

DRAFT CUSTOMS BILLS: EXPLANATORY MEMORANDUM

1. INTRODUCTION

1.1 Traditionally border or customs control is exercised to ensure the collection of taxes on imported and exported goods, to combat cross-border crime and generally to protect a country's sovereignty and people and to enforce its laws. With the advent of globalisation, a changing world environment and the importance of international trade and tourism there is increasing pressure worldwide on countries to work towards a better balance between their needs for rigid customs control and the facilitation of the international movement of travellers and goods. Whilst the need for an effective customs control system as a mechanism for revenue collection, protection of society and combating of crime is not denied, the international trend is to modernise customs systems in order to minimise their disruptive effect on legitimate trade and tourism as much as possible. This is to be achieved through simple, predictable and efficient customs systems and by optimising available technology that would neither compromise the traditional objectives of customs control nor disrupt the flow of goods and people between countries.

1.2 The Revised Kyoto Convention provides a model framework for customs control and is regarded as the blueprint for a modern, efficient and cost-effective customs system. The Republic has acceded to this Convention on 18 May 2004.

1.3 Customs and excise legislation is currently contained in the Customs and Excise Act, 1964 (Act No. 91 of 1964), which basically provides for the levying of customs and excise duties, and also certain other taxes such as fuel levies, air passenger tax and environmental levies. To enable the administration and collection of these taxes the Act prescribes an extensive system of customs control focussed on the import, export, manufacture and use of goods. For purposes of convenience and common sense these control mechanisms also serve a secondary purpose, viz. to enforce legislative restrictions on the import and export of certain regulated goods, and especially to combat the smuggling of illicit goods into and out of the Republic.

1.4 The Customs and Excise Act, 1964, was written to cater for the needs of the time when the focus was on control, and although the Act was extensively amended over the years to keep pace with new approaches and to soften and modernise the system, the basic structure of the Act remained unchanged and still contains a strong undercurrent of rigidity reminiscent of the era in which it was written. As such it is not

structurally suitable to serve as a vehicle for implementing a modern system of customs control in accordance with current international trends and best practice. What is required is a fundamental restructuring of our customs and excise legislation not only to give effect to Kyoto and other binding international instruments but also to establish a sound, clear and logical legislative framework that would enhance and “speak to” the many other legislative instruments that rely for their implementation on customs control.

1.5 It is proposed that the new legislative framework should consist of three separate pieces of legislation that would eventually replace the Customs and Excise Act, 1964, viz. –

- (a) a Customs Control Act that establishes a customs control system for all goods imported into or exported from the Republic and that prescribes the operational aspects of the system;
- (b) a Customs Duty Act, that provides for the imposition, assessment and collection of customs duties; and
- (c) an Excise Duty Act, that provides for the imposition, assessment and collection of excise duties.

1.6 The dissection of the Customs and Excise Act, 1964, and rewrite of the current customs and excise legislation is a mammoth task that will probably take several years to complete. For that reason it was decided to split the customs and the excise aspects of the task and to complete the project in two phases, the first phase being the drafting of the two Customs Bills and the second the drafting of the Excise Bill. The intention is to proceed, at this stage, only with the two Customs Bills and once enacted into law to retain the current Customs and Excise Act, 1964, for the continued administration of excise duties until the proposed Excise Act comes into effect. The position would thus be that the two Customs Bills would replace the provisions of the current Customs and Excise Act, 1964, in relation to customs only and that the 1964 Act would for the time being continue to apply to excise duties.

2. THE PROPOSED CUSTOMS CONTROL ACT

2.1 The Customs Control Bill is primarily concerned with the control of goods imported into or intended for export from the Republic. The rationale for this control is to ensure that any taxes imposed by various other laws on such goods are collected and that other laws regulating the import or export of specific goods are complied with. As such the Bill can best be described as a law that will serve as a “platform” for

the implementation of these other laws that are concerned with goods imported into or exported from the Republic. Laws that will rely for their implementation on the Customs Control Bill include, firstly, laws imposing taxes on goods when imported or exported, such as the proposed Customs Duty Act, the proposed Excise Act, the VAT Act, 1991, and the Diamond Export Levy Act, 2007, and, secondly, laws prohibiting or regulating the import or export of certain goods such as arms and ammunition, protected species, goods that are subject to permit control, counterfeit goods, etc. The primary aims of the Bill are set out in section 4 as follows:

- (a) to provide systems and procedures for customs control of all goods and persons entering or leaving the Republic;
- (b) to enable the effective collection of tax on such goods imposed in terms of the tax levying Acts; and
- (c) to facilitate the implementation of other legislation applicable to such goods and persons.

2.2 The Bill determines the procedural requirements that must be complied with when goods are “imported” or “exported”. The basic requirement is that goods may only be imported through specific places designated as “places of entry” where the goods must be “cleared” by the importer either for “home use” or a “customs procedure” before they may be “released” by the customs authority for their intended purpose. Similarly, goods intended for export may only be exported through specific places designated as “places of exit” after properly cleared by the exporter and released by the customs authority for export.

2.3 To effectively cover the myriad of eventualities that affect the control of imported and exported goods in the customs environment, the Bill deals with complex, cross-cutting material which tends to become highly technical at some points and to compound the understanding of the legislation. In order to facilitate a proper understanding of these technical configurations and to assist the reader in grasping the many and varied situations posed by customs control, the drafting approach was to present the Bill in a logical and systematic way that would hopefully make the Bill more reader friendly. Firstly, the material covered by the Bill is arranged in topic specific Chapters each with its own descriptive heading and a clause stating the purpose of the Chapter. Each Chapter is divided into topic specific Parts covered by the Chapter heading, and each Part, in turn, contains a number of titled sections that fall under the topic covered by the Part heading. Secondly, the drafting generally follows the recognised guidelines for modern plain language drafting. The sections,

subsections and paragraphs are generally crisp, short statements devoid of unnecessary legalistic trappings. Thirdly, wide use is made of footnotes to provide background information and, especially, to connect specific provisions with the numerous cross-cutting provisions contained in other parts of the Bill. The legal status of the footnotes is determined in the Bill, namely that they do not form part of the Bill, but that they may be taken into account in the interpretation of the Bill as non-binding opinions on the information they convey.

2.4 CHAPTER 1: INTERPRETATION, APPLICATION AND ADMINISTRATION OF THIS ACT

2.4.1 Terminology: Words and phrases used in the Bill are defined in section 1. Because of the technical nature of the Bill, terminology is of critical importance for a proper understanding of the Bill. Some of the key concepts explained by way of definitions include the following:

2.4.1.1 The main focus of the Bill is on “**customs control**” which means control exercised by the customs authority in terms of the Bill in relation to goods and persons to whom the Bill applies. The Bill applies to goods imported into and exported from the Republic. Both “**import**” and “**export**” are defined in their widest sense, viz. when goods cross the border into the Republic or cross the border out of the Republic. The same applies to persons entering or leaving the Republic. The “**Republic**” means the territory of the Republic of South Africa, including its internal and territorial waters and the airspace above its territory and its internal and territorial waters. This means that goods and persons come under customs control when a ship carrying goods and persons enters the territorial waters of the Republic, or an aircraft carrying goods and persons enters the airspace above the Republic, or when vehicles or persons on foot cross a land border into the Republic.

2.4.1.2 The word “**goods**” is defined to include any wares, supplies, merchandise, articles, products, commodities, substances, documents or any other things capable of being transported. It is to be noted that “goods” includes vessels, aircraft, locomotives, railway carriages, vehicles or other means of transport, whether or not used for the transport of goods or travellers, transport equipment whether or not used in the transport of goods, baggage of persons entering or leaving the Republic, postal items, currency, commodities capable of being pumped through pipelines and electricity. Although the Bill deals in some instances separately with “**compensating products**”, these products are generally included in the definition of goods.

“Compensating products” merely denotes goods consisting of products obtained from the processing of goods under certain processing procedures.

2.4.1.3 Customs control is centred around **“places of entry”** and **“places of exit”**, viz. seaports, airports and land border-posts where goods and persons entering or leaving the Republic, including vessels, aircraft, trains and vehicles, are processed for customs purposes. Customs control is further enhanced by **“customs controlled areas”**. All **“terminals”** and **“depots”** situated at places of entry and exit must be licensed for purposes of the proposed Customs Control Act.

2.4.1.4 Customs control in terms of the Bill requires all imported goods and goods destined for export to be **“cleared”** which is the new term to describe the action of entering goods for home use or a customs procedure, in other words the action of officially notifying customs of goods that are subject to the Act. In the current Act this action is indicated by the term “enter” which has been discarded. Notification is effected by way of a **“clearance declaration”** containing the prescribed information concerning the goods and submitted by or on behalf of the importer or exporter to customs either manually or electronically. The word **“release”** describes the action taken by customs to authorise the goods to be put into **“home use”** or to be dealt with in accordance with a **“customs procedure”**. If goods are released for home use, the goods go into **“free circulation”** in the Republic which indicates that the goods may be dealt with free of any further customs control. If goods are released for a customs procedure the goods remain subject to customs control and the goods may be dealt with only in accordance with the provisions regulating the relevant customs procedure. There are twelve different customs procedures, viz.

- (a) the national transit procedure;
- (b) the international transit procedure;
- (c) the transshipment procedure;
- (d) the temporary admission procedure;
- (e) the warehousing procedure;
- (f) the tax free shop procedure;
- (g) the stores procedure;
- (h) the export procedure;
- (i) the temporary export procedure;
- (j) the inward processing procedure;
- (k) the processing for home use procedure; and
- (l) the outward processing procedure.

Each of these customs procedures has a precise technical meaning which is described in the Chapter dealing with the particular procedure. If non-cleared imported goods or goods under a customs procedure are “**diverted for home use**” it means that the goods are dealt with illegally as if the goods are in free circulation.

2.4.1.5 Although an importer may choose to clear goods for home use or a customs procedure, that choice must be “**permissible**” in the circumstances, which means that the choice must be consistent with the provisions of the Bill or authorised by customs. Some clearances are not permissible.

2.4.1.6 It is to be noted that the export of goods is a customs procedure whilst the concept of home use is not. The reason for this is that a release for home use terminates customs control of the goods whilst goods released for export remains under customs control until exported.

2.4.1.7 Goods are subjected to a system of clearance and release in order to achieve the primary objectives of the Bill, i.e. to facilitate the control over and collection of taxes on imported and exported goods imposed in terms of other Acts and the enforcement of Acts prohibiting or restricting the import, possession or export of certain goods. The term

“**tax levying Act**” refers to Acts imposing taxes on imported and exported goods and includes the proposed Customs Duty Act, the Value-added Tax Act, the proposed Excise Duty Act and the Diamond Export Levy Acts. “**Prohibited goods**” are goods of which the import, possession or export are prohibited, whilst “**restricted goods**” are goods that may only be imported, be in a person’s possession or be exported in accordance with the requirements of the legislation regulating the import, possession or export of the goods, e.g. on authority of a permit or other official document issued in terms of such legislation.

2.4.1.8 “**Tax**” refers to –

- (a) a duty imposed in terms of the proposed Customs Duty Act on the import or export of goods;
- (b) any other tax, levy or duty imposed on the import or export of goods;
- (c) value-added tax, to the extent that value-added tax is –
 - (i) payable on imported goods cleared for home use; or
 - (ii) refundable on goods cleared for outright export;

- (d) excise duty, a fuel levy or environmental levy, to the extent that such duty or levy is –
 - (i) payable on imported goods cleared for home use; or
 - (ii) refundable on goods cleared for outright export; or
- (e) any other tax, levy or duty imposed on goods, to the extent that such tax, levy or duty is –
 - (i) payable when the goods are cleared for home use;
 - (ii) payable when the goods are cleared for outright export; or
 - (iii) refundable when the goods are exported or cleared for outright export.

2.4.1.9 Goods dealt with in the Bill have a tax due status or a tax free status. A “**tax due status**” indicates that a tax applicable to the goods is payable, and a “**tax free status**” indicates that whilst the goods have a tax free status no tax applicable to the goods will be payable.

2.4.1.10 “Customs Tariff” denotes the instrument that will be issued under the proposed Customs Duty Act to replace Schedules **1, 2, 3, 4** and **5** of the current Customs and Excise Act. Until this happens the existing Schedules **1, 2, 3, 4** and **5** will be regarded to be the Customs Tariff.

2.4.1.11 The words “**operator**” and “**carrier**” need to be distinguished. “**Operator**” denotes the person who is in on-board command of a vessel, aircraft, train or vehicle (usually the captain of a vessel, pilot of an aircraft, conductor of a train or driver of a vehicle), whilst “**carrier**” denotes the shipping line or airline or the rail or road hauler conducting business by transporting goods or persons for reward.

2.4.2 Administration of proposed Customs Control Act: The task to administer and enforce the Bill is given to the Commissioner of the South African Revenue Services who must for this purpose designate any number of SARS officials as customs officers. The Commissioner may, however, with the concurrence of an organ of state or other institution also designate persons in the service of that organ of state or institution as customs officers.

2.4.2.1 Customs officers may exercise the powers and duties assigned to them in, or delegated to them in terms of, the Bill in accordance with an appropriate hierarchical system of customs management as determined by the Commissioner whereby customs officers are entrusted with managerial, supervisory, operational or other

responsibilities according to rank or on any other selective basis and exercise those powers and duties in a manner commensurate with their respective responsibilities. Customs officers must perform their functions in accordance with instructions and rules issued by the Commissioner. Each customs officer will be furnished with an identity card which must be produced on demand by a member of the public affected by an action of the customs officer.

2.4.2.2 Provision is also made for the establishment of Customs Offices at centres where needed, for cooperation between customs and other role players in the customs environment, both local and foreign, and for other organs of state and institutions to perform support services in the administration of the proposed Customs Control Act. The Bill also contains confidentiality clauses to protect private information acquired in the implementation of the Act.

2.5 CHAPTER 2: CUSTOMS CONTROL, PLACES OF ENTRY AND EXIT AND CUSTOMS CONTROLLED AREAS

2.5.1 This Chapter identifies the goods and persons that are subject to customs control, provides for the designation of places as places of entry or exit and identifies places and facilities as customs controlled areas.

2.5.2 The list of persons and goods that are subject to customs control is extensive in order to ensure effective customs control of all goods and persons entering or leaving the Republic. Foreign-going vessels and aircraft that enter and pass through the territorial water or airspace of the Republic without calling or landing at a place in the Republic are subject to customs control until they leave the territorial water or airspace of the Republic, but goods and persons on board such vessels or aircraft are regarded as not having been imported or as having entered the Republic.

2.5.3 The power to designate seaports, airports, rail border crossings and land border crossings as places of entry and exit for the Republic is vested in the Commissioner, but because of the economic and strategic effect of such decisions the Commissioner may only exercise this power in accordance with national legislation and decisions of Cabinet. Any restrictions on the use of places of entry or exit may similarly be imposed by the Commissioner only in accordance with national legislation and decisions of Cabinet.

2.5.4 Although places of entry or exit will as a rule be located in the Republic, the Bill empowers the national executive of the Republic in exceptional cases to enter into an agreement with the government of a SACU member state or other adjoining country to provide for joint, one-stop or side by side places of entry or exit for the Republic and that adjoining country, for a place of entry or exit for the Republic alone at a location in that country or for a place of entry or exit for that country alone at a location in the Republic.

2.5.5 The premises identified as customs controlled areas for the purposes of the Bill include sea cargo terminals (general, special, bulk, container or a combination of these), sea travellers terminals, air travellers or cargo terminals, air cargo depots, rail travellers or cargo terminals, container depots, international postal clearance depots, customs warehouses, tax free shops, IDZ enterprises, inward processing premises, processing for home use premises, state warehouses, cross border pipelines and cross-border transmission lines. (See definitions in section 1 of the Bill).

2.6 CHAPTER 3: INBOUND AND OUTBOUND CONTROL OF VESSELS, AIRCRAFT, TRAINS, VEHICLES, PERSONS AND GOODS AT PLACES OF ENTRY AND EXIT

2.6.1 The purpose of this Chapter is to establish arrival and departure requirements for all foreign-going vessels and aircraft, cross-border trains, vehicles and persons entering or leaving the Republic and for all goods imported into or exported from the Republic.

2.6.2 The Chapter basically provides for the submission to customs of certain notices, reports and manifests to track the arrival and departure of all inbound and outbound foreign-going vessels and aircraft, cross-border trains, vehicles, persons and goods to ensure that all goods and persons entering or leaving the Republic are properly processed for customs purposes at places designated as places entry and exit or, in the case of trains, at specific railway stations. It also ensures that foreign-going vessels and aircraft call or land and take on board or discharge travellers and goods only at places of entry and exit and that vehicles and cross-border trains only enter or leave the Republic through places entry and exit. Non-compliance with these provisions has serious consequences and may even lead to confiscation of the vessel, aircraft, train, vehicle or goods.

2.6.3 The control system prescribed by the Chapter requires the carrier in charge of a foreign-going vessel or aircraft or a cross-border train to submit electronically to the customs authority an **advance notice** of the arrival in the Republic of the vessel, aircraft or train, and any travellers and cargo it has on board. Customs must also be alerted by way of the electronic submission of an **arrival report** of the actual arrival of the vessel or aircraft at a customs seaport or airport, or in the case of a train, at the first railway station after having entered the Republic. **Traveller's arrival reports** must also be submitted in respect of travellers and crew that will disembark from the vessel, aircraft or train, and **manifests** must be submitted in respect of cargo that will be discharged.

2.6.4 Inbound vehicles and persons on foot may cross the border into the Republic only at land-border posts designated as places of entry. If a person or vehicle enters the Republic at any other place, that person or vehicle must first report to customs at the nearest land-border post. Advance arrival notices, traveller arrival reports and cargo manifests in respect of overland vehicle traffic are required only for buses and commercial trucks entering the Republic with travellers or cargo on board.

2.6.5 **Advance departure notices** must likewise be submitted to customs in respect of all foreign-going vessels and aircraft and cross-border trains, and of all travellers and cargo on board, before departing from the Republic. A vessel or aircraft may depart from a customs seaport or airport only on authority of a **permission to depart** issued by the customs authority. In addition **departure reports** must be submitted in the case of all departures of foreign-going vessels and aircraft and cross-border trains, including **travellers departure reports** and **manifests of outgoing cargo**.

2.6.6 Outbound vehicles may cross the border out of the Republic only at land-border posts designated as places of exit, but only buses and commercial trucks with travellers or cargo on board are required to submit advance departure notices, traveller departure reports and manifests of outgoing cargo.

2.6.7 The Chapter covers all sea, air rail and road traffic into and out of the Republic, but in order to lessen its impact in circumstances where the proposed measures are unwarranted or perhaps even unnecessary, provision is made for excluding by rule any category of vessels, aircraft, trains, railway carriages, vehicles, persons or goods from all or any specific provisions of the Chapter. Provision is also

made for exempting any specific vessel, aircraft, train, railway carriage, vehicle, person or goods from any of these measures, e.g. when a foreign naval vessel calls in the Republic. These exclusions and exemptions may only be granted by the Commissioner in accordance with the decisions of the national executive.

2.7 CHAPTER 4: COASTWISE TRAFFIC OF DOMESTIC VESSELS

2.7.1 The purpose of this Chapter is to regulate the arrival and departure of domestic vessels at customs seaports. A “domestic vessel” is any vessel which is not a foreign-going vessel, and includes what is called a “coasting vessel” which is a domestic vessel engaged in the transportation of goods or passengers for reward between seaports within the Republic. Domestic vessels are subject to customs control to combat smuggling and also to control the use of domestic vessels for the coastwise carriage of imported goods between South African harbours. Such goods are transported in bond under the national transit procedure together with goods which are in free circulation. “Coastwise carriage” is not a separate customs procedure but a specific form of the transit procedure.

2.7.2 The Chapter requires all domestic vessels upon arrival at and departure from customs seaports to submit to customs arrival and departure reports, respectively. Unlike foreign-going vessels no advance arrival and departure notices are required. However, no domestic vessel may depart from a customs seaport without a permission to depart issued by the customs authority for the intended voyage.

2.7.3 Coasting vessels must on arrival at a customs seaport submit a manifest of cargo on board the vessel that will be discharged at that seaport, distinguishing between goods transported under a customs procedure and goods in free circulation. Manifests of all cargo on board must be submitted in the case of departing coasting vessels, again distinguishing between goods transported under a customs procedure and goods in free circulation.

2.7.4 Certain domestic vessels are excluded, such as naval ships, vessels that usually return to their place of departure in the Republic within a short period of time, small pleasure boats and any other category of vessels prescribed by rule. The Commissioner may also exempt domestic vessels that operate under transires.

2.8 CHAPTER 5: MOVEMENT OF GOODS INTO AND OUT OF CARGO DEPOTS AND TERMINALS

2.8.1 The purpose of this Chapter is to monitor the movement of goods into and out of licensed premises such as cargo terminals and depots. It provides for prescribed outturn reports to be submitted to Customs Offices by licensees of cargo terminals and depots when cargo is off loaded from foreign-going vessels or aircraft or cross border railway carriages or handled at terminals for loading on board foreign-going vessels or aircraft or cross border railway carriages, and also when imported goods are removed from cargo terminals or depots or when goods destined for export are received at terminals or depots.

2.8.2 Likewise outturn reports are also required when imported cargo is off loaded at sea cargo terminals from coasting vessels or handled at such terminals for loading on board coasting vessels.

2.8.3 A system of electronic notification to customs is prescribed to track the movement of goods in and out of depots and terminals, including when goods are received for export at a depot or terminal, are forwarded from a depot to a cargo terminal for export, remain at a depot for longer than as prescribed after their delivery to the depot for export or if the goods are not exported within the prescribed timeframes.

2.9 CHAPTER 6: CUSTOMS PROCESSING OF PERSONS ENTERING OR LEAVING REPUBLIC

2.9.1 Persons entering or leaving the Republic are required to be customs processed and to declare their accompanied baggage by submitting to customs at the place of entry or exit a declaration containing such personal and travel information and information concerning their accompanied baggage, as may be prescribed by rule. The submission of a declaration is, however, dispensed with at places of entry or exit where a channel system is in place and in terms of which persons entering or leaving the Republic who choose for instance the green channel indicating that they have nothing to declare will be allowed to proceed without customs formalities unless a customs officer intervenes.

2.9.2 Not all accompanied baggage needs to be declared and personal effects which that person has on or with him or her for personal or own use are excluded. Accompanied baggage that must be declared includes commercial goods, goods

brought in or exported under a customs procedure, prohibited or restricted goods, specific goods such as tobacco and alcohol products in excess of a prescribed tax free quantity, and specific goods of which the combined customs value exceeds the prescribed tax free allowance.

2.9.3 Items declared in terms of the Bill must, as may be appropriate, be cleared for home use or any applicable customs procedure. In this regard it is to be noted that the Bill draws a distinction between declaring goods and clearing goods. To **“declare”** goods means to disclose the goods and provide any required information concerning the goods to a customs officer. To **“clear”** goods has a technical meaning denoting a formal entry of the goods for home use or a customs procedure. In order to facilitate the smooth processing of travellers at places of entry or exit, the Bill provides for simplified and less formal clearance and release procedures to be prescribed by rule for declared items that must be cleared.

2.9.4 If any items in the accompanied baggage of a person attract tax in terms of a tax levying Act, the rate at which those items attract tax is determined in accordance with that tax levying Act. Provision is, however, made in the Bill for a tax free allowance up to a certain limit and the payment of tax in accordance with a flat rate prescribed in terms of the Bill.

2.10 CHAPTER 7: CLEARANCE AND RELEASE OF GOODS

2.10.1 This Chapter generally regulates the clearance and release of goods for home use or a customs procedure, and requires all imported goods to be cleared either for home use or a customs procedure and all goods destined for export to be cleared for a customs procedure that allows goods to be exported under that procedure. It is to be noted that no clearance is required for an import *per se* but that an import activates a clearance requirement for either home use or a customs procedure. On the other hand, no goods may be exported without clearance and for that reason the export *per se* is a customs procedure.

2.10.2 Certain categories of goods are excluded from the formal clearance requirements of the Bill, notably goods which upon entering the Republic automatically come under a customs procedure (such as means of transport and containers that automatically come under the temporary admission procedure), international postal articles such as letters, postcards and other postal items

containing personal messages only, trade samples which have no commercial value, etc.

2.10.3 Imported goods must be cleared within specific timelines after import and goods destined for export must be exported within a specific time after clearance and release of the goods for export. Failure to comply with these provisions has serious consequences, including removal of the goods to a state warehouse for disposal.

2.10.4 Although imported goods are normally cleared for home use in order to free the goods from customs control, importers have the option, depending on the circumstances, to clear the goods for a customs procedure such as transit or warehousing which delays the payment of tax on the goods. In order to prevent abuse of these customs procedures, also in the case of exported goods, customs is not obliged to release goods for any purpose when they are cleared. Release can only be given for what is “**permissible**”, i.e. when the clearance sought is authorised in the circumstances pertaining to a particular case by the Bill, a tax levying Act or in the discretion of the customs authority. The Chapter contains in this regard important provisions circumscribing the release of goods by customs. It states the circumstances when customs must or may refuse the release of goods, when the release of goods must or may be temporarily withheld and when the release of goods may be withdrawn. It also allows customs to release goods on an assumption that the self-assessment of tax payable on the goods or the presentation of facts and circumstances by the person clearing the goods is correct and to carry out verification procedures after the release of the goods.

2.10.5 The Chapter also deals with the effect of the release of goods for home use or a customs procedure. Goods released for home use become goods in free circulation, in other words goods that may be dealt with free from customs control. Goods released for a customs procedure will remain subject to the proposed Customs Control Act and may not be dealt with otherwise than in accordance with the provisions applicable to that customs procedure. The Chapter determines when a customs procedure commences and ends and also the consequences of non-compliance with customs procedures.

2.11 CHAPTER 8: TAX STATUS OF GOODS

2.11.1 The purpose of Chapter 8 is to confer for purposes of the applicable tax levying Acts a tax status on goods when the goods are cleared for home use or a

customs procedure, whilst the goods are under a customs procedure or in circumstances when the goods are regarded as having been cleared for home use or outright export.

2.11.2 The tax status is either tax due or tax free. A tax due status indicates that tax will be payable on goods if tax is imposed in terms of a tax levying Act on goods of that kind. A tax free status indicates that whilst goods have a tax free status no tax will be payable on the goods if tax is imposed in terms of a tax levying Act on goods of that kind. Tax includes customs duty, excise duty, VAT and any other tax payable on the import or export of goods.

2.11.3 The Chapter simply states that the default position applies only to the extent not provided otherwise in a tax levying Act regulating any relevant tax on the affected goods. In the event of any inconsistency between this Chapter and a provision of a tax levying Act, the provision of the tax levying Act will prevail.

2.11.4 The Chapter covers

- goods formally cleared for home use in terms of Chapter **10** and goods regarded as having been cleared for home use in terms of that Chapter, which in both instances acquire a tax due status in relation to import tax;
- goods formally cleared for outright export and goods regarded as having been cleared for outright export, which in both instances acquire a tax due status in relation to export tax; and
- goods cleared for other customs procedures, which in all instances acquire a tax free status.

2.11.5 It is to be noted that only goods cleared for home use in terms of Chapter **10** acquire a tax due status. Goods cleared for home use under a customs procedure, such as re-imported unaltered goods cleared for home use under the temporary export procedure, acquire a tax status applicable to the relevant customs procedure, which is tax free.

2.11.6 Goods regarded as having been cleared for home use in terms of Chapter **10** include goods imported otherwise than through places of entry, non-cleared imported goods and imported goods under a customs procedure that have not been dealt with in accordance with that customs procedure. Goods regarded as having been cleared for outright export include goods exported otherwise than through places of exit,

goods exported without clearance and export goods under a customs procedure that have not been dealt with in accordance with that customs procedure.

2.12 CHAPTER 9: STANDARD CLEARANCE AND RELEASE PROCEDURES

2.12.1 This Chapter sets standard procedures that apply generally to the clearance and release of all goods imported into or destined for export from the Republic, mainly to avoid repeating the same requirements for the different customs procedures in the Chapters dealing with the specific procedures. The standard procedures provide the default position and apply unless the Chapters dealing with the specific procedures provide otherwise.

2.12.2 Goods are cleared by the submission to customs of clearance declarations stating the purpose of the clearance and the other information required by the Bill. The Chapter determines the persons who must complete and submit clearance declarations, the contents of clearance declarations, how and where and the time when clearance declarations must be submitted, the amendment of clearance declarations and the documents, including invoices that must be submitted in support of the clearance.

2.12.3 Throughout the Bill a heavy emphasis is placed on the shift to electronic communication with customs. This new approach applies especially to the clearance of goods and the Chapter accordingly allows importers, exporters and other persons to submit clearance declarations through electronic media. Other measures to facilitate the expeditious processing of goods through customs include the submission of clearance declarations before the arrival of the goods at the place of entry.

2.12.4 Standard release procedures are also prescribed. A release is normally effected by an endorsement on a copy of the clearance declaration or a supporting document, by issuing a computer printout or by transmitting an electronic message to the person who cleared the goods and the release agent who has possession of the goods. An endorsement, computer printout or electronic message must indicate whether the goods have been released for home use or a customs procedure, and if for a customs procedure, which procedure. No goods may be delivered by a release agent to any person otherwise than on authority of such a release document or notification.

2.12.5 The release agent in control of released goods must notify customs of delivery of the goods to the person entitled to collect or receive the goods and of any failure by such person to take delivery of the goods within the required period.

2.13 CHAPTER 10: HOME USE OF GOODS

2.13.1 Chapter **10** contains certain specific provisions relating to the clearance and release of goods for home use. “**Home use**” means the consumption, utilisation, processing or disposal of imported goods in the Republic as goods that are no longer subject to customs control. Imported goods must accordingly be cleared and released for home use before they are utilised “**in free circulation**”. Failure to do this amounts to diversion or smuggling of the goods which is not only a criminal offence but also exposes the goods to confiscation by the state.

2.13.2 It is to be noted that when goods are cleared for home use in terms of this Chapter, the standard clearance and release procedures set out in Chapter **9** must be applied except to the extent that those standard procedures are inconsistent with any specific provisions of this Chapter or other Chapters regulating specific matters. A case in point is the provisions contained in Chapter **24** whereby the clearance of goods may be fast-tracked in certain circumstances in accordance with procedures less cumbersome than the standard procedures.

2.13.3 Goods cleared in terms of this Chapter acquire a tax due status which means that any import tax (e.g. customs duty, excise duty and VAT) applicable to the goods must be paid when the goods are cleared for home use. Clearance for home use in terms of this Chapter must be distinguished from home use clearances under certain customs procedures where no tax is payable, such as the temporary export procedure where re-imported unaltered goods cleared for home use attract no import tax. The same applies to compensating products imported under the outward processing procedure which when cleared for home use under that procedure do not attract import tax.

2.14 CHAPTER 11: THE NATIONAL AND INTERNATIONAL TRANSIT PROCEDURES

2.14.1 Chapter **11** regulates the national and international transit procedures, and provides for the clearance and release of goods for national or international transit, the conduct with goods cleared and released for national or international transit and

the commencement, carrying out and completion of national and international transit operations.

2.14.2 National transit is the customs procedure that allows goods that are not in free circulation, to be transported in the Republic from one customs controlled area to another customs controlled area not served by the same Customs Office.

2.14.3 International transit is the customs procedure that allows imported goods to be transported through the Republic from the place of entry where the goods were off-loaded from the vessel, aircraft or railway carriage to a place of exit from where the goods are to be exported, or, in the case of an import on board a vehicle, from the land border-post where the vehicle entered the Republic to a place of exit from where the goods are to be exported from the Republic. The international transit procedure allows goods to be exported under that procedure without complying with any export clearing formalities under the export procedure.

2.14.4 The general principle is that imported goods may only be transported within the Republic when cleared and released for the transit procedure. There are certain exceptions though, e.g. the transport of goods to the place of entry where the goods are to be discharged from the vessel, aircraft or railway carriage that brought the goods into the Republic, the transport of goods between customs controlled areas served by the same Customs Office and the transport of goods under certain other customs procedures that allow the transport of the goods under that procedure, for instance the warehousing procedure.

2.14.5 Goods are cleared for the transit procedures in accordance with the standard clearance and release procedures set out in Chapter 9 except to the extent that those standard procedures are inconsistent with any specific provisions of this Chapter. For instance, this Chapter allows some importers to submit certain documents such as invoices, transport documents, advance cargo arrival notices or other documents prescribed by rule as clearance declarations.

2.14.6 Transit operations may be carried out only by carriers licensed to carry out transit operations. Unlicensed carriers may carry out transit operations only if represented in the Republic by a licensed carrier's agent who is a carrier licensed to carry out transit operations. Transit operations must be completed within specific time frames.

2.14.7 Both the national and international transit procedures confer a tax free status on the relevant goods and no tax is payable on the goods whilst the goods are under that procedure. However, if the goods whilst under the transit procedure are diverted or dealt with otherwise than in accordance with the procedure, the goods will be regarded as having been cleared for home use and any tax applicable to the goods becomes payable immediately.

2.15 CHAPTER 12: THE TRANSHIPMENT PROCEDURE

2.15.1 Chapter 12 deals with the clearance of goods for the transshipment procedure and contains specific conditions for the clearance and release of goods for transshipment, the conduct with goods cleared and released for transshipment, the carrying out and completion of transshipment operations and the export of goods under the transshipment procedure.

2.15.2 The transshipment procedure allows goods imported by sea or by air to be transferred at a customs seaport or airport from the vessel or aircraft on which the goods were imported, to another vessel or aircraft on which those goods are to be exported. Goods under the transshipment procedure may be exported under that procedure without formal clearance in terms of the export procedure.

2.15.3 The Chapter empowers the Commissioner to limit by rule, in accordance with any applicable decisions of the national executive, the customs seaports and airports where goods may be transhipped under the transshipment procedure.

2.15.4 As is generally the case, goods must be cleared for the transshipment procedure in accordance with the standard clearance and release procedures set out in Chapter 9 except to the extent that those standard procedures are inconsistent with any specific provisions of this Chapter. One example is the provision in the Chapter that allows advance cargo arrival notices submitted in respect of the goods to be transhipped to serve as transshipment clearance declarations.

2.15.5 The Chapter contains extensive provisions to ensure the integrity of transshipment operations and to guard against diversion of goods whilst under the transshipment procedure. Transshipment operations must be completed within specific time frames.

2.15.6 The transshipment procedure confers a tax free status on the relevant goods and no tax is payable on goods under the transshipment procedure. However, if a provision of this Chapter is contravened or if the transshipment operation is not completed or the goods not exported within the applicable period, the goods must be regarded as having been cleared for home use and any applicable tax becomes payable.

2.16: CHAPTER 13: THE TEMPORARY ADMISSION PROCEDURE

2.16.1 Chapter 13 regulates the temporary admission of goods into the Republic. Under this procedure goods may be imported and used for a specific purpose for a specific period in the Republic and then exported from the Republic. The goods must be exported before the end of this period without having undergone any change except for maintenance and normal wear and tear. Goods under temporary admission may be exported under this procedure without any formal clearance under the export procedure.

2.16.2 The Chapter provides for the placing of goods under the temporary admission procedure either in terms of the standard clearance and release procedures set out in Chapter 9 or on authority of temporary admission papers issued in accordance with the Istanbul Convention on Temporary Admission to which the Republic is a party. The Chapter also allows for the application of this procedure to the temporary admission of goods in terms of bi-lateral agreements between the Republic and other countries.

2.16.3 Provision is also made for certain goods to automatically come under the temporary admission procedure, such as vessels, aircraft, locomotives and railway carriages entering the Republic as a means of transport for purposes of international trade or for the transport of travellers for reward between countries. Similarly, reusable transport equipment, such as containers, entering the Republic automatically comes under this procedure. Commercial trucks used as a means of transport do not automatically come under this procedure, but provision is made for such vehicles to be cleared in accordance with simplified procedures.

2.16.4 This Chapter does not apply to items in the accompanied baggage of persons entering the Republic that are cleared and released for the temporary admission procedure in terms of simplified clearance and release procedures available for accompanied baggage.

2.16.5 The temporary admission procedure confers a tax free status on goods under this procedure. Accordingly there are no tax consequences for goods imported under this procedure except when the goods are diverted or not dealt with in accordance with the provisions applicable to the procedure.

2.17 CHAPTER 14: WAREHOUSING PROCEDURE

2.17.1 Chapter 14 regulates the warehousing procedure, including the clearance and release of goods for warehousing, the conditions for the warehousing of goods and the storage of goods in and removal of goods from customs warehouses.

2.17.2 The warehousing procedure allows goods to be stored in a specific customs warehouse for a limited period. In terms of this Chapter goods must before being delivered to a warehouse be cleared for warehousing in that warehouse in accordance with the standard clearance and release procedures set out in Chapter 9 as modified by this Chapter.

2.17.3 A customs warehouse can either be a public or a private warehouse. A public warehouse is used for the storing of goods belonging to clients of the licensee of the warehouse and a private warehouse is used for the warehousing of goods owned by the licensee of the warehouse or in which the licensee has a material interest.

2.17.4 It is to be noted that goods under a customs procedure that provides for the storage of goods, such as the inward processing procedure or the processing for home use procedure, need not be cleared for warehousing and may be stored in terms of those procedures in private storage facilities at the premises where the goods are processed. The temporary storage of goods at temporary storage facilities such as terminals and depots is also excluded from compliance with the warehousing procedure.

2.17.5 The warehousing procedure confers a tax free status on the goods whilst being warehoused, but tax becomes payable upon clearance of the goods for home use.

2.17.6 The purposes for which goods may be stored in public and private warehouses are limited. Goods may be stored in public warehouses to secure imported goods on behalf of clients pending clearance and release of the goods for

home use or any permissible customs procedure, to store and consolidate on behalf of clients goods destined for export, to store goods for any reason on behalf of clients to ensure that the goods remain under customs control for a specific period, or to secure restricted goods on behalf of a client who has imported the goods without prior compliance with legislation restricting the import or possession of the goods, pending compliance by the client with such legislation.

2.17.7 Goods may be stored in private warehouses to secure imported goods of the licensee pending clearance and release of the goods for home use or a permissible customs procedure, or to secure restricted goods imported by the licensee without prior compliance with the legislation restricting the import or possession of such goods, pending compliance by the licensee with such legislation.

2.17.8 Goods may be secured in public and private warehouses for various reasons, including to delay the clearance and release of the goods in order to utilise the tax free status conferred on warehoused goods. This means that no tax is payable on the goods as long as the goods remain warehoused. This is also one of the reasons why warehousing periods are limited and the removal of goods from warehouses is strictly regulated.

2.17.9 If a provision regulating the warehousing procedure is contravened or if the warehoused goods are not cleared for home use or any other customs procedure available for warehoused goods within the period allowed for the warehousing of the goods, the goods may be regarded as having been cleared for home use and any applicable tax becomes payable immediately. The Chapter also provides for the seizure of the goods in these circumstances.

2.18 CHAPTER 15: THE TAX FREE SHOP PROCEDURE

2.18.1 Chapter 15 regulates the tax free shop procedure, including the clearance and release of goods not in free circulation for supply to tax free shops, the receipt of goods, whether or not in free circulation, in tax free shops and the sale and removal of goods from tax free shops.

2.18.2 The tax free shop procedure allows goods to be sold tax free in retail quantities on premises situated within a licensed sea, air or rail travellers terminal or land border-post and licensed as tax free shops to persons entering or leaving the Republic. Goods so sold must be treated as accompanied baggage of such persons.

2.18.3 Goods not in free circulation may not be supplied to a tax free shop unless cleared for the tax free shop procedure. Clearance must be in accordance with the standard procedures set out in Chapter 9 as modified by this Chapter. Goods in free circulation can be supplied to a tax free shop without clearance but once supplied come under the tax free shop procedure.

2.18.4 The tax consequences of the tax free status of goods under the tax free shop procedure include exemption of the goods from tax whilst the goods are under that procedure, the right to sell the goods in the shop tax free to inbound and outbound travellers and the right to recover from the Commissioner any tax paid on goods in the shop that were in free circulation before supplied to the shop.

2.18.5 The Chapter in addition contains provisions on the period for which goods may be kept in a tax free shop, the removal of goods from such shops, retail outlets, inventory control and the furnishing of regular returns to customs.

2.18.6 If a provision regulating the tax free shop procedure is contravened, the goods may apart from other consequences be regarded as having been cleared for home use and any applicable tax becomes payable immediately.

2.18.7 The Chapter empowers the Commissioner to make rules regulating the related matter of special shops for diplomats where goods may be sold tax free to diplomats representing other countries in the Republic.

2.19 CHAPTER 16: THE STORES PROCEDURE

2.19.1 Chapter 16 regulates the stores procedure, including the reporting of stores on board foreign-going vessels, foreign-going aircraft and cross-border trains when those vessels, aircraft or trains enter the Republic, the clearance and release for the stores procedure of goods taken in by such vessels, aircraft or trains as stores for the vessel, aircraft or train, and the use of goods under the stores procedure on such vessels, aircraft or trains whilst in the Republic.

2.19.2 The stores procedure is a customs procedure that allows goods to be used on board foreign-going vessels, foreign-going aircraft or cross-border trains as stores for those vessels, aircraft or trains without any home use or export clearing formalities. This procedure is available only in the case of foreign-going vessels, foreign-going aircraft and cross-border trains engaged in the transport of goods or travellers for

reward to the Republic from a place outside the Republic or from the Republic to a place outside the Republic.

2.19.3 The Chapter provides for all stores on board foreign-going vessels, foreign-going aircraft and cross-border trains when entering the Republic to be reported to customs. All stores so reported come under the stores procedure without any formal clearance. Such stores may be sealed or otherwise secured by customs to avoid any malpractices, and unreported stores may be seized.

2.19.4 Any stores taken on board foreign-going vessels, foreign-going aircraft and cross-border trains in the Republic must be cleared for the stores procedure. Again, clearance must be in accordance with the standard procedures set out in Chapter 9 as modified by this Chapter for purposes of the stores procedure.

2.19.5 When considering release of goods for the stores procedure, customs may determine the quantity of goods reasonably needed to be taken on board such vessels, aircraft or trains as stores for any intended voyage, taking into account all relevant factors such as the quantities needed for the provision of on board services, the functional and operational needs of the vessel, aircraft or train, the length and duration of the voyage, the number of travellers and crew on board and the amount of unused stores on board the vessel, aircraft or train at the time of submission of the stores clearance declaration.

2.19.6 The Chapter provides for strict control of stores on board foreign-going vessels and aircraft and cross-border trains whilst still in the Republic, and covers matters such as the issue of stores on board foreign-going vessels whilst in customs seaports, the removal of goods under the stores procedure from such vessels, aircraft and trains, the sale of tax-free items on board such vessels, aircraft and trains to travellers and crew, unused stores on board foreign-going vessels or aircraft no longer bound for foreign destinations, reporting of stores on departing foreign-going vessels or aircraft and cross-border trains, and aborted voyages.

2.19.7 The stores procedure confers a tax free status on goods under the stores procedure which means that no import tax is payable on goods reported as stores, and that any tax paid on goods in free circulation cleared for the stores procedure is refundable. The tax free status is forfeited in the case of non-compliance with the provisions applicable to the stores procedure.

2.20 CHAPTER 17: THE EXPORT PROCEDURE

2.20.1 Chapter 17 provides for the clearance and release of goods for export from the Republic. This Chapter applies primarily to goods cleared for outright export, but is also applied for the clearance of goods for export that are under certain other customs procedures, i.e. the temporary export procedure, the outward processing procedure and the export of inward processed compensating products under the inward processing procedure.

2.20.2 Other customs procedures that have an inbuilt “export leg”, such as the international transit procedure, the transshipment procedure, the temporary admission procedure, the tax free shop procedure and the stores procedure, do not rely on this Chapter for the export of goods that are under those procedures as the export of the goods are part and parcel of the procedure. In these instances no additional clearance under the export procedure is accordingly necessary.

2.20.3 The general clearance and release provisions contained in Chapter 9 must be followed in respect of the clearance and release of goods for the export procedure except to the extent that those provisions are modified, qualified or departed from in this Chapter. In this regard this Chapter, inter alia, contains provision for special rules on the clearance of categories of goods that have a low risk of tax evasion.

2.20.4 The export procedure confers a tax free status on goods in free circulation cleared for outright export and any export duty or other export tax, such as the diamond levy, applicable to the goods must be paid upon clearance of the goods for outright export. In relation to tax other than export tax, for instance VAT and excise duty, the export procedure confers a tax free status and any such tax paid on the goods may be recovered from the Commissioner upon clearance and release of the goods for outright export. “Outright export” ordinarily denotes the export of goods that are in free circulation.

2.20.5 The Chapter contains several provisions to counter abuse of the tax status conferred by the export procedure on exported goods and also to ensure that the provisions relating to the export procedure are complied with. The export of goods without clearance for export amounts to smuggling which is not only a criminal offence but also exposes the goods to confiscation by the state.

2.21 CHAPTER 18: THE TEMPORARY EXPORT PROCEDURE

2.21.1 Chapter 18 regulates the temporary export procedure. This procedure allows goods to be either temporarily exported and returned to the Republic as re-imported unaltered goods for home use, or goods exported outright to be returned to the Republic as re-imported unaltered goods for home use. In other words, the procedure is not only available for goods before they are exported but also after the goods have been outright exported.

2.21.2 Goods are cleared for temporary export in accordance with the export procedure referred to in Chapter 17. Release of goods for temporary export may be conditional and may state the time within which the goods must be returned to the Republic and any measures to be taken to ensure accurate identification of the goods upon their return to the Republic.

2.21.3 Upon their return to the Republic, the goods must be in an unaltered state and may be cleared as such for home use in accordance with the standard clearance and release provisions contained in Chapter 9 and the specific provisions contained in this Chapter. Goods may be cleared as re-imported unaltered goods for home use only if the goods can be identified as the same goods originally exported from the Republic, are returned within the period applicable to the goods and, whilst abroad, have not undergone any manufacturing, processing or repairs other than maintenance in connection with their use abroad.

2.21.4 If goods that were exported outright are returned to the Republic under the temporary export procedure, the exporter forfeits any benefit and must repay to the Commissioner any benefit granted in respect of the original export of the goods. This includes any benefit given in terms of an export incentive scheme on the original export of the goods, whether in the form of a tax reduction or relief, an export or other subsidy, a rebate or reward or other benefit.

2.21.5 Goods under the temporary export procedure have a tax free status in relation to export tax when the goods are exported and also in relation to import tax when the goods are re-imported into the Republic.

2.21.6 If customs for any reason refuses to release goods as re-imported unaltered goods for home use, the goods must be cleared for home use in terms of Chapter 10 or any permissible customs procedure. A clearance for home use in terms of Chapter

10 confers a tax due status on the goods and any applicable import tax payable on the goods, such customs duty or VAT, becomes payable.

2.21.7 The Chapter also spells out the tax consequences if the provisions regulating the temporary export procedure are not complied with.

2.22 CHAPTER 19: THE INWARD PROCESSING PROCEDURE

2.22.1 Chapter **19** regulates the inward processing procedure and makes provision for the clearance and release of imported goods for inward processing and the clearance and release of inward processed compensating products for export. “Inward processed compensating products” are products obtained from the processing of imported goods cleared for inward processing.

2.22.2 Inward processing is a customs procedure that allows imported goods identified for purposes of this procedure in the Customs Tariff or a tax levying Act to be processed in the Republic without clearing the goods for home use in terms of Chapter **10** and that allows the products obtained from the processing of those goods to be cleared for export under this procedure as inward processed compensating products. This procedure also allows goods under the procedure to be transported without clearing the goods for national transit and to be stored without clearing the goods for warehousing.

2.22.3 The inward processing procedure confers a tax free status on goods under this procedure, both in relation to the imported goods from which the compensating products are derived and the goods that are exported as inward processed compensating products.

2.22.4 The inward processing procedure involves two clearance processes, firstly when goods are imported for inward processing and secondly when the compensating products obtained from the imported goods are exported. In both instances the standard clearance and release procedures contained in Chapter **9** as modified by this Chapter are applicable. With regard to compensating products obtained under the inward processing procedure, this Chapter provides that the provisions applicable to the export procedure referred to in Chapter **17** must be applied when those compensating products are cleared for export.

2.22.5 Because of the tax implications of the procedure, strict conditions regulate the clearance of goods for inward processing, for instance only goods of a kind authorised in the Customs Tariff or a tax levying Act may be cleared for this procedure, the person who is to carry out the inward processing must be registered and the premises where the inward processing is to be carried out must be licensed, security to cover any tax risk must be given, and any conditions set out in the Customs Tariff or any applicable tax levying Act must be complied with. Imported goods cleared and released for inward processing may be used only for the production of inward processed compensating products of the kind stated in the clearance declaration of the goods.

2.22.6 If customs refuses to release any imported goods for the inward processing procedure, those goods must be cleared for export or for home use in terms of Chapter 10.

2.22.7 The clearance of goods for export as inward processed compensating products is also subject to strict requirements, including conditions that the goods must be cleared for export within specific timeframes, that proof must be provided that the goods are compensating products obtained from the processing of imported goods under the inward processing procedure and that those compensating products are of a kind indicated when the goods from which they were obtained were cleared for inward processing.

2.22.8 The licensed premises where imported goods are processed under the inward processing procedure may be used for the storage of the goods and compensating products derived from the goods and no separate warehousing clearance is necessary for such storage. However, the licensee processing the goods must keep the prescribed records in respect of the goods and the compensating products, by-products and commercially valuable waste obtained from the goods.

2.22.9 The Chapter also spells out the tax consequences in the event of non-compliance with the provisions regulating the inward processing procedure or if goods under the procedure are diverted for home use.

2.23 CHAPTER 20: THE PROCESSING FOR HOME USE PROCEDURE

2.23.1 The purpose of Chapter **20** is to regulate the processing for home use procedure, including the clearance and release of imported goods for processing for home use and the clearance and release of goods for home use as home use compensating products. “Home use compensating products” are products obtained from the processing of imported goods cleared for processing for home use.

2.23.2 Processing for home use is a customs procedure that allows imported goods identified for purposes of this procedure in the Customs Tariff or a tax levying Act to be processed in the Republic without clearing the goods for home use in terms of Chapter **10** and the products obtained from the processing of those goods to be cleared for home use under this procedure as home use compensating products. Processing for home use differs from inward processing in that the compensating products obtained from the imported goods are not exported but put into home use. The processing for home use procedure also allows goods under the procedure to be transported without clearing the goods for national transit and to be stored without clearing the goods for warehousing.

2.23.3 The processing for home use procedure confers a tax free status on the imported goods in relation to customs duty but not in relation to other taxes like VAT and excise duties. Such taxes are payable if the applicable tax levying Act so requires.

2.23.4 The processing for home use procedure involves two clearance processes, firstly when goods are imported for processing for home use and secondly when the compensating products obtained from the imported goods are put into home use. In both instances the standard clearance and release procedures contained in Chapter **9** as modified by this Chapter are applicable.

2.23.5 Strict measures regulate the clearance of goods for processing for home use to prevent duty evasion. For instance, only goods of a kind authorised in the Customs Tariff may be cleared for this procedure, the person who is to carry out the processing for home use must be registered and the premises where the processing is to be carried out must be licensed, security to cover any tax risk must be given, and any conditions set out in the Customs Tariff must be complied with. Imported goods cleared and released for processing for home use may be used only for the

production of home use compensating products of the kind stated in the clearance declaration of the goods.

2.23.6 If customs refuses to release any imported goods for the processing for home use procedure, those goods must be cleared for home use in terms of Chapter **10** or a permissible customs procedure. A home use clearance under Chapter **10** confers a tax due status on the goods and duty becomes payable.

2.23.7 The clearance of goods for home use as home use compensating products is also strictly regulated. The Chapter requires that the products must be cleared within specific timeframes that proof must be provided that the goods are compensating products obtained from the processing of imported goods under the processing for home use procedure and that those compensating products are of a kind stated in the clearance declaration of the imported goods from which they were obtained.

2.23.8 The licensed premises where imported goods are processed under the processing for home use procedure may be used for the storage of the goods and compensating products derived from the goods and no separate warehousing clearance is necessary for such storage. However, the licensee processing the goods must keep the prescribed records in respect of the goods and the compensating products, by-products and commercially valuable waste obtained from the goods.

2.23.9 The Chapter also spells out the tax consequences in the event of non-compliance with the provisions regulating the processing for home use procedure or if goods under the procedure are diverted for home use.

2.24 CHAPTER 21: THE OUTWARD PROCESSING PROCEDURE

2.24.1 The purpose of Chapter **21** is to regulate the outward processing procedure, including the clearance and release for outward processing of goods exported from the Republic and the clearance and release of goods for home use as outward processed products.

2.24.2 Outward processing is a customs procedure which allows goods identified in the Customs Tariff or a tax levying Act to be exported from the Republic under this procedure for processing abroad and for products obtained from the processing of

those goods to be imported into the Republic and cleared for home use under this procedure as outward processed compensating products.

2.24.3 Both goods exported under the outward processing procedure and compensating products imported under this procedure have a tax free status and no export and import tax is payable on goods and compensating products under this procedure.

2.24.4 The outward processing procedure involves two clearance processes, firstly when goods are exported for outward processing and secondly when the compensating products obtained from the exported goods are imported into the Republic. In both instances the standard clearance and release procedures contained in Chapter 9 as modified by this Chapter are applicable. With regard to the export of goods under the outward processing procedure, this Chapter provides that the provisions applicable to the export procedure referred to in Chapter 17 must be applied when those goods are cleared for export.

2.24.5 Only goods of a kind authorised in the Customs Tariff may be cleared for export under the outward processing procedure. Any conditions set out in the Customs Tariff must be complied with and measures must be taken to ensure that goods imported as outward processed compensating products are accurately identified as compensating products obtained from the goods originally exported for outward processing.

2.24.6 The clearance of goods for home use as outward processed compensating products is also strictly regulated. The Chapter requires that the products must be cleared within specific timeframes after the export of the goods from which they were obtained, that proof must be provided that the goods are compensating products obtained from the processing of imported goods under the outward processing procedure and that those compensating products are of a kind stated in the export clearance declaration of the goods from which they were obtained.

2.24.7 If customs refuses to release any imported goods for home use as outward processed compensating products, those goods must be cleared for home use in terms of Chapter 10 or a permissible customs procedure. A home use clearance under Chapter 10 confers a tax due status on the goods and tax becomes payable.

2.24.8 The Chapter also spells out the tax consequences in the event of non-compliance with the provisions regulating the outward processing procedure.

2.25 CHAPTER 22: INTERNATIONAL POSTAL ARTICLES HANDLED BY SOUTH AFRICAN POST OFFICE

2.25.1 Chapter 22 establishes a special dispensation for the customs clearance and release of international postal articles and the handling, examination and tax assessment of international postal articles imported or exported through the South African Post Office. The Chapter does not apply to international postal articles imported or exported through private couriers and those postal articles must be treated as ordinary imported or exported goods.

2.25.2 “International postal articles” means postal articles posted outside the Republic for delivery inside the Republic or transit through the Republic to another country, or posted inside the Republic for delivery outside the Republic. It is also to be noted that certain international postal articles, such as letters, postcards, greeting cards, telegrams and other similar communications containing personal messages only, printed papers not subject to any taxes and literature for the blind, are excluded from the clearance requirements of the Bill and that the clearance provisions of this Chapter accordingly do not apply to such postal articles.

2.25.3 In terms of this Chapter, the ordinary provisions of the Bill regulating the clearance and release of imported and exported goods must be followed when imported international postal articles are cleared and released for home use or for export. Provision is, however, made for simplified clearance and release procedures to expedite the customs processing of postal articles that have a customs value below a prescribed upper limit. In terms of the simplified procedure postal declarations attached to postal articles by the consignor of postal articles must be regarded to be clearance declarations, thus obviating the submission of standard clearance declarations.

2.25.4 To ensure the smooth and expeditious customs processing of international postal articles, the Chapter requires all postal articles that require clearance to be removed to a licensed international postal clearance depot where SAPO must present them to customs officers stationed at the depot. Each postal article must be accompanied by a postal declaration completed by or on behalf of the consignor of the article. Customs must then separate the taxable postal articles and any prohibited

or restricted articles from those that are not, release non-taxable articles to SAPO for delivery or export, assess the tax payable on taxable articles and release tax assessed articles to SAPO for collection of tax on behalf of the Commissioner. Postal articles that contain prohibited or restricted goods must be dealt with in accordance with the provisions of the Bill applicable to prohibited or restricted goods (Chapter 34). SAPO must pay over to SARS all taxes collected on behalf of the Commissioner either on a daily basis, or at regular intervals as agreed with the Commissioner.

2.25.4 This Chapter also regulates the opening of international postal articles by customs officers and notification to the addressee if an article has been opened. An international postal article may be seized and confiscated by the customs authority if the article or its contents is not in accordance with the clearance declaration submitted in respect of that postal article or the accompanying postal declaration.

2.26 CHAPTER 23: ACCESS TO AND SAMPLING OF GOODS

2.26.1 Chapter 23 regulates the right of importers, exporters and other persons who have a material interest in goods which are subject to customs control, to access and take samples of the goods after notice to the customs authority. The purposes for which sampling may be done include to establish the nature, quality, content, tariff classification, customs value or origin of the goods, or for use as evidence or trade samples.

2.26.2 It is to be noted that access to, sampling and inspection of goods by customs officers is dealt with in Chapter 33 and not in this Chapter. Access to goods by interested persons during customs inspection is also dealt with in Chapter 33 and not here.

2.27 CHAPTER 24: FAST-TRACKING PROCEDURES

2.27.1 Chapter 24 provides for the fast-tracking of clearance and release of goods for home use or a permissible customs procedure in accordance with procedures less cumbersome than the standard procedures.

2.27.2 In terms of this Chapter customs may allow the fast-tracking of clearance and release procedures on application by an accredited person. If customs grants an application, an accredited person may submit a shortened clearance declaration. Fast-tracking procedures may furthermore be allowed when expedited release of goods is required and the person requiring such release has notified the customs

authority in advance. Fast-tracking is also allowed in the case of low value goods and in the case of a disaster or medical emergency. Any applicable clearance procedures must be complied with after release of the goods.

2.28 CHAPTER 25: DAMAGED, DESTROYED, LOST OR UNACCOUNTED FOR GOODS

2.28.1 This Chapter determines the procedures to be followed as well as the tax consequences when goods that are not in free circulation are damaged, destroyed, lost or unaccounted for. Compensating products are dealt with separately from other goods.

2.28.2 When goods are damaged, destroyed, lost or unaccounted for the customs authority must promptly be notified. Failure to notify the customs authority results in consequences which include tax remaining payable on the goods as if they were not damaged, destroyed, lost or unaccounted for and tax already paid not being refundable.

2.28.3 A notification in relation to damaged, destroyed or lost goods must be accompanied by documentary proof if the damage, destruction or loss was due to a natural occurrence, an accident, a hostile act of a third party or the inherent characteristics of the goods. In the case of unaccounted for goods the notification must be accompanied by documentary proof if the shortfall of the goods was due to a short shipment of goods or an administrative error.

2.28.4 If customs accepts the documentary proof, any existing clearance and release of the goods must be withdrawn, tax payable on the goods falls away and tax already paid must be refunded. Damaged goods and any parts or materials that can be salvaged from destroyed goods remain taxable goods and must be cleared for home use or a permissible customs procedure or abandoned to the Commissioner.

2.28.5 If customs refuses to accept the documentary proof or if no such proof is submitted to explain the damage, destruction, loss or shortfall, tax remains payable on the goods as if they were not damaged, destroyed, lost or unaccounted for and tax already paid is not refundable.

2.28.6 The Chapter contains similar provisions in relation to compensating products that are damaged, destroyed, lost or unaccounted for whilst under a customs procedure, but are dealt with separately for technical reasons.

2.28.7 The Chapter also regulates procedures in relation to “**wreck**” which includes any flotsam, jetsam, lagan or derelict, portions of vessels or aircraft lost, abandoned, stranded or in distress, portions of cargo, stores or equipment of any such vessels or aircraft or personal property on board such vessels or aircraft. The removal of wreck from where it is found or the alteration of wreck in quantity or quality without the permission of customs is prohibited unless necessary for its preservation. Any person in possession of wreck must notify the nearest Customs Office. Wreck consisting of goods that are not in free circulation must in the case of damaged goods, be dealt with in terms of this Chapter, and in the case of undamaged goods, be dealt with in accordance with the applicable provisions of this Act.

2.29 CHAPTER 26: ABANDONED AND UNCLAIMED GOODS

2.29.1 This Chapter determines procedures to abandon goods to the Commissioner and how abandoned and unclaimed goods are to be dealt with. The Chapter, however, does not apply to prohibited, restricted and counterfeit goods, and such goods must be dealt with in accordance with the provisions of the Bill regulating prohibited, restricted and counterfeit goods.

2.29.2 Goods that are not in free circulation may be abandoned to the Commissioner only on application by or on behalf of the owner of the goods to the Commissioner. The Commissioner may approve an application if abandonment is in the best interest of the state. The consequences of abandonment is that the clearance of the goods must be regarded as having been withdrawn, ownership of the goods becomes vested in the Commissioner for the credit of the National Revenue Fund, tax payable falls away and the goods must be removed to a state warehouse.

2.29.3 If the Commissioner refuses an application for abandonment and the goods are not cleared and released for home use or a customs procedure in accordance with the relevant requirements, the goods must at the cost of the owner or importer of the goods and under supervision of the customs authority be destroyed or exported from the Republic.

2.29.4 This Chapter also provides for the disposal of goods that remain unclaimed for a specified time at a customs controlled area after having been cleared and released for home use or for export under the export procedure. In such cases the licensee of the customs controlled area may deal with and dispose of the goods in accordance with any conditions agreed to between the person who cleared the goods and the licensee for the use of that customs controlled area for the receipt, storage or handling of the goods.

2.30 CHAPTER 27: STATE WAREHOUSES

2.30.1 Chapter 27 makes provision for the removal of goods to and storage of goods in state warehouses if the goods are dealt with contrary to the proposed Customs Control Act or a tax levying Act or if necessary for the enforcement of the proposed Act or a tax levying Act, and also for the disposal of goods removed to a state warehouse.

2.30.2 A “**state warehouse**” is a facility designated and operated by the Commissioner for the receipt, storage and disposal of goods that are dealt with contrary to the proposed Customs Control Act or a tax levying Act or if such receipt, storage or disposal is necessary for the enforcement of the proposed Act or a tax levying Act. The Bill also provides for private facilities to be licensed and operated by the licensees as state warehouses subject to control by customs.

2.30.3 The Chapter spells out the circumstances in which goods must be removed to a state warehouse, for instance when imported goods are not cleared for home use or a permissible customs procedure within the applicable period, when goods cleared for export are not exported within the applicable period, or when customs direct that goods be removed to a state warehouse. Customs may direct the removal of goods to a state warehouse in various circumstances, including when goods are dealt with in breach of the proposed Customs Control Act or a tax levying Act, become subject to a lien in terms of a tax levying Act, are detained, seized or confiscated or are for another reason required to be secured to ensure compliance with any applicable legislation.

2.30.4 Customs may determine the state warehouse to which the person who is in control of the goods must remove the goods. If a person does not comply, customs may remove the goods to the warehouse at the risk and expense of that person. Customs may in specific circumstances also direct or authorise a person who is in

physical control of goods which in terms of this Chapter must be removed to a state warehouse, to keep the goods where they are at or to remove the goods to premises which is not a state warehouse, as if those premises were a state warehouse. Risk in connection with goods removed to or stored in state warehouses is also dealt with if the goods are damaged, destroyed, lost or become unaccounted for.

2.30.5 This Chapter also regulates the disposal of goods kept or accounted for in state warehouses. Before customs may sell or otherwise dispose of goods in state warehouses, it must compile and publish a list of all goods kept in or accounted for in each state warehouse, which serves as notification to any person who has a right or interest in the goods that those goods may be sold or otherwise disposed of. Such a person may then within a specified time after publication of the list, clear the goods for home use or export. If the goods are not cleared and released for home use or export within the specified time or if the goods are not after their clearance and release removed from the state warehouse or premises, or if the goods have been confiscated, customs may sell the goods in a manner determined by the Commissioner. Provision is also made for urgent sales where goods are perishable or dangerous or if a delay would result in diminishing the proceeds. Goods sold in terms of this Chapter must for tax purposes be regarded as having been cleared for home use, which means that the goods acquire a tax due status and the buyer must pay any tax applicable to the goods.

2.30.6 State warehoused goods may also be disposed of by being donated for welfare purposes, appropriated to an organ of state, made available as humanitarian aid or destroyed. Disposal in this manner does not affect the liability of a person responsible for paying tax, expenses or charges in respect of the goods.

2.30.7 These provisions do not apply to prohibited, restricted and counterfeit goods that are detained, seized or confiscated in terms of Chapter **35** or **36** and any disposal of such goods must be carried out in accordance with those Chapters.

2.31 CHAPTER 28: LICENSING

2.31.1 This Chapter regulates the licensing by customs of cargo or passenger terminals, cargo depots, customs warehouses and other premises that are customs controlled for the purposes of the Bill and listed in the Chapter, including cross-border pipelines and transmission lines. It also regulates the licensing of carriers, carriers'

agents and customs brokers. The use of unlicensed premises and the conducting of unlicensed carriers' and customs brokers' businesses is prohibited.

2.31.2 Chapter **28** sets out requirements and procedures for licensing and makes provision for the issuing of licenses subject to either general conditions relating to the type of license as may be prescribed by rule, or specific conditions determined by customs in respect of a specific license. Provision is also made for the refusal of applications on certain grounds, such as when the applicant has a record of non-compliance with the Act or a tax levying Act, if false or misleading information is submitted, or if the applicant's tax matters are not in order. Certain additional grounds for the refusal of licences are also prescribed. Other provisions deal with the giving of security to cover tax risks posed by licensees, the period of validity of licenses, procedures relating to renewal of licenses, the amendment of licenses, processes for the suspension or withdrawal of licenses, the consequences of lapsing, suspension or withdrawal of licenses and the transfer of licenses.

2.32 CHAPTER 29: REGISTRATION

2.32.1 Chapter **29** regulates the registration of certain persons active in the customs environment, such as importers and exporters located in the Republic who import or export goods into or from the Republic, importer or exporters' agents and persons who desire or who required to communicate electronically with customs for the purposes of the proposed Customs Control Act.

2.32.2 The Chapter contains provisions prescribing general requirements and procedures for registration applications and makes provision for registration certificates to be issued subject to conditions. Registration is simply procedural as there is no provision for the refusal of registration applications. The giving of security to cover tax risks posed by registered persons, the period of validity of registration certificates and applications for renewal of registrations are also dealt with. Transfer of registration certificates is prohibited.

2.33 CHAPTER 30: ACCREDITATION

2.33.1 The purpose of Chapter **30** is to provide for the conferral of accredited client status on licensees and registered persons that have a proven record of compliance with the Act and the tax levying Acts and that are capable of complying with the accredited client requirements contained in the proposed Act or prescribed by rule. A person on whom accredited client status has been conferred becomes, in

accordance with the level of accreditation, entitled to certain benefits which may include simplified and fast-tracked clearance and release procedures, simplified and fast-tracked procedures for submission and processing of documents, deferment of tax on goods, simplified tax payment procedures and the exemption from specific requirement of the Act.

2.33.2 Accredited client status must be applied for and the Chapter sets out general requirements and procedures for applications for accredited status, including application procedures, the criteria for such status, the consideration and decision of applications and the issuing of accredited client status certificates. Aspects like the period of validity of accredited client status certificates, renewals and suspension or withdrawal of accredited client status are also dealt with.

2.34 CHAPTER 31: SECURITY FOR PAYMENT OF TAX AND OTHER MONEY OWED TO COMMISSIONER

2.34.1 This Chapter enables customs to require the provision of security to the Commissioner to ensure the payment of any taxes on goods and any other money that may become payable to the Commissioner in respect of goods that are subject to customs control.

2.34.2 The Chapter lists the tax risk circumstances in which security may be required. These include amongst others, goods on which tax is deferred, goods released for home use if import tax on those goods is not paid before the release of the goods for home use, goods released for outright export if export tax on those goods is not paid before the release of the goods for outright export, and goods received, stored, handled, processed or in any way dealt with on licensed premises should a breach of this Act or a tax levying Act relating to those licensed premises or those goods put the payment of tax on those goods at risk. The list is open ended in order to enable customs to require security in respect of any goods that are subject to customs control if there is a risk of non-payment of tax or other money owed to the Commissioner.

2.34.3 The persons from whom security may be required are also listed, for instance the person who clears the goods or on whose behalf the goods are cleared, the person to whom goods are released or the licensee of licensed premises in relation to goods received, stored, handled, dealt with, managed or controlled on licensed premises.

2.34.4 Other aspects relating to security for which provision is made in the Chapter include the time when security may be required, the determination of the amount of security to be given, the forms of security that may be given, and the details that need to be provided with the security such as the personal details of the person giving the security, the purpose for which the security is given, the goods covered and the amount and validity period.

2.34.5 Security provided may only be used for the payment or recovery of tax or other money owed to the Commissioner in respect of the goods for which security was given and for which the person giving the security was liable. The Commissioner must return any security given if the validity of the security has expired and it was not utilised or if the purpose for which the security was given has lapsed.

2.35 CHAPTER 32: RECOVERY OF DEBT DUE UNDER THIS ACT

2.35.1 The purpose of Chapter **32** is to facilitate the recovery by the Commissioner of any money owed to the Commissioner in terms of the Bill, for instance administrative penalties, costs and expenses incurred by the Commissioner and recoverable from another person, license, registration, administration or processing fees and interest on amounts not paid on due date.

2.35.2 It is to be noted that this Chapter does not cover the recovery of taxes on goods, administrative penalties imposed in connection with the non-payment of tax and interest on outstanding tax and penalties, as these are specifically dealt with in the tax levying Acts. In the case of the proposed Customs Duty Act, the payment and collection of customs duties is extensively covered in Chapter 3 of that Act which in accordance with the existing Customs and Excise Act also makes provision for statutory liens over goods if duties are not paid on due date.

2.35.3 Money owed to the Commissioner in terms of the proposed Customs Control Act is a debt due to the Commissioner for the credit of the National Revenue Fund, but provision is made for costs or expenses in relation to goods paid from SARS own funds to be a debt due to the Commissioner for credit of SARS.

2.35.4 Debts owed to the Commissioner in terms of the proposed Customs Control Act may be recovered from the person liable for the debt or from security provided by that person covering that debt. Provision is made for the Commissioner to recover

debt from the agent of a person liable for the debt if the liable person cannot be located in the Republic or fails to pay the debt and has not provided security.

2.35.5 The Commissioner may allow debt to be paid in instalments subject to the payment of interest on outstanding balances. Also, amounts owed by persons having accounts with the Commissioner for the payment of tax and other money owed to the Commissioner, may be debited against those accounts.

2.36 CHAPTER 33: GENERAL ENFORCEMENT FUNCTIONS

2.36.1 Chapter **33** assigns enforcement functions to customs officers for the enforcement of the proposed Customs Control Act and the tax levying Acts, and in particular to ensure that tax on goods and other money owed to the Commissioner is paid, to ensure that goods that are subject to customs control are dealt with in accordance with the proposed Act and to prevent, investigate and take action against breaches of the proposed Act or a tax levying Act. This Chapter applies to all goods that in whatever way have become subject to customs control.

2.36.2 It must be noted that this Chapter, although primarily applicable to the enforcement of the proposed Customs Control Act and the tax levying Acts, may be applied for the enforcement of other legislation in relation to goods that become subject to customs control if the Commissioner has agreed to assist the organ of state responsible for that legislation with the enforcement of that legislation. Prohibited, restricted and counterfeit goods, however, stand on a different footing as the Bill contains extensive provisions determining customs responsibilities in relation to prohibited, restricted and counterfeit goods uncovered in the customs environment. In terms of Chapters **35** and **36** customs have direct powers to detain and deal with goods that are prohibited, restricted or counterfeit goods in terms of other legislation irrespective of whether an agreement to enforce that legislation has been concluded by the Commissioner and the organ of state administering that legislation.

2.36.3 This Chapter regulates a number of enforcement functions, including access to and inspection and search of premises, vessels, aircraft, trains, railway carriages and vehicles, the stopping and searching of persons, inspection of goods and documents and sampling of goods, investigative powers, powers of arrest of customs officers, carrying and use of arms and ammunitions by customs officers, and border patrolling functions to assist the South African Police Service. Each of these

enforcement functions is properly circumscribed to prevent infringement of fundamental rights.

2.36.3 Part 2 of the Chapter regulates access to and inspection and search of premises, vessels, aircraft, trains, railway carriages and vehicles. Customs has unrestricted access to and in customs controlled areas and premises, vessels, aircraft, trains, railway carriages and vehicles within customs controlled areas may at any time be entered or boarded and searched. Access to and searching of premises, vessels, aircraft, trains, railway carriages and vehicles outside customs controlled areas without a warrant is subject to strict preconditions. Premises which are used for residential purposes may be inspected and searched only on authority of a warrant. Force to gain access to premises, vessels, aircraft, trains, railway carriages and vehicles may only be used in certain circumstances. Customs may apply to the national or a provincial commissioner of police for written authorisation before establishing a roadblock for vehicles.

2.36.4 Part 3 deals with the stopping and searching of persons. Provision is made for a customs officer to stop a person in or outside of a customs controlled area, and request such a person to produce certain documents or goods. If a person refuses to comply with a request or if the customs officer suspects that the person is concealing documents or goods in respect of which a breach of the Act or a tax levying Act has been committed, a customs officer is empowered to search the person. Distinction is drawn between searches of any goods the person may have with him or her; frisk searches of the person, external bodily searches and internal bodily searches. All searches are strictly controlled to ensure privacy and decency. Internal bodily searches may only be conducted by a medical practitioner, and children may not be subjected to an internal bodily search except when public health or safety is at risk.

2.36.5 Provision is made in Part 4 for the inspection and sampling of goods and the inspection of documents, which includes copying or making extracts of such documents. Customs officers are also assigned certain investigative powers relating to the questioning of persons, taking photographs and making audio-visual recordings.

2.36.6 Part 5 allows the Commissioner to authorise certain categories of customs officers to effect arrests and provision is made for the arrest of persons without a warrant in certain circumstances. These provisions track the arrest powers of police

officers in terms of the Criminal Procedure Act. The Commissioner may in terms of Part 6 also authorise certain categories of customs officers to carry firearms for the purpose of exercising their enforcement functions. A customs officer may use an official firearm only as a last resort and then only in self defence from imminent or future death or grievous bodily harm or in defence of any other person accompanying or assisting the officer in the execution of his or her duties that are at risk from imminent or future death or grievous bodily harm. Provision is also made for customs officers to use non-lethal weapons.

2.36.7 In terms of Part 7 customs is authorised to assist SAPS in patrolling the borders of the Republic and in preventing, combating and investigating cross-border crime. For this purpose customs may acquire any equipment necessary for patrolling the land and sea borders of the Republic, including patrol boats, aircraft and vehicles and any arms and ammunition required to equip or supply any customs patrol boat, aircraft or vehicle.

2.37 CHAPTER 34: DETENTION, SEIZURE AND CONFISCATION OF GOODS

2.37.1 Chapter 34 provides for the detention, seizure and confiscation of goods in order to enforce the provisions of this Act, a tax levying Act or any other legislation enforced by customs. This Chapter applies to all goods that are subject to customs control irrespective of how the goods have become subject to customs control.

applies also to goods suspected to be prohibited, restricted or counterfeit goods. If it is established after the detention of the goods that they are in fact prohibited, restricted or counterfeit goods, Chapter 35 or 36 becomes applicable.

2.37.2 Part 1 deals with the initial detention of goods. The word “**detention**” is used to denote a customs restriction on the movement or handling of the goods without permission of customs pending an investigation or determination concerning the goods. Such an investigation or determination may relate to whether a breach of the proposed Customs Control Act or a tax levying Act has been committed, whether the goods have been or are being used in the commission of an offence or whether the goods are prohibited or restricted goods. If it is established after the detention of the goods that they are prohibited or restricted goods, this Chapter no longer applies and Chapter 35 becomes applicable. Counterfeit goods may not be detained in terms of this Chapter solely because the goods are counterfeit, but must be dealt with in accordance with the provisions relating to counterfeit goods contained in Chapter 36.

2.37.3 Customs detains goods by issuing a detention notification to the person who cleared the goods or on whose behalf the goods were cleared or to the person in whose possession the goods are at the time of detention. The Chapter further regulates the place where detained goods are to be kept, the period for which goods may be detained and when detention must be terminated. Reasons for termination include if the grounds for detention fall away, if customs decides not to seize the goods, if the goods were erroneously detained or if a court orders the termination.

2.37.4 Part 2 of this Chapter empowers customs to seize goods in specific circumstances whether or not the goods were first detained. **“Seizure”** of goods means to take physical possession of the goods without divesting a person of ownership of the goods. Goods may be seized if the goods are liable to confiscation, needed as evidence in criminal proceedings or where a specific provision of the Bill permits seizure. Goods are liable to confiscation if a breach of the Act or a tax levying Act has been committed in respect of the goods, if the goods have been used in the commission of an offence, if the goods, including any means of transport, have been constructed, adapted, altered or fitted in any manner for the purpose of concealing goods, or if the goods are required in terms of a provision of the Bill or any other legislation to be destroyed or otherwise disposed of.

2.37.5 When goods are seized a notification must be issued, in the case of goods that were first detained, to the person to whom the detention notice was issued, or in the case of goods seized without previous detention, to the person who cleared the goods or on whose behalf the goods were cleared or to the person in whose possession the goods are at the time of seizure. Seized goods needed for evidence in criminal proceedings must be handed over to the National Prosecuting Authority or SAPS. Provision is also made for the termination of seizures if the goods were seized in error, if a court orders the termination or on application by the owner of the seized goods. Customs may on application by a person affected by a seizure terminate the seizure subject to the payment of tax or any expenses incurred in connection with the seizure or previous detention, and subject to any conditions customs may determine.

2.37.6 Part 3 authorises the **“confiscation”** of goods that are liable to confiscation in terms of this Chapter. The effect of confiscation is that a person, upon confiscation, loses ownership of the relevant goods and that the goods become the property of the state. Goods cannot be confiscated unless they have first been seized. Confiscation takes place upon written notice to the person to whom the notice of seizure was

issued if, after the expiry of a specified period after seizure, no action was taken by the owner of the goods to apply for termination of the seizure or if application for termination has been refused. Customs may withdraw a confiscation on application by the person who was the owner of the goods prior to confiscation, subject to the payment of any tax payable on the goods, payment of expenses incurred by the Commissioner in connection with the confiscation, and any conditions customs may determine. Confiscated goods may be disposed of by way of sale, donation, appropriation or destruction, but confiscated goods that are needed as evidence in criminal proceedings must be handed over to the National Prosecuting Authority or the SAPS.

2.38 CHAPTER 35: PROHIBITED AND RESTRICTED GOODS

2.38.1 Chapter **35** assigns direct powers to customs to detain and deal with goods that are prohibited or restricted goods. “**Prohibited goods**” are goods of which the import, possession or export is prohibited by legislation. “**Restricted goods**” are goods of which the import, possession or export is restricted otherwise than on authority of a permit or other authorisation issued in terms of legislation. “**Counterfeit goods**” are excluded from the definitions of prohibited or restricted goods as counterfeit goods are dealt with separately in Chapter **36**.

2.38.2 Part 1 of the Chapter deals with prohibited goods. The clearance of prohibited goods for home use or a customs procedure is not allowed, except that imported prohibited goods destined for a destination other than the Republic may be cleared for transshipment or international transit if the release, handling or transport of the goods is not inconsistent with the legislation prohibiting the goods. However, this exception is not available for goods of which the import or possession is prohibited for the purpose of combating the illicit trade in narcotics, arms and ammunition or endangered species, combating the spread of contagious diseases, protecting the public against hazardous substances, or giving effect to international obligations which are binding on the Republic.

2.38.3 If customs encounters prohibited goods it must seize the goods, also if requested to do so by SAPS or the organ of state administering the legislation prohibiting the import, possession or export of the goods. If a customs officer suspects that goods are prohibited but is unsure, the officer may detain the goods in order to investigate and determine whether the goods are prohibited goods. If customs seizes prohibited goods it must notify the person in whose possession the

goods are at the time of seizure or the person to whom a detention notice was issued (if the goods have first been detained), the organ of state administering the relevant legislation and the organ of state or member of the SAPS who requested the seizure (if the goods were seized following a request for seizure).

2.38.4 Customs must terminate a seizure if the goods were seized in error or on request of the organ of state administering the legislation prohibiting the import, possession or export of the goods, or when requested to do so by the organ of state or SAPS who initially requested the seizure of the goods. Application for termination of a seizure may also be made to customs by persons who have a specific interest in the goods. Seized prohibited goods of which the seizure is not terminated must be disposed of in accordance with the legislation prohibiting the import, possession or export of the goods or regulating the criminal justice system, or otherwise confiscated and disposed of in terms of the Bill.

2.38.5 Restricted goods are dealt with in Part 2 of the Chapter. In terms of this Part restricted goods may not be cleared for home use or a customs procedure unless the required permit or authorisation, or confirmation of the issuing of such a permit or authorisation, is submitted to or verified by customs. The clearance of restricted goods without a permit or authorisation is allowed, though, for warehousing pending compliance with the legislation imposing the restriction, and also for transshipment or international transit provided the goods are destined for a destination other than the Republic and the release, handling and transport of the goods for transshipment or transit is not inconsistent with the legislation imposing the restriction. Certain restricted goods may, however, not be cleared at all without the necessary permit or authorisation, for example goods of which the import, possession or export is restricted for the purpose of combating the illicit trade in narcotics, arms and ammunition or endangered species, combating the spread of contagious diseases, protecting the public against hazardous substances, or giving effect to the Republic's international obligations.

2.38.6 Restricted goods must be seized if the organ of state administering the legislation restricting the import, possession or export of the goods notifies customs that no permit or authorisation has not been issued in relation to the goods, or if SAPS requests customs to seize the goods. If a customs officer suspects that goods are restricted but is unsure, the officer may detain the goods in order to investigate and determine whether the goods are restricted goods. If customs seizes restricted

goods it must issue a notice of seizure to the person in whose possession the goods are at the time of seizure, or the person to whom a detention notice was issued (if the goods have first been detained), the organ of state administering the legislation imposing the restriction and the organ of state or member of the SAPS who requested the seizure (if the goods were seized following a request for seizure).

2.38.7 Customs must terminate a seizure if the goods were seized in error or if the organ of state administering the legislation restricting the import, possession or export of the goods or SAPS so requests. Application for termination of a seizure may also be made to customs by persons who have an interest in the goods. Seized restricted goods must be disposed of in accordance with the legislation restricting the import, possession or export of the goods or regulating the criminal justice system, or otherwise confiscated and disposed of in terms of the Bill. Restricted goods that were confiscated in terms of the Bill may not be disposed of in way that would allow the goods into free circulation in the Republic without a permit issued in terms of the legislation restricting the import, possession or export of the goods.

2.39 CHAPTER 36: COUNTERFEIT GOODS

2.39.1 The trade in counterfeit goods is dealt with in the Counterfeit Goods Act, but in terms of this Chapter customs is afforded a role in combating the import or export of counterfeit goods, in other words in the area where counterfeit goods enter the customs environment. “**Counterfeit goods**” and “**protected goods**” have the meanings assigned to them in the Counterfeit Goods Act.

2.39.2 The Chapter is drafted on the premise that as the infringement of intellectual property rights is a private law matter, the onus is in the first instance on right-holders to protect their rights. For this reason the Chapter requires a person claiming to be a right-holder in relation to protected goods to apply to customs for assistance in stopping and detaining goods suspected of infringing intellectual property rights in relation to protected goods when such goods enter the customs environment. The Chapter prescribes the requirements for these applications and states that an application may be granted only if the goods in respect of which customs assistance is sought are protected goods, an intellectual property right exists in respect of those goods, the applicant is the right-holder in respect of the goods and the right-holder’s fear of infringement appears to be reasonable in the circumstances. If an application is granted, customs must detain any suspected counterfeit goods to which the application applies wherever found during customs operations.

2.39.3 The Chapter also provides for the detention of suspected counterfeit goods in the absence of a prior approved detention application. If a customs officer has reasonable cause to suspect that certain goods found in the ordinary course of exercising his or her customs duties are counterfeit goods in respect of which a detention application had not been brought, the customs officer must notify the right-holder in respect of the protected goods of the fact that the goods are suspected counterfeit goods provided the right-holder is known and contact details are available. The person notified may then apply to customs for the detention of the suspected counterfeit goods and, if the application is granted, the goods must be detained and dealt with in terms of the Chapter.

2.39.4 The procedures to be followed when suspected counterfeit goods are detained are spelt out. When suspected counterfeit goods are detained, customs must make out an inventory of the detained goods and furnish to the right-holder the personal details of the affected parties in relation to the goods and, if requested, samples of the detained goods. Affected parties include the person who cleared the goods or whose behalf the goods were cleared, the consignee, consignor, importer, exporter, owner, manufacturer or person having control of the goods.

2.39.5 If a right-holder intends to apply to a court for a finding that the detained goods are indeed counterfeit goods, the right-holder must notify customs of that intention. In such a case the goods must be removed to a counterfeit goods depot. If there is no intention of applying to a court for a finding that the goods are counterfeit, customs must terminate the detention.

2.39.6 Court applications must be brought within a specified time after the notification failing which the detention must be terminated. If a court finds that the goods are indeed counterfeit, the court may award title of the goods to the right-holder. The court may also order a person who is an affected party to disclose to the right-holder the source of the goods, the identity of the persons involved in the importation, exportation, manufacture, production and distribution of the goods as well as the channels of distribution. If the court makes no order as to title, the goods must be dealt with as prohibited goods in terms of Chapter 35. If the court finds that the goods are not counterfeit, the court may order the right-holder to pay damages to a person who is an affected party.

2.40 CHAPTER 37: ADVANCE RULINGS

2.40.1 This Chapter enables the Commissioner to issue advance rulings on the interpretation or application of a provision of the Bill.

2.40.2 The purpose of an advance ruling is to create legal certainty in relation to the application of the proposed Act in that an advance ruling binds customs to interpret and apply the Act in accordance with the advance ruling in the situations and transactions to which the advance ruling relates. A distinction is drawn between binding private rulings which apply to specific persons or specific goods only, binding class rulings which apply to specific categories of persons or goods, and binding general rulings which apply to persons or goods in general.

2.41 CHAPTER 38: RECONSIDERATION OF DECISIONS AND DISPUTE RESOLUTION

2.41.1 This Chapter establishes mechanisms for the internal reconsideration of decisions taken in terms of the proposed Customs Control and Customs Duty Acts, and for the resolution of disputes arising from the implementation of these proposed Acts. The mechanisms provided for are:

- * reconsideration of decisions either on initiative of customs or at the request of aggrieved persons;
- * administrative appeals by aggrieved persons;
- * resolution of disputes through dispute settlement procedures; and
- * alternative dispute resolution procedures.

2.41.2 Processes for the reconsideration of decisions can be utilised either by customs or aggrieved persons. The Chapter firstly confers on the Commissioner, customs officers and other SARS officials a discretionary power to reconsider their own decisions and the decisions of lower order decision makers at any time. Their decisions may be confirmed, altered or repealed and any action taken as a result of the decision may be ended or undone to the extent necessary to alter or repeal the decision. If rights have accrued as a result of the decision and the person to whom the decision relates has been notified, the decision may only be altered or repealed if the decision relates to a tax assessment, the affected person agrees to the alteration or repeal, the decision was arrived at in a fraudulent, dishonest or illegal way, or the decision was clearly wrong or invalid. Decisions which are the subject of an administrative appeal, alternative dispute resolution or judicial proceedings, and

decisions which are part of a settlement may not be reconsidered in terms of this discretionary power.

2.41.3 Aggrieved persons affected by a customs decision and who has a right to institute judicial proceedings in respect of the decision, are entitled to obtain the reasons for the decision from SARS and personally or through a duly authorised representative either request reconsideration of the decision or lodge an administrative appeal. Aggrieved persons, however, have no right to demand that a decision be reconsidered but can lodge an administrative appeal to ensure that the decision is reconsidered. In this regard it is to be noted that a distinction is drawn between requests for reconsideration which customs may refuse and the more formal administrative appeal procedure which is a right given to aggrieved persons.

2.41.4 The administrative appeals procedures provide for aggrieved persons to appeal against customs decisions to the Commissioner, the official in charge of the Customs Office where the decision was taken or appeal committees. These procedures also prescribe how and when appeals must be lodged, the time within which appeals must be decided and the lapsing of appeals. The Commissioner is also empowered to make rules relating to procedures to be followed in connection with the lodging, consideration and decision of appeals, the condonation of non-compliance with procedural requirements and the categories of decisions that must be appealed against to appeal committees.

2.41.5 The Chapter also regulates the settlement of disputes between the Commissioner and other parties. The discretion of the Commissioner to settle disputes is carefully circumscribed and lists the circumstances when it is inappropriate and not to the best advantage of the state to settle disputes, such as when the dispute relates to intentional tax evasion or fraud, where the settlement would be contrary to the law or a clearly established practice of the Commissioner and no exceptional circumstances exist to justify a departure from the law or practice, or if it is in the public interest to have judicial clarification of the issue. Factors to be taken into account to determine when it is appropriate to settle a dispute include whether the settlement would be in the interest of good management of the tax system, whether settlement would be justified in comparison to any possible benefit that may be derived through litigation, or whether there are any complex factual or quantum issues which would make the case unsuitable for resolution through litigation.

2.41.6 Provision is also made for other aspects including who may settle disputes on behalf of the state, the formal requirements for settlement, the consequences of non-compliance, confidentiality of settlement agreements, and record keeping by the Commissioner of all disputes settled.

2.41.7 Alternative dispute resolution is recognised as a further mechanism available to aggrieved persons. Aggrieved persons intending to utilise this mechanism for the resolution of a dispute with customs are required to apply in writing to the Commissioner. The Commissioner may grant an application only if the applicant was unsuccessful in a request for reconsideration or in an administrative appeal, the decision is appropriate for alternative dispute resolution and the decision is not subject to judicial proceedings. An application may be refused if alternative dispute resolution is not in the state's interest. The Minister is also empowered to make regulations, after consultation with the cabinet member responsible for justice, prescribing alternative dispute resolution procedures and categories of decisions which are not suitable for alternative dispute resolution.

2.42 CHAPTER 39: JUDICIAL MATTERS

2.42.1 This Chapter regulates general judicial matters including offences in terms of this Act, penalties for offences, administrative penalties, as well as criminal and civil jurisdiction of the magistrate's court.

2.42.2 Provision is made only for general offences as offences pertaining to contraventions of specific provisions of the Bill are provided for at the end of each of the Chapters in which those provisions are contained. General offences include making false statements or providing false or misleading information in any document which must in terms of this Act be submitted to customs, making use of documents containing false or misleading information which a person could not reasonably have believed to be true, and hindering or interfering with customs officers in the execution of their official duties. Provision is also made for offences committed at a place outside the Republic but which was designated in terms of the Act as a place of entry or exit. Persons convicted of an offence in terms of this Act are liable to imprisonment and/or a fine in accordance with the Adjustment of Fines Act, 1991 (Act No. 101 of 1999).

2.42.3 The current practice of imposing administrative penalties for contraventions of the Act is maintained whereby customs may issue a written notice to a person who has committed an offence in terms of the Act to either pay a fine or face prosecution. Prosecution is avoided if the person elects to pay the fine.

2.42.4 In terms of this Chapter the magistrate's court has jurisdiction to hear and decide any criminal actions for offences in terms of this Act and to impose any penalty determined for such offences. The magistrate's court also has jurisdiction to hear any civil actions instituted by the Commissioner against persons for the payment of money owed to the Commissioner irrespective of the amount claimed. The Commissioner may institute any civil actions necessary for enforcing this Act.

2.43 CHAPTER 40: MISCELLANEOUS MATTERS

2.43.1 This Chapter contains provisions on various cross-cutting matters, such as enabling provisions for the making of regulations by the Minister and rules by the Commissioner, condonation for non-compliance with rules or conditions or requirements imposed by customs, the methods in which declarations, reports, statements, returns, notices or other documents may be submitted to customs, the electronic submission of documents or communications to customs, and computerised recordkeeping systems.

2.43.2 It also enables customs on good grounds to extend time periods specified in the Bill and to grant exemptions, authorisations, permissions, approvals or recognitions and to issue directions on conditions or for periods determined by customs.

2.43.3 The Chapter limits the liability of the state, the Commissioner or a customs officer for damage or loss arising from any decisions taken or action performed in good faith in the exercise of a power or duty assigned or delegated to the Commissioner, customs authority or customs officer in terms of the Act.

2.43.4 The Chapter finally makes provision for the repeal of legislation and for the Customs and Excise Act, 1964 (Act No. 91 of 1964), to continue to be applicable despite its repeal, in respect of the imposition, administration, payment and recovery of excise duties.

3. THE PROPOSED CUSTOMS DUTY ACT

3.1 The Customs Duty Bill is the second of the trilogy of Bills intended to replace the Customs and Excise Act of 1964. The scope of this Bill is confined to providing for the levying, payment and recovery of customs duties on goods imported or exported from the Republic. As such it is one of the so-called tax levying Acts which for its implementation will rely on the “platform” provided by the proposed Customs Control Act.

3.2 The Bill is structured around three broad topics, viz. the imposition of duties, the assessment of duties, and the payment and collection of duties. The mechanisms and procedures prescribed for each of these three topics are contained in appropriately titled chapters each divided into Parts and sections. As is done in the Customs Control Bill, wide use is made of footnotes to link provisions of the Bill with cross-cutting provisions and also applicable provisions of the Customs Control Bill. These linkages with the Customs Control Bill are critically important because of the dependability of the Duty Bill’s implementation on the Control Bill.

3.3 It must be noted that the Bill is written to give maximum effect to the notion of self-assessment. In terms of this notion persons liable for duties are required, as part of the clearance process, to make their own tariff classification, value determination and origin determination of the goods, to assess the amount of any tax applicable to the goods and to pay tax according to their own assessment. The role of customs is focussed on verification of the self-assessment rather than on assessing the amount of tax.

3.4 CHAPTER 1: INTERPRETATION, APPLICATION AND ADMINISTRATION OF ACT

3.4.1 Terminology: The Bill is a highly technical piece of legislation which relies on technical terminology that can only be understood in the context of their defined meanings in section 1 of the Bill. Definitions of words and phrases already defined in the Customs Control Bill are not repeated in the Duty Bill. In such cases the reader has to resort to the Control Bill for establishing the meaning of the relevant term which also ensures that the two Bills are read together. The following terminology issues should be noted when reading the Duty Bill:

3.4.1.1 The “**Customs Tariff**” is the instrument that will be issued in terms of the Bill listing all goods on which duty is imposed. The “**Customs Tariff**” will replace Schedules **1, 2, 3, 4** and **5** of the Customs and Excise Act, 1964, which currently contain the lists of goods attracting duty. In terms of these Schedules imported goods are currently attracting import duties set out under different tariff headings for different kinds of imported goods. As the compilation of the Customs Tariff will take time to complete, the existing Schedules **1, 2, 3, 4** and **5** will in the mean time be regarded to be the Customs Tariff.

3.4.1.2 The Bill provides for both import and export duties on goods although only import duties are currently levied in terms of the Customs and Excise Act of 1964. The inclusion in the Bill of provision for export duties does not mean that such duties are now intended.

3.4.1.3 “**Import duty**” means a duty imposed in the Customs Tariff on imported goods, and includes ordinary import duty, anti-dumping duty, countervailing duty and safeguard duty. “**Export duty**” means a duty imposed in the Customs Tariff on goods exported from the Republic. “**Dutiable goods**” denotes goods on which a duty has been imposed in the Customs Tariff.

3.4.1.4 “**Assessment**” is the term used to describe the action performed by customs to calculate the amount of duty payable on goods. The assessment of duty is based on certain key assessment factors which include a determination of the tariff applicable to the goods in terms of the Customs Tariff, a determination of the customs value of the goods and a determination of the country of origin of the goods. The determination by customs of these key assessment factors are respectively called “**tariff determination**”, “**value determination**” and “**origin determination**”. A “**re-assessment**”, “**tariff re-determination**”, “**value re-determination**” and “**origin re-determination**”, in turn, refer to a re-assessment by customs of the duty payable on goods, a re-determination by customs of the tariff applicable to the goods, or re-determination by customs of the value or origin of the goods.

3.4.1.5 The distinction between “**re-determination**” and “**correction**” should be noted. A “**re-determination**” describes the action by customs when changing (or amending) the tariff classification, valuation or origin ascribed to goods in a determination or previous re-determination made in respect of goods. A “**correction**” describes the action by customs when correcting an error in a determination or re-

determination without changing the tariff classification, valuation or origin ascribed to the goods in the determination or a re-determination.

3.4.1.6 The prefix “self-” as contained in “self-assessment”, “tariff self-determination”, “value self-determination” and “origin self-determination” indicates duty assessments and tariff, value and origin determinations by persons submitting clearance declarations to clear goods in accordance with the self assessment system.

3.4.2 Application of proposed Act in relation to SACU member states: The Customs Duty Bill respects the SACU Agreement and no import duty will be payable on goods in free circulation in a SACU member state when those goods are imported into the Republic and cleared for home use in the Republic in terms of the proposed Customs Control Act.

3.4.2.1 Likewise, if in the event of an export duty being imposed on goods in free circulation exported from the Republic, such export duty will not be payable on goods when cleared in terms of the proposed Customs Control Act for outright export to a SACU member state.

3.4.2 Administration of proposed Customs Duty Act: As is the case with all tax levying Acts, the administration and enforcement of the Bill is assigned to the Commissioner of the South African Revenue Services assisted by SARS staff and customs officers.

3.5 CHAPTER 2: CUSTOMS TARIFF

3.5.1 This Chapter provides for a Customs Tariff in terms of which duties are levied on goods. The Customs Tariff replaces Schedules 1, 2, 3, 4 and 5 to the Customs and Excise Act, 1964.

3.5.2 The Customs Tariff, which will be issued by the Minister by notice in the Government Gazette, must substantially re-enact Schedules 1, 2, 3, 4 and 5 and consist of schedules, parts, items, provisions, notes and other components in substantially the same format as currently set out in these Schedules. The Customs Tariff may impose, subject to requirements, conditions or exclusions, import duties on goods imported into the Republic as well as export duties on goods exported from the Republic. In addition to ordinary import duties, provision is also made for the

imposition of other kinds of import duties for economic protection, such as anti-dumping duties, countervailing duties and safeguard duties.

3.5.3 The Customs Tariff may also provide for the granting of exemptions in respect of a duty imposed, including for the circumstances in which exemptions may be granted, the organs of state, bodies or persons empowered to grant exemptions, procedures for the submission, processing and consideration of applications for exemptions and the conditions on which exemptions may be granted.

3.5.4 As the Customs Tariff will probably not be ready to be issued when the proposed Act takes effect, the current Schedules **1, 2, 3, 4** and **5** to the Customs and Excise Act, 1964, will in the mean time be regarded to be the Customs Tariff.

3.5.5 Provision is also made for the Customs Tariff, including the current Schedules **1, 2, 3, 4** and **5** that are for the time being regarded to be the Customs Tariff, to be amended by notice in the *Government Gazette*. In terms of the Chapter the Minister must amend the Customs Tariff in relation to imported goods

- * if the Minister responsible for trade and industry requests the amendment for implementing any international obligations on tariffs and trade binding on the Republic or for giving effect to national economic policies on the import of goods;
- * if the International Trade Administration Commission requests the amendment to protect local economic activity in terms of the International Trade Administration Act, 2002 (Act No. 77 of 2002); or
- * to effect any changes in terminology used in international tariffs and trade instruments or in mechanisms or procedures applicable to international trade.

3.5.6 In respect of goods destined for export, the Minister may amend the Customs Tariff if necessary for implementing national financial and fiscal policies, national economic policies on export, international agreements or changes in terminology used in international tariffs and trade instruments or mechanisms or procedures applicable to international trade.

3.5.7 An amendment to the Customs Tariff takes effect from a date specified in the notice effecting the amendment, or if no date is specified, from the date of publication of the notice. If an amendment to the Customs Tariff forms part of any tax proposals contained in a national annual or adjustments budget tabled by the Minister in the

National Assembly, the amendment takes effect from the time the annual or adjustments budget is tabled in the Assembly.

3.5.8 Any amendments to the Customs Tariff must be submitted to Parliament for parliamentary scrutiny. If the National Assembly rejects the amendment, the amendment lapses retrospectively from the date the amendment took effect. Any person who has paid duties in terms of the amendment before its rejection will in such a case be entitled to a refund, and a person who is liable for the payment of duties that would have been payable had it not been for the fact that the amendment has been rejected, must pay the duties to the Commissioner on demand.

3.6 CHAPTER 3: PAYMENT OF DUTIES, PENALTIES AND INTEREST

3.6.1 This Chapter provides for liability for import and export duties on dutiable goods and for the payment and collection of such duties as well as penalties, interest and other amounts owed to the Commissioner in terms of the proposed Duty Act. Duties payable in terms of the Act will be a debt owed to the Commissioner for credit of the National Revenue Fund.

3.6.2 Imported dutiable goods attract liability for import duty when the goods enter the Republic. That liability remains attached to the goods until the duty is paid in full or falls away on certain grounds. Dutiable goods destined for export attract liability for export duty when the goods are cleared or regarded as having been cleared for outright export. Liability for export duty ceases when the duty is paid in full or falls away on certain grounds specified in the Bill.

3.6.3 The liability for duty attached to goods must be distinguished from the time when duty becomes payable. Duty only becomes payable when the goods acquire a tax due status in terms of the proposed Customs Control Act. Imported goods liable for import duty acquire a tax due status when the goods are cleared or regarded in terms of a provision of that proposed Act as having been cleared for home use. Exported goods liable for export duty acquire a tax due status when the goods are cleared or regarded in terms of a provision of that proposed Act as having been cleared for outright export.

3.6.4 Customs may, however, defer payment of duty to a future date on conditions, including the giving of security, determined by it. If duty has been deferred the duty becomes payable at the end of the period for which payment is deferred.

3.6.5 The Chapter is very specific as to the persons who are responsible for paying the duty on dutiable goods or from whom the duty may be recovered in the event of the duty not being paid. Ordinarily duty must be paid by or on behalf of the importer, in the case of imported goods, or the exporter, in the case of goods destined for export. If the duty is not paid on due date, the Commissioner must recover the duty on the goods from any of a range of persons who have an interest in the goods, including the importer or exporter, the owner or other person who has a material interest in the goods or who has the right to dispose of the goods, or the person who cleared the goods. If the goods are covered by security provided to customs the duty may be recovered from the security.

3.6.6 The Chapter also specifies the persons who are responsible for paying duty in scenarios where goods are not actually cleared for home use or outright export but regarded as having been cleared for home use or outright export. These scenarios include cases where goods are imported or exported otherwise than through places of entry or exit or not cleared within the applicable timeframes, when goods are diverted whilst under a customs procedure, or when goods are damaged, destroyed, lost or unaccounted for, etc. The general principle here is that the person responsible for causing the goods to be regarded as having been cleared for home use or outright export, is also responsible to pay the duty. If the duty is not paid, the Commissioner must recover the duty from any of a list of persons specified in the Chapter for that specific scenario or from security provided to customs in connection with the goods.

3.6.7 Persons specified in the Chapter as persons from whom the Commissioner may recover an outstanding duty are jointly and severally liable for payment of the duty.

3.6.8 If the duty cannot be recovered from any of these specified persons, customs may recover the duty from any person who in connection with the goods acted or gave out to be the agent of any such person. A customs broker who submitted a clearance declaration on behalf of another person to clear goods will normally not be liable for any outstanding duty provided the customs broker was not a party to the failure to pay the duty, when becoming aware of the failure promptly notified customs and took all reasonable steps to prevent the failure. A customs broker will, however, be liable if the customs code or the name and physical address of the person on

whose behalf a clearance declaration was submitted is not disclosed on the declaration or if the person on whose behalf the declaration was submitted is a natural person resident outside the Republic or is a juristic person with no physical address in the Republic.

3.6.9 The Chapter also deals with matters such as collection of under payment of duty, payment and recovery of interest and administrative penalties, and statutory liens in favour of the Commissioner. Such liens may be established in order to secure payment to the Commissioner of debts arising from this Chapter over any goods of which the debtor is the owner or co-owner or in which the debtor has any title, right or interest in terms of a credit agreement under the National Credit Act, 2005 (Act No. 34 of 2005). Liens are not confined to goods in respect of which duty is owed, but may be established over any goods of the debtor that are not in free circulation or that are used, stored or found within a customs controlled area.

3.7 CHAPTER 4: REFUNDS AND DRAWBACKS

3.7.1 This Chapter provides for the refund of duties, administrative penalties and interest paid to the Commissioner and the drawback of import duties.

3.7.2 Duties, administrative penalties and interest may be refunded by the Commissioner if it is refundable in terms of a provision of the Customs Tariff or in various listed circumstances. These circumstances include if the duty, penalty or interest was paid in error, for example by a person who was not liable for the duty, penalty or interest, or due to a clerical or administrative mistake or incorrect assumption on which the calculation was based or due to an incorrect self-assessment, valuation, tariff classification or origin decision. Other errors which may result in a refund include, in the case of imported goods, if the duty or other charge was paid in respect of goods of a higher value than the goods actually imported, if the duty or other charge was paid in respect of goods which after payment but before release of the goods diminished in value or deteriorated in condition, or in respect of goods that were damaged, destroyed or lost before the release of the goods. Errors in respect of any goods resulting in refunds include if the duty or other charge was paid in respect of a larger quantity of goods than the quantity in respect of which the payment should have been made, or in respect of goods that were abandoned to the Commissioner or destroyed under supervision of customs.

3.7.3 Drawbacks of import duties to be given if the goods on which the duty was paid or compensating products obtained from the goods on which duty was paid are exported from the Republic without being put into home use, or in circumstances recognized by the Customs Tariff.

3.7.4 The Chapter also prescribes the procedure by which persons that paid the duty or other charge or a person's representative may apply for refunds and drawbacks. Applications must be lodged to customs within a prescribed period, be accompanied by a motivation justifying the refund or drawback and supported by any necessary documents. Customs may refuse an application if it does not comply with the formal requirements, if the applicant does not allow a customs officer an opportunity to examine the relevant goods to verify the reason for the application or if the applicant has persistently contravened or failed to comply with a provision of this Act.

3.7.5 The Commissioner may also issue a general directive authorising refunds without application, but this excludes refunds of duties, penalties or interest paid or overpaid due to errors in tariff classification, valuation or origin.

3.7.6 This Chapter also enables the Customs Tariff to provide for refunds or drawbacks to be authorised by permit issued by an organ of state or person other than the Commissioner, the circumstances in which and conditions on which such permits may be issued and the procedures and limitations relating to the submission of applications for and issue of such permits.

3.7.7 Other aspects relating to refunds and drawbacks covered in this Chapter are the recovery of refunds and drawbacks made in error, the set-off of refunds or drawbacks against amounts owed to the Commissioner, and interest on amounts refunded.

3.8 CHAPTER 5: ASSESSMENT OF DUTIES

3.8.1 This Chapter provides for the assessment or calculation of the amount of duty payable on dutiable goods.

3.8.2 When a person clearing goods makes a self-assessment of the amount of duty payable on the goods or when customs makes an assessment or re-assessment of the amount of the duty, such self-assessment, assessment or re-

assessment must be determined with reference to certain key assessment factors, viz. the tariff classification of the goods, the customs value or the quantity, weight, volume or measurement of the goods, the origin of the goods, the rate of duty applicable to the goods, and any other specific factors regulating the duty or calculation of the amount of duty that may be payable on those goods. The tariff classification, customs value and origin of the goods are the subject matter of three separate Chapters dealt with below.

3.8.3 The rate of duty applicable to goods is the rate applicable at the time when the goods are in terms of a valid clearance declaration cleared for either home use, outright export or another customs procedure that renders the goods subject to the payment of duty, or in the case of goods regarded to have been cleared for home use or outright export, the rate applicable to the goods at the time when customs commences with the assessment of duty on those goods. Provision is made for a flat rate of duty payable on non-commercial goods of a value lower than a specified amount.

3.8.4 The first step in assessing duty on goods occurs when the goods are cleared for home use, outright export or another customs procedure that renders the goods subject to the payment of import or export duty. The Chapter requires the person who submits the clearance declaration to make a self-assessment of the amount of duty payable on the goods and to state on the declaration the amount of duty payable. The self-assessment must be done on a worksheet as may be prescribed with reference to the key assessment factors referred to above. The self-assessment worksheet must be submitted to the customs authority on request.

3.8.5 Customs must then, before releasing the goods, adopt the self-assessment of the amount of duty as stated on the clearance certificate as its own assessment or make its own assessment of the amount of duty payable on the goods. Customs is implied as having adopted a self-assessment as stated on the clearance declaration of the goods if it releases the goods without making its own assessment of the amount of duty payable on the goods. Adoption or implied adoption of a self-assessment by customs does not prevent customs from later making an assessment of the duty on the goods, even if the duty has already been paid or the goods are no longer subject to customs control. An assessment may be made at any time before the expiry of a specified period of accepting a self-assessment except when the assessment is necessary to rectify an underpayment or non-payment of duty that

occurred as a result of fraud, misrepresentation, a false declaration or non-disclosure of material facts.

3.8.6 If goods are for tax purposes regarded as having been cleared for home use or outright export and the goods acquire a tax due status as a result of the fictional clearance, customs must assess any duty payable on the goods, give notice to the person who must pay the duty and determine the time within which the duty must be paid. Alternatively customs may require the person who must pay the duty to submit a self-assessment of the duty whereupon customs may either adopt the self-assessment or reject the self-assessment and make its own assessment.

3.8.7 If customs has made an assessment of the amount of duty payable on goods, it may at a later stage re-assess the amount of duty payable. A re-assessment may also be re-assessed. Customs is obliged to make a re-assessment of the amount of duty if the previous assessment of the amount of duty is affected by a tariff, value or origin determination or re-determination, an advance tariff, value or origin ruling or a court order. No re-assessment may be made after the expiry of a specified period unless the re-assessment is necessary to rectify an underpayment or non-payment of duty that occurred as a result of fraud, misrepresentation, a false declaration or non-disclosure of material facts.

3.8.8 Customs may request any information or documents from an affected person necessary for making an assessment or re-assessment, and if such information or documents are not provided it may base its assessment or re-assessment on the best information available.

3.8.9 Provision is made in the Chapter for aggrieved persons to institute administrative appeals or judicial review proceedings in connection with customs assessments or re-assessments, but such proceedings do not suspend a person's obligation to pay the duty as assessed by customs.

3.9 CHAPTER 6: TARIFF CLASSIFICATION OF GOODS

3.9.1 This Chapter provides for the classification of imported and exported goods under a tariff heading, subheading or item specified in the Customs Tariff.

3.9.2 The tariff classification of goods must be determined in accordance with this Chapter and the International Convention on the Harmonized Commodity Description

and Coding System. When classifying goods, the Explanatory Notes and the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System issued by the Customs Co-operation Council must also be considered. The Commissioner must keep and update copies of these three international instruments at SARS head office.

3.9.3 In terms of this Chapter, a person submitting a clearance declaration to clear goods for home use or a customs procedure must make a self-determination of the tariff classification of the goods and state the tariff classification on the clearance declaration. This must be done irrespective of whether duty is payable on the goods.

3.9.4 Customs may accept a tariff self-determination as stated on the clearance declaration, or may refuse to accept it and make its own tariff determination. If customs releases the goods without making its own tariff determination, it must be implied that customs has accepted the tariff self-determination. However, neither actual nor implied acceptance of a tariff self-determination prevents customs from making its own tariff determination in relation to the goods at a later stage, even if duty has been paid or the goods have been released into free circulation.

3.9.5 Customs may make such tariff determinations at any time, but if the goods have been assessed by customs for duty purposes in terms of Chapter 5, no tariff determination may be made by customs after expiry of the period allowed for duty assessments in terms of that Chapter, unless the tariff self-determination made in respect of the goods is incorrect because of fraud, misrepresentation, a false declaration or non-disclosure of material facts. The period allowed for duty assessments in terms of Chapter 5 is a period (still to be specified) from the date of acceptance by customs of the duty self-assessment submitted by the person clearing the goods.

3.9.6 If goods that must in terms of the Customs Control Act be cleared for home use or a customs procedure have not been cleared within the applicable period, customs may either direct the person who requires release of the goods or who is liable for duty on the goods to make a tariff self-determination of the goods or may make its own determination of the tariff classification of the goods according to any available information.

3.9.7 Provision is also made for customs to re-determine the tariff classification of goods as previously determined by it. When necessary a previous tariff re-determination may also be re-determined. As in the case of tariff determinations, a tariff re-determination may be made by customs at any time, but if the goods have been assessed by customs for duty purposes in terms of Chapter 5, no tariff re-determination may be made by customs after expiry of the period allowed for duty re-assessments in terms of that Chapter, unless the existing tariff determination or re-determination of the goods is incorrect because of fraud, misrepresentation, a false declaration or non-disclosure of material facts. The period allowed for duty re-assessments in terms of Chapter 5 is a period (still to be specified) from the date of the duty assessment made by customs in respect of the goods.

3.9.8 Customs may request an affected person to furnish it with any additional information or documents it may require for considering or making a tariff determination or re-determination. If such information or documents are not provided it may base its determination or re-determination on the best information available.

3.9.9 The Chapter also allows customs to correct any error in a tariff determination or re-determination by notice to an affected person, such as the person who submitted the clearance declaration or who is liable for any duty on the goods. The correction of an error must be distinguished from a tariff re-determination in that the tariff classification of the goods cannot be changed by a mere correction notice. A change in tariff classification can only be done by way of a formal tariff re-determination. The timeframes applicable to tariff re-determinations also apply to corrections.

3.9.10 Persons aggrieved by tariff determinations, re-determinations or corrections have the right to institute administrative appeals or judicial review proceedings, but no such proceedings suspend a person's obligation to pay duty on the relevant goods as assessed by customs.

3.10 CHAPTER 7: VALUATION OF GOODS

3.10.1 This Chapter contains provisions regulating the valuation of goods for customs purposes, and prescribes valuation methods based on international best practice that must be used when determining the customs value of goods. Valuation methods prescribed by the Chapter are based on those agreed to under the WTO

Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, 1994.

3.10.2 The provisions of the Chapter are compulsory but when valuing goods in terms of the Chapter certain international instruments must be considered although they don't have binding force for the purpose of the valuation, namely Article VII of the General Agreement on Tariffs and Trade, 1994, and the Note to Article VII, the WTO Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade, 1994, and the Interpretative Notes to the Agreement, decisions of the Committee on Customs Valuation of the WTO and instruments issued by the Technical Committee on Customs Valuation of the WTO.

3.10.3 The first step in valuing goods for customs purposes occurs when the goods are cleared for home use or another customs procedure. This Chapter requires a person who submits a clearance declaration to make a self-determination of the customs value of the goods and to state the value so determined on the declaration. The value self-determination must be done on a worksheet as may be prescribed which must be submitted to the customs authority on request. In the case of imported goods the valuation method used must be indicated. If the primary valuation method was use, details of any close family, personal, employment or business relationship between the person who purchased the goods for export to the Republic and the seller must also be indicated.

3.10.4 Customs must then, before releasing the goods for home use or a customs procedure, either accept the value self-determination as stated on the clearance declaration or refuse to accept it and make its own determination of the customs value of the goods. If customs releases the goods without specifically accepting the value self-determination or making its own value determination of the goods, it must be implied that customs has accepted the value self-determination. However, neither actual or implied acceptance of a value self-determination prevents customs from later making a value determination of the goods, even after duty has been paid or the goods are no longer subject to customs control.

3.10.5 Customs may make a value determination at any time, but if the goods have been assessed by customs for duty purposes in terms of Chapter 5, no value determination may be made by customs after expiry of the period allowed for duty assessments in terms of that Chapter, unless the value self-determination made in

respect of the goods is incorrect because of fraud, misrepresentation, a false declaration or non-disclosure of material facts. The period allowed for customs in terms of Chapter 5 to make duty assessments is a period (still to be specified) from the date of acceptance by customs of the duty self-assessment submitted by the person clearing the goods.

3.10.6 If goods that must in terms of the Customs Control Act be cleared for home use or a customs procedure have not been cleared within the applicable period, customs may direct the person who requires release of the goods or who is liable for duty on the goods to make a value self-determination of the goods or it may make its own value determination of the goods according to any available information.

3.10.7 Provision is also made for customs to re-determine the customs value of goods as previously determined by it. When necessary a previous value re-determination may also be re-determined. Value re-determinations may be made by customs at any time, but if the goods have been assessed by customs for duty purposes in terms of Chapter 5, no value re-determination may not be made by customs after expiry of the period allowed for duty re-assessments in terms of that Chapter, unless the existing value determination or re-determination of the goods is incorrect because of fraud, misrepresentation, a false declaration or non-disclosure of material facts. The period allowed for duty re-assessments in terms of Chapter 5 is a period (still to be specified) from the date of the duty assessment made by customs in respect of the goods.

3.10.8 Customs may request any information or documents necessary for considering or making a value determination or re-determination from an affected person. If such information or documents are not provided, customs may base its value determination or re-determination on the best information available.

3.10.9 The Chapter also allows customs to correct any error in a value determination or re-determination by notice to an affected person, such as to the person who cleared the goods or who is liable for any duty on the goods. The correction of an error must be distinguished from a value re-determination in that the value of the goods as determined by customs cannot be changed by a mere correction notice. Value can only be changed by a formal value re-determination. The same timeframes prescribed for customs to re-determine the value of goods apply in the case of corrections.

3.10.10 Persons aggrieved by value determinations, re-determinations or corrections may lodge administrative appeals or institute judicial proceedings, but no such proceedings suspend a person's obligation to pay any duty on the goods as assessed by customs.

3.10.11 In terms of the Chapter goods must be valued for customs purposes in accordance with prescribed valuation methods. The general rule is that the primary valuation method i.e. the transaction value of the goods, must be used for determining the value of imported goods unless that method cannot or may not be used.

3.10.12 The transaction value of goods purchased for export to the Republic is the price actually paid or payable for the goods, adjusted by the addition of certain amounts and the deduction of certain amounts. Amounts that must be added to the price to determine the transaction value include, amongst others, commission other than buying commission, brokerage, packaging costs including labour and materials, container costs, royalties and licence fees in respect of the goods, and transportation, loading, unloading, handling, insurance and associated costs incidental to delivery of the goods at the port or place of export and placing those goods on a vessel, aircraft, carriage or vehicle. Amounts that must be deducted from the price actually paid or payable for the goods include, amongst others, the cost of transport of the imported goods from the port or place of export in the country of exportation to the place of entry in the Republic, insurance costs from the port or place of export in the country of exportation to the place of entry in the Republic, the loading, unloading and handling charges associated with the delivery of the goods at the place of entry in the Republic, the cost of transport and insurance in the Republic, and buying commission.

3.10.13 Instances when the primary valuation method cannot or may not be used include when the transaction in terms of which the goods were acquired for export to the Republic is not a contract of purchase and sale, when the transaction is a contract of purchase and sale but was concluded otherwise than in the ordinary course of trade under fully competitive conditions, when there is for whatever reason no price actually paid or payable that can be used as the basis for determining a transaction value for the goods, when a special, arbitrary or abnormal discount,

rebate or reduction was given on the ordinary competitive price, or when the seller and the buyer have a close family, personal, employment or business relationship.

3.10.14 If the primary valuation method cannot be used, i.e. the transaction value of the goods cannot be taken as the customs value of goods, the customs value of goods must be determined in accordance with the following alternative methods:

- * the identical goods method;
- * the similar goods method;
- * the deductive method;
- * the computed method; and
- * the fall-back method.

A process of elimination is used to select the most suitable method for determining the customs value of the relevant goods.

3.10.15 The Chapter makes specific provision for the valuation of certain imported goods. For example, goods imported by an individual for own use and goods imported into the Republic after having been refurbished by the importer must be valued for customs purposes according to the fall-back method. In the case of carrier media on which software for data processing equipment is recorded (for example magnetic tape, hard disks, compact disks and CD ROM) only the cost of the carrier medium itself must be taken into account and not the cost of the software.

3.10.16 In respect of export goods, the price of goods free on board a vessel, aircraft, railway carriage or vehicle at the place of exit from where goods will be exported from the Republic must be taken as the customs value of the goods. The customs value of goods in accompanied baggage of a person leaving the Republic that are not classified as “goods free on board”, may be determined in accordance with any method that may render a fairly accurate valuation of the goods.

3.10.17 The customs value of goods must be expressed in South African Rand. If payments to be made in connection with goods are expressed in foreign currency, the amounts must for customs valuation purposes be converted to South African Rand in accordance with conversion rates determined by the Commissioner.

3.11 CHAPTER 8: ORIGIN

3.11.1 This Chapter provides for the determination of the origin of goods imported into or exported from the Republic and for the establishment, recognition and application of rules of origin for determining the origin of goods.

3.11.2 In terms of this Chapter, a person submitting a clearance declaration to clear goods for home use or a customs procedure must make a self-determination of the origin of the goods and state the origin of the goods on the clearance declaration. This must be done irrespective of whether duty is payable on the goods. If preferential treatment in terms of an international trade agreement is claimed in respect of goods, the clearance declaration must be accompanied by documentary evidence of origin.

3.11.3 Customs may accept an origin self-determination as stated on the clearance declaration, or may refuse to accept it and make its own origin determination. If customs releases the goods without specifically accepting the origin self-determination or making its own origin determination, it must be implied that customs has accepted the origin self-determination. However, neither actual nor implied acceptance of an origin self-determination prevents customs from making its own origin determination in relation to the goods at a later stage, even if duty has been paid or the goods have been released into free circulation or exported.

3.11.4 Customs may make origin determinations at any time, but if the goods have been assessed by customs for duty purposes in terms of Chapter 5, no origin determination may be made by customs after expiry of the period allowed for duty assessments in terms of that Chapter, unless the origin self-determination made in respect of the goods is incorrect because of fraud, misrepresentation, a false declaration or non-disclosure of material facts. The period allowed for duty assessments in terms of Chapter 5 is a period (still to be specified) from the date of acceptance by customs of the duty self-assessment submitted by the person clearing the goods.

3.11.5 If goods that must in terms of the Customs Control Act be cleared for home use or a customs procedure have not been cleared within the applicable period, customs may either direct the person who requires release of the goods or who is liable for duty on the goods to make an origin self-determination of the goods or may

make its own origin determination of the goods according to any available information.

3.11.6 Provision is also made for customs to re-determine the origin of goods as previously determined by it. When necessary a previous origin re-determination may again be re-determined. An origin re-determination may be made by customs at any time, but if the goods have been assessed by customs for duty purposes in terms of Chapter 5, no origin re-determination may be made by customs after expiry of the period allowed for duty re-assessments in terms of that Chapter, unless the existing origin determination or re-determination of the goods is incorrect because of fraud, misrepresentation, a false declaration or non-disclosure of material facts. The period allowed for duty re-assessments in terms of Chapter 5 is a period (still to be specified) from the date of the duty assessment made by customs in respect of the goods.

3.11.7 Customs may request an affected person to furnish it with any additional information or documents it may require for considering or making an origin determination or re-determination. If such information or documents are not provided it may base its determination or re-determination on the best information available.

3.11.8 The Chapter also allows customs to correct any error in an origin determination or re-determination by notice to an affected person, such as the person who submitted the clearance declaration or who is liable for any duty on the goods. The correction of an error must be distinguished from an origin re-determination in that the determination of the origin of the goods cannot be changed by a mere correction notice. A change of the origin can only be done by way of a formal origin re-determination. The timeframes applicable to origin re-determinations apply also in the case of corrections.

3.11.9 Persons aggrieved by origin determinations, re-determinations or corrections have the right to institute administrative appeals or judicial review proceedings, but no such proceedings suspend a person's obligation to pay duty on the relevant goods as assessed by customs.

3.11.10 Customs may at any time request persons having an interest in goods to furnish it with documentary evidence of origin in respect of the goods if the evidence is required for

- * considering or making an origin determination or re-determination or a correction to an origin determination or re-determination in respect of those goods;
- * implementing an international trade agreement, economic or trade measures adopted unilaterally or under an international trade agreement or health or public order measures;
- * ensuring compliance with a non-reciprocal general system of preferences implemented by another country in respect of goods exported from the Republic to that country;
- * determining the dutiability of the goods or the rate of duty payable if the duty is dependent on the origin of the goods;
- * combating fraud or duty evasion; or
- * statistical purposes.

3.11.11 Documentary evidence of origin includes certificates of origin, declarations of origin, certified declarations of origin and certificates certifying declarations of origin. These are documents issued by various role players such as the producer or supplier of goods and authority or other official body in a country authorised to issue official certificates, etc, declaring or certifying that the goods to which it relates were produced in a specific country.

3.12 CHAPTER 9: PREFERENTIAL TARIFF TREATMENT

3.12.1 This Chapter is aimed at making effective the preferential tariff treatment of –

- * goods of South African origin exported to countries under international trade agreements or applying non-reciprocal general systems of preferences; or
- * goods imported into the Republic under international trade agreements.

3.12.2 The international trade agreements to which the Chapter applies are bi- and multi-lateral agreements between the Republic and other countries which provide for goods of South African origin to be exported to such a country under preferential tariff treatment and for goods originating in such a country to be imported into the Republic under preferential tariff treatment.

3.12.3 The Commissioner is required to take all reasonable steps, by rule or otherwise, to make the agreement effective in relation to goods imported into or exported from the Republic under preferential tariff treatment and must for this purpose enable South African customs to perform any customs duties required from

it by the agreement, to collect information required by the customs administration of the other country and to furnish reports to that customs administration as and when required. Rules issued by the Commissioner must prevent circumventions of the agreement and provide for the registration of importers and exporters.

3.12.4 Imports to the Republic under such international trade agreements are generally subject to the direct transport rule in that the goods are not entitled to preferential tariff treatment in the Republic unless the goods were transported from the country of origin directly to the Republic.

3.12.5 In relation to the export from the Republic of goods to countries implementing a non-reciprocal general system of preferences for South African goods, the Commissioner is required to take all reasonable steps, including the issuing of rules, to ensure that the legislative and administrative measures regulating that system are complied with insofar as those measures require the performance of acts in the Republic as a precondition for the goods to benefit from that system.

3.12.6 A “**non-reciprocal generalised system of preferences**” means a system implemented by another country which allows goods of South African origin to be exported from the Republic to that country duty free or at preferential rates of duty subject to compliance with the requirements of that system.

3.13 CHAPTER 10: ADVANCE RULINGS

3.13.1 Customs may in terms of Chapter 10 issue advance rulings on the tariff, value and origin determination of goods of a specific type, kind or brand should goods of that type, kind or brand be cleared during a future period for home use or a customs procedure by or on behalf of the person to whom the ruling is issued.

3.13.2 An advance ruling can either be an advance tariff ruling, advance ruling on a valuation factor or an advance origin ruling. An “**advance tariff ruling**” is a customs ruling to settle in advance the tariff classification of goods of a specific type, kind or brand cleared during the validity period of the ruling by or on behalf of the recipient of the ruling. An “**advance ruling on a valuation factor**” is a customs ruling on a valuation factor applicable to the valuation of goods of a specific type, kind or brand in order to settle in advance the application of that valuation factor in the valuation of such goods cleared during the validity period of the ruling by or on behalf of the recipient of the ruling. An “**advance origin ruling**” means a customs ruling to settle

in advance the origin of goods of a specific type, kind or brand cleared during the validity period of the ruling by or on behalf of the recipient of the ruling.

3.13.3 Any person who is a licensee or registered person in terms of the Customs Control Act may apply to customs for an advance ruling. An application for an advance ruling may relate to only one type, kind or brand of goods and transactions between the same parties. The customs authority must consider each application and grant the application or refuse it. An application may be granted only if the advance ruling will promote or facilitate the implementation of this Act or the Customs Control Act and if there is sufficient certainty that the advance ruling will be applied to the goods to which the ruling relates.

3.13.4 If customs grants an application, the advance ruling applied for must be issued to the applicant, stating the title, number and date of the ruling, the name and physical address of the recipient of the ruling, whether it is an advance tariff ruling, an advance ruling on a valuation factor or an advance origin ruling, the type, kind or brand of goods to which it relates, particulars of the transactions to which the ruling relates, conditions imposed and period for which the ruling will be valid.

3.13.5 An advance ruling binds both customs and the recipient of the ruling. When clearing goods under an advance ruling, the recipient of the ruling or the person clearing the goods must provide proof that the ruling applies to the goods.

3.13.6 Customs may amend an advance ruling on application by the recipient of the ruling. Advance rulings may be amended by customs on own initiative, but only to correct errors or to give effect to amendments to international instruments relating to tariff classification, valuation factors or rules of origin. Advance rulings may be withdrawn by customs authority if the ruling was issued as a result of fraud, misrepresentation or incorrect or incomplete information or, in the case of an advance origin ruling, if the ruling is in conflict with an international trade agreement concluded by the Republic or to which the Republic becomes a party after the ruling was issued.

3.13.7 An advance ruling ceases to be effective if a legislative provision affecting the ruling is repealed or amended and that amendment renders the ruling incompatible with this Act or if a court in a final judgment interprets a provision of this Act in a way that renders the advance ruling legally incorrect.

3.14 CHAPTER 11: JUDICIAL MATTERS

3.14.1 This Chapter provides for general offences for contraventions of the Act, the penalties that may be imposed in respect of those offences, other punitive powers of courts, administrative penalties, as well as jurisdiction of the magistrate's court.

3.14.2 General offences include making false statements or providing false or misleading information in any document submitted to the Commissioner, using documents containing false or misleading information, and committing fraudulent evasion of duty. Provision is also made for prosecuting offences committed at a place outside the Republic which was designated as a place of entry or exit under the Customs Control Act or in a country which is a party to an international trade agreement with the Republic.

3.14.3 Persons convicted of an offence under the Act are liable to imprisonment and/or to a fine determined in accordance with the Adjustment of Fines Act, 1991 (Act No. 101 of 1999). Additional punitive powers are given to courts convicting a person for an offence involving non-payment or evasion of duty. In the case of non-payment of duty a court may summarily inquire into the amount of the unpaid duty and make an order regarding payment of the duty, and in the case of an offence committed with the intent to evade duty a court may declare anything used in the commission of the offence, including vessels, aircraft and vehicles, forfeited to the state.

3.14.4 Provision is also made for the imposition of administrative penalties by customs for contraventions of the Act. Customs may issue to persons who commit offences under the Act a "spot fine" giving the alleged offender a choice either to pay the fine or face prosecution in a court. Payment of an administrative penalty does not amount to a conviction in respect of the offence.

3.14.5 The magistrate's court will have jurisdiction in respect of any criminal action against a person for an offence in terms of this Act, as well as in respect of any civil action for the payment of any duty, interest or administrative penalty claimed by the Commissioner in terms of this Act irrespective of the amount claimed.

3.14.6 The Chapter includes a fast track procedure for the collection of outstanding duties and interest by the Commissioner. In terms of this procedure the

Commissioner may file with the clerk or registrar of a court a certified statement stating the amount of the debt, the due date and the name of the person by whom the debt is payable. When so filed the statement has all the effects of, and any proceedings may be taken thereon, as if it were a civil judgment lawfully given in the relevant court in favour of the Commissioner for a liquid debt of the amount specified in the statement. The Commissioner may at any time by notice to the clerk or registrar withdraws the statement, whereupon it ceases to have any effect. A withdrawal does not prevent the Commissioner from instituting proceedings afresh in respect of the debt.

3.15 CHAPTER 12: MISCELLANEOUS MATTERS

3.15.1 This Chapter contains provisions on various matters, such as enabling provisions for the making of rules by the Commissioner, consultative processes before the promulgation of rules, the format of documents to be submitted to customs and the application of certain miscellaneous provisions of the Customs Control Act for purposes of implementing this Act.

3.15.2 The Chapter also deals with schemes which have the effect of granting undue duty benefits. In a case where a scheme has the effect of granting a duty benefit to a person and was entered into and carried out in a way not normally associated with *bona fide* business purposes and solely or mainly for the purpose of obtaining a duty benefit, the Commissioner must determine the liability for duty and the amount of the duty as if the scheme did not exist. Provision is made for objection and appeal against decisions of the Commissioner relating to such schemes.