



Hof Communications

9, Church Square, Cnr Parliament & Spin Sts Cape Town
(021) 790 4420 fax: (021) 790 2847
patmacpr@vebo.co.za

AmCham Parliamentary Report

26 May 2010

World Cup Fever

Very little has dominated parliamentary proceedings quite like the preparations for the World Cup. There has been a tense air to many of the committee meetings as department after department, organisation after organisation and each overseeing body, has been questioned and asked repeatedly to confirm that nothing will go wrong.

Its like the dress-rehearsal period before the opening of a Broadway show. Everybody knows their words but nobody knows quite what will happen.

The COSATU strike has not helped and general secretary Zwelinzima Vavi's words, "Our demands cannot be ignored because we have a few visitors to the country" had a confusing response amongst many parliamentarians in the alliance. But, in general, this crazy outburst seems to have been ignored. As we write, it appears that Transnet strikers might accept their third offer but the collateral damage is great.

World Cup fever exists in Parliament, for sure. But it has been soured by the strike, nevertheless, and committees chairpersons appear worried. Parliament goes into winter recess in a few days, hopefully to see in the stadiums, built at enormous cost to meet the Blatter contract, a triumphal success in terms of economic returns around the country.

Probably the one common message to emerge amongst commentators in Cape Town is that whatever happens, the only course now left is to leave matters with the organisers, learn how to handle the vuvuzelas and try and enjoy the moment for what it is, fever or not.

+++++

AmCham's late May report includes the following items, as a cross-section of parliamentary activity:



- **Reserve Bank Wants To Get Control**
- **Land Reform Issues Now Coming From The Top**
- **New Procurement Act Regulations Go Before Parliament**
- **Parliament Goes To School On IP Legislation**
- **The Water Tariff Issue Gets Hot**
- **Petroleum Companies Are Set To Go**
- **Comment Called For On Environmental Issues**
- **CIPRO Issue Not To Go Away**
- **Minister Davies Comments on IPAP Submissions**

Challenges On Control Result In New Reserve Bank Bill

Portfolio Committee on Finance

2 May 2010

A amendments to try and stop private shareholders whom many, including Reserve Bank's Gill Marcus, say are motivated by profit and undermining therefore the Reserve Bank of South Africa's integrity and impartiality, have been published by the national treasury for comment by 17 May 2010. He intention appears to be to fast-track the bill through Parliament over the next few days.

The draft bill is entitled the South African Reserve Bank Amendment Bill and the comment accompanying from minister Pravin Gordhan in the government gazette issued tabling the bill said that the aim is, amongst many things, "to provide for the establishment of a panel for the election of directors to the board and the functions of the panel."

The statement quoted the purpose of the draft bill as being to reinforce the requirements "regarding the limitation on shareholding in the South African Reserve Bank and to prevent the abuse of these provisions; to provide for the nomination of directors by a broader base of the South African public and to broaden representation on the Board of the South African Reserve Bank."

President Adds Weight To Land Reform Changes

The Presidency

President Zuma is the latest to add to the recent parliamentary comments made by the minister of agriculture that "significant changes to the willing-buyer willing-seller" model used for land reform negotiations between the state and private sellers, are about to take place.

President Zuma has stated that government was looking at alternative ways to put good arable land on the books that did not put too much strain on the public purse. He stressed that this process would involve consultation with key stakeholders, indicating therefore his firm view that cabinet would support any legislative changes.

“The general view is that the willing-buyer willing-seller model has not worked adequately thus far. We are working on a much more pragmatic formula for land redistribution”, he told an audience in Johannesburg, thus confirming the government departmental view put to Parliament in previous weeks.

A SAPA report also said that the deputy rural development minister, Joe Phaahla, speaking at another conference in Gauteng had announced government plans to conduct a full audit of all state and private land. Parliament had earlier been told that a green paper suggesting the facilitation a land commission was to be introduced, Phaahla now adding that it would be this body that would carry out any such envisaged audit.

Government has until now has been working on a target of 30% of commercial farmland in black hands by 2014 and is not by any means on the way to achieving such a figure, President Zuma has admitted.

Draft Preferential Procurement Regulations Debated by Finance

Portfolio committee on finance

26 May 2010

The revised and draft government preferential procurement regulations bringing more definitions into the criteria for assessing government tenders in terms of the “broad-based” requirements of the law will “go a long way towards preventing fronting”, said Coen Kruger, the deputy director general of the national treasury. He was presenting the draft to the parliamentary committee on finance.

The portion of the draft that most affects business, the balanced scorecard and sections regarding equity ownership, are included in the draft bringing into play the issue of what functions black management that score actually undertake in job definition terms and considers the issue of valuing their contributions accordance to their task. Verification certificates would be according in terms of the new scales, which involve different and raised threshold entry points for contracts/tenders.

Much of the more recent input to the regulations was received by national treasury from the department of trade and industry (DTI) as a result of the IPAP(2) exercise.

Coen said that the primary purpose of the draft regulations was to amend the Act to bring this into line with the aims of the B-BBEE Act and the Codes of Practice. In principle, the regulations would therefore cease to refer to “HDI’S”, or historically disadvantaged persons, and update to the definitions of black persons as contained in the B-BBEE Act.

Verification certificates issued in terms of the B-BBEE scorecard calculate points out of 10 or 20. The new regulations would give points awarded to a bidder based on his or her B-BBEE status level and a bidder level 1 would receive 10 points if under the 90/10 system and 20 points if under the 80/20 with allocations in similar proportions at the remaining seven levels. The 80/20 system was described by Coen as being 80% for price and 20% for black empowerment.

He told parliamentarians that the DTI will be able under the new regulations to designate specific industries where tenders should prescribe that only locally manufactured products will be considered.

Coen said that currently there are only 30 accredited "VAs" and in some provinces none. To supplement the number of "VAs", DTI he said has embarked on recognizing regulated professional bodies, such as registered auditors, to also assess B-BBEE status of enterprises. During November 2008, he added, SARS had indicated that there were 82, 076 enterprises with annual turnover in excess of R5 million and who needing rating on an annual basis.

The process has been that draft interim revised regulations were published in the national gazette and all provincial gazettes for public comment - the closing date having been 14 September 2009 - extended to 30 September 2009 due to public demand. Coen said that a total number of 156 written comments were received, and comments came back from NEDLAC during December 2009.

During March 2010, joint comments were received from DTI and the department of economic development, particularly in the terms of reference contained in IPAP aimed at promoting domestically produced goods and services.

Parliament on learning curve on intellectual property law

Portfolio Committee on Economic Development

22 May 2010

Ms Joanne Fubbs, chairperson of the trade and industry portfolio committee, was particularly clear at the outset of the briefing on the IP Law that no hearings will be conducted on the new Intellectual Property Laws Amendment Bill in the immediate future on the basis of both its importance of the bill and the necessity to thoroughly brief the committee on the complexities.

This was to be done first before engaging with the IP interested parties during a round of public hearings.

Zodwa Ntuli, deputy director general: consumer and corporate regulation division of the department of trade & industry (DTI) briefed members on the meaning of indigenous knowledge (IK) and how it was to be applied the regime of intellectual property law.

She said that there was no single all-encompassing definition of IK, since it was something that was created in the mind and could be transferred from generation to generation. IK was "embedded in culture", she said, and was unique to a given location or community. It served as the basis often for decision-making of communities in food security, human and animal health, educational and natural resource management and for such practices as herbal medicine, she said.

Ms Ntuli explained why it was important to protect IK. The creations and inventions of people needed to be protected so that they could exploit them commercially and IK embraced much knowledge that was mostly rural, she said. The importance of IK was that it was an important aspect of the development process of local communities and the poor, she added. Knowledge, not capital, was the key to sustainable development of communities.

Also IK was the key element of the ‘social capital’ of the poor in the view of DTI in their IPAP document and their main asset to invest in the struggle for survival; to produce food; to provide for shelter; and to achieve control of their lives. IK had importance in conferring socio-economic benefits to IK holders and could be a catalyst for empowerment and economic development of the rural population in the agricultural environment.

Moreover, it could be improved progressively and passed from one generation to the next, Ntuli said. However, IK holders were vulnerable to transfer of IK to industrial economies without proper recognition and compensation, she concluded.

DTI said that the department had followed a proper process in the preparation of the legislation. The draft bill had been prepared in co-operation with all government departments, government agencies such as the agricultural research council and universities. Also the World Intellectual Property Organisation (WIPO) had been consulted before the bill was put before cabinet for approval.

There was public consultation regarding the draft in 2007 and thereafter consultation was held with IP practitioners, librarians and the Mark Shuttleworth Organisation. The bill was introduced to Parliament in March 2010 and consultation has since been taking place with the Law Society, DTI said, and the Free Market Foundation.

Ntuli said that much of the impasse between developing and developed countries over IK had been resolved in WIPO discussions in recent years and she told parliamentarians that DTI perceived the protection of IK as important as far as access to markets was concerned. The bill, she said, in fact brought together a number of pieces of major legislation including the Performances Protection Act, the Trade Marks Act and the Designs Act. By doing this, DTI was bringing to the table “protection rather than promotion”.

The parliamentary committee resolved to have a workshop on the bill before the whole subject of public hearings was to be entertained. DTI was to be invited to the workshop. In all likelihood public hearings will be advised by Parliament in the new parliamentary session after the short winter recess which incorporates the World Cup period.

Water tariffs set to rise to maintain viability

Parliamentary committee on water affairs

15 May 2010

Parliament’s water affairs committee were told by the department of water affairs that most of the country’s thirteen water boards are set to increase their tariffs in July by 6% to 43%, although the last case is an exception.

While the water boards are required to consult with local government and ask the Treasury for its comments, nevertheless Parliament could not approve or reject water tariff increases nor in fact could the minister of water affairs or the department itself.

In answer to questions, parliamentarians were warned that if pressure were to be put on the various water boards to reduce their tariffs, the result would be a higher level of borrowing and this would subsequently result in tariffs becoming relatively unaffordable.

The largest of the boards, Rand Water, is to shortly increase its tariff by 14%, the committee was told, but the increase came off a relatively low base, the department commented. Rand Water increases were expected to be rising from R3,48/kl to R3,97/kl .

In defence of the need to allow the water boards to leave the matter of increases uncontested, water affairs demonstrated with financial models how such increases would allow the water boards to finance capital expansion and decrease their dependence on loan finance. In fact, of the thirteen water boards eleven were still financially viable, the department said, and to allow such increases was important to maintain stable delivery systems.

The exceptions were Namakwa in the Springbok area and Bushbuckridge in Mpumalanga, but rescue plans, said the department, were being put in place for these instances. The committee was also told that municipalities owed the various water boards more than R1,3bn in back fees. Of this amount, R704m was in arrears, whilst R691m was current.

Sapia Says Fuel Companies Ready for World Cup

Ad hoc committee on World Cup Readiness

May 21, 2010

Transnet strike excluded, Avhaphani Tshifularo, executive director of SA Petroleum Industry Association (SAPIA), says that all fuel companies are in a state of preparedness for the World Cup.

However, he pointed out to parliamentarians that 60% of the jet fuel supply for OR Tambo airport travels the Natref fuel pipeline along the Durban/Gauteng corridor and the industry was “interdependent” on such logistic facilities, the pipeline being run by Transnet. Or Tambo would have sufficient fuel for only 7 days if the pipeline were to stop pumping.

Steps to mitigate emergencies had been put in plus, such as the ability to appoint additional drivers and obtain additional road haulage facilities but, nevertheless said Tshifularo major disruption would arise if the public started “panic fuel buying” in the light of an extended Transnet strike and started to accumulate stock themselves.

Should the strike be resolved in time, Tshifularo laid out a series of checks and balances indicating the state of preparedness of the petroleum industry.

Most highly affected by an extended Transnet strike would be chemical industries, SAPIA noted. Newspaper reports have subsequently quoted the minister of agriculture as stating that also affected badly are already fruit farmers in the Cape. Speedy resolution of the strike was needed, said SAPIA.

As Gauteng was the biggest market and would also host the majority of games, the industry had focused on uninterrupted supplies to this area and consequently the competition commission exemption had gone a long way in helping by allowing for “enhanced logistical planning” for the World Cup, said Tshifularo .

Comment On Draft National Enviro Strategy Called For

Environmental Affairs

May 23, 2010

The department of environmental affairs has published a draft national strategy on sustainable development and an associated action plan for 2010-2014 for public comment, giving until 14 June for written comment.

The department states that its strategy contains a clear definition of sustainable development in the South African context - "sustainable development" it says being the process of moving in the direction of sustainability.

The document now out for comment outlines the process followed by the government in developing its strategy; the plan itself having been adopted by cabinet in June 2008. Incorporated is also a plan on how government wishes to implement the framework.

Formal implementation of the action plan, the document says, is to commence this year and such provides the "roadmap for the development path that needs to be followed in South Africa if the country is to "achieve a vision of a sustainable society".

The document says the strategy and action plan is intended to guide both public and private sector organisations in long-term planning and sector-specific strategies, and which includes the promotion of a green economy.

Further Reports To Come On Cipro Tender

Standing Committee on Public Accounts

May 15, 2010

Trade and Industry Minister Rob Davies has announce steps to deal with issues behind the alleged tender-rigging in the Companies and Intellectual Property Registration Office (Cipro).

The cabinet, previously in a statement issued early May, had also noted the AG's report and supported the minister's plan to take action against all those who are implicated in the AG and forensic reports.

Davies said he would report to Parliament's standing committee on public accounts (Scopa) in mid-May and brief them on his internal probe and the background behind the R153 million enterprise content management system awarded by Cipro. Reports now indicate that this contract has been halted.

"We've had to determine whether the successful bidder had information that was not available to other bidders," he told Parliament's portfolio committee on trade and industry earlier.

"Our investigation gave us the basis where the director-general (of trade and industry) can respond to that question from the Attorney General. We are now taking legal advice on the options with respect to how we need to act."

A report by the AG completed last month noted that the successful bidder was the only one whose "proposal was within a range of two percent of the estimated price as contained in the business case".

It instructed the department to determine whether the company had inside information. If so, the AG said, the contract "should be reconsidered and those responsible should be held accountable".

Davies told the committee his department was not yet ready to announce its future plan of action but would do so when it faced Scopa next month.

"It is our intention to go before Scopa and give some indication of how we intend to act. We cannot do that right now; we are still in the process of deciding how to act."

He rejected allegations by the opposition that the department of trade and industry had been "dragging its feet" on the issue and said it was determined to root out corruption at Cipro and restore the integrity of the office.

However, Sapa reported recently that Davies had commented separately that he had conceded that fraud might have impacted on Cipro's turnaround time in handling company registrations, an issue which has been worrying critics for some time on the subject of Cipro's performance and services to the commercial sector.

Davies: No High Technology Development In IPAP

Committee on economic development

20 May 2010

In answer to a parliamentary question as to why IPAP (2) was not focusing sufficiently on "nano" or high technology, minister of trade and industry, Rob Davies, told the portfolio committee on economic development that proposals would be needed first for consideration by the department of trade and industry (DTI) before any such direction was taken by government.

Mr Nimrod Zalk, deputy director general, industrial development division, added to this comment by saying that the IPAP approach was to commercialise viable technology and rather the IDC should play the role of a venture capitalist and take on any risk that the private sector would not take in developing both bio and "nano" technologies.

Minister Davies said that with regard to a further comment that had been made by parliamentarians on the lack of involvement of IPAP in the country's the infrastructure sector, such an issue was fundamental to the growth of any economy interested in stimulating industrial development. Infrastructure development was indeed already being undertaken by the state, which acknowledges, he said, that the cabinet and the DTI had seen the importance of such and this was now accounted for in IPAP.

When asked about more sophisticated agriculture technologies, the Minister said that the DTI was planning a response to the necessity to enter the high added value agricultural products market. He said that the DTI was specifically exploring the aquaculture sector with the department of agriculture, forestry and fisheries.

In answer to comments that the national treasury should study some of the difficulties caused to potential investors by complicated legislation, minister Davies responded that the problem with financial growth was that it was unsustainable if it did not contribute to the issue of domestic development.

A lack of regulation would only serve to encourage investors to prey on productive sectors, he said. As a result, it was a necessity that stringent legislation must remain in his view. Minister Davies noted that in his view it was this legislation that saved South Africa from the worst effects of the global recession.

He said that the response to the call for submissions had been plentiful. Most of the issues related specifically to funding and the budget, the Proudly South African campaign, the Competition Commission, unemployment, the green economy and the mismatch and deficit in skills. Particular comment by departments had, or will be, made by the relevant departments on these matters, he said.

Of specific concern, the minister said, was the recognized need to secure industrial financial concessions for IPAP sectors. The best possible model, he said, for industrial financing was being studied with the new economic planning department, national treasury and IDC.

He said that another major item that DTI had noted from submissions was the matter of leverage in public procurement area and that should take place order to develop a competitive domestic supply base. Davies told parliamentarians that a task team comprising the economic development and trade and industry departments together with national treasury was close to an agreement on a new set of regulations for the Preferential Procurement Policy Framework Act.

Should such regulations be approved, the minister said, “they would create a significant platform to advance the objectives set out in the IPAP2 with respect to public procurement”. The minister said he called on the private sector to support local production by increasing local procurement.

In response to submissions that questioned government’s ability to implement the plan across all relevant departments, the minister answered such criticisms by saying that IPAP clearly sets out “which department, agency and state-owned enterprise is responsible for carrying forward each key action plan”.

Minister Davies said he had been pleased with the overall tendency in the submissions to support increased activity in the work of the Competition Commission. “Careful considerations will have to be given to the additional measures proposed in the submissions, including proposals to amend the Competition Act to go beyond existing measures as far as cartels and monopolies are concerned.”

The Minister said that he was looking forward to the committee’s parliamentary report which is now to be debated in the National Assembly.

Current legislation still in process at various stages of parliamentary procedure:

1. SOUTH AFRICAN RESERVE BANK AMENDMENT BILL B10 - 2010
2. BLACK AUTHORITIES ACT REPEAL BILL B9 - 2010
3. INTELLECTUAL PROPERTY LAWS AMENDMENT BILL B8 - 2010

4. PREVENTION AND COMBATING OF TRAFFICKIN IN PERSONS BILL B7 – 2010
5. PROTECTION OF INFORMATION BILL B6 - 2010
6. APPROPRIATION BILL B3 - 2010
7. SOUTH AFRICAN POST OFFICE BILL B2- 2010
8. PROTECTION FROM HARASSMENT BILL B1 – 2010
9. SOUTH AFRICAN POSTBANK BILL B14 - 2009
10. CONSTITUTION SEVENTEENTH AMENDMENT BILL B8-2009
11. CRIMINAL LAW (FORENSIC PROCEDURES) AMENDMENT BILL B2-2009
12. SOCIAL ASSISTANCE AMENDMENT BILL B5 - 2010
13. TRADITIONAL COURTS BILL B15 - 2008
14. PROTECTION OF PERSONAL INFORMATION BILL B9 - 2009

Patrick McLaughlin

AmCham parliamentary representatives & monitors

De Graafs Bldg 9, Church Square,

Cnr Parliament & Spin Sts

Cape Town