

## Briefing Note 2: Options for localising steel inputs for the infrastructure build programme

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The government has sought a rigorous redirection of its spending toward physical public infrastructure projects. It aims to both improve services for business and to stimulate local input manufacturers, especially in the steel value chain. Yet the last major build programme, 10 years ago, fell short on both counts. Moreover, localisation policies now face a radically changed legal environment. On the one hand, in 2024 the new Public Procurement Act revised the requirements for designations, which mandate government agencies to privilege local products. On the other, the new build programme is expected to rely more heavily private investors, which are not automatically subject to designations.

To help understand the evolving context for localisation, TIPS has analysed the options for promoting the use of domestic steel in new infrastructure projects. (*Options for localising steel inputs for the infrastructure build programme*) The TIPS report assesses the impact of localisation policies in the last major build programme; the new legal framework; and the costs, benefits and risks of leading options to support industrialisation through local procurement. This briefing note summarises findings on the new legal environment.

The 2024 procurement act (No 28 of 2024) reshapes the ability of the central state in general, and the Department of Trade, Industry and Competition (the dtic) in particular, to require government agencies to buy local inputs. Section 20 introduces the following changes to the designation process.

- The Minister of the dtic may introduce designations only where there are at least three local producers. This appears to be a fixed requirement, but it is not clear if it refers to actual or potential producers.
- The Minister must explicitly consider the impact on employment and on the agents and distributors of the imported goods.
- Generally, the Minister must consider the “economic impact on imported goods”. Presumably the regulations for the Act, expected sometime this year, will clarify what this means.
- The Act introduces set-asides for black-owned businesses, without requiring any local content. This could entail hard trade-offs when the only viable manufacturers are not empowered.

To reduce compliance burdens, the new Act empowers government agencies to decide individually whether sufficient locally produced goods are available. The procuring agency can re-tender without local-content requirements if it informs the dtic within 14 days (para 20(7)). Until the regulations are published, it is not clear what evidence is required to demonstrate inadequate domestic supply.

The Finance Minister can also exempt agencies from any provision of the Act, including designations, if they find it is “uneconomical” to comply (Para 61(1)). Similarly, the national procurement officer can exempt a government agency from regulations if it is “impractical” to comply or if “market conditions or behaviour do not allow effective application of the instruction” (62(1)). Finally, it appears that

regulations under the Act are not binding on municipalities unless they voluntarily adopt them as by-laws.

In the 2010s, various regulatory and administrative shortcomings limited the impact of designations.

Historically, designations applied only to relatively few products, with little pressure on government agencies to stop importing other goods and services that could be produced locally. Designations focused on heavy industrial products, neglecting labour-intensive light manufacturing and services. Because government agencies often buy through intermediaries, many did not know if undesignated products were produced locally or not.

Agencies sometimes used specifications or waivers to circumvent local-content requirements. The impact was most telling in the case of Transnet's locomotive purchases from China, which accounted for over half of all designated products by value. Generally, the vast number of tenders and lack of an effective appeals process hindered monitoring of designations by stakeholders.

In some cases, South African producers struggled to compete on quality, scale, timeliness and/or price. The result was often higher costs, delays and sometimes faulty infrastructure. Highly secretive tender decision-making made it hard to evaluate the cost and quality of imports compared to local products.

Finally, the new build programme is premised largely on private investment, both directly in public infrastructure projects and through suppliers to the national electricity and rail grids. That means designations may not apply at all to major projects. They can extend fairly easily to subcontractors, but not to fully privatised operations.