

CUSTOMS CONTROL BILL

To provide for customs control of all goods and persons entering or leaving the Republic; and for matters incidental thereto.

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SCHEDULE**Laws repealed****PREAMBLE**

WHEREAS current customs legislation has not kept pace with technological advances and does not fully reflect the modern standards of the Revised Kyoto Convention and other related international instruments to which the Republic has assented;

AND WHEREAS the Revised Kyoto Convention and these other related international instruments serve as a model framework for modern, efficient and cost-effective customs control and simplified customs procedures and formalities;

AND WHEREAS there is a need for establishing a new legislative framework for the further development and reform of customs legislation in an open and democratic society;

AND WHEREAS mere amendment of current legislation will not achieve the desired result of modernisation and transformation of customs legislation and the simplification of customs procedures and formalities;

AND WHEREAS customs administration plays a critical role within the context of international trade and tourism in ensuring effective controls that secure revenue recovery, facilitation of legitimate trade and protection of society at large;

AND WHEREAS customs procedures and formalities should be efficient, transparent and predictable for carriers, importers, exporters, traders, travellers and other persons involved in or affected by customs procedures and formalities and not impede legitimate international trade, economic competitiveness and the movement of people and goods across national boundaries;

AND WHEREAS a new legislative framework must achieve a balance between effective customs control, the secure movement of goods and people into and from the Republic and the facilitation of trade and tourism;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:-

CHAPTER 1

INTERPRETATION, APPLICATION AND ADMINISTRATION OF THIS ACT

*Part 1: Interpretation of this Act***Definitions**

1. (1) In this Act, unless the context otherwise indicates –

“**accompanied baggage**”, in relation to a person entering or leaving the Republic, means all goods which a person has on or with him or her when processed through customs at the place of entry or exit;¹

“**accredited**”, in relation to a licensee or registered person, indicates that accredited status has been conferred in terms of Chapter 30 on the licensee or registered person;

“**administrative penalty**” means an administrative penalty referred to in section 733(1)(c), 735, 737(1)(c) or 837(7);

“**aircraft**” means a craft of any kind whatsoever which is capable of flying, whether self-propelled or not, and includes any part, fittings, furnishings and equipment of such a craft;

“**air cargo depot**”² means premises within a customs airport or elsewhere –

(a) where air cargo is –

- (i) received, packed or unpacked;
- (ii) consolidated for export, or deconsolidated for delivery; and
- (iii) temporarily stored; and

(b) from where air cargo is –

- (i) released for home use or a customs procedure; or
- (ii) removed to an air cargo terminal;

“**air cargo terminal**” means premises within a customs airport where air cargo is –

(a) off-loaded from, or loaded on board, foreign-going aircraft; and

(b) temporarily stored after being off-loaded or before being loaded;

“**air travellers terminal**” means premises within a customs airport where travellers and crew –

(a) board, or disembark from, foreign-going aircraft; and

¹ This includes all items booked as a person’s baggage or excess baggage irrespective of whether that baggage accompanied, or is to accompany, that person on the same vessel, aircraft, train or vehicle in which that person entered or is to leave the Republic or whether that baggage arrived, or is to be sent, on a separate vessel, aircraft, train or vehicle. It also includes any goods bought or acquired by a person from a tax free shop at the place of entry after having entered the Republic.

² Referred to in the Customs and Excise Act, 1964 as a degrouping depot.

(b) are processed for purposes of passenger control before boarding, or disembarking from, foreign-going aircraft,

and includes –

- (i) all transit areas through which travellers and crew must proceed to or from foreign-going aircraft; and
- (ii) all facilities used for or in connection with the operation of the terminal;

“**air waybill**” means a document issued by an air carrier or other person for the transportation of goods to a particular destination on board an aircraft, and which serves as proof that the carrier –

- (a) has received the goods; and
- (b) has undertaken to transport the goods on the terms and conditions stated in the document;

“**assessment**”, in relation to taxable goods, means a calculation by the customs authority in terms of a tax levying Act of the amount of tax payable on those goods in terms of that Act;

“**bill of lading**” means a document issued by a sea carrier or other person in respect of cargo received for transportation on board a vessel and which serves as proof that the carrier or other person –

- (a) has received the goods; and
- (b) has undertaken to transport the goods on board a vessel on the terms and conditions stated in the document;

“**breach**”, in relation to this Act or a tax levying Act, means any of the following acts or omissions whether or not that act or omission is an offence in terms of this Act or a tax levying Act:

- (a) a contravention of or failure to comply with a provision of this Act or a tax levying Act;
- (b) a contravention of or failure to comply with a term or condition of any authorisation, release, license, registration, accreditation, permission, approval, exemption, instruction or direction given or issued in terms of this Act or a tax levying Act; or
- (c) a circumvention of, or any act or omission aimed at circumventing, a provision of this Act or a tax levying Act or a term or condition of any authorisation, release, license, registration, accreditation, permission, approval, exemption, instruction or direction given or issued in terms of this Act or a tax levying Act;

“**break bulk cargo**” means general cargo transported in separate packages on board a vessel, railway carriage or vehicle, but excludes cargo transported in containers;

"bulk cargo" means a large quantity of unpacked dry or liquid homogeneous cargo transported loose in –

- (a) the hold or cargo space of a vessel, railway carriage or truck; or
- (b) a container;

"bulk sea cargo terminal" means premises within a customs seaport where bulk cargo is –

- (a) off-loaded from, or loaded on board, foreign-going vessels; and
- (b) temporarily stored after being off-loaded or before being loaded,

but excludes a special sea cargo terminal handling bulk cargo of a specific type;

"bus" means a vehicle with a seating capacity to carry more than 15 passengers;

"cargo", in relation to a vessel, aircraft, railway carriage or vehicle, means any goods on board, or to be loaded on board, or off-loaded from, a vessel, aircraft, railway carriage or vehicle, but excludes –

- (a) stores; and
- (b) the accompanied baggage of travellers and crew members;

"cargo reporter", in relation to cargo on board a vessel or aircraft, means a person who in terms of a contract of carriage concluded by that person with the consignor of the cargo or any other interested person is responsible for the delivery of the cargo, whether that person is the carrier who actually transports the cargo, a customs broker or other person who arranged the transport of the cargo;

"cargo status", in relation to cargo imported into or to be exported from the Republic by sea, means any of the following symbols used for indicating the form in which the cargo is imported or to be exported:

- (a) "FCL" for indicating that the cargo is contained in an FCL container or FCL (groupage) container;
- (b) "LCL" for indicating that the cargo is contained in an LCL container;
- (c) "Break Bulk" for indicating that the cargo is in break bulk; or
- (d) "Bulk" for indicating that the cargo is bulk;

"carrier" means –

- (a) a shipping line, airline or other person conducting business by transporting goods or travellers by sea or air for reward;
goods that are not in free circulation;

- (b) any person conducting business by transporting goods or travellers by rail for reward; or
- (c) any person conducting a business by transporting goods or travellers by truck or bus for reward;

“carrier’s agent” means a person located in the Republic³ who represents in the Republic a carrier not located in the Republic;

“clear” –

- (a) in relation to home use, means to submit to the customs authority in accordance with the requirements of this Act a valid clearance declaration to obtain the release of goods for home use; or
- (b) in relation to a customs procedure, means to submit to the customs authority in accordance with the requirements of this Act a valid clearance declaration to obtain the release of goods for that customs procedure;⁴

“clearance declaration” means a document referred to in section 158 which is submitted to the customs authority for the purpose stated in that section;

“coasting vessel” means a vessel engaged in the transportation of goods or passengers for reward between seaports within the Republic, but excludes a foreign-going vessel –

- (a) whilst on a voyage to its end destination in the Republic engages in such transportation during that part of the voyage in the Republic; or
- (b) whilst on a voyage to a destination outside the Republic engages in such transportation during that part of the voyage in the Republic;

“combination sea cargo terminal” means premises situated within a customs seaport where both break bulk cargo and cargo in containers are –

- (a) off-loaded from, or loaded on board, foreign-going vessels; and
- (b) temporarily stored after being off-loaded or before being loaded;

“Commissioner” means the Commissioner for the South African Revenue Service;

“common customs area” means the area comprising the territories of SACU member states;

³ See section 1(3)(a).

⁴ This paragraph includes clearance for export as the export of goods from the Republic is a customs procedure. See definition of “customs procedure”.

“compensating products” means products obtained from the processing⁵ of goods –

- (a) exported from the Republic under the outward processing procedure;
- (b) imported into the Republic and cleared and released for the inward processing procedure; or
- (c) imported into the Republic and cleared and released for the processing for home use procedure,

and includes products not solely but at least materially, to an extent set out in the Customs Tariff or as may be prescribed by rule, derived from such exported or imported goods;

“confiscate”, in relation to goods, means to divest a person of ownership of goods and to vest ownership of the goods in the state;

“container” means a receptacle or holder –

- (a) specially designed and equipped for the transport of goods by more than one mode of transport without intermediate repacking; and
 - (b) which has an internal volume of not less than one cubic metre,
- and includes a demountable body;

“container depot” means premises, whether situated within a customs seaport or elsewhere –

- (a) where containers are –
 - (i) received;
 - (ii) packed or unpacked; or
 - (iii) temporarily stored;
- (b) from where containers or the unpacked contents are delivered –
 - (i) to consignees, if the contents have been cleared and released for home use; or
 - (ii) for the carrying out of a customs procedure, if the contents have been cleared and released for that customs procedure; and
- (c) where goods are received for packing into containers;

“container terminal” means premises, whether situated within a customs seaport or elsewhere –

- (a) where packed and empty containers are received;
- (b) from where packed containers are delivered –
 - (i) to container depots;

⁵ See definition of “processing”.

- (ii) directly to consignees, if the contents have been cleared and released for home use; or
 - (iii) for a customs procedure, if the contents have been cleared and released for that customs procedure; and
- (c) where packed and empty containers are temporarily stored after being received or before being delivered;

“Counterfeit Goods Act” means the Counterfeit Goods Act, 1997 (Act No. 37 of 1997);

“crew”, in relation to a vessel, aircraft, train, railway carriage or vehicle, means –

- (a) the operator of the vessel, aircraft, train, railway carriage or vehicle; and
- (b) other staff travelling on board the vessel, aircraft, train, railway carriage or vehicle for the purpose of performing work on board the vessel, aircraft, train, railway carriage or vehicle in the course of its journey;

“cross-border pipeline” means a pipeline through which liquid or gas commodities are imported into or exported from the Republic in accordance with a bi-lateral or multi-lateral international agreement governing the use of the pipeline;

“cross-border transmission line”, in relation to electricity, means a transmission line through which electricity is imported into or exported from the Republic in accordance with a bi-lateral or multi-lateral international agreement governing the use of the transmission line;

“cross-border railway carriage” means a coach or wagon which –

- (a) forms part of a cross-border train that will transport goods or travellers out of the Republic, and includes a coach or wagon scheduled to form part of a cross-border train that will transport goods or travellers out of the Republic; or
- (b) forms part of a cross-border train that transported goods or travellers into the Republic, and includes a coach or wagon which did form part of a cross-border train that transported goods or travellers into the Republic and from which the goods have not yet been unloaded or the travellers have not yet disembarked;

“cross-border train” means a train on, or scheduled for, a voyage –

- (a) from a place outside the Republic to a destination inside the Republic; or
- (b) from a place inside the Republic to a destination outside the Republic;

“customs airport” means an airport designated as a place of entry or exit for aircraft and for persons and goods on board aircraft;

“customs authority” means –

- (a) the Commissioner; or
- (b) a customs officer, but only if and to the extent that a power or duty assigned to the customs authority in terms of this Act has been delegated to that officer in terms of section **20**;

“customs broker” means a person conducting business in the Republic by –

- (a) clearing goods for home use or a customs procedure on behalf of other persons;
- (b) arranging on behalf of other persons the receipt, delivery or transport of goods;
- (c) consolidating or deconsolidating goods on behalf of other persons or arranging on behalf of other persons the consolidation or deconsolidation of goods;
- (d) providing information and assistance on the import or export of goods; or
- (e) handling on behalf of other persons the formalities relating to the import or export of goods,

but excludes a carrier, importer or exporter of goods;

“customs code” means an identification number allocated by the customs authority to –

- (a) any licensed premises, cross-border pipeline, carrier, carrier’s agent or customs broker in terms of section **589(d)**; or
- (b) any registered person in terms of section **630(c)**;

“customs control” means control in terms of this Act;

“customs controlled area” means –

- (a) an area, premises or facility listed in section **37(1)** as a customs controlled area; or
- (b) an area designated in terms of section **37(2)** as a customs controlled area;

“Customs Duty Act” means the Customs Duty Act, 20.. (Act No. ... of);

“Customs Office” means an office established or designated as a customs office in terms of section **14(a)**;

“customs officer” means a person designated by the Commissioner in terms of section **10(1)** as a customs officer;

“**customs procedure**” means any conduct listed below involving goods imported into or to be exported from the Republic which may commence and be carried out only in accordance with this Act:

- (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; or
- (l) the outward processing procedure;

“**customs seaport**” means a seaport designated as a place of entry or exit for vessels and for persons and goods on board vessels;

“**Customs Tariff**” means the instrument –

- (a) issued in terms of section 12 of the Customs Duty Act; or
- (b) regarded in terms of that section to be the Customs Tariff;

“**customs value**”, in relation to goods, means the value of goods for customs purposes as calculated in accordance with Chapter 7 of the Customs Duty Act;

“**customs warehouse**” means a public or private warehouse;

“**damage**”⁶, in relation to goods, includes–

- (a) any deterioration or spoiling of goods due to any act or occurrence; or
- (b) any diminishing of, or shortages in, goods due to the inherent characteristics of the goods,

without rendering the goods commercially valueless, but excludes stealing or pilfering of goods;

⁶ It is to be noted that “**damage**” retains its ordinary grammatical meaning and that the definition, by using the word “includes”, merely extends, and not replaces, the ordinary grammatical meaning.

“declare”⁷, in relation to goods, means –

- (a) to disclose goods to the customs authority; and
- (b) to provide the customs authority with all information relating to the goods necessary –
 - (i) to determine whether the goods are taxable;
 - (ii) to assess any tax payable on the goods;
 - (iii) to determine whether the goods must be cleared for home use or a customs procedure; and
 - (iv) to determine whether the goods are not prohibited, restricted or counterfeit goods;

“delegation”, in relation to a duty that must be performed in terms of this Act, includes an instruction or request to perform or to assist in performing the duty;

“demountable body” means a load compartment which has no means of locomotion and which is designed to be transported on, or as a detachable part of, a specially adapted vehicle, and includes a swap-body which is a load compartment designed for combined road and rail transport;

“depot” means –

- (a) a container depot;
- (b) an air cargo depot; or
- (c) an international postal clearance depot;

“destroy”, in relation to goods, includes an act or occurrence that renders goods commercially valueless;⁸

“detain”, in relation to goods, means restrict the movement or handling of the goods without the permission of the customs authority pending a decision concerning the goods in terms of this Act, a tax levying Act or other legislation applicable to the goods;

“divert for home use” means dealing with any of the following goods as if the goods are in free circulation:

- (a) goods imported into the Republic –
 - (i) that have not been cleared for home use;

⁷ The notion of “declaring” goods does not imply “clearing” the goods for home use or a customs procedure. The declaration or disclosure of goods to a customs officer may (but not necessarily) lead to the clearance of the goods depending on the value of the goods, the nature of the goods, etc.

⁸ It is to be noted that **“destroy”** retains its ordinary grammatical meaning and that the definition, by using the word “includes”, merely extends, and not replaces, the ordinary grammatical meaning.

- (ii) that have been cleared for home use but not released for home use; or
- (b) goods under a customs procedure, including compensating products under the inward or outward processing procedure or the processing for home use procedure;

“document” includes –

- (a) any instrument, whether paper-based or from any other material, on or in which there –
 - (i) is writing;
 - (ii) are images; or
 - (iii) are perforations having meaning;
- (b) any object instrument from which writing, sounds or images can be reproduced or retrieved with or without the aid of any device; or
- (c) any computer, computer hardware or other device containing electronically stored information or from which electronically stored information is retrievable;

“domestic vessel” means any vessel at a seaport, harbour or other place in the Republic or in the territorial waters of the Republic which is not a foreign-going vessel;

“enforcement function”, in relation to the customs authority or a customs officer, means a power or duty assigned to the customs authority in terms of this Act or assigned or delegated to a customs officer in terms of this Act –

- (a) to implement and enforce this Act or a tax levying Act; or
- (b) to assist in the implementation or enforcement of other legislation referred to in section 16 or Chapter 35 or 36;

“enter”, in relation to the Republic, means –

- (a) in the case of a vessel or goods or persons on board a vessel, when the vessel crosses into the territorial waters of the Republic;
- (b) in the case of an aircraft or goods or persons on board an aircraft, when the aircraft crosses into the airspace above the Republic;
- (c) in the case of a cross-border train or goods or persons on board a cross-border train, when the train crosses the border into the Republic;
- (d) in the case of a vehicle or goods or persons on board a vehicle, when the vehicle crosses the border into the Republic;
- (e) in the case of goods in a cross-border pipeline, when the goods crosses the border through the pipeline into the Republic; or
- (f) in the case of a person on foot, when that person crosses the border into the Republic;

“exporter”⁹ –

- (a) in relation to goods exported or to be exported from the Republic, means the person who exported, is in the process of exporting or intends to export those goods from the Republic; or
- (b) in relation to goods exported or to be exported to the Republic, means the person who exported, is in the process of exporting or intends to export those goods to the Republic,

and includes –

- (i) a person who at the time of exportation of the goods from or to the Republic –
 - (aa) is the owner of the goods;
 - (bb) carries the risk of the goods; or
 - (cc) is beneficially interested in the goods in any way whatsoever;
- (ii) a person who actually transports or attempts to transport the goods out of or into the Republic, except when that person is a licensed carrier or an unlicensed carrier represented in the Republic by a licensed carrier’s agent; or
- (iii) a person who represents, or pretends to be or to represent, a person referred to in paragraph (a) or (b) or paragraph (i) or (ii);

“export from the Republic”, in relation to goods, means transporting, taking or sending goods out of the Republic, subject to sections **2** and **31**;

“export procedure” means the customs procedure described in section **356**;

“export tax”-means –

- (a) a duty imposed in the Customs Tariff on goods cleared for outright export from the Republic; or
- (b) any other tax, levy or duty –
 - (i) on the export of goods from the Republic;¹⁰ or
 - (ii) on goods, to the extent that such tax, levy or duty is payable when the goods are cleared for outright export;

“export to the Republic”, in relation to goods, means taking, sending or transporting goods from outside the Republic to a destination inside the Republic;

⁹ “Exporter” is used in two senses in the Act. Firstly, as a person who exports goods **from** the Republic **to** another country, and, secondly, as a person who exports goods **from** another country **to** the Republic. See definitions of “export from the Republic” and “export to the Republic”.

¹⁰ Such as the levy on diamonds exported from the Republic in terms of the Diamond Export Levy Act, 2007(Act No. 15 of 2007)

"FCL container" means a container containing goods consigned from one or more consignors to a single consignee;

"FCL (groupage) container" means a container containing goods consigned from more than one consignors to more than one consignees;

"foreign-going aircraft" means –

- (a) an aircraft at an airport, landing strip or other place in the Republic if that aircraft –
 - (i) has arrived at that place in the course of a voyage from outside the Republic to a destination or destinations inside the Republic, whether that place is that destination or one of those destinations or a stopover on its way to that or any of those destinations; or
 - (ii) is scheduled to depart from that place in the course of a voyage to a destination outside the Republic, whether that place is its place of departure to that destination or a stopover or one of several stopovers in the Republic from where it departs in the course of that voyage;
- (b) an aircraft in the airspace above the Republic on a voyage referred to in paragraph (a)(i) or (ii); or
- (c) an aircraft on a voyage from a place outside the Republic to a destination outside the Republic –
 - (i) passing through the airspace above the Republic; or
 - (ii) making a stopover at any airport, landing strip or other place in the Republic;

"foreign-going vessel" means –

- (a) a vessel at a seaport, harbour or other place in the Republic if that vessel –
 - (i) has arrived at that place in the course of a voyage from outside the Republic to a destination or destinations inside the Republic, whether that place is that destination or one of those destinations or a stopover on its way to that or any of those destinations; or
 - (ii) is scheduled to depart from that place in the course of a voyage to a destination outside the Republic, whether that place is its place of departure to that destination or a stopover or one of several stopovers in the Republic from where it departs in the course of that voyage;
- (b) a vessel in the territorial waters of the Republic on a voyage referred to in paragraph (a)(i) or (ii); or
- (c) a vessel on a voyage from a place outside the Republic to a destination outside the Republic –

- (i) passing through the territorial waters of the Republic; or
- (ii) making a stopover at any place in the Republic;

“free circulation”, in relation to goods, means that the goods are not or no longer subject to customs control;

“general cargo” means cargo of a diverse nature whether in packages or containers;

“general sea cargo terminal” means premises within a customs seaport where break bulk cargo is –

- (a) off-loaded from, or loaded on board, foreign-going vessels; and
- (b) temporarily stored after being off-loaded or before being loaded;

but excludes a special sea cargo terminal handling break bulk cargo of a specific type;

“goods” means any wares, supplies, merchandise, articles, products, commodities, substances, documents or any other things capable of being transported, whether loose, packed, in a package or holder, containerized or in bulk, and includes –

- (a) any animals, whether dead or alive, or parts of animals;
- (b) any plants, whether dead or alive, or parts of plants;
- (c) any postal items;
- (d) any baggage of persons entering or leaving the Republic, whether accompanied or unaccompanied;
- (e) any vessels, aircraft, locomotives, railway carriages, vehicles or other means of transport, whether or not used for the transport of goods or travellers;
- (f) any transport equipment whether or not used in the transport of goods, including reusable transport equipment;
- (g) currency;
- (h) any commodity capable of being pumped through pipelines; and
- (i) electricity;

“home use compensating products” means compensating products –

- (a) obtained from imported goods under the processing for home use procedure; and
- (b) cleared or to be cleared for home use under that procedure;

“home use”, in relation to imported goods, means the consumption, utilisation, processing or disposal of the goods in the Republic as goods that are no longer subject to customs control;

“IDZ enterprise” means an enterprise within an industrial development zone or part of an industrial development zone designated in terms of section **37(2)(c)** as a customs controlled area;

“import”, in relation to goods, means transporting, sending or bringing goods into the Republic, subject to sections **2** and **31**;

“importer”, in relation to goods, means a person who imports goods into the Republic, and includes –

- (a) a person who, at the time of importation –
 - (i) is the owner of the goods that are imported;
 - (ii) carries the risk of the goods that are imported; or
 - (iii) is beneficially interested in any way whatsoever in the goods that are imported;
- (b) a person who actually transports or attempts to transport the goods into the Republic, except when that person is a licensed carrier or an unlicensed carrier represented in the Republic by a licensed carrier’s agent; or
- (c) a person who represents, or pretends to be or to represent –
 - (i) a person who imports goods into the Republic; or
 - (ii) a person referred to in paragraph (a) or (b)

“import tax” -means –

- (a) a duty imposed in the Customs Tariff on imported goods cleared for home use, and includes –
 - (i) an ordinary import duty referred to in section **13(2)(a)** of the Customs Duty Act;
 - (ii) an anti-dumping duty referred to in section **13(2)(b)** of that Act;
 - (iii) a countervailing duty referred to in section **13(2)(c)** of that Act; and
 - (iv) a safeguard duty referred to in section **13(2)(d)** of that Act;
- (b) any other tax, levy or duty imposed on the import into the Republic of goods;
- (c) value-added tax, to the extent that value-added tax is payable on imported goods cleared for home use;
- (d) an excise duty, a fuel levy or environmental levy, to the extent that such duty or levy is payable on imported goods cleared for home use; and
- (e) any other tax, levy or duty imposed on goods, to the extent that such tax, levy or duty is payable when the goods are cleared for home use;

“**industrial development zone**” means an area designated as an industrial development zone in terms of the Manufacturing Development Act, 1993 (Act No. 197 of 1993);

“**inspect**”, as an action performed by a customs officer in relation to goods, includes to perform any or all of the actions referred to in section **693(3)**;

“**international postal article**” means a postal article –

- (a) posted outside the Republic for –
 - (i) delivery inside the Republic; or
 - (ii) transit through the Republic to another country; or
- (b) posted inside the Republic for delivery outside the Republic;

“**international postal clearance depot**” means premises operated by the South African Post Office for the processing and sorting of international postal items for –

- (a) delivery inside the Republic, in the case of postal items posted outside the Republic for delivery in the Republic; or
- (b) loading on board foreign-going vessels, foreign-going aircraft, cross-border railway carriages or vehicles departing from the Republic, in the case of postal items posted inside the Republic for delivery outside the Republic;

“**international transit**” or “**international transit procedure**” means the customs procedure described in section **189(2)**;

“**inward processed compensating products**” means compensating products –

- (a) obtained from the processing of goods imported under the inward processing procedure; and
- (b) destined for export or exported from the Republic under that procedure;

“**inward processing**” or “**inward processing procedure**” means the customs procedure described in section **395**;

“**land border-post**”, in relation to –

- (a) vehicles, means a road border crossing designated in terms of section **32(1)(d)** as a place of entry or exit for vehicles and persons and goods on board vehicles; and
- (b) persons on foot, means a road or other border crossing designated in terms of section **32(1)(e)** as a place of entry or exit for persons on foot and accompanied baggage that such persons have with them;

“L.C.L. container” means a container containing goods consigned from one or more consignors to more than one consignees;

“leave”, in relation to the Republic, means –

- (a) in the case of a vessel or goods or persons on board a vessel, when the vessel moves out of the territorial waters of the Republic;
- (b) in the case of an aircraft or goods or persons on board an aircraft, when the aircraft moves out of the airspace above the Republic;
- (c) in the case of a cross-border train or goods or persons on board a cross-border train, when the train crosses the border out of the Republic;
- (d) in the case of a vehicle or goods or persons on board a vehicle, when the vehicle crosses the border out of the Republic;
- (e) in the case of goods in a cross-border pipeline, when the goods crosses the border through the pipeline out of the Republic; or
- (f) in the case of a person on foot or accompanied baggage that such persons have with them, when that person crosses the border out of the Republic;

“licence” means a licence issued by the customs authority in terms of Chapter 28; –

“licensed” means licensed in terms of Chapter 28;

“licensee” means the holder of a licence;

“loss”, in relation to goods, means that goods have become lost due to –

- (a) pilfering, theft or robbery;
- (b) falling overboard;
- (c) being left behind or forgotten somewhere;
- (d) loading on board wrong vessel, aircraft, railway carriage or vehicle;
- (e) off-loading at wrong place; or
- (f) any other specific act or occurrence other than the destruction or damage of goods;

“manifest” means a summary of cargo on board or to be off-loaded from a vessel, aircraft, railway carriage or vehicle at a specific place as reflected in the transport documents issued in respect of that cargo;

“Minister” means the Cabinet member responsible for finance;

“multi-purpose seaport terminal” means an area at a customs seaport comprising any combination of –

- (a) general sea cargo terminals;
- (b) special sea cargo terminals;
- (c) bulk sea cargo terminals;
- (d) container terminals; and
- (e) sea travellers terminals,

and includes any other areas and facilities used for or in connection with any of those terminals;

“national transit” or **“national transit procedure”** means the customs procedure described in section 189(1);

“official”, in relation to SARS, means –

- (a) the Commissioner;
- (b) any other employee of SARS;
- (c) a person employed by another organ of state, including any institution which is not an organ of state, and seconded to SARS to work as a member of the staff; or
- (d) a person contracted by SARS to work as a member of the staff otherwise than as an employee;

“operator” –

- (a) in relation to a vessel, aircraft, train or vehicle, means the person who is in on-board command¹¹ of the vessel, aircraft, train or vehicle; or
- (b) in relation to a railway carriage, means the person who is in on-board command of the train of which that railway carriage forms part or is intended to form part;

“origin”, in relation to goods, means the country in which the goods were produced or regarded as having been produced according to the rules of origin applicable to the goods in terms of Chapter 8 of the Customs Duty Act;

“outright export” in relation to goods, means the export of goods from the Republic otherwise than under any of the following customs procedures:

- (a) the international transit procedure;
- (b) the transshipment procedure;
- (c) the temporary admission procedure;
- (d) the tax free shop procedure;

¹¹ This refers to the master or captain of a vessel, the pilot or captain of an aircraft, etc.

- (e) the stores procedure;
- (f) the inward processing procedure;
- (g) the outward processing procedure; or
- (h) the temporary export procedure;

“outturn report” means a report giving the information as may be prescribed by rule concerning –

- (a) goods –
 - (i) packed into containers, or consolidated, whether on pallets or in another way, for transportation;
 - (ii) loaded on board a vessel, aircraft, railway carriage or vehicle for transportation;
 - (iii) unloaded from a vessel, aircraft, railway carriage or vehicle; or
 - (iv) unpacked from containers or de-grouped from consolidated packages; or
- (b) empty containers unloaded from vessels or railway carriages;

“outward processed compensating products” means compensating products –

- (a) obtained from the processing of goods exported from the Republic under the outward processing procedure; and
- (b) imported under that procedure for home use;

“outward processing” or **“outward processing procedure”** means the customs procedure described in section 452;

“package” means –

- (a) any wrapping or outer cover and its contents;
- (b) any bundle tied together; or
- (c) any single piece in the case of unpacked goods;

“permissible” –

- (a) in relation to a customs procedure, means that clearance and release of goods for that customs procedure is authorised in the circumstances pertaining to a particular case –
 - (i) by this Act or a tax levying Act; or
 - (ii) in the discretion of the customs authority, provided such authorisation is not inconsistent with this Act or a tax levying Act; and
- (b) in relation to home use, means that clearance and release of goods for home use is authorised in the circumstances pertaining to a particular case –

- (i) by this Act or a tax levying Act; or
- (ii) in the discretion of the customs authority,¹² provided such authorisation is not inconsistent with this Act or a tax levying Act;

“person” means a natural or juristic person, and includes –

- (a) a company, close corporation or co-operative incorporated or registered in terms of legislation whether in the Republic or elsewhere;
- (b) an association, partnership or club or other body of persons of whatever description, corporate or unincorporated;
- (c) an estate of a deceased or insolvent person;
- (d) a trust or trust fund; and
- (e) an organ of state or an official of an organ of state;

“place of entry” means a place designated in terms of section 32 or 35 as a place of entry for the control of vessels, aircraft, trains, vehicles, goods and persons entering the Republic;

“place of exit” means a place designated in terms of section 32 or 35 as a place of exit for the control of vessels, aircraft, trains, vehicles, goods and persons leaving the Republic;

“police officer” means a member of the South African Police Service established in terms of the South African Police Service Act, 1995 (Act No. 86 of 1995);

“postal article” means any letter, postcard, letter card, envelope, book, packet, pattern or sample packet or any parcel or other article when in the course of conveyance by post, and includes a telegram when conveyed by post;

“posted” means posted at a post office operated by the South African Post Office;

“post office” includes any house, building, room, vehicle, place or structure where the South African Post Office –

- (a) receives, sorts, delivers, make up or dispatch postal articles; or
- (b) renders any postal, savings, money transfer or other service,

and includes any pillar box or other receptacle provided by or with the approval of the South African Post Office for the reception of postal articles;

¹² See for instance sections 115 and 116 stating the circumstances in which the release of goods for home use or a customs procedure must or may be refused.

“**premises**” means any site, property, building, structure or any part of a site, property, building or structure;

“**private warehouse**” means licensed premises used exclusively by the licensee of the premises for the storage of goods owned by the licensee of the warehouse or in which the licensee has a material interest;

“**processing**”, in relation to –

- (a) goods under the inward processing procedure, means to the extent indicated in the Customs Tariff –
 - (i) to repair, clean, recondition, pack or re-pack imported goods in the Republic;
 - (ii) to subject imported goods to an industrial process in the Republic; or
 - (iii) to use imported goods in a manufacturing process in the Republic;
- (b) goods under the processing for home use procedure, means to the extent indicated in the Customs Tariff –
 - (i) to repack imported goods in retail quantities in the Republic;
 - (ii) to subject imported goods to an industrial process in the Republic; or
 - (iii) to use imported goods in a manufacturing process in the Republic; or
- (c) goods under the outward processing procedure, means to the extent indicated in the Customs Tariff –
 - (i) to repair or recondition goods exported from the Republic abroad;
 - (ii) to subject goods exported from the Republic to an industrial process abroad; or
 - (iii) to use goods exported from the Republic in a manufacturing process abroad;

“**processing for home use**” or “**processing for home use procedure**” means the customs procedure described in section 426;

“**produce**”, in relation to goods, includes to grow, manufacture, mine or process goods;

“**prohibited goods**” means goods described in section 742;¹³

“**public warehouse**” means licensed premises made available by the licensee of the premises to clients generally for the storage of their goods that are not in free circulation, but excludes –

- (a) a terminal or depot where goods are temporarily stored; or

¹³ “Prohibited goods” excludes counterfeit goods which are dealt with separately in Chapter 36.

- (b) a state warehouse or premises regarded to be a state warehouse in terms of section **555**;

“**railway station**” includes a railway siding serving a specific mining, industrial or commercial enterprise or complex;

“**railway terminal**” means –

- (a) a rail cargo terminal; or
(b) a rail travellers terminal;

“**rail cargo terminal**” means premises on a railway station where cargo is –

- (a) off-loaded from, or loaded on board, cross-border railway carriages; and
(b) temporarily stored after being off-loaded or before being loaded;

“**rail consignment note**” means a document issued by a rail carrier or other person for the transportation of goods to a particular destination on board a railway carriage, and which serves as proof that the carrier –

- (a) has received the goods; and
(b) has undertaken to transport the goods on the terms and conditions stated in the document;

“**rail travellers terminal**” means premises on a railway station where travellers and crew –

- (a) board, or disembark from, cross-border railway carriages; and
(b) are processed before boarding, or after disembarking from, cross-border railway carriages,

and includes –

- (i) all transit areas through which travellers and crew must proceed to or from cross-border railway carriages; and
(ii) all facilities used for or in connection with the operation of the terminal;

“**registered**” means registered in terms of Chapter **29**;

“**regulation**” means a regulation made by the Minister in terms of section **841**;

“**re-imported unaltered goods**” means goods imported into the Republic that –

- (a) were previously exported from the Republic, whether temporarily or outright; and

- (b) whilst abroad, have not undergone any manufacturing, processing or repairs except maintenance in connection with their use abroad;

“release”, in relation to –

- (a) goods imported into the Republic and cleared for home use, means a decision by the customs authority to allow the goods into free circulation;
- (b) goods cleared for a customs procedure, means a decision by the customs authority to allow the goods to be dealt with in accordance with that specific customs procedure;

“release agent”, in relation to goods, means the licensee of the customs controlled area where the goods are located immediately before their release for home use or a customs procedure;

“release document” means –

- (a) a document referred to in section 173(1)(a) containing an endorsement contemplated in that section which states that goods have been released for home use or a customs procedure; or
- (b) a computer printout referred to in section 173(1)(b) which states that goods have been released for home use or a customs procedure;

“release notification” means an electronic message referred to in section 173(1)(c) that goods have been released for home use or a customs procedure;

“restricted goods” means goods described in section 750;

“reusable transport equipment” means containers, pallets, packing material and other transport equipment designed for continuous reuse in the transport of goods in the ordinary course of trade;

“reward”, in relation to the transport of goods or travellers, includes any form of consideration received or to be received wholly or partly in connection with the transport of the goods or travellers, irrespective of the person by whom or to whom the consideration has been or is to be paid or given;

“road waybill” means a document issued by a road carrier or other person for the transportation of goods to a particular destination on board a vehicle, and which serves as proof that the carrier –

- (a) has received the goods; and

- (b) has undertaken to transport the goods on the terms and conditions stated in the document;

“**rule**” means a rule made by the Commissioner in terms of section **842**;

“**SACU**” means the Southern African Customs Union comprising –

- (a) the Republic of Botswana;
- (b) the Kingdom of Lesotho;
- (c) the Republic of Namibia;
- (d) the Republic of South Africa; and
- (e) the Kingdom of Swaziland;

“**SACU Agreement**” means the Southern African Customs Union Agreement;

“**SACU member state**” means a state which is a member to SACU;

“**SARS**” means the South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);

“**sea cargo terminal**” means –

- (a) a general sea cargo terminal;
- (b) a special sea cargo terminal;
- (c) a bulk sea cargo terminal;
- (d) a container terminal; or
- (e) a combination sea cargo terminal;

“**sea travellers terminal**” means premises within a customs seaport where travellers and crew –

- (a) board, or disembark from, foreign-going vessels; and
- (b) are processed before boarding, or after disembarking from, foreign-going vessels,

and includes –

- (i) all transit areas through which travellers and crew must proceed to or from foreign-going vessels; and
- (ii) all facilities used for or in connection with the operation of the terminal;

“**security**” means any security provided in terms of Chapter **31** for a purpose set out in section **657**;

“**seize**”, in relation to goods, means to take physical possession of the goods without divesting a person of ownership of the goods;

“**self-assessment**”, in relation to taxable goods, means a calculation in terms of a tax levying Act by a person submitting a clearance declaration in respect of those goods of the amount of tax payable on the goods in terms of that Act;

“**South African Post Office**” means the South African Post Office Ltd established in terms of section 3 of the Post Office Act, 1958 (Act No. 44 of 1958);

“**special sea cargo terminal**” means premises within a customs seaport where cargo of a specific type, whether bulk or break bulk cargo, but other than cargo in containers is –

- (a) off-loaded from, or loaded on board, foreign-going vessels; and
- (b) temporarily stored after being off-loaded or before being loaded;

“**state warehouse**” means a facility referred to in section 544(a) or (b) to which goods must be removed when required in terms of this Act, a tax levying Act or other legislation;

“**stores**” means goods taken on board a foreign-going vessel, foreign-going aircraft or cross-border train by the carrier in charge of the vessel, aircraft or train, whether in the Republic or elsewhere, exclusively for the purpose of meeting the reasonable needs of its next voyage, including stopovers, and includes goods intended to be used –

- (a) by travellers and crew on board the vessel, aircraft or train during that voyage;
- (b) for the operation of the vessel, aircraft or train on that voyage;
- (c) for the maintenance of the vessel, aircraft or train during that voyage; or
- (d) as tax free items for sale on board the vessel, aircraft or train to travellers and crew, in the case of a vessel, aircraft or train entitled in terms of section 341 to sell tax free items to travellers and crew;

“**stores procedure**” means the customs procedure described in section 323;

“**supporting document**” includes a document referred to in section 169;

“**tariff classification**” or “**classification**”, in relation to goods cleared for home use or a customs procedure, means the classification of the goods in terms of Chapter 6 of the Customs Duty Act under a heading, subheading, tariff item or other item specified in the Customs Tariff;

“tax” means –

- (a) a duty imposed in terms of the Customs Tariff on the import into, or export from, the Republic of goods;
- (b) any other tax, levy or duty imposed on the import into, or export from, the Republic 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;

“taxable”, in relation to goods, indicates that a tax has been imposed in terms of a tax levying Act on the goods;

“tax due status” means a tax status described in section 133(1);

“tax free status” means a tax status described in section 133(2);

“tax levying Act” means any legislation other than this Act imposing or imposing and regulating the administration of a specific tax on goods, and includes –

- (a) the Customs Duty Act;
- (b) the Value-added Tax Act;
- (c) the Excise Duty Act;¹⁴
- (d) the Diamond Export Levy Act, 2007 (Act No. 15 of 2007); and
- (e) the Diamond Export Levy Administration Act, 2007 (Act No. 14 of 2007);

“tax free shop” means premises from where goods are sold in accordance with the tax free shop procedure, and includes any storage facilities on the premises;

¹⁴ Until the new Excise Duty Act is passed, the Customs and Excise Act, 1964 (Act No. 91 of 1964), must in relation to excise duties be regarded to be a tax levying Act. See section 857.

“**tax free shop procedure**” means the customs procedure described in section **301**;

“**temporary admission**” or “**temporary admission procedure**” means the customs procedure described in section **245**;

“**temporary admission paper**” means an internationally accepted customs document known as a CPD carnet, for the temporary admission of means of transport into a country, or an ATA carnet, for the temporary admission of other goods into a country, and which –

- (a) identifies the means of transport or other goods; and
- (b) is covered by a guarantee for any tax that may be, or may become, payable on such means of transport or other goods;

“**temporary export**”, in relation to goods, means the export of goods under the temporary export procedure;

“**temporary export procedure**” means the customs procedure described in section **377**;

“**temporary storage**”, in relation to goods, means the storage of goods at a terminal or depot until the goods are removed from the terminal or depot –

- (a) in terms of a release for home use or a customs procedure; or
- (b) to a state warehouse or a place contemplated in section **555(1)(b)**;

“**terminal**” means –

- (a) a sea cargo terminal;
- (b) an air cargo terminal;
- (c) a sea travellers terminal;
- (d) an air travellers terminal; or
- (e) a railway terminal;

“**the Republic**” means the territory of the Republic of South Africa, including its internal and territorial waters referred to in sections 3 and 4 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), and the airspace above its territory and internal and territorial waters;

“**this Act**” includes the regulations and the rules;

“**train**” includes –

- (a) a locomotive with or without any passenger, goods or other railway carriages attached to it; and

(b) any fittings, furnishings and equipment of such locomotive or railway carriages;

“transhipment” or **“transhipment procedure”** means the customs procedure described in section 221;

“transit”, in relation to goods, means national or international transit of goods;

“transit operation” means –

- (a) the receipt of goods cleared and released for the national or international transit procedure;
- (b) the transport of those goods in terms of the procedure; and
- (c) the delivery of those goods in terms of the procedure at the destined customs controlled area;

“transport document”, in relation to cargo transported on board –

- (a) a vessel, means a bill of lading or other similar document issued in respect of the transport of that cargo;
- (b) an aircraft, means an air waybill or other similar document issued in respect of the transport of that cargo;
- (c) a railway carriage, means a rail consignment note or other similar document issued in respect of the transport of that cargo; or
- (d) a vehicle, means a road waybill, road manifest or other similar document issued in respect of the transport of that cargo;

“transport-unit” means a vessel, aircraft, locomotive, railway carriage, vehicle or pipeline, and includes a container or other transport equipment;

“traveller” means a person travelling on board a vessel, aircraft, train or vehicle or on foot, but excludes the operator or a other crew member of a vessel, aircraft, train or vehicle;

“truck” means a vehicle –

- (a) with a gross vehicle mass exceeding 3500 kilograms¹⁵; and
- (b) that is designed or adapted for the transport of goods;

“UCR number”, in relation to a consignment of goods –

¹⁵ See National Road Traffic Act, 1996 (Act No. 93 of 1996).

- (a) imported into the Republic, means the unique consignment reference number allocated to the consignment by the person who exported the goods to the Republic; or
- (b) to be exported from the Republic, means the unique consignment reference number allocated to the consignment by the exporter of the goods;

“**unaccounted**”, in relation to goods, means a shortfall in goods according to any documents or records relating to the goods, where the reason for the shortfall cannot be ascribed to the destruction, damage or loss of goods;

“**vehicle**” means –

- (a) a motor car, bus, mini-bus, van, truck, trailer, semi-trailer, motor cycle, wagon, cart, cycle, wheelbarrow or other means of conveyance of any kind whatsoever capable of moving on land, whether self-propelled or not, and including its fittings, furnishings and equipment; or
- (b) any pack animal, including its harness and tackle, but excludes an aircraft, vessel or train;

“**vessel**” means –

- (a) a craft of any kind whatsoever capable of moving in, on or under water, whether self-propelled or not;
 - (b) a hovercraft; or
 - (c) any floating structure, whether moored or not,
- and includes the fittings, furnishings and equipment of any such craft or floating structure;

“**warehousing**” or “**warehousing procedure**” means the customs procedure described in section **275**;

“**wreck**” includes any –

- (a) flotsam, jetsam, lagan or derelict;
- (b) portion of a vessel or aircraft lost, abandoned, stranded or in distress;
- (c) portion of the cargo, stores or equipment of any such vessel or aircraft; and
- (d) portion of the personal property on board such vessel or aircraft when it was lost, abandoned, stranded or in distress.

(2) In this Act, a word or expression which is a derivative or other grammatical form of a word or expression defined in this Act, has a corresponding meaning unless the context indicates that another meaning is intended.

- (3) Unless inconsistent with the context, any reference in this Act to –
- (a) a person located in the Republic must be read –
 - (i) in the case of a natural person, as a reference to a natural person ordinarily resident in the Republic; or
 - (ii) in the case of a juristic person, as a reference to –
 - (aa) a juristic person incorporated or registered in terms of the laws of the Republic; or
 - (bb) a juristic person incorporated or registered in terms of the laws of another country provided that that person has a place of business at a specific physical address in the Republic;
 - (b) a specific Chapter of this Act must be read as including any regulation or rule made for the purpose, or to facilitate the implementation, of that Chapter;
 - (c) a specific Part of a Chapter of this Act must be read as including any regulation or rule made for the purpose, or to facilitate the implementation, of that Part; and
 - (d) a specific section of this Act must be read as including any regulation or rule made for the purpose, or to facilitate the implementation, of that section.

Time when goods are imported into or exported from Republic

2. Unless inconsistent with the context, goods must for the purpose of this Act and a tax levying Act be regarded as having been –
- (a) imported into the Republic when the goods enter the Republic; and
 - (b) exported from the Republic when the goods leave the Republic.

Legal status of footnotes

3. Footnotes in this Act do not form part of this Act, but may be taken into account in the interpretation of this Act as non-binding opinions on the information they convey.

Part 2: Purpose and application of this Act

Purpose of this Act

4. The purpose of this Act is –
- (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.

Goods and persons to which this Act applies

5. This Act applies to all goods and persons that are subject to customs control in terms of section **29**, **30** or **31**.

Territorial application of this Act

6. (1) This Act applies in the whole of the Republic.¹⁶

(2) For the purposes of subsection (1) —

- (a) the continental shelf referred to in section 8 of the Maritime Zones Act, 1994, must be regarded as being part of the Republic;
- (b) any installation or device of any kind whatsoever, including any floating or submersible drilling or production platform, constructed or operating upon, beneath or above the continental shelf for the purpose of exploring it or exploiting its natural resources must be regarded as having been constructed or as operating within the Republic; and
- (c) any goods mined or produced in the operation of such installation or device and transported to the shore, whether by pipeline or otherwise, and any person or other goods transported by any means to and from such installation or device must be regarded as having been transported within the Republic.

(3) The enforcement functions in terms of this Act may be applied in the contiguous and exclusive economic zones of the Republic referred to in sections 5 and 7 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), to the extent necessary to enforce, or to prevent a breach of, this Act, a tax levying Act or any legislation referred to in section **16** or Chapter **35** or **36**.

Application of this Act in relation to SACU member states

7. (1) This Act applies to all goods imported into the Republic from a SACU member state and to all goods in the process of being exported from the Republic to a SACU member state, subject to any rules as must be prescribed in terms of subsection (2).

¹⁶ Although the Prince Edward Islands form part of the Republic, this Act does not apply to those islands. See the Prince Edward Islands Act, 1948 (Act No. 43 of 1948).

(2) The Commissioner must make rules to give effect to the SACU Agreement in the Republic.

Application of this Act in relation to other legislation regulating goods and persons entering or leaving Republic

8. This Act must be interpreted as facilitating the implementation of other legislation¹⁷ to the extent that such legislation applies –

- (a) to goods or persons entering or leaving the Republic or to any matter relating to such goods or persons; or
- (b) in any areas which are customs controlled areas for purposes of this Act or to any matter relating to such areas.

Part 3: Administration of this Act

Commissioner to administer this Act

9. The Commissioner must –

- (a) administer and enforce this Act subject to the control and directions of the Minister; and
- (b) develop and maintain administrative, technological, communicative and other systems and procedures necessary for the implementation of this Act.

Designation of customs officers

10. (1) The Commissioner –

- (a) must designate any number of SARS officials as customs officers necessary for –
 - (i) the proper administration and enforcement of this Act and the tax levying Acts to the extent that those Acts apply to goods imported into, or exported from, the Republic; and
 - (ii) providing support services in the enforcement of legislation referred to in section 16; and
- (b) may with the concurrence of an organ of state or other institution with whom the Commissioner has concluded an agreement in terms of section 15 designate persons in the service of that organ of state or institution as customs officers.

(2) No person may be designated in terms of subsection (1) as a customs officer –

¹⁷ The idea is that the Customs Control Act should provide a “platform” for the implementation of other legislation applicable to goods and persons entering or leaving the Republic, especially the tax levying Acts and legislation prohibiting or restricting the import or export of goods.

- (a) unless that person has completed a declaration of interest determined by the Commissioner; or
- (b) if that person has a direct financial interest in, or stands to benefit from, any business activity consisting of or relating to –
 - (i) the clearance of goods for home use or a customs procedure;
 - (ii) the import into or export from the Republic of goods; or
 - (iii) the manufacture, processing, sale, handling or transport of, or the trade in, goods to which this Act applies.

(3) A customs officer must inform the Commissioner immediately if that officer acquires any interest referred to in subsection (2)(b).

(4) The Commissioner may at any time withdraw or suspend the designation of a person as a customs officer.

Powers and duties of customs officers

- 11.** (1) A customs officer –
- (a) may exercise the powers and must perform the duties –
 - (i) assigned to customs officers in terms of this Act,¹⁸ subject to subsections (2) and (3); or
 - (ii) delegated or sub-delegated in terms of section **20** to customs officers generally or to that customs officer specifically; and
 - (b) must assist the Commissioner, as the Commissioner may require, in the administration and enforcement of –
 - (i) this Act; and
 - (ii) all tax levying Acts to the extent that those Acts apply to goods imported into, or exported from, the Republic.

(2) Customs officers must exercise their enforcement functions¹⁹ in accordance with an appropriate hierarchical system of customs management as may be determined by the Commissioner and whereby customs officers –

- (a) are entrusted with managerial, supervisory, operational or other responsibilities according to rank or on any other selective basis; and
- (b) exercise those functions in a manner commensurate with their respective responsibilities.

¹⁸ These are powers and duties conferred on customs officers directly by the Act or the rules otherwise than through delegation by the Commissioner.

¹⁹ See definition of “enforcement function” in section 1.

(3) The Commissioner may, for the purpose of subsection (2), determine that a power or duty assigned generally to customs officers in terms of this Act, may be exercised only by customs officers –

- (a) of at least a specific rank; or
- (b) selected in any other way.

General requirements for performing enforcement functions

12. (1) Customs officers must perform their enforcement functions –

- (a) in accordance with any instructions issued by the Commissioner; and
- (b) subject to any limitations and in accordance with any procedures that may be prescribed by rule.

(2) A customs officer may, subject to subsection (1) and sections **681** and **705**, perform an enforcement function at any time and without a warrant or previous notice.

(3) When performing an enforcement function, a customs officer may –

- (a) be accompanied and assisted by any interpreters, technicians, workers, police officers or any other persons whose assistance may reasonably be required for the performance of that function; or
- (b) use any aids such as a dog, or chemical substances, or imaging equipment, or any other mechanical, electrical or electronic devices, subject to compliance with any legislation applicable to the use of such aids.

(4) A person assisting a customs officer in terms of subsection (3) must, whilst and for the purpose of assisting, be regarded to be a customs officer.

Identity cards

13. (1) The Commissioner must issue an identity card to each person designated as a customs officer.

(2) When performing an enforcement function a customs officer must, on demand by a member of the public affected by the performance of the function, produce the identity card issued to that officer in terms of subsection (1).

Customs offices

14. The Commissioner must by rule –

- (a) establish in the Republic or, if necessary, outside the Republic, any number of SARS offices for the purpose of this Act and designate such offices as customs offices, or designate any existing SARS office as a Customs Office;
- (b) determine the purpose and functions of each Customs Office; and
- (c) determine –
 - (i) the office hours of each Customs Office; and
 - (ii) the outside hours of attendance by customs officers.

Agreements for assistance in administration of this Act and tax levying Acts

15. The Commissioner may by agreement with another organ of state or other institution, including a railway, port, airline or postal authority, obtain the assistance of that organ of state or institution to perform such support services in the administration of this Act, or of any tax levying Act to the extent that such tax levying Act applies to goods imported into or exported from the Republic, as may be agreed between the Commissioner and that organ of state or institution.

Customs assistance in administration of other legislation

16. (1) The Commissioner may by agreement with an organ of state responsible for the administration of any specific legislation provide such assistance, as may be agreed between the Commissioner and that organ of state, for the enforcement of that legislation in relation to goods and persons that become subject to customs control.²⁰

(2) Subsection (1), and any agreement in terms of that subsection, does not affect the implementation of Chapters **35** and **36** and other provisions of this Act relating to prohibited, restricted and counterfeit goods and those provisions apply irrespective of whether such an agreement has been concluded.

Customs co-operation with other countries

17. The Commissioner may enter into an agreement with the customs administration of another country –

- (a) to provide for customs co-operation, including the exchange of customs information between the Commissioner and that customs administration;
- (b) to facilitate the customs processing of goods –
 - (i) exported to the Republic from that country; and
 - (ii) exported from the Republic to that country; and
- (c) to allow –

²⁰ See also sections **679** and **721**.

- (i) customs personnel of that customs administration to perform functions in the Republic necessary for the enforcement of the customs legislation of that country in respect of goods to be exported from the Republic to that country; and
- (ii) customs officers of the Republic to perform functions in that country necessary for the enforcement of this Act, a tax levying Act or any legislation referred to in section 16 or Chapter 35 and 36 in respect of goods to be exported to the Republic from that country.

Provision of customs services

18. The Commissioner may by rule provide for the provision of services to persons to assist them in complying with –

- (a) this Act; or
- (b) a tax levying Act to the extent that such tax levying Act applies to goods imported into or exported from the Republic.

Part 4: Delegations

Delegations by Minister

19. (1) The Minister may delegate to a Deputy Minister appointed to assist the Minister any of the powers or duties assigned to the Minister in terms of this Act.

(2) A delegation in terms of subsection (1)—

- (a) must be in writing;
- (b) is subject to such limitations and conditions as the Minister may determine;
- (c) does not divest the Minister of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty; and
- (d) may at any time be amended or repealed by the Minister.

(3) The Minister may at any time confirm, alter or repeal any decision taken in consequence of a delegation in terms of this section, but no such alteration or repeal may detract from any rights that have accrued as a result of the decision.

Delegations by Commissioner

20. (1) The Commissioner –

- (a) must for the proper implementation of this Act develop an appropriate system of delegation to maximise administrative and operational efficiency; and

- (b) may, in accordance with that system, delegate to a customs officer, including any SARS official who is not a customs officer –
 - (i) any power or duty assigned to the Commissioner or the customs authority in terms of this Act; or
 - (ii) any part or aspect of any such power or duty.
- (2) A delegation in terms of subsection (1)—
- (a) must be in writing;
 - (b) is subject to such limitations and conditions as the Commissioner may determine generally or in a specific case;
 - (c) may either be to –
 - (i) a specific individual; or
 - (ii) the incumbent of a specific post;
 - (d) may, in the case of a delegation to a supervising customs officer, authorise the officer to sub-delegate the delegated power or duty, or part or aspect of such power or duty, in writing to –
 - (i) a customs officer under that supervising customs officer's control; or
 - (ii) the incumbent of a specific post under that supervising customs officer's control;
 - (e) does not divest the Commissioner of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty; and
 - (f) may at any time be amended or repealed by the Commissioner.²¹

Part 5: Confidentiality

Definition

21. In this Part –

"**authorised recipient**", in relation to information obtained in the application of this Act or the Customs Duty Act by a SARS official, including a customs officer who is not a SARS official, means –

- (a) the Statistician-General contemplated in the Statistics Act, 1999 (Act No. 6 of 1999);
- (b) the Director-General of the Department of Trade and Industry;
- (c) the Director-General of the National Treasury;
- (d) the Chief Commissioner of the International Trade Administration Commission established in terms of the International Trade Administration Act, 2002 (Act No. 71 of 2002);

²¹ See Chapter 38 for the reconsideration by the Commissioner of decisions taken in terms of delegated powers.

- (e) the Governor of the South African Reserve Bank referred to in section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933);
- (f) the South African Police Service referred to in section 6(1) of the South African Police Service Act, 1995 (Act No. 68 of 1995); or
- (g) the National Director of Public Prosecutions referred to in section 5(2)(a) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998).

Confidentiality

22. No SARS official, customs officer or person referred to in section **12(3)**, and no person who was such an official, officer or person, may disclose any information acquired by him or her in the exercise of powers or duties in terms of this Act or the Customs Duty Act concerning the private or confidential matters of any person,²² except –

- (a) to the extent that such disclosure is made in the exercise of those powers or duties, including for the purpose of any proceedings referred to in Chapter **38**;
- (b) if that official, officer or person is –
 - (i) summoned to give evidence as a witness before a court or tribunal and the Commissioner has authorised that official, officer or person to disclose the information; or
 - (ii) required to do so by a court;
- (c) if the person that will be affected by the disclosure has consented to the disclosure;
- (d) to the Minister or a Deputy Minister appointed to assist the Minister;
- (e) if there is a serious and imminent risk to public health or safety or the environment and the public's interest in the disclosure outweighs the official, officer or person's duty of confidentiality;
- (f) to an authorised recipient, subject to section **23**; or
- (g) in accordance with –
 - (i) an international agreement or convention in respect of customs cooperation to which the Republic is a party, subject to section **24(1)**; or
 - (ii) any other international agreement or convention to which the Republic is a party, subject to section **24(2)**.

Disclosures to authorised recipients

23. (1) Any disclosure in terms of section **22(f)** to –

- (a) the Chief of the Central Statistics Services, must be confined to information necessary for statistical purposes;

²² Such official, customs officer or person may be obliged to disclose such information in terms of other legislation e.g. the Financial Intelligence Centre Act, 2001

- (b) the Director-General of the Department of Trade and Industry and the Chief Commissioner of the International Trade Administration Commission, must be confined to information necessary for the development of trade policy;
- (c) the Governor of the South African Reserve Bank, must be confined to information necessary for the implementation of the Exchange Control Regulations issued in terms of section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933);
- (d) the Director-General of the National Treasury, must be confined to information –
 - (i) relating to foreign transactions under the Exchange Control Regulations; or
 - (ii) necessary for the development of tax policy or the estimation of revenue; or
- (e) the South African Police Service or the National Director of Public Prosecutions, must be confined to information relating to the alleged commission of –
 - (i) a serious offence punishable by a prison sentence of more than 10 years;
 - (ii) an offence in respect of which the Commissioner is a complainant;
 - (iii) an offence in terms of this Act, a tax levying Act or other legislation administered by the Commissioner;
 - (iv) an offence in terms of legislation which is the subject of an agreement in terms of section **16**;
 - (v) an offence in terms of legislation applicable to prohibited, restricted or counterfeit goods referred to in Chapter **35** or **36**; or
 - (vi) an offence in terms of legislation applicable to the entry of persons into the Republic.

(2) An authorised recipient may use the information disclosed in terms of subsection (1) only for the purpose for which the information was disclosed.

- (3) Information disclosed in terms of subsection (1)(e) may be used only –
- (a) for the purpose of investigating the alleged commission of an offence referred to in that subsection; and
 - (b) as evidence in prosecuting a person for an offence referred to in that subsection.

Disclosures in terms of international agreements and conventions

24. (1) A disclosure in terms of section **22(g)(i)** may be made only –

- (a) if authorised by the Commissioner; and
- (b) for a purpose and on conditions as may be specified by the Commissioner.

(2) A disclosure in terms of section **22(g)(ii)** may be made only –

- (a) in circumstances where the international, regional or national interest in disclosure outweighs any potential harm to the person affected by the disclosure; and

(b) for a purpose and on conditions as may be specified by the Commissioner.

(3) A disclosure referred to in subsection (1) or (2) may be made only to a person authorised to act on behalf of –

- (a) a party to the relevant international agreement or convention; or
- (b) an international agency, institution or organisation established or recognised in terms of that agreement or convention.

Part 6: Other matters

Requests for information

25. The Commissioner may by written notice request a person in possession of information required for the administration of this Act or a tax levying Act and which is sufficiently identified in the notice, to submit that information to the Commissioner within a period specified in the notice.

Rules to facilitate implementation of this Chapter

26. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

- (a) training requirements for customs officers, including –
 - (i) the levels of training;
 - (ii) the standards required to ensure competency in respect of any particular tasks; and
 - (iii) the establishment of a training academy for customs officers, including cadet customs officers;
- (b) standards of medical and psychological condition required of customs officers;
- (c) standards of discipline applicable to customs officers;
- (d) conditions, qualifications and limitations on the performance by customs officers of their enforcement functions; or
- (e) the places where, the time when and the manner in which enforcement functions must or may be performed.

Offences in terms of this Chapter

27. (1) A customs officer is guilty of an offence if that officer fails to comply with section **10(2)(b)**.

(2) A SARS official, a customs officer who is not a SARS official or a person referred to in section **12(3)** is guilty of an offence if that official or person contravenes section **22**.

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

Purpose of this Chapter

28. The purpose of this Chapter is –

- (a) to identify the goods and persons that are subject to customs control;
- (b) to provide for the designation of places as places of entry or exit to ensure effective customs control of goods and persons referred to in paragraph (a) entering or leaving the Republic; and
- (c) to identify and to provide for the designation of places and facilities as customs controlled areas to ensure effective customs control of goods and persons referred to in paragraph (a).

Customs control of goods

29. (1) The following goods are for purposes of this Act subject to customs control:

- (a) all goods imported, or suspected on reasonable grounds of having been imported, into the Republic;
- (b) all goods in the process of being exported or suspected on reasonable grounds of being exported from the Republic;
- (c) all compensating products under a customs procedure or goods suspected on reasonable grounds to be compensating products under a customs procedure;
- (d) all foreign-going vessels and aircraft, and all vessels or aircraft suspected on reasonable grounds to be foreign-going vessels or aircraft;
- (e) all domestic vessels;
- (f) all cross-border trains and railway carriages, and all trains or railway carriages suspected on reasonable grounds of being cross-border trains or railway carriages;
- (g) all vehicles entering or in the process of leaving the Republic, or suspected on reasonable grounds of having entered or being in the process of leaving the Republic;
- (h) all goods on board any vessel, aircraft, train, railway carriage or vehicle referred to in paragraph (d), (e), (f) or (g);
- (i) all trains, railway carriages and vehicles transporting, or suspected on reasonable grounds of transporting, goods referred to in paragraph (a), (b) or (c);
- (j) all cross-border pipelines and transmission lines, and all goods in the process of being conveyed through cross-border pipelines or transmission lines;
- (k) all goods, including vessels, aircraft, trains, locomotives, railway carriages and vehicles –

- (i) within a customs controlled area; or
 - (ii) on any premises to which this Act applies as if those premises were a customs controlled area;²³
- (l) all goods in the process of being conveyed through pipelines or conveyor belts used for loading goods onto or off from foreign-going vessels or aircraft or cross-border railway carriages;
- (m) all goods that persons who are subject to customs control in terms of section **30** (1) have with them, including all accompanied baggage of persons referred to in section **30**(1)(a) or (b); and
- (n) any other goods not covered above but in relation to which the customs authority may exercise a power in terms of a provision of this Act.

(2) Imported goods remain subject to customs control until –

- (a) the goods are cleared and released for home use;
- (b) the goods are in terms of any provision of this Act allowed into free circulation otherwise than in terms of a clearance and release of the goods for home use;²⁴
- (c) the goods are exported under a customs procedure that provides for the export of goods under that procedure, in the case of goods that have been cleared and released for such a customs procedure²⁵ or automatically upon import came under such a procedure;²⁶
- (d) the goods are exported in terms of a provision of this Act that allows the goods to be re-exported otherwise than under a customs procedure;²⁷ or
- (e) compensating products obtained from the goods are cleared and released for home use or exported under the applicable customs procedure.²⁸

(3) Non-imported goods in the process of being exported remain subject to customs control until the goods are exported –

- (a) under the outright export procedure or another customs procedure that provides for the export of goods;²⁹ or
- (b) in terms of any provision of this Act that allows goods to be exported otherwise than under a customs procedure.³⁰

²³ For instance premises to which Part 3 of Chapter 27 applies.

²⁴ Eg accompanied baggage of travellers and crew members which they brought back with them to the Republic.

²⁵ Eg customs procedures such as transshipment, international transit, temporary admission, etc.

²⁶ Eg goods such as foreign-going vessels and aircraft, cross-border trains, stores imported on board such vessels, aircraft or trains, reusable transport equipment, etc.

²⁷ Eg accompanied baggage of travellers and crew members, goods required by customs to be removed from the Republic, goods that remain on arriving foreign-going vessels and aircraft without being offloaded in the Republic, etc.

²⁸ Processing for home use and inward processing procedures.

²⁹ Eg the stores procedure, temporary export procedure, outward processing procedure, etc.

(4) Despite subsections (2) and (3) those subsections do not affect the implementation of a provision of this Act or a tax levying Act applicable to goods after those goods have gone into free circulation.

Customs control of persons

- 30.** (1) The following persons are for purposes of this Act subject to customs control:
- (a) all persons who have entered or are suspected on reasonable grounds of having entered the Republic, whether on board a vessel, aircraft, train or vehicle or on foot;
 - (b) all persons in the process of leaving or suspected on reasonable grounds of leaving the Republic, whether on board a vessel, aircraft, train or vehicle or on foot;
 - (c) all persons on board any vessel, aircraft, train, railway carriage or vehicle referred to in section **29**(1);
 - (d) all persons –
 - (i) within a customs controlled area; or
 - (ii) on any premises to which this Act applies as if those premises were a customs controlled area;³¹
 - (e) all persons in any capacity connected with goods that are subject to customs control in terms of section **29**(1); and
 - (f) any other persons not covered above but in relation to whom the customs authority may exercise a power in terms of a provision of this Act.

(2) Persons entering the Republic remain subject to customs control until the person is customs processed at a place of entry.

(3) Persons in the process of leaving the Republic remain subject to customs control until the person leaves the Republic.

(4) Despite subsection (2) that subsection does not affect the implementation of a provision of this Act or a tax levying Act applicable to goods after those goods have gone into free circulation.

Foreign-going vessels and aircraft passing through Republic without calling or landing

- 31.** (1) Foreign-going vessels or aircraft that enter and pass through the territorial water or airspace of the Republic without calling or landing at a place in the Republic,

³⁰ Eg accompanied baggage of travellers and crew members on visits abroad.

³¹ For instance premises to which Part 3 of Chapter 27 applies.

including any goods and persons on board such vessels or aircraft, are subject to customs control until they leave the territorial water or airspace of the Republic.

- (2) When leaving the territorial water or airspace of the Republic –
- (a) vessels, aircraft and goods referred to in subsection (1) must for the purpose of this Act be regarded as not having been imported into or exported from the Republic; and
 - (b) any persons on board those vessels and aircraft must for the purposes of this Act be regarded as not having entered or leaving the Republic.

(3) Subsection (2) does not apply to goods or persons that do not remain on board, or are taken on board, the vessel or aircraft during its voyage across the territorial water or airspace of the Republic.

Places of entry and exit

32. (1) The Commissioner must for the proper exercise of customs control, and in accordance with any applicable Acts of Parliament and decisions of the national executive, by rule designate any number of –

- (a) seaports in the Republic as places where foreign-going vessels may call;
- (b) airports in the Republic as places where foreign-going aircraft may call;
- (c) rail border crossings as places where cross-border trains may enter or leave the Republic;
- (d) road border crossings as places where vehicles may enter or leave the Republic; and
- (e) any road or other border crossings as places where persons may enter or leave the Republic on foot.

(2) Places designated in terms of subsection (1) are places of entry or exit for the Republic.

Purposes for which places of entry or exit may be used

33. (1) A seaport or airport designated as a place of entry or exit in terms of section 32(1)(a) or (b) may be used as a place where –

- (a) foreign-going vessels or aircraft may call;
- (b) goods –
 - (i) imported into the Republic may be off-loaded from foreign-going vessels or aircraft; or
 - (ii) may be loaded on board foreign-going vessels or aircraft for export from the Republic; and
- (c) persons –

- (i) entering the Republic may disembark from foreign-going vessels or aircraft; or
- (ii) leaving the Republic may board foreign-going vessels or aircraft.

(2) A rail border crossing designated as a place of entry or exit in terms of section **32(1)(c)** may be used as a place where –

- (a) goods may be imported into or exported from the Republic on board cross-border trains; and
- (b) persons may enter or leave the Republic on board cross-border trains.

(3) A road border crossing designated as a place of entry or exit in terms of section **32(1)(d)** may be used as a place where –

- (a) goods may be imported into or exported from the Republic on board vehicles; and
- (b) persons may enter or leave the Republic on board vehicles.

(4) A road or other border crossing designated as a place of entry or exit in terms of section **32(1)(e)** may be used as a place where persons may enter or leave the Republic on foot together with any goods they may have with them.

Restrictions on use of places of entry or exit

34. The Commissioner must, in accordance with any applicable Acts of Parliament and decisions of the national executive, by rule –

- (a) restrict the use of any specific place of entry or exit to a purpose determined by the Commissioner;
- (b) restrict the use of any specific customs seaport or airport to –
 - (i) the offloading of goods of a specific type or in a specific manner from vessels or aircraft in which the goods were imported into the Republic;
 - (ii) the loading of goods of a specific type or in a specific manner on board vessels or aircraft in which the goods are to be exported from the Republic; or
 - (iii) the taking in of fuel or other stores;
- (c) determine that only a specific customs seaport or airport may be used as a place where –
 - (i) imported goods of a specific type may be off-loaded from foreign-going vessels or aircraft;
 - (ii) goods of a specific type may be loaded on board foreign-going vessels in which the goods are to be exported from the Republic; or
 - (iii) goods, or goods of a specific type, may be off-loaded, loaded or handled for international transit or transshipment; or

- (d) impose conditions as to the use of any specific place as a place of entry or exit, including the period for, and the hours of the day during, which it may be so used.

Places of entry or exit in terms of international agreements with adjoining countries

35. (1) The national executive of the Republic may enter into an agreement with the government of a SACU member state or other adjoining country to provide for –

- (a) joint, one-stop or side by side places of entry or exit for the Republic and that adjoining country;
- (b) a place of entry or exit for the Republic alone at a location in that country; or
- (c) a place of entry or exit for that country alone at a location in the Republic.

(2) The Commissioner must by rule give effect to any agreement in terms of subsection (1), including, in the case of an agreement referred to in subsection (1)(a) or (b), by –

- (a) designating that place as a place of entry or exit for the Republic in terms of section **32(1)(c), (d) or (e)**;
- (b) determining –
 - (i) the purposes for which that place may be used as a place of entry or exit for the Republic; and
 - (ii) the period for, and the hours of the day during, which it may be so used; and
- (c) prescribing procedures and conditions to be complied with, and the documents to be used, or any other matter necessary or useful, for –
 - (i) the implementation of the agreement; or
 - (ii) the use of that place as a place of entry or exit for the Republic.

(3) The Commissioner must by rule give effect to any agreement in terms of subsection (1) to the extent that a place of entry or exit referred to in subsection (1)(a) or (c) is located within the Republic –

- (a) by allowing that place to be used by the adjoining country as a place of entry or exit in accordance with the legislation of that country –
 - (i) through which trains or vehicles may pass from or to that country;
 - (ii) through which goods may pass from or to that country;
 - (iii) where goods may be declared and processed for that country's customs purposes; and
 - (iv) through which persons may pass from or to that country; and
- (b) by allowing customs officials of that country at that place –
 - (i) to process for customs purposes goods and persons in accordance with the legislation of that country; and

- (ii) to apply and enforce the legislation of that country.³²

Information sharing agreements

36. (1) The Commissioner and a port authority or other organ of state operating at a place of entry or exit may enter into an information sharing agreement for the proper and effective administration of that place as a place of entry or exit.

- (2) An information sharing agreement may provide for –
- (a) the sharing of non-confidential information between the parties relevant to the administration of that place of entry or exit;
 - (b) the specific information that must or may be shared between the parties;
 - (c) the manner in which and the time within which information must be passed to the other party;
 - (d) the combination of declarations, reports, statements, returns or other documents that must be submitted by third persons respectively to the customs authority in terms of this Act and to the other party in terms of the legislation administered by the other party;
 - (e) the exemption of third persons from the obligation to submit to each party separate overlapping declarations, reports, statements, returns or other documents containing substantially the same information;
 - (f) the submission by third persons of such declarations, reports, statements, returns or other documents to only one of the parties;
 - (g)

NOTE: This clause will be enhanced based upon comments received.

- (3) The Commissioner may by rule –
- (a) give effect to an information sharing agreement in terms of subsection (1);
 - (b) exempt a person from a requirement in terms of this Act to submit a declaration, report, statement, return or other document provided that the exempted person submits substantially the same information that must be contained in that declaration, report, statement, return or other document to the other party;
 - (c)

NOTE: This clause will be enhanced based upon comments received.

³² In the case of section 35(1)(b) where the place of entry or exit for the Republic is at a location in that country, the adjoining country must have provisions similar to section 35(3) to allow SA Customs to operate in that country.

Customs controlled areas

37. (1) The following areas, premises or facilities are customs controlled areas for the purpose of this Act:

- (a) all licensed –
 - (i) general sea cargo terminals;
 - (ii) special sea cargo terminals;
 - (iii) bulk sea cargo terminals;
 - (iv) container terminals;
 - (v) combination sea cargo terminals;
 - (vi) sea travellers terminals;
 - (vii) multipurpose terminals;
 - (viii) air cargo terminals;
 - (ix) air travellers terminals;
 - (x) air cargo depots;
 - (xi) rail cargo terminals;
 - (xii) rail travellers terminals;
 - (xiii) container depots;
 - (xiv) international postal clearance depots;
 - (xv) customs warehouses;
 - (xvi) tax free shops;
 - (xvii) IDZ enterprises;
 - (xviii) inward processing premises;
 - (xix) processing for home use premises;
 - (xx) state warehouses contemplated in section **544(b)**;
 - (xxi) cross border pipelines; or
 - (xxii) cross-border transmission lines; and
- (b) state warehouses contemplated in section **544(a)**.

(2) The Commissioner may by rule designate as a customs controlled area –

- (a) the whole area comprising a customs seaport or airport or other place of entry or exit;
- (b) any part of an area comprising a customs seaport or airport or other place of entry or exit;
- (c) an industrial development zone or any part of an industrial development zone; or
- (d) any general or special entrance to or exit from –
 - (i) a customs seaport or airport or other place of entry or exit; or
 - (ii) an area designated as a customs controlled area in terms of paragraph (b) or (c).

(3) The licensee of a customs controlled area must free of charge provide facilities at the customs controlled area necessary for customs officers to exercise their enforcement functions in relation to goods and persons on or in that customs controlled area.

Rules to facilitate implementation of this Chapter

38. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

- (a) conditions and requirements so as to facilitate the use of the areas, premises or facilities referred to in section **37** (1) or (2) as customs controlled area;
- (b)

<p>NOTE: This clause will be enhanced after consideration of requirements in respect of subordinate legislation and based upon comments received</p>

CHAPTER 3
CUSTOMS CONTROL OF VESSELS, AIRCRAFT, TRAINS, VEHICLES, PERSONS AND
GOODS ENTERING OR LEAVING REPUBLIC

Purpose of this Chapter

39. The purpose of this Chapter is to establish customs control of, and arrival and departure requirements for –

- (a) all vessels, aircraft, trains, vehicles or persons entering or leaving the Republic; and
- (b) all goods imported into or to be exported from the Republic.

Arrival and departure of foreign-going vessels and aircraft, and cross-border trains

40. For the purposes of this Act –

- (a) a foreign-going vessel or goods or persons on board a foreign-going vessel must be regarded as –
 - (i) arriving at a customs seaport when the vessel upon reaching the seaport docks for the first time at that seaport, whether inside the seaport or at a docking facility outside the seaport; or
 - (ii) departing from a customs seaport when the vessel undocks to move out of or away from the seaport;
- (b) a foreign-going aircraft or goods or persons on board a foreign-going aircraft must be regarded as –
 - (i) arriving at a customs airport when the aircraft lands at the airport; or
 - (ii) departing from a customs airport when the aircraft takes off from the airport; or
- (c) a cross-border train or a railway carriage attached to a cross-border train or goods or persons on board a cross-border train must be regarded as –
 - (i) arriving at a railway station when the train stops for the first time at a railway terminal at that railway station; or
 - (ii) departing from a railway station when the train starts to move out of the railway station.

Part 1: Arrival and departure of foreign-going vessels and aircraft³³

Places of entry for foreign-going vessels and aircraft

- 41.** (1) No foreign-going vessel –
- (a) after entering the Republic may call on any port or place along the coastline of the Republic other than a customs seaport; and
 - (b) when leaving the Republic, may depart from a place other than a customs seaport.

³³ Arrival and departure of domestic vessels at customs seaports dealt with in Chapter 4.

(2) After departing from a customs seaport –

- (a) to another place within the Republic, no foreign-going vessel may call on any port or place along the coastline of the Republic other than a customs seaport; or
- (b) to a destination outside the Republic, no foreign-going vessel may call on any port or place along the coastline of the Republic.

(3) No foreign-going aircraft –

- (a) after entering the Republic, may land at any place other than a customs airport; or
- (b) when leaving the Republic, may depart from any place other than a customs airport.

(4) After departing from a customs airport –

- (a) to another place within the Republic, no foreign-going aircraft may land at any place in the Republic other than a customs airport; or
- (b) to a destination outside the Republic, no foreign-going aircraft may land at any place in the Republic.

(5) This section does not apply in respect of foreign-going aircraft of an unconventional nature, such as helicopters, aircraft landing on water, gliders or balloons, but the Commissioner may, in accordance with any applicable Acts of Parliament and decisions of the national executive, by rule prescribe –

- (a) the places at which such aircraft may call or land in the Republic;
- (b) the places from which such aircraft may depart to destinations outside the Republic;
- (c) the conditions on which such aircraft may call or land at or depart from such places; and
- (d) the granting of exemptions from rules prescribed in terms of paragraphs (a), (b) or (c).

Calls or landings resulting from forced circumstances³⁴

42. (1) Section 41(1), (2), (3) or (4) does not apply if the operator of a foreign-going vessel or aircraft is forced by stress of weather, accident or other circumstances beyond the control of the operator to call or land at a place which is not a customs seaport or airport.

(2) The operator of a foreign-going vessel or aircraft which makes a forced call or landing must promptly report the incident, and the circumstances of the incident, to the Customs Office –

- (a) nearest to the place where the vessel called or the aircraft landed; or
- (b) at the first customs seaport or airport at which the vessel or aircraft next arrives.

³⁴ See section 525 for wreck.

(3) The operator of a foreign-going vessel or aircraft who makes a forced call or landing must at the place where the vessel calls or the aircraft lands take all precautions reasonable in the circumstances to prevent a breach of this Act or a tax levying Act in respect of any goods or persons –

- (a) on board the vessel or aircraft;
- (b) off-loaded or disembarking from the vessel or aircraft at that place; or
- (c) loaded on board or boarding the vessel or aircraft at that place.

(4) The Commissioner may prescribe by rule the procedures that must be complied with after a vessel or aircraft has made a forced call or landing.

Consequences of non-compliance with section 41

43. (1) If section 41 is contravened in relation to any foreign-going vessel or aircraft the customs authority may, apart from instituting criminal proceedings –

- (a) for tax purposes regard –
 - (i) the vessel or aircraft, or any goods on board the vessel or aircraft, as having been cleared for home use in terms of Chapter 10³⁵ if the contravention was committed when the vessel or aircraft was on an inbound voyage; or
 - (ii) the vessel or aircraft, or any goods on board the vessel or aircraft that have not been cleared for outright export, as having been cleared for outright export³⁶ if the contravention was committed when the vessel or aircraft was on an outbound voyage;
- (b) seize the vessel or aircraft, or any of those goods, in terms of Chapter 34;
- (c) where not inconsistent with this Act or other applicable legislation,³⁷ allow or direct the person responsible for the vessel, aircraft or those goods –
 - (i) to formally clear the vessel, aircraft or those goods for home use or a customs procedure subject to such conditions as the customs authority may impose;
 - (ii) to remove the vessel, aircraft or those goods from the Republic; or
 - (iii) to deal with the vessel, aircraft or those goods in any other manner as may be appropriate in the circumstances.

³⁵ See section 148 for tax consequences if goods are regarded as having been cleared for home use, and section 28 of Customs Duty Act for collection of duty in those circumstances.

³⁶ See section 151 for tax consequences if goods are regarded as having been cleared for outright export, and section 39 of Customs Duty Act for collection of duty in those circumstances.

³⁷ For instance where the goods have been seized or abandoned to the Commissioner.

(2) A vessel, aircraft or goods that in terms of subsection (1)(a) have been regarded for tax purposes as having been cleared for home use, may not be released for home use unless formally cleared for home use in terms of subsection (1)(c)(i).

Advance vessel and aircraft arrival notices

44. (1) (a) The carrier in charge of a foreign-going vessel bound for the Republic must give advance notice to the customs authority of the arrival of the vessel in the Republic.

(b) An advance vessel arrival notice referred to in paragraph (a) must be submitted –

- (i) at least 24 hours before the arrival of the vessel at the first customs seaport where the vessel will call after entering the Republic, if the voyage time to that customs seaport, taken from the last place where cargo or travellers bound for the Republic were taken on board, is likely to be more than 96 hours; or
- (ii) at least six hours before the arrival of the vessel at that customs seaport, if that voyage time is likely to be less than 96 hours.

(2) (a) The carrier in charge of a foreign-going aircraft bound for the Republic must give advance notice to the customs authority of the arrival of the aircraft in the Republic.

(b) An advance aircraft arrival notice referred to in paragraph (a) must be submitted –

- (i) at least two hours before the arrival of the aircraft at the first customs airport where the aircraft will call after entering the Republic, if the voyage time to that airport, taken from the last place where cargo or travellers bound for the Republic were taken on board, is likely to be more than six hours; or
- (ii) at least one hour before the arrival of the aircraft at that customs airport, if that voyage time is likely to be less than six hours.

(3) An advance arrival notice referred to in subsection (1) or (2) must –

- (a) indicate the original place of departure of the vessel or aircraft for that voyage;
- (b) indicate all places where the vessel or aircraft called between the original place of departure and the Republic;
- (c) include –
 - (i) the full voyage schedule of the vessel or aircraft, indicating all places in the Republic where it is scheduled to call; and
 - (ii) any other detail as may be prescribed by rule; and
- (d) be submitted electronically in accordance with section **849**.

- (4) This section applies only to foreign-going vessels and aircraft –
- (a) transporting goods or travellers to or from the Republic for reward; or
 - (b) entering the Republic for another reason prescribed by rule.

Vessel and aircraft arrival reports

45. (1) The arrival of a foreign-going vessel at a customs seaport or a foreign-going aircraft at a customs airport must be reported to the Customs Office serving that seaport or airport by –

- (a) the carrier in charge of the vessel or aircraft, unless the customs authority permits otherwise; and
- (b) the port authority managing that seaport or airport.

(2) An arrival report in terms of subsection (1)(a) must –

- (a) be submitted electronically in accordance with section **849** within 30 minutes after the arrival of the vessel at that seaport or within 15 minutes after the arrival of the aircraft at that airport;
- (b) be submitted whether or not the vessel or aircraft has goods or travellers on board; and
- (c) be accompanied by any documents as may be required in terms of this Act, a tax levying Act or other legislation, or as may be prescribed by rule.

(3) An arrival report in terms of subsection (1)(b) must be submitted –

- (a) electronically in accordance with section **849** within 30 minutes after the arrival of the vessel at that seaport or within 15 minutes after the arrival of the aircraft at that airport; and
- (b) whether or not the vessel or aircraft has goods or travellers on board.

Advance vessel and aircraft departure notices

46. (1) The carrier in charge of a foreign-going vessel must give advance notice to the customs authority of the departure of the vessel from a customs seaport at least 48 hours before the departure of the vessel from that seaport.

(2) The carrier in charge of a foreign-going aircraft must give advance notice to the customs authority of the departure of the aircraft from a customs airport at least six hours before the departure of the aircraft from that airport.

(3) An advance arrival notice referred to in subsection (1) or (2) must –

- (a) indicate the end destination of the vessel or aircraft for that voyage;

- (b) include –
 - (i) the full voyage schedule of the vessel or aircraft; and
 - (ii) any other detail as may be prescribed by rule; and
 - (c) be submitted electronically in accordance with section **849**.
- (4) This section applies only to foreign-going vessels and aircraft –
- (a) transporting goods or travellers to or from the Republic for reward; or
 - (b) entering the Republic for another reason prescribed by rule.

Permissions to depart

47. (1) No foreign-going vessel may depart from a customs seaport and no foreign-going aircraft may depart from a customs airport without a permission to depart issued by the customs authority.

- (2) No permission to depart may be issued –
- (a) unless sections **48**, **64** and **70** have been complied with; or
 - (b) if the vessel or aircraft has been detained, seized or confiscated, or if the vessel or aircraft has on board goods that have been detained, seized or confiscated, in terms of –
 - (i) this Act or a tax levying Act; or
 - (ii) other legislation or a court order and the customs authority has been informed of the detention, seizure or confiscation.

(3) If a vessel or aircraft in respect of which a permission to depart has been issued in terms of subsection (1) does not depart within 12 hours of the time the permission was issued or within any extended period granted in terms of section **846**, the permission lapses and the operator of the vessel or aircraft must obtain a new permission to depart before the vessel or aircraft may depart.

Vessel and aircraft departure reports

- 48.** (1) The departure of a foreign-going vessel from a customs seaport or a foreign-going aircraft from a customs airport to a destination, whether inside or outside the Republic, must be reported to the Customs Office serving that seaport or airport by –
- (a) the carrier in charge of the vessel or aircraft, unless the customs authority permits otherwise; and
 - (b) the port authority managing that seaport or airport.

- (2) A departure report in terms of subsection (1)(a) must –
- (a) be submitted electronically in accordance with section **849** at least 30 minutes after the departure of the vessel from that seaport or at least 15 minutes after the departure of the aircraft from that airport;
 - (b) be submitted whether or not the vessel or aircraft has goods or travellers on board; and
 - (c) be accompanied by any documents as may be required in terms of this Act, a tax levying Act or other legislation or as may be prescribed by rule.

- (3) A departure report in terms of subsection (1)(b) must be submitted –
- (a) electronically in accordance with section **849** at least 30 minutes after the departure of the vessel from that seaport or at least 15 minutes after the departure of the aircraft from that airport; and
 - (b) whether or not the vessel or aircraft has goods or travellers on board.

Exclusions

49. This Part does not apply to any of the following vessels or aircraft to the extent that they fall within the definition of “**foreign-going vessel**” or “**foreign- going aircraft**”.³⁸

- (a) naval ships; and
- (b) naval or military aircraft.

Part 2: Arrival and departure of cross-border trains

Places of entry or exit for cross-border trains

50. No cross-border train may enter or leave the Republic at a rail border crossing other than a rail border crossing designated in terms of section **32(1)(c)** as a place of entry or exit.

Consequences of non-compliance with section 50

- 51.** (1) If a cross-border railway carriage has entered or is in the process of leaving or has left the Republic in contravention of section **50** the customs authority may, apart from instituting criminal proceedings –
- (a) for tax purposes regard –
 - (i) the railway carriage, or any goods on board the railway carriage, as having been cleared for home use in terms of Chapter **10**³⁹ if the contravention was committed in relation to a railway carriage entering the Republic; or

³⁸ Section **72** makes provision for additional exclusions and exemptions.

³⁹ See section **148** for tax consequences if goods are regarded as having been cleared for home use, and section **28** of Customs Duty Act for collection of duty in those circumstances.

- (ii) the railway carriage, or any goods on board the railway carriage that have not been cleared for outright export, as having been cleared for outright export⁴⁰ if the contravention was committed in relation to a railway carriage leaving the Republic;
- (b) seize the railway carriage or any of those goods in terms of Chapter **34** if the railway carriage or goods are in the Republic; or
- (c) where not inconsistent with this Act or other applicable legislation,⁴¹ allow or direct the person responsible for the railway carriage or those goods –
 - (i) to formally clear the railway carriage or those goods for home use or a customs procedure subject to such conditions as the customs authority may impose;
 - (ii) to remove the railway carriage or those goods from the Republic; or
 - (iii) to deal with the railway carriage or those goods in any other manner as may be appropriate in the circumstances.

(2) A railway carriage or goods that in terms of subsection (1)(a) have been regarded for tax purposes as having been cleared for home use, may not be released for home use unless formally cleared for home use in terms of subsection (1)(c)(i).

Advance train arrival notices

52. (1) The carrier that, on the Republic's side of the border, will be in charge of a cross-border train with cargo or travellers on board for the Republic must give advance notice to the customs authority of the arrival of the train in the Republic.

(2) An advance train arrival notice referred to in subsection (1) must be submitted at least one hour before the arrival of the train at the first railway station after it entered the Republic.

- (3) An advance train arrival notice referred to in subsection (1) must –
- (a) indicate –
 - (i) the original place of departure of the train; and
 - (ii) all places in the Republic where –
 - (aa) cargo or travellers are scheduled to be discharged; or
 - (bb) railway carriages are scheduled to be detached; and
 - (b) be submitted electronically in accordance with section **849**.

⁴⁰ See section **151** for tax consequences if goods are regarded as having been cleared for outright export, and section **39** of Customs Duty Act for collection of duty in those circumstances.

⁴¹ For instance where the goods have been seized or abandoned to the Commissioner.

Train arrival reports

53. (1) The arrival of a cross-border train at the first railway station after it entered the Republic must be reported to the Customs Office serving that railway station within 30 minutes of the arrival of the train.

(2) A report in terms of subsection (1) must –

- (a) be submitted electronically in accordance with section **849** by the carrier in charge of the train; and
- (b) be accompanied by any documents as may be required in terms of this Act, a tax levying Act or other legislation, or as may be prescribed by rule.

Advance train departure notices

54. (1) The carrier in charge of a cross-border train destined to leave the Republic with cargo or travellers on board must give advance notice to the customs authority of the departure of the train from the Republic.

(2) An advance train departure notice referred to in subsection (1) must be submitted at least one hour before the train is expected to leave the Republic.

(3) An advance train a departure notice referred to in subsection (1) must –

- (a) indicate –
 - (i) the end destination of the train; and
 - (ii) all places in the Republic where –
 - (aa) cargo or travellers are scheduled to be loaded; or
 - (bb) railway carriages are scheduled to be attached; and
- (b) be submitted electronically in accordance with section **849**.

Train departure reports

55. (1) The departure of a train from a railway station where goods or travellers are taken on board a cross-border railway carriage forming part of that train, or where a cross-border railway carriage is attached to that train, for a destination outside the Republic must be reported to the Customs Office serving that railway station.

(2) A departure report in terms of subsection (1) must –

- (a) be submitted electronically in accordance with section **849** by the carrier in charge of the train at least 30 minutes after the departure of the train from a railway station; and
- (b) be accompanied by any documents as may be required in terms of this Act, a tax levying Act or other legislation, or as may be prescribed by rule.

Part 3: Vehicles entering or leaving the Republic**Places of entry or exit for vehicles**

56. (1) No vehicle may enter or leave the Republic at a place other than a land border-post for vehicles.

(2) Subsection (1) must be read subject to section **58**(2).

Consequences of non-compliance with section 56

57. (1) If a vehicle has entered or is in the process of leaving or has left the Republic in contravention of section **56** the customs authority may, apart from instituting criminal proceedings –

- (a) for tax purposes regard –
 - (i) the vehicle, or any goods on board the vehicle, as having been cleared for home use in terms of Chapter **10**⁴² if the contravention was committed in relation to a vehicle entering the Republic; or
 - (ii) the vehicle, or any goods on board the vehicle that have not been cleared for outright export, as having been cleared for outright export⁴³ if the contravention was committed in relation to a vehicle leaving the Republic;
- (b) seize the vehicle or any of those goods in terms of Chapter **34** if the vehicle or goods are in the Republic; or
- (c) where not inconsistent with this Act or other applicable legislation,⁴⁴ allow or direct the person responsible for the vehicle or those goods –
 - (i) to formally clear the vehicle or those goods for home use or a customs procedure subject to such conditions as the customs authority may impose;
 - (ii) to remove the vehicle or those goods from the Republic; or
 - (iii) to deal with the vehicle or those goods in any other manner as may be appropriate in the circumstances.

(2) A vehicle or goods that in terms of subsection (1)(a) have been regarded for tax purposes as having been cleared for home use, may not be released for home use unless formally cleared for home use in terms of subsection (1)(c)(i).

⁴² See section **148** for tax consequences if goods are regarded as having been cleared for home use, and section **28** of Customs Duty Act for collection of duty in those circumstances.

⁴³ See section **151** for tax consequences if goods are regarded as having been cleared for outright export, and section **39** of Customs Duty Act for collection of duty in those circumstances.

⁴⁴ For instance where the vehicle or goods have been seized or abandoned to the Commissioner.

Vehicles entering Republic

58. (1) When a vehicle entering the Republic arrives at a land border-post for vehicles, the operator of the vehicle must provide the customs authority with such information as may be prescribed by rule or as the customs authority may require concerning the vehicle and any goods and persons on board the vehicle. ⁴⁵

(2) If a vehicle enters the Republic otherwise than through a land border-post for vehicles, the operator of the vehicle must –

- (a) promptly, together with the vehicle and any goods or persons on board the vehicle, report to the nearest Customs Office; and
- (b) at that Office –
 - (i) give particulars, in writing, of the circumstances in which that vehicle entered the Republic and its journey and destination; and
 - (ii) provide the customs authority with such information as may be prescribed by rule or as the customs authority may require concerning the vehicle and any goods and persons on board the vehicle.

(3) No person may remove a vehicle referred to in subsection (1) or (2) from the relevant land border-post or Customs Office until that subsection has been complied with.

Vehicles leaving Republic

59. When a vehicle leaving the Republic arrives at a land border-post for vehicles, the operator of the vehicle must provide such information as may be prescribed by rule or as the customs authority may require concerning the vehicle and any goods and persons on board the vehicle. ⁴⁶

Exclusions

60. This Part does not apply to vehicles imported into or exported from the Republic on board foreign-going vessels or aircraft or cross-border trains⁴⁷ or other vehicles.

⁴⁵ When a vehicle arrives at a land border-post the requirements of this Act relating to the vehicle, and goods and persons on board the vehicle, must be complied with. These requirements include declaring goods that must be declared in terms of section **93**, and clearing the vehicle and any goods on board the vehicle for home use or a customs procedure in terms of section **108** if and to the extent that section **108** applies.

⁴⁶ When a vehicle arrives at a place of exit the requirements of this Act relating to the vehicle and the goods and persons on board the vehicle must be complied with. These requirements include submitting outgoing traveller and crew declarations in terms of section **99** and clearing the vehicle and any goods on board the vehicle in terms of section **111** for outright export or any other permissible customs procedure which provides for the export of goods, if and to the extent that those sections apply.

⁴⁷ Section **72** makes provision for additional exclusions and exemptions.

Part 4: Persons entering or leaving Republic**Places of entry or exit for persons**

- 61.** (1) A person entering or leaving the Republic on board –
- (a) a foreign-going vessel may not disembark from or board that vessel at any place other than at a customs seaport; or
 - (b) a foreign-going aircraft may not disembark from or board that aircraft at any place other than at a customs airport.

(2) Subsection (1)(a) or (b) does not apply if the operator of a vessel or aircraft is forced by stress of weather, accident or other circumstances beyond the control of the operator to call or land at a place which is not a customs seaport or a customs airport.

- (3) No person may enter or leave the Republic –
- (a) on board a cross-border train otherwise than at a rail border crossing designated as a place of entry or exit in terms of section **32(1)(c)**;
 - (b) on board a vehicle otherwise than at a land border-post for vehicles; or
 - (c) on foot otherwise than at a land border-post for persons on foot.

Advance traveller arrival notices

62. (1) (a) The carrier in charge of a foreign-going vessel transporting travellers bound for the Republic must give advance notice to the customs authority of the arrival of those travellers in the Republic.

- (b) An advance traveller arrival notice referred to in paragraph (a) must be submitted –
- (i) at least 96 hours before the arrival of the vessel at the first customs seaport where the vessel will call after entering the Republic, if the voyage time to that customs seaport, taken from the last place where travellers bound for the Republic were taken on board, is likely to be more than 96 hours; or
 - (ii) at least 12 hours before the arrival of the vessel at that customs seaport, if that voyage time is likely to be less than 96 hours.

(2) (a) The carrier in charge of a foreign-going aircraft transporting travellers bound for the Republic must give advance notice to the customs authority of the arrival of those travellers in the Republic.

- (b) An advance traveller arrival notice referred to in paragraph (a) must be
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submitted –

- (i) at least six hours before the arrival of the aircraft at the first customs airport where the aircraft will call after entering the Republic, if the voyage time to that customs airport, taken from the last place where travellers bound for the Republic were taken on board, is likely to be more than six hours; or
- (ii) at least one hour before the arrival of the aircraft at that customs airport, if that voyage time is likely to be less than six hours.

(3) (a) The carrier in charge of a cross-border train transporting travellers bound for the Republic must give advance notice to the customs authority of the arrival of those travellers in the Republic.

(b) An advance traveller arrival notice referred to in paragraph (a) must be submitted at least one hour before the arrival of the train at the first licensed rail travellers terminal after it entered the Republic.

(4) (a) The carrier in charge of a bus transporting travellers bound for the Republic must give advance notice of the arrival of those travellers to the Commissioner.

(b) An advance traveller arrival notice referred to in paragraph (a) must be submitted at least one hour before the arrival of the bus at the land border-post for vehicles where the bus will enter the Republic.

(5) An advance traveller arrival notice referred to in subsection (1), (2), (3) or (4) must –

- (a) reflect the information prescribed by rule concerning –
 - (i) all travellers and crew on board the vessel, aircraft, train or bus; and
 - (ii) in the case of travellers on board a vessel, aircraft or train, all places in the Republic where travellers are scheduled to disembark; and
- (b) be submitted electronically in accordance with section **849**.

Traveller arrival reports

63. (1) The carrier in charge of a foreign-going vessel or aircraft arriving at a customs seaport or airport must, within 30 minutes of arrival of the vessel at that seaport or within 15 minutes of arrival of the aircraft at that airport, submit to the Customs Office serving that seaport or airport a report, as may be prescribed by rule, of any travellers and crew who disembarked at that seaport or airport.

(2) The carrier in charge of a cross-border train arriving at a licensed rail travellers terminal must, within 30 minutes of arrival at that terminal, submit to the Customs Office

serving that terminal a report, as may be prescribed by rule, of any travellers and crew who disembarked at that terminal.

(3) The operator of a bus entering the Republic must, upon arrival at the land border-post where it enters the Republic, submit to the customs authority a report, as may be prescribed by rule, of all travellers and crew on board the bus.

Advance traveller departure notices

64. (1) The carrier in charge of a foreign-going vessel or aircraft that will transport travellers scheduled to board the vessel or aircraft in the Republic to a destination outside the Republic must give advance notice to the customs authority of the departure of those travellers from the Republic, at least one hour before the vessel or aircraft departs from a customs seaport or airport to a destination outside the Republic.

(2) The carrier in charge of a cross-border train that will transport travellers to a destination outside the Republic, must give advance notice to the customs authority of the departure of those travellers from the Republic, at least one hour before the train departs from the last licensed rail travellers terminal on its voyage to a destination outside the Republic.

(3) The carrier in charge of a bus that will transport travellers to a destination outside the Republic, must give advance notice to the customs authority of the departure of those travellers from the Republic, at least one hour before that bus reaches the land border-post where it will leave the Republic.

(4) An advance traveller departure notice referred to in subsection (1), (2) or (3) must be submitted electronically in accordance with section **849**.

Traveller departure reports

65. (1) The carrier in charge of a foreign-going vessel or aircraft scheduled to depart to a destination outside the Republic must, at least 30 minutes after the departure of the vessel at that seaport or 15 minutes after the departure of the aircraft at that airport, submit to the Customs Office serving the customs seaport or airport from where the vessel or aircraft will depart to its destination, a report of all travellers and crew on board the vessel or aircraft.

(2) The carrier in charge of a cross-border train scheduled to depart to a destination outside the Republic must –

- (a) at least 30 minutes after the departure of the train from the first licensed rail travellers terminal on its voyage to its destination outside the Republic, submit to the Customs Office serving that terminal a report of all travellers and crew on board the train; and
- (b) before departing from the last licensed rail travellers terminal before leaving the Republic, submit to the Customs Office serving that terminal an update of the report of all travellers and crew who boarded or disembarked from the train after its departure from the rail travellers terminal referred to in paragraph (a).

(3) The operator of a bus transporting travellers to a destination outside the Republic must, upon arrival at the land border-post where the bus will leave the Republic, submit to the customs authority a report of all travellers and crew on board the bus.

(4) Travellers departure reports in terms of this section must contain the information as may be prescribed by rule.

Part 5: Goods entering or leaving Republic

Places of entry or exit for goods

- 66.** (1) No goods imported into or destined for export from the Republic on board –
- (a) a foreign-going vessel may be off-loaded from or loaded on board the vessel other than at a place within a customs seaport licensed as a sea cargo terminal;
 - (b) a foreign-going aircraft may be off-loaded from or loaded on board the aircraft other than at a place within a customs airport licensed as an air cargo terminal; or
 - (c) a cross-border railway carriage may be off-loaded from or loaded on board the railway carriage other than at a place within a railway station licensed as a rail cargo terminal.
- (2) No goods may be imported into or exported from the Republic –
- (a) on board a cross-border train otherwise than through a rail border crossing designated as a place of entry or exit in terms of section **32(1)(c)**;
 - (b) on board a vehicle otherwise than through a land border-post for vehicles;
 - (c) by persons on foot otherwise than through a land border-post for persons on foot; or
 - (d) through a pipeline other than a licensed cross-border pipeline.
- (3) No electricity may be imported into or exported from the Republic otherwise than through a licensed cross-border transmission line.

Consequences of non-compliance with section 66

67. (1) If section **66** is contravened in relation to any goods the customs authority may, apart from instituting criminal proceedings –

- (a) apply subsection (2) or (3) with regard to the goods;
- (b) seize the goods in terms of Chapter **34** if the goods are in the Republic; or
- (c) where not inconsistent with this Act or other applicable legislation,⁴⁸ allow or direct the person responsible for the goods –
 - (i) to formally clear the goods for home use or a customs procedure subject to such conditions as the customs authority may impose;
 - (ii) to remove the goods from the Republic; or
 - (iii) to deal with the goods in any other manner as may be appropriate in the circumstances.

(2) The customs authority may for tax purposes regard goods imported into the Republic as having been cleared for home use in terms of Chapter **10**⁴⁹ if the goods were –

- (a) imported into the Republic otherwise than through a place of entry in contravention of section **66**(2); or
- (b) off-loaded in contravention of section **66**(1) from a vessel, aircraft or railway carriage on board of which the goods were imported into the Republic.

(3) The customs authority may for tax purposes regard goods that are in the process of being exported or that have been exported from the Republic as having been cleared for outright export⁵⁰ if the goods –

- (a) were loaded on board a vessel, aircraft or railway carriage in contravention of section **66**(1); or
- (b) are being or were exported from the Republic in contravention of section **66**(2).

(4) Goods that in terms of subsection (2) have been regarded for tax purposes as having been cleared for home use, may not be released for home use unless formally cleared for home use in terms of subsection (1)(c)(i).

⁴⁸ For instance where the vehicle or goods have been seized or abandoned to the Commissioner.

⁴⁹ See section **148** for tax consequences if goods are regarded as having been cleared for home use.

⁵⁰ See section **151** for tax consequences if goods are regarded as having been cleared for outright export.

Advance cargo arrival notices

68. (1) (a) Each cargo reporter responsible for cargo imported into the Republic on board a foreign-going vessel that will be discharged in the Republic must give advance notice to the customs authority of the arrival of that cargo in the Republic.

(b) An advance cargo arrival notice referred to in paragraph (a) must be submitted –

- (i) at least one hour before the arrival of the vessel at the first customs seaport where the vessel will call after entering the Republic, if the voyage time to that customs seaport, taken from the last place where cargo bound for the Republic was taken on board, is likely to be more than 96 hours; or
- (ii) at least 30 minutes before the arrival of the vessel at that customs seaport, if that voyage time is likely to be less than 96 hours.

(2) (a) Each cargo reporter responsible for cargo imported into the Republic on board a foreign-going aircraft that will be discharged in the Republic must give advance notice to the customs authority of the arrival of that cargo in the Republic.

(b) An advance cargo arrival notice referred to in paragraph (a) must be submitted –

- (i) at least 30 minutes before the arrival of the aircraft at the first customs airport where the aircraft will call after entering the Republic, if the voyage time to that customs seaport, taken from the last place where cargo bound for the Republic was taken on board, is likely to be more than six hours; or
- (ii) at least 15 minutes before the arrival of the aircraft at that airport, if that voyage time is likely to be less than six hours.

(3) (a) The carrier in charge of a cross-border train transporting cargo bound for the Republic must give advance notice to the customs authority of the arrival of that cargo in the Republic.

(b) An advance cargo arrival notice referred to in paragraph (a) must be submitted at least one hour before the arrival of the train at the first licensed rail cargo terminal after it entered the Republic.

(4) (a) The carrier in charge of a truck due to enter the Republic with cargo bound for the Republic must give advance notice to the customs authority of the arrival of that cargo in the Republic.

(b) An advance cargo arrival notice referred to in paragraph (a) must be

submitted at least one hour before the arrival of the truck at the land border-post where the truck will enter the Republic.

(5) An advance cargo arrival notice referred to in subsection (1), (2), (3) or (4) must –

- (a) reflect the information prescribed by rule concerning –
 - (i) the cargo on board the vessel, aircraft, train or truck; and
 - (ii) the place in the Republic where that cargo is scheduled to be discharged; and
- (b) be submitted electronically in accordance with section **849**.

Manifests of cargo to be discharged in Republic

69. (1) The carrier in charge of a foreign-going vessel arriving at a customs seaport must within 30 minutes of arrival of the vessel at that seaport submit to the customs authority electronically in accordance with section **849** a manifest of the cargo on board the vessel that will be off loaded at that seaport.

(2) The operator of a foreign-going aircraft arriving at a customs airport must within 30 minutes of arrival at that airport submit to the customs authority electronically in accordance with section **849** a manifest of the cargo on board the aircraft that will be off loaded at that airport.

(3) The carrier in charge of any cross-border railway carriage that forms or has formed part of a cross-border train that has entered the Republic, must upon arrival of the railway carriage at a licensed rail cargo terminal where cargo will be off loaded, submit to the customs authority electronically in accordance with section **849** a manifest of the cargo on board the railway carriage that will be discharged at that terminal.

(4) The operator of a truck entering the Republic with cargo must, upon arrival at the land border-post where the truck enters the Republic, submit to the customs authority serving that land border-post a manifest of the cargo on board the truck.

(5) If the cargo on board a vessel, aircraft, train or truck consists of or includes containers, the manifest to be submitted in terms of subsection (1), (2), (3) or (4) must be accompanied by a list of those containers that are empty.

Advance notice of outgoing cargo

70. (1) (a) Each cargo reporter responsible for cargo to be exported from the Republic on board a foreign-going vessel or aircraft, must give advance notice to the

customs authority of that outgoing cargo at least 72 hours before the vessel departs from a customs seaport and at least six hours before the aircraft departs from a customs airport to a destination outside the Republic.

(b) Paragraph (a) does not apply in respect of cargo that is to be transhipped in accordance with Chapter 12. In such a case the transshipment clearance declaration or document regarded to be a transshipment clearance declaration in terms of section 231 must be regarded to be the advance notice contemplated in paragraph (a).

(2) The carrier in charge of a cross-border railway carriage in which cargo is to be exported from the Republic, must give advance notice to the customs authority of that outgoing cargo at least 72 hours before the railway carriage departs from the licensed rail cargo terminal where the goods were loaded.

(3) The carrier in charge of a truck in which cargo is to be exported from the Republic, must give advance notice to the customs authority of that outgoing cargo at least three hours before that truck reaches the land border-post where it will leave the Republic.

(4) An advance notice of outgoing cargo referred to in subsection (1), (2) or (3) must –

- (a) reflect the information as may be prescribed by rule; and
- (b) be submitted electronically in accordance with section 849.

Manifests of outgoing cargo

71. (1) The carrier in charge of a foreign-going vessel or aircraft in which cargo is to be exported from the Republic must, at least one hour before the departure of the vessel or aircraft, submit to the customs authority electronically in accordance with section 849 a manifest of all cargo on board the vessel or aircraft.

(2) The carrier in charge of cross-border train in which cargo is to be exported from the Republic must, at least one hour before the train departs from the last railway station before leaving the Republic, submit to the customs authority electronically in accordance with section 849 a manifest of all cargo on board the train.

(3) The operator of a truck in which cargo is to be exported from the Republic must, upon arrival at the land border-post where it will leave the Republic, submit to the Customs Office serving that land border-post a manifest of all cargo on board the truck.

Part 6: Other matters**Exclusions and exemptions**

72. The Commissioner may in accordance with any applicable decisions of the national executive –

- (a) by rule exclude from the application of any of or all the provisions of this Chapter –
 - (i) any category of vessels, aircraft, trains, railway carriages or vehicles;
 - (ii) any category of persons, travellers or crew; or
 - (iii) any category of goods or cargo;
- (b) by rule prescribe the conditions of any exclusion referred to in paragraph (a); or
- (c) in a special case exempt⁵¹ –
 - (i) a specific vessel, aircraft, train, railway carriage or vehicle from the application of any of or all the provisions of this Chapter;
 - (ii) a specific person from complying with any of or all the provisions of this Chapter; or
 - (iii) the carrier in charge of, or the operator of, a specific vessel, aircraft, train, railway carriage or vehicle from complying with any of or all the provisions of this Chapter.

Rules to facilitate implementation of this Chapter

73. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

- (a)

NOTE: This clause will be completed after consideration of subordinate legislation and based upon comments received

Offences in terms of this Chapter

74. (1) The operator of a foreign-going vessel is guilty of an offence if that operator contravenes or fails to comply with section **41(1)** or (2), **42(2)** or (3), **45(2)**, **48(2)**, **50(1)**, **63(1)**, **64(1)**, **65(1)**, **66(1)(a)** or (2)(a), **69(1)** or **71(1)**.

(2) The operator of a foreign-going aircraft is guilty of an offence if that operator contravenes or fails to comply with section **41(3)** or (4), **42(2)** or (3), **45(2)**, **48(2)**, **47(1)**, **63(1)**, **64(1)**, **65(1)**, **66(1)(b)** or (2)(b), **69(1)** or **71(1)**.

⁵¹ See section **852**.

(3) The carrier in charge of a foreign-going vessel is guilty of an offence if that carrier contravenes or fails to comply with section **44(1)**, **62(1)** or **66(1)(a)** or (2)(a).

(4) The carrier in charge of a foreign-going aircraft is guilty of an offence if that carrier contravenes or fails to comply with section **44(2)**, **62(2)** or **66(1)(b)** or (2)(b).

(5) The operator of a cross-border train is guilty of an offence if that operator contravenes or fails to comply with section **53**, **55**, **56**, **66** (1)(c) or (2)(a), **69(2)** or **71(2)**.

(6) The carrier in charge of a cross-border train is guilty of an offence if that carrier contravenes or fails to comply with section **52(1)**, **62(3)**, **63(2)**, **64(2)**, **65(2)**, **66(1)(c)** or (2)(a), **68(3)** or **70(2)**.

(7) The operator of a vehicle is guilty of an offence if that operator contravenes or fails to comply with section **56(1)**, **58(1)** or (2), **59(1)**, **63(3)**, **66(2)(b)**, **69(3)** or **71(3)**.

(8) The carrier in charge of a vehicle is guilty of an offence if that carrier contravenes or fails to comply with section **62(4)**, **64(3)**, **65(3)**, **66(2)(b)**, **68(4)** or **70(3)**.

(9) If an unlicensed carrier is represented in the Republic by a licensed carrier's agent, that carrier's agent is guilty of an offence if –

- (a) the carrier contravenes or fails to comply with a provision referred to in subsection (3), (4), (6) or (8); and
- (b) the carrier's agent did not take reasonable steps to ensure that the carrier complies with or does not contravene that provision.

(10) A cargo reporter is guilty of an offence if that person contravenes or fails to comply with section **68(1)** or (2) or **70(1)**.

(11) A person is guilty of an offence if that person contravenes or fails to comply with section **58(3)**, **61(1)** or (3) or **66(2)(c)** or (d).

CHAPTER 4 COASTWISE TRAFFIC OF DOMESTIC VESSELS

Purpose of this Chapter

75. The purpose of this Chapter is to regulate the arrival and departure of domestic vessels at customs seaports.

Arrival and departure of domestic vessels and goods and persons on board domestic vessels

76. For the purposes of this Act a domestic vessel, or goods or persons on board a domestic vessel, must be regarded as –

- (a) arriving at a customs seaport when the vessel upon reaching the seaport docks for the first time whether inside the seaport or at a docking facility outside the seaport; or
- (b) departing from a seaport when the vessel undocks to move out of or away from the seaport.

Arrival reports for domestic vessels

77. (1) The arrival of a domestic vessel at a customs seaport must be reported to the customs authority at that seaport within 30 minutes of the arrival of the vessel.

(2) A report in terms of subsection (1) must –

- (a) be submitted by the operator of the vessel unless the carrier in charge of the vessel transmits the report electronically in accordance with section **847**;
- (b) be submitted whether or not the vessel carries goods or passengers; and
- (c) be accompanied by any documents as may be prescribed by rule.

Manifests of cargo to be discharged from coasting vessels

78. (1) The operator of a coasting vessel arriving at a customs seaport must within 30 minutes of arrival at that seaport submit to the Customs Office serving that seaport, a manifest of the cargo on board the vessel that will be discharged at that seaport, distinguishing between –

- (a) cargo that consists of goods transported under a customs procedure; and
- (b) cargo that consists of goods in free circulation.

(2) If the cargo on board a coasting vessel consists of or includes containers, the manifest to be submitted in terms of subsection (1) must be accompanied by a list of those containers that are empty.

Departure reports for domestic vessels

79. (1) The departure of a domestic vessel from a customs seaport must be reported to the customs authority at that seaport before the vessel undocks.

(2) A report in terms of subsection (1) must –

- (a) be submitted by the operator of the vessel unless the carrier in charge of the vessel transmits the report electronically in accordance with section **849**;
- (b) be submitted whether or not the vessel carries goods or passengers; and
- (c) be accompanied by –
 - (i) a manifest in the prescribed format of any cargo on board that vessel; and
 - (ii) any other documents as may be prescribed by rule.

Permissions to depart

80. (1) No domestic vessel may depart from a customs seaport without a permission to depart issued by the customs authority for the intended voyage, as may be prescribed by rule.⁵²

(2) No permission to depart may be issued –

- (a) unless section **79** has been complied with; or
- (b) if the vessel has been detained, seized or confiscated, or if the vessel has on board goods that have been detained, seized or confiscated in terms of –
 - (i) this Act or a tax levying Act; or
 - (ii) any other legislation or an order of court and the customs authority has been informed of the detention, seizure or confiscation.

(3) If a vessel in respect of which a permission to depart has been issued in terms of subsection (1) does not depart within 12 hours of the time when the permission to depart was issued, or within such further time as the customs authority may allow in terms of section **846**, the permission to depart lapses and the operator of the vessel must obtain a new permission to depart in terms of that subsection before the vessel may depart.

Manifests of cargo on board departing coasting vessels

81. (1) The operator of a coasting vessel departing from a customs seaport must, at least one hour before the departure of the vessel from that seaport submit to the Customs

⁵² Section **80** does not apply to vessels excluded from this Chapter in terms of section **82**(1) or in respect of which an exemption has been granted in terms of section **82**(2).

Office serving that seaport, a manifest of all cargo on board the vessel, distinguishing between –

- (a) cargo that consists of goods transported under a customs procedure; and
- (b) cargo that consists of goods in free circulation.

(2) If the cargo on board a coasting vessel consists of or includes containers, the manifest to be submitted in terms of subsection (1) must be accompanied by a list of those containers that are empty.

Exclusions and exemptions

82. (1) The following vessels to the extent that they fall within the definition “**domestic vessel**” are excluded from this Chapter:

- (a) naval ships;
- (b) vessels which usually return to their place of departure in the Republic within 24 hours;
- (c) pleasure boats not exceeding 100 gross tonnes arriving from a seaport in the Republic or departing for another seaport in the Republic; and
- (d) any other category of vessels as may be prescribed by rule.

(2) The customs authority may exempt a coasting vessel or other domestic vessel exclusively engaged in activities as may be prescribed by rule, from any or all of the provisions of this Chapter, on such conditions as the customs authority may determine.⁵³

(3) The customs authority may by written notice to the master or owner of the vessel or any member of the crew on board the vessel revoke any exemption granted in respect of that vessel in terms of subsection (2) if –

- (a) a condition of the exemption has been breached; or
- (b) the vessel is not or no longer exclusively engaged in the activity for which exemption was granted.

⁵³ These exemptions are in practice called “transires”.

Rules to facilitate implementation of this Chapter

83. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

(a)

NOTE: This clause will be completed after consideration of subordinate legislation and based upon comments received

Offences in terms of this Chapter

84. A person is guilty of an offence if that person fails to comply with sections

NOTE: This clause will be completed based upon finalisation of the clauses providing for obligations of the relevant entities.

CHAPTER 5**MOVEMENT OF GOODS INTO AND OUT OF CARGO DEPOTS AND TERMINALS****Outturn reports of imported cargo and cargo destined for export**

85. (1) The licensee of a sea cargo terminal, air cargo terminal or rail cargo terminal must submit to the Customs Office serving that terminal such outturn reports as may be prescribed by rule regarding cargo –

- (a) off loaded at that terminal from a foreign-going vessel or aircraft or a cross border railway carriage; or
- (b) handled at that terminal for loading on board a foreign-going vessel or aircraft or a cross border railway carriage.

(2) The licensee of a container depot or air cargo depot must submit to the Customs Office serving that depot such outturn reports as may be prescribed by rule regarding –

- (a) imported cargo handled at that depot; or
- (b) cargo destined for export handled at that depot.

Outturn reports of imported cargo off loaded or loaded on board coasting vessels

86. The licensee of a sea cargo terminal must submit to the Customs Office serving that terminal such outturn reports as may be prescribed by rule regarding imported cargo –

- (a) off loaded at that terminal from a coasting vessel; or
- (b) handled at that terminal for loading on board a coasting vessel.

Outturn reports of cargo removed from and received in terminals and depots

87. The licensee of a sea cargo terminal, air cargo terminal, container depot or air cargo depot must submit to the Customs Office serving that depot such outturn reports as may be prescribed by rule regarding –

- (a) imported goods removed from that terminal or depot; or
- (b) goods destined for export received at that terminal or depot.

Notifications by licensees of cargo depots and terminals

88. (1) The licensee of an air cargo depot or container depot must notify the customs authority electronically in accordance with section **849** of any goods –

- (a) delivered for export to the depot;
- (b) forwarded from that depot to a sea, air or rail cargo terminal from where the goods are to be exported from the Republic; or

- (c) remaining at the depot for more than 72 hours after their delivery to the depot for export.

(2) The licensee of a sea, air or rail cargo terminal from where goods are to be loaded for export from the Republic must notify the customs authority electronically in accordance with section **849** of –

- (a) any goods delivered for export to the terminal;
- (b) the receipt of any release notification received from the customs authority in respect of those goods;
- (c) the receipt of any release document in respect of those goods;
- (d) the loading of the goods on board a foreign-going vessel, foreign-going aircraft or cross-border railway carriage in which the goods are to be exported from the Republic; or
- (e) any failure to export the goods from the Republic within the timeframes applicable to those goods in terms of section **111**.

Rules to facilitate implementation of this Chapter

89. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

- (a) the different kinds of outturn reports licensees of terminals and depots must submit, the cargo in respect of which, the time when and the circumstances in which they must be submitted and the particulars they must contain;
- (b)

NOTE: This clause will be enhanced after consideration of requirements in respect of subordinate legislation and based upon comments received

Offences in terms of this Chapter

90. A person is guilty of an offence if that person fails to comply with sections ...

NOTE: This clause will be completed based upon finalisation of the clauses providing for obligations of the relevant entities.

CHAPTER 6
CUSTOMS PROCESSING OF PERSONS ENTERING OR LEAVING REPUBLIC

Definitions

91. In this Chapter –

“commercial goods” means items in the accompanied baggage of a person entering or leaving the Republic that are imported into or exported from the Republic for commercial or business purposes, and includes –

- (a) items intended –
 - (i) to be sold, leased, bartered or otherwise commercially transacted; or
 - (ii) for use in a business or profession; and
- (b) items which by reason of their nature, quantity, volume or other attribute can reasonably be classified as goods intended for commercial or business purposes;

“personal effects” means items in the accompanied baggage of a person entering or leaving the Republic which that person has on or with him or her for personal or own use, such as any wearing apparel, toilet articles, medicine, personal jewellery, watch, cellular phone, food and drinks and other items evidently on or with that person for personal or own use, but excludes –

- (a) in relation to a person entering the Republic, any of the above items to the extent that they fall within any of the categories of items that must be declared in terms of section **94(1)**; or
- (b) in relation to a person leaving the Republic, any of the above items to the extent that they fall within any of the categories of items that must be declared in terms of section **100(1)**;

“tax free allowance” –

- (a) in relation to a person entering the Republic, the amount specified in a notice issued in terms of section **94(4)**; or
- (b) in relation to a person leaving the Republic, the amount specified in a notice issued in terms of section **100(3)**;

“tax free limit” in relation to a person entering the Republic, the quantity of a type of goods specified in a notice in terms of section **94(3)** that may be imported tax free into the Republic as part of the accompanied baggage of a person entering the Republic.

Purpose and application of this Chapter

92. (1) The purpose of this Chapter is to provide for persons entering or leaving the Republic –

- (a) to be processed for customs purposes; and
- (b) to declare their accompanied baggage.

(2) This Chapter applies to all persons entering or leaving the Republic, including crew members of a foreign-going vessel or aircraft, cross-border train or vehicle, but excluding persons who entered the Republic on board a foreign-going vessel or aircraft on their way to a destination outside the Republic and who –

- (a) remain on board the vessel or aircraft which brought them into the Republic;
- (b) disembark under customs supervision for transfer to another foreign-going vessel or aircraft; or
- (c) disembark for another reason but without leaving the transit area at a place of entry.

Part 1: Persons entering the Republic

Incoming traveller and crew declarations

93. (1) A person entering the Republic must –

- (a) subject to section **104**, complete, and submit to the customs authority, a declaration containing such personal and travel information, including information concerning that person's accompanied baggage, as may be prescribed by rule; and
- (b) declare all items in that person's accompanied baggage that must be declared in terms of section **94**.

(2) When declaring accompanied baggage items in terms of subsection (1), a person must –

- (a) furnish the customs authority with full particulars concerning those items, including any available invoices and other commercial documents relating to those items; and
- (b) pay any tax that is payable on any of those items.

(3) Accompanied baggage items that are not in terms of section **94** required to be declared are exempted from –

- (a) the formalities of this Chapter; and

- (b) any clearance and release requirements in terms of the other provisions of this Act.⁵⁴

Accompanied baggage items that must be declared

94. (1) The following items in a person's accompanied baggage must be declared:

- (a) any items that are commercial goods;
- (b) any items re-imported into the Republic which, at the time of export, were –
 - (i) declared in terms of section **100(1)(b)**; and
 - (ii) cleared and released for export under the temporary export procedure;
- (c) any items imported into the Republic temporarily for later re-exportation from the Republic in an unaltered state;
- (d) any items imported into the Republic temporarily for remodelling, processing, repair or alteration and later re-exportation from the Republic;
- (e) any items consisting of compensating products obtained from goods which, when exported, were –
 - (i) declared in terms of section **100(1)(e)**; and
 - (ii) cleared for outward processing;
- (f) any items that are prohibited or restricted goods;
- (g) any items of the types specified in a notice issued in terms of subsection (3) in excess of the tax free quantity for the relevant type, excluding any items of the specified types already declared in terms of paragraphs (a) to (f) of this subsection; and
- (h) any items of the types specified in a notice issued in terms of subsection (4) if the combined customs value of those items exceeds the tax free allowance, excluding any items of the specified types already declared in terms of paragraphs (a) to (g) of this subsection.

(2) Items in a person's accompanied baggage referred to in subsection (1) must be declared whether or not the person entering the Republic is the owner of those items.

(3) The Minister may for purposes of subsection (1)(g), by notice in the Gazette,⁵⁵ determine that an item in a person's accompanied baggage of a type of consumable goods specified in the notice may be imported tax free up to a maximum quantity specified in the notice for the relevant type of goods.

⁵⁴ It follows that no tax is payable on imported goods exempted from clearance formalities as all taxes on imported goods are in terms of the applicable tax levying Acts based on clearance for home use.

⁵⁵ Currently done in the Schedules to the Customs and Excise Act and Value Added Tax Act.

(4) The Minister may for purposes of subsection (1)(h), by notice in the Gazette,⁵⁶ determine that items in a person's accompanied baggage of a type of goods specified in the notice may be imported tax free to the extent that the combined customs value of those items does not exceed an amount specified in the notice.

(5) Items in a person's accompanied baggage that are personal effects are not required to be declared and may be imported tax free.

Application of clearance and release procedures to accompanied baggage items that are declared⁵⁷

95. (1) Accompanied baggage items declared in terms of section **94**(1) must, as may be appropriate, be cleared for home use⁵⁸ or the customs procedure applicable to the goods.⁵⁹

(2) The Commissioner may by rule –

- (a) prescribe simplified clearance and release procedures for accompanied baggage items that must be cleared in terms of subsection (1); and
- (b) exempt accompanied baggage items that must be cleared in terms of subsection (1) from any specific provisions of this Act applicable to the clearance and release of goods.

(3) The simplified procedures and exemptions referred to in subsection (2) do not apply to items in the accompanied baggage of a person –

- (a) if the customs authority directs those items must be cleared in accordance with the ordinary provisions of this Act applicable to the clearance of goods; or
- (b) if that person elects to clear those items in accordance with those ordinary provisions.

(4) Subsection (1) does not apply to items referred to in section **94**(1)(f) and those items must be dealt with in accordance with Chapter **35**.

⁵⁶ Currently done in the Schedules to the Customs and Excise Act and Value Added Tax Act.

⁵⁷ In this Act a distinction is drawn 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 means to formally enter the goods for home use or a customs procedure. See definitions in section **1**.

⁵⁸ This could be a clearance for home use in terms of Chapter **10** or, in the case of section **94**(1)(b) a clearance for home use under the temporary export procedure, or in the case of section **94**(1)(e), a clearance for home use under the outward processing procedure.

⁵⁹ The appropriate customs procedure would either be temporary admission in the case of section **94**(1)(c) or inward processing in the case of section **94**(1)(d).

Rate of import tax payable on accompanied baggage items that are declared

96. (1) If any items in the accompanied baggage of a person declared in terms of section **94**(1) attract import tax in terms of a tax levying Act, the rate at which those items attract that tax must be determined in accordance with that Act, subject to subsection (2).⁶⁰

(2) A person may in stead of paying an amount of tax determined in accordance with subsection (1) on any items in his or her accompanied baggage declared in terms of section **94**(1)(h), elect to pay tax on those items as follows:⁶¹

- (a) items selected by that person of which the combined customs value is within the tax free allowance: no tax payable on those items;
- (b) items selected by that person from items not already selected in terms of paragraph (a), of which the combined customs value does not exceed an upper limit determined by the Minister by notice in the Gazette: tax payable on those items at a flat rate of tax determined by the Minister by notice in the Gazette; and
- (c) items selected by that person from the remaining items, of which the combined customs value exceeds the upper limit referred to in paragraph (b): tax payable on those items at the rates payable in terms of the applicable tax levying Acts.

Place where incoming traveller and crew declarations must be submitted

97. Section **93**(1) and (2) must be complied with –

- (a) in the case of a person who entered the Republic in a foreign-going vessel, at the customs seaport where that person disembarks from the vessel;
- (b) in the case of a person who entered the Republic in a foreign-going aircraft, at the customs airport where that person disembarks from the aircraft;
- (c) in the case of a person who entered the Republic in a cross-border railway carriage, at the rail traveller terminal where that person disembarks from the railway carriage; or
- (d) in the case of a person who entered the Republic in a vehicle or on foot, at the land border-post –
 - (i) where the person entered the Republic; or
 - (ii) to which that person reported in terms of section **98**.

Persons entering Republic otherwise than at land border-posts

98. (1) If a person enters the Republic in a vehicle or on foot otherwise than at a land border-post, that person must –

⁶⁰ This applies to all accompanied baggage items declared in terms of section **94**(1) and cleared in terms of section **95** for home use.

⁶¹ It is to be noted that this subsection only applies to items of the types specified in the notice issued in terms of section **94**(4) and that are declared in terms of section **94**(1)(h).

- (a) promptly report to the nearest or most conveniently situated Customs Office; and
- (b) at that Office –
 - (i) give particulars of the circumstances in which he or she entered the Republic; and
 - (ii) declare all items in his or her accompanied baggage that must be declared in terms of section **94**.

(2) A person referred to in subsection (1) may not dispose of any items in his or her accompanied baggage that must be declared in terms of section **94** unless that person has complied with subsection (1), any other applicable provisions of this Act and any applicable tax levying Act.

(3) A person entering the Republic otherwise than through a land border-post must be regarded as not having contravened section **56(1)** or **61(3)(b)** or (c) provided that that person –

- (a) has complied with paragraphs (a) and (b) of subsection (1); and
- (b) has not contravened subsection (2).

Part 2: Persons leaving the Republic

Outgoing traveller and crew declarations

- 99.** (1) A person in the process of leaving the Republic must –
- (a) subject to section **104**, complete and submit to the customs authority a declaration containing such personal and travel information, including information concerning that person's accompanied baggage, as may be prescribed by rule; and
 - (b) declare all items in that person's accompanied baggage that must be declared in terms of section **100**.

(2) When declaring accompanied baggage items in terms of subsection (1), a person must –

- (a) furnish the customs authority with full particulars concerning those items, including any available invoices and other commercial documents relating to those items; and
- (b) pay any tax that is payable on any of those items.

(3) Accompanied baggage items that are not in terms of section **100** required to be declared are exempted from –

- (a) the formalities of this Chapter; and
- (b) any clearance and release requirements in terms of the other provisions of this Act.

Accompanied baggage and items that must be declared

- 100.** (1) The following items in a person's accompanied baggage must be declared:
- (a) any items that are commercial goods;
 - (b) any items to be exported from the Republic temporarily for later re-importation into the Republic in an unaltered state;
 - (c) any items previously imported into the Republic which, at the time of import –
 - (i) were declared in terms of section **94**(1)(c); and
 - (ii) cleared and released for the temporary admission procedure;
 - (d) any items consisting of compensating products obtained from goods which, when imported –
 - (i) were declared in terms of section **94**(1)(d); and
 - (ii) cleared and released for the inward processing procedure;
 - (e) any items to be exported from the Republic temporarily for remodelling, processing, repair or alteration abroad and later re-importation into the Republic;
 - (f) any items that are prohibited or restricted goods; and
 - (g) any items of the types specified in a notice issued in terms of subsection (3) if the combined customs value of those items exceeds the tax free allowance, excluding any items of the specified types already declared in terms of paragraphs (a) to (f) of this subsection.

(2) Items in a person's accompanied baggage referred to in subsection (1) must be declared whether or not the person leaving the Republic is the owner of those items.

(3) The Minister may for purposes of subsection (1)(g), by notice in the Gazette, determine that items in a person's accompanied baggage of a type of goods specified in the notice may be exported from the Republic tax free to the extent that the combined value of those items does not exceed an amount specified in the notice.⁶²

(4) Items in a person's accompanied baggage that are personal effects are not required to be declared.

⁶² This subsection can obviously be applied only if a tax on the export of goods has been imposed in terms of a tax levying Act.

Application of clearance and release procedures to accompanied baggage items that are declared⁶³

101. (1) Accompanied baggage items declared in terms of section **100**(1) must, as may be appropriate, be cleared for outright export or for export under the customs procedure applicable to the goods.⁶⁴

(2) The Commissioner may by rule –

- (a) prescribe simplified clearance and release procedures for accompanied baggage items that must be cleared in terms of subsection (1); and
- (b) exempt accompanied baggage items that must be cleared in terms of subsection (1) from any specific provisions of this Act applicable to the clearance and release of goods.

(3) The simplified procedures and exemptions referred to in subsection (2) do not apply to items in the accompanied baggage of a person if –

- (a) the customs authority directs that those items must be cleared in accordance with the ordinary provisions of this Act applicable to the clearance of goods; or
- (b) that person elects to clear those items in accordance with those ordinary provisions.

(4) Subsection (1) does not apply to –

- (a) items referred to in section **100**(1)(c) and those items may be exported under the temporary admission procedure without any separate export clearance; or
- (b) items referred to in section **100**(1)(f) and those items must be dealt with in terms of Chapter **35**.

Rate of export tax payable on accompanied baggage that are declared

102. (1) If any items in the accompanied baggage of a person declared in terms of section **100**(1) attract export tax in terms of a tax levying Act, the rate at which those items attract that tax must be determined in accordance with that Act, subject to subsection (2).⁶⁵

⁶³ In this Act a distinction is drawn 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 means to formally enter the goods for home use or a customs procedure. See definitions in section **1**.

⁶⁴ The appropriate customs procedure would be temporary export in the case of section **69**(1)(b), inward processing in the case of section **100**(1)(d), and outward processing in the case of section **100**(1)(e).

⁶⁵ This applies to all accompanied baggage items declared in terms of section **100**(1) and cleared in terms of section **95** for outright export.

(2) A person may in stead of paying an amount of tax determined in accordance with subsection (1) on any items in his or her accompanied baggage declared in terms of section **100**(1)(g), elect to pay tax on those items as follows:⁶⁶

- (a) items selected by that person of which the combined customs value is within the tax free allowance: no tax payable on those items;
- (b) items selected by that person from items not already selected in terms of paragraph (a), of which the combined customs value does not exceed an upper limit determined by the Minister by notice in the Gazette: tax payable on those items at a flat rate of tax determined by the Minister by notice in the Gazette; and
- (c) items selected by that person from the remaining items, of which the combined customs value exceeds the upper limit referred to in paragraph (b): tax payable on those items at the rates payable in terms of the applicable tax levying Acts.

Place where outgoing traveller and crew declarations must be submitted

103. Section **99**(1) and (2) must be complied with –

- (a) in the case of a person who will leave the Republic in a foreign-going vessel, at the customs seaport where that person boards the vessel;
- (b) in the case of a person who will leave the Republic in a foreign-going aircraft, at the customs airport where that person boards the aircraft;
- (c) in the case of a person who will leave the Republic in a cross-border railway carriage, at the rail traveller terminal where that person boards the railway carriage; or
- (d) in the case of a person who will leave the Republic in a vehicle or on foot, at the land border-post where the person will leave the Republic.

Part 3: Other matters

Channel system

104. (1) The Commissioner may by rule prescribe a channel system to facilitate the processing at places of entry or exit of persons entering or leaving the Republic.

(2) In terms of such a system –

- (a) persons who have items in their accompanied baggage that must be declared in terms of section **94** or **100**, must be processed separately from persons who do not have any items in their accompanied baggage that must be declared; and

⁶⁶ It is to be noted that this subsection only applies to items of the types specified in the notice issued in terms of section **94**(3) and that are declared in terms of section **100**(1)(g).

- (b) persons who do not have any items in their accompanied baggage that must be declared in terms of section **94** or **100**, must be allowed to proceed without customs formalities unless a customs officer intervenes in terms of this Act.

(3) Unless the customs authority demands otherwise in relation to a specific person –

- (a) section **93(1)(a)** need not be complied with at a place of entry where a channel system is in force; and
- (b) section **99(1)(a)** need not be complied with at a place of exit where a channel system is in force.

Rules to facilitate implementation of this Chapter

105. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

- (a)

NOTE: This clause will be completed after consideration of subordinate legislation and based upon comments received

Offences in terms of this Chapter

106. (1) A person entering the Republic is guilty of an offence if that person contravenes or fails to comply with section **93(1)** or (2), or **98(1)** or (2).

(2) A person in the process of leaving the Republic is guilty of an offence if that person contravenes or fails to comply with section **99(1)** or (2).

CHAPTER 7 CLEARANCE AND RELEASE OF GOODS

Purpose and application of this Chapter

107. (1) The purpose of this Chapter is to generally regulate the clearance and release of goods for home use or a customs procedure.

(2) This Chapter applies to –

- (a) all goods imported into the Republic, irrespective of the purpose for which those goods were imported;
- (b) all goods destined for export from the Republic, irrespective of the purpose for which those goods are to be exported; and
- (c) all compensating products obtained from goods under a customs procedure.

Part 1: Clearance of goods for home use or customs procedure

Clearance of imported goods

108. (1) All goods imported into the Republic must, irrespective of the purpose for which the goods are imported but subject to sections **109**, **743** and **751**, be cleared either for –

- (a) home use in terms of Chapter **10**;
- (b) home use under a customs procedure which provides for the clearance of goods for home use under that customs procedure;⁶⁷ or
- (c) a permissible customs procedure.

(2) Goods must be cleared for –

- (a) home use in accordance with the standard clearance procedures set out in Chapter **9** and any other provisions of this Act applicable to the clearance of goods for home use; or
- (b) a customs procedure in accordance with the standard clearance procedures set out in Chapter **9** and any other provisions of this Act applicable to the clearance of goods for that specific customs procedure.

⁶⁷ The following customs procedures provide for goods to be cleared for home use under that procedure:

- (a) the temporary export procedure which in Chapter **18** provides for re-imported unaltered goods to be cleared for home use;
- (b) the processing for home use procedure which in Chapter **20** provides for home use compensating products to be cleared for home use; or
- (c) the processing for outward processing procedure which in terms of Chapter **21** provides for clearance of goods for export for outward processing.

(3) Imported goods that are containerised must be cleared within three days, and imported goods that are not containerised must be cleared within three days, of arrival⁶⁸ of the goods at –

- (a) the customs seaport where the goods are to be off-loaded, if the goods were imported into the Republic on board a foreign-going vessel;
- (b) the customs airport where the goods are to be off-loaded, if the goods were imported into the Republic on board a foreign-going aircraft; or
- (c) the licensed rail cargo terminal where the goods are to be off-loaded, if the goods were imported into the Republic on board a cross-border railway carriage.

(4) Goods imported into the Republic on board a vehicle or by a person on foot must be cleared before the vehicle or person leaves the land border-post –

- (a) where the goods entered the Republic; or
- (b) to which the person on board the vehicle or on foot reported in terms of section **98**.

(5) The customs authority may in terms of section **846** extend the clearance period for goods referred to in subsection (3).

Certain categories of imported goods excluded from clearance requirements

109. (1) The following categories of imported goods are excluded from section **107**, subject to subsection (5).⁶⁹

- (a) goods imported on board a foreign-going vessel or aircraft or a cross-border railway carriage which –
 - (i) are not off-loaded in the Republic;
 - (ii) are not used on board the vessel, aircraft or railway carriage; and
 - (iii) remain on board the vessel, aircraft or railway carriage until exported from the Republic;
- (b) goods which upon entering the Republic automatically come under a customs procedure;⁷⁰

⁶⁸ Section **40** determines when goods “arrive”.

⁶⁹ Exclusion of the goods listed in section **109** from clearance requirements does not have the effect of exempting the goods from customs control. The goods remain subject to customs control for as long as a condition stated in section **29** applies to the goods.

⁷⁰ The following imported goods come automatically under a customs procedure:

- Vessels, aircraft, locomotives or railway carriages which upon entering the Republic automatically come under the temporary admission procedure in terms of section **265**. (Trucks used for the transport of goods to and from the Republic for reward are not excluded from clearance requirements contained in section **108**, but must in terms of section **266** be cleared in accordance with a simplified clearance procedure);
- reusable transport equipment (e.g. containers, pallets, etc.) which upon entering the Republic automatically comes under the temporary admission procedure in terms of section

- (c) goods which a foreign-going naval vessel or foreign-going military aircraft has on board when entering the Republic as stores for that vessel or aircraft;
- (d) accompanied baggage of persons entering the Republic excluding accompanied baggage items that in terms of section 95(1) must be cleared for home use or a customs procedure;
- (e) goods in a single consignment with a customs value not exceeding R100, subject to subsection (2);
- (f) goods, including trade samples, which have no commercial value;
- (g) international postal articles of the following kinds imported into the Republic for delivery in the Republic by the South African Post Office:⁷¹
 - (i) letters, postcards, greeting cards, telegrams and other similar communications containing personal messages only;
 - (ii) printed papers not subject to any import taxes; and
 - (iii) literature for the blind;
- (h) human remains; or
- (i) any other category of goods determined by rule.

(2) If goods are imported in more than one consignment for delivery to the same addressee in the same calendar year, the exemption contained in subsection (1)(e) applies only to the extent that the combined customs value of the goods contained in the those consignments does not exceed R100.

(3) An exclusion in terms of subsection (1) is subject to such conditions as may be prescribed by rule.

(4) The customs authority may require proof that goods claimed to fall within an excluded category listed in subsection (1) do fall within such an excluded category.

(5) Prohibited, restricted or counterfeit goods must be dealt with in accordance with Chapters 35 and 36.

Consequences of failure to clear imported goods

110. (1) Goods imported into the Republic and to which section 108 applies –

267;

- goods entering the Republic as stores on board foreign-going vessels or aircraft or cross-border trains referred to in section 340(2).

⁷¹ International postal articles imported by private couriers must be dealt with as if ordinary imported goods.

- (a) may for tax purposes be regarded by the customs authority as having been cleared for home use in terms of Chapter **10**⁷² if the goods are not cleared in accordance with section **108** for home use or a customs procedure within the time applicable to the goods; or
- (b) must for tax purposes be regarded as having been cleared for home use in terms of Chapter **10** if the goods –
 - (i) are diverted for home use; or
 - (ii) before cleared in accordance with section **108** for home use or a customs procedure are damaged, destroyed, lost or unaccounted for and it is not proved in accordance with Part **1** of Chapter **25** that the goods were damaged, destroyed, lost or unaccounted for due to a cause set out in section **520(1)**, **521(1)**, **522(1)** or **523(1)**, and, in the case of lost goods, that the goods, after having been lost, were not diverted for home use or have not gone into home use in any other way.

(2) If imported goods to which section **108** applies are not cleared in accordance with that section for home use or a customs procedure, or if imported goods are diverted for home use, the customs authority may, apart from any tax consequences that may arise from subsection (1) or any criminal proceedings that may be instituted –

- (a) seize the goods in terms of Chapter **34**;
- (b) allow the person responsible for the goods to abandon the goods to the Commissioner in accordance with Chapter **26**; or
- (c) where not inconsistent with this Act or other applicable legislation,⁷³ allow or direct⁷⁴ the person responsible for the goods –
 - (i) to formally clear the goods for home use or a customs procedure;
 - (ii) to remove the goods from the Republic;
 - (iii) to destroy the goods under supervision of the customs authority or an organ of state designated by the customs authority; or
 - (iv) to deal with the goods in any other manner as may be appropriate in the circumstances.

(3) The onus to prove for purposes of this section that goods imported into the Republic have been cleared for home use or a customs procedure in accordance with section **108** rests on the person who alleges this fact.

⁷² See section **147** for tax consequences if goods are regarded as having been cleared for home use, and section **29** of Customs Duty Act for collection of duty in those circumstances.

⁷³ For instance where the goods have been seized or abandoned to the Commissioner.

⁷⁴ See section **852** for granting of permissions or issuing directions subject to conditions.

(4) Any imported goods that in terms of subsection (1) have been regarded for tax purposes as having been cleared for home use, may not be released for home use unless formally cleared for home use in terms of subsection (2)(c)(i).

Clearance of goods destined to be exported

111. (1) All goods destined for export from the Republic must, irrespective of the purpose for which the goods are to be exported but subject to sections **112**, **743** and **751**, be cleared –

- (a) under the export procedure⁷⁵ for –
 - (i) outright export;
 - (ii) temporary export in terms of the temporary export and re-importation of unaltered goods procedure dealt with in Chapter **18**;
 - (iii) export as inward processed compensating products in terms of the inward processing procedure dealt with in Chapter **19**; or
 - (iv) export in terms of the outward processing procedure dealt with in Chapter **21**;
 or
- (b) for a permissible customs procedure which allows the export of goods under that procedure without any separate export clearance.⁷⁶

(2) Goods referred to in –

- (a) subsection (1)(a) must be cleared for export in accordance with the standard clearance procedures set out in Chapter **9** and any other provisions of this Act applicable to the clearance of such goods for export; or
- (b) subsection (1)(b) must be cleared for the relevant customs procedure in accordance with the standard clearance procedures set out in Chapter **9** and any other provisions of this Act applicable to the clearance of goods for that customs procedure.

(3) Goods referred to in subsection (1)(a)(i) may be cleared for outright export at any time, but if those goods are released by the customs authority for outright export the goods must be exported within –

- (a) 72 hours of release of the goods; or
- (b) any extended period as may be granted in terms of section **846**.⁷⁷

⁷⁵ Chapter **17** provides for the export of goods under the export procedure. The export procedure covers the export of goods under various other customs procedures. See section **355(2)**.

⁷⁶ The following customs procedures allow the export of goods under that procedure without specific clearance of the goods for export:

- (a) the international transit procedure in terms of Chapter **11**;
- (b) the transshipment procedure in terms of Chapter **12**;
- (c) the temporary admission procedure in terms of Chapter **13**;
- (d) the tax free shop procedure in terms of Chapter **15**; or
- (e) the stores procedure in terms of Chapter **16**;

(4) Goods referred to in subsection (1)(a)(ii), (iii) or (iv) must be cleared for export under the relevant customs procedure, and be exported, within the timeframes applicable to that procedure.

(5) Goods cleared in terms of subsection (1)(b) for a customs procedure which allows the export of goods under that procedure, must be exported within the timeframes applicable to that procedure.

Certain categories of goods destined for export excluded from clearance requirements

112. (1) The following categories of goods destined for export from the Republic are excluded from section 111:⁷⁸

- (a) Goods imported into the Republic on board a foreign-going vessel or aircraft or a cross-border railway carriage which are not off-loaded in the Republic and which remain on board the vessel, aircraft or railway carriage until exported from the Republic;
- (b) goods which upon entering the Republic automatically came under a customs procedure that provides for the export of the goods under that procedure and which leave the Republic under that procedure;⁷⁹
- (c) goods which a foreign-going naval vessel or foreign-going military aircraft takes on board in the Republic as stores reasonably needed for that vessel or aircraft on a voyage to a destination outside the Republic;
- (d) vessels, aircraft, locomotives or railway carriages in free circulation in the Republic which when leaving the Republic are in use as a means of transport for the transport of goods in the ordinary course of international trade or for the transport of travellers for reward between countries;

⁷⁷ See also section 362.

⁷⁸ Exclusion of the goods listed in section 112 from export clearance requirements does not have the effect of exempting the goods from customs control. The goods remain subject to customs control for as long as a condition stated in section 29 applies to the goods.

⁷⁹ The following goods upon entering the Republic automatically came under a customs procedure that provides for the export of the goods under that procedure:

- Vessels, aircraft, locomotives or railway carriages which upon entering the Republic automatically came under the temporary admission procedure in terms of section 265. (Trucks used for the transport of goods to and from the Republic for reward are not excluded from clearance requirements contained in section 111, but must in terms of section 266 be cleared for temporary admission in accordance with a simplified clearance procedure);
- reusable transport equipment (e.g. containers, pallets, etc.) which upon entering the Republic automatically came under the temporary admission procedure in terms of section 267;
- goods which entered the Republic as stores on board foreign-going vessels or aircraft or cross-border trains referred to in section 323(2).

- (e) reusable transport equipment in free circulation in the Republic which when leaving the Republic is in use as equipment for the transport of goods in the ordinary course of international trade;
- (f) accompanied baggage of persons leaving the Republic, excluding accompanied baggage items that in terms of section 101(1) must be cleared for outright export or for export under a customs procedure applicable to the goods;
- (g) goods in a single consignment of a customs value not exceeding R100, subject to subsection (2);
- (h) goods, including trade samples, which have no commercial value;
- (i) international postal articles of the following kinds posted in the Republic and exported from the Republic through the South African Post Office:
 - (i) letters, postcards, greeting cards, telegrams and other similar communications containing personal messages only;
 - (ii) printed papers not subject to any import taxes; and
 - (iii) literature for the blind;⁸⁰
- (j) human remains; or
- (k) any other category of goods determined by rule.

(2) If goods are destined for export in more than one consignment for delivery to the same addressee in the same calendar year, the exclusion contained in subsection (1)(g) applies only to the extent that the combined customs value of the goods contained in the those consignments does not exceed R100.

(3) An exclusion in terms of subsection (1) is subject to such conditions as may be prescribed by rule.

(4) The customs authority may require proof that goods claimed to fall within an excluded category listed in subsection (1) do fall within such an excluded category.

(5) Prohibited, restricted or counterfeit goods must be dealt with in accordance with Chapters 35 and 36.

Consequences of failure to clear goods in free circulation⁸¹ for export

113. (1) Goods in free circulation exported or in the process of being exported from the Republic and to which section 111 applies must for tax purposes be regarded as having

⁸⁰ International postal articles to be exported by private couriers must be dealt with as if ordinary exported goods.

⁸¹ The consequences for goods exported under a customs procedure otherwise than in accordance with that procedure, are dealt with in the Chapters regulating those procedures.

been cleared for outright export⁸² if the goods were or are being exported without having been cleared in accordance with section 111 for –

- (a) export under the export procedure,⁸³ or
- (b) a customs procedure which allows the export of goods under that procedure without any separate export clearance.⁸⁴

(2) If goods in free circulation to which section 110 applies have been exported or are in the process of being exported without having been cleared in accordance with that section, the customs authority may, apart from any tax consequences that may arise from subsection (1) or any criminal proceedings that may be instituted –

- (a) seize the goods in terms of Chapter 34, if the goods are still in the Republic
- (b) allow the person responsible for the goods to abandon the goods to the Commissioner in accordance with Chapter 26, if the goods are still in the Republic; or
- (c) where not inconsistent with this Act or other applicable legislation,⁸⁵ allow or direct⁸⁶ the person responsible for the goods –
 - (i) to formally clear the goods for outright export or for a customs procedure that allows the export of goods under that procedure; or
 - (ii) to deal with the goods in any other manner as may be appropriate in the circumstances.

(3) The onus to prove for purposes of this section that goods exported or in the process of being exported from the Republic have been cleared in accordance with section 110, rests on the person who alleges this fact.

(4) Any goods that in terms of subsection (1) have been regarded for tax purposes as having been cleared for outright export, may not be released for outright export unless formally cleared for outright export in terms of subsection (2)(c)(i).

Clearance substitutions before release of goods⁸⁷

114. (1) Goods cleared for home use may at any time before the release of the goods for home use be cleared for a permissible customs procedure.

⁸² See section 152 for tax consequences if goods in free circulation are regarded as having been cleared for outright export, and section of Customs Duty Act for collection of export duty in those circumstances.

⁸³ Chapter 17 provides for the export of goods under the export procedure. The export procedure covers the export of goods under various other customs procedures. See section 355(2).

⁸⁴ For instance export of goods under stores procedure.

⁸⁵ For instance where the goods have been seized or abandoned to the Commissioner.

⁸⁶ See section 852 for conditional exercise of this power.

⁸⁷ This section applies only to clearance substitutions *before* release of the goods. For clearance of goods *already* released for home use or a customs procedure, see sections 123 and 124.

(2) Goods cleared for a customs procedure may at any time before the release of the goods for that customs procedure be cleared for –

- (a) another customs procedure, provided that a clearance of the goods for that other customs procedure is permissible⁸⁸ in the circumstances; or
- (b) home use, provided that a home use clearance of the goods is permissible⁸⁹ in the circumstances.

(3) If goods are cleared for home use or a permissible customs procedure in terms of subsection (1) or (2) the previous clearance must be withdrawn.

(4) If the clearance of goods for home use is withdrawn in terms of subsection (3) the person who paid any import tax on the goods as a consequence of that clearance is entitled to a refund in terms of the applicable tax levying Act.

Part 2: Release of goods for home use or customs procedure

When release of goods must be refused⁹⁰

115. (1) The customs authority must refuse the release of imported goods for home use or a customs procedure –

- (a) if the goods have not been cleared in terms of section **108** for home use or that customs procedure;
- (b) if such release –
 - (i) is not permissible in terms of this Act; or
 - (ii) would result in a contravention of this Act, a tax levying Act or any other legislation applicable to the goods; or
- (c) if the goods were detained, seized or confiscated⁹¹ in terms of –
 - (i) this Act or a tax levying Act; or
 - (ii) any other legislation or an order of court and the customs authority has been informed of the seizure or confiscation.

(2) The customs authority must refuse the release of goods for export from the Republic –

- (a) if the goods have not been cleared in terms of section **111** for –

⁸⁸ See definition of “permissible” in relation to a customs procedure.

⁸⁹ See definition of “permissible” in relation to home use.

⁹⁰ For consequences of refusal to release see section **122**.

⁹¹ See Chapters **34**, **35** and **36** for the seizure and confiscation of goods in terms of this Act, including the conditions for terminating seizures and confiscations.

- (i) export; or
- (ii) a customs procedure which allows the export of goods under that procedure without any separate export clearance;
- (b) if such release –
 - (i) is not permissible in terms of this Act; or
 - (ii) would result in a contravention of this Act, a tax levying Act or any other legislation applicable to the goods;
- (c) if the goods were seized or confiscated⁹² in terms of –
 - (i) this Act or a tax levying Act; or
 - (ii) any other legislation or an order of court and the customs authority has been informed of the seizure or-confiscation.

(3) (a) The customs authority may, despite anything to the contrary in subsection (1) or (2) but subject to section **121**, 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.⁹³

(b) Goods may not be released in terms of paragraph (a) if the customs authority is aware of the fact that –

- (i) the self-assessment or presentation of facts and circumstances is incorrect; and
- (ii) the release of the goods is not permissible in terms of subsection (1) or (2).

(c) No person is absolved from liability for tax if goods are erroneously released in terms of paragraph (a).

(4) Subsections (1)(a) and (2)(a) do not apply where this Act specifically provides for the release of goods for home use or export without clearance.

When release of goods may be refused⁹⁴

116. The customs authority may refuse to release goods for home use or a customs procedure if such refusal is necessary to give effect to –

- (a) this Act or a tax levying Act; or
- (b) national legislation or policy on –
 - (i) international trade;
 - (ii) the protection of public health;
 - (iii) the protection of the environment; or

⁹² See Chapters **34**, **35** and **36** for the seizure and confiscation of goods in terms of this Act, including the conditions for terminating seizures and confiscations.

⁹³ Release of goods on the assumption that the self-assessment of tax payable on goods is correct does not affect the customs authority's power to do an assessment after the release. See Chapter **5** of the Customs Duty Act.

⁹⁴ For consequences of refusal to release goods see section **122**.

- (iv) public safety.

When release of goods may or must be withheld

117. (1) The customs authority may withhold the release of goods for home use or a customs procedure until –

- (a) a requirement of this Act, a tax levying Act or any other legislation applicable to the goods have been complied with;
- (b) any pre-condition imposed in terms of section **119** for the release of the goods has been met;
- (c) any tax or any other money payable to the Commissioner in respect of those goods has been paid to the Commissioner; or
- (d) any security required for the payment of any such tax or other money in respect of the goods has been provided to the Commissioner.

(2) The customs authority must withhold the release of goods for home use or a customs procedure whilst the goods are detained in terms of –

- (a) this Act⁹⁵ or a tax levying Act; or
- (b) any other legislation or an order of court and the customs authority has been informed of the detention.

Release of goods pending technical analysis, expert advice or civil or criminal proceedings

118. (1) The customs authority may not delay the release of goods for home use or the required customs procedure by reason only that –

- (a) inspection procedures require a technical analysis of, or expert advice on, the goods;
- (b) civil proceedings relating to the goods between the Commissioner and any other person are pending; or
- (c) an offence involving those goods has allegedly been committed and that criminal investigations or proceedings relating to those goods are pending.

(2) Subsection (1) may not be read as affecting or preventing the application of sections **115**, **116** and **117**.

⁹⁵ See Chapters **34**, **35** and **36** for the detention of goods in terms of this Act, including the conditions for terminating seizures and confiscations.

Preconditions for release of goods

119. The customs authority may impose such preconditions for the release of goods for home use or a customs procedure as may be necessary to ensure that a provision of this Act or a tax levying Act is complied with, or that any tax payable or that may become payable on the goods is paid, including conditions requiring the giving of security.

Conditional release

120. (1) The release of goods for home use or a customs procedure is subject to such conditions as may be prescribed by rule.

(2) The customs authority may, in a specific case, release goods for home use or a customs procedure on such conditions as may be necessary to ensure compliance with a provision of this Act applicable to home use or that customs procedure.

When release of goods may be withdrawn⁹⁶

121. The customs authority may withdraw the release of goods for home use or a customs procedure if –

- (a) the release of the goods for home use or that customs procedure –
 - (i) was not permissible in terms of this Act; or
 - (ii) results in a contravention of this Act, a tax levying Act or any other legislation applicable to the goods;
- (b) any condition subject to which the goods were released is breached;
- (c) withdrawal of the release is necessary to give effect to –
 - (i) this Act or a tax levying Act;⁹⁷ or
 - (ii) national legislation or policy on –
 - (aa) international trade;
 - (bb) the protection of public health;
 - (cc) the protection of the environment; or
 - (dd) public safety; or
- (d) the goods are detained, seized or confiscated in terms of this Act, a tax levying Act, any other legislation or an order of court.

⁹⁶ For consequences of withdrawal of a release see section **122**. Also, this section does not affect a withdrawal of a release in the circumstances set out in section **123(1)(a)**.

⁹⁷ Included here are the conditions and requirements contained in the Customs Tariff subject to which goods may be cleared and released for specific customs procedures.

Consequences of refusal to release or withdrawal of release of goods

122. (1) If the customs authority refuses to release goods for home use or a customs procedure in terms of section **115**(1) or (2) or **116** or withdraws the release of goods for home use or a customs procedure in terms of section **121** the clearance of the goods for home use or that customs procedure must immediately be withdrawn.

(2) A refusal to release goods or a withdrawal of a release of goods is a ground for the detention of the goods in terms of section **722** if the goods are not already detained on any other ground.

- (3) The customs authority may –
- (a) allow the person who cleared goods referred to in subsection (1) –
 - (i) to clear the goods for home use or a specific customs procedure that will not render release of the goods subject to a refusal in terms of section **114**(1) or (2) or **116**;
 - (ii) to deal with the goods in any manner approved by the customs authority; or
 - (iii) to abandon the goods to the Commissioner in accordance with Chapter **26**; or
 - (b) direct the person who cleared the goods to deal with the goods in any manner determined by the customs authority, including by –
 - (i) exporting the goods from the Republic, in the case of imported goods; and
 - (ii) destroying the goods under supervision of the customs authority or an organ of state designated by the customs authority;
 - (c) seize the goods in terms of section **730**;
 - (d) institute criminal proceedings if an offence has been committed; or
 - (e) take any other steps as may be appropriate in the circumstances.

(4) Any import or export tax paid on the goods as a consequence of a clearance that has been withdrawn in terms of subsection (1) may in accordance with the applicable tax levying Act be refunded to the person who paid the tax if the customs authority in terms of subsection (3)(a)(i) allows the goods to be cleared for a customs procedure that has a tax free status.

Clearance and release substitutions for goods released for home use⁹⁸

123. (1) Goods that have been released for home use may, despite such release, with the permission of the customs authority⁹⁹ be cleared and, subject to sections **115** and **116**, released for a customs procedure provided that the clearance and release of the goods for –

- (a) home use is withdrawn; and
- (b) that customs procedure is permissible in the circumstances.

(2) Goods that have been released for home use may be cleared and released for a customs procedure in terms of subsection (1) only in such circumstances and within such timeframes as may be prescribed by rule.

(3) If the clearance and release of goods for home use is withdrawn in terms of subsection (1)(a) a person who paid any import tax on the goods as a consequence of that clearance is entitled to a refund in accordance with the applicable tax levying Act.

Clearance and release of goods under customs procedures

124. Goods under a customs procedure may at any time during, or at the completion of, the procedure be cleared and, subject to sections **115** and **116**, released –

- (a) for another customs procedure, provided that a clearance and release for that customs procedure is permissible in the circumstances; or
- (b) for home use, provided that a clearance and release for home use is permissible in the circumstances.

Effect of release of goods for home use or customs procedure

125. (1) Goods released for home use become goods in free circulation.

(2) Goods released for a customs procedure remain subject to this Act despite the release and may not be dealt with otherwise than in accordance with –

- (a) the provisions of this Act or a tax levying Act¹⁰⁰ applicable to that customs procedure; and
- (b) any conditions as may be –
 - (i) prescribed by rule for that customs procedure; or
 - (ii) imposed in terms of section **120** in a specific case.

⁹⁸ See section **114** for clearance substitutions of goods cleared for home use or a customs procedure **before** release of the goods, and section **167** for amendments to clearance declarations.

⁹⁹ See section **852**(1) for conditional granting of permissions.

¹⁰⁰ For instance, the Customs Tariff prescribes conditions and requirements for certain customs procedures.

Commencement and ending of customs procedures

- 126.** (1) A customs procedure in relation to goods –
- (a) commences when the goods come under that customs procedure;¹⁰¹ and
 - (b) ends when that customs procedure is completed as determined by the provisions of this Act regulating that procedure unless that procedure is interrupted by an occurrence referred to in subsection (2).
- (2) A customs procedure in relation to goods ends before its completion if –
- (a) the release of the goods for that customs procedure is withdrawn;
 - (b) the goods are for any reason for tax purposes regarded in terms of a provision of this Act as having –
 - (i) been cleared for home use in terms of Chapter 10;
 - (ii) been cleared for outright export; or
 - (iii) reverted to free circulation;
 - (c) the goods are abandoned to the Commissioner;¹⁰²
 - (d) the goods are seized in terms of this Act, a tax levying Act, any other legislation or an order of court; or
 - (e) the goods are destroyed, lost or unaccounted for.¹⁰³

Consequences of non-compliance with customs procedures

- 127.** (1) If a provision of this Act applicable to a customs procedure or a condition of the license of any premises used for the purpose of carrying out a customs procedure is contravened or not complied with in relation to any goods, or if imported goods are diverted for home use whilst under a customs procedure, the customs authority may, apart from any tax consequences that may arise from such contravention, non-compliance or diversion, or any criminal proceedings that may be instituted –
- (a) seize the goods in terms of Chapter 34;
 - (b) allow the person responsible for the goods to abandon the goods to the Commissioner in accordance with Chapter 26;
 - (c) where not inconsistent with this Act or other applicable legislation,¹⁰⁴ allow or direct the person responsible for the goods –
 - (i) to continue applying that customs procedure to the goods subject to such conditions as the customs authority may impose;

¹⁰¹ The time when goods come under a customs procedure is stated in the Chapters dealing with the specific customs procedures.

¹⁰² See Chapter 26.

¹⁰³ See Chapter 25.

¹⁰⁴ For instance where the goods have been seized or abandoned to the Commissioner.

- (ii) to formally clear the goods for home use, in the case of imported goods;
- (iii) to remove the goods from the Republic, in the case of imported goods;
- (iv) to destroy the goods under supervision of the customs authority or an organ of state designated by the customs authority, in the case of imported goods; or
- (v) to deal with the goods in any other manner as may be appropriate in the circumstances.

(2) Any goods under a customs procedure that in terms of a provision of this Act have been regarded for tax purposes as having been cleared for home use,¹⁰⁵ may not be released for home use unless formally cleared for home use in terms of subsection (1)(c)(ii).

Part 3: Transport and loading of goods not cleared and released

Transport of goods not in free circulation

- 128.** (1) Goods not in free circulation may be transported in or through the Republic –
- (a) only if cleared and released for a customs procedure that allows the transport of goods under that procedure; and
 - (b) only in accordance with the provisions regulating that procedure.

(2) The following categories of goods not in free circulation are excluded from subsection (1):

- (a) Goods transported on board a foreign-going vessel or aircraft from –
 - (i) the place where the vessel or aircraft entered the Republic to the customs seaport or airport where the goods are off-loaded;
 - (ii) the place where the vessel or aircraft entered the Republic to the place where the vessel or aircraft leaves the Republic, if the goods are not off-loaded in the Republic; or
 - (iii) the customs seaport or airport where the goods were loaded on board that vessel or aircraft for export from the Republic to the place where the vessel or aircraft leaves the Republic;
- (b) goods transported on board a cross-border railway carriage from –
 - (i) the place of entry where the railway carriage entered the Republic to the rail cargo terminal where the goods are off-loaded;
 - (ii) the rail cargo terminal where the goods were loaded on board that railway carriage for export from the Republic to the place of exit where the railway carriage leaves the Republic; or

¹⁰⁵ See provisions in Chapters dealing with specific customs procedures when goods are for tax purposes regarded as having been cleared for home use.

- (iii) the place where the railway carriage entered the Republic to the place of exit leaves the Republic, if the goods were not off-loaded in the Republic;
- (c) goods transported between customs controlled areas served by the same Customs Office; or
- (d) goods transported in accordance with a direction issued or permission granted¹⁰⁶ by the customs authority in terms of a provision of this Act or a tax levying Act.

(3) Subsection (2) may not be read as affecting the requirements relating to the submission of advance cargo arrival notices in terms of section **68** or advance notices of outgoing cargo in terms of section **70**.

Loading of goods on foreign-going vessels and aircraft and cross-border railway carriages for export¹⁰⁷

129. (1) Goods destined for export from the Republic may be loaded on board a foreign-going vessel, foreign-going aircraft or cross-border railway carriage in which the goods are to be exported only if the goods have been cleared and released for –

- (a) export in terms of Chapter **17**; or
- (b) a customs procedure that allows the export of goods under that procedure without any separate export clearance.¹⁰⁸

(2) Subsection (1) does not apply to –

- (a) a kind or category of goods as may be prescribed by rule; or
- (b) any specific goods as the customs authority may determine in a special case.

(3) Subsection (2) does not affect the application of section **111** to goods referred to in that subsection.

¹⁰⁶ See section **852** for attaching conditions to directions and permissions.

¹⁰⁷ Section **59** applies to vehicles and goods on board vehicles passing through land border-posts out of the Republic.

¹⁰⁸ The following customs procedures allow the export of goods under that procedure without separate export clearance:

- (a) the international transit procedure in terms of Chapter **11**;
- (b) the transshipment procedure in terms of Chapter **12**;
- (c) the temporary admission procedure in terms of Chapter **13**;
- (d) the tax free shop procedure in terms of Chapter **15**; or
- (e) the stores procedure in terms of Chapter **16**.

Part 4: Other matters

Rules to facilitate implementation of this Chapter

130. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

- (a) measures ensuring the expeditious release for home use or a customs procedure of goods in respect of which this Act has been complied with; and
- (b) the circumstances in and the time within which clearance substitutions may be effected in terms of section **114**.

Offences in terms of this Chapter

131. An importer or exporter of goods is guilty of an offence if that importer or exporter contravenes or fails to comply with a provision of section **108(1)** or **111(1)**.

CHAPTER 8

TAX STATUS OF GOODS

Purpose and application of this Chapter

132. (1) The purpose of this Chapter is to confer for purposes of any applicable tax levying Act a tax status on goods –

- (a) when the goods are cleared for home use or a customs procedure;
- (b) whilst the goods are under a customs procedure; or
- (c) when the goods are regarded as having been cleared for home use or outright export.

(2) The tax status conferred on goods in terms of this Chapter applies only to the extent not provided otherwise in a tax levying Act regulating any relevant tax on those goods, and in the event of any inconsistency between this Chapter and a provision of a tax levying Act, the provision of the tax levying Act prevails.

Effect of tax status

133. (1) A tax due status conferred on goods in terms of this Act indicates that tax will be payable on the goods if tax is imposed in terms of a tax levying Act on goods of that kind.

(2) A tax free status conferred on goods in terms of this Act indicates that whilst the 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.

Part 1: Goods formally cleared

Tax status of goods cleared for home use in terms of Chapter 10

134. (1) Goods imported into the Republic acquire a tax due status¹⁰⁹ if the goods are cleared for home use in terms of Chapter 10.¹¹⁰

(2) Any import tax imposed on goods cleared for home use in terms of Chapter 10 becomes payable when the goods are cleared for home use in terms of that Chapter.¹¹¹

¹⁰⁹ See definition of “tax due status” in section 1.

¹¹⁰ This section only applies to goods cleared for home use in terms of Chapter 10. Goods cleared for home use under a customs procedure, such as re-imported unaltered goods, acquire a tax status applicable to the relevant customs procedure. For other examples see section 180(2).

¹¹¹ An exception to this principle is where payment of tax is deferred in terms of a tax levying Act. See for example section 25 of the Customs Duty Act.

Tax status of goods cleared for outright export

135. (1) Goods in free circulation acquire a tax due status in relation to export tax and a tax free status in relation to tax other than export tax if the goods are cleared for outright export.

(2) Any export tax imposed on goods in free circulation cleared for outright export becomes payable when the goods are cleared for outright export.

(3) Any other tax¹¹² paid on goods in free circulation may be recovered from the Commissioner if the goods are cleared and released for outright export.

Tax status of goods under national transit procedure

136. Goods under the national transit procedure have a tax free status, and whilst the goods are under that procedure no tax is payable on those goods.

Tax status of goods under international transit procedure

137. Goods under the international transit procedure have a tax free status, and whilst the goods are under that procedure no tax is payable on those goods.

Tax status of goods under transshipment procedure

138. Goods under the transshipment procedure have a tax free status, and whilst goods are under that procedure no tax is payable on those goods.

Tax status of goods under temporary admission procedure

139. Goods under the temporary admission procedure have a tax free status, and whilst goods are under that procedure no tax is payable on those goods.

Tax status of goods under warehousing procedure

140. (1) Imported goods under the warehousing procedure have a tax free status, and whilst the goods are under that procedure no tax is payable on those goods.

(2) Goods in free circulation before placed under the warehousing procedure pending their export from the Republic have no tax free status, and the warehousing of those goods does not effect any tax paid on those goods whilst in free circulation.

Tax status of goods under tax free shop procedure

141. Goods under the tax free shop procedure have a tax free status, and –

¹¹² For instance tax such as VAT and excise duty.

- (a) no tax is payable on those goods whilst the goods are under that procedure;
- (b) those goods may be sold tax free from the tax free shop; and
- (c) any tax paid on goods in the tax free shop that were in free circulation before supplied to the shop may be recovered from the Commissioner.¹¹³

Tax status of goods under stores procedure

142. Goods under the stores procedure have a tax free status, and except where provided otherwise in this Act¹¹⁴ –

- (a) no tax is payable on those goods whilst the goods are under the stores procedure; and
- (b) any tax paid on goods that were in free circulation before placed under the stores procedure may be recovered from the Commissioner.

Tax status of goods under temporary export procedure

143. Goods under the temporary export procedure have a tax free status in relation to export and import tax, and –

- (a) no export tax is payable on goods cleared for temporary export from the Republic;
- (b) no import tax is payable on those goods when those goods are returned to the Republic and cleared as re-imported unaltered goods for home use; and
- (c) any export tax paid on goods when cleared for export may be recovered from the Commissioner when those goods are returned to the Republic and cleared and released as re-imported unaltered goods for home use.

Tax status of goods under inward processing procedure

144. (1) (a) Imported goods cleared for the inward processing procedure have a tax free status to the extent as may be stated in the tax levying Act regulating tax on goods of the relevant kind or category under the inward processing procedure.

(b) To the extent exempted from tax in terms of paragraph (a), no tax is payable on such goods whilst the goods are under the inward processing procedure.

(2) (a) Compensating products obtained from the processing of goods under the inward processing procedure have a tax free status to the extent as may be stated in the tax levying Act regulating tax on goods of that kind or category under the inward processing procedure.

(b) To the extent exempted from tax, no tax is payable on inward

¹¹³ Goods in free circulation can be supplied to a tax free shop without any clearance and release procedures, but once supplied come under the tax free shop procedure and acquire a tax free status.

¹¹⁴ See for instance section 341.

processed compensating products whilst the goods from which those products were obtained are under the inward processing procedure.

(3) Compensating products, by-products and waste derived from the processing of goods under the inward processing procedure and not cleared within the applicable period for export under that procedure as inward processed compensating products have no tax free status.

Tax status of goods under processing for home use procedure

145. (1) (a) Imported goods cleared for the processing for home use procedure have –

- (i) a tax free status in relation to customs duty to the extent stated in the Customs Duty Act for goods of that kind or category under the processing for home use procedure; and
- (ii) a tax status in relation to a tax other than customs duty as stated in any relevant tax levying Act regulating that tax on goods of the relevant kind or category under the processing for home use procedure.

(b) To the extent exempted from customs duty in terms of paragraph (a)(i), no customs duty is payable on such goods whilst the goods are under the processing for home use procedure.

(2) (a) Compensating products obtained from the processing of goods under the processing for home use procedure have –

- (i) a tax free status in relation to customs duty to the extent as stated in the Customs Duty Act for goods of the relevant kind or category under the processing for home use procedure; and
- (ii) a tax status relation to a tax other than customs duty as stated in any relevant tax levying Act regulating that tax on goods of the relevant kind or category under the processing for home use procedure.

(b) To the extent exempted from customs duty in terms of paragraph (a)(i), no customs duty is payable on home use compensating products whilst the goods from which those products were obtained are under the processing for home use procedure.

Tax status of goods under outward processing procedure

146. (1) (a) Goods cleared for export under the outward processing procedure have a tax free status to the extent as may be stated in the tax levying Act regulating tax on goods of the relevant kind or category under the outward processing procedure.

(b) To the extent exempted from tax in terms of subsection (1), no tax is payable on such goods whilst the goods are under the outward processing procedure.

(2) (a) Goods cleared for home use under the outward processing procedure as outward processed compensating products have a tax free status to the extent as may be stated in the tax levying Act regulating tax on goods of the relevant kind or category under the outward processing procedure.

(b) To the extent exempted from tax in terms of subsection (1), no tax is payable on outward processed compensating products whilst the goods from which those products were obtained are under the outward processing procedure.

Duration of tax status conferred by customs procedures

147. (1) The tax status conferred on goods by a customs procedure applies for as long as the goods are under that customs procedure.

(2) When goods under a specific customs procedure are –

- (a) cleared and released for another customs procedure, the goods acquire a tax status applicable to that other customs procedure; or
- (b) cleared for home use, the goods acquire a tax status applicable to home use.

Part 2: Goods regarded as having been cleared for home use

Tax status of goods imported otherwise than through places of entry

148. (1) If goods imported into the Republic, including any vessel, aircraft, railway carriage or vehicle, are in terms of section **43(2)**, **42(2)**, **57(2)** or **67(2)** regarded for tax purposes as having been cleared for home use in terms of Chapter **10** –

- (a) those goods acquire a tax due status as from –
 - (i) the date of import; or
 - (ii) a date determined by the customs authority if the date of import for any reason cannot be determined; and
- (b) the person liable in terms of any applicable tax levying Act for any import tax that would have been payable on those goods had the goods actually been cleared for home use on the date applied to the goods in terms of paragraph (a),¹¹⁵ must pay to the Commissioner –
 - (i) that tax; and
 - (ii) any interest on the amount of that tax as from that date.

¹¹⁵ See for instance section **92** of the Customs Duty Act for assessment of duties on goods regarded as having been cleared for home use.

(2) Any tax and interest that become payable in terms of subsection (1) is payable on demand.

Tax status of non-cleared imported goods

149. (1) If goods imported into the Republic are in terms of section **110**(1) regarded for tax purposes as having been cleared for home use in terms of Chapter **10** –

- (a) those goods acquire a tax due status as from –
 - (i) the date on which the period applicable to the goods in terms of section **108**(3) expired; or
 - (ii) a date determined by the customs authority if the date referred to in subparagraph (i) for any reason cannot be determined; and
- (b) the person liable in terms of any applicable tax levying Act for any import tax that would have been payable on those goods had the goods actually been cleared for home use on the date applied to the goods in terms of paragraph (a),¹¹⁶ must pay to the Commissioner –
 - (i) that tax; and
 - (ii) any interest on the amount of that tax as from that date.

(2) Any tax and interest that become payable in terms of subsection (1) is payable on demand.

Tax status of goods under customs procedures regarded as having been cleared for home use

150. (1) If goods under a customs procedure conferring a tax free status on the goods are in terms of a provision of this Act regarded for tax purposes as having been cleared for home use in terms of Chapter **10**¹¹⁷ –

- (a) those goods lose their tax free status and acquire a tax due status as from the date on which those goods were cleared for that customs procedure; and

¹¹⁶ See for instance section **92** of the Customs Duty Act for assessment of duties on goods regarded as having been cleared for home use.

¹¹⁷ The following sections apply here:

- Goods under transit procedure – sections **216** and **217**;
- Goods under transshipment procedure – sections **239** and **240**;
- Goods under temporary admission procedure – sections **270** and **271**;
- Goods under warehousing procedure – sections **294** and **295**;
- Goods under tax free shop procedure – sections **316** and **317**;
- Goods under stores procedure – sections **349**, **350** and **348**;
- Goods under export procedure – sections **367** and **368**;
- Goods under inward processing procedure – sections **420** and **421**;
- Goods under processing for home use procedure – sections **446** and **447**;

- (b) the person liable in terms of any applicable tax levying Act¹¹⁸ for any import tax that would have been payable on those goods had the goods actually been cleared for home use on that date,¹¹⁹ must pay to the Commissioner –
- (i) that tax; and
 - (ii) any interest on the amount of that tax as from that date.

(2) Any import tax and interest that become due in terms of subsection (1) is payable on demand.

(3) The onus to prove that goods referred to in subsection (1) have not lost their tax free status rests on the person who alleges this fact.

Part 3: Goods regarded as having been cleared for outright export

Tax status of goods exported otherwise than through places of exit

151. (1) If goods in the process of being exported, or exported, from the Republic, including any vessel, aircraft, railway carriage or vehicle, are in terms of section **43(2)**, **51(2)**, **57(2)** or **67(2)** regarded for tax purposes as having been cleared for outright export –

- (a) those goods acquire a tax due status as from –
 - (i) five days before the date of export of the goods; or
 - (ii) a date determined by the customs authority if the date referred to in subparagraph (i) for any reason cannot be determined or if the goods are still in the process of being exported;
- (b) the person liable in terms of any applicable tax levying Act for any export tax that would have been payable on those goods had the goods actually been cleared for outright export on the date applied to the goods in terms of paragraph (a), must pay to the Commissioner –
 - (i) that tax; and
 - (ii) any interest on the amount of that tax as from that date; and
- (c) no tax paid on those goods that would have been refundable in terms of a tax levying Act regulating that tax had the goods actually been cleared for outright export is recoverable from the Commissioner.¹²⁰

¹¹⁸ See sections **30**, **31**, **32**, **33**, **34**, **35**, **36** or **37** of the Customs Duty Act for collection of import duty if these goods are regarded as having been cleared for home use.

¹¹⁹ See for instance section **92** of the Customs Duty Act for assessment of duties on goods regarded as having been cleared for home use.

¹²⁰ This provision affects tax such as VAT and excise duty paid on goods in free circulation that would have been refundable upon actual clearance of the goods for outright export.

(2) Any tax and interest that become payable in terms of subsection (1) is payable on demand.

Tax status of goods exported without clearance

152. (1) If goods exported or in the process of being exported from the Republic are in terms of section 113(1) regarded for tax purposes as having been cleared for outright export –

- (a) those goods acquire a tax due status as from –
 - (i) five days before the date of export of the goods; or
 - (ii) a date determined by the customs authority if the date referred to in subparagraph (i) for any reason cannot be determined or if the goods are still in the process of being exported;
- (b) the person liable in terms of any applicable tax levying Act¹²¹ for any export tax that would have been payable on those goods had the goods actually been cleared for outright export¹²² on the date applied to the goods in terms of paragraph (a), must pay to the Commissioner –
 - (i) that tax; and
 - (ii) any interest on the amount of that tax from that date; and
- (c) no tax paid on those goods that would have been refundable in terms of a tax levying Act regulating that tax had the goods actually been cleared for outright export is recoverable from the Commissioner.¹²³

(2) Any tax and interest that become payable in terms of subsection (1) is payable on demand.

Tax status of goods under customs procedures regarded as having been cleared for outright export

153. (1) If goods were or are being exported from the Republic under a customs procedure conferring a tax free status on the goods and those goods are in terms of a provision of this Act regarded as having been cleared for outright export¹²⁴ –

¹²¹ See section 41 of Customs Duty Act for collection of export duty if these goods are regarded as having been cleared for outright export.

¹²² See for instance section 93 of Customs Duty Act for assessment of duties on goods regarded as having been cleared for outright export.

¹²³ This provision affects tax such as VAT and excise duty paid on goods in free circulation that would have been refundable upon actual clearance of the goods for outright export.

¹²⁴ The following sections apply here:
Goods under temporary export procedure – sections 390 and 391;
Goods under outward processing procedure – sections 472 and 473;

- (a) those goods lose their tax free status in relation to export tax and acquire a tax due status in relation to export tax as from the date on which those goods were cleared for that customs procedure;¹²⁵ and
- (b) the person liable in terms of any applicable tax levying Act¹²⁶ for any export tax that would have been payable on those goods had the goods actually been cleared for outright export on that date,¹²⁷ must pay to the Commissioner –
 - (i) that tax; and
 - (ii) any interest on the amount of that tax as from that date.

(2) Any export tax and interest that become due in terms of subsection (1) is payable on demand.

(3) The onus to prove that goods referred to in subsection (1) have not lost their tax free status rests on the person who alleges this fact.

Tax status of goods under customs procedures that revert to free circulation

154. (1) If goods under a customs procedure conferring a tax free status on the goods revert, or are regarded as having reverted, to free circulation¹²⁸ in terms of a provision of this Act –

- (a) those goods lose their tax free status as from the date on which those goods came under that customs procedure;
- (b) those goods no longer qualify for a refund of any tax paid on the goods that arose from the tax free status of the goods; and
- (c) the person who received any refund in respect of the goods because of the tax free status of the goods must in terms of any applicable tax levying Act –
 - (i) pay the refund back to the Commissioner; and
 - (ii) pay to the Commissioner any interest on the amount of that refund from the date on which the refund was paid to that person.

¹²⁵ If goods exported under a customs procedure are regarded as having been cleared for outright export, only export tax is affected and the goods retain their tax free status in relation to other tax such as VAT. In other words if VAT paid on the goods was refunded because of the export of the goods, the refund is not affected by the fact that the goods were regarded as having been cleared for outright export.

¹²⁶ See sections **41**, of the Customs Duty Act for collection of export duty if these goods are regarded as having been cleared for outright export.

¹²⁷ See section **93** of the Customs Duty Act for assessment of duties on goods regarded as having been cleared for outright export.

¹²⁸ The following sections apply here:
Goods under tax free shop procedure – sections **318** and **319**;
Goods under stores procedure– sections **351**, **352** and **348**;
Goods under export procedure– sections **369** and **370**.

(2) Any recovery of a refund and any interest that become due in terms of subsection (1) is payable on demand.

(3) The onus to prove that goods referred to in subsection (1) have not lost their tax free status rests on the person who alleges this fact.

Part 4: Other matters

Rules to facilitate implementation of this Chapter

155. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

(a)

NOTE: This clause will be completed after consideration of subordinate legislation and based upon comments received

Offences in terms of this Chapter

156. A person is guilty of an offence if that person fails to comply with sections

NOTE: This clause will be completed based upon finalisation of the clauses providing for obligations of the relevant entities

CHAPTER 9
STANDARD CLEARANCE AND RELEASE PROCEDURES¹²⁹

Purpose and application of this Chapter

157. (1) The purpose of this Chapter is to determine standard procedures for general application to the clearance and release of goods for home use and the customs procedures.

(2) This Chapter applies to –

- (a) all goods imported into the Republic which must in terms of section **108** be cleared either for home use or a customs procedure;
- (b) all goods to be exported from the Republic which must in terms of section **111** be cleared either for –
 - (i) export under the export procedure; or
 - (ii) a customs procedure which allows the clearance of goods for export under that procedure; and
- (c) all compensating products obtained from goods under a customs procedure and which are to be cleared under that procedure for home use or export.

(3) This Chapter must be applied subject to the other provisions of this Act determining –

- (a) specific clearance and release procedures for home use or a customs procedure; or
- (b) procedures for declaring the accompanied baggage of persons entering or leaving the Republic.

(4) In the event of a conflict between a provision of this Chapter and another provision of this Act referred to in subsection (3), that other provision prevails.

Part 1: Standard clearance procedures

Submission of clearance declarations

158. In order to clear goods for home use or a customs procedure, a clearance declaration in respect of those goods stating the purpose of the clearance and the other information

¹²⁹ 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.

required in connection with those goods in terms of this Act and any applicable tax levying Act must be submitted to the customs authority.

Persons who must complete and submit clearance declarations

- 159.** (1) A clearance declaration must be –
- (a) submitted by –
 - (i) a person entitled in terms of this Act to submit clearance declarations for home use or the required customs procedure, as the case may be; or
 - (ii) a licensed customs broker duly authorised to act on behalf of a person referred to in subparagraph (i); and
 - (b) completed, signed and certified by the person who submits the clearance declaration.

(2) If a clearance declaration is submitted by a customs broker representing a person referred to in subsection (1)(a)(i), the customs broker must, on request by the customs authority, submit a certified copy of the authority in terms of which that customs broker acts on behalf of that person.

Contents of clearance declarations

- 160.** (1) A clearance declaration must state –
- (a) the nature and quantity of the goods, and, in the case of goods imported into or to be exported from the Republic by sea, the cargo status of the goods;
 - (b) the UCR number of the goods;
 - (c) whether the goods are cleared for home use or a customs procedure, and if for a customs procedure, the desired customs procedure;
 - (d) in the case of goods already under a customs procedure, particulars of that customs procedure;
 - (e) in the case of imported goods, the date of actual or expected arrival of the goods, as may be applicable, at the place referred to in section **108**(3) or (4);
 - (f) the tariff classification of the goods ascribed to the goods in terms of section **105** of the Customs Duty Act, and the reference number of any direction referred to in section **114**(2) of that Act or advance tariff ruling applicable to the goods in terms of that Act;
 - (g) the customs value of the goods as established in accordance with section **124** of the Customs Duty Act, and the reference number of any direction referred to in section **133**(2) of that Act or advance ruling on a valuation factor applicable to the goods in terms of that Act;

- (h) the origin of the goods ascribed to the goods in terms of section **163** of the Customs Duty Act, and the reference number of any direction referred to in section **172(2)** of that Act or advance origin ruling applicable to the goods in terms of that Act;
- (i) whether any import or export tax is payable on the goods in terms of any tax levying Act, and if so –
 - (i) the kind of tax payable; and
 - (ii) the amount of the tax determined in accordance with a self-assessment in terms of the applicable tax levying Act;
- (j) the name and physical address of the person submitting the declaration, or, if submitted by a customs broker acting in terms of section **159(1)(a)(ii)** –
 - (i) the customs code of the customs broker; and
 - (ii) the customs code or the name and physical address of the principal on whose behalf the declaration is submitted; and
- (k) such additional information as may be required on the prescribed clearance declaration or by this Act or a tax levying Act.

(2) A clearance declaration must be in a format as may be prescribed by rule.¹³⁰

How and where to submit clearance declarations

- 161.** (1) A clearance declaration may be submitted to the customs authority –
- (a) in paper format, consisting of the original and a number of copies as may be prescribed by rule; or
 - (b) electronically, provided the person submitting a clearance declaration electronically is a registered electronic user.

- (2) A clearance declaration submitted –
- (a) in paper format, must be submitted to the customs authority –
 - (i) at the Customs Office serving the customs controlled area where the goods are to be released for home use or a customs procedure; or
 - (ii) at any other Customs Office designated in terms of section **14** to receive clearance declarations; or
 - (b) electronically, must be transmitted in accordance with section **849**.

(3) Sections **159(1)(b)** do not apply to clearance declarations submitted electronically.

¹³⁰ See section **844**.

Time when clearance declarations must be submitted

162. (1) A clearance declaration must be submitted before the customs authority may release the goods for home use or the required customs procedure.

(2) A clearance declaration submitted in paper format must be submitted to the customs authority at the Customs Office referred to in section **161(2)(a)** during the hours of business as may be prescribed by rule, subject to subsection (3).

(3) The Commissioner may by rule prescribe the conditions on which clearance declarations submitted in paper format may be submitted to the customs authority outside the prescribed office hours.

Submission of clearance declarations before arrival of goods at place of entry

163. (1) A clearance declaration in relation to goods imported or to be imported into the Republic may be submitted before the arrival of the goods at the place referred to in section **108(3)** or (4), provided that the goods have already been loaded on board the vessel, aircraft, railway carriage or vehicle transporting those goods to the Republic.

(2) If a clearance declaration is received before the goods arrive at the place referred to in section **108(3)** or (4), the customs authority may proceed with processing the declaration despite the fact that the goods have not yet arrived at that place.

Acceptance of clearance declarations by customs

164. (1) The customs authority must accept a clearance declaration submitted to it and issue a receipt to the person who submitted the declaration if –

- (a) the declaration is in the prescribed format;
- (b) all the information required on the official form prescribed for clearance declarations is furnished;¹³¹
- (c) the declaration is signed by or on behalf of the person submitting the declaration; and
- (d) the declaration is submitted by a person entitled to submit the declaration.

(2) The customs authority –

- (a) must refuse acceptance of a clearance declaration if the declaration does not comply with subsection (1); or
- (b) may refuse acceptance of a clearance declaration if the person who has submitted the declaration –

¹³¹ The official form should require at least all the information referred to in section **160**.

- (i) has persistently contravened or failed to comply with this Act or a tax levying Act; or
- (ii) has been convicted of an offence in terms of this Act or a tax levying Act more than once.

Validity of clearance declarations

165. (1) A clearance declaration accepted in terms of section **164** is despite such acceptance invalid if any of the information required on the official form prescribed for clearance declarations¹³² is incorrect or incomplete, but the declaration may be validated by an amendment in terms of section **167**.

(2) An amendment of a clearance declaration validates the declaration from the date of submission of the declaration, but such validation of the declaration does not affect any criminal proceedings arising from the submission of an incorrect or incomplete declaration.

Determination of time of clearance of goods

166. (1) For the purposes of this Act and a tax levying Act, the time of clearance of goods for home use or a customs procedure must be taken as the time when a clearance declaration in respect of the goods which complies with the requirements set out in section **164(1)(a)** to (d) is received by the customs authority.

(2) The time of clearance in terms of subsection (1) is not affected if the clearance declaration is amended in terms of section **167**.

(3) If a clearance declaration is withdrawn in terms of section **114** and replaced by a another clearance declaration, the time of clearance of the goods must be taken as the time when such other declaration in respect of the goods which complies with the requirements set out in section **164(1)(a)** to (d) is received by the customs authority.

Amendment of clearance declarations

167. (1) If a person who submitted a clearance declaration or on whose behalf a clearance declaration was submitted in respect of any goods becomes aware, whether before or after the release of the goods, of any incorrect or incomplete information or other

¹³² For contents of clearance declarations see section **160**.

error on the declaration, that person must promptly submit to the customs authority an amended clearance declaration to replace the declaration containing the error.¹³³

(2) A clearance declaration containing an error may be amended only if the customs authority gives permission for the declaration to be amended.¹³⁴

(3) Permission in terms of subsection (2) must be given if the amended clearance declaration is submitted to the customs authority before it has commenced with either the verification of the information on the clearance declaration or the inspection of the goods to which the clearance declaration relates.

(4) If the customs authority becomes aware, whether before or after the release of any goods, of any incorrect or incomplete information or other error on the clearance declaration submitted in respect of the goods, it may issue an instruction to the relevant person to correct the error by submitting to it an amended clearance declaration to replace the declaration containing the error.

(5) A clearance declaration may be amended in terms of subsection (1) or (4) to correct an error on the declaration, but may not replace –

- (a) a clearance for home use with a clearance for a customs procedure; or
- (b) a clearance for a customs procedure with a clearance for another customs procedure or for home use.¹³⁵

(6) This section may be applied for amending –

- (a) clearance declarations accepted by the customs authority in terms of section **164**; and
- (b) amended clearance declarations submitted in terms of this section.

Withdrawal of clearance declarations

168. A person who submitted a clearance declaration or on whose behalf a clearance declaration was submitted in respect of any goods may withdraw the declaration if –

- (a) the goods were cleared in terms of section **163** and the goods do not arrive at the place referred to in section **108(3)** or (4);

¹³³ See section **166(2)**. The submission of an amended declaration does not affect the time of clearance.

¹³⁴ See section **852(1)** for conditional granting of permissions.

¹³⁵ Clearance substitutions cannot be effected through mere amendment of the existing clearance declaration. In such cases the clearance declaration must be withdrawn and replaced by a new clearance declaration reflecting the new clearance. See section **114** for clearance substitutions of goods **before** release of the goods, and sections **123** and **124** for clearance substitutions of goods **after** release of the goods.

- (b) a duplicate clearance declaration was erroneously submitted in respect of the same goods;
- (c) the goods are intended to remain under the customs procedure for which the goods are currently cleared; or
- (d) the customs authority on good cause shown gives permission for the declaration to be withdrawn.

Supporting documents

169. (1) The clearance of goods for home use or a customs procedure must be supported by the following documents:

- (a) an invoice issued by the person who –
 - (i) exports the goods to or from the Republic; or
 - (ii) supplied the goods that are exported to or from the Republic;
- (b) any transport documents issued in relation to those goods;
- (c) in the case of a clearance through a customs broker, the clearance instruction of the principal, unless exempted by rule from the obligation to submit the clearance instruction; and
- (d) any other documents as may be required by this Act or a tax levying Act or prescribed by rule for the purpose for which the goods are cleared.

(2) The documents referred to in subsection (1) must contain such information as may be required by this Act, a tax levying Act or as prescribed by rule.

- (3) The originals of the supporting documents referred to in subsection (1) must –
- (a) in the case of a clearance of goods in paper format, be submitted to the customs authority together with the clearance declaration unless the customs authority determines otherwise in a specific case; or
 - (b) in the case of a clearance of goods electronically, be kept by the person who cleared the goods for a period of at least five years from the date of clearance.

(4) A person who clears goods in paper format, must keep copies of any original supporting documents submitted to the customs authority in connection with that clearance, or if the originals have not been submitted, the originals, for a period of at least five years from the date of clearance.

(5) A person who is in terms of subsection (3)(b) or (4) required to keep supporting documents must submit¹³⁶ those documents to the customs authority when required to do so.

Invoices

- 170.** (1) An invoice referred to in section **169**(1)(a) must –
- (a) be a true reflection of the transaction which is the cause for the goods to be exported to or from the Republic, as the case may be, including of –
 - (i) the nature of the transaction;
 - (ii) the goods to which the transaction relates; and
 - (iii) the amount payable in terms of the transaction;
 - (b) describe the goods to which it relates, which must include a distinctive and permanent identification number, code, description, character or other mark allocated in respect of the goods by the person who issued the invoice;
 - (c) be the last invoice issued in respect of those goods, if more than one invoice was issued in respect of those goods as at the time of clearance or, in the case of a clearance in terms of section **163**, as at the time of arrival of the goods at the place referred to in section **106**(3) or (4); and
 - (d) show –
 - (i) the date of issue;
 - (ii) the name and physical address of the issuer;
 - (iii) the name of the person to whom the invoice is issued, and the name of the consignee if the person to whom the invoice is issued is not the consignee;
 - (iv) the underlying commercial transaction which is the cause for the goods to be exported to or from the Republic, as the case may be;
 - (v) the transaction value in accordance with the Customs Duty Act;
 - (vi) any commission, discount, cost, charge, expense, royalty, freight, tax, drawback, refund, rebate, remission or other information whatsoever that affects the transaction value in accordance with the Customs Duty Act; and
 - (vii) any other information as may be prescribed by rule.
- (2) The particulars on an invoice must describe the goods as they are or will be at the time when imported into the Republic or exported from the Republic, as the case may be.
- (3) For the purposes of this Act and a tax levying Act no change in the condition of the goods may be regarded as having occurred between the time when imported into the

¹³⁶ For methods of submission of documents to customs authority see section **848**.

Republic and the time of any examination or analysis of the goods by the customs authority unless the person who submitted the clearance declaration provides proof of a change in the condition of the goods and the extent thereof.

Amendment of invoices

171. (1) The customs authority may allow or require an invoice submitted to it in connection with the clearance of any goods to be replaced by an amended invoice in the following circumstances only:

- (a) if this is necessary to correct any incorrect information on the invoice;
- (b) if splitting of the invoice is necessary for any reason, including for purposes of facilitating tax administration;
- (c) if a credit or debit note affecting the amount paid or payable in terms of the transaction reflected by the invoice has been issued by the issuer of the invoice;
- (d) if a refund on the amount paid in terms of the transaction reflected by the invoice has been made by or has become due to the issuer of the invoice;
- (e) if a payment, other than the amount payable in terms of the transaction reflected by the invoice, has been made or has become due to the issuer of the invoice, whether directly or indirectly, in money or in kind or in any other manner, and that payment affects the amount payable in terms of the transaction; or
- (f) if there has been a change in the particulars, characteristics or nature of the goods after the date of issue of the invoice.

(2) The customs authority may allow an invoice to be replaced by an amended invoice in terms of subsection (1) only if the amended invoice is –

- (a) submitted within one month of submission of the invoice that is amended;
- (b) accompanied by a statement setting out the reasons for the amendment and any documentary proof substantiating those reasons.

Keeping of information in respect of clearance declarations

172. A person who submits a clearance declaration must –

- (a) keep any documents and records relating to information given on or in respect of that clearance declaration in the manner and for the period as may be prescribed by rule; and
- (b) produce those documents or records to the customs authority when required to do so.

Part 2: Standard release procedures**Release documents and notifications**

173. (1) Goods are released by the customs authority for home use or a customs procedure by –

- (a) making an endorsement stating that the goods have been released on any of the following documents:
 - (i) a copy of the clearance declaration submitted in respect of the goods;
 - (ii) any other document that was submitted as a clearance declaration in respect of the goods;¹³⁷ or
 - (iii) any supporting document submitted in respect of the goods and bearing particulars of the clearance declaration, including its number and date;
- (b) issuing to the person who cleared the goods a computer printout stating that the goods have been released;
- (c) transmitting an electronic message that the goods have been released to –
 - (i) the person who cleared the goods; and;
 - (ii) the release agent; or
- (d) any other method as may be prescribed by rule.

(2) An endorsement, computer printout or electronic message in terms of subsection (1) must indicate –

- (a) whether the goods have been released for home use or a customs procedure, and if for a customs procedure, which procedure; and
- (b) whether the release is conditional, and if so the conditions.¹³⁸

(3) In addition, an endorsement or printout in terms of section (1)(a) or (b) must –

- (a) be signed by the customs authority; and
- (b) be stamped with the official date-stamp of the customs authority.

Delivery of released goods

174. (1) No goods may be delivered by a release agent to any person otherwise than on authority of a release document or notification.

(2) If a release agent delivers goods otherwise than on authority of a release document or notification –

¹³⁷ For instance a advance cargo arrival notice that may in terms of section **231** be regarded as a transshipment clearance declaration.

¹³⁸ See section **120** for conditional release of goods.

- (a) the goods must, at the expense of the release agent, be returned to the release agent or be delivered to such other place as the customs authority may determine; and
- (b) the customs authority may hold the release agent liable for any tax payable on those goods.

(3) Goods released in terms of section **173** for home use or a customs procedure must be removed from the place where the goods were when released within three days of the date of the release document or notification.¹³⁹

Return messages

175. The release agent in control of goods released in terms of section **173** must notify the customs authority of –

- (a) delivery of the goods to the person entitled to collect or receive the goods; and
- (b) any failure by such person to take delivery of the goods within two days as required by section **171(3)**.

Amendment or withdrawal of release documents or notifications

176. The customs authority may, in a manner prescribed by the rules, amend or withdraw a release document or notification at any time before the person entitled to collect or receive the goods has taken delivery of the goods.

Part 3: Other matters

Destruction, loss or theft of clearance and release documentation

177. The customs authority may, at the request of a person entitled to a document relating to the clearance or release of goods, issue to that person a certified copy of the document if –

- (a) the document is destroyed, lost or stolen; and
- (b) a copy of the document is in the possession of the Commissioner.

¹³⁹ See Chapter **26** in the case of abandoned or unclaimed goods released for a customs procedure. If goods released for home use and on which tax has been paid are not removed or are abandoned, the licensee of the customs controlled area where the goods are may treat the goods as unclaimed.

Rules to facilitate implementation of this Chapter

178. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

(a)

NOTE: This clause will be completed after consideration of subordinate legislation and based upon comments received

Offences in terms of this Chapter

179. (1) A customs broker is guilty of an offence if that customs broker contravenes or fails to comply with section **159(2)**.

(2) A person who submits to the customs authority a clearance declaration that is invalid¹⁴⁰ is guilty of an offence.

(3) A release agent is guilty of an offence if that agent fails to comply with section **174(1)** or **175**.

(4) A person is guilty of an offence if that person contravenes or fails to comply with section **172**, **174(1)(a)** or **175(3)**.

¹⁴⁰ See section **165**.

CHAPTER 10 HOME USE OF GOODS

Purpose and application of this Chapter

180. (1) The purpose of this Chapter is to regulate the clearance and release for home use of goods.

(2) This Chapter must be applied to all goods that are or are to be cleared for home use except –

- (a) goods cleared for home use¹⁴¹ as –
 - (i) re-imported unaltered goods under the temporary export and re-importation of unaltered goods procedure in terms of Chapter **18**; or
 - (ii) home use compensating products under the processing for home use procedure in terms of Chapter **20**;
- (b) items in the accompanied baggage of a person entering the Republic –
 - (i) cleared for home use in terms of the simplified clearance and release procedures referred to in section **95(2)**; and
 - (ii) to the extent that such goods are in terms of that section exempted from this Chapter; or
- (c) imported goods exempted by section **109** from clearance requirements.

Part 1: Clearance and release of goods for home use¹⁴²

General clearance and release provisions to be followed except where provided otherwise

181. (1) The general clearance and release provisions contained in Chapters **7** and **9** must be followed in respect of the clearance and release of imported goods for home use in terms of this Chapter except to the extent that those provisions are modified, qualified or departed from in this Chapter.

(2) In the event of any inconsistency between a provision of this Chapter and Chapter **7** or **9**, the provision of this Chapter prevails.

Persons entitled to submit home use clearance declarations

182. Only the following persons may submit clearance declarations and supporting documents to clear imported goods for home use:¹⁴³

¹⁴¹ The goods referred to in (i) and (ii) of this paragraph are cleared for home use in terms of specific provisions in the Chapters regulating the relevant customs procedures.

¹⁴² For tax status of goods cleared for home use in terms of this Chapter, see section **134**.

- (a) the importer of the goods;
- (b) the owner of the goods or other person who has the right to dispose of the goods; or
- (c) a customs broker referred to in section 159(1)(a)(ii).

Contents of home use clearance declarations

183. A clearance declaration submitted to clear imported goods for home use must, in addition to the information required in terms of section 160, state the date, number and particulars of any permit or other authorisation issued in terms of any legislation regulating the import of the goods, if such a permit or authorisation is a requirement for the import of the goods.

Manner of submission of home use clearance declarations by accredited importers

184. A clearance declaration submitted by an accredited importer to clear imported goods for home use must be submitted electronically in accordance with section 849.

Part 3: Other matters

Conditional exemption of goods imported through pipelines and transmission lines

185. The Commissioner may exempt¹⁴⁴ from any of or all the provisions of this Chapter or Chapter 9 a person importing into the Republic –

- (a) goods by way of a cross border pipeline; or
- (b) electricity by way of cross border transmission lines.

Rules to facilitate implementation of this Chapter

186. The Commissioner may in terms of section 842 make rules to facilitate the implementation of this Chapter, including rules prescribing –

- (a)

NOTE: This clause will be completed after consideration of subordinate legislation and based upon comments received

Offences in terms of this Chapter

187. A person who submits a clearance declaration is guilty of an offence if that person contravenes or fails to comply with section 183.

¹⁴³ See section 159(1)(a)(i).

¹⁴⁴ For conditional granting of exemptions see section 852.

CHAPTER 11
THE NATIONAL AND INTERNATIONAL TRANSIT PROCEDURES

Part 1: Introductory provisions

Purpose and application of this Chapter

188. (1) The purpose of this Chapter is to regulate the national and international transit procedures, including –

- (a) the clearance and release of goods for national and international transit;
- (b) the conduct with goods cleared and released for national or international transit; and
- (c) the commencement, carrying out and completion of national and international transit operations.

(2) This Chapter applies to the transport of all goods that are not in free circulation, excluding goods transported –

- (a) in any of the circumstances referred to in section **128(2)**; or
- (b) under a customs procedure other than national or international transit that provides for the transport of goods under that procedure.¹⁴⁵

National and international transit¹⁴⁶

189. (1) National transit is a 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) International transit is a customs procedure that allows goods imported into the Republic on board –

- (a) a foreign-going vessel or aircraft or a cross-border railway carriage –
 - (i) to be transported through the Republic from the place in the Republic 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 from the Republic; and
 - (ii) to be exported from the Republic without complying with any export clearing formalities;¹⁴⁷ or
- (b) a vehicle –

¹⁴⁵ For instance the warehousing procedure, the inward processing procedure, etc.

¹⁴⁶ For tax status of goods under the national or international transit procedure, see sections **136** and **137**.

¹⁴⁷ Chapter **17** regulating the clearance of goods for export from the Republic does not apply to the export from the Republic of goods cleared and released for international transit. See section **355(3)**.

- (i) to be transported through the Republic 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, irrespective of whether the transport through the Republic takes place in the same vehicle or any other means of transport; and
- (ii) to be exported from the Republic without complying with any export clearing formalities.

Commencement and completion of national transit procedure

190. (1) Goods come under the national transit procedure when the goods are cleared for national transit. The national transit procedure is, subject to subsection (2), completed when the goods are cleared and released for another permissible customs procedure or for home use.

(2) The national transit procedure, in relation to any goods, ends before its completion if completion of the procedure is interrupted by an occurrence referred to in section **126(2)**.

Commencement and completion of international transit procedure

191. (1) Goods come under the international transit procedure when the goods are cleared for international transit. The international transit procedure is, subject to subsection (2), completed when the goods are exported from the Republic.

(2) The international transit procedure, in relation to any goods, ends before its completion if –

- (a) the goods before completion of the procedure are cleared and released for another permissible customs procedure or for home use; or
- (b) completion of the procedure is interrupted by an occurrence referred to in section **126(2)**.

Limiting customs seaports and airports for international transit purposes

192. (1) The Commissioner may, in accordance with any applicable decisions of the national executive, by rule limit –

- (a) the customs seaports and airports where goods may be off-loaded from foreign-going vessels or aircraft for international transit; or
- (b) the customs seaports and airports where goods may be loaded on board foreign-going vessels or aircraft for export from the Republic under the international transit procedure.

(2) If the customs seaports and airports for international transits have been limited in terms of subsection (1) no person may –

- (a) off-load goods from foreign-going vessels or aircraft for international transit other than at a customs seaport or airport determined in terms of subsection (1)(a); or
- (b) load goods on board foreign-going vessels or aircraft for export from the Republic under the international transit procedure other than at a customs seaport or airport determined in terms of subsection (1)(b).

(3) When limiting the customs seaports and airports in terms of subsection (1) for the international transit procedure, the Commissioner must act in accordance with the directions of the Minister acting in consultation with the Cabinet members responsible for transport, trade and industry and home affairs.

Application of other legislation to goods under international transit

193. (1) Legislation, other than this Act, regulating the import into, or the possession in, the Republic of goods for the purpose of protecting South African goods for economic reasons, does not apply to goods imported into the Republic and cleared and released for international transit.

(2) Subsection (1) ceases to apply if –

- (a) a provision of this Act relating to international transit is contravened or not complied with;
- (b) the goods are diverted for home use; or
- (c) the goods are cleared for –
 - (i) another permissible customs procedure; or
 - (ii) home use.

Part 2: Clearance and release of goods for transit

General clearance and release provisions to be followed except where provided otherwise

194. (1) The general clearance and release provisions contained in Chapters 7 and 9 must be followed in respect of the clearance and release of goods for national or international transit except to the extent that those provisions are modified, qualified or departed from in this Chapter.

(2) In the event of any inconsistency between a provision of this Chapter and Chapter 7 or 9, the provision of this Chapter prevails.

Transit operations

195. No national or international transit operation may commence unless the goods have been cleared and released for the transit.¹⁴⁸

Persons entitled to submit transit clearance declarations

196. Only the following persons are entitled to submit clearance declarations and supporting documents to clear imported goods for transit¹⁴⁹:

- (a) the importer of the goods;
- (b) the owner of the goods or other person who has the right to dispose of the goods;
- (c) the carrier who is to carry out the transit operation, if the transit operation is to be carried out by a licensed carrier;
- (d) the carrier's agent of the carrier who is to carry out the transit operation, if the transit operation is to be carried out by an unlicensed carrier represented in the Republic by a licensed carrier's agent; or
- (e) a customs broker referred to in section **159(1)(a)(ii)**.

Contents of transit clearance declarations

197. A transit clearance declaration must, in addition to the information required in terms of section **160**, indicate –

- (a) the starting point of the transit operation contemplated in section **200(1)** and the delivery point of the transit operation contemplated in section **200(2)**;
- (b) the customs code of the carrier who will carry out the transit operation, if the transit operation is to be carried out by a licensed carrier;
- (c) the customs code of the carrier's agent of the carrier who is to carry out the transit operation, if the transit operation is to be carried out by an unlicensed carrier represented in the Republic by a licensed carrier's agent;
- (d) the mode of transport; and
- (e) the route over which the goods will be transported, if by road or rail.

Manner of submission of transit clearance declarations

198. A transit clearance declaration must be submitted electronically in accordance with section **849**.

Use of other documents as transit clearance declarations

199. (1) The customs authority may authorise¹⁵⁰ –

¹⁴⁸ Goods released by the customs authority for transit remain in terms of section **29** subject to customs control despite such release.

¹⁴⁹ See section **159(1)(a)(i)**.

¹⁵⁰ For conditional authorisations see section **852**.

- (a) an accredited importer to submit an invoice referred to in section **169(1)(a)** as a transit clearance declaration to clear goods for a national transit;
- (b) a licensed marine, air or rail carrier who is an accredited carrier to submit a transport document, advance cargo arrival notice or other document prescribed by rule as a transit clearance declaration to clear goods for a national transit or international transit, but only if that carrier –
 - (i) transported the goods into the Republic; and
 - (ii) is to carry out the transit operation; or
- (c) a South African Post Office transport document, advance arrival notice or other document prescribed by rule as a transit clearance declaration to clear postal articles for a national transit or international transit by or on behalf of the South African Post Office.

(2) An invoice document submitted as a transit clearance declaration in terms of subsection (1) must –

- (a) reflect all the information required in terms of sections **160** and **197** for transit clearance declarations except as determined otherwise by the customs authority in a specific case; and
- (b) be submitted electronically in accordance with section **849**.

(3) An invoice or document submitted as a transit clearance declaration in terms of subsection (1) must for the purposes of this Act be regarded to be a transit clearance declaration.

Part 3: Transit operations

Starting and delivery points of transit operations

200. (1) Unless the customs authority permits or directs¹⁵¹ otherwise, the starting point of a transit operation is –

- (a) a customs controlled area where goods are in temporary storage or any other place approved by the customs authority, seaport or airport where the goods were off-loaded from the foreign-going vessel or aircraft on board of which the goods were imported into the Republic;
- (b) the licensed rail cargo terminal where the goods were off-loaded from the cross-border railway carriage in which the goods were imported into the Republic; or

¹⁵¹ Such permission or direction may be issued subject to conditions. See section **852**.

- (c) the land border post where the vehicle on board of which the goods were imported into the Republic entered the Republic.

(2) Unless the customs authority allows or directs otherwise, the delivery point of a transit operation must be a customs controlled area –

- (a) at the place of exit from where the goods are to be exported from the Republic, in the case of an international transit; or
- (b) at the place to which the goods are consigned, in the case of a national transit.

Commencement and completion periods for transit operations¹⁵²

201. (1) A transit operation must, subject to sections **210(1)(i)** and **846**, commence –

- (a) at the starting point of the operation indicated in the transit clearance declaration within one day of the release for transit of the goods by the customs authority; or
- (b) if release was given before the goods arrived at the starting point, within three days from the date of arrival of the goods.

(2) Goods under national transit must, subject to sections **210(1)(i)** and **846**, reach the delivery point indicated in the transit clearance declaration –

- (a) in the case of a transit by sea, within ten days of the commencement of the transit;
- (b) in the case of a transit by air, within two hours of the commencement of the transit;
- (c) in the case of a transit by rail, within five days of the commencement of the transit; and
- (d) in the case of a transit by road, within five days of the commencement of the transit.

(3) Goods under international transit must, subject to sections **210(1)(i)** and **846**, reach the delivery point indicated in the transit clearance declaration, and be exported –

- (a) in the case of a transit by sea, within ten days of the commencement of the transit;
- (b) in the case of a transit by air, within two hours of the commencement of the transit;
- (c) in the case of a transit by rail, within five days of the commencement of the transit; and

¹⁵² Commencement and completion of transit operation must be distinguished from the commencement and completion of the transit procedure in terms of sections **190** and **191**.

- (d) in the case of a transit by road, within five days of the commencement of the transit.

Limitations on routes for transits

202. (1) The Commissioner may by rule limit the routes, by road or railway line, over which goods may be transported under the transit procedures.

(2) If the routes for transits have been limited in terms of subsection (1) no person may carry out a transit operation over a road or railway route other than a route determined in terms of that subsection.

Diversions from starting and delivery points

203. No diversion from the starting or delivery point of a transit operation as indicated in the transit clearance declaration may be effected without the prior written permission of the customs authority.

Carriers permitted to carry out transit operations

204. (1) A transit operation may be carried out only by –

- (a) a carrier licensed to carry out transit operations; or
- (b) an unlicensed carrier represented in the Republic by a licensed carrier's agent who is a carrier licensed to carry out transit operations.

(2) The carrier carrying out a transit operation must be –

- (a) the person mentioned in the transit clearance declaration as the carrier of the goods, if a transit clearance declaration was submitted in terms of section **196**;
- (b) a carrier contracted by an accredited importer, if an invoice was submitted in terms of section **199(1)(a)** to clear the goods for the transit;
- (c) the accredited carrier who submitted a document referred to in section **199(1)(b)**, if that document was submitted in terms of section **199(1)(b)** to clear the goods for the transit; or
- (d) a carrier subcontracted by the carrier referred to in paragraph (a), (b) or (c).

(3) Goods in transit may only be transported in accordance with –

- (a) any conditions subject to which –
 - (i) the carrier was licensed, if the transit operation is to be carried out by a licensed carrier; or

- (ii) the carrier's agent was licensed, if the transit operation is to be carried out by an unlicensed carrier represented in the Republic by a licensed carrier's agent;
- (b) any directions issued by the customs authority in terms of section **209** or **210**; and
- (c) any rules as may be prescribed.

Technical specifications or requirements of transport-units

205. (1) A transport-unit used in the transit of goods must comply with any technical specifications or requirements as may be prescribed by rule.

(2) If a transport-unit does not comply with the prescribed technical specifications or requirements, the customs authority may refuse to release the goods for transit in that transport-unit.

Transfer of goods in transit to other transport-units

206. (1) Once a transit has commenced the goods may not without the permission of the customs authority be transferred from the transport-unit in which the goods are transported to another transport-unit.

- (2) Permission in terms of subsection (1) may be given only if –
- (a) the transport-unit to which the goods are transferred is operated by –
 - (i) the same carrier; or
 - (ii) another carrier licensed to transport goods in transit;
 - (b) the transport-unit itself is not customs sealed, or, if the transport-unit itself is customs sealed, is capable of being transferred to another transport-unit without breaking or interfering with the seal; and
 - (c) no customs seals have been broken or interfered with before or during the transfer of the goods to the other transport-unit.

(3) If goods in transit are transferred to another transport-unit operated by another carrier the new carrier must –

- (a) give notice to the customs authority that the goods were transferred to another transport-unit; and
- (b) endorse that carrier's transport document or road manifest with –
 - (i) details of the previous vessel, aircraft, railway carriage or vehicle on which the goods were transported, as may be prescribed by rule,
 - (ii) the container number, if applicable, in which the goods were transported;
 - (iii) the name of the previous carrier; and

- (iv) the number of the previous carrier's transport document or road manifest, as may be applicable.

Transport of transit goods with other goods in same transport-unit

207. Goods in transit may be transported with other goods in the same transport-unit only –

- (a) with the permission of the customs authority;¹⁵³ and
- (b) in accordance with any rules as may be prescribed.

Accidents and other unforeseen events

208. (1) The carrier transporting goods in transit must promptly report to the nearest Customs Office any accident or other unforeseen event occurring in the cause of the transport of the goods which affects the transit.

(2) The carrier transporting goods in transit must comply with any instructions of the customs authority.¹⁵⁴

Interruptions in transits

209. (1) The customs authority may permit or direct that a transit of goods be interrupted for a purpose as it may determine, including for –

- (a) re-packing of the goods;
- (b) tallying the goods;
- (c) sorting the goods;
- (d) cleaning the goods;
- (e) carrying out activities aimed at preserving the condition of, or maintaining, the goods;
- (f) inspection of the goods; or
- (g) sealing the goods or the transport-unit.

(2) The conditions subject to which a permission or direction referred to in subsection (1) may be issued in terms of section **852** may include conditions specifying –

- (a) the place where the activities referred to in subsection (1) may be carried out; and
- (b) the time within which those activities must be carried out.

Steps or directions by customs authority to ensure integrity of transit operations

210. (1) The customs authority may take any steps or issue any directions necessary to guard against any unauthorised interference with goods in transit, including by –

¹⁵³ See section **852** for conditional granting of permissions.

¹⁵⁴ If goods are damaged, destroyed or lost due to the accident or occurrence, Chapter **25** becomes applicable.

- (a) identifying the goods by means of photographs, audio or audio-visual recordings or sketches or any other means;
- (b) pre-approving the transport-unit;
- (c) marking or sealing the transport-unit;
- (d) marking or sealing the goods;
- (e) stipulating the mode of transport;
- (f) stipulating the route to be followed;
- (g) stipulating the specific place for the goods to be delivered to;
- (h) requiring the provision of security in terms of Chapter **31** or any security additional to security already given in terms of that Chapter;
- (i) shortening the time limit within which the transit operation must commence and be completed in terms of section **201**;
- (j) requiring that the goods be transported under supervision of a customs escort; and
- (k) requiring proof that the goods arrived at the place of destination, including, in the case of an international transit, the country of destination.

(2) Any steps taken or directions issued by the customs authority in terms of subsection (1) are subject to such conditions or specifications as may be –

- (a) prescribed by rule; or
- (b) the customs authority may determine in a specific case.

Transit goods transported by road carriers

211. (1) A road carrier transporting goods in transit must keep a road manifest of all the cargo transported on board the vehicle.

(2) A road manifest must –

- (a) be in the format as may be prescribed by rule;
- (b) identify the goods in transit; and
- (c) distinguish those goods from any other goods on board the vehicle.

(3) Until the transit of the goods is completed, the carrier transporting the goods must keep in the vehicle –

- (a) the road manifest; and
- (b) a copy of the clearance declaration submitted in terms of section **196** in respect of the transit, if such a clearance declaration was submitted.

Part 4: Completion of transit operations¹⁵⁵**Completion of transit operations**

212. (1) A national transit operation is completed when the transit goods are delivered at the delivery point indicated in the transit clearance declaration.

(2) An international transit operation is completed when the transit goods are exported from the Republic.

Completion procedures

213. (1) Upon completion of a transit operation, the carrier who has carried out the transit operation or the person who has cleared the goods for transit must –

- (a) submit to the customs authority proof that the transit operation has been completed; and
- (b) comply with such other procedures as may be prescribed by rule.

(2) Proof required in terms of subsection (1) –

- (a) must be in a format and contain the information as may be prescribed by rule;
- (b) must be submitted within one days of completion of the transit operation; and
- (c) may be submitted either in paper format or electronically.

(3) Proof required in terms of subsection (1) which is submitted –

- (a) in paper format, must be submitted to the Customs Office serving the customs controlled area where the transit operation commenced; and
- (b) electronically, must be submitted in accordance with section **849**.

Responsibility for ensuring compliance with this Act

214. (1) The responsibility for ensuring that a transit operation is carried out and completed in accordance with this Act and any steps taken or directions issued by the customs authority in terms of section **210** rests with the carrier who carries out the transit operation.

¹⁵⁵ The distinction between “transit operation” and “transit procedure” should be noted. Transit procedure includes national transit procedure and international transit procedure, and indicates the customs status of the relevant goods, i.e. that the goods are under customs control. A transit operation is the actual removal, by a licensed carrier, of goods that are under the transit procedure from one customs controlled area to another not served by the same Customs Office. In the case of international transit, both the international transit procedure and operation end when the goods are exported. For national transit, the place of completion for the transit procedure and the transit operation is not necessarily the same, i.e. the transit operation ends at delivery by the carrier of the goods to the depot to which the goods were consigned, while in the case of the national transit procedure, the transit procedure ends when the importer clears the goods for home use or another permissible customs procedure after delivery of the goods to the receiving depot.

(2) If the carrier who carries out the transit operation is not the person who submitted the clearance declaration or other document for the clearance of the transit, or has subcontracted the transport of the goods to another carrier, the responsibility referred to in subsection (1) rests jointly and severally with the carrier and that other person or other carrier.

(3) The responsibility conferred in terms of subsections (1) and (2) does not affect the responsibility of any other person to comply with this Act or the relevant steps taken or directions issued in respect of the goods which are the subject of the transit.

Transit control agreements

215. (1) The Commissioner may enter into a written agreement with an accredited carrier licensed to transport transit goods. Such an agreement may provide for the clearance of transit goods and the conduct of transit operations by that carrier in accordance with special arrangements as may be agreed between the Commissioner and the carrier *in lieu* of the requirements provided for in this Chapter.

- (2) An agreement in terms of subsection (1) must –
- (a) set out the terms, conditions and details of the agreement;
 - (b) provide for customs supervision in instances where the customs authority requests such supervision; and
 - (c) allow the customs authority –
 - (i) to control and monitor customs transit operations conducted in terms of the agreement; and
 - (ii) to verify that transit goods arrive at their place of destination.

Part 5: Other matters

When transit goods must be regarded as having been cleared for home use

216. (1) Goods under the national or international transit procedure must for tax purposes be regarded as having been cleared for home use in terms of Chapter 10¹⁵⁶ if the goods –

- (a) do not reach the delivery point indicated in the transit clearance declaration, or, in the case of an international transit, are not exported, within the period applicable to the goods in terms of section 201(2) or (3) or 210(1)(i);
- (b) are diverted for home use; or

¹⁵⁶ For tax consequences if goods are regarded as having been cleared for home use, see section 150; for other consequences of non-compliance with customs procedures, see sections 127.

- (c) are damaged, destroyed, lost or unaccounted for and it is not proved in accordance with Part 1 of Chapter 25 –
- (i) that the goods were damaged, destroyed, lost or unaccounted for due to a cause set out in section 520(1), 521(1), 522(1) or 523(1); and
 - (ii) in the case of lost goods, that the goods, after having been lost, were not diverted for home use or have not gone into home use in any other way.

(2) When applying subsection (1) to any goods under the national or international transit procedure in circumstances where paragraph (a), (b) or (c) of that subsection pertains only to a part of the goods, only that part of the goods must in terms of that subsection be regarded as having been cleared for home use.

When transit goods may be regarded as having been cleared for home use

217. (1) The customs authority may direct that goods under the national or international transit procedure must for tax purposes be regarded as having been cleared for home use in terms of Chapter 10¹⁵⁷ if a provision of this Act applicable to national or international transits is contravened or not complied with in respect of the goods.

(2) When applying subsection (1) to any goods under the national or international transit procedure in circumstances where the grounds on account of which goods under that procedure may be regarded as having been cleared for home use, pertain only to a part of the goods, only that part of the goods may in terms of that subsection be regarded as having been cleared for home use.

Rules to facilitate implementation of this Chapter

218. The Commissioner may in terms of section 842 make rules to facilitate the implementation of this Chapter, including rules prescribing –

- (a)

NOTE: This clause will be completed after consideration of subordinate legislation and based upon comments received

Offences in terms of this Chapter

219. (1) A person is guilty of an offence if that person –

- (a) contravenes or fails to comply with –
 - (i) section 191(2), 195(1) or 204(1); or

¹⁵⁷ For tax consequences if goods are regarded as having been cleared for home use, see section 150; for other consequences of non-compliance with customs procedures, see sections 127.

- (ii) a direction issued to that person in terms of section **209(1)** or **210(1)**; or
- (b) diverts transit goods for home use.

(2) A person who carries out a transit operation is guilty of an offence if that person contravenes or fails to comply with section **201(1), (2) or (3), 202(2), 203, 204(2), 205(1), 206(1) or (3), 207, 208, 211(1), (2) or (3) or 213(1)**.

CHAPTER 12
TRANSHIPMENT PROCEDURE

Part 1: Introductory provisions

Purpose and application of this Chapter

220. (1) The purpose of this Chapter is to regulate the transshipment of goods, including –

- (a) the clearance and release of goods for transshipment;
- (b) the conduct with goods cleared and released for transshipment; and
- (c) the carrying out and completion of transshipment operations and the export of the goods from the Republic.

(2) This Chapter must be applied to all goods that are or are to be cleared for transshipment.

Transshipment¹⁵⁸

221. Transshipment is a customs procedure that allows goods imported into the Republic –

- (a) to be transferred at a customs seaport or airport from the foreign-going vessel or aircraft in which those goods were imported into the Republic to another foreign-going vessel or aircraft at that seaport or airport in which those goods are to be exported from the Republic; and
- (b) to be exported from the Republic without complying with any export clearing formalities.¹⁵⁹

Commencement and completion of transshipment procedure

222. (1) Goods come under the transshipment procedure when the goods are cleared for transshipment. The transshipment procedure is, subject to subsection (2), completed when the goods are exported from the Republic.

(2) The transshipment procedure, in relation to any goods, ends before its completion if –

- (a) the goods before completion of the procedure are cleared and released for another permissible customs procedure or for home use; or

¹⁵⁸ For tax status of goods under the transshipment procedure, see section **138**.

¹⁵⁹ Chapter **17** regulating the clearance of goods for export from the Republic does not apply to the export from the Republic of goods cleared and released for transshipment. See section **355(3)**.

- (b) completion of the procedure is interrupted by an occurrence referred to in section 126(2).

Limitation of customs seaports and airports for transshipment purposes

223. (1) The Commissioner may, in accordance with any applicable decisions of the national executive, by rule limit the customs seaports and airports where goods may be transhipped under the transshipment procedure.

(2) If the customs seaports or airports where goods may be transhipped have been limited in terms of subsection (1), no person may tranship goods under the transshipment procedure at a customs seaport or airport other than a seaport or airport determined in terms of that subsection.

Application of other legislation to goods under transshipment

224. (1) Legislation, other than this Act, regulating the import into, or the possession in, the Republic of goods for the purpose of protecting South African goods for economic reasons, does not apply to goods imported into the Republic and cleared and released for transshipment.

- (2) Subsection (1) ceases to apply if –
- (a) a provision of this Act relating to transshipment is contravened or not complied with;
 - (b) the goods are diverted for home use; or
 - (c) the goods are cleared for –
 - (i) another permissible customs procedure; or
 - (ii) home use.

Part 2: Clearance of goods for transshipment

General clearance and release provisions to be followed except where provided otherwise

225. (1) The general clearance and release provisions contained in Chapters 7 and 9 must be followed in respect of the clearance and release of goods for transshipment except to the extent that those provisions are modified, qualified or departed from in this Chapter.

(2) In the event of any inconsistency between a provision of this Chapter and Chapter 7 or 9, the provision of this Chapter prevails.

Transshipment operations

226. No transshipment operation may commence unless the goods have been cleared and released for transshipment.¹⁶⁰

Persons entitled to submit transshipment clearance declarations

227. (1) Only the following persons are entitled to submit a clearance declaration to clear goods for transshipment:¹⁶¹

- (a) the cargo reporter who is responsible for the transshipment goods; or
- (b) a customs broker referred to in section **159(1)(a)(ii)**.

(2) A transshipment clearance declaration must be submitted –

- (a) before the goods arrive in the Republic; and
- (b) within the same timeframes applicable to advance cargo arrival notices in terms of section **68(1)** or (2).

Contents of transshipment clearance declarations

228. (1) A transshipment clearance declaration must state –

- (a) that the goods will be off-loaded in the Republic for purposes of transshipment;
- (b) the date and time when the goods are due to arrive in the Republic;
- (c) the customs seaport or airport where the transshipment operation will be carried out;
- (d) particulars of the vessel or aircraft on board of which the goods are to be transported out of the Republic; and
- (e) any other information prescribed by rule.

(2) If the particulars referred to in subsection (1)(d) are not available to the cargo reporter at the time when the transshipment clearance declaration is submitted, those particulars may be submitted separately at any later stage but before the goods are loaded on board the vessel or aircraft that will transport the goods out of the Republic.

Manner of submission of transshipment clearance declarations

229. A transshipment clearance declaration must be submitted electronically in accordance with section **849**.

¹⁶⁰ Goods released by the customs authority for transshipment remain in terms of section **29** subject to customs control despite such release.

¹⁶¹ See section **159(1)(a)(i)**.

Supporting documents

230. Section 169(1) does not apply in respect of the transshipment of goods and no supporting documents need to be submitted in respect of a transshipment.

Advance cargo arrival notices to be regarded as transshipment clearance declarations

231. (1) An advance cargo arrival notice submitted in terms of section 68 in respect of the goods to be transhipped may serve as a transshipment clearance declaration, provided that the notice reflects the information that must be contained in transshipment clearance declarations.¹⁶²

(2) If an advance notice is used, that notice must for all purposes be regarded to be a transshipment clearance declaration.

Part 3: Transshipment operations**Commencement and completion of transshipment operations**

232. A transshipment operation –

- (a) commences when the transshipment goods are off-loaded from the vessel or aircraft on board of which the goods were imported into the Republic; and
- (b) is completed when the transshipment goods are loaded on board the vessel or aircraft that will transport the goods out of the Republic.

Transshipment goods to be secured in licensed customs controlled areas

233. (1) Goods off-loaded for transshipment from a vessel or aircraft on board of which the goods were imported into the Republic must be secured in a customs controlled area licensed for the receipt, storage and handling of transshipment goods.

(2) Transshipment goods must, subject to subsection (3), be kept in the customs controlled area under the control of that licensee until the goods are loaded on board the vessel or aircraft that will transport the goods out of the Republic.

(3) No transshipment goods may be removed from one customs controlled area to another customs controlled area at the customs seaport or airport where the goods were off-loaded without the prior permission¹⁶³ of the customs authority.

¹⁶² See section 228.

¹⁶³ For granting of permissions subject to conditions see section 852.

Commencement and completion periods for transshipment operations¹⁶⁴ and export of transshipment goods

234. (1) A transshipment operation must, subject to sections **238(1)(f)** or if an extended period is granted in terms of section **846**, commence within one day of the release for transshipment of the goods by the customs authority.

(2) A transshipment operation must, subject to sections **238(1)(f)** and **846**, be completed and the goods must be exported from the Republic within ten days of commencement of the transshipment operation.

Non-compliance with completion periods

235. (1) If a transshipment operation does not commence within the period applicable to the goods in terms of section **234(1)**, the operator of the vessel or aircraft on board of which the goods were imported into the Republic must –

- (a) immediately notify the customs authority of the delay, and the reasons for the delay; and
- (b) thereafter notify the customs authority regularly as prescribed by rule, of the situation with regard to the commencement of the transshipment operation.

(2) If a transshipment operation is not completed within the period applicable to the goods in terms of section **234(2)**, the licensee of the customs controlled area where the transshipment goods are stored or handled must –

- (a) immediately notify the customs authority of the delay, and the reasons for the delay; and
- (b) thereafter notify the customs authority regularly as prescribed by rule, of the situation with regard to the completion of the transshipment operation.

(3) If transshipment goods loaded on board the vessel or aircraft that will transport the goods out of the Republic, are not exported from the Republic within the period applicable to the goods in terms of section **234(2)**, the operator of the vessel or aircraft must –

- (a) immediately notify the customs authority of the delay, and the reasons for the delay; and
- (b) thereafter notify the customs authority regularly as prescribed by rule, of the situation with regard to the export of the goods from the Republic.

¹⁶⁴ Commencement and completion of transshipment operation must be distinguished from the commencement and completion of the transshipment procedure in terms of section **222**.

Delivery of transshipment goods for loading on board outgoing vessels or aircraft

236. (1) The cargo reporter who in terms of section **68** reported the arrival of transshipment goods in the Republic is responsible for ensuring that the goods are delivered at the customs controlled area from where the goods are to be loaded on board the aircraft or vessel that will transport the goods out of the Republic.

(2) If transshipment goods are to be transported by public road from the the customs controlled area where the goods are secured in terms of section **235** to the customs controlled area from where the goods are to be loaded on board the vessel or aircraft that will transport the goods out of the Republic –

- (a) those goods may not be transported by a person other than a carrier licensed for that purpose;
- (b) the licensee of the customs controlled area where those goods are secured may not give delivery of the goods to anyone other than such a licensed carrier; and
- (c) the carrier transporting the goods may not give delivery of the goods to anyone other than the licensee of the customs controlled area from where the goods are to be loaded on board the vessel or aircraft that will transport the goods out of the Republic.

Responsibilities of licensees of customs controlled areas handling transshipment goods

237. (1) The licensee of the customs controlled area where transshipment goods are secured in terms of section **235** must keep such records of the receipt, handling, storage and delivery of the goods as may be prescribed by rule.

(2) The licensee of the customs controlled area from where transshipment goods are to be loaded on board the vessel or aircraft that will transport the goods out of the Republic must –

- (a) within two hours after the goods have been loaded on board that vessel or aircraft, submit to the customs authority an outturn report concerning the removal of the goods from that customs controlled area; and
- (b) immediately notify the customs authority if the goods are removed from that customs controlled area for a purpose other than the loading of the goods on board that aircraft or vessel.

(3) An outturn report submitted in terms of subsection (2)(a) must –

- (a) declare that the goods to which it relates are transshipment goods;
- (b) reflect all the information as may be prescribed by rule; and
- (c) be submitted electronically in accordance with section **849**.

Steps or directions by customs authority to ensure integrity of transhipment operations

238. (1) The customs authority may take any steps or issue any directions necessary to identify transhipment goods and to guard against any unauthorised interference with the goods whilst in the Republic or during the transportation thereof out of the Republic, including by –

- (a) taking and testing, examining or analysing samples of the goods;
- (b) identifying the goods by means of photographs, audio or audio-visual recordings or sketches or any other means;
- (c) marking or sealing the goods or any containers;
- (d) stipulating the specific customs controlled area for the goods to be delivered to;
- (e) requiring security in terms of Chapter **31** or any security additional to security already given in terms of that Chapter;
- (f) shortening the time limit within which the transhipment operation must in terms of section **234(1)** commence or in terms of section **234(2)** be completed or the goods be exported from the Republic;
- (g) requiring that the goods be transhipped and exported from the Republic under customs escort; and
- (h) requiring proof that the transhipment goods arrived in the country of destination.

(2) Any steps taken or directions issued by the customs authority in terms of subsection (1) are subject to such conditions or specifications as may be –

- (a) prescribed by rule; or
- (b) the customs authority may determine in a specific case.

Part 4: Other matters

When transhipment goods must be regarded as having been cleared for home use

239. (1) Goods under the transhipment procedure must for tax purposes be regarded as having been cleared for home use in terms of Chapter **10**¹⁶⁵ if the goods are –

- (a) diverted for home use; or
- (b) are damaged, destroyed, lost or unaccounted for and it is not proved in accordance with Part **1** of Chapter **25** –
 - (i) that the goods were damaged, destroyed, lost or unaccounted for due to a cause set out in section **520(1)**, **521(1)**, **522(1)** or **523(1)**; and

¹⁶⁵ For tax consequences if goods are regarded as having been cleared for home use, see section **150**; for other consequences of non-compliance with customs procedures, see sections **127**.

- (ii) in the case of lost goods, that the goods, after having been lost, were not diverted for home use or have not gone into home use in any other way.

(2) When applying subsection (1) to any goods under the transshipment procedure in circumstances where paragraph (a) or (b) of that subsection pertains only to a part of the goods, only that part of the goods must in terms of that subsection be regarded as having been cleared for home use.

When transshipment goods may be regarded as having been cleared for home use

240. (1) The customs authority may direct that goods under the transshipment procedure must for tax purposes be regarded as having been cleared for home use in terms of Chapter 10¹⁶⁶ if –

- (a) a provision of this Act applicable to transshipment is contravened or not complied with in respect of the goods; or
- (b) the transshipment operation is not completed or the goods are not exported within the period applicable to the goods in terms of section 234(2).

(2) When applying subsection (1) to any goods under the transshipment procedure in circumstances where paragraph (a) or (b) of that subsection pertains only to a part of the goods, only that part of the goods may in terms of that subsection be regarded as having been cleared for home use.

Rules to facilitate implementation of this Chapter

241. The Commissioner may in terms of section 842 make rules to facilitate the implementation of this Chapter, including rules prescribing –

- (a)

NOTE: This clause will be completed after consideration of subordinate legislation and based upon comments received

Offences in terms of this Chapter

242. (1) A person is guilty of an offence if that person –

- (a) contravenes or fails to comply with –
- (i) section 223(2), 226(1), 233(1), (2) or (3), 234(1) or (2) or 236(2)(a); or
- (ii) a direction issued to that person in terms of section 238(1); or

¹⁶⁶ For tax consequences if goods are regarded as having been cleared for home use, see section 150; for other consequences of non-compliance with customs procedures, see sections 127.

(b) diverts transshipment goods for home use .

(2) The operator of a vessel or aircraft is guilty of an offence if that person contravenes or fails to comply with section **235**(1) or (3).

(3) The licensee of a customs controlled area is guilty of an offence if that person contravenes or fails to comply with section **235**(2), **236**(2)(b), or **237**(1) or (2).

(4) A carrier is guilty of an offence if that person contravenes or fails to comply with section **236**(2)(c).

CHAPTER 13 TEMPORARY ADMISSION PROCEDURE

Part 1: Introductory provisions

Definitions

243. In this Chapter –

“**issuing association**” means an association which in terms of the Convention on Temporary Admission or any agreement referred to in section **255(a)** is authorised to issue temporary admission papers for the temporary admission of goods into the Republic;

“**guaranteeing association**” means an association guaranteeing in accordance with the Convention on Temporary Admission or any agreement referred to in section **255(a)** the payment of any tax that may be or become payable on goods temporarily admitted into the Republic on authority of a temporary admission paper;

“**Convention on Temporary Admission**” means the Convention on Temporary Admission (Istanbul, 26 June 1990).

Purpose and application of this Chapter

244. (1) The purpose of this Chapter is to regulate the temporary admission of goods into the Republic, including –

- (a) the clearance and release of goods for temporary admission;
- (b) the placing of goods under temporary admission in terms of international customs procedures;
- (c) the use of goods in the Republic under the temporary admission procedure; and
- (d) the export from the Republic of goods under the temporary admission procedure.

(2) This Chapter must be applied to all goods that –

- (a) are or are to be cleared and released for the temporary admission procedure; or
- (b) automatically come under the temporary admission procedure.

Temporary admission¹⁶⁷

245. (1) Temporary admission is a customs procedure that allows goods imported into the Republic –

- (a) to be used in the Republic for a specific purpose and for a specific period on condition that the goods are exported from the Republic within that period without having

¹⁶⁷ For tax status of goods under the temporary admission procedure, see section **139**.

undergone any change except for maintenance and normal wear and tear due to the use made of the goods whilst in the Republic; and

- (b) to be exported from the Republic without complying with any export clearing formalities.¹⁶⁸

(2) The temporary admission procedure is not available for –

- (a) imported goods which are of a nature that will make them, when eventually exported from the Republic, unlikely to be identified as the same goods; or
- (b) imported goods of a category prescribed by rule as goods for which the temporary admission procedure is not available.

Commencement and completion of temporary admission procedure

246. (1) Goods come under the temporary admission procedure –

- (a) when cleared for temporary admission in terms of Part 2;
- (b) when placed under temporary admission on the authority of a temporary admission paper in terms of Part 3;
- (c) if the goods consist of a vessel, aircraft, locomotive or railway carriage referred to in section 265(1), when the vessel, aircraft, locomotive or railway carriage enters the Republic;
- (d) if the goods consist of a truck referred to in section 266(1) that are to be cleared for temporary admission in terms of the simplified clearance and release procedures referred to in that section, when the truck is cleared for temporary admission in terms of those simplified procedures;
- (e) if the goods consist of reusable transport equipment referred to in section 267(1), when the equipment enters the Republic; or
- (f) if the goods consist of items in the accompanied baggage of a person entering the Republic that are to be cleared for temporary admission in terms of the simplified clearance and release procedures referred to in section 95(2), when the item is cleared for temporary admission in terms of those simplified procedures.

(2) The temporary admission procedure is, subject to subsection (3), completed when the goods are exported from the Republic.

(3) The temporary admission procedure, in relation to any goods, ends before its completion if –

¹⁶⁸ Chapter 17 regulating the clearance of goods for export from the Republic does not apply to the export from the Republic of goods cleared and released for temporary admission. See section 355(3).

- (a) the goods before completion of the procedure are cleared and released for a permissible customs procedure or for home use; or
- (b) completion of the procedure is interrupted by an occurrence referred to in section 126(2).

Application of other legislation to goods under temporary admission

247. (1) Legislation, other than this Act, regulating the importation into, or the possession in, the Republic of goods for the purpose of protecting South African goods from imported goods for economic reasons, does not apply to goods under the temporary admission procedure.

(2) Subsection (1) ceases to apply if –

- (a) a provision of this Act relating to temporary admission is contravened or not complied with;
- (b) the goods are diverted for home use; or
- (c) the goods are cleared for –
 - (i) another permissible customs procedure; or
 - (ii) home use.

Part 2: Temporary admission of goods in terms of clearance and release procedures

Application of this Part

248. This Part applies to import of all goods under the temporary admission procedure except goods that are –

- (a) temporarily admitted in accordance with the international customs procedures provided for in Part 3; or
- (b) exempted in terms of Part 4 from the provisions of this Part.

General clearance and release provisions to be followed except where provided otherwise

249. (1) The general clearance and release provisions contained in Chapters 7 and 9 must be followed in respect of the clearance and release for temporary admission of goods to which this Part applies except to the extent that those provisions are modified, qualified or departed from in this Chapter.

(2) In the event of any inconsistency between a provision of this Chapter and Chapter 7 or 9, the provision of this Chapter prevails.

Persons entitled to submit temporary admission clearance declarations

250. (1) Only the following persons may submit clearance declarations and supporting documents to clear goods for temporary admission:¹⁶⁹

- (a) the importer of the goods;
- (b) the owner of the goods or other person who has the right to dispose of the goods; or
- (c) a customs broker referred to in section **159(1)(a)(ii)**.

(2) The provisions of Chapter **9** relating to supporting documents apply to goods cleared for temporary admission only to the extent as determined by rule.

Contents of temporary admission clearance declarations

251. A temporary admission clearance declaration must, in addition to the information required in terms of section **160**, state –

- (a) the purpose for which the goods are to be temporarily admitted into the Republic; and
- (b) the period for which the goods will remain in the Republic, subject to section **846**.

Release documents and notifications to state period of temporary admission

252. (1) If goods are released for temporary admission, the release document or notification must state the period for which the goods are placed under temporary admission.

(2) A period determined in terms of subsection (1) may not exceed –

- (a) the maximum period prescribed by rule for the category in which the goods fall; or
- (b) 12 months from the date of clearance of the goods, if no period is prescribed for the relevant category of goods.

(3) The customs authority may in terms of section **846** extend the period mentioned in a release document or notification, but an extension may be granted only once except if good cause is shown for an additional extension.

Period for which goods under temporary admission may remain in Republic

253. Goods under temporary admission in terms of this Part must be exported from the Republic before the expiry of –

- (a) the period mentioned in the release document or notification; or
- (b) any extended period granted in terms of section **846**.

¹⁶⁹ See section **159(1)(a)(i)**.

Proof of removal of goods from Republic

254. The onus to prove that goods cleared and released for temporary admission were exported from the Republic, or were exported from the Republic within the required period, rests on the person who cleared the goods for temporary admission.

Part 3: Temporary admission of goods under international customs procedures**Application of this Part**

255. This Part –

- (a) gives effect to –
 - (i) the Convention on Temporary Admission; and
 - (ii) any agreement between the Republic and another country regulating the temporary admission of goods into the Republic and that other country; and
- (b) applies to goods described in the Convention or agreement and imported into the Republic that may in terms of the Convention or agreement be placed under temporary admission in the Republic on authority of temporary admission papers guaranteeing in accordance with the Convention or agreement the payment of any tax that may be or become payable on those goods.

Temporary admission of goods on authority of temporary admission papers

256. (1) Goods imported into the Republic may be placed under temporary admission on the authority of a temporary admission paper only if the temporary admission paper –

- (a) was issued by an issuing association;
- (b) is guaranteed by a guaranteeing association approved in terms of section **257**; and
- (c) has been accepted by the customs authority.

(2) A temporary admission paper must be submitted to the customs authority at the Customs Office serving the customs controlled area where the goods are to be released for temporary admission.

Guaranteeing associations to be approved

257. (1) No temporary admission paper may be accepted by the customs authority unless the guaranteeing association guaranteeing the temporary admission paper –

- (a) has submitted an application to the customs authority for its approval, on a form as may be prescribed by rule; and
- (b) has been approved by the customs authority for the purposes of this Part.

- (2) No guaranteeing association may be approved unless the association –
- (a) has a place of business at a specific physical address in the Republic; and
 - (b) has given security in accordance with Chapter **31** for the payment of any tax that may be or become payable on any goods imported into the Republic and placed under temporary admission on authority of a temporary admission paper guaranteed by that guaranteeing association.

(3) The conditions subject to which an approval in terms of subsection (1) may be granted in terms of section **852** may include conditions requiring the association to assist the Commissioner in combating fraud and contravention or abuse of this Part.

Formats of temporary admission papers

258. Temporary admission papers must conform to the models set out in the Convention on Temporary Admission or relevant international agreement referred to in section **255(a)**.

Validity period of temporary admission papers

- 259.** (1) A temporary admission paper remains valid for –
- (a) a period prescribed by rule for the category in which the goods fall for which the temporary admission paper was issued; or
 - (b) 12 months from the date of issue of the temporary admission paper, if no period is prescribed for the relevant category of goods.

(2) The customs authority may in terms of section **846** extend the period of validity of a temporary admission paper, but an extension may be granted only once and for a period of not more than three additional months.

- (3) If any further extension is required, the goods may remain under temporary admission in the Republic only if –
- (a) a new temporary admission paper is issued by an issuing association; and
 - (b) that new temporary admission paper –
 - (i) is guaranteed by a guaranteeing association approved in terms of section **257**; and
 - (ii) has been accepted by the customs authority.

Amendment of temporary admission papers

260. (1) A temporary admission paper may, subject to subsection (2), be amended only by or with the approval of the guaranteeing association which guaranteed the paper.

(2) Once a temporary admission paper has been accepted by the customs authority no amendment may be made to the paper except with the approval of the customs authority.

Replacement of temporary admission papers

261. (1) If a temporary admission paper has been destroyed, lost or stolen whilst the goods to which the paper relates are still in the Republic, the issuing association which issued the paper may, with the approval of the customs authority,¹⁷⁰ issue a replacement paper.

(2) A replacement paper expires on the same date as the date on which the original temporary admission paper would have expired.

Period for which goods under temporary admission may remain in Republic

262. (1) The person to whom a temporary admission paper was issued must ensure that the goods to which the temporary admission paper relates are exported from the Republic before the expiry of –

- (a) the validity period of the temporary admission paper; or
- (b) any extended period granted in terms of section **846**.

(2) If a new temporary admission paper was issued and accepted in terms of section **259**(3), the person to whom the temporary admission paper was issued must ensure that the goods to which the temporary admission paper relates are exported from the Republic before the expiry of the validity period of that temporary admission paper.

Proof of removal of goods from Republic

263. The onus to prove that goods under the temporary admission procedure in terms of this Part, were exported from the Republic, or were exported from the Republic within the required period, rests on the person to whom the temporary admission paper on authority of which the goods were imported into Republic was issued.

Damaged, destroyed, lost or unaccounted goods

264. Chapter **25** applies to goods placed under temporary admission on authority of a temporary admission paper and which are damaged, destroyed, lost or unaccounted for

¹⁷⁰ See section **852** for granting of approval subject to conditions.

before the goods are exported from the Republic, as if those goods were cleared in terms of Part 2.¹⁷¹

Part 4: Goods coming under temporary admission otherwise than in terms of Part 2 or 3

Foreign-going vessels, aircraft, locomotives and railway carriages entering the Republic

265. (1) A vessel, aircraft, locomotive or railway carriage entering the Republic as a means of transport currently in use for the transport of goods in the ordinary course of international trade or for the transport of travellers for reward between countries, comes under the temporary admission procedure without any formal clearance or release for that procedure if the vessel, aircraft, locomotive or railway carriage is destined to leave the Republic without any interruption in its current use as a means of transport for goods in the ordinary course of international trade or for the transport of travellers for reward between countries.

(2) Parts 2 and 3 of this Chapter do not apply to vessels, aircraft, locomotives or railway carriages referred to in subsection (1).

Commercial trucks entering the Republic¹⁷²

266. (1) Trucks entering the Republic as a means of transport currently in use for the transport of goods in the ordinary course of international trade may be cleared and released for the temporary admission procedure in accordance with a simplified clearance and release procedure prescribed by the Commissioner by rule if the truck is destined to leave the Republic without any interruption in its current use as a means of transport for goods in the ordinary course of international trade.

(2) Parts 2 and 3 do not apply to trucks referred to in subsection (1) if the Commissioner has by rule prescribed a simplified clearance and release procedure in terms of that subsection.

¹⁷¹ As Chapter 25 applies only to goods “cleared”, this provision is necessary to ensure that Chapter 25 applies also to goods placed under temporary admission on authority of a temporary admission paper which is not “clearance” in the strict sense of the word.

¹⁷² Vehicles entering the Republic, other than trucks to which this section applies, must be cleared in accordance with Parts 2 and 3 of this Chapter.

Reusable transport equipment entering the Republic

267. (1) Transport equipment entering the Republic as reusable transport equipment currently in use as transport equipment for goods in the ordinary course of international trade, comes under the temporary admission procedure without any formal clearance or release for that procedure if –

- (a) that transport equipment is destined to leave the Republic without any interruption in its current use as reusable transport equipment for goods in the ordinary course of international trade; and
- (b) the carrier who brought the transport equipment into the Republic or, if that carrier is an unlicensed carrier represented in the Republic by a licensed carrier's agent, that carrier's agent, keeps record of that transport equipment as may be prescribed by rule.

(2) Parts 2 and 3 of this Chapter do not apply to reusable transport equipment referred to in subsection (1).

Accompanied baggage items cleared for temporary admission

268. Parts 2 and 3 of this Chapter do not apply to items in the accompanied baggage of a person entering the Republic –

- (a) that are cleared and released for the temporary admission procedure in terms of the simplified clearance and release procedures referred to in section 95(2); and
- (b) to the extent that such goods are in terms of that section exempted from those Parts.

Part 5: Provisions applicable to all goods under temporary admission**General provisions**

269. Goods under temporary admission –

- (a) may not be disposed of in the Republic –
 - (i) unless cleared and released for home use; or
 - (ii) otherwise than in accordance with section 520, in the case of damaged goods to which that section applies;
- (b) must be dealt with in accordance with conditions that may be prescribed rule;
- (c) may be exported from the Republic only subject to customs control; and
- (d) may be exported from the Republic –
 - (i) through a place of exit other than the place of entry through which the goods were imported into the Republic; and
 - (ii) in one or more consignments.

When goods under temporary admission procedure must be regarded as having been cleared for home use

270. (1) Goods under the temporary admission procedure must for tax purposes be regarded as having been cleared for home use in terms of Chapter **10**¹⁷³ if the goods are –

- (a) diverted for home use; or
- (b) are damaged, destroyed, lost or unaccounted for and it is not proved in accordance with Part 1 of Chapter **25** –
 - (i) that the goods were damaged, destroyed, lost or unaccounted for due to a cause set out in section **520(1)**, **521(1)**, **522(1)** or **523(1)**; and
 - (ii) in the case of lost goods, that the goods, after having been lost, were not diverted for home use or have not gone into home use in any other way.

(2) When applying subsection (1) to any goods under the temporary admission procedure in circumstances where paragraph (a) or (b) of that subsection pertains only to a part of the goods, only that part of the goods must in terms of that subsection be regarded as having been cleared for home use.

When goods under temporary admission procedure may be regarded as having been cleared for home use

271. (1) The customs authority may direct that goods under the temporary admission procedure must for tax purposes be regarded as having been cleared for home use in terms of Chapter **10**¹⁷⁴ if –

- (a) a provision of this Act applicable to temporary admission is contravened or not complied with in respect of the goods; or
- (b) the goods are not exported from the Republic within the period applicable to the goods in terms of section **253** or **262**.

(2) When applying subsection (1) to any goods under the temporary admission procedure in circumstances where paragraph (a) or (b) of that subsection pertains only to a part of the goods, only that part of the goods may in terms of that subsection be regarded as having been cleared for home use.

¹⁷³ For tax consequences if goods are regarded as having been cleared for home use, see section **150**; for other consequences of non-compliance with customs procedures, see sections **127**.

¹⁷⁴ For tax consequences if goods are regarded as having been cleared for home use, see section **150**; for other consequences of non-compliance with customs procedures, see sections **127**.

Part 6: Other matters**Rules to facilitate implementation of this Chapter**

272. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

- (a) the periods within which –
 - (i) vessels, aircraft, locomotives and railway carriages that have entered the Republic as a means of transport referred to in section **265** must leave the Republic; and
 - (ii) transport equipment that has entered the Republic as reusable transport equipment referred to in section **267** must leave the Republic;
- (b) the consequences if such means of transport or transport equipment does not leave the Republic within the period prescribed in terms of paragraph (a) or extended in terms of section **846**;
- (c) the records that must be kept of such reusable transport equipment, including records of –
 - (i) the type of transport equipment and number of each type that entered and left the Republic;
 - (ii) the places of entry or exit through which, and the dates on which, such transport equipment entered or left the Republic; and
 - (iii) the movement of such transport equipment in the Republic;
- (d) the persons by whom, and the period for which, such records must be kept;
- (e)

NOTE: This clause will be enhanced based upon comments received and after consideration of subordinate legislation

Offences in terms of this Chapter

273. (1) A person is guilty of an offence if that person –

- (a) contravenes or fails to comply with section **269**; or
- (b) diverts goods under temporary admission for home use.

(2) A person who cleared goods for temporary admission is guilty of an offence if that person contravenes or fails to comply with section **253**.

(3) A person to whom a temporary admission paper was issued is guilty of an offence if that person contravenes or fails to comply with section **262(1)** or (2).

CHAPTER 14 WAREHOUSING PROCEDURE

Part 1: Introductory provisions

Purpose and application of this Chapter

274. (1) The purpose of this Chapter is to regulate the warehousing procedure, including –

- (a) the clearance and release of goods for warehousing;
- (b) the conditions for the warehousing of goods; and
- (c) the storage of goods in and removal of goods from customs warehouses.

(2) This Chapter must be applied to all goods that are or to be cleared for warehousing.

Warehousing procedure¹⁷⁵

275. (1) The warehousing procedure is a customs procedure that allows goods to be stored for a limited period in a specific customs warehouse.

(2) The storage of goods in the following circumstances are excluded from the warehousing procedure:

- (a) the temporary storage¹⁷⁶ of goods;
- (b) the storage of goods under a customs procedure that provides for the storage of goods under that procedure;¹⁷⁷
- (c) the storage of goods in state warehouses or premises regarded to be state warehouses in terms of section **555**; and
- (d) the storage of goods in an industrial development zone or a part of an industrial development zone designated in terms of section **37(2)(c)** as a customs controlled area except when the goods are stored in a customs warehouse within an industrial development zone or such designated part of an industrial development zone.

Commencement and completion of warehousing procedure

276. (1) Goods come under the warehousing procedure when the goods are cleared for warehousing. The warehousing procedure is, subject to subsection (2), completed when

¹⁷⁵ For tax status of goods under the warehousing procedure, see section **140**.

¹⁷⁶ See definition of “temporary storage” in section **1**.

¹⁷⁷ For instance the inward processing procedure (section **395**) or the processing for home use procedure (section **426**).

the goods are cleared and released for another permissible customs procedure or for home use.

(2) The warehousing procedure, in relation to any goods, ends before its completion if completion of the procedure is interrupted by an occurrence referred to in section **126**.

Part 2: Clearance and release of goods for warehousing

Warehousing of goods

277. (1) No goods may be stored in a customs warehouse unless the goods have been cleared and released for warehousing in that specific warehouse.¹⁷⁸

(2) No goods in free circulation may be stored in a customs warehouse unless the licence conditions of the warehouse allow for such storage.

- (3) No goods may be cleared or released for warehousing –
- (a) in a facility other than a customs warehouse;
 - (b) for a purpose other than a purpose referred to in section **279** or **280**, as may be applicable;
 - (c) in a customs warehouse which is not licensed for the purpose for which the goods are to be warehoused; and
 - (d) unless the licensee of the customs warehouse, in the case of a public warehouse –
 - (i) has granted permission for the warehousing of the goods in that warehouse; and
 - (ii) has advised the customs authority in writing or electronically of such permission.

General clearance and release provisions to be followed except where provided otherwise

278. (1) The general clearance and release provisions contained in Chapters **7** and **9** must be followed in respect of the clearance and release of goods for warehousing except to the extent that those provisions are modified, qualified or departed from in this Chapter.

(2) In the event of any inconsistency between a provision of this Chapter and Chapter **7** or **9**, the provision of this Chapter prevails.

¹⁷⁸ Goods released by the customs authority for warehousing remain in terms of section **29** subject to customs control despite such release.

Purposes for which goods may be cleared for warehousing in public warehouses

279. (1) Goods may be cleared for warehousing in a public warehouse for the following purposes only:

- (a) To secure imported goods on behalf of clients pending clearance and release of the goods for –
 - (i) home use;
 - (ii) warehousing in another warehouse; or
 - (iii) another permissible customs procedure;¹⁷⁹
- (b) to store and consolidate on behalf of clients goods destined for export from the Republic pending their clearance and release for export;
- (c) to store goods for any reason on behalf of clients to ensure that the goods remain under customs control for a specific period; or
- (d) in the case of restricted goods imported into the Republic without prior compliance with legislation restricting the import or possession of the goods, to secure the goods on behalf of a client in terms of section **751** (2)(a) pending compliance by the client with such legislation.

(2) Goods may be secured in terms of subsection (1)(a) in a public warehouse to delay the clearance and release of the goods as contemplated in that subsection –

- (a) in order to utilise the tax free status conferred on warehoused goods in terms of section **140**(1); or
- (b) for any other purpose determined by the customs authority as consistent with the warehouse procedure.

Purposes for which goods may be cleared for warehousing in private warehouses

280. (1) Goods may be cleared for warehousing in a private warehouse for the following purposes only:¹⁸⁰

- (a) To secure imported goods owned by the licensee of the warehouse or in which the licensee has a material interest, pending clearance and release of the goods for –
 - (i) home use; or
 - (ii) a permissible customs procedure;¹⁸¹ or

¹⁷⁹ For instance goods warehoused for later clearance as supplies to vessels and aircraft under the stores procedure.

¹⁸⁰ It is to be noted that goods under a customs procedure that provides for the storage of goods, such as the inward processing procedure (section **395**) or the processing for home use procedure (section **426**), need not be cleared for warehousing and may be stored in terms of that procedure in private storage facilities at the premises where the goods are processed other than private warehouses.

¹⁸¹ For instance goods warehoused for later clearance as supplies to vessels and aircraft under the

- (b) in the case of restricted goods imported into the Republic by the licensee of the warehouse without prior compliance with the legislation restricting the import or possession of such goods, to secure the goods in terms of section **751(2)(a)** pending compliance by the licensee with such legislation.

(2) Goods may be secured in terms of subsection (1)(a) in a private warehouse to delay the clearance and release of the goods as contemplated in that subsection –

- (a) in order to utilise the tax free status conferred on warehoused goods in terms of section **140(1)**; or
- (b) for any other purpose determined by the customs authority as consistent with the warehouse procedure.

Persons entitled to submit warehousing clearance declarations

281. Only the following persons may submit clearance declarations and supporting documentation to clear goods for warehousing:¹⁸²

- (a) the importer or exporter of the goods;
- (b) the owner of the goods or other person who has the right to dispose of the goods; or
- (c) a customs broker referred to in section **159(1)(a)(ii)**.

Contents of warehousing clearance declarations

282. A warehousing clearance declaration must, in addition to the information required in terms of section **160**, indicate –

- (a) the purpose for which the goods will be warehoused, taking into account section **280** or **280**;
- (b) the customs code and address of the customs warehouse where the goods will be warehoused; and
- (c) that the customs warehouse where the goods will be warehoused is licensed for the purpose for which the goods are to be warehoused.

Diversions

283. No person may, without the permission of the customs authority, divert goods cleared for warehousing to any warehouse or place other than the customs warehouse indicated in the warehousing clearance declaration.

stores procedure.

¹⁸² See section **159(1)(a)(i)**.

Part 3: Warehousing of goods in customs warehouses**Maximum warehousing periods**

284. (1) No goods may be warehoused in a public warehouse for longer than –

- (a) 12 months from the time the goods were for the first time cleared for warehousing; or
- (b) an extended period granted in terms of section **846**.

(2) No goods may be warehoused in a private warehouse –

- (a) in the case of a specific category of private warehouses or category of goods determined by rule, for longer than a period prescribed by rule; or
- (b) in the case of any other goods, for longer than –
 - (i) 12 months from the time the goods were for the first time cleared for warehousing; or
 - (ii) an extended period granted in terms of section **846**.

Warehousing of dangerous or hazardous goods

285. (1) The customs authority may allow the warehousing of dangerous or hazardous goods in a customs warehouse subject to such conditions and requirements as the customs authority may impose, including the period for which the goods may be stored in that warehouse.

(2) Dangerous or hazardous goods –

- (a) may in terms of subsection (1) be warehoused only in a customs warehouse certified by the licensee as a warehouse that can safely receive and store such goods; and
- (b) must immediately be removed from a warehouse to another place if the customs authority in the public interest so directs.

Records to be kept of warehoused goods

286. (1) The licensee of a customs warehouse must keep record of –

- (a) all goods in the warehouse; and
- (b) all goods removed from the warehouse.

(2) A record contemplated in subsection (1) must be kept in such a manner and format as may be prescribed by rule¹⁸³, and must contain information concerning –

- (a) all goods received in the warehouse, and the date of receipt;

¹⁸³ See section **853** for computerised record keeping systems.

- (b) the purpose for which, and, in the case of a public warehouse, the person on whose behalf, the goods are warehoused;
- (c) all goods removed from the warehouse, and the date of removal;
- (d) the person by whom the goods were removed;
- (e) whether the goods were removed –
 - (i) in terms of a clearance for home use or a customs procedure, and if for a customs procedure the specific customs procedure under which the goods were removed; or
 - (ii) for any other purpose, taking into account section 291(1) or 292(1); and
- (f) any other matter as may be prescribed by rule.

Reports to be submitted in connection with warehoused goods

287. (1) The licensee of a customs warehouse must, within three days after the end of each month, submit to the customs authority a report in connection with all goods stored in, or removed from, the warehouse during that month.

(2) A report in terms of subsection (1) must contain such information as may be prescribed by rule, including information concerning –

- (a) the goods received in the warehouse during the reporting period;
- (b) any surpluses or shortfalls on goods in the warehouse, as at the end of the reporting period;
- (c) any goods in the warehouse damaged, destroyed, lost or unaccounted for, as at the end of the reporting period; and
- (d) all goods removed from the warehouse during the reporting period.

Change in taxability of goods whilst warehoused

288. The licensee of a customs warehouse must –

- (a) immediately notify the customs authority of any taxable goods warehoused in the warehouse if a tax on the goods is repealed whilst the goods are in the warehouse; and
- (b) thereafter deal with the goods as the customs authority may direct.

Sorting, packing, etc of goods warehoused in customs warehouses

289. Goods warehoused in a customs warehouse may be sorted, separated, graded, packed, repacked, grouped, de-grouped, labelled or relabelled only with the permission of the customs authority or as may be prescribed by rule.

Transfer of ownership of warehoused goods

290. (1) Ownership or other right in or to warehoused goods may not without the permission of the customs authority be transferred or ceded to, or conferred on, another person whilst those goods are in the warehouse.

(2) An agreement entered into in contravention of subsection (1) is null and void.

(3) The customs authority may not without good reason withhold permission in terms of subsection (1).

Part 4: Removal of goods from customs warehouses**Removal of goods from public warehouses**

291. (1) Warehoused goods may be removed from a public warehouse in the following circumstances only:

- (a) When the goods have been –
 - (i) cleared and released for home use;
 - (ii) cleared and released for warehousing in another warehouse; or
 - (iii) cleared and released for another permissible customs procedure;
- (b) for carrying out repair or preservation operations in connection with the goods, provided that the goods are returned to the warehouse within three days or an extended period granted in terms of section **846**;
- (c) for any other purpose as may be prescribed by rule or as the customs authority may approve in a special case, provided that the goods are within three days or an extended period granted in terms of section **846** –
 - (i) returned to the warehouse; or
 - (ii) cleared and released as contemplated in paragraph (a);
- (d) to comply with a demand in terms of subsection (2)(a); or
- (e) if the goods have been detained, seized or confiscated and the customs authority directs in terms of Chapter **34**, **35** or **36** that the goods be removed to another place.

(2) (a) If warehoused goods are not removed from a public warehouse within the period applicable to the goods in terms of section **284(1)**, the customs authority may demand that the goods immediately –

- (i) be cleared for home use or any permissible customs procedure other than warehousing; and
- (ii) be removed from the warehouse upon release of the goods for home use or that other customs procedure.

(b) The customs authority may detain or seize the warehoused goods in terms of Chapter **34** if a demand in terms of paragraph (a) is not complied with.

(3) Subsection (2) does not apply to restricted goods imported into the Republic and warehoused in a public warehouse in terms of section **751(2)(a)** pending compliance with the legislation restricting the import or possession of such goods, and such goods must be dealt with in accordance with section **293**.

Removal of goods from private warehouses

292. (1) Warehoused goods may be removed from a private warehouse in the following circumstances only:

- (a) When the goods have been –
 - (i) cleared and released for home use; or
 - (ii) cleared and released for a permissible customs procedure;
- (b) for carrying out repair or preservation operations in connection with the goods, provided that the goods are returned to the warehouse within three days or an extended period granted in terms of section **846**;
- (c) for any other purpose as may be prescribed by rule or approved by the customs authority in a special case, provided that the goods are within three days or an extended period granted in terms of section **846** –
 - (i) returned to the warehouse; or
 - (ii) cleared and released as contemplated in paragraph (a);
- (d) to comply with a demand in terms of subsection (2)(a); or
- (e) if the goods have been detained, seized or confiscated and the customs authority directs in terms of Chapter **34**, **35** or **36** that the goods be removed to another place.

(2) (a) If warehoused goods are not removed from a private warehouse within the period applicable to the goods in terms of section **284(2)**, the customs authority may demand that the goods immediately –

- (i) be cleared for home use or any permissible customs procedure other than warehousing; and
- (ii) be removed from the warehouse upon release of the goods for home use or that other customs procedure.

(b) The customs authority may detain or seize the warehoused goods in terms of Chapter **34** if a demand in terms of paragraph (a) is not complied with.

(3) Subsection (2) does not apply to restricted goods imported into the Republic and warehoused in a private warehouse in terms of section **751(2)(a)** pending compliance

with the legislation restricting the import or possession of such goods, and such goods must be dealt with in accordance with section **293**.

Removal of restricted goods stored in customs warehouses pending compliance with legislation restricting import or possession

293. (1) Restricted goods imported into the Republic and warehoused in a customs warehouse in terms of section **751(2)(a)** pending compliance with the legislation restricting the import or possession of such goods, may not be removed from the warehouse unless proof of compliance with that legislation is submitted to the customs authority.

(2) If such proof of compliance is not submitted to the customs authority within the period applicable to the goods in terms of section **284**, section **752(1)(b)** and the other provisions of Chapter **35** become applicable.

Part 5: Other matters

When goods under warehousing procedure must be regarded as having been cleared for home use

294. (1) Imported goods under the warehousing procedure must for tax purposes be regarded as having been cleared¹⁸⁴ for home use in terms of Chapter **10** if the goods are –

- (a) diverted for home use; or
- (b) are damaged, destroyed, lost or unaccounted for and it is not proved in accordance with Part **1** of Chapter **25** –
 - (i) that the goods were damaged, destroyed, lost or unaccounted for due to a cause set out in section **520(1)**, **521(1)**, **522(1)** or **523(1)**; and
 - (ii) in the case of lost goods, that the goods, after having been lost, were not diverted for home use or have not gone into home use in any other way.

(2) When applying subsection (1) to any goods under the warehousing procedure in circumstances where paragraph (a) or (b) of that subsection pertains only to a part of the goods, only that part of the goods must in terms of that subsection be regarded as having been cleared for home use.

¹⁸⁴ For tax consequences if goods are regarded as having been cleared for home use, see section **150**; for other consequences of non-compliance with customs procedures, see sections **127**.

When goods under warehousing procedure may be regarded as having been cleared for home use

295. (1) The customs authority may direct that imported goods under the warehousing procedure must for tax purposes be regarded as having been cleared for home use in terms of Chapter **10**¹⁸⁵ if –

- (a) a provision of this Act applicable to warehousing or a condition of the license of the warehouse is contravened or not complied with in respect of the goods;
- (b) the goods are removed from the warehouse except in any of the circumstances referred to in section **291**(1) or **292**(1); or
- (c) a demand in terms of section **291**(2)(a) or **292**(2)(a) in relation to those goods is not complied with.

(2) When applying subsection (1) to any goods under the warehousing procedure in circumstances where paragraph (a), (b) or (c) of that subsection pertains only to a part of the goods, only that part of the goods may in terms of that subsection be regarded as having been cleared for home use.

Notification of closure of public warehouse

296. Before closing a public warehouse in terms of section **616**, the Commissioner must give every person who has deposited goods in that warehouse 30 days written notice of the closure of the warehouse.

Rules to facilitate implementation of this Chapter

297. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

- (a) the format and contents of applications for permissions in terms of section **270**;
- (b)

NOTE: This clause will be enhanced after consideration of requirements of subordinate legislation and based upon comments received and

Offences in terms of this Chapter

298. (1) A person is guilty of an offence if that person –

- (a) contravenes or fails to comply with section **277**(1) or (2), **283**, **284**(1) or (2), **285**(2), **290**(1), **291**(1), **292**(1), or **293**(1);

¹⁸⁵ For tax consequences if goods are regarded as having been cleared for home use, see section **150**; for other consequences of non-compliance with customs procedures, see sections **127**.

- (b) fails to comply with a demand or order in terms of section **291(3)** or **292(4)**; or
- (c) diverts goods cleared for warehousing for home use.

(2) A person who cleared goods for warehousing is guilty of an offence if that person contravenes or fails to comply with section **279(1)** or (2).

(3) A licensee of a customs warehouse is guilty of an offence if that person contravenes or fails to comply with section **286(1)**, **287(1)**, **288** or **289**.

CHAPTER 15
TAX FREE SHOP PROCEDURE

Part 1: Introductory provisions

Purpose of this Chapter

- 299.** The purpose of this Chapter is to regulate the tax free shop procedure, including –
- (a) the clearance and release of goods not in free circulation for supply to tax free shops;
 - (b) the receipt of goods, whether or not in free circulation, in tax free shops; and
 - (c) the sale and removal of goods from tax free shops.

Tax free shop procedure¹⁸⁶

- 300.** The tax free shop procedure is a customs procedure that allows –
- (a) 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; and
 - (b) the goods so sold to be treated as accompanied baggage of such persons.

Commencement and completion of tax free shop procedure

- 301.** (1) Goods not in free circulation come under the tax free shop procedure when the goods are cleared for supply to a tax free shop in accordance with Part 2, and goods in free circulation come under the tax free shop procedure when the goods are received in a tax free shop in accordance with Part 3. The tax free shop procedure is, subject to subsection (2), completed when the goods are sold from the shop and –
- (a) if sold to a person in the process of leaving the Republic, exported from the Republic; or
 - (b) if sold to a person having entered the Republic, declared in terms of section 93(1)(b) to the customs authority.

(2) The tax free shop procedure, in relation to any goods, ends before its completion if –

- (a) the goods before completion of the procedure are cleared and released for another permissible customs procedure or for home use; or
- (b) completion of the procedure is interrupted by an occurrence referred to in section 126(2).

¹⁸⁶ For tax status of goods under the tax free shop procedure, see section 141.

Part 2: Clearance and release of goods not in free circulation for supply to tax free shops

Supply of goods not in free circulation to tax free shops

302. Goods not in free circulation may not be received in a tax free shop unless those goods have been cleared and released for supply to that tax free shop.¹⁸⁷

General clearance and release provisions to be followed except where provided otherwise

303. (1) The general clearance and release provisions contained in Chapters 7 and 9 must be followed in respect of the clearance and release of goods not in free circulation for supply to tax free shops except to the extent that those provisions are modified, qualified or departed from in this Chapter.

(2) In the event of any inconsistency between a provision of this Chapter and Chapter 7 or 9, the provision of this Chapter prevails.

Persons entitled to submit tax free shop clearance declarations

304. Only the following persons may submit clearance declarations and supporting documents to clear goods for supply to a tax free shop:¹⁸⁸

- (a) the importer of the goods;
- (b) the owner of the goods or other person who has the right to dispose of the goods;
- (c) the licensee of the tax free shop; or
- (d) a customs broker referred to in section 159(1)(a)(ii).

Contents of tax free shop clearance declarations

305. A tax free shop clearance declaration must, in addition to the information required in terms of section 160, state –

- (a) the customs code of the tax free shop to which the goods are to be supplied; and
- (b) the name of the licensee of the shop.

Diversions

306. Goods cleared for supply to a tax free shop must be delivered to the tax free shop indicated in the clearance declaration, and no person may, without the permission of the

¹⁸⁷ Goods not in free circulation which have been released by the customs authority for supply to a tax free shop remain in terms of section 29 subject to customs control despite such release.

¹⁸⁸ See section 159(1)(a)(i).

customs authority, divert goods cleared for supply to a tax free shop to any place other than the tax free shop indicated in the clearance declaration.

Part 3: Receipt, sale and removal of goods in tax free shops

Goods that may be sold in tax free shops

307. Any goods may be kept, displayed for sale or sold in a tax free shop, provided that Part 2 is complied with in relation to the supply of goods not in free circulation to a tax free shop.

Persons to whom goods may be sold in tax free shops

308. Goods may be sold in a tax free shop only to –

- (a) travellers and crew –
 - (i) about to depart from the sea, air or rail travellers terminal or land border-post where the tax free shop is situated on board a foreign-going vessel or aircraft, cross-border train or vehicle to a destination outside the Republic; and
 - (ii) holding valid boarding passes or other documents indicating that they are about to undertake the voyage to such destination, as may be prescribed by rule;¹⁸⁹ or
- (b) travellers and crew –
 - (i) having arrived at the sea, air or rail travellers terminal or land border-post where the tax free shop is situated on board a foreign-going vessel or aircraft, cross-border train or vehicle from a place outside the Republic; and
 - (ii) holding valid boarding passes or other documents indicating that they arrived at that terminal or land border-post from a place outside the Republic, as may be prescribed by rule.

Issuing of sales invoices

309. No goods may be sold from a tax free shop unless a sales invoice containing such information as may be prescribed by rule has been issued to the purchaser in respect of the sale.

¹⁸⁹ Goods sold in a tax free shop to persons referred to in section 308 are accompanied baggage to which Chapter 6 applies. Chapter 17 regulating the clearance of goods for export from the Republic does not apply to accompanied baggage which persons have with them when leaving the Republic. See section 355(3).

Off-site outlets

310. (1) The licensee of a tax free shop may for the purpose of promoting sales establish retail outlets for the tax free shop in other locations outside the sea, air or rail travellers terminal or land border-post in which the shop is situated, provided that –

- (a) the customs authority is informed, in writing, of the establishment of the outlet at least 30 days in advance;
- (b) the customs authority may limit the number of off-site outlets that a tax free shop may establish;
- (c) the outlet is only used for the purpose of taking orders;
- (d) the delivery or pick-up of goods ordered from an off-site outlet may only take place at the tax free shop;
- (e) the outlet is located within the area served by the same Customs Office as the tax free shop;
- (f) the outlet is secure and meets the standards as may be prescribed by rule;
- (g) the transfer of goods for display purposes between the tax free shop and the outlet takes place in accordance with such procedures and accounting documents as may be prescribed by rule; and
- (h) the liability for the payment of any tax on goods in the tax free shop and in the outlet remain with the licensee of the tax free shop.

(2) Goods transferred for display purposes in terms of subsection (1)(g) must be regarded as forming part of the goods in the tax free shop.

Maximum period for which goods may remain in tax free shops

311. No goods supplied to a tax free shop for sale in the shop may remain in the shop for longer than –

- (a) 12 months from the date of receipt of the goods in the shop, or in the case of goods cleared in terms of Part 2, from the date of clearance of the goods; or
- (b) an extended period granted in terms of section 846.

Removal of goods from tax free shops

312. Goods may be removed from a tax free shop only –

- (a) if sold to a traveller or crew member referred to in section 308;
- (b) if sold to another person, after cleared and released for home use and upon payment of any applicable tax that may be payable on the goods;
- (c) after cleared and released for export for the purpose of returning the goods to a supplier of the goods situated outside the Republic;

- (d) for transfer to another tax free shop;
- (e) for transfer for display purposes to an off-site outlet of that tax free shop;
- (f) if abandoned to the Commissioner;
- (g) to be destroyed under customs supervision; or
- (h) under any other circumstance approved by the customs authority.

Manipulation, alteration or combination of goods in tax free shops

313. No goods in a tax free shop may for the purpose of display or sale be manipulated, altered or combined with another article to form a new or different product.

Part 4: Accountability for goods in tax free shops

Inventory control of goods in tax free shops

314. The licensee of a tax free shop must establish and maintain an inventory control system¹⁹⁰ complying with any requirements as may be prescribed by rule or approved by the customs authority to reflect –

- (a) the weekly, monthly and annual quantities of goods –
 - (i) received in the tax free shop, distinguishing between –
 - (aa) goods cleared and released for supply to the shop in terms of Part 2;
 - and
 - (bb) goods that were in free circulation for which no clearance and release were necessary;
 - (ii) sold from the tax free shop; and
 - (iii) removed from the tax free shop for each of the purposes listed in section 312;
- (b) the date of receipt of the goods in the tax free shop, the date of sale and the date of removal;
- (c) monthly and year-end balances of all unsold goods in the tax free shop;
- (d) any goods to which section 316, 317, 318 or 319 was applied; and
- (e) any other matter as may be prescribed by rule.

Monthly returns

315. (1) The licensee of a tax free shop must submit to the customs authority monthly returns reflecting –

- (a) all goods received in the tax free shop during the previous month, distinguishing between –
 - (i) goods cleared and released for supply to the shop in terms of Part 2; and

¹⁹⁰ See section 853 for computerized systems.

- (ii) goods that were in free circulation for which no clearance and release were necessary;
- (b) all goods sold from the tax free shop during the previous month;
- (c) all goods removed from the tax free shop during the previous month for each of the purposes listed in section **312**;
- (d) any damaged or non-sellable goods received in, or removed for disposal from, the tax free shop during the previous month;
- (e) any goods damaged, destroyed, lost or unaccounted for during the previous month;
- (f) any goods to which section **316**, **317**, **318** or **319** was applied; and
- (g) any other matter as may be prescribed by rule.

(2) Goods cleared for supply to a tax free shop must be delivered to the tax free shop indicated in the clearance declaration, and no person may, without the permission of the customs authority, divert goods cleared for supply to a tax free shop to any place other than the tax free shop indicated in the clearance declaration.

Part 5: Other matters

When goods under tax free shop procedure must be regarded as having been cleared for home use

316. (1) Goods under the tax free shop procedure that were not in free circulation when cleared for the tax free shop procedure must for tax purposes be regarded as having been cleared for home use in terms of Chapter **10**¹⁹¹ to the extent that the goods –

- (a) are not delivered to the tax free shop in accordance with section **306**;
- (b) are diverted for home use;
- (c) are used or sold as samples, perfume testers or other items used for promoting sales in the shop; or
- (d) are damaged, destroyed, lost or unaccounted for and it is not proved in accordance with Part **1** of Chapter **25** –
 - (i) that the goods were damaged, destroyed, lost or unaccounted for due to a cause set out in section **520(1)**, **521(1)**, **522(1)** or **523(1)**; and
 - (ii) in the case of lost goods, that the goods, after having been lost, were not diverted for home use or have not gone into home use in any other way.

(2) When applying subsection (1) to any goods under the tax free shop procedure in circumstances where paragraph (a), (b), (c) or (d) of that subsection pertains only to a part

¹⁹¹ For tax consequences if goods are regarded as having been cleared for home use, see section **150**; for other consequences of non-compliance with customs procedures, see sections **127**.

of the goods, only that part of the goods must in terms of that subsection be regarded as having been cleared for home use.

When goods under tax free shop procedure may be regarded as having been cleared for home use

317. (1) The customs authority may direct that goods under the tax free shop procedure that were not in free circulation when cleared for the tax free shop procedure must for tax purposes be regarded as having been cleared for home use in terms of Chapter **10**¹⁹² if –

- (a) a provision of this Act applicable to tax free shops or a condition of the license of the tax free shop is contravened or not complied with in respect of the goods;
- (b) the goods are sold or dealt with otherwise than in accordance with this Chapter;
- (c) the goods are kept in the shop for a period longer than the period applicable to the goods in terms of section **311**; or
- (d) the goods are manipulated, altered or combined with another article in contravention of section **313**.

(2) When applying subsection (1) to any goods under the tax free shop procedure in circumstances where paragraph (a), (b), (c) or (d) of that subsection pertains only to a part of the goods, only that part of the goods may in terms of that subsection be regarded as having been cleared for home use.

When goods under tax free shop procedure must be regarded as having reverted to free circulation

318. (1) Goods under the tax free shop procedure that were in free circulation when supplied to the tax free shop must for tax purposes be regarded as having reverted to free circulation¹⁹³ if the goods –

- (a) are diverted for home use;
- (b) are used or sold as samples, perfume testers or other items used for promoting sales in the shop; or
- (c) are damaged, destroyed, lost or unaccounted for and it is not proved in accordance with Part 1 of Chapter-**25** –
 - (i) that the goods were damaged, destroyed, lost or unaccounted for due to a cause set out in section **520(1)**, **521(1)**, **522(1)** or **523(1)**; and

¹⁹² For tax consequences if goods are regarded as having been cleared for home use, see section **150**; for other consequences of non-compliance with customs procedures, see sections **127**.

¹⁹³ For tax consequences if goods are regarded as having reverted to free circulation, see section **154**; for other consequences of non-compliance with customs procedures, see sections **127**.

- (ii) in the case of lost goods, that the goods, after having been lost, were not diverted for home use or have not gone into home use in any other way.

(2) When applying subsection (1) to any goods under the tax free shop procedure in circumstances where paragraph (a), (b) or (c) of that subsection pertains only to a part of the goods, only that part of the goods must in terms of that subsection be regarded as having reverted to free circulation.

When goods under tax free shop procedure may be regarded as having reverted to free circulation

319. (1) The customs authority may direct that goods under the tax free shop procedure that were in free circulation when supplied to the tax free shop must for tax purposes be regarded as having reverted to free circulation¹⁹⁴ if –

- (a) a provision of this Act applicable to tax free shops or a condition of the license of the tax free shop is contravened or not complied with in respect of the goods;
- (b) the goods are sold or dealt with otherwise than in accordance with this Chapter;
- (c) the goods are kept in the shop for a period longer than the period applicable to the goods in terms of section **311**; or
- (d) the goods are manipulated, altered or combined with another article in contravention of section **313**.

(2) When applying subsection (1) to any goods under the tax free shop procedure in circumstances where paragraph (a), (b), (c) or (d) of that subsection pertains only to a part of the goods, only that part of the goods may in terms of that subsection be regarded as having reverted to free circulation.

Rules to facilitate implementation of this Chapter

320. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

- (a) conditions and procedures for the sale of goods tax free to diplomats representing other countries in the Republic in special shops for diplomats;
- (b) limits on the number of special shops for diplomats;

¹⁹⁴ For tax consequences if goods are regarded as having reverted to free circulation, see section **154**; for other consequences of non-compliance with customs procedures, see sections **127**.

- (c) the application of provisions of this Chapter to special shops for diplomats;
- (d)

NOTE: This clause will be enhanced after consideration of requirements of subordinate legislation and based upon comments received

Offences in terms of this Chapter

321. (1) A person is guilty of an offence if that person contravenes or fails to comply with section **306**.

(2) The licensee of a tax free shop is guilty of an offence if that person contravenes or fails to comply with section **302(1), 308, 309, 310(1), 311, 312, 313, 314** or **315**.

CHAPTER 16 STORES PROCEDURE

Part 1: Introductory provisions

Purpose of this Chapter

- 322.** The purpose of this Chapter is to regulate the stores procedure, including –
- (a) the reporting of stores on board foreign-going vessels, foreign-going aircraft and cross-border trains entering the Republic;
 - (b) the clearance and release for the stores procedure of goods taken on board such vessels, aircraft or trains as stores for the vessel, aircraft or train; and
 - (c) the use of goods under the stores procedure on such vessels, aircraft or trains whilst in the Republic.

Stores procedure¹⁹⁵

- 323.** (1) The stores procedure is a customs procedure that allows –
- (a) goods imported into the Republic on board a foreign-going vessel, foreign-going aircraft or cross-border train referred to in subsection (2) as stores for that vessel, aircraft or train to be –
 - (i) used in the Republic on board that vessel, aircraft or train as stores for that vessel, aircraft or train without complying with any home use clearing formalities;¹⁹⁶ or
 - (ii) exported from the Republic on board that vessel, aircraft or train as stores for that vessel, aircraft or train without complying with any export clearing formalities;¹⁹⁷ or
 - (b) goods to be taken in the Republic on board a foreign-going vessel or aircraft or cross-border train referred to in subsection (2) as stores for that vessel, aircraft or train and –
 - (i) to transport the goods to that vessel, aircraft or train without complying with any transit clearing formalities, in the case of imported goods;
 - (ii) to use those goods in the Republic on board that vessel, aircraft or train as stores for that vessel, aircraft or train without complying with any home use clearing formalities, in the case of imported goods; or

¹⁹⁵ For tax status of goods under the stores procedure, see section **142**.

¹⁹⁶ Such goods are in terms of section **109** excluded from import clearance requirements.

¹⁹⁷ Such goods are in terms of section **112** excluded from export clearance requirements.

- (iii) to export those goods from the Republic on board that vessel, aircraft or train as stores for that vessel, aircraft or train without complying with any export clearing formalities.¹⁹⁸

(2) The stores procedure is available only in the case of foreign-going vessels, foreign-going aircraft or cross-border trains engaged in the transport of goods or travellers for reward –

- (a) to the Republic from a place outside the Republic; or
- (b) from the Republic to a place outside the Republic.

(3) Goods imported into or to be exported from the Republic as stores for other foreign-going vessels, foreign-going aircraft or cross-border trains, and goods imported into or to be exported on board a vehicle entering or leaving the Republic as stores for that vehicle, must be treated as ordinary goods imported into or to be exported from the Republic.¹⁹⁹

Commencement and completion of stores procedure

324. (1) Goods imported on board a foreign-going vessel, foreign-going aircraft or cross-border train referred to in section **323**(2) as stores for that vessel, aircraft or train, come under the stores procedure when those goods enter the Republic, and goods taken on board such a vessel, aircraft or train in the Republic as stores for that vessel, aircraft or train, come under the stores procedure when the goods are cleared for supply as stores to that vessel, aircraft or train in terms of Part **3**. The stores procedure is, subject to subsection (2), completed when the goods leave the Republic on board that vessel, aircraft or train.

- (2) The stores procedure, in relation to any goods, ends before its completion if–
- (a) the goods are used as stores on that vessel, aircraft or train whilst in the Republic;
 - (b) the goods before completion of the procedure are cleared and released for a permissible customs procedure or for home use; or
 - (c) completion of the procedure is interrupted by an occurrence referred to in section **126**(2).

¹⁹⁸ Chapter **17** regulating the clearance of goods for export from the Republic does not apply to the export from the Republic of goods cleared and released for the stores procedure. See section **355**(3).

¹⁹⁹ This means that sections **108** and **111** must be applied to these goods.

Part 2: Stores imported on board foreign-going vessels or aircraft or cross-border trains

Application of this Part

325. This Part applies to all goods imported into the Republic on board a foreign-going vessel, foreign-going aircraft or cross-border train referred to in section **323(2)** as stores for that vessel, aircraft or train.

Reporting of stores on board arriving foreign-going vessels or aircraft

326. (1) Within 30 minutes after the arrival of a foreign-going vessel referred to in section **323(2)** at a customs seaport, and within 15 minutes after the arrival of a foreign-going aircraft referred to in section **323(2)** at a customs airport, all goods under the stores procedure on board that vessel or aircraft must be reported to the Customs Office serving that seaport or airport.²⁰⁰

(2) A stores report in terms of subsection (1) must be in such format and contain such information as may be prescribed by rule, and must, subject to subsection (3), be submitted –

- (a) together with or as part of the arrival report for that vessel or aircraft required in terms of section **45**; and
- (b) whether or not the vessel or aircraft carries goods or travellers.

(3) The customs authority may allow a stores report in terms of subsection (1) for an aircraft to be made orally by the operator of the aircraft or in any other manner approved by the customs authority.

Reporting of stores on board arriving cross-border trains

327. (1) Within 30 minutes after the arrival of a cross-border train referred to in section **323(2)** at a railway station prescribed by rule, all goods under the stores procedure on board that train must be reported to the Customs Office serving that railway station.

(2) A stores report in terms of subsection (1) must be in such format and contain such information as may be prescribed by rule, and must be submitted –

- (a) by the operator of the train unless the carrier in charge of the train transmits the report electronically in accordance with section **849**;

²⁰⁰ All stores on board foreign-going vessels, foreign-going aircrafts or cross-border trains are in terms of section **29** subject to customs control whilst that vessel, aircraft or train is in the Republic.

- (b) together with or as part of the arrival report for that train required in terms of section 53; and
- (c) whether or not the train carries goods or travellers.

Unreported stores

328. The customs authority may seize any goods under the stores procedure found on board a foreign-going vessel or aircraft or cross-border train referred to in section 322(2) or, in the case of such a vessel or train, in the personal possession of a crew member that have not been reported as required in terms of section 326 or 327.

Sealing or securing of stores

329. (1) When a foreign-going vessel or aircraft or cross-border train referred to in section 323(2) arrives at a location where a stores report must be submitted in terms of section 326 or 327, a customs officer may seal or otherwise secure –

- (a) any goods under the stores procedure on board the vessel, aircraft or train; and
- (b) any stores referred to in paragraph (a) in the personal possession of a crew member on board the vessel or train if in excess of a quantity prescribed by rule for the personal use of crew members on board vessels or trains.

(2) No person may, without permission of the customs authority, break any seal placed in terms of subsection (1) on any stores or interfere with any stores otherwise secured in terms of that subsection before –

- (a) the vessel or aircraft has departed from the relevant seaport or airport and all physical contact with that seaport or airport has ceased; or
- (b) the train has left the Republic.

(3) The operator of a vessel, aircraft or train is responsible for ensuring that stores sealed or otherwise secured in terms of subsection (1) are not used or dealt with in any unauthorised way.

(4) This section does not apply to stores if their tax free status is relinquished and any tax payable on those stores is paid to the Commissioner.

Part 3: Clearance and release of stores taken on board in Republic

Application of this Part

330. This Part applies to all goods taken in the Republic on board a foreign-going vessel, foreign-going aircraft or cross-border train referred to in section 323(2) as stores for that vessel, aircraft or train.

Goods taken on board as stores first to be cleared and released as stores

331. (1) No goods may be taken on board a foreign-going vessel, foreign-going aircraft or cross-border train referred to in section **323(2)** as stores for that vessel, aircraft or train unless the goods have been cleared and released as stores for that vessel, aircraft or train under the stores procedure.

(2) Subsection (1) does not apply to goods taken on board a foreign-going vessel, foreign-going aircraft or cross-border train as stores for that vessel, aircraft or train in terms of a clearance and release for outright export.

General clearance and release provisions to be followed except where provided otherwise

332. (1) The general clearance and release provisions contained in Chapters **7** and **9** must be followed in respect of the clearance and release of goods to be taken on board a foreign-going vessel, foreign-going aircraft or cross-border train referred to in section **323(2)** as stores for that vessel, aircraft or train, except to the extent that those provisions are modified, qualified or departed from in this Chapter.

(2) In the event of any inconsistency between a provision of this Chapter and Chapter **7** or **9**, the provision of this Chapter prevails.

Persons entitled to submit stores clearance declarations

333. Only the following persons²⁰¹ may submit stores clearance declarations and supporting documents to clear goods as stores for foreign-going vessels or aircraft or cross-border trains referred to in section **323(2)**:

- (a) the operator of the vessel, aircraft or train;
- (b) the carrier in charge of the vessel, aircraft or train;
- (c) the person who supplies the goods to the vessel, aircraft or train; or
- (d) a customs broker referred to in section **159(1)(a)(ii)**.

Contents of stores clearance declarations

334. A stores clearance declaration must, in addition to the information required in terms of section **160**, state –

- (a) that the goods will be taken on board as stores for a voyage; and
- (b) particulars of –
 - (i) the vessel, aircraft or train for which the stores are needed;

²⁰¹ See section **159(1)(a)(i)**.

- (ii) the voyage schedule of the vessel, aircraft or train and expected duration of the voyage, if this information has not already been submitted to the customs authority; and
- (iii) the quantity of unused stores of the kind in question on board the vessel, aircraft or train at the time of submission of the stores clearance declaration, if this information has not already been submitted to customs authorities.

Release to be given only for quantities of stores actually needed for voyage

335. (1) The customs authority may determine the quantity of goods reasonably needed to be taken on board a foreign-going vessel, foreign-going aircraft or cross-border train referred to in section **323**(2) as stores for any intended voyage, taking into account all relevant factors including –

- (a) the quantities needed for the provision of on board services;
- (b) the functional needs of the vessel, aircraft or train;
- (c) the operational needs of the vessel, aircraft or train;
- (d) the length and duration of the voyage;
- (e) the number of travellers and crew on board;
- (f) the needs of travellers and crew; and
- (g) the amount of unused stores on board the vessel, aircraft or train at the time of submission of the stores clearance declaration.

(2) Release may be given in terms of section **331** only for quantities as determined by the customs authority in terms of subsection (1).

Acknowledgement of receipt of stores taken on board

336. The operator of a foreign-going vessel, foreign-going aircraft or cross-border train referred to in section **323**(2) must in respect of all stores taken on board the vessel, aircraft or train in the Republic issue a receipt containing the information as may be prescribed by rule.

Taking of prohibited and restricted goods on board vessels, aircraft and trains as stores

337. (1) No prohibited goods may be taken on board a foreign-going vessel, foreign-going aircraft or cross-border train as stores for that vessel, aircraft or train.

(2) Restricted goods may be taken on board a foreign-going vessel, foreign-going aircraft or cross-border train as stores for that vessel, aircraft or train only in accordance with the legislation restricting the possession or export of those goods.

Exemptions from stores clearance procedures

338. The customs authority may for good reason exempt a person from compliance with a provision of this Part.²⁰²

***Part 4: Control of stores on board foreign-going vessels and aircraft and
cross-border trains***

Application of this Part

339. This Part applies to all goods under the stores procedure.

Issue of stores on board foreign-going vessels whilst in customs seaports

340. (1) The customs authority may give permission to the operator of a foreign-going vessel referred to in section 323(2) to issue goods under the stores procedure on board the vessel for use on the vessel during its stay at a customs seaport, in such quantities as are reasonably required taking into account all relevant factors, including –

- (a) the number of travellers and crew on board; and
- (b) the length of time the vessel will stay in that seaport.

(2) Alcohol and tobacco products issued from the vessel's stores in terms of subsection (1) for use on the vessel by travellers and crew may not exceed the standard quantities prescribed by rule.

(3) The customs authority may give permission to the operator of a foreign-going vessel to issue additional quantities of goods under the stores procedure on board the vessel

-
- (a) for use on the vessel during its stay at a customs seaport –
 - (i) if departure of the vessel is delayed; or
 - (ii) if the vessel is to remain in the customs seaport for a period longer than four days; or
 - (b) for the purpose of a function on the vessel during its stay at that seaport.

(4) The operator of a foreign-going vessel must keep record of all stores issued in terms of this section for use on the vessel at a customs seaport, in a manner as may be prescribed by rule.

²⁰² See section 852 for granting of exemptions on conditions.

Tax free items for sale on board to travellers and crew

341. Goods under the stores procedure on board a foreign-going vessel or aircraft or cross-border train referred to in section **323(2)** as items for sale to travellers and crew on board the vessel, aircraft or train, have a tax free status²⁰³ only if the vessel or aircraft falls within a category of foreign-going vessels or aircraft or cross-border trains prescribed by rule as vessels, aircraft or trains entitled to carry tax-free items for sale on board to travellers and crew.

Removal of stores from foreign-going vessels or aircraft or cross-border trains

342. (1) No goods under the stores procedure may be removed from a foreign-going vessel or aircraft or cross-border train referred to in section **323(2)** –

- (a) unless the goods –
 - (i) are cleared and released for another permissible customs procedure;
 - (ii) are cleared and released for home use, in the case of goods that were on board the vessel, aircraft or train when the vessel, aircraft or train entered the Republic or that were not in free circulation when cleared in terms of Part **3** as stores for the vessel, aircraft or train;²⁰⁴ or
 - (iii) revert to free circulation in terms of section **345(1)(b)**; or
- (b) except for –
 - (i) securing the goods in accordance with section **343**;
 - (ii) repairing any damaged goods;
 - (iii) disposal as waste; or
 - (iv) another purpose approved by the customs authority.

(2) Goods under the stores procedure may be cleared for transshipment or international transit in terms of subsection (1)(a)(i) only –

- (a) to a foreign-going vessel or aircraft 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 as stores for that vessel or aircraft; and
- (b) in quantities determined by the customs authority in accordance with section **335**.

(3) No clearance or release in terms of Part **2** is needed when stores are returned to the vessel, aircraft or train from which those goods were removed in terms of subsection (1)(b)(i), (ii) or (iii).

²⁰³ See section **142** for tax status of goods under the stores procedure.

²⁰⁴ See also section **201**.

Securing of stores by removal from vessels or aircraft

343. The customs authority may order or allow the removal from a foreign-going vessel or aircraft referred to in section **323(2)** of any goods under the stores procedure for storage elsewhere until the vessel or aircraft is ready to depart, if –

- (a) the vessel or aircraft for any reason is to remain at a specific location for a period longer than scheduled; and
- (b) such storage is necessary to ensure that those stores are not dealt with in any unauthorised way.

Trading in stores in possession of crew members

344. Goods under the stores procedure in the possession of a crew member of a foreign-going vessel or aircraft or cross-border train referred to in section **323(2)** may not be sold, otherwise traded or taken off the vessel, aircraft or train without the permission²⁰⁵ of the customs authority.

Unused stores on board foreign-going vessels or aircraft no longer bound for foreign destinations

345. If a foreign-going vessel or aircraft or cross-border train referred to in section **323(2)** is no longer bound for a destination outside the Republic, any unused stores on board the vessel, aircraft or train –

- (a) must be cleared and released for another permissible customs procedure or for home use, in the case of goods that were on board the vessel, aircraft or train when the vessel, aircraft or train entered the Republic or that were not in free circulation when cleared in terms of Part **3** as stores for the vessel, aircraft or train; or
- (b) revert to free circulation, in the case of goods that were in free circulation when cleared in terms of Part **3** as stores for the vessel, aircraft or train.²⁰⁶

Reporting of stores on departing foreign-going vessels or aircraft

346. (1) After a foreign-going vessel or aircraft referred to in section **323(2)** departs from a customs seaport or airport, all goods under the stores procedure on board that vessel or aircraft, excluding tax free items for sale to travellers and crew on board the vessel or aircraft, must be reported to the Customs Office serving that seaport or airport.²⁰⁷

²⁰⁵ See section **852** for granting of permissions on conditions.

²⁰⁶ If these goods revert to free circulation the clearance for the stores procedure must be withdrawn and section **154** becomes applicable to the goods.

²⁰⁷ Chapter **17** regulating the clearance of goods for export from the Republic does not apply to the export of goods as stores. See section **355(3)**.

(2) A stores report in terms of subsection (1) must be in a format and contain such information as may be prescribed by rule, and must, subject to subsection (3), be submitted –

- (a) by the operator of the vessel or aircraft unless the carrier in charge of the vessel or aircraft transmits the report electronically in accordance with section **849**;
- (b) together with or as part of the departure report for that vessel or aircraft required in terms of section **48**; and
- (c) whether or not the vessel or aircraft carries goods or travellers.

(3) The customs authority may allow a stores report in terms of subsection (1) for an aircraft to be made orally by the operator of the aircraft or in any other manner approved by the customs authority.

Reporting of stores on board departing cross-border trains

347. (1) After a cross-border train referred to in section **323**(2) departs from a railway station prescribed by rule, all goods under the stores procedure on board that train must be reported to the Customs Office serving that railway station.

(2) A stores report in terms of subsection (1) must be in such format and contain such information as may be prescribed by rule, and must be submitted –

- (a) by the operator of the train unless the carrier in charge of the train transmits the report electronically in accordance with section **849**;
- (b) together with or as part of the departure report for that train required in terms of section **55**; and
- (c) whether or not the train carries goods or travellers.

Aborted voyages

348. (1) If after having left the Republic for a destination outside the Republic, a foreign-going vessel or aircraft referred to in section **323**(2) returns to the Republic, goods that were on board the vessel or aircraft under the stores procedure must be dealt with as follows:

- (a) Goods that were on board the vessel or aircraft when the vessel or aircraft entered the Republic or that were not in free circulation when cleared in terms of Part **3** as stores for that vessel or aircraft, must for tax purposes be regarded as having been cleared for home use in terms of Chapter **10**²⁰⁸ to the extent that those goods –

²⁰⁸ For tax consequences if goods are regarded as having been cleared for home use, see section **150**.

- (i) if the vessel or aircraft returned to the Republic due to unavoidable circumstances –
 - (aa) were used or purportedly used during the aborted voyage in excess of a quantity which could reasonably have been used on the vessel or aircraft taking into account the duration and circumstances of the aborted voyage; or
 - (bb) are lost or unaccounted for; or
 - (ii) if the vessel or aircraft returned to the Republic due to avoidable circumstances –
 - (aa) were used or purportedly used during the aborted voyage; or
 - (bb) are lost or unaccounted for.
- (b) Goods that were in free circulation when cleared in terms of Part 3 as stores for that vessel or aircraft, must for tax purposes be regarded as having reverted to free circulation²⁰⁹ to the extent that those goods –
- (i) if the vessel or aircraft returned to the Republic due to unavoidable circumstances –
 - (aa) were used or purportedly used during the aborted voyage in excess of a quantity which could reasonably have been used on the vessel or aircraft taking into account the duration and circumstances of the aborted voyage; or
 - (bb) are lost or unaccounted for; or
 - (ii) if the vessel or aircraft returned to the Republic due to avoidable circumstances –
 - (aa) were used or purportedly used during the aborted voyage; or
 - (bb) are lost or unaccounted for.

When goods under stores procedure must be regarded as having been cleared for home use

349. (1) Goods under the stores procedure that were on board a foreign-going vessel or aircraft or cross-border train referred to in section 323(2) when the vessel, aircraft or train entered the Republic or that were not in free circulation when cleared in terms of Part 3 as stores for that vessel, aircraft or train, must for tax purposes be regarded as having been cleared for home use in terms of Chapter 10²¹⁰ –

- (a) if the goods are used by –

²⁰⁹ For tax consequences if goods are regarded as having reverted to free circulation, see section 154.

²¹⁰ For tax consequences if goods are regarded as having been cleared for home use, see section 150; for other consequences of non-compliance with customs procedures, see sections 127.

- (i) travellers and crew members travelling on board such a vessel, aircraft or train only between places within the Republic;
 - (ii) persons performing duties on board such a vessel, aircraft or train only whilst the vessel, aircraft or train is in a customs seaport or airport or a railway terminal; or
 - (iii) guests on board such a vessel whilst in a customs seaport;
- (b) if a seal placed on the goods in terms of section **329** is broken or if the goods otherwise secured in terms of that section are interfered with in any unauthorised way;
- (c) if the goods are diverted for home use; or
- (d) if the goods are damaged, destroyed, lost or unaccounted for and it is not proved in accordance with Part **1** of Chapter **25** –
- (i) that the goods were damaged, destroyed, lost or unaccounted for due to a cause set out in section **520(1)**, **521(1)**, **522(1)** or **523(1)**; and
 - (ii) in the case of lost goods, that the goods, after having been lost, were not diverted for home use or have not gone into home use in any other way.

(2) When applying subsection (1) to any goods under the stores procedure in circumstances where paragraph (a), (b), (c) or (d) of that subsection pertains only to a part of the goods, only that part of the goods must in terms of that subsection be regarded as having been cleared for home use.

When goods under stores procedure may be regarded as having been cleared for home use

- 350.** (1) The customs authority may direct that goods under the stores procedure that were on board a foreign-going vessel or aircraft or cross-border train referred to in section **323(2)** when the vessel, aircraft or train entered the Republic or that were not in free circulation when cleared in terms of Part **3** as stores for that vessel, aircraft or train, must for tax purposes be regarded as having been cleared for home use in terms of Chapter **10**²¹¹ if –
- (a) a provision of this Act applicable to the stores procedure is contravened or not complied with in respect of those goods;
 - (b) the goods are not used in accordance with this Chapter as stores for the vessel, aircraft or train; or
 - (c) the goods are removed from the vessel, aircraft or train otherwise than in accordance with section **342(1)**.

²¹¹ For tax consequences if goods are regarded as having been cleared for home use, see section **150**; for other consequences of non-compliance with customs procedures, see sections **127**.

(2) When applying subsection (1) to any goods under the stores procedure in circumstances where paragraph (a), (b) or (c) of that subsection pertains only to a part of the goods, only that part of the goods may in terms of that subsection be regarded as having been cleared for home use.

When goods under stores procedure must be regarded as having reverted to free circulation

351. (1) Goods under the stores procedure that were in free circulation when cleared in terms of Part 3 as stores for a foreign-going vessel or aircraft or cross-border train referred to in section 323(2), must for tax purposes be regarded as having reverted to free circulation²¹² if the goods are –

- (a) used by –
 - (i) travellers and crew members travelling on board such a vessel, aircraft or train only between places within the Republic;
 - (ii) persons performing duties on board such a vessel, aircraft or train only whilst the vessel, aircraft or train is in a customs seaport or airport or a railway terminal; or
 - (iii) guests on board such a vessel whilst in a customs seaport; or
- (b) are damaged, destroyed, lost or unaccounted for and it is not proved in accordance with Part 1 of Chapter 25 –
 - (i) that the goods were damaged, destroyed, lost or unaccounted for due to a cause set out in section 520(1), 521(1), 522(1) or 523(1); and
 - (ii) in the case of lost goods, that the goods, after having been lost, were not diverted for home use or have not gone into home use in any other way.

(2) When applying subsection (1) to any goods under the stores procedure in circumstances where paragraph (a), (b) or (c) of that subsection pertains only to a part of the goods, only that part of the goods must in terms of that subsection be regarded as having reverted to free circulation.

When goods under stores procedure may be regarded as having reverted to free circulation

352. (1) The customs authority may direct that goods under the stores procedure that were in free circulation when cleared in terms of Part 3 as stores for a foreign-going vessel or

²¹² For tax consequences if goods are regarded as having reverted to free circulation, see section 154; for other consequences of non-compliance with customs procedures, see sections 127.

aircraft or cross-border train referred to in section 323 (2), must for tax purposes be regarded as having reverted to free circulation²¹³ if –

- (a) a provision of this Act applicable to the stores procedure is contravened or not complied with in respect of the goods;
- (b) the goods are not used in accordance with this Chapter as stores for the vessel, aircraft or train; or
- (c) the goods are removed from the vessel, aircraft or train otherwise than in accordance with section 342(1).

(2) When applying subsection (1) to any goods under the stores procedure in circumstances where paragraph (a), (b) or (c) of that subsection pertains only to a part of the goods, only that part of the goods may in terms of that subsection be regarded as having reverted to free circulation.

Part 5: Other matters

Rules to facilitate implementation of this Chapter

353. The Commissioner may in terms of section 842 make rules to facilitate the implementation of this Chapter, including rules prescribing –

- (a)

NOTE: This clause will be completed after consideration of subordinate legislation and based upon comments received

Offences in terms of this Chapter

354. (1) A person is guilty of an offence if that person contravenes or fails to comply with section 329(2), 342(1) or 344.

(2) The operator of a foreign-going vessel or aircraft is guilty of an offence if that person contravenes or fails to comply with section 326(1), 329(3), 331(1), 336, 337(1) or (2), 340(2) or (4), or 346(1).

²¹³ For tax consequences if goods are regarded as having reverted to free circulation, see section 154; for other consequences of non-compliance with customs procedures, see sections 127.

CHAPTER 17 EXPORT PROCEDURE

Part 1: Introductory provisions

Purpose and application of this Chapter

355. (1) The purpose of this Chapter is to regulate the clearance and release of goods for the export procedure.

- (2) This Chapter applies to goods cleared or to be cleared for –
- (a) outright export;
 - (b) export under –
 - (i) the temporary export procedure in terms of Chapter **18**; or
 - (ii) the outward processing procedure in terms of Chapter **21**; or
 - (c) export as inward processed compensating products under the inward processing procedure in terms of Chapter **19**.

- (3) This Chapter does not apply to goods –
- (a) exported under –
 - (i) the international transit procedure in terms of Chapter **11**;
 - (ii) the transshipment procedure in terms of Chapter **12**;
 - (iii) the temporary admission procedure in terms of Chapter **13**;
 - (iv) the tax free shop procedure in terms of Chapter **15**; or
 - (v) the stores procedure in terms of Chapter **16**; or
 - (b) exempted by section **112** from export clearance requirements.

Export procedure

356. The export procedure is the customs procedure that allows the export of goods from the Republic, excluding goods to which this Chapter does not apply.

Commencement and completion of export procedure

357. (1) Goods come under the export procedure when the goods are in terms of this Chapter cleared for export. The export procedure is, subject to subsection (2), completed when the goods are exported from the Republic.

- (2) The export procedure ends before its completion if –

- (a) the goods before completion of the procedure are cleared and released for a permissible customs procedure or for home use; or
- (b) completion of the procedure is interrupted by an occurrence referred to in section 126(2).

Part 2: Clearance and release of goods for export from Republic²¹⁴

General clearance and release provisions to be followed except where provided otherwise

358. (1) The general clearance and release provisions contained in Chapters 7 and 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.

(2) In the event of any inconsistency between a provision of this Chapter and Chapter 7 or 9, the provision of this Chapter prevails.

Persons entitled to submit export clearance declarations

359. Only the following persons²¹⁵ are entitled to submit clearance declarations and supporting documents to clear goods for the export procedure:

- (a) the exporter of the goods;
- (b) the owner of the goods or other person who has the right to dispose of the goods; or
- (c) a customs broker referred to in section 159(1)(a)(ii).

Contents of export clearance declarations

360. (1) An export clearance declaration must, in addition to the information required in terms of section 160, state the following:

- (a) the amount of any tax and the kind of tax paid on the goods and reclaimable on export of the goods (other than export tax);
- (b) the amount of any export tax payable on the goods, and the kind of export tax;
- (c) in the case of goods to be exported from the Republic –
 - (i) by sea, air or rail, the customs code of the licensed terminal where the goods will be loaded on board the foreign-going vessel, foreign-going aircraft or cross-border railway carriage in which the goods are to be exported from the Republic; or

²¹⁴ For tax status of goods cleared for outright export, see section 135.

²¹⁵ See section 159(1)(a)(i).

- (ii) by road, the customs code of the land border-post where the goods will be exported from the Republic;
- (d) in the case of goods that will be transported by road from a licensed terminal or depot, the customs code of –
 - (i) that terminal or depot; and
 - (ii) the licensed carrier that will transport the goods by road from that terminal or depot to the land border-post where the goods will be exported from the Republic;
- (e) whether any exchange control measures are applicable to the export of the relevant goods; and
- (f) the date, number and other particulars of any permit or other authorisation issued in terms of any legislation in respect of the export of the goods, if such a permit or authorisation is a requirement for the export of the goods.

Manner of submission of export clearance declarations

361. (1) An export clearance declaration must be submitted electronically in accordance with section **849**, except in the case of –

- (a) goods exported by a person exempted from electronic submission in terms of subsection (3);
- (b) vehicles (other than trucks and buses) departing from the Republic on their own power, and goods on board such vehicles; or
- (c) goods exported by a person on foot.

(2) Export clearance declarations in respect of goods and vehicles referred to in subsection (1)(a), (b) or (c) must be submitted in paper format, together with any required supporting documents, to the Customs Office serving the place of exit through which the goods are to be exported.

(3) The customs authority may exempt a person, other than an accredited exporter, from electronic submission of an export clearance declaration as required by subsection (1).²¹⁶

(4) The customs authority may permit²¹⁷ the oral reporting of goods being exported because of a medical emergency or disaster outside the Republic that threatens life, property or the environment.

²¹⁶ See section **852** for granting of exemptions on conditions or for specific period.

²¹⁷ See section **852** for granting of permissions on conditions or for specific period.

Time when export clearance declarations must be submitted²¹⁸

362. (1) An export clearance declaration, and any supporting documents if applicable, must be submitted to the customs authority –

- (a) if the goods are to be exported by sea, not later than 72 hours before the goods are delivered to the sea cargo terminal where the goods will be loaded on board the foreign-going vessel in which the goods are to be exported from the Republic;
- (b) if the goods are to be exported by air, not later than 24 hours before the goods are delivered to the air cargo terminal where the goods will be loaded on board the foreign-going aircraft in which the goods are to be exported from the Republic;
- (c) if the goods are to be exported by rail, not later than 48 hours before the goods are delivered to the licensed rail cargo terminal where the goods will be loaded on board a cross-border railway carriage in which the goods are to be exported from the Republic; or
- (d) if the goods are to be exported by road, not later than six hours before the vehicle in which the goods are to be exported reaches the land border-post where the goods will be exported.

(2) Subsection (1) (d) applies only to trucks and goods on board trucks.

(3) If goods are to be exported by sea, the goods must be delivered to the sea cargo terminal where the goods will be loaded on board the foreign-going vessel in which the goods are to be exported from the Republic at least 54 hours before the vessel departs from that terminal.

Lapsing of export clearance declarations

363. (1) An export clearance declaration lapses if the goods to which the declaration relates are not exported from the Republic within the period applicable to the goods in terms of section 111(3).

(2) If an export clearance declaration has lapsed, a fresh export clearance declaration may be submitted to the customs authority in respect of the goods.

Alternative clearance procedures for low risk goods

364. (1) The Commissioner may by rule determine –

- (a) any category of goods that have a low risk of tax evasion as goods that may be cleared for export under the export procedure otherwise than by way of export clearance declarations;

²¹⁸ See also section 111(2).

- (b) the type of documentation that must be used for the clearance of such goods for export;
- (c) the minimum information that must be contained in such document; and
- (d) the conditions on which such a clearance may be accepted.

(2) No goods may be cleared for export in terms of this section if –

- (a) the goods attract export tax;
- (b) the export of the goods give rise to a claim for the refund of tax other than export tax paid on the goods; or
- (c) the goods are required in terms of any legislation to be recorded for statistical purposes.

Time when goods may be released for export

365. (1) The customs authority may not release goods for export under the export procedure –

- (a) in the case of goods that will be exported by sea, air or rail, before the goods have been delivered to the licensed terminal where the goods will be loaded on board a foreign-going vessel, foreign-going aircraft or cross-border railway carriage in which the goods are to be exported; or
- (b) in the case of goods that will be exported by road, before the vehicle that will transport the goods out of the Republic has reached the land border-post where the goods will be exported.

(2) Subsection (1) does not apply to goods in a customs warehouse and such goods may whilst still in the warehouse be cleared and released for export under the export procedure.

Failure to export goods released for export

366. If goods cleared and released for export under the export procedure are not exported within the timeframes applicable to those goods in terms of section **111** –

- (a) the person who cleared the goods for export must immediately notify the customs authority of the failure to export the goods and the reasons for the failure; and
- (b) the customs authority may, whether notification in terms of paragraph (a) has been given or not –
 - (i) cancel or amend the release given in respect of the goods;
 - (ii) require the goods to be warehoused or secured in such other manner as the customs authority may determine pending the export of the goods; or
 - (iii) issue a direction in terms of section **368(1)(b)** or **370(1)(b)**.

Part 3: Tax consequences of non-compliance**When goods under export procedure must be regarded as having been cleared for home use**

367. (1) Goods under the export procedure that were not in free circulation when cleared in terms of Part 2 for export, must for tax purposes be regarded as having been cleared for home use in terms of Chapter 10²¹⁹ if the goods –

- (a) are diverted for home use; or
- (b) are damaged, destroyed, lost or unaccounted for and it is not proved in accordance with Part 1 of Chapter 25 –
 - (i) that the goods were damaged, destroyed, lost or unaccounted for due to a cause set out in section 520(1), 521(1), 522(1) or 523(1); and
 - (ii) in the case of lost goods, that the goods, after having been lost, were not diverted for home use or have not gone into home use in any other way.

(2) When applying subsection (1) to any goods under the export procedure in circumstances where paragraph (a) or (b) of that subsection pertains only to a part of the goods, only that part of the goods must in terms of that subsection be regarded as having been cleared for home use.

When goods under export procedure may be regarded as having been cleared for home use

368. (1) The customs authority may direct that goods under the export procedure that were not in free circulation when cleared in terms of Part 2 for export, must for tax purposes be regarded as having been cleared for home use in terms of Chapter 10²²⁰ if –

- (a) the goods are not exported within the timeframes applicable to the goods in terms of section 111; or
- (b) a provision of this Act applicable to the export procedure is contravened or not complied with in respect of those goods.

(2) When applying subsection (1) to any goods under the export procedure in circumstances where paragraph (a) or (b) of that subsection pertains only to a part of the goods, only that part of the goods may in terms of that subsection be regarded as having been cleared for home use.

²¹⁹ For tax consequences if goods are regarded as having been cleared for home use, see section 150; for other consequences of non-compliance with customs procedures, see sections 127.

²²⁰ For tax consequences if goods are regarded as having been cleared for home use, see section 150; for other consequences of non-compliance with customs procedures, see sections 127.

When goods under export procedure must be regarded as having reverted to free circulation

369. (1) Goods under the export procedure that were in free circulation when cleared in terms of Part 2 for export, must for tax purposes be regarded as having reverted to free circulation²²¹ if the goods are damaged, destroyed, lost or unaccounted for and it is not proved in accordance with Part 1 of Chapter 25 –

- (a) that the goods were damaged, destroyed, lost or unaccounted for due to a cause set out in section 520(1), 521(1), 522(1) or 523(1); and
- (b) in the case of lost goods, that the goods, after having been lost, were not diverted for home use or have not gone into home use in any other way.

(2) When applying subsection (1) to any goods under the export procedure in circumstances where that subsection pertains only to a part of the goods, only that part of the goods must in terms of that subsection be regarded as having reverted to free circulation.

When goods under export procedure may be regarded as having reverted to free circulation

370. (1) The Commissioner may direct that goods under the export procedure that were in free circulation when cleared in terms of Part 2 for export, must for tax purposes be regarded as having reverted to free circulation²²² if –

- (a) a provision of this Act applicable to the export procedure is contravened or not complied with in respect of the goods; or
- (b) not exported within the timeframes applicable to the goods in terms of section 111.

(2) When applying subsection (1) to any goods under the export procedure in circumstances where paragraph (a) or (b) of that subsection pertains only to a part of the goods, only that part of the goods may in terms of that subsection be regarded as having reverted to free circulation.

²²¹ For tax consequences if goods are regarded as having reverted to free circulation, see section 154; for other consequences of non-compliance with customs procedures, see sections 127.

²²² For tax consequences if goods are regarded as having reverted to free circulation, see section 154; for other consequences of non-compliance with customs procedures, see sections 127.

Part 4: Other matters**Goods loaded for export not to be off-loaded in Republic**

371. (1) Goods loaded on authority of a release given in terms of section **129**(1) on board a foreign-going vessel, foreign-going aircraft or cross-border railway carriage in which the goods are to be exported from the Republic may not be off-loaded in the Republic, except with the permission of the customs authority.

(2) Goods cleared and released for export and loaded on board a truck in which the goods will be exported from the Republic, may not be off-loaded in the Republic except with the permission of the customs authority.

Customs approved export secured arrangements

372. (1) The customs authority may on written application by an accredited exporter approve an arrangement submitted by that exporter for the secure export of goods by that exporter.

(2) A customs approved export secured arrangement must –

- (a) be designed to ensure that goods exported under the arrangement are packaged and transported securely and without interference to the sea, air or rail cargo terminal from where the goods are to be exported; and
- (b) comply with any conditions determined by the customs authority or as may be prescribed by rule.

(3) The customs authority may exempt²²³ from any of or all the provisions of this Chapter or Chapter **9** a person exporting goods from the Republic in terms of a customs approved export secured arrangement.

Exemption of goods exported through transmission cables and pipelines

373. The Commissioner may exempt²²⁴ from any of or all the provisions of this Chapter or Chapter **7** or **9** a person exporting electricity or goods by way of a pipeline from the Republic.

²²³ See section **852** for granting of exemptions on conditions or for a period.

²²⁴ See section **852** for granting of exemptions on conditions or for a period.

Rules to facilitate implementation of this Chapter

374. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

(a)

NOTE: This clause will be completed after consideration of subordinate legislation and based upon comments received

Offences in terms of this Chapter

375. (1) A person is guilty of an offence if that person contravenes or fails to comply with section **129, 180** or **358**.

(2) The licensee of a container depot, air cargo depot or inland container terminal is guilty of an offence if that person fails to comply with section **88(1)**.

(3) The licensee of a licensed sea, air or rail cargo terminal is guilty of an offence if that person fails to comply with section **88(2)**.

(4) A person who cleared the goods for export is guilty of an offence if that person fails to comply with section **366(a)**.

CHAPTER 18
TEMPORARY EXPORT PROCEDURE

Part 1: Introductory provisions

Purpose of this Chapter

376. The purpose of this Chapter is to regulate the temporary export procedure.

Temporary export procedure²²⁵

377. The temporary export procedure is a customs procedure that allows –

- (a) goods –
 - (i) to be temporarily exported from the Republic with the intention to return the goods to the Republic; and
 - (ii) to be returned to the Republic as re-imported unaltered goods for home use; or
- (b) goods exported outright from the Republic to be returned to the Republic as re-imported unaltered goods for home use.

Commencement and completion of temporary export procedure

378. (1) Goods come under the temporary export procedure referred to in –

- (a) section **377(a)**, when the goods are cleared for temporary export from the Republic; or
- (b) section **377(b)**, retrospectively as from the time the goods were cleared and released in terms of Chapter **17** for outright export from the Republic.

(2) The temporary export procedure is, subject to subsection (3), completed when the goods are returned to the Republic and cleared and released as re-imported unaltered goods for home use.

(3) The temporary export procedure ends before its completion if completion of the procedure is interrupted by an occurrence referred to in section **126(2)**.

²²⁵ For tax status of goods under the temporary export procedure, see section **143**.

Part 2: Clearance and release of goods for temporary export**Application of this Part**

379. This Part must be applied to all goods that are exported under the temporary export procedure except items in the accompanied baggage of a person leaving the Republic –

- (a) cleared and released for temporary export in terms of the simplified clearance and released procedures referred to in section 101(2); and
- (b) to the extent that such goods are in terms of that section exempted from this Part.

Export procedure to be applied for temporary export of goods

380. Chapter 17, read with Chapters 7 and 9, applies to the clearance and release of goods for temporary export in terms of this Part, except to the extent that a provision of any of those Chapters is inconsistent with a provision of this Chapter.

Clearing of goods for temporary export

381. (1) If a person clears goods for temporary export in terms of Part 2 of Chapter 17 –

- (a) the export clearance declaration referred to in that section must state –
 - (i) the intention to return the goods to the Republic as re-imported unaltered goods; and
 - (ii) the expected date of return;
- (b) that person must –
 - (i) either provide security for the payment of any export tax or pay the amount of any export tax that may become payable on the goods should the goods lose their tax free status in relation to export tax; and
 - (ii) comply with such further requirements as the customs authority may determine.

(2) The customs authority may exempt a person from compliance with subsection (1)(b)(i).

(3) Goods may in terms of subsection (1) be cleared for temporary export only if the goods will be returned to the Republic in the same state they were when exported.

Release of goods for temporary export

382. Any conditional release in terms of section 120 of goods cleared for temporary export may include conditions as to –

- (a) the time within which the goods must be returned to the Republic; and

- (b) measures to be taken to ensure accurate identification of the goods upon their return to the Republic.

Part 3: Clearance and release of re-imported unaltered goods for home use

Application of this Part

383. This Part must be applied to all goods re-imported into the Republic under the temporary export procedure except items in the accompanied baggage of a person entering the Republic –

- (a) cleared and released as re-imported unaltered goods for home use in terms of the simplified clearance and released procedures referred to in section **95(2)**; and
(b) to the extent that such goods are in terms of that section exempted from this Part.

General clearance and release provisions to be followed except where provided otherwise

384. (1) The general clearance and release provisions contained in Chapters **7** and **9** must be followed in respect of the clearance and release of re-imported unaltered goods for home use in terms of this Part except to the extent that those provisions are modified, qualified or departed from in this Chapter.

(2) In the event of any inconsistency between a provision of this Chapter and Chapter **7** or **9**, the provision of this Chapter prevails.

Conditions for clearance of goods as re-imported unaltered goods for home use

385. (1) Goods may be cleared in terms of this Part as re-imported unaltered goods for home use only if –

- (a) the goods were previously exported from the Republic;
(b) the goods can be identified as the same goods originally exported from the Republic or the importer furnishes proof that the goods are the same goods originally exported;
(c) the importer provides sufficient information to the customs authority concerning –
(i) any export tax paid on the original export of the goods; and
(ii) any benefit given in terms of an export incentive scheme to any person 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;²²⁶
(d) the goods are returned to the Republic –
(i) in the case of temporarily exported goods referred to in section **377(a)**, within the period expiring on the date stated in the export clearance declaration in

²²⁶ For instance where goods were outright exported and then returned under the temporary export procedure.

accordance with section **381(1)(a)(ii)** or as extended in terms of section **846**;
or

- (ii) in the case of outright exported goods referred to in section **377(b)**, within three months of the date of export or within any extended period in terms of section **846**;
- (e) the goods are returned within that period but, whilst abroad, have not undergone manufacturing, processing or repairs other than maintenance in connection with their use abroad; and
- (f) any conditions subject to which the goods were released for export in terms of section **120** read with section **382** have been complied with.

(2) Goods may in terms of subsection (1) be cleared as re-imported unaltered goods for home use despite the fact that –

- (a) only a part of the exported goods is re-imported;
- (b) the goods are re-imported in separate consignments;
- (c) the goods are re-imported by a person other than the person who exported the goods, provided that that person –
 - (i) is authorised by the original exporter to re-import the goods; and
 - (ii) is able to provide the information required in terms of subsection (1); or
- (d) the goods, whilst abroad –
 - (i) have been used whether or not to their full capacity;
 - (ii) have been damaged; or
 - (iii) have deteriorated.

Persons entitled to submit re-importation clearance declarations

386. Only the following persons are entitled²²⁷ to submit clearance declarations and supporting documentation to clear goods in terms of this Part as re-imported unaltered goods for home use:

- (a) the importer of the goods;
- (b) the owner of the goods or other person who has the right to dispose of the goods; or
- (c) a customs broker referred to in section **159(1)(a)(ii)**.

Contents of re-importation clearance declarations

387. (1) A clearance declaration submitted to clear goods in terms of this Part as re-imported unaltered goods for home use must, in addition to the matters required in terms of section **160**, state –

- (a) that the goods were previously exported from the Republic;

²²⁷ See section **159(1)(a)(i)**.

- (b) the date on which the goods were exported; and
- (c) the amount of any export tax paid on those goods when the goods were exported, the kind of export tax paid and whether the tax is to be reclaimed.

(2) A re-importation clearance declaration must be accompanied by a statement stating –

- (a) whether the goods, whilst abroad, have undergone –
 - (i) any manufacturing, processing or repairs other than maintenance in connection with their use abroad; or
 - (ii) any change of ownership;
- (b) whether the exporter or any other person at the time of export of the goods from the Republic paid or reclaimed any tax paid on the goods, and if so –
 - (i) the kind of tax; and
 - (ii) the amount of tax paid or reclaimed;
- (c) the number and date of the export clearance declaration submitted in respect of the goods at the time of export of the goods; and
- (d) in the case of outright exported goods referred to in section 377(b) –
 - (i) the reason why the goods are returned to the Republic; and
 - (ii) whether the exporter or any other person were granted any benefit in respect of the export of the goods.

Repayment of export benefits

388. The person clearing outright exported goods referred to in section 377(b) as re-imported unaltered goods for home use in terms of this Part forfeits any benefit and must repay to the Commissioner any benefit granted in respect of the original export of the goods.

Refusal to release goods as re-imported unaltered goods for home use

389. If the customs authority refuses to release goods as re-imported unaltered goods for home use which were cleared in terms of this Part, whether on the ground that a condition referred to in section 385(1) was not met or on any other ground²²⁸, the clearance in terms of this Part lapses and those goods must within five days of the date of refusal be cleared for –

- (a) home use in terms of Chapter 10; or
- (b) a permissible customs procedure.

²²⁸ See sections 115 and 116.

Part 4: Tax consequences of non-compliance**When goods under temporary export procedure must be regarded as having been cleared for outright export**

390. (1) Goods exported under the temporary export procedure must for tax purposes be regarded as having been cleared for outright export²²⁹ if –

- (a) the goods are not returned to the Republic within the period stated in the export clearance declaration in accordance with section **381**(1)(a)(i) or as extended in terms of section **846**;
- (b) the exporter notifies the customs authority that the goods will not be returned to the Republic;
- (c) the goods upon their return to the Republic are not cleared in terms of Part **3** as re-imported unaltered goods for home use; or
- (d) the customs authority refuses to release the goods in terms of section **389** as re-imported unaltered goods for home use.

(2) When applying subsection (1) to any goods under the temporary export procedure in circumstances where paragraph (a), (b), (c) or (d) of that subsection pertains only to a part of the goods, only that part of the goods must in terms of that subsection be regarded as having been cleared for outright export.

When goods under temporary export procedure may be regarded as having been cleared for outright export

391. (1) The customs authority may direct that goods exported under the temporary export and re-importation of unaltered goods procedure must for tax purposes be regarded as having been cleared for outright export²³⁰ if a provision of this Act applicable to that procedure is contravened or not complied with in respect of the goods.

(2) When applying subsection (1) to any goods under the temporary export procedure in circumstances where that subsection pertains only to a part of the goods, only that part of the goods may in terms of that subsection be regarded as having been cleared for outright export.

²²⁹ For tax consequences if goods are regarded as having been cleared for outright export, see section **153**; for other consequences of non-compliance with customs procedures, see section **127**.

²³⁰ For tax consequences if goods are regarded as having been cleared for outright export, see section **153**; for other consequences of non-compliance with customs procedures, see section **127**.

Part 5: Other matters

Rules to facilitate implementation of this Chapter

392. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

(a)

<p>NOTE: This clause will be completed after consideration of subordinate legislation and based upon comments received</p>

Offences in terms of this Chapter

393. A person is guilty of an offence if that person fails to comply with section **324** or **388**.

CHAPTER 19
INWARD PROCESSING PROCEDURE

Part 1: Introductory provisions

Purpose of this Chapter

394. The purpose of this Chapter is to regulate the inward processing procedure, including –

- (a) the clearance and release for inward processing of goods imported into the Republic; and
- (b) the clearance and release for export from the Republic of inward processed compensating products.

Inward processing procedure²³¹

395. Inward processing is the customs procedure which allows –

- (a) imported goods identified in the Customs Tariff or a tax levying Act for purposes of this procedure to be –
 - (i) transported in the Republic without clearing the goods for national transit;
 - (ii) stored in the Republic without clearing the goods for warehousing; and
 - (iii) processed in the Republic without clearing the goods for home use in terms of Chapter 10; and
- (b) products obtained from the processing of those goods to be cleared for export under this procedure as inward processed compensating products.

Commencement and completion of inward processing procedure

396. (1) Imported goods come under the inward processing procedure when the goods are cleared for inward processing. The inward processing procedure is, subject to subsection (2), completed when the products obtained from the processing of those goods are cleared and released for export as inward processed compensating products and exported from the Republic.

- (2) The inward processing procedure ends before its completion if –
 - (a) the imported goods before completion of the procedure are –
 - (i) cleared and released for outright export or another permissible customs procedure which allows the export of goods under that procedure, as contemplated in section 411(2)(b)(i) or (3); or

²³¹ For tax status of goods under the inward processing procedure, see section 144.

- (ii) cleared and released for home use, as contemplated in section 411(2)(b)(ii);
or
- (b) completion of the procedure is interrupted by an occurrence referred to in section 126(2).

Part 2: Clearance and release of goods for inward processing

Application of this Part

397. This Part must be applied to all imported goods that are cleared and released for inward processing except items in the accompanied baggage of a person entering the Republic –

- (a) cleared and released for inward processing in terms of the simplified clearance and released procedures referred to in section 95(2); and
- (b) to the extent that such goods are in terms of that section exempted from this Part.

General clearance and release provisions to be followed except where provided otherwise

398. (1) The general clearance and release provisions contained in Chapters 7 and 9 must be followed in respect of the clearance and release of goods for inward processing except to the extent that those provisions are modified, qualified or departed from in this Chapter.

(2) In the event of any inconsistency between a provision of this Chapter and Chapter 7 or 9, the provision of this Chapter prevails.

Conditions for clearance of imported goods for inward processing

399. Imported goods may not be cleared for the inward processing procedure unless –

- (a) the clearance for inward processing of goods of the relevant kind or category is authorised in the Customs Tariff or a tax levying Act;
- (b) the conditions applicable to the clearance for the inward processing procedure of goods of that kind or category have been complied with, as prescribed by rule, specified in the item of the Customs Tariff or determined in terms of a tax levying Act;
- (c) the person who is to carry out the inward processing of the goods is registered for the inward processing of goods in terms of the Customs Tariff or a tax levying Act, if such registration is required by the Customs Tariff or that tax levying Act;
- (d) that person has undertaken to comply with any conditions applicable to the inward processing of the goods, as prescribed by rule, specified in the Customs Tariff or determined in terms of a tax levying Act;

- (e) the premises where the inward processing of the goods is to be carried out are licensed as premises for inward processing;
- (f) the payment of any import tax that may become payable on the goods is covered by security given in respect of the licensing of the inward processing premises where the goods will be processed; and
- (g) measures have been taken to ensure that when goods are cleared for export from the Republic as inward processed compensating products, those goods will be accurately identified as compensating products obtained from the imported goods originally cleared for inward processing.

Persons entitled to submit inward processing clearance declarations

400. Only the following persons are entitled²³² to submit clearance declarations and supporting documentation to clear imported goods for inward processing:

- (a) a person registered for the inward processing of goods;
- (b) an importer importing goods on behalf of a person referred to in paragraph (a); or
- (c) a customs broker referred to in section **159(1)(a)(ii)**.

Contents of inward processing clearance declarations

401. A clearance declaration for inward processing of imported goods must, in addition to the information required in terms of section **160**, also state the following:

- (a) that the goods are cleared for the inward processing procedure;
- (b) the item number in the Customs Tariff or a tax levying Act authorising the clearance of goods of the relevant kind or category for inward processing;
- (c) details of any permit, permission or authorisation granted in respect of the goods in terms of any condition prescribed by rule or specified in that item of the Customs Tariff or determined in terms of a tax levying Act;
- (d) the customs code of the licensed inward processing premises where the goods will be processed under that procedure; and
- (e) the industry in which the goods are to be used and the kind of compensating products that will be obtained from the inward processing of those goods.

Release of imported goods for inward processing

402. (1) When goods are released for the inward processing procedure the goods must be delivered to the licensed inward processing premises where the goods will be processed under that procedure unless the customs authority authorises²³³ the goods to be taken to another location. No person may divert goods cleared for inward processing to a

²³² See section **159(1)(a)(i)**.

²³³ See section **852** for authorisations granted on conditions.

place other than the licensed premises or that other location.

(2) The release of goods for the inward processing procedure is subject to compliance by the person registered to process the goods with any conditions –

- (a) referred to in section **399**(b) and (d);
- (b) as may be prescribed by rule; and
- (c) as may be determined by the customs authority in terms of section **120**, which may include a condition requiring that person to take specific steps to ensure accurate identification of the compensating products obtained from the processing of those goods when compensating products are cleared in terms of Part **3** for export as inward processed compensating products.

Refusal to release goods for inward processing

403. (1) If the customs authority refuses to release any imported goods for the inward processing procedure, whether on the ground that a condition referred to in section **399** for the clearance of the goods was not met or on any other ground²³⁴, those goods must, subject to subsection (2), within five days of the date of refusal or any extended period granted in terms of section **846** –

- (a) be cleared for outright export or a permissible customs procedure which allows the goods to be exported under that procedure,²³⁵ and exported from the Republic; or
- (b) be cleared for home use in terms of Chapter **10**.

(2) If goods are cleared in terms of subsection (1)(b) for home use and the release of the goods for home use is refused, the goods must within five days of the date of refusal –

- (a) be cleared for outright export or a permissible customs procedure which allows the goods to be exported under that procedure,; and
- (b) exported from the Republic.

(3) Goods cleared in terms of subsection (1) or (2) for outright export or another permissible customs procedure or for home use acquire a tax status applicable to goods cleared for outright export or that customs procedure or for home use, as the case may be.

²³⁴ See sections **115** and **116**.

²³⁵ For instance international transit.

Part 3: Clearance and release of inward processed compensating products**Application of this Part**

404. This Part must be applied to all goods that are to be exported as inward processed compensating products under the inward processing procedure, except items in the accompanied baggage of a person leaving the Republic –

- (a) cleared and released under the inward processing procedure for export in terms of the simplified clearance and release procedures referred to in section **101(2)**; and
- (b) to the extent that such items are in terms of that section exempted from this Part.

Export procedure to be applied for export of inward processed compensating products

405. Chapter **17**, read with Chapters **7** and **9**, applies to the clearance and release in terms of this Part of goods for export as inward processed compensating products, except to the extent that a provision of any of those Chapters is inconsistent with a provision of this Chapter.

Conditions for clearance of goods for export as inward processed compensating products

406. (1) Goods may be cleared for export as inward processed compensating products only if –

- (a) the person clearing the goods for export as inward processed compensating products provides proof to the customs authority –
 - (i) that the goods are compensating products obtained from the processing of goods under the inward processing procedure; and
 - (ii) that those compensating products are of a kind stated in the inward processing clearance declaration submitted in respect of the goods from which they were obtained;
- (b) the provisions of this Act have been complied with in respect of the inward processing of the goods from which those compensating products were obtained; and
- (c) any conditions subject to which those goods were released for inward processing in terms of section **402** have been complied with.

(2) No proof referred to in subsection (1)(a) is necessary to the extent that the goods can physically or on appearance be identified as compensating products –

- (a) that were obtained from the goods under the inward processing procedure; and
- (b) that are of a kind stated in the outward processing clearance declaration submitted in respect of the goods from which they were obtained.

Time limits on clearance for export of inward processed compensating products

407. Except when the Customs Tariff or a tax levying Act determines otherwise, goods may be cleared for export as inward processed compensating products not later than –

- (a) six months of the date of import of the first constituent goods from which the compensating products were manufactured, in the case of goods used in a manufacturing process;
- (b) three months of the date of import of the goods from which the compensating products were obtained, in the case of repaired, cleaned or reconditioned goods;
- (c) three months of the date of import of the goods from which the compensating products were obtained, in the case of any other processed goods; or
- (d) if the period referred to in paragraph (a), (b) or (c) has been extended in terms of section **846**, the expiry of the extended period.

Export of inward processed compensating products

408. Goods may be cleared and released for export as inward processed compensating products despite the fact that –

- (a) not all the compensating products obtained from the imported goods cleared and released for inward processing are to be exported;
- (b) the compensating products are exported in separate consignments, provided that a separate export clearance declaration is made in respect of each consignment;
- (c) the compensating products are exported at a place of exit other than the place of entry where the goods from which the products were obtained were originally imported; or
- (d) the compensating products are exported by a person other than the person who imported the goods from which the products were obtained.

Persons entitled to submit export clearance declarations for inward processed compensating products

409. Only the following persons are entitled²³⁶ to submit clearance declarations and supporting documents to clear goods for export as inward processed compensating products:

- (a) The person who originally cleared for inward processing the goods from which those products were obtained;
- (b) the owner of those products or the person who has the right to dispose of those products; or
- (c) a customs broker referred to in section **159(1)(a)(ii)**.

²³⁶ See section **159(1)(a)(i)**.

Contents of export clearance declarations for inward processed compensating products

410. A clearance declaration submitted in terms of Part 2 of Chapter 17 for the export of goods as inward processed compensating products must, in addition to the information required in terms of sections 160 and 360, state –

- (a) the number and date of the inward processing clearance declaration submitted in respect of the goods from which those products were obtained; and
- (b) the item number of the Customs Tariff under which those goods have been cleared for inward processing.

Part 4: Provisions regulating inward processing procedure

Goods under inward processing procedure to be used only for production of inward processed compensating products

411. (1) 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, subject to section 413.

(2) If goods under the inward processing procedure are for any reason no longer intended to be used for the purpose referred to subsection (1), the person registered for the inward processing of the goods must promptly –

- (a) notify the customs authority in writing; and
- (b) clear those goods in terms of section 124 for –
 - (i) outright export or a permissible customs procedure which allows the export of goods under that procedure,²³⁷ and export those goods from the Republic;²³⁸ or
 - (ii) home use in terms of Chapter 10.

(3) If goods are cleared in terms of subsection (2)(b)(ii) for home use and the release of the goods for home use is refused,²³⁹ the goods must within five days of the date of refusal, or any extended period granted in terms of section 846, be –

- (a) cleared for outright export or a permissible customs procedure which allows the export of goods under that procedure; and
- (b) exported from the Republic.

²³⁷ For instance international transit.

²³⁸ Failure to comply with this subsection may result in steps under section 127 or 110 which may include seizure of the goods.

²³⁹ See sections 115 and 116.

(4) Goods cleared in terms of subsection (2) or (3) for outright export or another permissible customs procedure or for home use acquire a tax status applicable to goods cleared for outright export or that customs procedure or for home use, as the case may be.²⁴⁰

Compulsory export of compensating products obtained from goods under inward processing procedure

412. (1) Compensating products obtained from goods under the inward processing procedure must be exported from the Republic unless the goods from which those compensating products were obtained were in terms of section **124**, read with section **411**, cleared and released for home use before the expiry of the time limit applicable to those compensating products in terms of section **407**.

(2) If goods under the inward processing procedure are cleared for home use in terms of subsection (1) and the release of the goods for home use is refused,²⁴¹ the compensating products obtained from those goods must within five days of the date of refusal be –

- (a) cleared for export as inward processed compensating products; and
- (b) exported from the Republic.

By-products and commercially valuable waste

413. If by-products or commercially valuable waste is, in addition to compensating products, derived from the processing of imported goods under the inward processing procedure, the by-products or waste must within six months of the date of import of the first constituent goods from which the by-products or waste is derived or not later than the expiry of any extended period granted in terms of section **846** be –

- (a) cleared and released for export in terms of this Part as if the by-products or waste were inward processed compensating products; or
- (b) put into home use by clearing for home use in terms of Chapter **10** a quantity of the imported goods which in value equals the value of such by-products or waste.

Conversion rates

414 (1) The customs authority may in respect of imported goods under the inward processing procedure determine a conversion rate that must for purposes of this Chapter be used for determining –

²⁴⁰ For tax status of goods see Chapter **8**.

²⁴¹ See sections **115** and **116**.

- (a) the quantity of compensating products, by-products or waste that should in the ordinary course of processing the imported goods for the relevant purpose be derived from a specific quantity of those goods; or
- (b) the quantity of those imported goods that, in the ordinary course of processing the goods for the relevant purpose, would have been used in order to obtain a specific quantity of compensating products, by-products or waste.

(2) Quantities may for purposes of subsection (1) be determined by number, weight, volume or any other measuring unit, as may be appropriate.

- (3) In determining the rate of yield, account must be taken of any –
- (a) evaporation;
 - (b) drying-out;
 - (c) any other losses that may result from the nature of the goods used; and
 - (d) any other relevant factors.

Identification measures

415. The customs authority may take such steps as are necessary for the accurate identification of goods exported as inward processed compensating products, including by –

- (a) recording any specific marks or numbers on the imported goods cleared for inward processing;
- (b) affixing any seals, stamps or individual marks to such goods;
- (c) taking any samples or making use of any illustrations or technical descriptions of such goods; or
- (d) requesting any documentary evidence concerning the processing of the goods.

Records and stocktaking

416. (1) A person processing imported goods under the inward processing procedure must keep such records in respect of the goods and the compensating products, by-products and commercially valuable waste obtained from the goods, as may be prescribed by rule.

- (2) A customs officer may at any time –
- (a) examine the records kept in terms of subsection (1); and
 - (b) take stock of imported goods cleared and released for inward processing and present on the licensed inward processing premises where the goods are processed.

(3) If during any stocktaking imported goods under the inward processing procedure are found to be –

- (a) greater than the quantity, weight or volume that should be on hand on the inward processing premises where the goods are processed, the excess must be taken as stock on hand; or
- (b) less than the quantity, weight or volume that should be on hand on the premises, the shortfall must be dealt with in terms of Chapter **24** as goods unaccounted for.

Transfer of ownership in goods, compensating products, by-products and commercially valuable waste

417. (1) Ownership in imported goods cleared and released for inward processing, or compensating products, by-products or commercially valuable waste obtained from those goods, may not be transferred whilst under the inward processing procedure unless –

- (a) the customs authority has approved the transfer; and
- (b) the person to whom the goods or compensating products, by-products or waste is transferred –
 - (i) assumes the obligations of the person who cleared the imported goods for inward processing;
 - (ii) complies with any conditions applicable to the goods in terms of section **402(2)**; and
 - (iii) complies with any conditions imposed by the customs authority in respect of the transfer.

(2) Application for approval in terms of subsection (1) of the transfer of ownership in imported goods under the inward processing procedure, or in compensating products, by-products or commercially valuable waste obtained from those goods, must be made –

- (a) to the customs authority before the goods or compensating products are transferred; and
- (b) on a form as may be prescribed by rule.

(3) A transfer in terms of subsection (1) of ownership in imported goods under the inward processing procedure, or in compensating products obtained from those goods, does not –

- (a) interrupt the continuation of that procedure; or
- (b) affect the tax status conferred on the goods or products by virtue of that procedure.²⁴²

Subcontracting of inward processing operations

418. (1) A person registered in terms of the Customs Tariff or a tax levying Act to process imported goods under the inward processing procedure may, with the approval of

²⁴² See section **144**.

the customs authority,²⁴³ appoint a person as a subcontractor to undertake such processing or any aspect of such processing.

- (2) Application for an approval in terms of subsection (1) must be made –
- (a) to the customs authority before the goods are delivered to the subcontractor; and
 - (b) on a form as may be prescribed by rule.

Use of equivalent goods

419. (1) The customs authority may grant permission²⁴⁴ to a person registered to process goods under the inward processing procedure to replace goods cleared and released for inward processing with domestic or other imported goods identical in description, quality, technical characteristics and quantity for use in the production of inward processed compensating products.

(2) If the customs authority has granted permission in terms of subsection (1) for equivalent goods to be used, those equivalent goods must for all purposes regarded to be the goods cleared and released for inward processing.

Part 5: Tax consequences of non-compliance

When goods under inward processing procedure must be regarded as having been cleared for home use

420. (1) Imported goods cleared and released for the inward processing procedure must for tax purposes be regarded as having been cleared for home use in terms of Chapter 10²⁴⁵ if –

- (a) the goods –
 - (i) without having been cleared and released as contemplated in section 411(2) or (3), are used for a purpose other than the production of inward processed compensating products of the kind stated in the inward processing clearance declaration of the goods;
 - (ii) are otherwise diverted for home use;
 - (iii) are damaged, destroyed, lost or unaccounted for and it is not proved in accordance with Part 1 of Chapter 25 that the goods were damaged, destroyed, lost or unaccounted for due to a cause set out in section 520(1),

²⁴³ See section 852 for granting of approvals on conditions.

²⁴⁴ See section 852 for granting of permissions on conditions.

²⁴⁵ For tax consequences if goods are regarded as having been cleared for home use, see section 150; for other consequences of non-compliance with customs procedures, see sections 127.

521(1), **522(1)** or **523(1)**, and, in the case of lost goods, that the goods, after having been lost, were not diverted for home use or have not gone into home use in any other way; or

- (b) compensating products obtained from the processing of those goods –
- (i) are for any reason not cleared for export as inward processed compensating products within the time limit applicable to those compensating products in terms of section **407** and the goods from which those compensating products were obtained were not cleared and released for home use as contemplated in section **411(2)**;
 - (ii) are otherwise diverted for home use;
 - (iii) are cleared and released for export as inward processed compensating products but not exported from the Republic within the timeframes applicable to the goods in terms of section **111(2)**; or
 - (iv) are damaged, destroyed, lost or unaccounted for and it is not proved in accordance with Part **2** of Chapter **25** that the compensating products were damaged, destroyed, lost or unaccounted for due to a cause set out in section **527(1)**, **528(1)**, **529(1)** or **530(1)** and, in the case of lost compensating products, that the products, after having been lost, were not diverted for home use or have not gone into home use in any other way.

(2) When applying subsection (1) to any imported goods under the inward processing procedure in circumstances where –

- (a) paragraph (a) of that subsection pertains only to a part of the imported goods, only that part of the imported goods must in terms of that subsection be regarded as having been cleared for home use; or
- (b) paragraph (b) of that subsection pertains only to a part of the compensating products obtained from the imported goods, only a proportionate part of the imported goods must in terms of that subsection be regarded as having been cleared for home use. In determining the proportionate part of the imported goods that must be regarded as having been cleared for home use, a conversion rate determined in terms of section **414** must be used.

(3) Subsections (1)(b)(ii), (iii), (iv) and (v) and (2)(b) apply to by-products and commercially valuable waste derived from the processing of imported goods under the inward processing procedure as if such by-products or waste were compensating products, except when such by-products or waste is dealt with in terms of section **413(b)**.

When goods under inward processing procedure may be regarded as having been cleared for home use

421. (1) The customs authority may direct that imported goods cleared and released for the inward processing procedure must for tax purposes be regarded as having been cleared for home use in terms of Chapter **10**²⁴⁶ if –

- (a) a provision of this Act applicable to that procedure is contravened or not complied with in respect of –
 - (i) those imported goods; or
 - (ii) compensating products obtained from those imported goods;
- (b) the customs authority withdraws in terms of section **121** the release of those imported goods for inward processing;
- (c) goods are cleared for export as inward processed compensating products obtained from those imported goods and the customs authority –
 - (i) refuses in terms of section **115** or **116** to release those goods for export as inward processed compensating products; or
 - (ii) withdraws in terms of section **121** any release given in respect of those goods for export as inward processed compensating products; or
- (d) the ownership in those imported goods or in compensating products obtained from those goods is transferred otherwise than in accordance with section **417**.

(2) When applying subsection (1) to any imported goods under the inward processing procedure in circumstances where –

- (a) paragraph (a)(i), (b) or (d) of that subsection pertains only to a part of the imported goods, only that part of the goods must in terms of that subsection be regarded as having been cleared for home use; or
- (b) paragraph (a)(ii), (c) or (d) of that subsection pertains only to a part of the compensating products obtained from the imported goods, only a proportionate part of the imported goods must in terms of that subsection be regarded as having been cleared for home use. In determining the proportionate part of the imported goods that must be regarded as having been cleared for home use, a conversion rate determined in terms of section **414** must be used.

(3) Subsections (1)(a)(ii), (c) and (d) and (2)(b) apply to by-products and commercially valuable waste derived from the processing of imported goods under the inward processing procedure as if such by-products or waste were compensating products, except when such by-products or waste is dealt with in terms of section **413(b)**.

²⁴⁶ For tax consequences if goods are regarded as having been cleared for home use, see section **150**; for other consequences of non-compliance with customs procedures, see sections **127**.

Effect on compensating products when goods under inward processing procedure regarded as having been cleared for home use

422. (1) Compensating products obtained from imported goods under the inward processing procedure lose their tax free status as inward processed compensating products if, and to the extent that, the imported goods are in terms of section **420** or **421** regarded as having been cleared for home use.

(2) In applying subsection (1) a conversion rate determined in terms of section **414** must be used.

Part 6: Other matters**Rules to facilitate implementation of this Chapter**

423. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

(a)

NOTE: This clause will be completed after consideration of subordinate legislation and based upon comments received
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Offences in terms of this Chapter

424. A person is guilty of an offence if that person fails to comply with sections

NOTE: This clause will be completed upon finalisation of the clauses providing for obligations of the relevant entities
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CHAPTER 20
PROCESSING FOR HOME USE PROCEDURE

Part 1: Introductory provisions

Purpose of this Chapter

425. The purpose of this Chapter is to regulate the processing for home use procedure, including –

- (a) the clearance and release for processing for home use of goods imported into the Republic; and
- (b) the clearance and release of goods for home use as home use compensating products.

Processing for home use procedure²⁴⁷

426. Processing for home use is the customs procedure which allows –

- (a) imported goods identified in the Customs Tariff or a tax levying Act for purposes of this procedure to be –
 - (i) transported in the Republic without clearing the goods for national transit;
 - (ii) stored in the Republic without clearing the goods for warehousing; and
 - (iii) processed in the Republic without clearing the goods for home use in terms of Chapter 10; and
- (b) products obtained from the processing of those goods to be cleared for home use under this procedure as home use compensating products.

Commencement and completion of processing for home use procedure

427. (1) Imported goods come under the processing for home use procedure when the goods are cleared for processing for home use. The processing for home use procedure is, subject to subsection (2), completed when the products obtained from the processing of those goods are cleared and released for home use as home use compensating products.

- (2) The processing for home use procedure ends before its completion if –
 - (a) the imported goods before completion of the procedure are cleared and released for –
 - (i) another permissible customs procedure, as contemplated in section 439(2)(b)(ii); or

²⁴⁷ For tax status of goods under the processing for home use procedure, see section 145.

- (ii) home use, as contemplated in section 439(2)(b)(i); or
- (b) completion of the procedure is interrupted by an occurrence referred to in section 126(2).

Part 2: Clearance and release of imported goods for processing for home use

General clearance and release provisions to be followed except where provided otherwise

428. (1) The general clearance and release provisions contained in Chapters 7 and 9 must be followed in respect of the clearance and release of goods for processing for home use except to the extent that those provisions are modified, qualified or departed from in this Chapter.

(2) In the event of any inconsistency between a provision of this Chapter and Chapter 7 or 9, the provision of this Chapter prevails.

Conditions for clearance of imported goods for processing for home use

429. Imported goods may not be cleared for the processing for home use procedure unless –

- (a) the clearance for processing for home use of goods of that kind or category is authorised in the Customs Tariff or a tax levying Act;
- (b) the conditions applicable to the clearance for that procedure of goods of that kind or category have been complied with, as prescribed by rule or specified in the applicable item of the Customs Tariff or determined in terms of a tax levying Act;
- (c) the person who is to carry out the processing for home use of the goods is registered in terms of Customs Tariff or a tax levying Act for the processing for home use of goods of that kind or category, if such registration is required by the Customs Tariff or that tax levying Act;
- (d) that person has undertaken to comply with any conditions applicable to the processing for home use of the goods, as prescribed by rule, specified in the Customs Tariff or determined in terms of a tax levying Act;
- (e) the premises where the processing for home use of the goods is to be carried out are licensed as premises for processing for home use;
- (f) the payment of any import tax that may become payable on the goods is covered by security given in respect of the licensing of the home use processing premises where the goods will be processed; and
- (g) measures have been taken to ensure that when goods are cleared for home use as home use compensating products, those goods will be accurately identified as

compensating products obtained from the imported goods originally cleared for processing for home use.

Persons entitled to submit processing for home use clearance declarations

430. Only the following persons are entitled²⁴⁸ to submit clearance declarations and supporting documentation to clear imported goods for processing for home use:

- (a) a person registered for the processing of imported goods for home use;
- (b) an importer importing goods on behalf of a person referred to in paragraph (a); or
- (c) a customs broker referred to in section **159(1)(a)(ii)**.

Contents of processing for home use clearance declarations

431. A clearance declaration for processing for home use of imported goods must, in addition to the information required in terms of section **160**, also state the following:

- (a) that the goods are cleared for the processing for home use procedure;
- (b) the item number in the Customs Tariff or a tax levying Act authorising the clearance of goods of the relevant kind or category for processing for home use;
- (c) details of any permit, permission or authorisation granted in respect of the goods in terms of any condition prescribed by rule, specified in that item of the Customs Tariff or determined in terms of a tax levying Act;
- (d) the customs code of the licensed home use processing premises where the goods will be processed under that procedure; and
- (e) the industry in which the goods are to be used and the kind of the compensating products that will be obtained from the processing for home use of those goods.

Release of imported goods for processing for home use

432. (1) When goods are released for the processing for home use procedure the goods must be delivered to the licensed home use processing premises where the goods will be processed under that procedure unless the customs authority authorises²⁴⁹ the goods to be taken to another location. No person may divert goods cleared for processing for home use to a place other than the licensed premises or that other location.

(2) The release of goods for the processing for home use procedure is subject to compliance by the person registered to process the goods with any conditions –

- (a) referred to in section **429(b)** and (d);
- (b) as may be prescribed by rule; and
- (c) determined by the customs authority in terms of section **120**, which may include a

²⁴⁸ See section **159(1)(a)(i)**.

²⁴⁹ See section **852** for authorisations granted on conditions.

condition requiring that person to take specific steps to ensure accurate identification of the compensating products obtained from the processing of those goods when compensating products are cleared in terms of Part 3 for home use as home use compensating products.

Refusal to release goods for processing for home use

433. (1) If the customs authority refuses to release any imported goods for the processing for home use procedure, whether on the ground that a condition referred to in section 429 for the clearance of the goods was not met or on any other ground²⁵⁰, those goods must within five days of the date of refusal or any extended period granted in terms of section 846, be cleared for –

- (a) home use in terms of Chapter 10; or
- (b) a permissible customs procedure.

(2) Goods cleared in terms of subsection (1) for home use or a permissible customs procedure acquire a tax status applicable to goods cleared for home use in terms of Chapter 10 or that customs procedure, as the case may be.

Part 3: Clearance and release for home use of home use compensating products

General clearance and release provisions to be followed except where provided otherwise

434. (1) The general clearance and release provisions contained in Chapters 7 and 9 must be followed in respect of the clearance and release of goods for home use as home use compensating products except to the extent that those provisions are modified, qualified or departed from in this Chapter.

(2) In the event of any inconsistency between a provision of this Chapter and Chapter 7 or 9, the provision of this Chapter prevails.

Conditions for clearance of goods for home use as home use compensating products

435. (1) Goods may be cleared for home use as home use compensating products only if –

- (a) the person clearing the goods for home use as home use compensating products provides proof to the customs authority –
 - (i) that the goods are compensating products obtained from the processing of goods under the processing for home use procedure; and

²⁵⁰ See sections 115 and 116.

- (ii) that those compensating products are of a kind stated in the processing for home use clearance declaration submitted in respect of the goods from which they were obtained;
- (b) the provisions of this Act have been complied with in respect of the processing for home use of the goods from which those compensating products were obtained; and
- (c) any conditions subject to which those goods were released for processing for home use in terms of section **432** have been complied with.

(2) No proof referred to in subsection (1)(a) is necessary to the extent that the goods can physically or on appearance be identified as compensating products –

- (a) that were obtained from the goods under the processing for home use procedure; and
- (b) that are of a kind stated in the processing for home use clearance declaration submitted in respect of the goods from which they were obtained.

Time limits on clearance of goods for home use as home use compensating products

436. Except when the Customs Tariff or a tax levying Act determines otherwise, goods may be cleared for home use as home use compensating products not later than –

- (a) six months of the date of import of the first constituent goods from which the compensating products were manufactured, in the case of goods used in a manufacturing process;
- (b) three months of the date of import of the goods from which the compensating products were obtained, in the case of any other processed goods; or
- (c) if the period referred to in paragraph (a) or (b) has been extended in terms of section **846**, the expiry of the extended period.

Persons entitled to submit home use clearance declarations for home use compensating products

437. Only the following persons are entitled²⁵¹ to submit clearance declarations and supporting documents to clear goods for home use as home use compensating products:

- (a) the person who originally cleared for processing for home use the imported goods from which the products were obtained;
- (b) the owner of the products or the person who has the right to dispose of the products; or
- (c) a customs broker referred to in section **159(1)(a)(ii)**.

²⁵¹ See section **159(1)(a)(i)**.

Contents of clearance declarations for home use compensating products

438. A clearance declaration submitted in terms of section **437** for the clearance of goods for home use as home use compensating products must, in addition to the information required in terms of section **160**, state –

- (a) the number and date of the processing for home use clearance declaration submitted in respect of the imported goods from which those products were obtained; and
- (b) the item number of the Customs Tariff or a tax levying Act under which the imported goods were cleared for processing for home use.

Part 4: Provisions regulating processing for home use procedure**Goods under processing for home use procedure only to be used for production of home use compensating products**

439. (1) 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, subject to section **440**.

(2) If goods under the processing for home procedure are for any reason no longer intended to be used for the purpose referred to subsection (1), the person registered for the home use processing of the goods must promptly –

- (a) notify the customs authority in writing; and
- (b) clear those goods in terms of section **124** for –
 - (i) home use in terms of Chapter **10**; or
 - (ii) a permissible customs procedure.²⁵²

(3) Goods cleared in terms of subsection (2) for home use or a permissible customs procedure acquire a tax status applicable to goods cleared for home use or that customs procedure, as the case may be.²⁵³

By-products and commercially valuable waste

440. (1) If by-products or commercially valuable waste is, in addition to compensating products, derived from the processing of imported goods under the processing for home use procedure, the by-products or waste may be put into home use by clearing for home use in terms of Chapter **10** a quantity of the imported goods which in value equals the value of such by-products or waste.

²⁵² Failure to comply with this subsection may result in steps under section **127** or **110** which may include seizure of the goods.

²⁵³ For tax status of goods see Chapter **8**.

(2) The quantity of imported goods under the processing for home use procedure that may in terms of subsection (1) be cleared for home use in terms of Chapter 10 must be cleared not later than –

- (a) three months of the date of import of those goods; or
- (b) the expiry of any extended period granted in terms of section 846.

Conversion rates for goods to compensating products

441. (1) The customs authority may in respect of imported goods under the processing for home use procedure determine a conversion rate that must for purposes of this Chapter be used for determining –

- (a) the quantity of compensating products, by-products or waste that should in the ordinary course of processing the imported goods for the relevant purpose be derived from a specific quantity of those goods; or
- (b) the quantity of those imported goods that, in the ordinary course of processing the goods for the relevant purpose, would have been used in order to obtain a specific quantity of compensating products, by-products or waste.

(2) Quantities may for purposes of subsection (1) be determined by number, weight, volume or any other measuring unit, as may be appropriate.

(3) In determining the rate of yield account must be taken of any –

- (a) evaporation;
- (b) drying-out;
- (c) any other losses that may result from the nature of the goods used; and
- (d) any other relevant factors.

Identification measures

442. The customs authority may take such steps as are necessary for the accurate identification of goods cleared for home use as home use compensating products, including by –

- (a) recording any specific marks or numbers on the imported goods cleared for processing for home use;
- (b) affixing any seals, stamps or individual marks to such goods;
- (c) taking any samples or making use of any illustrations or technical descriptions of such goods; or
- (d) requesting any documentary evidence concerning the processing of the goods.

Records and stocktaking

443. (1) A person processing imported goods under the processing for home use procedure must keep such records in respect of the goods and the compensating products, by-products and commercially valuable waste obtained from the goods, as may be prescribed by rule.

(2) A customs officer may at any time –

- (a) examine the records kept in terms of subsection (1); and
- (b) take stock of imported goods under the processing for home use procedure and present on the licensed home use processing premises where the goods are processed.

(3) If during any stocktaking imported goods under the processing for home use procedure are found to be –

- (a) greater than the quantity, weight or volume that should be on hand on the home use processing premises where the goods are processed, the excess must be taken as stock on hand; or
- (b) less than the quantity, weight or volume that should be on hand on the premises, the shortfall must be dealt with in terms of Chapter 25 as goods unaccounted for.

Transfer of ownership in goods, compensating products, by-products and commercially valuable waste

444. (1) (1) Ownership in imported goods cleared and released for processing for home use, or compensating products, by-products or commercially valuable waste obtained from those goods, may not be transferred whilst under the processing for home use procedure unless –

- (a) the customs authority has approved the transfer; and
- (b) the person to whom the goods or compensating products, by-products or waste is transferred –
 - (i) assumes the obligations of the person who cleared the imported goods for processing for home use;
 - (ii) complies with any conditions applicable to the goods in terms of section 432(2); and
 - (iii) complies with any conditions imposed by the customs authority in respect of the transfer.

(2) Application for approval in terms of subsection (1)(a) of the transfer of ownership in imported goods, or in compensating products, by-products or commercially valuable waste obtained from those goods, must be made –

- (a) to the customs authority before the goods or compensating products, by-products or waste are transferred; and
- (b) on a form as may be prescribed by rule.

(3) A transfer in terms of subsection (1) of ownership in imported goods under the processing for home use procedure, or in compensating products, by-products or waste obtained from those goods, does not –

- (a) interrupt the continuation of that procedure; or
- (b) affect the tax status conferred on the goods, products or waste by virtue of that procedure.²⁵⁴

Sub-contracting of processing for home use operations

455. (1) A person registered to process imported goods under the processing for home use procedure may, with the approval of the customs authority,²⁵⁵ appoint a person as a subcontractor to undertake such processing or any aspect of such processing.

- (2) Application for an approval in terms of subsection (1) must be made –
- (a) to the customs authority before the goods are delivered to the subcontractor; and
 - (b) on a form as may be prescribed by rule.

Part 5: Tax consequences of non-compliance

When goods under processing for home use procedure must be regarded as having been cleared for home use

456. (1) Imported goods cleared and released for the processing for home use procedure must for tax purposes be regarded as having been cleared for home use in terms of Chapter **10**²⁵⁶ if –

- (a) the goods –
 - (i) are not used for the processing for home use procedure;
 - (ii) are diverted for home use; or
 - (iii) are damaged, destroyed, lost or unaccounted for and it is not proved in accordance with Part **1** of Chapter **25** that the goods were damaged,

²⁵⁴ See section **145**.

²⁵⁵ See section **852** for granting of approvals on conditions.

²⁵⁶ For tax consequences if goods are regarded as having been cleared for home use, see section **104**; for other consequences of non-compliance with customs procedures, see section **107**.

destroyed, lost or unaccounted for due to a cause set out in section **520(1)**, **521(1)**, **522(1)** or **523(1)**, and, in the case of lost goods, that the goods, after having been lost, were not diverted for home use or have not gone into home use in any other way;

- (b) compensating products obtained from those goods –
 - (i) are for any reason not cleared for home use as home use compensating products within the period contemplated in section **436**; or
 - (ii) are damaged, destroyed, lost or unaccounted for and it is not proved in accordance with Part **2** of Chapter **25** that the compensating products were damaged, destroyed, lost or unaccounted for due to a cause set out in section **527(1)**, **528(1)**, **529(1)** or **530(1)** and, in the case of lost compensating products, that the products, after having been lost, were not diverted for home use or have not gone into home use in any other way;
- (c) goods are cleared for home use as home use compensating products and the customs authority refuses²⁵⁷ to release those goods for home use as home use compensating products;
- (d) goods are cleared and released for home use as home use compensating products and the customs authority withdraws²⁵⁸ the release of those goods for home use as home use compensating products; or
- (e) the customs authority is notified that compensating products obtained from those imported goods will not be cleared for home use as home use compensating products.

(2) When applying subsection (1) to any imported goods under the processing for home use procedure in circumstances where –

- (a) paragraph (a) or (e) of that subsection pertains only to a part of the imported goods, only that part of the imported goods must in terms of that subsection be regarded as having been cleared for home use; or
- (b) paragraph (b), (c) or (d) of that subsection pertains only to a part of the compensating products obtained from the imported goods, only a proportionate part of the imported goods must in terms of that subsection be regarded as having been cleared for home use. In determining the proportionate part of the imported goods that must be regarded as having been cleared for home use, a conversion rate determined in terms of section **441** must be used.

²⁵⁷ See section **115** or **116**.

²⁵⁸ A release may be withdrawn in terms of section **121**.

(3) Subsection (1)(b), (c) and (d) applies to by-products and commercially valuable waste derived from the processing of imported goods under the processing for home use procedure as if those by-products and waste were compensating products, except when those by-products and waste is dealt with in terms of section **440**.

When goods under processing for home use procedure may be regarded as having been cleared for home use

447. (1) The customs authority may direct that goods cleared and released for the processing for home use procedure must be regarded as having been cleared for home use in terms of Chapter **10**²⁵⁹ if –

- (a) a provision of this Act applicable to the processing for home use procedure is contravened or not complied with in respect of –
 - (i) those imported goods; or
 - (ii) compensating products obtained from those imported goods; or
- (b) the ownership in those imported goods or in compensating products obtained from those goods is transferred otherwise than in accordance with section **444**.

(2) When applying subsection (1) to any imported goods under the processing for home use procedure in circumstances where –

- (a) paragraph (a)(i) or (b) of that subsection pertains only to a part of the imported goods, only that part of the imported goods must in terms of that subsection be regarded as having been cleared for home use; or
- (b) paragraph (a)(ii) or (b) of that subsection pertains only to a part of the compensating products obtained from the imported goods, only a proportionate part of the imported goods must in terms of that subsection be regarded as having been cleared for home use. In determining the proportionate part of the imported goods that must be regarded as having been cleared for home use, a conversion rate determined in terms of section **441** must be used.

(3) Subsections (1)(a)(ii) and (b) and (2) apply to by-products and commercially valuable waste derived from the processing of imported goods under the processing for home use procedure as if those by-products and waste were compensating products, except when those by-products and waste are dealt with in terms of section **440**.

²⁵⁹ For tax consequences if goods are regarded as having been cleared for home use, see section **150**; for other consequences of non-compliance with customs procedures, see section **127**.

Effect on compensating products when goods under processing for home use procedure regarded as having been cleared for home use

448. (1) Compensating products obtained from imported goods under the processing for home use procedure lose their tax free status as home use compensating products if, and to the extent that, the imported goods are in terms of section **446** or **447** regarded as having been cleared for home use in terms of Chapter **10**.

(2) In applying subsection (1) a conversion rate determined in terms of section **441** must be used.

Part 6: Other matters**Rules to facilitate implementation of this Chapter**

449. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

(a)

NOTE: This clause will be completed after consideration of subordinate legislation and based upon comments received
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Offences in terms of this Chapter

450. A person is guilty of an offence if that person fails to comply with sections

NOTE: This clause will be completed based upon finalisation of the clauses providing for obligations of the relevant entities
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CHAPTER 21 OUTWARD PROCESSING PROCEDURE

Part 1: Introductory provisions

Purpose of this Chapter

451. The purpose of this Chapter is to regulate the outward processing procedure, including –

- (a) the clearance and release of goods for export from the Republic for outward processing; and
- (b) the clearance and release of goods for home use as outward processed compensating products.

Outward processing procedure²⁶⁰

452. Outward processing is the customs procedure which allows –

- (a) goods identified in the Customs Tariff or a tax levying Act for purposes of this procedure, to be exported from the Republic under this procedure for processing abroad; and
- (b) products obtained from the processing of those goods to be imported into the Republic and cleared and released for home use under this procedure as outward processed compensating products.

Commencement and completion of outward processing procedure

453. (1) Goods come under the outward processing procedure when the goods are cleared for export under the outward processing procedure. The outward processing procedure is, subject to subsection (2), completed when products obtained from those goods are cleared and released for home use as outward processed compensating products.

(2) The outward processing procedure ends before its completion if completion of the procedure is interrupted by an occurrence referred to in section **126(2)**.

Part 2: Clearance and release of goods for export for outward processing

Application of this Part

454. This Part must be applied to all goods that are cleared and released for outward processing, except items in the accompanied baggage of a person leaving the Republic –

²⁶⁰ For tax status of goods under the outward processing procedure, see section **146**.

- (a) cleared and released under the outward processing procedure for export in terms of the simplified clearance and release procedures referred to in section 101(2); and
- (b) to the extent that such items are in terms of that section exempted from this Part.

Export procedure to be applied for export of goods under outward processing procedure

455. Chapter 17, read with Chapters 7 and 9, applies to the clearance and release in terms of this Part of goods for export from the Republic under the outward processing procedure, except to the extent that a provision of any of those Chapters is inconsistent with a provision of this Chapter.

Conditions for clearance of goods for export under outward processing procedure

456. Goods may not be cleared for export from the Republic under the outward processing procedure unless –

- (a) the clearance for export under the outward processing procedure of goods of the relevant kind or category is authorised in the Customs Tariff or a tax levying Act;
- (b) the conditions applicable to the clearance for export under that procedure of goods of that kind or category have been complied with, as prescribed by rule or specified in the item of the Customs Tariff or determined in terms of a tax levying Act;
- (c) the person who clears the goods for export under that procedure –
 - (i) undertakes to comply with any conditions as prescribed by rule or specified in that item of the Customs Tariff or determined in terms of a tax levying Act, applicable to the processing of the goods and the importation of compensating products obtained from such processing; and
 - (ii) gives security for the payment of any export tax that may become payable on the goods; and
- (d) measures have been taken to ensure that when goods are cleared for home use as outward processed compensating products, those goods will be accurately identified as compensating products obtained from the goods originally exported under the outward processing procedure.

Persons entitled to submit export clearance declarations for export of goods under outward processing procedure

457. Only the following persons are entitled²⁶¹ to submit clearance declarations and supporting documents to clear goods for the export of goods from the Republic under the outward processing procedure:

- (a) the exporter of the goods;

²⁶¹ See section 159(1)(a)(i).

- (b) the owner of the goods or other person who has the right to dispose of the goods; or
- (c) a customs broker referred to in section **159(1)(a)(ii)**.

Contents of export clearance declarations for export of goods under outward processing procedure

458. An export clearance declaration submitted in terms of Part **2** of Chapter **17** for the export of goods from the Republic under the outward processing procedure must, in addition to the information required in terms of section **160**, also state –

- (a) that the goods are cleared for export under the outward processing procedure;
- (b) the item number in the Customs Tariff or a tax levying Act authorising the clearance of goods of the relevant kind or category for outward processing;
- (c) details of any permit, permission or authorisation granted in respect of the goods in terms of any condition prescribed by rule or specified in that item of the Customs Tariff or determined in terms of a tax levying Act;
- (d) the name and street address of the person to whom any such permit, permission or authorisation was granted; and
- (e) the kind of compensating products that will be obtained from the outward processing of those goods.

Release not to be limited to owners of goods

459. The customs authority may not limit release of goods for export under the outward processing procedure to the owner of the goods, but may grant such release to any person complying with the requirements for outward processing as specified for such goods in the rules, the item of the Customs Tariff or the tax levying Act authorising the export of goods of that kind or category under that procedure.

Release of goods for export under outward processing procedure

460. The release of the goods for export under the outward processing procedure is subject to any conditions as may be –

- (a) referred to in section **456(b)** and (c);
- (b) prescribed by rule; or
- (c) determined by the customs authority in terms of section **120**, which may include a condition requiring the exporter or person clearing the goods to take specific steps to ensure accurate identification of the compensating products obtained from those goods when those products are cleared in terms of Part **3** as outward processed compensating products for home use.

Part 3: Clearance and release for home use of outward processed compensating products

Application of this Part

461. This Part must be applied to all goods that are cleared and released for home use as outward processed compensating products, except items in the accompanied baggage of a person entering the Republic –

- (a) cleared and released for home use as outward processed compensating products in terms of the simplified clearance and release procedures referred to in section **95(2)**;
and
- (b) to the extent that such items are in terms of that section exempted from this Part.

General clearance and release provisions to be followed except where provided otherwise

462. (1) The general clearance and release provisions contained in Chapters **7** and **9** must be followed in respect of the clearance and release of goods for home use as outward processed compensating products except to the extent that those provisions are modified, qualified or departed from in this Chapter.

(2) In the event of any inconsistency between a provision of this Chapter and Chapter **7** or **9**, the provision of this Chapter prevails.

Conditions for clearance for home use of outward processed compensating products

463. (1) Goods may be cleared in terms of this Part for home use as outward processed compensating products only if –

- (a) the person clearing the goods for home use as outward processed compensating products provides proof to the customs authority –
 - (i) that the goods are compensating products obtained from goods exported from the Republic under the outward processing procedure; and
 - (ii) that those compensating products are of a kind stated in the outward processing clearance declaration submitted in respect of the export of the goods from which they were obtained;
- (b) that person provides sufficient information to the customs authority concerning –
 - (i) any export tax paid on the export of the goods from which the outward processed compensating products were the obtained; and
 - (ii) any benefit given in terms of an export incentive scheme to any person 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;

- (c) the provisions of this Act have been complied with in respect of the outward processing of the goods from which those compensating products were obtained; and
- (d) any conditions subject to which those goods were released for export under the outward processing procedure in terms of section **460** have been complied with.

(2) No proof referred to in subsection (1)(a) is necessary to the extent that the goods can physically or on appearance be identified as compensating products –

- (a) that were obtained from the goods exported under the outward processing procedure; and
- (b) that are of a kind stated in the outward processing clearance declaration submitted in respect of the goods from which they were obtained.

Time limit on clearance for home use of outward processed compensating products

464. Except when the Customs Tariff or a tax levying Act determines otherwise, compensating products obtained from goods exported from the Republic under the outward processing procedure may be cleared in terms of this Part for home use as outward processed compensating products only if those compensating products were imported into the Republic not later than –

- (a) six months from the date of export of those goods; or
- (b) the expiry of any extended period granted in terms of section **846**.

Importation of outward processed compensating products

465. Goods may be cleared and released for home use as outward processed compensating products despite the fact that –

- (a) only a part of the compensating products obtained from the goods exported for outward processing are imported;
- (b) the compensating products are imported in separate consignments, provided that a separate clearance declaration must be made in respect of each consignment;
- (c) the compensating products are imported at a place of entry other than the place of exit from where the goods from which the products were obtained were originally exported; or
- (d) the compensating products are imported by a person other than the person who exported the goods from which the products were obtained.

Persons entitled to submit home use clearance declarations for outward processed compensating products

466. Only the following persons are entitled²⁶² to submit clearance declarations and supporting documents to clear goods in terms of this Part for home use as outward processed compensating products:

- (a) The person who originally cleared the goods from which the compensating products were obtained for export for outward processing;
- (b) the owner of the products or the person who has the right to dispose of the products; or
- (c) a customs broker referred to in section **159(1)(a)(ii)**.

Contents of home use clearance declarations for outward processed compensating products

467. (1) A clearance declaration to clear goods for home use as outward processed compensating products must, in addition to the matters required in terms of section **160**, state –

- (a) the number and date of the clearance declaration submitted in respect of the export for outward processing of the goods from which those compensating products were obtained;
- (b) the item number of the Customs Tariff or a tax levying Act under which those goods were cleared for export under the outward processing procedure;
- (c) the street address of the person to whom the compensating products are consigned; and
- (d) the date, number and particulars of any permit or other authorisation issued in terms of any legislation in respect of the import of the compensating products, if such a permit or authorisation is a requirement for the import of the products.

(2) A clearance declaration submitted in terms of subsection (1) in respect of outward processed compensating products must be accompanied by a statement stating in relation to the goods from which those compensating products were obtained –

- (a) whether the exporter or any other person reclaimed any tax paid on the goods, and if so –
 - (i) the kind of tax; and
 - (ii) the amount of tax reclaimed; and

²⁶² See section **159(1)(a)(i)**.

- (b) if any benefit was paid to the exporter or other person under any export incentive scheme applicable to the goods, whether in the form of a tax reduction or relief, an export or other subsidy, a rebate or reward or other benefit.

Refusal to release goods for home use as outward processed compensating products

468. (1) If the customs authority refuses to release any imported goods cleared for home use as outward processed compensating products, whether on the ground that a condition referred to in section **463** for the clearance of the goods was not met or on any other ground,²⁶³ those goods must within five days of the date of refusal be cleared for –

- (a) home use in terms of Chapter **10**; or
- (b) a permissible customs procedure.

(2) Goods cleared in terms of subsection (1) for home use or a permissible customs procedure acquire a tax status applicable to goods cleared for home use in terms of Chapter **10** or that customs procedure, as the case may be.

Part 4: Provisions regulating outward processing procedure

Conversion rates for goods to compensating products

469. (1) The customs authority may in respect of any goods exported under the outward processing procedure determine a conversion rate that must for purposes of this Chapter be used for determining –

- (a) the quantity of compensating products that should in the ordinary course of processing the exported goods for the relevant purpose be obtained from those goods; or
- (b) the quantity of those exported goods that, in the ordinary course of processing the goods for the relevant purpose, would have been used in order to obtain a specific quantity of compensating products.

(2) Quantities may for purposes of subsection (1) be determined by number, weight, volume or any other measuring unit, as may be appropriate.

- (3) In determining the rate of yield account must be taken of any –
- (a) evaporation;
 - (b) drying-out;
 - (c) any other losses that may result from the nature of the goods used; or
 - (d) any other relevant factors.

²⁶³ See sections **115** and **116**.

Identification measures

470. The customs authority may take such steps as are necessary for the accurate identification of compensating products obtained from goods exported under the outward processing procedure when those products are cleared in terms of Part 3 for home use as outward processed compensating products, including by –

- (a) recording any specific marks or numbers on goods exported under the outward processing procedure before their export;
- (b) affixing any seals, stamps or individual marks to the goods;
- (c) taking any samples or making use of any illustrations or technical descriptions; or
- (d) requesting any documentary evidence concerning the processing abroad of the exported goods.

Effect of transfer of ownership of outward processed compensating products

471. Transfer of ownership of compensating products obtained from goods under the outward processing procedure prior to their clearance in terms of Part 3 for home use as outward processed compensating products, does not affect the tax status²⁶⁴ of those products, provided that –

- (a) the customs authority is informed of the transfer at the time of submission of the clearance declaration in terms of section 466; and
- (b) any conditions as the customs authority may determine are complied with.

Part 5: Tax consequences of non-compliance**When goods exported under outward processing procedure must be regarded as having been cleared for outright export**

472. (1) Goods exported under the outward processing procedure must for tax purposes be regarded as having been cleared for outright export²⁶⁵ if –

- (a) the goods are not used for outward processing; or
- (b) compensating products obtained from the processing of those goods –
 - (i) are not cleared for home use as outward processed compensating products within the timeframes applicable to the goods in terms of section 464; or
 - (ii) are damaged, destroyed, lost or unaccounted for and it is not proved in accordance with Part 2 of Chapter 25 that the compensating products were damaged, destroyed, lost or unaccounted for due to a cause set out in section

²⁶⁴ See section 146.

²⁶⁵ For tax consequences if goods are regarded as having been cleared for outright export, see section 153; for other consequences of non-compliance with customs procedures, see section 127.

527(1), 528(1), 529(1) or 530(1) and, in the case of lost compensating products, that the products, after having been lost, were not diverted for home use or have not gone into home use in any other way;

- (c) imported goods are cleared for home use as inward processed compensating products and the customs authority refuses²⁶⁶ to release those imported goods for home use as outward processed compensating products;
- (d) imported goods are cleared and released for home use as inward processed compensating products and the customs authority withdraws²⁶⁷ the release of those imported goods for home use as outward processed compensating products; or
- (e) the customs authority is notified that compensating products obtained from the goods exported under the outward processing procedure will not be cleared for home use as outward processed compensating products.

(2) When applying subsection (1) to any goods exported under the outward processing procedure in circumstances where –

- (a) paragraph (a) of that subsection pertains only to a part of the exported goods, only that part of the exported goods must in terms of that subsection be regarded as having been cleared for outright export; or
- (b) paragraph (b), (c), (d) or (e) of that subsection pertains only to a part of the compensating products obtained from the exported goods, only a proportionate part of the exported goods must in terms of that subsection be regarded as having been cleared for outright export. In determining the proportionate part of the exported goods that must be regarded as having been cleared for outright export, a conversion rate determined in terms of section **469** must be used.

When goods exported under outward processing procedure may be regarded as having been cleared for outright export

473. (1) The customs authority may direct that goods exported under the outward processing procedure must for tax purposes be regarded as having been cleared for outright export²⁶⁸ if a provision of this Act applicable to the outward processing procedure is contravened or not complied with in respect of–

- (a) those goods; or
- (b) outward processed compensating products obtained from those goods;

²⁶⁶ See sections **115** and **116** and also section **468**.

²⁶⁷ A release may be withdrawn in terms of section **121**.

²⁶⁸ For tax consequences if goods are regarded as having been cleared for outright export, see section **153**; for other consequences of non-compliance with customs procedures, see section **127**.

(2) When applying subsection (1) to any goods exported under the outward processing procedure in circumstances where –

- (a) paragraph (a) of that subsection pertains only to a part of the exported goods, only that part of the exported goods must in terms of that subsection be regarded as having been cleared for outright export; or
- (b) paragraph (b) of that subsection pertains only to a part of the compensating products obtained from the exported goods, only a proportionate part of the exported goods must in terms of that subsection be regarded as having been cleared for outright export. In determining the proportionate part of the exported goods that must be regarded as having been cleared for outright export, a conversion rate determined in terms of section 469 must be used.

Effect on outward processed compensating products when goods under outward processing procedure regarded as having been cleared for outright export

474. Compensating products obtained from goods under the outward processing procedure lose their tax free status as outward processed compensating products if those goods are in terms of section 472 or 473 regarded as having been cleared for outright export.

Part 6: Other matters

Rules to facilitate implementation of this Chapter

475. The Commissioner may in terms of section 842 make rules to facilitate the implementation of this Chapter, including rules prescribing –

- (a)

NOTE: This clause will be completed after consideration of subordinate legislation and based upon comments received

Offences in terms of this Chapter

476. A person is guilty of an offence if that person fails to comply with sections

NOTE: This clause will be completed based upon finalisation of the clauses providing for obligations of the relevant entities

CHAPTER 22
INTERNATIONAL POSTAL ARTICLES HANDLED BY SOUTH AFRICAN POST
OFFICE

Part 1: Introductory provisions

Purpose and application of this Chapter

477. (1) The purpose of this Chapter is –

- (a) to provide for international postal articles to be cleared and released for home use or export in accordance with either the regular clearance and release procedure or a special clearance and release procedure;
- (b) to determine the categories of international postal articles to which the regular and special clearance and release procedures apply, respectively; and
- (c) to regulate the handling, examination and tax assessment of international postal articles.

(2) This Chapter applies to all international postal articles –

- (a) imported into the Republic for –
 - (i) delivery in the Republic by the South African Post Office; or
 - (ii) transit to another country through the South African Post Office; or
- (b) posted in the Republic for export from the Republic through the South African Post Office.²⁶⁹

Prohibited or restricted goods

478. Chapter 35 applies if an international postal article consists of or contains prohibited or restricted goods.

Part 2: Clearance and release of international postal articles

Clearance of imported international postal articles

479. (1) Imported international postal articles to which this Chapter applies and that are not in terms of section 109 exempted from the clearance requirements for imported goods, must be cleared for home use or a permissible customs procedure in accordance with section 108. The provisions of this Act regulating the clearance and release of imported

²⁶⁹ As this Chapter applies only to international postal articles handled by the South African Post Office, international postal articles imported or exported through private couriers must be treated as ordinary imported or exported goods.

goods must be followed when imported international postal articles are cleared and released, subject to subsections (2) and (3).

(2) A postal declaration accompanying a postal article in terms of section **483** must for purposes of the clearance of the postal article be regarded to be a clearance declaration for home use in terms of Chapter **10** in the case of a postal article that –

- (a) has a customs value not exceeding an upper limit prescribed by the Minister by notice in the *Gazette*; and
- (b) is imported for home use.

(3) The Commissioner may by rule exempt international postal articles cleared for home use in accordance with the simplified clearance procedure provided for in subsection (2) from a provision of this Act regulating the clearance or release of goods for home use.

Clearance of international postal articles destined for export

480. (1) International postal articles to which this Chapter applies that are destined for export from the Republic and not in terms of section **112** exempted from the clearance requirements for goods destined for export, must be cleared for export as required by section **110**. The provisions of this Act regulating the clearance and release of goods destined for export must be followed when international postal articles destined for export are cleared and released, subject to subsections (2), (3) and (4).

(2) A postal declaration accompanying a postal article in terms of section **483** must for purposes of the clearance of the postal article be regarded to be a clearance declaration for outright export under the export procedure in the case of a postal article that –

- (a) has a customs value not exceeding an upper limit prescribed by the Minister by notice in the *Gazette*; and
- (b) is to be outright exported.²⁷⁰

(3) The simplified clearance procedure provided for in subsection (2) does not apply if the exporter of a postal article intends to apply in terms of Chapter **4** of the Customs Duty Act for a drawback of duty exceeding R100.

(4) The Commissioner may by rule exempt international postal articles cleared under the export procedure for outright export in accordance with the simplified clearance

²⁷⁰ This section would not apply if the postal article is exported in terms of a customs procedure that provides for the clearance of goods for export, such as temporary export. See section **111**.

procedure provided for in subsection (2) from a provision of this Act regulating the clearance or release of goods for outright export.

Part 3: Customs processing of international postal articles

Removal of international postal articles to international postal clearance depots

481. All international postal articles to which this Chapter applies must be removed to a licensed international postal clearance depot before –

- (a) delivered in the Republic, in the case of international postal articles imported for delivery in the Republic; or
- (b) exported from the Republic, in the case of international postal articles posted in the Republic for delivery outside the Republic.

Presentation of international postal articles to customs authority

482. The South African Post Office must present all international postal articles handled by it at a licensed international postal clearance depot to the customs authority at that depot, except postal articles excluded from clearance requirements in terms of section **109(1)(j)** or **(k)** or **112(1)(l)** or **(m)**.

Postal declarations to accompany international postal articles presented to customs authority

483. (1) When an international postal article referred to in section **482** is presented to the customs authority, the article must be accompanied by a postal declaration completed by or on behalf of the consignor of the postal article.

(2) A postal declaration in terms of subsection (1) must –

- (a) be on a form as may be prescribed by rule and contain the information required on the form;
- (b) signed and dated by the declarant; and
- (c) be accompanied by such supporting documentation as may be prescribed by rule.

Customs authority's functions in relation to international postal articles presented to it

484. (1) When international postal articles are presented to the customs authority at a licensed international postal clearance depot, a customs officer must promptly –

- (a) separate –
 - (i) postal articles that are taxable²⁷¹ from those that are not; and

²⁷¹ See definition in section **1**. Goods become taxable only when cleared or regarded as having been cleared for home use in terms of Chapter **10** or for outright export. Goods under other customs

- (ii) postal articles that are or contain prohibited or restricted goods from other postal articles;
- (b) release non-taxable postal articles which are not prohibited or restricted goods, to the South African Post Office for delivery in the Republic or for export from the Republic, as the case may be;
- (c) deal with prohibited or restricted goods in accordance with Chapter 35;
- (d) assess any import or export tax payable on taxable postal articles in accordance with any applicable tax levying Act; and
- (e) release any tax assessed postal articles to the South African Post Office for –
 - (i) collection on behalf of the Commissioner of any assessed import or export tax due; and
 - (ii) delivery in the Republic or export from the Republic, as the case may be.

(2) The South African Post Office is in respect of every international postal article that it presents to the customs authority in terms of this section entitled to recover from the addressee or consignor a presentation and clearance fee prescribed by rule in order to offset the costs incurred by it in performing the service on behalf of the addressee or consignor.

Part 4: Payment of import or export tax on international postal articles

Release of international postal articles

485. No international postal article assessed by the customs authority and on which any import or export tax is payable may be delivered to the addressee or exported by the South African Post Office before the tax payable on the postal article has been paid.

Payment of tax on international postal articles

486. (1) Any import tax payable on an international postal article cleared for home use in terms of Chapter 10 in accordance with –

- (a) the ordinary clearance procedure referred to in section 479(1), must be paid to the Commissioner by the person responsible in terms of the applicable tax levying Act for payment of the tax; or
- (b) the simplified clearance procedure provided for in section 479(2), must be paid to the South African Post Office as collecting agent of the Commissioner by the person in the Republic to whom the postal article is addressed.

(2) Any export tax payable on an international postal article cleared under the export procedure for outright export in accordance with –

procedures have a tax free status whilst under those procedures.

- (a) the ordinary clearance procedure referred to in section **480(1)**, must be paid to the Commissioner by the person responsible in terms of the applicable tax levying Act for payment of the tax; or
- (b) the simplified clearance procedure provided for in section **480(2)**, must be paid to the South African Post Office as collecting agent of the Commissioner by the person in the Republic who consigns the postal article for export through the South African Post Office.

(3) The South African Post Office is for purposes of this Act the collecting agent of the Commissioner for import and export tax referred to in subsection (1)(b) and (2)(b).

Time when tax becomes payable and rate of tax

487. (1) Import or export tax on an international postal article –

- (a) becomes payable when the customs authority has assessed the tax on the postal article in terms of section **484**; and
- (b) must be paid before the postal article is delivered to the consignee.

(2) The rate at which import or export tax is payable on an international postal article is the rate applicable at the time of the assessment, subject to the applicable tax levying Act.²⁷²

Payment of tax to the customs authority

488. (1) The South African Post Office must –

- (a) on a daily basis pay over to the Commissioner the import or export tax that it collected the previous day; or
- (b) if an agreement referred to in subsection (2) has been entered into between the Commissioner and the South African Post Office, pay over to the Commissioner the tax that it collected at regular intervals as agreed.

(2) The Commissioner may enter into a written agreement with the South African Post Office on –

- (a) the collection of tax payable on international postal articles;
- (b) the payment of the tax that it collected to the Commissioner at such regular intervals as may be agreed; and
- (c) the manner in, and the intervals at, which the South African Post Office must report to the Commissioner on tax collected by it on international postal articles.

²⁷² See for instance section **87** of the Customs Duty Act.

Cancellation and repayments of tax

489. (1) The Commissioner may, at the request of the South African Post Office and subject to such conditions as the Commissioner may determine, cancel any import or export tax due on an international postal article, or repay to the South African Post Office any import or export tax already paid by it to the Commissioner on an international postal article, if the postal article, whilst under the control of the South African Post Office, was –

- (a) destroyed;
- (b) abandoned;
- (c) not collected;
- (d) refused by the addressee;
- (e) not delivered to the addressee;
- (f) returned to the sender;
- (g) re-directed to a third country; or
- (h) not exported from the Republic.

(2) Postal articles referred to in subsection (1)(b), (c) or (d) must be dealt with in accordance with the Post Office Act.

(3) Chapter 4 of the Customs Duty Act does not apply to the repayment of duty to the South African Post Office in terms of subsection (1).

Condonation of underpayments

490. The Commissioner may condone any underpayment of import or export tax on an international postal article if the amount of the underpayment is less than R50.

Part 5: Inspection of international postal articles**Enforcement to be consistent with this Part**

491. When performing an enforcement function in relation to international postal articles a customs officer must perform that function in a manner consistent with this Part.

Opening of international postal articles

492. A customs officer may open an international postal article only if necessary –

- (a) to retrieve any invoice or consignment-related information contained inside the postal article;
- (b) to compare the contents of the postal article with the description, quantity, tariff heading, value and any other information reflected on the postal declaration made in respect of the postal article in terms of section **483**;

- (c) to assess whether the postal article is subject to the payment of any import or export tax;
- (d) to determine whether the postal article is or contains prohibited or restricted goods; or
- (e) to carry out any other enforcement function provided for in this Act.

Personal or private communications

493. (1) No customs officer may –

- (a) open any international postal article that weighs 30 grams or less, unless the customs officer on reasonable grounds suspects that the postal article contains prohibited or restricted goods;
- (b) read any personal or private communication found in any international postal article opened in terms of section **492** if reading that communication is not necessary for the enforcement of this Act or a tax levying Act; or
- (c) disclose any personal or private communication found in any international postal article opened in terms of section **492** otherwise than for a purpose permitted in terms of Part **5** of Chapter **1**.

(2) For the purpose of this section a personal or private communication does not include –

- (a) an invoice;
- (b) an order form;
- (c) a cheque;
- (d) a newspaper, magazine, book, catalogue or similar printed matter;
- (e) a blank form; or
- (f) any other communication as may be prescribed by rule.

Notifications that international postal articles have been opened

494. (1) When opening an international postal article a customs officer must affix a notification to the postal article informing the addressee that the postal article has been opened and examined by a customs officer.

(2) An opening notification must contain the information and be affixed in a manner as may be prescribed by rule.

(3) The customs authority may dispense with subsection (1) if disclosure of the fact that an international postal article has been opened may obstruct the investigation of crime involving the smuggling of goods.

Seizure and confiscation of international postal articles

495. (1) An international postal article is subject to seizure and confiscation by the customs authority in terms of Chapter **34** if that postal article or its contents is found to be not in accordance with –

- (a) the clearance declaration submitted in respect of that postal article; or
- (b) the postal declaration accompanying that postal article in terms of section **483**.

(2) Subsection (1) does not apply to closed international postal articles conveyed by or for the South African Post Office under an international consignment document for purposes of international transit.²⁷³

Part 6: Other matters**Conclusion of agreements**

496. The Commissioner may conclude any agreement with the South African Post Office in order to –

- (a) improve the ability of each party to fully execute their respective functions;
- (b) enhance the level of co-operation between the parties;
- (c) secure and expedite the clearance and release of international postal articles;
- (d) enhance security relating to international postal articles and the detection of prohibited, restricted and counterfeit goods;
- (e) facilitate the exchange of information between the SARS and the South African Post Office and the use of information technology with regard to the clearance and release of international postal articles; and
- (f) provide for any other matters that may be required in order to control the movement of goods by international post.

Rules to facilitate implementation of this Chapter

497. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

- (a)

NOTE: This clause will be completed after consideration of subordinate legislation and based upon comments received

²⁷³ See section **199**(1)(c).

Offences in terms of this Chapter

498. A person is guilty of an offence if that person fails to comply with sections

NOTE: This clause will be completed based upon finalisation of the clauses providing for obligations of the relevant entities

CHAPTER 23
ACCESS TO AND SAMPLING OF GOODS²⁷⁴

Purpose of this Chapter

499. (1) The purpose of this Chapter is to provide for importers, exporters and other persons having a material interest in goods that are subject to customs control, to access and to take samples of the goods.

(2) This Chapter may not be read as affecting the enforcement functions of customs officers in terms of this Act, or the powers of any law enforcement agency or other persons accessing and taking samples of goods in terms of any legislation for the purpose of enforcing that legislation.

Right of access to and taking samples from goods

500. (1) Whilst goods are subject to customs control, the importer, exporter or owner of the goods, or a person who has a material interest in the goods, or a person who acts on behalf of the importer, exporter, owner or such a person, is after notice to the customs authority entitled –

- (a) to access the goods; and
- (b) to take samples of the goods.

(2) Samples may in terms of subsection (1) be taken –

- (a) for establishing or verifying –
 - (i) the nature or characteristics of the goods;
 - (ii) the quality or content of the goods;
 - (iii) the tariff classification, customs value or origin of the goods; or
 - (iv) any other fact in relation to the goods as may be prescribed by rule;
- (b) for use as –
 - (i) evidence in a court or other proceedings referred to in Chapter **38**; or
 - (ii) trade samples; or
- (c) for any other purpose as may be prescribed by rule or approved by the customs authority.

(3) Samples taken in terms of subsection (1) may be –

- (a) examined, analysed or tested in any way;
- (b) subjected to a chemical, mechanical or technological process;

²⁷⁴ See section **695** for sampling of goods by customs, whether or not as part of an inspection.

- (c) used for obtaining advice, including expert or technical advice, on the goods as reflected by the samples or a matter relating to the goods; or
- (d) utilised in any other way necessary for achieving any of the purposes of subsection (2).

(4) Samples may be taken from goods in terms of subsection (1) without clearing the samples for home use or a customs procedure, subject to section **501** or **502**.

(5) Access to and sampling of goods in terms of subsection (1) must take place under supervision of a customs officer, if the customs authority so requires.²⁷⁵

Samples of imported goods

501. (1) Samples taken in terms of section **500** of imported goods must for tax purposes be regarded as having been cleared for home use in terms of Chapter **10** if those samples are taken from the goods –

- (a) before the goods have been cleared for home use or a customs procedure in terms of section **107**; or
- (b) whilst the goods are under a customs procedure.

(2) If samples are in terms in terms of subsection (1) regarded as having been cleared for home use, the person liable for any import tax that would have been payable on those samples had the samples actually been cleared for home use must promptly pay that tax in respect of those samples in accordance with the applicable tax levying Act.

(3) Any tax that becomes due as a consequence of subsection (2) is payable on demand.

(4) Samples taken in terms of section **500** of imported goods already cleared for home use do not affect the amount of any tax paid or payable on the goods.

Samples of goods in free circulation cleared for export under export procedure

502. (1) Samples taken in terms of section **500** of goods cleared for export under the export procedure must for tax purposes be regarded as having reverted to free circulation if –

- (a) those goods were in free circulation before cleared for export; and
- (b) those samples are taken of the goods before exported from the Republic.

²⁷⁵ For access to goods by interested persons during customs inspection, see section **726**.

(2) If samples are in terms in terms of subsection (1) regarded as having reverted to free circulation section **154** becomes applicable to those samples.

Rules to facilitate implementation of this Chapter

503. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

(a)

NOTE: This clause will be completed after consideration of subordinate legislation and based upon comments received

Offences in terms of this Chapter

504. A person is guilty of an offence if that person fails to comply with sections

NOTE: This clause will be completed upon finalisation of the clauses providing for obligations of the relevant entities

CHAPTER 24**FAST-TRACKING PROCEDURES****Purpose of this Chapter**

505. The purpose of this Chapter is to provide for the fast-tracking of procedures for the clearance and release of goods for home use or a permissible customs procedure.

Part 1: Fast-tracking procedures for accredited persons**Fast-tracking on application by accredited persons**

506. (1) The customs authority may on application by an accredited person allow the clearance and release of goods for home use or a customs procedure to be fast-tracked in accordance with this Part.

(2) An application referred to in subsection (1) must –

- (a) be in a format and contain all the information as may be prescribed by rule; and
- (b) be in accordance with any requirements prescribed by rule.

(3) An application for fast-tracking may be in respect of –

- (a) a specific consignment of goods; or
- (b) a specific category or kind of goods to be cleared by the accredited person during a specific period.

(4) If an application is granted, goods may be cleared and released on submission of a shortened clearance declaration referred to in section **507**.

(5) This section may be applied to goods only if any risks in relation to tax payable or that may be come payable on the goods are covered by security covering those goods

Shortened clearance declarations

507. (1) A shortened clearance declaration must contain the following minimum clearance information:

- (a) the purpose for which the goods are being cleared according to the prescribed purpose code;
- (b) the name of the consignor, consignee and any clearing agent;
- (c) a sufficiently precise description of the goods to determine the tariff heading;
- (d) the quantity of the goods;

- (e) applicable marks and numbers distinguishing the goods;
- (f) container numbers;
- (g) container seal numbers;
- (h) cargo reference or cargo tracking numbers;
- (i) the UCR number in relation to the consignment;
- (j) the number and date or any applicable transport document;
- (k) if the goods are restricted goods in terms of legislation restricting the import, possession or export of the goods, information relating to the permit or other authorisation issued in terms of that legislation, authorising the import, possession or export of the goods, as may be appropriate; and
- (l) any further information prescribed by rule.

(2) A shortened clearance declaration must be accompanied such supporting documentation as may be prescribed by rule.

Submission of full clearance declarations after release of goods

508. (1) The release of goods in terms of section **506** does not absolve the accredited person or person acting on behalf of the accredited person from compliance with full clearance procedures after the release of the goods.

(2) A full clearance declaration must be submitted after the release of the goods within a period as may be prescribed by rule or an extended period granted in terms of section **846**.

(3) An accredited person may in the case of goods of the same kind, in stead of submitting separate clearance declarations for each consignment of goods, submit a single clearance declaration covering various consignments cleared within the period for which the application was granted in terms of section **506(3)(b)**.

Tax payable in respect of goods cleared in terms of this Part

509. Any import or export tax payable on goods cleared and released in terms of this Part must be –

- (a) assessed when the full clearance declaration in respect of those goods is submitted in terms of section **508(2)** or (3); and
- (b) paid on demand following such assessment, unless payment of the tax is deferred in terms of the applicable tax levying Act.

Goods in respect of which applications have been granted to be released unless detained, seized or confiscated

510. The customs authority must release goods in respect of which an application for fast-tracking has been granted in terms of section **506(4)**, unless –

- (a) a condition subject to which the application had been granted, was not met; or
- (b) the goods are detained, seized or confiscated in terms of Chapter **34**.

Part 2: Other instances where fast-tracking is allowed**Fast-tracking when expedited release is required**

511. (1) The customs authority may despite non-compliance with any specific procedural aspect regulating the clearance of goods for home use or a customs procedure in terms of this Act, release goods for home use or a permissible customs procedure if the person requiring release of the goods notifies the customs authority in advance –

- (a) that expedited release of the goods is required; and
- (b) that the relevant procedural aspect cannot be complied with immediately.

(2) A release in terms of subsection (1) may only be granted if the person requiring release of the goods –

- (a) provides sufficient reasons why immediate release of the goods is required;
- (b) submits minimum information on the consignment concerned, as may be required by the customs authority or prescribed by rule;
- (c) undertakes to comply with the full clearance procedures after release of the goods; and
- (d) complies with any other requirements as may be prescribed by rule.

(3) A full clearance declaration must be submitted after release of the goods within a period as may be prescribed by rule or an extended period granted in terms of section **846**.

(4) Any import or export tax payable on goods cleared and released in terms of this section must be –

- (a) assessed when the full clearance declaration in respect of those goods is submitted in terms of subsection (3); and
- (b) paid on demand following such assessment, unless payment of the tax is deferred in terms of the applicable tax levying Act.

(5) This section may be applied to goods only if any risks in relation to tax payable or that may become payable on the goods are covered by security covering those goods.²⁷⁶

Fast-tracking procedures for low value goods

512. (1) The customs authority may despite non-compliance with any specific procedural aspects regulating the clearance of goods for home use or a customs procedure in terms of this Act, release the for home use or a permissible customs procedure if the goods have a value below R100.

(2) A release in terms of subsection (1) may be granted in respect of taxable goods only if sufficient information to enable the assessment of any import or export tax payable on the goods is reflected on –

- (a) the cargo arrival notice submitted in respect of those goods in terms of section **68**, in the case of imported goods; or
- (b) the advance notice of outgoing cargo submitted in respect of those goods in terms of section **70**, in the case of goods to be exported.

(3) Except where any import or export tax payable on the goods is paid before the release of the goods, the customs authority may require that security be given to ensure the payment of any such tax.

Oral clearance in emergencies

513. (1) The customs authority may permit the oral clearance and release of goods for home use imported into the Republic because of a disaster or medical emergency inside the Republic that threatens life, property or the environment.²⁷⁷

(2) Any applicable clearance procedures must be complied with after release of the goods within a period as may be prescribed by rule or an extended period granted in terms of section **846**.

²⁷⁶ See Chapter **31**.

²⁷⁷ For conditional granting of permissions see section **852**.

Part 3: Other matters**Rules to facilitate implementation of this Chapter**

514. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules –

- (a) excluding certain classes or kinds of goods from the application of this Chapter, if –
 - (i) the fast-tracking of clearance and release procedures for such goods present undue risk to revenue; or
 - (ii) such goods are not suitable for fast-tracked clearance and release;
- (b) prescribing –
 - (i) the time within which a full clearance declaration must be submitted to the customs authority;
 - (ii) the manner in which the release of goods cleared by way of fast-tracking procedures must be authorised;
- (c)

NOTE: This clause will be completed after consideration of subordinate legislation and based upon comments received
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Offences in terms of this Chapter

515. A person is guilty of an offence if that person fails to comply with sections

NOTE: This clause will be completed upon finalisation of the clauses providing for obligations of the relevant entities
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CHAPTER 25
DAMAGED, DESTROYED, LOST OR UNACCOUNTED FOR GOODS

Purpose and application of this Chapter

- 516.** (1) The purpose of this Chapter is to determine –
- (a) the procedures to be followed when goods are damaged, destroyed, lost or unaccounted for; and
 - (b) the tax and other consequences when goods are damaged, destroyed, lost or unaccounted for.
- (2) This Chapter applies to all goods that are not in free circulation that have become damaged, destroyed or lost or are unaccounted for, including wreck.

Part 1: Goods other than compensating products

Application of this Part

- 517.** (1) This Part applies to –
- (a) imported goods to which section **108** applies that were damaged, destroyed or lost or became unaccounted for before the goods –
 - (i) were cleared as required by that section for home use or a customs procedure; or
 - (ii) were released for home use or a customs procedure;
 - (b) goods cleared for home use or a customs procedure in terms of section **163** that were damaged, destroyed or lost or became unaccounted for before the goods were released for home use or that customs procedure; or
 - (c) goods under a customs procedure that were damaged, destroyed or lost or became unaccounted for before the completion of the procedure.²⁷⁸
- (2) This Part does not apply to –
- (a) compensating products;²⁷⁹ or
 - (b) goods in licensed state warehouses.²⁸⁰

²⁷⁸ As a customs procedure commences when goods are cleared for the procedure, this paragraph covers all goods cleared for a customs procedure, including goods in free circulation cleared under the export procedure for export.

²⁷⁹ See Part **2** of this Chapter for compensating products that become damaged, destroyed, lost or unaccounted for.

²⁸⁰ Goods damaged, destroyed, lost or unaccounted for in licensed state warehouses are dealt with in Chapter **27**.

Notification of goods damaged, destroyed, lost or unaccounted for

518. (1) The customs authority must within a period and in a manner as may be prescribed by rule be notified if goods to which this Part applies are damaged, destroyed, lost or unaccounted for.

- (2) A notification referred to in subsection (1) must be submitted by the person –
- (a) who was in physical control of the goods when the goods were damaged, destroyed or lost, in the case of damaged, destroyed or lost goods; or
 - (b) who discovered that the goods are unaccounted for, in the case of goods unaccounted for.

(3) Subsection (2) does not prevent any of the following persons to submit the notification referred to in subsection (1):

- (a) the customs broker or other person who cleared the goods;
- (b) the person on whose behalf the goods were cleared;
- (c) the owner of the goods; or
- (d) any other person who has a material interest in the goods.

- (4) A notification referred to in subsection (1) must –
- (a) identify the goods damaged, destroyed or lost or unaccounted for, in a manner and by way of documents as may be prescribed by rule;
 - (b) indicate whether the goods have been cleared for home use or a customs procedure, and, if so, the number and date of the clearance declaration;
 - (c) give a detailed account of how, when and where the goods became damaged, destroyed, lost or unaccounted for; and
 - (d) contain any other particulars as may be prescribed by rule.

Consequences of failure to notify

519. If the customs authority is not notified in accordance with section **518** of goods to which this Part applies that were damaged, destroyed, lost or unaccounted for –

- (a) any tax that was payable on the goods before they were damaged, destroyed, lost or unaccounted for remains payable as if the goods were not damaged, destroyed, lost or unaccounted for;
- (b) no tax already paid on the goods is refundable;
- (c) section **110**(1) must be applied to the goods, in the case of goods damaged, destroyed, lost or unaccounted for before the goods were cleared as required by section **108** for home use or a customs procedure; and

- (d) section **216(1)**²⁸¹, **239(1)**²⁸², **270(1)**²⁸³, **294(1)**²⁸⁴, **316(1)**, **318(1)**²⁸⁵, **349(1)**, **351(1)**²⁸⁶, **367(1)**, **369(1)**²⁸⁷, **420(1)**²⁸⁸ or **446(1)**²⁸⁹, as may be appropriate, must be applied to the goods, if those goods were damaged, destroyed, lost or unaccounted for whilst under a customs procedure.

Damaged goods

520. (1) A notification in terms of section **518** in relation to damaged goods must be accompanied by documentary proof if the goods were damaged due to –

- (a) a natural occurrence;
- (b) an accident;
- (c) a hostile act by a third party; or
- (d) the inherent characteristics of the goods.

(2) If the customs authority accepts documentary proof submitted to it in terms of subsection (1) that the goods were damaged due to a cause referred to in that subsection –

- (a) any existing clearance and release of the goods must be withdrawn;
- (b) any tax payable on the goods by virtue of that clearance but not yet paid falls away;
- (c) any tax already paid on the goods may, to the extent determined by the tax levying Act regulating that tax, be refunded to the person who paid the tax;²⁹⁰ and
- (d) the damaged goods must, in the case of imported goods, within a period prescribed by rule –
 - (i) be cleared for home use or a permissible customs procedure;
 - (ii) be abandoned to the Commissioner in accordance with Chapter **26**; or
 - (iii) at the expense of a person referred to in section **518(2)** or (3) and under customs supervision be exported from the Republic or destroyed.

(3) If the damaged goods are cleared for home use or a permissible customs procedure in terms of subsection (2)(d)(i), any tax payable on the goods by virtue of that clearance may be set off against any tax refundable in terms of subsection (2)(c).

²⁸¹ National and international transit.

²⁸² Transhipment

²⁸³ Temporary admission

²⁸⁴ Warehousing

²⁸⁵ Tax free shop procedure

²⁸⁶ Stores procedure

²⁸⁷ Export procedure

²⁸⁸ Inward processing

²⁸⁹ Processing for home use

²⁹⁰ But see section **531**.

(4) No tax is payable on damaged goods dealt with in terms of subsection (2)(d)(ii) or (iii).

- (5) The consequences set out in section **519**(a), (b), (c) and (d) apply if –
- (a) the customs authority refuses to accept documentary proof submitted to it in terms of subsection (1) that the goods were damaged due to a cause referred to in that subsection; or
 - (b) no such documentary proof is submitted to the customs authority.

Destroyed goods

521. (1) A notification in terms of section **518** in relation to destroyed goods must be accompanied by documentary proof if the goods were destroyed due to –

- (a) a natural occurrence;
- (b) an accident;
- (c) a hostile act by a third party; or
- (d) the inherent characteristics of the goods.

(2) If the customs authority accepts documentary proof submitted to it in terms of subsection (1) that the goods were destroyed due to a cause referred to in that subsection –

- (a) any existing clearance and release of the goods must be withdrawn;
- (b) any tax payable on the goods by virtue of that clearance but not yet paid falls away;
- (c) any tax already paid on the goods may, to the extent determined by the tax levying Act regulating that tax, be refunded to the person who paid the tax;²⁹¹ and
- (d) any parts or materials that have been salvaged from the destroyed goods or that are salvageable, must, in the case of imported goods, within a period prescribed by rule –
 - (i) be cleared for home use or a permissible customs procedure;
 - (ii) be abandoned to the Commissioner in accordance with Chapter **26**; or
 - (iii) at the expense of a person referred to in section **518**(2) or (3), and under customs supervision, be exported from the Republic or destroyed.

(3) If any parts or materials that have been salvaged from the destroyed goods or that are salvageable are cleared for home use or a permissible customs procedure in terms of subsection (2)(d)(i), any tax payable on the parts or materials by virtue of that clearance may be set off against any tax refundable in terms of subsection (2)(c).

²⁹¹ But see section **531**.

(4) No tax is payable on parts or materials dealt with in terms of subsection (2)(d)(ii) or (iii).

- (5) The consequences set out in section **518**(a), (b), (c) and (d) apply if –
- (a) the customs authority refuses to accept documentary proof submitted to it in terms of subsection (1) that the goods were destroyed due to a cause referred to in that subsection; or
 - (b) no such documentary proof is submitted to the customs authority.

Lost goods

522. (1) A notification in terms of section **518** in relation to lost goods must be accompanied by documentary proof –

- (a) if the goods were lost due to –
 - (i) a natural occurrence;
 - (ii) an accident;
 - (iii) a hostile act by a third party; or
 - (iv) the inherent characteristics of the goods; and
- (b) that the goods after having been lost due to an occurrence referred to in paragraph (a) were not diverted for home use or have not gone into home use in any other way.

(2) If the customs authority accepts documentary proof submitted to it in terms of subsection (1) that the goods were lost due to a cause referred to in that subsection and that the goods were not diverted for home use or have not gone into home use in any other way –

- (a) any existing clearance and release of the goods must be withdrawn;
- (b) any tax payable on the goods by virtue of that clearance but not yet paid falls away; and
- (c) any tax already paid on the goods may, to the extent consistent with the tax levying Act regulating that tax, be refunded to the person who paid the tax.²⁹²

- (3) The consequences set out in section **519**(a), (b), (c) and (d) apply if –
- (a) the customs authority refuses to accept documentary proof submitted to it in terms of subsection (1) –
 - (i) that the goods were lost due to a cause referred to in that subsection; or
 - (ii) that the lost goods were not diverted for home use or have not gone into home use in any other way; or
 - (b) no such documentary proof is submitted to the customs authority.

²⁹² But see section **531**.

Goods unaccounted for

523. (1) A notification in terms of section **518** in relation to goods that are unaccounted for must be accompanied by documentary proof if the shortfall in the goods is due to –

- (a) a short shipment of the goods; or
- (b) an administrative error in any documents or records relating to the goods.

(2) If the customs authority accepts documentary proof submitted to it in terms of subsection (1) that the goods are unaccounted for due to a cause referred to in that subsection –

- (a) any existing clearance and release of the goods must be withdrawn;
- (b) any tax payable on those goods by virtue of that clearance but not yet paid falls away; and
- (c) any tax already paid on the goods may, to the extent determined by the tax levying Act regulating that tax, be refunded to the person who paid the tax.²⁹³

(3) The consequences set out in section **519**(a), (b), (c) and (d) apply if –

- (a) the customs authority refuses to accept documentary proof submitted to it in terms of subsection (1) that the goods are unaccounted for due to a cause referred to in that subsection; or
- (b) no such documentary proof is submitted to the customs authority.

Part 2: Compensating products**Application of this Part**

524. This Part applies to –

- (a) compensating products obtained from the processing of goods under the inward processing procedure²⁹⁴ that were damaged, destroyed or lost or became unaccounted for before exported from the Republic as inward processed compensating products;
- (b) compensating products obtained from the processing of goods under the home use procedure²⁹⁵ that were damaged, destroyed or lost or became unaccounted for before released for home use as home use compensating products; and
- (c) compensating products imported into the Republic under the outward processing procedure²⁹⁶ that were damaged, destroyed or lost or became unaccounted for before released for home use as outward processed compensating products.

²⁹³ But see section **531**.

²⁹⁴ See Chapter **19**.

²⁹⁵ See Chapter **20**.

Notification of compensating products damaged, destroyed, lost or unaccounted for

525. (1) The customs authority must within a period and in a manner as may be prescribed by rule be notified if compensating products to which this Part applies are damaged, destroyed, lost or unaccounted for.

(2) A notification referred to in subsection (1) must be submitted –

- (a) in the case of damaged, destroyed or lost compensating products, by the person who was in physical control of the compensating products when they were damaged, destroyed or lost; or
- (b) in the case of compensating products unaccounted for, by –
 - (i) the licensee of the premises where the goods from which the compensating products are obtained were processed; or
 - (ii) the person who discovered that the compensating products are unaccounted for.

(3) Subsection (2) does not prevent any of the following persons to submit the notification referred to in subsection (1):

- (a) the customs broker or other person who initially cleared the goods from which the compensating products were obtained for the inward processing, processing for home use or outward processing procedure, as the case may be;
- (b) the person on whose behalf those were cleared;
- (c) the owner of the compensating products; or
- (d) any other person who has a material interest in the compensating products.

(4) A notification referred to in subsection (1) must –

- (a) identify the compensating products damaged, destroyed or lost or unaccounted for, in a manner and by way of documents as may be prescribed by rule;
- (b) indicate whether the compensating products were under the inward processing, processing for home use or outward processing procedure;
- (c) state the number and date of the clearance declaration of the goods from which the compensating products were obtained;
- (d) give a detailed account of how, when and where the compensating products became damaged, destroyed, lost or unaccounted for; and
- (e) contain any other particulars as may be prescribed by rule.

²⁹⁶ See Chapter 21.

Consequences of failure to notify

526. If the customs authority is not notified in accordance with section **525** of compensating products to which this Part applies that were damaged, destroyed or lost or became unaccounted for –

- (a) section **420(1)**²⁹⁷ **446(1)**²⁹⁸ or **472(1)**,²⁹⁹ as may be appropriate, must be applied to the goods from which the compensating products were obtained; and
- (b) the compensating products must, in the case of compensating products under the outward processing procedure, for tax purposes be regarded as having been cleared for home use in terms of Chapter **10**.³⁰⁰

Damaged compensating products

527. (1) A notification in terms of section **525** in relation to damaged compensating products must be accompanied by documentary proof if the compensating products were damaged due to –

- (a) a natural occurrence;
- (b) an accident;
- (c) a hostile act by a third party; or
- (d) the inherent characteristics of the compensating products.

(2) If the customs authority accepts documentary proof submitted to it in terms of subsection (1) that the compensating products were damaged due to a cause referred to in that subsection, the damaged compensating products –

- (a) in the case of compensating products under the inward processing procedure, must –
 - (i) continue to be dealt with as inward processed compensating products in accordance with the inward processing procedure or be dealt with in terms of section **413** as by-products or commercially valuable waste obtained from the processing of goods under that procedure;
 - (ii) be abandoned to the Commissioner in accordance with Chapter **26**; or
 - (iii) at the expense of a person referred to in section **525(2)** or (3) be destroyed under customs supervision;
- (b) in the case of compensating products under the processing for home use procedure, must –
 - (i) continue to be dealt with as home use processed compensating products in accordance with the processing for home use procedure or be dealt with in

²⁹⁷ For compensating products under the inward processing procedure.

²⁹⁸ For compensating products under the processing for home use procedure.

²⁹⁹ For compensating products under the outward processing procedure.

³⁰⁰ Section **150** applies if goods are regarded as having been cleared for home use.

- terms of section **440** as by-products or commercially valuable waste obtained from the processing of goods under that procedure;
- (ii) be abandoned to the Commissioner in accordance with Chapter **26**; or
 - (iii) at the expense of a person referred to in section **525(2)** or (3) be destroyed under customs supervision; or
- (c) in the case of compensating products under the outward processing procedure, must –
- (i) continue to be dealt with as outward processed compensating products obtained from the processing of goods under the outward processing procedure;
 - (ii) be abandoned to the Commissioner in accordance with Chapter **26**; or
 - (iii) at the expense of a person referred to in section **525(2)** or (3) be destroyed under customs supervision.
- (3) The consequences set out in section **526(a)** or (b) apply if –
- (a) the customs authority refuses to accept documentary proof submitted to it in terms of subsection (1) that the compensating products were damaged due to a cause referred to in that subsection; or
 - (b) no such documentary proof is submitted to the customs authority.

Destroyed compensating products

- 528.** (1) A notification in terms of section **524** in relation to destroyed compensating products must be accompanied by documentary proof if the compensating products were destroyed due to –
- (a) a natural occurrence;
 - (b) an accident;
 - (c) a hostile act by a third party; or
 - (d) the inherent characteristics of the compensating products.

- (2) If the customs authority accepts documentary proof submitted to it in terms of subsection (1) that the compensating products were destroyed due to a cause referred to in that subsection whilst under –
- (a) the inward processing procedure, any parts or materials that may have been salvaged or are salvageable from the destroyed compensating products must –
 - (i) be dealt with in terms of section **413** as by-products or commercially valuable waste obtained from the processing of goods under the inward processing procedure;³⁰¹

³⁰¹ Section **413** includes provision for by-products or commercially valuable waste to be cleared and

- (ii) be abandoned to the Commissioner in accordance with Chapter 26; or
 - (iii) at the expense of a person referred to in section 525(2) or (3) be destroyed under customs supervision;
- (b) the processing for home use procedure, any parts or materials that may have been salvaged or are salvageable from the destroyed compensating products must –
- (i) be cleared under the processing for home use procedure for home use as home use compensating products in accordance with the conditions and requirements regulating that procedure;
 - (ii) be dealt with in terms of section 440 as by-products or commercially valuable waste obtained from the processing of goods under the processing for home use procedure;
 - (iii) be abandoned to the Commissioner in accordance with Chapter 26; or
 - (iv) at the expense of a person referred to in section 525(2) or (3) be destroyed under customs supervision; and
- (c) the outward processing procedure, any parts or materials that may have been salvaged or are salvageable from the destroyed compensating products, may –
- (i) be cleared under the outward processing procedure for home use as outward processed compensating products in accordance with the conditions and requirements regulating that procedure;
 - (ii) be abandoned to the Commissioner in accordance with Chapter 26; or
 - (iii) at the expense of a person referred to in section 525(2) or (3) be destroyed under customs supervision.
- (3) The consequences set out in section 525(a) or (b) apply if –
- (a) the customs authority refuses to accept documentary proof submitted to it in terms of subsection (1) that the compensating products were destroyed due to a cause referred to in that subsection; or
 - (b) no such documentary proof is submitted to the customs authority.

Lost compensating products

529. (1) A notification in terms of section 524 in relation to lost compensating products must be accompanied by documentary proof –

- (a) if the compensating products were lost due to –
 - (i) a natural occurrence;
 - (ii) an accident;
 - (iii) a hostile act by a third party; or

released for export under the inward processing procedure as if the by-products or waste were inward processed compensating products.

- (iv) the inherent characteristics of the compensating products; and
- (b) that the compensating products after having been lost due to an occurrence referred to in paragraph (a) were not diverted for home use or have not gone into home use in any other way.

- (2) The consequences set out in section **525**(a) or (b) apply if –
 - (a) the customs authority refuses to accept documentary proof submitted to it in terms of subsection (1) –
 - (i) that the compensating products were lost due to a cause referred to in that subsection; or
 - (ii) that the lost compensating products were not diverted for home use or have not gone into home use in any other way; or
 - (b) no such documentary proof is submitted to the customs authority.

Compensating products unaccounted for

530. (1) A notification in terms of section **518** in relation to compensating products that are unaccounted for must be accompanied by documentary proof if the shortfall in the compensating products was due to –

- (a) a short shipment of the compensating products;
- (b) an administrative error in any documents or records relating to the compensating products; or
- (c) an erroneous calculation in the conversion of goods to compensating products.

- (2) The consequences set out in section **519**(a), (b), (c) and (d) apply if –
 - (a) the customs authority refuses to accept documentary proof submitted to it in terms of subsection (1) that the goods are unaccounted for due to a cause referred to in that subsection; or
 - (b) no such documentary proof is submitted to the customs authority.

Part 3: Other matters

Tax waivers and refunds for goods damaged, destroyed, lost or unaccounted for not applicable in certain circumstances

531. A provision of this Chapter which provides for tax on goods to fall away or to be refunded when goods are damaged, destroyed, lost or unaccounted for does not apply if in any specific case the beneficiary of such tax waiver or refund has received or is entitled to receive insurance or other compensation in respect of such tax that has become payable to the beneficiary as a result of the fact that the goods were damaged, destroyed, lost or unaccounted for.

Wreck

532. (1) No person may without the permission of the customs authority remove any wreck from where it is found or alter in quantity or quality such wreck unless necessary for its preservation or safe-keeping.

(2) Any person in possession of any wreck must without delay –

- (a) give notice thereof to the nearest Customs Office; and
- (b) if required to do so, deliver the wreck to the Commissioner.

(3) Subsection (2)(b) does not apply to the owner of the wreck or the duly authorised agent of the owner.

(4) Wreck consisting of goods that are not in free circulation must be dealt with in accordance with this Chapter to the extent that this Chapter can be applied. Wreck consisting of undamaged goods not in free circulation must be dealt with in accordance with the provisions of this Act applicable to such goods.

Rules to facilitate implementation of this Chapter

533. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

- (a) additional particulars that a notification referred to in section **518** or **525** must contain;
- (b)

NOTE: This clause will be enhanced after consideration of subordinate legislation and based upon comments received

Offences in terms of this Chapter

534. A person is guilty of an offence if that person fails to comply with sections

NOTE: This clause will be completed upon finalisation of the clauses providing for obligations of the relevant entities
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CHAPTER 26
ABANDONED AND UNCLAIMED GOODS

Purpose and application of this Chapter

535. (1) The purpose of this Chapter is to provide for –

- (a) the abandonment to the Commissioner of goods that are not in free circulation; and
- (b) the disposal of unclaimed goods.

(2) This Chapter does not apply to prohibited or restricted goods and counterfeit goods, and such goods must be dealt with in accordance with Chapters **35** and **36**, respectively.

Goods that may be abandoned to Commissioner

536. The owner of goods that are not in free circulation, or another person authorised to act on behalf of the owner, may by agreement with the Commissioner abandon the goods to the Commissioner if –

- (a) the goods were damaged and the owner elects not to obtain release of the goods for home use or a customs procedure;
- (b) the goods consist of parts or materials salvaged from goods that were destroyed and the owner elects not to obtain release of the parts or materials for home use or a customs procedure;
- (c) the value of the goods to the owner does not justify the cost of obtaining release of the goods for home use or a customs procedure; or
- (d) a provision of this Act or a tax levying Act provides for the abandonment of the goods to the Commissioner.

Applications to abandon goods to Commissioner

537. (1) The owner of goods imported into the Republic or another person authorised to act on behalf of the owner may apply in writing to the customs authority to abandon the goods to the Commissioner.

(2) An application to abandon goods to the Commissioner must –

- (a) identify the goods in sufficient detail;
- (b) state the reason for the abandonment;
- (c) indemnify the Commissioner against any claim in respect of the abandoned goods by another person;
- (d) contain an undertaking to pay any cost relating to –
 - (i) the removal of the goods to a licensed state warehouse or other place of security; and

- (ii) the storage of the goods; and
- (e) reflect any other information as may be prescribed by rule.

(3) Application in terms of this section may be made, as may be appropriate, at any time before –

- (a) the goods are released for home use; or
- (b) the goods are exported from the Republic.

Consideration of applications

538. The customs authority must consider an application to abandon goods to the Commissioner, and may –

- (a) approve the application if abandonment is in the best interest of the state; or
- (b) refuse the application.

Abandonment notices

539. (1) If an application to abandon goods to the Commissioner is approved, the customs authority must issue a notice of abandonment to –

- (a) the person who lodged the application; and
- (b) the person who is in physical control of the goods.

(2) A notice of abandonment must –

- (a) identify the abandoned goods;
- (b) state the date from which the goods are abandoned; and
- (c) contain any other particulars as may be prescribed by rule.

Consequences of abandonment

540. Upon issuing a notice of abandonment referred to in section **539** –

- (a) any clearance of the goods must be regarded as having been withdrawn;
- (b) ownership in the goods becomes vested in the Commissioner for credit of the National Revenue Fund;
- (c) any import or export tax payable on the goods falls away; and
- (d) the goods must –
 - (i) be removed to a licensed state warehouse or other place of security determined by the customs authority; and
 - (ii) be dealt with in terms of Chapter **27**.

Consequences of refusal for goods to be abandoned

541. If an application to abandon goods to the Commissioner is refused, and the goods are not cleared and released for home use or a customs procedure in accordance with the requirements regulating the clearance and release of goods for home use or a customs procedure, 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.

Goods unclaimed after release for home use or for export under export procedure³⁰²

542. If goods that have been cleared and released for home use or for export under the export procedure lay unclaimed at the customs controlled area where the goods happen to be for three days after having been released for home use or for export under the export procedure, the licensee of that customs controlled area may deal with and dispose of the goods in accordance with the conditions –

- (a) 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; or
- (b) generally stipulated by the licensee for the use of that customs controlled area for the receipt, storage or handling of goods.

³⁰² See sections 110 and 113 for goods not cleared within the required period.

CHAPTER 27 STATE WAREHOUSES

Part 1: Introductory provisions

Purpose and application of this Chapter

- 543.** (1) The purpose of this Chapter is to provide for –
- (a) goods to which this Chapter may be applied to be secured in state warehouses or other secure places if –
 - (i) those goods are dealt with contrary to this Act, a tax levying Act or any other applicable legislation; or
 - (ii) this is necessary for the enforcement of this Act, a tax levying Act or any other applicable legislation; and
 - (b) the handling, storage and disposal of such goods.
- (2) This Chapter may be applied to any goods that are subject to customs control.

Designation and licensing of premises as state warehouses

- 544.** The Commissioner may –
- (a) designate a facility as a state warehouse to be operated by the Commissioner in accordance with this Act; or
 - (b) licence any premises in terms of Chapter **28** as a state warehouse to be operated by the licensee in accordance with this Act and any conditions subject to which the premises were licensed.

Part 2: Removals to and securing of goods in state warehouses

Removal of goods to state warehouses

- 545.** (1) A person who is in physical control of goods –
- (a) imported into the Republic must remove those goods to a state warehouse determined in terms of subsection (3) if those goods are not cleared for home use or a permissible customs procedure in accordance with section **108** within the period applicable to the goods in terms of that section; or
 - (b) cleared for export under the export procedure³⁰³ or for a customs procedure that allows the export of goods under that procedure without any export clearance,³⁰⁴

³⁰³ Chapter **17** provides for the export of goods under the export procedure. The export procedure covers the export of goods under various other customs procedures. See section **355(2)**.

must remove those goods to a state warehouse determined in terms of subsection (3) if those goods are not exported within the period applicable to the goods in terms of section 111(3), (4) or (5).

(2) The customs authority may at any time direct a person who is in physical control of any goods to remove those goods to a state warehouse determined in terms of subsection (3) if those goods –

- (a) were dealt with in breach of this Act;
- (b) are subject to a lien in terms of a tax levying Act or any other legislation;
- (c) are detained, seized or confiscated in terms of Chapter 34 or 35;³⁰⁵ or
- (d) for any other reason required to be secured to ensure compliance with this Act or a tax levying Act or that other legislation.

(3) The customs authority may for the purpose of subsection (1) or (2) determine the state warehouse to which goods must be removed in terms of that subsection.

(4) The customs authority must submit a copy of any direction issued in terms of subsection (2) to the customs officer or licensee in charge of the state warehouse to which the goods are to be removed.

(5) This section must be read subject to section 555.

Submission of removal notices

546. (1) Before removing goods to a state warehouse in compliance with section 545(1) or in compliance with a direction issued in terms of section 545(2), the person who must remove the goods must submit a notice of removal of the goods containing such information as may be prescribed by rule, to –

- (a) the customs officer in charge of the state warehouse, if that warehouse is operated by the Commissioner; or
- (b) the licensee of the state warehouse, if that warehouse is a licensed state warehouse.

(2) A notice referred to in subsection (1) must be accompanied by all supporting documents concerning those goods which are in the possession of the person who must remove the goods.

³⁰⁴ For instance goods cleared for international transit and exported under that procedure.

³⁰⁵ Counterfeit goods detained in terms of Chapter 36 must in terms of section 773(3)(a) be removed to a counterfeit depot in terms of the Counterfeit Goods Act. However, section 545(3)(c) above will apply if the counterfeit goods were detained in terms of section 721.

Failure to remove goods to state warehouses

547. If a person fails to comply with section **545(1)** or a direction issued in terms of section **542(2)** to remove goods to a state warehouse, the customs authority may remove the goods at the risk and expense of that person to a state warehouse.

Recovery of expenses for removal of goods to state warehouses

548. A person referred to in section **545(1)** or (2) may recover any expenses incurred by that person to remove goods to a state warehouse in terms of that section or to compensate the Commissioner in terms of section **547**, from –

- (a) the importer or owner of the goods or any other person who has a right or interest in the goods;
- (b) the agent in the Republic of the importer, owner or other person; or
- (c) the proceeds of the sale of goods in accordance with section **570**.

Diversion of goods

549. No person may, without the permission of the customs authority, divert goods to which section **545(1)** or a direction issued in terms of section **545(2)** applies to a place other than a state warehouse determined in terms of section **545(3)**.

Charges for goods in state warehouses

550. (1) The Commissioner may determine for goods stored in a state warehouse –

- (a) state warehouse rent at a rate fixed by the Commissioner; and
- (b) additional charges for goods which require special care or treatment.

(2) State warehouse rent and additional charges determined in terms of subsection (1) are –

- (a) payable by –
 - (i) the importer or owner of the goods, the person clearing the goods in terms of section **565** or any other person who has a right or interest in the goods; or
 - (ii) the agent in the Republic of the importer, owner, person clearing the goods in terms of section **565** or other person; and
- (b) payable to –
 - (i) the Commissioner, in the case of a state warehouse operated by the Commissioner; or
 - (ii) the licensee of the state warehouse, in the case of a licensed state warehouse.

(3) If the goods are sold in terms of section **567** any amount outstanding at the date of sale may be recovered from the proceeds of the sale in accordance with section **570**.

(4) The Commissioner may in special circumstances exclude any specific goods or category of goods from state warehouse rent or additional charges.

Accounting

551. (1) The customs officer or licensee in charge of a state warehouse must –

- (a) keep record of –
 - (i) all goods received in and removed from the state warehouse; and
 - (ii) all goods that are in terms of section **555(4)** required to be recorded in the accounting records of that state warehouse;
- (b) perform monthly stock checks; and
- (c) perform such other accounting tasks as may be prescribed by rule or stipulated in the licensee's licence agreement.

(2) A record in terms of subsection (1)(a) must be kept in such a manner and format and must contain such information as may be prescribe by rule.³⁰⁶

Reporting by licensees of state warehouses

552. (1) The licensee of a state warehouse must, within three days after the end of each month or any extended period granted in terms of section **846**, submit to the customs authority a report for that month in connection with all goods in that warehouse.

(2) A report in terms of subsection (1) must contain such information as may be prescribed by rule, including information concerning –

- (a) all goods received in the state warehouse during the reporting period;
- (b) all goods removed from the state warehouse during the reporting period;
- (c) any goods damaged, destroyed or lost during the reporting period;
- (d) any goods unaccounted for as at the end of the reporting period; and
- (e) any surplus goods as at the end of the reporting period.

Responsibilities of licensees of state warehouses

553. (1) The licensee of a state warehouse to which goods were removed in terms of section **545(1)** or (2) must take all reasonable steps to safeguard the goods in the warehouse against damage, destruction or loss.

³⁰⁶ Own computerised system for record keeping purposes is permissible in terms of section **853**.

(2) The licensee of a state warehouse is liable for the payment of any import or export tax payable on goods in the warehouse if those goods are –

- (a) damaged, destroyed or lost in the warehouse, unless it is proved that the goods were damaged, destroyed or lost due to –
 - (i) a natural occurrence;
 - (ii) an accident;
 - (iii) a hostile act by a third party; or
 - (iv) the inherent characteristics of the goods; or
- (b) unaccounted for, unless it is proved that the goods are unaccounted for due to –
 - (i) a short shipment of the goods to the warehouse; or
 - (ii) an administrative error in any documents or records relating to the goods.

(3) Subsection (2) does not affect the Commissioner's right to recover any import or export tax payable on goods that were damaged or destroyed in a licensed state warehouse from the proceeds of the sale of the damaged goods or any parts or materials that may have been salvaged from the destroyed goods.

(4) When the licensee of a state warehouse becomes liable in terms of subsection (2) for import or export tax payable on any goods that are –

- (a) damaged, destroyed or lost in the warehouse, the tax must be paid on demand; or
- (b) unaccounted for, the tax becomes payable upon the discovery of the shortfall either by the licensee or a customs officer.

Risks in connection with goods removed to or stored in state warehouses

554. (1) The importer or owner of goods removed to or kept in a state warehouse, or any other person who has a right or interest in those goods, or the agent in the Republic of that importer, owner or other person, carries the risk for any damage to or destruction or loss of –

- (a) those goods that may –
 - (i) occur whilst those goods are removed to, in or from the warehouse, or stored in the warehouse; or
 - (ii) be caused by the handling or opening of any package or container in which those goods are contained, or the examination of the contents, by a customs officer at the warehouse; or
- (b) any other property that may be caused by –
 - (i) the removal of those goods to, in or from the warehouse, or the storage of those goods in the warehouse; or

- (ii) the handling or opening of any package or container in which those goods are contained, or the examination of the contents, by a customs officer at the warehouse.

(2) Subsection (1) does not apply if the damage to or destruction or loss of the goods or other property was caused by the negligent or intentional conduct of –

- (a) the customs officer in charge of the state warehouse or an employee of SARS, in the case of a state warehouse operated by the Commissioner; or
- (b) the licensee in charge of the state warehouse or an employee of the licensee, in the case of a licensed state warehouse.

Part 3: Removals to and keeping of goods at premises as if those premises are state warehouses

Retentions at or removals to premises other than state warehouses

555. (1) If a condition for the removal of goods to a state warehouse in terms of section **545**(1) or (2) exists, the customs authority may direct or authorise the person who is in physical control of those goods, in stead of removing the goods to a state warehouse in terms of that section –

- (a) to retain the goods on the premises where they are currently located for a specific period; or
- (b) to remove the goods to any premises determined by the customs authority which is not a state warehouse.

(2) Except where clearly inappropriate, the provisions of this Act relating to –

- (a) state warehouses apply to premises where goods are retained or to which goods are removed in terms of subsection (1) as if those premises were a licensed state warehouse; and
- (b) the enforcement of this Act within customs controlled areas apply to such premises for as long as the goods remain on those premises as if those premises were a customs controlled area.

(3) Goods to which this section applies must for accounting purposes be recorded in the accounting records of a state warehouse operated by the Commissioner, as may be determined by the customs authority.

(4) The customs authority must give notice to the person in charge of the premises where the goods are retained or to which the goods were removed in terms of subsection (1) that –

- (a) subsection (2) applies to those premises for as long as the goods remain on those premises;
- (b) the goods must be kept secured on those premises as if the goods were in a state warehouse; and
- (c) the goods must for accounting purposes be recorded in the accounting records of a state warehouse specified in the notice.

(5) A copy of the notice referred to in subsection (4) must be submitted to the customs officer in charge of the state warehouse contemplated in subsection (3).

Submission of removal notice to person in charge of premises to which goods are removed

556. Before removing goods in terms of an authorisation or direction issued in terms of section **555(1)(b)** to a place specified in the authorisation or direction, the person who must remove the goods must submit a notice of removal of the goods containing such information as may be prescribed by rule, to the person in charge of the premises to which those goods are to be removed.

Submission of supporting documentation to state warehouse responsible for accounting

557. The person who has control over, or is responsible for, goods in connection with which a direction or authorisation is issued in terms of section **555(1)**, must within three days of receipt of the direction or authorisation or any extended period granted in terms of section **846**, submit all supporting documents concerning the goods which are in the possession of that person to the state warehouse determined in terms of section **555(4)**.

Failure to remove goods

558. If a person fails to give effect to a direction or authorisation issued in terms of section **555(1)(b)** to remove goods to the premises specified in the direction or authorisation, the customs authority may remove those goods at the risk and expense of that person to those premises.

Recovery of expenses for removal of goods

559. A person referred to in subsection **555(1)** may recover any expenses incurred by that person to remove goods to the premises specified in the direction or authorisation issued in terms of that section or to compensate the Commissioner in terms of section **558**, from –

- (a) the importer or owner of the goods or any other person who has a right or interest in the goods;
- (b) the agent in the Republic of the importer, owner or other person; or
- (c) the proceeds of the sale of goods in accordance with section **570**.

Diversion of goods

560. No person may, without the permission of the customs authority –

- (a) divert goods to which a direction or authorisation issued in terms of section **555(1)(b)** applies, to a place other than the premises specified in the direction or authorisation; or
- (b) remove goods from premises where goods are retained or to which they were removed in terms of section **555 (1)(a)** or (b).

Responsibilities of persons in charge of premises where goods are kept

561. (1) The person in charge of the premises where the goods are retained or to which the goods were removed in terms of a direction or authorisation issued in terms of section **555(1)**, must take all reasonable steps to safeguard the goods against damage, destruction or loss.

(2) The person in charge of premises on which goods are retained or to which goods are removed in terms of a direction or authorisation issued in terms of section **555(1)**, is liable for the payment of any import or export tax payable on the goods if those goods are –

- (a) damaged, destroyed or lost on those premises, unless it is proved that the goods were damaged, destroyed or lost due to –
 - (i) a natural occurrence;
 - (ii) an accident;
 - (iii) a hostile act by a third party; or
 - (iv) the inherent characteristics of the goods; or
- (b) unaccounted for, unless it is proved that the goods are unaccounted for due to –
 - (i) a short shipment of the goods to those premises; or
 - (ii) an administrative error in any documents or records relating to the goods.

(3) Subsection (2) does not affect the Commissioner's right to recover any import or export tax payable on goods that were damaged or destroyed on premises referred to in that subsection, from the proceeds of the sale of the damaged goods or any parts or materials that may have been salvaged from the destroyed goods.

(4) When a person in charge of premises referred to in subsection (2) becomes liable in terms of that subsection for import or export tax payable on goods that –

- (a) were damaged, destroyed or lost on those premises, the tax must be paid on demand; or
- (b) are unaccounted for, the tax becomes payable upon the discovery of the shortfall either by that person or a customs officer.

Risks in connection with goods

562. (1) The importer or owner of goods retained at, removed to or kept on premises in terms of a direction or authorisation issued in terms of section **555** (1), or any other person who has a right or interest in those goods, or the agent in the Republic of that importer, owner or other person, carries the risk for any damage to or destruction or loss of –

- (a) those goods that may –
 - (i) occur whilst those goods are removed to, in or from those premises, or stored on those premises; or
 - (ii) be caused by the handling or opening of any package or container in which those goods are contained, or the examination of the contents, by a customs officer at those premises; or
- (b) any other property that may be caused by –
 - (i) the removal of those goods to, in or from those premises, or the storage of those goods on those premises; or
 - (ii) the handling or opening of any package or container in which those goods are contained, or the examination of the contents, by a customs officer at those premises.

(2) Subsection (1) does not apply if the damage to or destruction or loss of the goods or other property was caused by the negligent or intentional conduct of the person in charge of the premises or an employee of that person.

Part 4: Disposal of goods in or accounted for in state warehouses

Application of this Part to detained, seized and confiscated goods

563. This Part does not apply to goods detained, seized or confiscated in terms of Chapter **35** or **36** and secured in a state warehouse or premises contemplated in section **555(1)** except to the extent stated in Chapter **35** or **36**.³⁰⁷

Publication of lists of goods in or accounted for in state warehouses

564. (1) The customs authority must –

- (a) compile a list as at a date determined by it of –
 - (i) all goods in each state warehouse; and
 - (ii) all goods that are in terms of section **555(4)** accounted for in state warehouses; and
- (b) publish or publicly display the list, in such a manner as may be determined by it.

(2) A list referred to in subsection (1) must contain in respect of each lot –

- (a) a description of the goods;
- (b) the quantity;
- (c) any marks and identification numbers on the goods;
- (d) the name of the carrier who transported the goods;
- (e) the transport document number of the goods;
- (f) the date of importation or intended exportation of the goods;
- (g) the name of the customs broker or other person who cleared the goods, if any;
- (h) the name of the state warehouse where the goods are kept, or in the case of goods retained at or removed to other premises in terms of section **555(1)**, the physical address of those premises; and
- (i) any other information as may be determined by the customs authority.

(3) The publication or public display of a list in terms of subsection (1)(b) serves as notification to any person who has a right or interest in the goods concerned that those goods –

- (a) may be sold in terms of section **567**, if the goods are not cleared for home use or a permissible customs procedure within the period specified in section **565**;
- (b) may be sold or may already have been sold in terms of section **567**, if that section applies to the goods; or

³⁰⁷ Both Chapter **35** and **36** contains provisions on the disposal of prohibited, restricted, counterfeit, detained, seized or confiscated goods, whether stored in a state warehouse or any other place.

- (c) may otherwise be disposed of or may already have been disposed of in terms of section **567**, if that section applies to the goods.

Clearance of goods in or accounted for in state warehouses

565. (1) Imported goods that were removed to a state warehouse or are accounted for in a state warehouse in terms of section **555(4)** may be cleared for home use in terms of Chapter **10** or a customs procedure by a person entitled to the goods, or by a customs broker acting on behalf of that person, within 30 days of the date of publication or public display of the list in respect of those goods or any extended period as may have been granted in terms of section **846**.

(2) Goods destined for export from the Republic that were removed to a state warehouse or are accounted for in a state warehouse in terms of section **555(4)**, may be cleared for outright export under the export procedure or for a customs procedure that allows the export of goods, by a person entitled to the goods, or by a customs broker acting on behalf of that person, within 30 days of the date of publication or public display of the list in respect of those goods or any extended period as may have been granted in terms of section **846**.

(2) Subsections (1) and (2) does not apply in respect of goods that are or have been dealt with in terms of section **568**.

Removal of goods cleared for home use or customs procedure

566. (1) Goods cleared in terms of section **565(1)** for home use or a customs procedure or in terms of section **565(2)** for outright export or another export procedure that allows the export of goods may be removed from the state warehouse or other premises where the goods are kept upon release of the goods for home use or a customs procedure, as may be appropriate.

(2) No goods may be released in terms of subsection (1) unless all claims referred to in section **570(1)(a)** to (h) as may be applicable to the goods have been paid.

Sale of goods

567. (1) The customs authority may sell goods reflected in a list published or publicly displayed in terms of section **564(1)(b)** and that are not of a kind referred to in section **571(2)(b)** to (d) if –

- (a) those goods are not cleared for home use or outright export, as may be appropriate;

- (b) the release of those goods for home use or outright export has been refused;³⁰⁸
- (c) those goods after their clearance and release are not removed from the state warehouse or premises where the goods are kept before the expiry of three days from the date on which the list in respect of those goods was published or publicly displayed; or
- (d) those goods have been confiscated by the customs authority.

(2) Subsection (1) does not apply to goods dealt with in accordance with section **568**.

Urgent sales

568. The customs authority may sell immediately goods that are not of a kind referred to in section **571(2)(b)** to (d) –

- (a) if those goods are of a perishable or dangerous nature; or
- (b) if a delay in the sale of the goods would result in diminishing proceeds that would not be sufficient to cover claims referred to in section **570(1)(a)** to (h) as may be applicable to the goods.

Manner of sale

569. Goods may be sold in terms of section **567** or **568** in any manner determined by the Commissioner, which may include a sale –

- (a) by public auction;
- (b) by public tender; or
- (c) out of hand, when appropriate.

Application of proceeds of sales

570. (1) The proceeds of the sale of goods in terms of section **567** or **568** must be applied to pay the following claims in the order of preference as indicated below:

- (a) any penalty, interest or tax on the goods, in that order;
- (b) any expenses incurred by the Commissioner in connection with the goods and any charges due in terms of section **550(1)** to the Commissioner in connection with the goods;
- (c) any charges due in terms of –
 - (i) section **550(2)** to the licensee of a state warehouse in connection with the goods, if the goods were kept in a licensed state warehouse; or
 - (ii) section **559** to a person in charge of premises

³⁰⁸ See sections **566(2)**, **115** and **116** and other provisions regulating release of goods.

where the goods were kept, if the goods were retained at or removed to such premises;

- (d) any charges due to a seaport, airport or railway authority in connection with the goods;
- (e) any charges due in connection with the goods to a carrier or licensee of a customs controlled area;
- (f) any expenses due to a person in terms of section 548 or 559; and
- (g) any freight and salvage as provided for in section 16 of the Wreck and Salvage Act, 1996 (Act No. 94 of 1996).

(2) Any surplus remaining after all claims in terms of subsection (1) have been met, must on written application by the owner of the goods be paid to the owner, provided that –

- (a) the application is supported by proof of ownership of the goods; and
- (b) is received by the Commissioner within three years of the date of sale of the goods.

(3) Subsection (2) does not apply to confiscated goods, and any surplus remaining after all claims in terms of subsection (1) have been met accrues to the National Revenue Fund.

Disposal of goods otherwise than by sales

571. (1) The Commissioner is not bound to sell goods referred to in subsection (2) and may, subject to subsection (4), dispose of such goods in any appropriate manner, including by –

- (a) donating the goods for welfare purposes;
- (b) appropriating the goods to an organ of state, including SARS, for use by that organ of state;
- (c) making the goods available as humanitarian aid to communities in the Republic or to another country; or
- (d) destroying the goods.

(2) Subsection (1) may be applied to –

- (a) unsold goods if efforts to sell the goods have been fruitless;
- (b) goods that cannot economically be sold having regard to the nature or condition of the goods; or
- (c) goods that pose a risk to public safety, health or morals, including tobacco and alcohol products.

(3) Goods referred to in subsection (2) may be removed from the state warehouse or premises where the goods are kept as the customs authority may direct.

(4) Disposal of goods in terms of subsection (1) does not affect the liability of a person responsible in terms of this Act or a tax levying Act for paying any tax, expenses or charges in respect of the goods.

Non-compliance with sales conditions

572. If the purchaser of goods sold in terms of section **567** or **568** fails to comply with any condition subject to which the goods were sold within a period of one month from the date of sale –

- (a) the sale becomes null and void;
- (b) any amounts paid by the purchaser less expenses incurred with the sale, storage and handling of the goods may be refunded to the purchaser, but the Commissioner is not bound to refund such amounts; and
- (c) the goods may be resold or section **571** may be applied to the goods.

Removal of goods following sale of goods

573. (1) Goods sold in terms of section **567** or **568** must –

- (a) for tax purposes be regarded as having been cleared for home use in terms of Chapter **10**;
- (b) promptly be released for home use by the customs authority, provided that –
 - (i) the purchase price has been paid; and
 - (ii) the conditions of sale have been complied with; and
- (c) after release of the goods in terms of paragraph (b) be removed from the state warehouse or premises where the goods are kept.

(2) If the goods are not removed within three days from the date of release of the goods in terms of subsection (1)(b) –

- (a) the purchaser becomes liable from that date for state warehouse rent and any additional charges contemplated in section **550(1)** and may not remove the goods unless such rent and charges are paid; or
- (b) the customs authority may direct that section **572(a)**, (b) and (c) be applied to the goods.

Part 5: Other matters**Rules to facilitate implementation of this Chapter**

574. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

- (a) how goods removed to a state warehouse must be stored, marked, labelled and otherwise dealt with;
- (b)

NOTE: This clause will be enhanced after consideration of subordinate legislation and based upon comments received

Offences in terms of this Chapter

575. A person is guilty of an offence if that person fails to comply with sections

NOTE: This clause will be completed upon finalisation of the clauses providing for obligations of the relevant entities

CHAPTER 28
LICENSING

Part 1: Introductory provisions

Definitions

576. For the purposes of this Chapter –

“**applicant**” means a person who intends to submit or has submitted an application;

“**application**” means an application in terms of this Chapter for –

- (a) a licence;
- (b) the renewal of a licence; or
- (c) the amendment of a licence.

Purpose of this Chapter

577. The purpose of this Chapter is to provide for –

- (a) the licensing of premises as –
 - (i) general sea cargo terminals;
 - (ii) special sea cargo terminals;
 - (iii) bulk sea cargo terminals;
 - (iv) container terminals;
 - (v) a combination sea cargo terminal
 - (vi) sea travellers terminals;
 - (vii) multi-purpose seaport terminals;
 - (viii) air cargo terminals;
 - (ix) air cargo depots;
 - (x) air travellers terminals;
 - (xi) rail cargo terminals;
 - (xii) rail travellers terminals;
 - (xiii) international postal clearance depots;
 - (xiv) container depots;
 - (xv) customs warehouses;
 - (xvi) tax free shops;
 - (xvii) IDZ enterprises;
 - (xviii) inward processing premises;
 - (xix) processing for home use premises; or
 - (xx) state warehouses contemplated in section **544(b)**;
- (b) the licensing of cross-border pipelines and cross-border transmission lines;

- (c) the licensing of carriers and carriers' agents; and
- (d) the licensing of customs brokers.

Licensing of premises for certain purposes

578. (1) No person may manage, operate or use any premises for a purpose referred to in section **577**(a)(i) to (xvii) unless those premises are licensed in terms of this Chapter for that purpose.

(2) No person may manage, operate or use any premises for the processing of imported goods cleared in terms of –

- (a) Chapter **19** for inward processing unless those premises are licensed as inward processing premises for the purpose of processing goods in accordance with the item in the Customs Tariff or a tax levying Act under which the goods were cleared for inward processing; or
- (b) Chapter **20** for processing for home use unless those premises are licensed as processing for home use premises for the purpose of processing goods in accordance with the applicable item in Customs Tariff or a tax levying Act under which the goods were cleared for processing for home use.

(3) No person other than the Commissioner may operate any premises as a state warehouse unless those premises are licensed in terms of this Chapter as a state warehouse.

Licensing of cross-border pipelines and transmission lines

579. (1) No person may import goods into the Republic or export goods from the Republic through a cross-border pipeline unless that pipeline is licensed in terms of this Chapter.

(2) No person may import electricity into the Republic or export electricity from the Republic through a cross-border transmission line unless that transmission line is licensed in terms of this Chapter.

Licensing of carriers

580. (1) No carrier located in the Republic³⁰⁹ may –

- (a) transport goods or travellers to or from the Republic on board a vessel, aircraft, railway carriage or vehicle operated by that carrier unless that carrier is licensed in terms of this Chapter to transport goods or travellers to or from the Republic; or

³⁰⁹ See section 1(3)(a).

(b) at any place in the Republic load on board a vessel, aircraft, railway carriage or vehicle operated by that carrier any goods that are not in free circulation and transport those goods to another place in the Republic, or through the Republic, unless that carrier is licensed in terms of this Chapter to transport goods that are not in free circulation.

(2) No carrier may be licensed in terms of subsection (1) unless that carrier has –

- (a) a fixed physical address in the Republic, in the case of a natural person; or
- (b) a place of business at a fixed physical address in the Republic, in the case of a juristic person.

(3) No carrier who is not located in the Republic may –

- (a) transport goods or travellers to or from the Republic on board a vessel, aircraft, railway carriage or vehicle operated by that carrier unless that carrier is represented in the Republic by a licensed carrier's agent; or
- (b) at any place in the Republic load on board a vessel, aircraft, railway carriage or vehicle operated by that carrier any goods that are not in free circulation and transport those goods to another place in the Republic, or through the Republic, unless that carrier is represented in the Republic by a licensed carrier's agent.

(4) Subsections (1) and (3) do not apply to a carrier operating a foreign-going vessel or aircraft which transports goods through the Republic without calling or landing at a place in the Republic.

Licensing of carriers' agents

581. (1) No person may act as the representative in the Republic of a carrier who is not located in the Republic³¹⁰ unless that person is licensed as a carrier's agent.

(2) No person may be licensed as a carrier's agent unless that person is a licensed carrier located in the Republic.

Licensing of customs brokers

582. No person may act for reward as a customs broker unless licensed as a customs broker.

³¹⁰ See section 1(3)(a).

Part 2: Procedures for all applications**General requirements**

583. (1) An application must –

- (a) be made to the customs authority on an application form as may be prescribed by rule;³¹¹
- (b) contain the information required on the application form;
- (c) be signed by the applicant;
- (d) be accompanied by such supporting documents or information as may be prescribed by rule; and
- (e) be submitted to any Customs Office or transmitted to the customs authority electronically in accordance with section **849**.

(2) A processing fee prescribed by rule is payable in respect of each application.

Consideration and decision of applications

584. (1) The customs authority –

- (a) may request the applicant to submit any additional information before considering the application; and
- (b) must consider the application if all requirements for applications have been complied with, and may –
 - (i) grant the application; or
 - (ii) refuse the application.

(2) A decision by the customs authority in terms of subsection (1) must be consistent with this Act.

General grounds for refusal of applications

585. (1) The customs authority may refuse an application if –

- (a) the applicant –
 - (i) has in respect of the application failed to comply with a requirement of this Act; or
 - (ii) has made a false or misleading statement in the application or any supporting document, or has omitted to state a fact, which is material to the consideration of the application;
- (b) the applicant, a director of the applicant or an employee of the applicant in a management position —

³¹¹ See section **844**.

- (i) has a record of non-compliance with this Act or a tax levying Act;
 - (ii) has been convicted of an offence under this Act or a tax levying Act; or
 - (iii) has been convicted of an offence involving fraud or dishonesty during the three. years preceding the application; or
- (c) the tax matters of the applicant are not in order.

Communication of decisions on applications

586. (1) After the customs authority has reached a decision on an application, the customs authority must –

- (a) notify the applicant of the decision; and
- (b) in the notification –
 - (i) give reasons for the decision to the applicant, if the application has been refused;
 - (ii) set out any special conditions contemplated in section **590**(1)(b) subject to which the licence is to be issued, if the application has been granted; and
 - (iii) draw the attention of the applicant to the fact that an appeal may in terms of Chapter **38** be lodged against the refusal of the application or any special condition subject to which the licence is to be issued, if such appeal is available in the circumstances of the decision.

(2) The customs authority may communicate a notification in terms of subsection (1) to the applicant by –

- (a) post;
- (b) facsimile; or
- (c) e-mail or other electronic means to which the applicant has access.

Part 3: Applications for licences

Additional grounds for refusal of applications for licences

587. In addition to the general grounds on which an application for a licence may be refused in terms of section **585**, the customs authority may refuse such an application also on the ground that –

- (a) the applicant does not qualify for the licence concerned in terms of any qualifications that may be prescribed by rule for such licences;
- (b) in the case of an application for the licensing of a terminal, depot, warehouse, tax free shop, IDZ enterprise, inward processing premises, processing for home use premises or cross-border pipeline or transmission line –

- (i) the applicant is not the owner of the premises in respect of which the licence is sought, or is not the owner of the pipeline or transmission line, or does not hold a lease or other right to manage the premises or pipeline or transmission line for a period of at least three years; or
 - (ii) the premises or the pipeline or transmission line is not suitably situated for the licence sought;
- (c) in the case of an application for the licensing of a depot, the premises on which the depot is to be situated is not –
- (i) situated within ten kilometres, or such further distance as the customs authority may in a special case allow, from the customs seaport or airport it is proposed to serve; and
 - (ii) serviced by road transport;
- (d) in the case of an application for the licensing of premises as inward processing premises for goods itemised in the Customs Tariff as goods that may be cleared for inward processing, the premises do not comply with any conditions attached to the itemisation of such goods; or
- (e) in the case of an application for the licensing of premises as a processing for home use premises for goods itemised in the Customs Tariff as goods that may be cleared for processing for home use, the premises do not comply with any conditions attached to the itemisation of such goods.

Issuing of licences

588. (1) If the customs authority decides to grant an application for a licence, the customs authority must issue the licence to and in the name of the applicant.

(2) The licence must be handed to the applicant or sent by registered post to the applicant within five days of posting or transmitting to the applicant the communication referred to in section **586(2)**.

Contents of licences

589. A licence must state –

- (a) the name of the licensee;
- (b) the purpose, according to the list contained in section **577**, for which the licence is issued;
- (c) any special conditions subject to which the licence is issued;
- (d) a customs code allocated to –

- (i) the licensed terminal, depot, warehouse, tax free shop, IDZ enterprise, inward processing premises, processing for home use premises, cross-border pipeline or cross-border transmission line; or
- (ii) the licensed carrier, carrier's agent or customs broker;
- (e) the address of the premises in respect of which the licence is issued, if the licence is issued for a terminal, depot, warehouse, tax free shop, IDZ enterprise, inward processing premises, processing for home use premises;
- (f) the date from which the licence takes effect; and
- (g) any other matters determined by the customs authority.

(2) A licence for a customs warehouse must indicate –

- (a) whether the licence is issued for a public or private warehouse; and
- (b) the purposes for which the warehouse may be used.

Licence conditions

590. (1) A licence is subject to –

- (a) any general conditions prescribed by rule in respect of the type of licence concerned; and
- (b) any special conditions determined by the customs authority in respect of the licence to be issued to the applicant.

(2) General conditions prescribed by rule in terms of subsection (1)(a) and any special conditions contemplated in subsection (1)(b) may include conditions relating to –

- (a) the protection of potential tax revenue on goods received, stored, handled, transported or in any way dealt with, managed or controlled by the licensee in terms of the licence;
- (b) the inspection of such goods by customs officers;
- (c) the requirements with which the licensee must comply when such goods are detained, seized or confiscated;
- (d) assistance that the licensee must provide to customs officers in implementing –
 - (i) this Act; and
 - (ii) a tax levying Act in relation to such goods; or
- (e) compliance by the licensee with –
 - (i) this Act; and
 - (ii) a tax levying Act in relation to such goods.

(3) It is a condition of each licence that the licensee must be registered as an electronic user.

Conditions in respect of licensed terminals, depots, warehouses, tax free shops and IDZ enterprises

591. General conditions prescribed by rule in terms of section **590(1)(a)** and special conditions imposed in terms of section **590(1)(b)** in respect of terminals, depots, warehouses, tax free shops or IDZ enterprises may include conditions determining –

- (a) the services that may or must be or may not be provided on the licensed premises;
- (b) the activities that may or must be or may not be carried out on the licensed premises;
- (c) the categories of goods that may or must be or may not be received, stored or otherwise dealt with on the premises;
- (d)

NOTE: This clause will be completed based upon comments received

Conditions in respect of licensed inward processing and processing for home use premises

592. General conditions prescribed by rule in terms of section **590(1)(a)** and special conditions imposed in terms of section **590(1)(b)** in respect of inward processing and processing for home use premises may include conditions determining –

- (a) the categories of goods that may be processed at the premises;
- (b)

NOTE: This clause will be completed based upon comments received

Conditions in respect of licensed customs warehouses

593. General conditions prescribed by rule in terms of section **590(1)(a)** and special conditions imposed in terms of section **590(1)(b)** in respect of customs warehouses may include conditions determining –

- (a)

NOTE: This clause will be completed based upon comments received

Conditions in respect of licensed state warehouses

594. General conditions prescribed by rule in terms of section **590(1)(a)** and special conditions imposed in terms of section **590(1)(b)** in respect of state warehouses contemplated in section **544(b)** may include conditions determining –

- (a)

NOTE: This clause will be completed based upon comments received

Conditions in respect of licensed tax free shops

595. General conditions prescribed by rule in terms of section **590(1)(a)** and special conditions imposed in terms of section **590(1)(b)** in respect of tax free shops may include conditions –

- (a) restricting the category and quantity of goods that may be received or sold in the tax free shop;
- (b) regulating the receipt of goods in free circulation in the tax free shop and the sale of those goods together with goods not in free circulation;
- (c)

NOTE: This clause will be completed based upon comments received

Conditions in respect of IDZ enterprises

596. General conditions prescribed by rule in terms of section **590(1)(a)** and special conditions imposed in terms of section **590(1)(b)** in respect of IDZ enterprises may include conditions determining –

- (a)

NOTE: This clause will be completed based upon comments received

Conditions in respect of licensed cross-border pipe-lines and transmission lines

597. General conditions prescribed by rule in terms of section **590(1)(a)** and special conditions imposed in terms of section **590(1)(b)** in respect of cross-border pipe-lines or transmission lines may include conditions determining –

- (a)

NOTE: This clause will be completed based upon comments received

Conditions in respect of licensed carriers

598. General conditions prescribed by rule in terms of section **590(1)(a)** and special conditions imposed in terms of section **590(1)(b)** in respect of carriers licensed for a purpose set out in section **577(c)** may include conditions determining –

- (a) the services that may or must be or may not be provided by the carrier;
- (b) the activities that may or must be or may not be carried out by the carrier;
- (c) the categories of goods that may or must be or may not be transported by the carrier;
- (d) requirements relating to the transport of goods;

- (e) technical specifications and other requirements in respect of transport-units used for the transport of goods;
- (f) requirements for the marking of transport-units used for the transport of goods;
- (g) requirements for the sealing of transported goods;
- (h) the circumstances in which and the terms on which the transport of goods may be subcontracted to other licensed carriers;
- (i)

NOTE: This clause will be completed based upon comments received

Conditions in respect of customs brokers

599. General conditions prescribed by rule in terms of section **590(1)(a)** and special conditions imposed in terms of section **590(1)(b)** in respect of customs brokers may include conditions determining –

- (a)

NOTE: This clause will be completed based upon comments received

Period of validity of licences

600. A licence –

- (a) takes effect from a date specified in the licence; and
- (b) remains in force for a period of three years from that date unless withdrawn by the customs authority earlier.

Part 4: Renewal of licences

Applications for renewal of licences

601. (1) A licensee may not later than 30 days before a licence lapses apply for the renewal of the licence in accordance with section **583**.

(2) If an application for renewal of a licence is not finalised by the customs authority before the expiry of the validity period of the licence, the customs authority may extend the validity period of the licence until the application is finalised.

Additional grounds for refusing applications for renewal

602. In addition to the general grounds on which an application for the renewal of a licence may be refused in terms of section **585**, the customs authority may refuse such an application also on the ground that –

- (a) the applicant has breached in a material respect any general or special condition applicable to the licence in terms of section **590**(1); or
- (b) the licensee has not engaged in the activity for which the licence was issued for a period of at least one year preceding the date of the application for the renewal of a licence.

Issuing of renewed licences

603. (1) If the customs authority decides to grant an application for the renewal of a licence, the customs authority must issue a new licence to and in the name of the applicant.

(2) The new licence must be handed or sent by registered post to the applicant within five days of posting or transmitting the communication referred to in section **586**(2) to the applicant.

(3) Sections **589** to **600** apply with the necessary changes as the context may require to new licences issued in terms of this Part.

Part 5: Amendment of licences

General

604. (1) A licence may be amended –

- (a) on application by the licensee; or
- (b) on initiative of the customs authority.

(2) A licence may be amended by –

- (a) changing, removing or substituting any condition referred to in section **590**(1)(b), or attaching any new condition;
- (b) extending or limiting the purposes for which the licence was issued;
- (c) updating or changing any detail on the licence; or
- (d) correcting a technical or editorial error.

(3) An amendment to a license takes effect on a date determined by the customs authority.

Applications for amendment of licences

605. A licensee may at any time apply in accordance with section **583** for the amendment of a licence.

Issuing of amended licences

606. (1) If the customs authority decides to grant an application for the amendment of a licence, the customs authority must issue an amended licence to and in the name of the applicant.

(2) The amended licence must be sent by registered post to the applicant within five days of posting or transmitting the communication referred to in section **586(2)** to the applicant.

Purposes for which customs authority may amend licences

607. The customs authority may on own initiative amend a licence if –

- (a) this is necessary for –
 - (i) protecting the state from any loss of tax that may occur on goods received, stored, handled, transported or in any way dealt with, managed or controlled by the licensee in terms of the licence;
 - (ii) the physical security of such goods;
 - (iii) making the inspection of such goods by customs officers more effective;
 - (iv) making the requirements with which the licensee must comply when such goods are detained, seized or confiscated more effective; or
 - (v) ensuring that this Act and any applicable tax levying Act is complied with by the licensee;
- (b) any circumstances contemplated in section **614(2)** which were material to the granting of the licence have changed;
- (c)

NOTE: This clause will be completed based upon comments received

Process

608. (1) If the customs authority intends to amend a licence in terms of section **604(1)(b)**, the customs authority must first –

- (a) notify the licensee by registered post of –
 - (i) the proposed amendment; and
 - (ii) the reasons for the proposed amendment; and
- (b) give the licensee an opportunity to submit representations on the proposed amendment within 30 days of the date the notification referred to in paragraph (a) was posted to the licensee.

(2) Subsection (1)(b) need not be complied with if the proposal is to amend the licence in a non-substantive way.

Communication of decisions to amend licences

- 609.** (1) If the customs authority decides to amend a licence, it must –
- (a) notify the licensee of the decision in a manner set out in section **586(2)**;
 - (b) in the notification draw the licensee's attention to the fact that an appeal may be lodged against the decision in terms of Chapter **38**, if such appeal is available in the circumstances of the decision; and
 - (c) issue an amended licence to and in the name of the licensee.
- (2) The amended licence must be sent by registered post to the licensee.

Part 6: Suspension or withdrawal of licences

Grounds on which licences may be suspended or withdrawn

- 610.** (1) The customs authority may suspend or withdraw a licence if –
- (a) the licensee –
 - (i) acquired the licence under false pretences;
 - (ii) has in a material respect breached any general or special condition applicable to the licence in terms of section **590(1)**;
 - (iii) failed to pay within five days after it became due –
 - (aa) any tax or other amount due to the Commissioner in terms of this Act or a tax levying Act on any goods received, stored, handled, transported or in any way dealt with, managed or controlled by the licensee in terms of the licence; or
 - (bb) the annual licence fee payable on the licence;
 - (iv) is no longer engaged in the activity for which the licence was issued;
 - (v) no longer qualifies for the licence in terms of any qualifications prescribed by rule for the type of licence concerned; or
 - (vi) is sequestered or liquidated;
 - (b) during the validity period of the licence, the licensee or a director or employee of the licensee –
 - (i) has breached a provision of this Act or a tax levying Act;
 - (ii) has been convicted of an offence under this Act or a tax levying Act; or
 - (iii) has been convicted of an offence involving fraud or dishonesty;
 - (c) the licensed premises is not operated, managed or used in accordance with this Act;

- (d) any circumstances contemplated in section 614(2) which were material to the granting of the licence have changed;
- (e)

NOTE: This clause will be completed based upon comments received

(2) Subsection (1)(b) does not apply if the licensee was not a party to, or could not prevent, any such contravention, omission or offence by such director or employee.

Process

611. If the customs authority intends to suspend or withdraw a licence in terms of section 610, the customs authority must first –

- (a) notify the licensee by registered post of –
 - (i) the proposed suspension or withdrawal; and
 - (ii) the reasons for the proposed suspension or withdrawal; and
- (b) give the licensee an opportunity to submit representations on the proposed suspension or withdrawal within 30 days of the date the notification referred to in paragraph (a) was posted to the licensee.

Communication of decisions to suspend or withdraw licences

612. (1) If the customs authority decides to suspend or withdraw a licence, the customs authority must –

- (a) notify the licensee of the decision in a manner set out in section 586(2), indicating –
 - (i) the period for which the licence is suspended; or
 - (ii) the date from which the licence is withdrawn; and
- (b) in the notification draw the licensee's attention to the fact that an appeal may be lodged against the decision in terms of Chapter 38, if such appeal is available in the circumstances of the decision.

Part 7: Other matters

Provision of security

613. The customs authority may in terms of Chapter 31 require a licensee to provide security to cover any –

- (a) tax risks referred to in section 658(1) in relation to goods received, stored, processed, handled, transported or in any way dealt with, managed or controlled by the licensee in terms of the licence; or
- (b) any other risks referred to in section 658(2).

Change of circumstances on which applications for licences were granted

614. (1) If any of the circumstances which were material to the granting of an application for a license has changed, the licensee must –

- (a) advise the customs authority within three days from the date of the change; and
- (b) submit a fresh application reflecting the changed circumstances.

(2) Circumstances material to the granting of an application includes –

- (a) the legal status, legal identity or financial soundness of the licensee;
- (b) the physical security of goods received, stored, handled, transported or in any way dealt with, managed or controlled by the licensee in terms of the licence;
- (c) the plant or equipment used in relation to such goods; and
- (d) the system used to keep record of and to account for such goods.

Consequences of lapsing, suspension or withdrawal of licences

615. (1) As from the date on which a licence lapses or a suspension or withdrawal takes effect –

- (a) the licensed premises may no longer be managed, operated or used for the purpose for which it was licensed; or
- (b) the licensed person may no longer carry on the activity for which that person was licensed.

(2) Subsection (1) applies in the case of the suspension of a licence only during the period for which the licence was suspended.

(3) The customs authority may despite subsection (1), on such conditions as the customs authority may determine, including conditions relating to the provision of security, allow –

- (a) the activity on the affected premises for which those premises were licensed to be continue with for a period necessary to wind up that activity, or, in the case of a suspension, to bring that activity to a halt; or
- (b) the affected person to continue with the activity for which that person was licensed for a period necessary to wind up that activity, or, in the case of a suspension, to bring that activity to a halt.

(4) (a) The suspension of a licence issued in respect of any premises does not affect the status of those premises as a customs controlled area.

- (b) Despite the lapsing or withdrawal of the licence issued in respect of

premises referred to in subsection (3)(a), those premises remain a customs controlled area during the period for which that subsection applies to those premises.

Customs authority's powers following lapsing, suspension or withdrawal of licences

616. If a licence issued in respect of any premises has lapsed or has been suspended or withdrawn, the customs authority may –

- (a) remove, or require the person who is or was the licensee of those premises to remove, all or any specific goods on those premises to a customs controlled area specified by the customs authority;
- (b) take control of those premises, or all or any specific goods on those premises, as may be necessary for –
 - (i) the protection of tax that may be, or become, payable on those goods; or
 - (ii) ensuring compliance with this Act or a tax levying Act;
- (c) place those goods under, or require that person to clear the goods for, a permissible customs procedure; or
- (d) require that person to pay any costs incurred by the Commissioner in carrying out any actions in terms of paragraphs (a), (b) or (c).

Transfer of licences

617. A licence may not be transferred. If any premises or business licensed in terms of this Chapter is transferred to another person, that person must first apply for a new license to replace the existing one.

Rules to facilitate implementation of this Chapter

618. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

- (a) supporting documents that must be submitted in respect of an application, including –
 - (i) proof that the applicant is the owner of the premises in respect of which the licence is sought, or holds a lease or other right to manage the premises for a period of at least three years;
 - (ii)
- (b) processing fees to be paid by applicants;
- (c) requirements for licence applications;
- (d) requirements for licensed premises and standards that must be maintained in respect of such premises, including requirements and standards relating to security, equipment and services;
- (e) obligatory conditions for licences;
- (f) business hours for licensed premises;

- (g) annual licensing fees to be paid on licences by licensees;
- (h) matters in connection with the inspection of goods by customs officers;
- (i) the requirements with which licensees must comply if goods received, stored, processed, handled, transported or in any way dealt with, managed or controlled by the licensee in terms of the licence are detained, seized or confiscated;
- (j) accommodation and other facilities, staff and equipment that must be provided by licensees at licensed premises to enable customs officers to effectively perform their functions;
- (k) the manner in which goods must be received, verified, recorded, acquitted, unpacked, packed, stored or otherwise handled or accounted for at licensed premises;
- (l) the records, books, accounts and data to be kept by licensees, including, in the case of licensed premises, records, books, accounts and data in respect of –
 - (i) goods received on the premises;
 - (ii) goods removed from the premises;
 - (iii) any surpluses or shortfalls on goods; and
 - (iv) any goods damaged, lost or destroyed;
- (m) the manner in which –
 - (i) damaged packages or goods must be dealt with and reported;
 - (ii) surpluses or shortfalls must be dealt with and reported; and
 - (iii) destroyed or lost goods must be reported;
- (n) outturn reports that must be submitted by licensees to the customs authority and the manner and time within which such reports must be submitted;
- (o) requirements and conditions for the removal of goods from licensed premises, and the documents or information that must be presented to licensees of such premises in respect of such removals;
- (p)

NOTE: This clause will be enhanced after consideration of requirements of subordinate legislation and based upon comments received

Offences in terms of this Chapter

619. A person is guilty of an offence if that person fails to comply with sections

NOTE: This clause will be completed based upon finalisation of the clauses providing for obligations of the relevant entities

Transitional provisions

620. (1) A licence issued in terms of the Customs and Excise Act (Act No. 91 of 1964), lapses six months as from the date on which this Act takes effect.

(2) A person who is the holder of a licence issued in terms of the Customs and Excise Act, 1964, and who is affected by section **578**, **579** or **580** must apply for a new licence in terms of this Act within one month as from the date on which this Act takes effect.

(3) Any security provided to the Commissioner in respect of a licence issued to a person in terms of the Customs and Excise Act, 1964, may be utilised by the Commissioner as if such security was provided in respect of a licence issued to that person in terms of this Act, but does not preclude the Commissioner from requiring new security in terms of that Chapter.

CHAPTER 29 REGISTRATION

Part 1: Introductory provisions

Purpose of this Chapter

621. The purpose of this Chapter is to regulate the registration of –

- (a) persons who import goods into or export goods from the Republic;
- (b) importer or exporters' agents;
- (c) persons who as a business supply goods to foreign-going vessels or aircraft or cross-border trains as stores for those vessels, aircraft or trains;
- (d) persons who are required or who elects to submit electronically to the customs authority clearance declarations and other documents that must be submitted to the customs authority in terms of this Act or a tax levying Act; and
- (e) any other persons involved in any other activities prescribed by rule and required by the Commissioner to register in terms of this Chapter.

Registration of persons importing or exporting goods

622. (1) No goods may be imported into or exported from the Republic unless the person importing or exporting the goods –

- (a) is registered in terms of this Chapter as an importer or exporter, if the person importing or exporting the goods is located in the Republic;³¹² or
- (b) is represented in the Republic by a registered importer or exporter's agent, if the person importing or exporting the goods is not located in the Republic.

(2) No person may be registered as an importer or exporter in terms of subsection (1)(a) unless that person has –

- (a) a fixed physical address in the Republic, in the case of a natural person; or
- (b) a place of business at a fixed physical address in the Republic, in the case of a juristic person.

(3) Subsection (1) does not apply to –

- (a) persons importing or exporting goods exempted from the clearing requirements of this Act,³¹³ or
- (b) other categories of persons exempted by rule from subsection (1).

³¹² See section 1(3)(a).

³¹³ See for instance sections 85 and 88.

Registration of importer or exporters' agents

623. (1) No person may act as the representative in the Republic of a person not located in the Republic³¹⁴ who imports goods into or exports goods from the Republic unless that person is registered as an importer or exporter's agent.

(2) No person may be registered as an importer or exporter's agent unless that person –

(a) is located in the Republic; and

(b) has –

(i) a fixed physical address in the Republic, in the case of a natural person; or

(ii) a place of business at a fixed physical address in the Republic, in the case of a juristic person.

Registration of persons supplying stores to vessels, aircraft or trains

624. No person may as a business supply goods to foreign-going vessels or aircraft or cross-border trains as stores for those vessels, aircraft or trains unless that person is registered to undertake such business.

Registration of electronic users

625. No person may submit to the customs authority electronically any clearance declarations or other documents that must be submitted to the customs authority in terms of a requirement of this Act or a tax levying Act unless that person is registered as an electronic user.

Registration of other persons

626. The Commissioner may by rule require any person involved in any other activity prescribed by rule, to register in terms of this Chapter.

Part 2: Procedures for registration applications**General requirements**

627. (1) An application for registration must –

(a) be made to the customs authority on an application form prescribed by rule;³¹⁵

(b) contain the information required on the application form;

(c) be signed by the applicant;

³¹⁴ See section 1(3)(a).

³¹⁵ See section 844.

- (d) be accompanied by such supporting documents and information as may be prescribed by rule; and
- (e) be submitted to any Customs Office or transmitted to the customs authority electronically in accordance with section 849.

(2) A processing fee prescribed by rule is payable in respect of each application.

Consideration and decision of applications

628. The customs authority –

- (a) may request the applicant to submit any additional information before considering the application; and
- (b) must grant the application if all requirements in respect of applications for registration have been complied with.

Issuing of registration certificates

629. (1) Upon approving an application for registration the customs authority must issue a registration certificate to and in the name of the applicant.

(2) The registration certificate must be handed to the applicant or sent by registered post to the applicant within five days of granting the application.

Contents of registration certificates

630. A registration certificate must state –

- (a) the name of the registered person;
- (b) the purpose for which the person is registered;
- (c) a customs code allocated to the registered person;
- (d) the date from which the certificate takes effect;
- (e)

NOTE: This clause will be completed based upon comments received

Registration conditions

631. (1) A registration certificate is subject to any conditions determined by the Act or prescribed by rule in respect of the type of registration certificate concerned.

(2) Conditions prescribed by rule in terms of subsection (1) may, in the case of a registration of a person handling goods, include conditions relating to –

- (a) the protection of potential tax revenue on goods imported, exported, received, stored, handled, transported, processed, manufactured or in any way dealt with, managed or controlled by the registered person in terms of the registration certificate;
- (b) the physical security of such goods;
- (c) the inspection of such goods by customs officers;
- (d) assistance that the registered person must provide to customs officers in implementing –
 - (i) this Act; and
 - (ii) a tax levying Act in relation to such goods; or
- (e) compliance by the registered person with –
 - (i) this Act; and
 - (ii) a tax levying Act in relation to such goods.

(3) It is a condition of registration of a person as an electronic user that that person must have –

- (a) the capability of communicating and receiving electronic documents and messages in a specific electronic format as may be prescribed by rule; and
- (b) a digital signature approved by the customs authority.

Period of validity of registration certificates

632. A registration certificate –

- (a) takes effect from a date specified in the certificate; and
- (b) remains in force for a period of three years from that date.

Part 3: Renewal of registration certificates

Applications for renewal of registration certificates

633. (1) A person may not later than 30 days before a registration certificate lapses apply for the renewal of the certificate.

(2) Sections **627** and **628**, with the necessary changes as the context may require, apply to applications for the renewal of registration certificates.

(3) If an application for renewal of a registration certificate is not disposed of before the expiry of the validity period of the certificate, the customs authority may extend the validity period of the certificate until the application is disposed of.

Issuing of renewed registration certificates

634. (1) Upon approving an application for the renewal of a registration certificate the customs authority must issue a new registration certificate to and in the name of the applicant.

(2) The new registration certificate must be handed to the applicant or sent by registered post to the applicant within five days of granting the application.

(3) Sections **630**, **631** and **632** apply, with the necessary changes as the context may require, to new registration certificates issued in terms of this Part.

Part 4: Other matters**Provision of security**

635. The customs authority may in terms of Chapter **31** require a registered person to provide security to cover any –

- (a) tax risks referred to in section **658**(1) in relation to goods imported, exported, received, stored, processed, handled or in any way dealt with, managed or controlled by the registered person or by a person for whom the registered person acts as a representative in the Republic; or
- (b) any other risks referred to in section **658**(2).

Transfer of registration certificates

636. A registration certificate may not be transferred.

Rules to facilitate implementation of this Chapter

637. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

- (a)

NOTE: This clause will be completed after consideration of subordinate legislation and based upon comments received
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Offences in terms of this Chapter

638. A person is guilty of an offence if that person fails to comply with sections

NOTE: This clause will be completed based upon finalisation of the clauses providing for obligations of the relevant entities

Transitional provisions

639. (1) A registration certificate issued in terms of the Customs and Excise Act (Act No. 91 of 1964), lapses six months as from the date on which this Act takes effect.

(2) A person who is the holder of a registration certificate issued in terms of the Customs and Excise Act, 1964, and who is affected by section **622** must apply for a new registration certificate in terms of this Act within one month as from the date on which this Act takes effect.

(3) Any security provided to the Commissioner in respect of a registration certificate issued to a person in terms of the Customs and Excise Act, 1964, may be utilised by the Commissioner as if such security was provided in respect of a registration certificate issued to that person in terms of this Act, but does not preclude the Commissioner from requiring new security in terms of that Chapter.

CHAPTER 30 ACCREDITATION

Purpose of this Chapter

640. The purpose of this Chapter is to provide for the conferral of accredited client status on licensees and registered persons that –

- (a) have a proven record of compliance with this Act and the tax levying Acts; and
- (b) are capable of complying with accredited client requirements enacted in terms of this Act.

Applications for accredited client status

641. (1) Only a licensee or a person registered in terms of this Act may apply for accredited client status.

(2) An application for accredited client status must –

- (a) be made to the customs authority on an application form prescribed by rule;
- (b) contain the information required on the application form;
- (c) be signed by the applicant;
- (d) be accompanied by such supporting documents and information as may be prescribed by rule; and
- (e) be submitted to any Customs Office or transmitted to the customs authority electronically in accordance with section **849**.

(3) A processing fee prescribed by rule is payable in respect of each application.

Consideration and decision of applications

642. (1) The customs authority –

- (a) may request the applicant to submit any additional information before considering the application; and
- (b) must consider the application if all requirements in respect of applications have been complied with, and may –
 - (i) grant the application; or
 - (ii) refuse the application.

(2) If an application is granted, the customs authority must determine the level of accreditation conferred on the applicant.

(3) A decision by the customs authority in terms of this section must be consistent with this Act.

Criteria for accredited client status

643. (1) No application for accredited client status may be granted unless the applicant has –

- (a) a record of compliance with this Act and the tax laws on goods during a period of five years preceding the date of the application;
- (b) an effective accounting, recordkeeping and operational system consistent with generally accepted accounting principles;
- (c) an effective computer system capable of complying with accredited client requirements;
- (d) skilled staff capable of complying with accredited client requirements;
- (e) sufficient financial resources to comply with accredited client requirements; and
- (f) complied with any other criteria for accredited status as may be prescribed by rule.

(2) The customs authority may refuse an application if the applicant –

- (a) does not comply with the criteria for accredited client status as set out in subsection (1);
- (b) has not in respect of the application complied with a requirement of this Act;
- (c) has made a false or misleading statement in the application or any supporting document, or has omitted to state a fact, which is material to the consideration of the application; or
- (d) the tax matters of the applicant are not in order.

Communication of decisions on applications

644. (1) After the customs authority has reached a decision on an application, the customs authority must –

- (a) notify the applicant of the decision; and
- (b) in the notification –
 - (i) give reasons for the decision to the applicant, if the application has been refused;
 - (ii) set out any special conditions contemplated in section **647(b)** subject to which accredited client status has been granted; and
 - (iii) draw the attention of the applicant to the fact that an appeal may in terms of Chapter **38** be lodged against the refusal of the application or any special condition subject to which accredited client status has been granted, if such appeal is available in the circumstances of the decision.

(2) The customs authority must communicate a notification in terms of subsection (1) to the applicant electronically.

Issuing of accredited client status certificates

645. (1) If the customs authority decides to grant an application, the customs authority must issue an accredited client status certificate to and in the name of the applicant.

(2) The certificate must be handed to the applicant or sent by registered post to the applicant within five days of transmitting the communication referred to in section **644**(2) to the applicant.

Contents of accredited client status certificates

646. An accredited client status certificate must state –

- (a) the name of the person to whom the certificate is issued;
- (b) the purpose for which accredited status is granted;
- (c) the level of accreditation conferred on the holder of the certificate;
- (d) any special conditions subject to which the certificate is issued; and
- (e) the date from which the accredited client status takes effect.

Conditions

647. Accredited client status is subject to –

- (a) any general conditions determined by the Act or prescribed by rule in respect of accredited client status; and
- (b) any special conditions determined by the customs authority, including the giving of security by the person to whom the certificate is issued.

Period of validity of accredited client status certificates

648. (1) An accredited client status certificate –

- (a) takes effect from a date specified in the certificate; and
- (b) remains in force for a period of three years from that date unless the certificate –
 - (i) is withdrawn by the customs authority earlier; or
 - (ii) lapses earlier in terms of subsection (2).

(2) An accredited client status certificate of a licensee lapses before the expiry of the three years period for which it was issued if the licence of the licensee lapses or is suspended or withdrawn in terms of Part 6 of Chapter 28.³¹⁶

Non-compliance with criteria for accredited client status

649. The holder of an accredited client status certificate must immediately advise the customs authority if that person is at any time during the period of validity of the certificate no longer in compliance with any of the criteria for accredited client status as set out in section 643(1).

Renewal of accredited client status certificates

650. (1) The holder of an accredited client status certificate may not later than 30 days before a certificate lapses apply for the renewal of the certificate.

(2) Sections 641(2) and (3) and 642 to 648, with the necessary changes as the context may require, apply to an application for the renewal of an accredited client status certificate and the issuing of a new accredited client status certificate.

Suspension or withdrawal of accredited client status certificates

651. (1) The customs authority may suspend or withdraw an accredited client status certificate if –

- (a) the holder of the certificate –
 - (i) acquired the certificate under false pretences;
 - (ii) breached any general or special condition applicable to the certificate in terms of section 647 in a material respect;
 - (iii) is no longer in compliance with any of the criteria for accredited client status as set out in section 643(1); or
 - (iv) failed to pay any tax or other amount due to the Commissioner within five days after it became due or within a period as agreed with the customs authority; or
- (b) the holder of the certificate or a director or employee of the holder of the certificate, during the validity period of the certificate –
 - (i) has contravened or failed to comply with a provision of this Act or a tax levying law;
 - (ii) has been convicted of an offence under this Act or a tax levying Act; or
 - (iii) has been convicted of an offence involving fraud or dishonesty.

³¹⁶ Subsection (2) does not apply to registered persons as Chapter 29 does not contain provisions similar to those contained in Part 6 of Chapter 28.

(2) Subsection (1)(b) does not apply if the holder of the certificate was not a party to, or could not prevent, any such breach or offence by such director or employee.

Process for suspension or withdrawal of accredited client status certificates

652. If the customs authority intends to suspend or withdraw an accredited client status certificate in terms of section **650**, the customs authority must first –

- (a) notify the holder of the certificate electronically of –
 - (i) the proposed suspension or withdrawal; and
 - (ii) the reasons for the proposed suspension or withdrawal; and
- (b) give the holder of the certificate an opportunity to submit representations on the proposed suspension or withdrawal within 30 days of the date the notification referred to in paragraph (a) was electronically transmitted to the holder of the certificate.

Communication of decisions to suspend or withdraw accredited client status certificates

653. (1) If the customs authority decides to suspend or withdraw an accredited client status certificate, the customs authority must –

- (a) notify the holder of the certificate electronically of the decision, indicating –
 - (i) the period for which the certificate is suspended; or
 - (ii) the date from which the certificate is withdrawn; and
- (b) in the notification draw the attention of the holder of the certificate to the fact that an appeal may be lodged against the decision in terms of Chapter **38**, if such appeal is available in the circumstances of the decision.

(2) The holder of an accredited client status certificate which has been withdrawn must return the certificate to the customs authority within three days of receiving the notice of withdrawal.

Rules to facilitate implementation of this Chapter

654. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules –

- (a) prescribing accredited client requirements for holders of accredited client status certificates;
- (b) prescribing the different levels of accreditation that may be conferred on holders of such certificates;
- (c) prescribing accredited client benefits conferred on holders of such certificates for the different levels of accreditation, which benefits may include –

- (i) simplified and fast-tracked clearance and release procedures;
 - (ii) simplified and fast-tracked procedures for the submission and processing of documents;
 - (iii) the deferment of tax on goods;
 - (iv) simplified tax payment procedures; and
 - (v) the exemption of holders of accredited client status certificates from specific requirements of the Act;
- (d) prescribing requirements and procedures for designating licensees and registered persons involved in international supply chains as authorised economic operators to facilitate the implementation of security measures in international trade;
- (e)

NOTE: This clause will be enhanced after consideration of subordinate legislation and based upon comments received

Offences in terms of this Chapter

655. A person is guilty of an offence if that person fails to comply with sections

NOTE: This clause will be completed based upon finalisation of the clauses providing for obligations of the relevant entities

Transitional provisions

656. (1) Any accredited status granted in terms of the Customs and Excise Act (Act No. 91 of 1964), lapses six months as from the date on which this Act takes effect.

(2) A person who is the holder of accredited status granted in terms of the Customs and Excise Act, 1964, may apply for an accredited client status certificate in terms of this Act within one month as from the date on which this Act takes effect.

(3) Any security provided to the Commissioner in respect of accredited status granted to a person in terms of the Customs and Excise Act, 1964, may be utilised by the Commissioner as if such security was provided in terms of Chapter 31, but does not preclude the Commissioner from requiring new security in terms of that Chapter.

CHAPTER 31

SECURITY FOR PAYMENT OF TAX AND OTHER MONEY OWED TO COMMISSIONER

Purpose of this Chapter

- 657.** (1) The purpose of this Chapter is to enable the customs authority to require that security be provided to the Commissioner in order –
- (a) to protect the state from loss of import or export tax on goods that are subject to customs control that is or may become payable in terms of a tax levying Act or this Act; or
 - (b) to ensure payment of any other money owed to the Commissioner in respect of goods that are subject to customs control.

When security may be required

- 658.** (1) The customs authority may require security in respect of any goods on which import or export tax is or may become payable in terms of a tax levying Act or this Act if, for any reason, the payment or recovery of the tax on those goods is or will be at risk, including to cover any tax risk in relation to –
- (a) goods on which tax is deferred;³¹⁷
 - (b) goods released for home use in terms of Chapter **10** if import tax on those goods is not paid before the release of the goods for home use;³¹⁸
 - (c) goods released for outright export from the Republic if export tax on those goods is not paid before the release of the goods for outright export;³¹⁹
 - (d) goods released for a customs procedure should a breach of this Act relating to that procedure put the payment or recovery of tax on those goods at risk;
 - (e) goods released for the temporary admission procedure on authority of a temporary admission paper issued by a guaranteeing association should a breach of this Act relating to that procedure put the payment or recovery of tax on those goods at risk;
 - (f) goods received, stored, handled, processed or in any way dealt with, managed or controlled 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 or recovery of tax on those goods at risk;
 - (g) goods received, stored, handled, processed or in any way dealt with, managed or controlled in terms of section **615(3)** on premises of which the license has lapsed

³¹⁷ For instance sections **26** and **102** of the Customs Duty Act.

³¹⁸ For instance when clearance and release of goods are fast-tracked in terms of Chapter **24**

³¹⁹ For instance when clearance and release of goods are fast-tracked in terms of Chapter **24**

- should a breach of this Act or a tax levying Act relating to those premises or goods put the payment or recovery of tax on those goods at risk;
- (h) goods imported into or to be exported from the Republic by a registered importer or exporter should a breach of this Act relating to that person's registration or those goods put the payment or recovery of tax on those goods at risk;
 - (i) goods imported or exported by an unregistered importer or exporter represented in the Republic by a registered importer or exporter's agent should a breach of this Act relating to that agent's registration or the import or export of those goods under that registration put the payment or recovery of tax on those goods at risk;
 - (j) goods transported by a licensed carrier should a breach of this Act relating to that carrier's license or the transport of those goods under that carrier's license put the payment or recovery of tax on those goods at risk;
 - (k) goods transported by an unlicensed carrier represented in the Republic by a licensed carrier's agent should a breach of this Act relating to that carrier's agent license or the transport of those goods under that license put the payment or recovery of tax on those goods at risk;
 - (l) goods transported within or between customs controlled areas should a breach of this Act relating to the transport of those goods put the payment or recovery of tax on those goods at risk;
 - (m) goods exempted by the Commissioner from a provision of this Act or a tax levying Act should such exemption put the payment or recovery of tax on those goods at risk;
 - (n) goods that are subject to customs control should the goods be damaged, lost, destroyed or unaccounted for and such eventuality put the payment or recovery of tax on those goods at risk; and
 - (o) goods that are subject to customs control, if for any other reason the payment or payment or recovery of tax is or will be at risk.

(2) The customs authority may require security to ensure the collection of any other money which is or may become payable to the Commissioner in respect of goods that are subject to customs control, if for any reason the collection of that money is or will be at risk.

Persons from whom security may be required

659. (1) Security referred to in section **658**(1) may be required from any person who is required to pay import or export tax on the relevant goods in terms of a tax levying Act or this Act, including, in relation to –

- (a) goods cleared for home use or a customs procedure, from the person who clears or on whose behalf the goods are cleared;
- (b) goods released for home use or a customs procedure, from the person to whom the goods are released;
- (c) goods released for the temporary admission procedure on authority of a temporary admission paper issued by a guaranteeing association, from the guaranteeing association;
- (d) goods received, stored, handled, or in any way dealt with, managed or controlled on licensed premises, from the licensee of those premises;
- (e) goods transported by –
 - (i) a licensed carrier, from that licensed carrier; or
 - (ii) an unlicensed carrier represented in the Republic by a licensed carrier's agent, from that licensed carrier's agent; and
- (f) goods imported into or exported from the Republic by –
 - (i) a person registered in terms of section **622** to import or export goods, from that registered importer or exporter; or
 - (ii) a person referred to in section **622** who has a registered importer or exporter's agent to act as that person's representative in the Republic, from that registered importer or exporter's agent.

(2) Security referred to in section **658(2)**, may be required from a person who is or may become liable for the payment of the money owed to the Commissioner in respect of the relevant goods.

Time when security may be required

- 660.** (1) The customs authority may require security in terms of section **658(1)** or (2) at any time during which the payment or recovery of the tax or other money is or will be at risk, including as a pre-condition for –
- (a) the release of the goods for home use or a customs procedure;
 - (b) the issuing or renewal of a licence, or at any time after a licence has been issued or renewed;
 - (c) the issuing or renewal of a registration certificate, or at any time after a registration certificate has been issued or renewed; and
 - (d) the granting of any approval,³²⁰ permission, authorisation or exemption in terms of this Act.

³²⁰ For instance approval granted in terms of section **257** to a guaranteeing association to guarantee any tax that may become payable on goods imported into the Republic and placed under the temporary admission procedure on authority of a temporary admission paper issued by that guaranteeing association.

(2) If the risk in relation to the payment or recovery of the tax or other money for which security was given for any reason changes, the customs authority may require the person who has given the security to alter the form, nature or amount of the security or to renew the security as the customs authority may determine.

Determination of amount of security

661. (1) Security in terms of this Chapter must be risk based.

(2) When determining the amount of security required, the customs authority must take into account all relevant factors, including –

- (a) an assessment of the risk to the state, and the monetary extent of that risk, to be covered by the security;
- (b) if the person who is to provide the security is a licensee or registered person –
 - (i) the annual turnover of that person's business as a licensee or registered person;
 - (ii) the type of licence or registration issued; and
 - (iii) whether that person has accredited client status;
- (c)

NOTE: This clause will be completed based upon comments received

(3) When determining the monetary extent of a tax risk, the customs authority must also take into account –

- (a) the likelihood of any interest and administrative penalties becoming payable in respect of the tax; and
- (b) the fact that such interest and penalties should be recovered as if part of the tax.³²¹

Forms of security

662. (1) Security in terms of this Chapter may be in the form of –

- (a) a surety bond issued on behalf of the person required to give security –
 - (i) by a financial institution approved by the Commissioner;
 - (ii) on conditions approved by the Commissioner; and
 - (iii) complying with such requirements and containing such particulars as may be prescribed by rule; or
- (b) another kind of security as may be prescribed by rule.

³²¹ See for instance section 53 of the Customs Duty Act.

- (2) Security in terms of subsection (1) must either be –
- (a) specific security to cover any tax or other money that is or may become payable by the person giving the security on specific goods or a specific consignment or consignments of goods; or
 - (b) general security to cover any tax or other money that is or may become payable by the person giving the security on any goods during a specified period.

Security details

663. Security provided in terms of section **662**, or a document accompanying the security, must –

- (a) indicate whether it is a specific or general security;
- (b) specify –
 - (i) the name and address of the person giving the security;
 - (ii) the purpose for which the security is given, and if given in relation to specific goods, those goods or that category;
 - (iii) the goods covered by the security;³²²
 - (iv) the amount of the security; and
 - (v) the validity period of the security; and
- (c) contain such other detail as may be prescribed by rule.

Utilisation of security

664. (1) Security provided in terms of section **662** may be utilised only for the payment or recovery of tax or other money owed to the Commissioner –

- (a) in respect of the goods for which the security was given; and
- (b) for which the person who has given the security is liable.

(2) The customs authority must promptly return any security to the person who has given the security if –

- (a) the validity period of the security has expired and the security was not utilised in terms of subsection (1); or
- (b) the purpose for which the security was given has lapsed.

Rules to facilitate implementation of this Chapter

665. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

- (a) the conditions on which security may be provided by financial institutions on behalf of persons required to provide security;

³²² Security is not necessarily consignment based.

- (b) the manner and circumstances in which tax or other money owed to the Commissioner may be recovered from security provided in terms of this Chapter;
- (c)

NOTE: This clause will be enhanced after consideration of subordinate legislation and based upon comments received

Offences in terms of this Chapter

666. A person is guilty of an offence if that person fails to comply with sections

NOTE: This clause will be completed based upon finalisation of the clauses providing for obligations of the relevant entities

CHAPTER 32
RECOVERY OF DEBT DUE UNDER THIS ACT³²³

Purpose of this Chapter

667. The purpose of this Chapter is to provide for the recovery by the Commissioner of money owed to the Commissioner in terms of this Act, including –

- (a) any administrative penalty;
- (b) any costs or expenses incurred and recoverable by the Commissioner from another person in terms of this Act;
- (c) the proceeds of the sale of goods in terms of section **567** or **568**;
- (d) any licence, registration, administration, processing or other fee prescribed by rule for the purposes of this Act;
- (e) any fee referred to in section **18**; and
- (f) any interest referred to in section **673** on amounts not paid on due date.

Money owed to Commissioner constitutes a debt due for credit of National Revenue Fund

668. (1) Money owed to the Commissioner in terms of this Act –

- (a) is a debt due to the Commissioner for credit of the National Revenue Fund, subject to subsection (2); and
- (b) must be recovered by the Commissioner in accordance with this Chapter and any other applicable provisions of this Act.

(2) If costs or expenses referred to in section **667** were paid from SARS own funds, the amount of those costs or expenses is a debt due to the Commissioner for credit of SARS.

(3) If the amount of an under-collection is less than R100, the customs authority is not obliged to recover the under-collection.

Recovery of debt

669. A debt referred to in section **668** may be recovered from –

- (a) the person liable for the debt; or
- (b) any security provided by that person covering that debt.

³²³ This Chapter does not cover the recovery of tax, administrative penalties imposed in connection with tax and interest on outstanding tax and penalties. These recoveries are dealt with in the respective tax laws on goods, for instance Chapter **3** of the Customs Duty Act.

Recovery of debt from agents

670. If a person mentioned in section **669(a)** is not located in the Republic,³²⁴ or has no fixed physical address in the Republic, or fails to pay the debt when required to do so, and has not provided security from which the Commissioner may recover the debt, the Commissioner may recover the debt from –

- (a) any person who, in connection with the goods in respect of which the debt is due, acted as or gave out to be the agent of the person liable for the debt; or
- (b) any security provided by a person referred to in paragraph (a) covering that debt.

Under- recovery of debt

671. (1) The customs authority must, subject to subsection (2), correct any under-recovery in the amount of a debt referred to in section **668** by recovering the amount under collected from –

- (a) the person who partially paid that debt;
- (b) any person from whom that debt could have been recovered in terms of section **669** or **670**; or
- (c) any security provided by a person referred to in paragraph (a) or (b) covering that debt.

(2) If the amount of an under- recovery is less than R100, the customs authority is not obliged to recover the under recovery.

Debt recovered from security

672. A person liable for any debt referred to in section **668** is absolved from liability towards the Commissioner if the debt is recovered in full from any security referred to in section **669** or **670**.

Interest on outstanding amounts

673. (1) A debt referred to in section **668** not paid on the due date bear interest at a rate determined by the Minister from time to time.

(2) Interest determined in terms of subsection (1) must be compounded on daily balances.

(3) The Commissioner may on good grounds exempt a person from paying interest for which that person becomes liable in terms of subsection (1).

³²⁴ See section 1(3)(a).

Payment of debt in instalments

674. The Commissioner may allow debt referred to in section **668** to be paid in instalments, subject to the payment of interest in terms of section **667** on outstanding balances.

Persons having accounts with Commissioner

675. (1) If a person has an account with the Commissioner for the payment of tax and other money owed to the Commissioner in terms of this Act or a tax levying Act, any amount –

- (a) paid by that person to the Commissioner may be debited against that account; or
- (b) refunded by the Commissioner to that person may be credited to that account.

(2) The customs authority must give notice to a person of any amounts debited to or credited against that person's account.

Rules to facilitate implementation of this Chapter

676. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules prescribing –

- (a) the methods that may be used to pay any debt to the Commissioner;
- (b) receipts and other documents and other evidence that may be used as proof of payment of any debt;
- (c)

NOTE: This clause will be enhanced after consideration of subordinate legislation and based upon comments received

Offences in terms of this Chapter

677. A person is guilty of an offence if that person fails to comply with sections

NOTE: This clause will be completed based upon finalisation of the clauses providing for obligations of the relevant entities

CHAPTER 33
GENERAL ENFORCEMENT FUNCTIONS

Part 1: Introductory provisions

Purpose and application of this Chapter

678. (1) The purpose of this Chapter is to assign effective enforcement functions to customs officers for the enforcement of this Act or a tax levying Act, and, in particular, to the extent reasonable in the circumstances –

- (a) to ensure that tax and any other money owed to the Commissioner in terms of this Act or a tax levying Act is paid;
- (b) to ensure that goods that are subject to customs control are dealt with in accordance with this Act; and
- (c) to prevent, investigate and take appropriate action against acts or omissions constituting breaches of this Act or a tax levying Act.

(2) The enforcement functions conferred on customs officers in terms of this Chapter are additional to the other enforcement functions assigned to customs officers in terms of the other provisions of this Act or a tax levying Act.

(3) This Chapter applies to all goods that in whatever way have become subject to customs control in terms of this Act.

Application of this Chapter for enforcing legislation other than this Act or tax levying Acts

679. (1) This Chapter also applies to the enforcement of other legislation in relation to goods that become subject to customs control if the Commissioner has in terms of section **16** by agreement with the organ responsible for the administration of that legislation agreed to assist in the enforcement of that legislation.³²⁵

(2) When applying this Chapter for the enforcement of other legislation referred to in section **16**, a reference to “this Act” in this Chapter or in a definition in section **1** of a word

³²⁵ It should be noted that in terms of Chapter **35** customs have direct powers to detain and deal with goods that are prohibited or restricted goods in terms of other legislation irrespective of whether an agreement referred to in section **16** to enforce that legislation has been concluded by the Commissioner and the organ of state administering that legislation. An agreement may, however, be used to confer additional powers on customs for the enforcement of such legislation, i.e. over and above those already assigned to customs in terms of Chapter **35**.

or expression used in this Chapter, must, unless clearly inappropriate, be read as a reference to that other legislation.

Part 2: Access to, and inspection and search of, premises, vessels, aircraft, trains, railway carriages and vehicles

Access to premises

680. (1) A customs officer has unqualified access to any premises consisting of or situated within a customs controlled area and may at any time, for the purpose of this Act or a tax levying Act, enter, inspect and search any such premises.

(2) A customs officer may, subject to section **681**, at any time for the purpose of this Act or a tax levying Act enter, inspect and search any premises outside a customs controlled area –

- (a) on or in which there are, or on or in which the customs officer on reasonable grounds suspects to find any goods –
 - (i) that are subject to customs control;
 - (ii) in respect of which a breach of this Act or a tax levying Act is being or has been committed;
 - (iii) that are being used or that have been used for an activity that constitutes a breach of this Act or a tax levying Act; or
 - (iv) that are prohibited, restricted or counterfeit goods;
- (b) on or in which there are, or on or in which the customs officer on reasonable grounds suspects to find, any documents concerning –
 - (i) any goods described in paragraph (a); or
 - (ii) any activity that constitutes a breach of this Act or a tax levying Act; or
- (c) on or in which there are, or on or in which the customs officer on reasonable grounds suspects to find, any persons having information concerning –
 - (i) any goods described in paragraph (a);
 - (ii) any documents described in paragraph (b); or
 - (iii) any activity that constitutes a breach of this Act or a tax levying Act; or
- (d) which is used, or which the customs officer on reasonable grounds suspects is being used, for an activity which constitutes a contravention of this Act or a tax levying Act.

(3) A person in charge of any premises referred to in subsection (1) or (2), and any person who works or resides on or in such premises, must provide and make available such facilities at such premises as may be reasonably required by the customs officer for entering, inspecting or searching the premises.

Access to premises used for residential purposes

681. (1) When acting in terms of section **680**(2), a customs officer may not without a warrant issued by a magistrate or judge enter or search –

- (a) any premises which is used for residential purposes; or
- (b) if only a part of any premises is used for residential purposes, that part which is used for residential purposes.

(2) A magistrate or judge may issue a warrant contemplated in subsection (1) only on written application by a customs officer setting out under oath or affirmation the grounds why it is necessary to enter, inspect or search the relevant premises or part of the premises.

(3) A customs officer may enter, inspect or search without a warrant any premises or part of any premises which is used for residential purposes if –

- (a) the person in control of the premises or that part consents to the entry, inspection or search; or
- (b) there are reasonable grounds to believe that a warrant would on application be issued, but that the delay that might be caused by applying for a warrant would defeat the object of the entry, inspection or search.

(4) This section does not apply to the entry, inspection or search of any premises within a customs controlled area.

Use of force to gain access to or to inspect or search premises

682. (1) No person may stop or prevent a customs officer from entering, inspecting or searching any premises in terms of section **680** or **681**, but a person in control of the premises, or of any entrance to the premises is entitled to demand that the customs officer –

- (a) produce his or her identity card referred to in section **13**; and
- (b) explain the purpose of the entry, inspection or search.

(2) If the customs officer is not immediately, or not immediately after having complied with any demand in terms of subsection (1), allowed to enter or to carry out the inspection or search, the customs officer may use any necessary force to gain entry or to carry out the inspection or search, including –

- (a) by searching any person for the keys to –
 - (i) the premises; or

- (ii) any room, enclosure, place, safe, chest, box, package or container on or in the premises;
- (b) by opening in any manner the premises, or any such room, enclosure, place, safe, chest, box, package or container, if it is locked and the keys are not produced on demand or are otherwise not available;
- (c) as a last resort, by breaking through any fence, wall, roof or ceiling, or breaking open any door or window, or breaking open any such safe, chest, box, package or container; or
- (d) by breaking up any ground or flooring.

Powers to stop, board and search vessels, aircraft, trains, railway carriages and vehicles

683. (1) A customs officer has unqualified access to any vessel, aircraft, train, railway carriage or vehicle within a customs controlled area and may, for the purpose of this Act or a tax levying Act, board, inspect and search any such vessel, aircraft, train, railway carriage or vehicle.

(2) A customs officer may, for the purpose of this Act or a tax levying Act, board, inspect and search any vessel, aircraft, train, railway carriage or vehicle outside a customs controlled area –

- (a) on or in which there are, or on or in which the customs officer on reasonable grounds suspects to find, any goods –
 - (i) that are subject to customs control;
 - (ii) in respect of which a breach of this Act or a tax levying Act is being or has been committed;
 - (iii) that are being used or that have been used for an activity that constitutes a breach of this Act or a tax levying Act; or
 - (iv) that are prohibited, restricted or counterfeit goods;
- (b) on or in which there are, or on or in which the customs officer on reasonable grounds suspects to find, any documents concerning –
 - (i) any goods described in paragraph (a); or
 - (ii) any activity that constitutes a breach of this Act or a tax levying law; or
- (c) on or in which there are, or on or in which the customs officer on reasonable grounds suspects to find, any persons having information concerning –
 - (i) any goods described in paragraph (a);
 - (ii) any documents described in paragraph (b); or
 - (iii) any activity that constitutes a breach of this Act or a tax levying law; or

- (d) which has been, or which the customs officer on reasonable grounds suspects to have been, specifically constructed, adapted, altered or fitted in any manner for the purpose of concealing goods.

(3) A customs officer may for the purpose of implementing subsection (2), at any time –

- (a) order the operator of a vessel or vehicle to stop, or the pilot of an aircraft to land; or
(b) if necessary and possible, force the operator or pilot to stop or land, as the case may be.

Roadblocks for vehicles

684. (1) The customs authority may apply to the national or a provincial commissioner of police for written authorisation in terms of section 13(8) of the South African Police Service Act, 1995 (Act No. 68 of 1995), to establish a roadblock or a checkpoint outside a customs controlled area for enforcing this Act or a tax levying Act.

(2) At a roadblock referred to in subsection (1) a customs officer may randomly stop vehicles and –

- (a) check whether any customs documentation is in order; and
(b) exercise in relation to the vehicle and any goods and persons on board the vehicle any other enforcement functions conferred on a customs officer.

(3) Only a customs officer in the official customs uniform may stop vehicles in terms of subsection (2).

Use of force to gain access to or to inspect or search vessels, aircraft, trains, railway carriages and vehicles

685. (1) No person may prevent a customs officer from boarding, inspecting or searching any vessel, aircraft, train, railway carriage or vehicle in terms of section **683** or **684**, but the operator of the vessel, aircraft, train, railway carriage or vehicle is entitled to demand that the customs officer –

- (a) produce his or her identity card referred to in section **13**; and
(b) explain the purpose of the entry, inspection or search.

(2) If the customs officer is not immediately, or not immediately after having complied with any demand in terms of subsection (1), allowed to board or to carry out the inspection or search, the customs officer may use any necessary force to gain access or to carry out the inspection or search, including –

- (a) by searching any person for the keys to the vessel, aircraft, train, railway carriage or vehicle or to any cabin, safe, chest, box, package or container on or in the vessel, aircraft, train, railway carriage or vehicle;
- (b) by opening in any manner any cabin, safe, chest, box, package or container on or in the vessel, aircraft, train, railway carriage or vehicle, if it is locked and the keys are not produced on demand or are otherwise not available; or
- (c) as a last resort, by breaking open the vessel, aircraft, train, railway carriage or vehicle or any such cabin, safe, chest, box, package or container.

Searching of premises, vessels, aircraft, trains, railway carriages or vehicles

686. (1) When searching any premises, vessel, aircraft, train, railway carriage or vehicle in terms of this Chapter, a customs officer –

- (a) has free access to every part of the premises, vessel, aircraft, train, railway carriage or vehicle;
- (b) may rummage any part of the premises, vessel, aircraft, train, railway carriage or vehicle;
- (c) may for the purpose of enforcing this Act or a tax levying Act fasten down the hatchways of any vessel, or mark, lock up, seal or otherwise secure any goods or documents found on or in the premises, vessel, aircraft, train, railway carriage or vehicle; or
- (d) may search in accordance with section **687** any person found on or in the premises, vessel, aircraft, train, railway carriage or vehicle.

(2) If any hatchways of a vessel have been fastened down, or any goods or documents have been marked, locked up, sealed or otherwise secured in terms of subsection (1)(c) –

- (a) no person may without the permission of a customs officer –
 - (i) open such hatchways;
 - (ii) open, break, destroy, alter or in any way tamper with such lock, seal or mark; or
 - (iii) remove such goods or documents; and
- (b) the person in charge of the premises, or the operator of the vessel, aircraft, train, railway carriage or vehicle, must take all steps reasonable in the circumstances to prevent any contravention of paragraph (a) of this subsection.

Part 3: Stopping, calling on and searching of persons**Stopping or calling on persons**

- 687.** (1) A customs officer may, for the purpose of this Act or a tax levying Act –
- (a) stop or call on any person in a customs controlled area, including any traveller or crew member who has entered the Republic or is in the process of leaving the Republic; and
 - (b) request that person to produce any or all goods or documents which that person –
 - (i) has with him or her;
 - (ii) has brought into the Republic; or
 - (iii) intends to take out of the Republic
- (2) A customs officer may, for the purpose of this Act or a tax levying Act –
- (a) stop or call on any person outside a customs controlled area, including any traveller or crew member who has entered the Republic or is in the process of leaving the Republic, who has, or on reasonable grounds is suspected by a customs officer to have, with him or her –
 - (i) any goods that are subject to customs control or in respect of which a breach of this Act or a tax levying Act is being or has been committed; or
 - (ii) any documents concerning –
 - (aa) any goods that are subject to customs control or in respect of which a breach of this Act or a tax levying Act is being or has been committed; or
 - (bb) any activity which constitutes a breach of this Act or a tax levying Act; and
 - (b) request that person to produce the goods or documents referred to in paragraph (a).
- (3) If a person referred to in subsection (1) or (2) fails to stop when requested by a customs officer to do so, the customs officer may take such action, including the use of any necessary force to stop that person.

Searching of persons

- 688.** (1) A customs officer may search a person stopped or called on in terms of section **687**(1) or (2)–
- (a) if that person refuses to comply with a request in terms of that section to produce any goods or documents referred to in that section; or
 - (b) if the customs officer on reasonable grounds suspects that that person is concealing –

- (i) any goods or documents which that person was requested to produce;
- (ii) any goods in respect of which a breach of this Act or a tax levying Act is being or has been committed; or
- (iii) any documents concerning any goods referred to in paragraph (b).

(2) A customs officer may, for purposes of subsection (1) and to the extent necessary in the circumstances, conduct –

- (a) a search of any goods the person may have with him or her;
- (b) a frisk search of the person in accordance with section 689; and
- (c) an external bodily search of the person in accordance with section 690.

(3) If a person refuses to be searched, the customs officer may take such action, including the use of any necessary force to search that person.

Frisk searches

689. (1) When conducting a frisk search of a person, a customs officer may move his or her hands briskly over the person's body on top of the person's clothing, in order to detect any concealed –

- (a) weapon or object capable of being used to inflict bodily injury; or
- (b) goods that are subject to customs control or in respect of which a breach of this Act or a tax levying Act is being or has been committed.

(2) A frisk search may only be conducted by a customs officer who is of the same gender as the person being searched.

External bodily searches

690. (1) The customs officer conducting an external bodily search of a person may request the person being searched to remove any outer garments that may hamper the search.

(2) When conducting an external bodily search of a person, a customs officer may, subject to subsection (3), make use of –

- (a) any mechanical, electrical, imaging or electronic equipment that can produce an indication that the person may be concealing any specific thing or substance on or in his or her body or in any goods that that person has with him or her;
- (b) sniffer dogs or other animals trained to use their senses for the detection of any specific thing or substance; or
- (c) any other search aids as may be prescribed by rule.

(3) A search aid referred to in subsection (2) may only be used by a customs officer trained to use such aid in the conduct of an external bodily search.

(4) An external bodily search may only be conducted –

- (a) by a customs officer who is of the same gender as the person being searched; and
- (b) in a place that affords adequate personal privacy to the person being searched.

(5) A person being subjected to an external bodily search may request the presence of another person during the search.

Internal bodily searches

691. (1) When a customs officer, after conducting an external bodily search in terms of section **690**, on reasonable grounds suspects that a person is internally concealing goods in respect of which a breach of this Act or any tax levying Act is being or has been committed, the officer may detain the person and arrange for an internal bodily search to be conducted as soon as practicable. Any detention in terms of this subsection must be under supervision of a medical practitioner.

(2) An internal bodily search may be conducted only by a registered medical practitioner at a place equipped for the carrying out of medical procedures required for an internal bodily search of the kind in question.

(3) A person being subjected to an internal bodily search may request the presence of another person during the search.

Searches of children

692. (1) A child may be searched in terms of section **689** or **690** only in the presence of –

- (a) that child's parent or guardian; or
- (b) if the child is travelling without a parent or guardian, another person who is responsible for the child during travelling.

(2) No child may be subjected to an internal bodily search except when public health or safety is at risk.

Part 4: Inspection, sampling and investigative powers**Inspection of goods**

693. (1) A customs officer may inspect –

- (a) any goods on or in any premises, vessel, aircraft, train, railway carriage or vehicle within a customs controlled area;
- (b) any goods which a person within a customs controlled area has with him or her;
- (c) any goods found during a search in terms of this Chapter of –
 - (i) any premises;
 - (ii) any vessel, aircraft, train, railway carriage or vehicle; or
 - (iii) any person;
- (d) any goods on public display for sale;
- (d) any goods produced on request by a customs officer in terms of this Chapter;
- (e) any goods in respect of which a breach of this Act or a tax levying Act has been committed or on reasonable grounds is suspected by a customs officer to have been committed; or
- (f) any other goods that are subject to customs control.

(2) Goods may without notice to any person be inspected at any time –

- (a) after the goods have been imported into the Republic, whether or not the goods have been cleared in terms of section **109**;
- (b) before the goods are exported from the Republic, whether or not the goods have been cleared in terms of section **112**; or
- (c) whilst the goods are under a customs procedure.

(3) Inspection of goods includes, to the extent necessary for the enforcement of this Act or a tax levying Act –

- (a) checking the goods and the packages or containers in which the goods are packed;
- (b) examining the goods and the packages or containers in which the goods are packed, whether –
 - (i) manually; or
 - (ii) by means of scanning equipment or any mechanical, electrical, imaging or electronic appliances that can produce an indication of the nature or characteristics of the goods or the contents of the packages or containers;
- (c) opening of packages or containers in which the goods are packed;³²⁶
- (d) carrying out tests on and analysing the goods;

³²⁶ See Part 5 of Chapter 22 for opening of international postal articles.

- (e) determining the quantity, volume or weight of the goods;
- (f) removing the goods to another place in order to carry out any further inspection;
- (g) subjecting the goods to a chemical, mechanical or technological process;
- (h) obtaining advice, including expert or technical advice on the goods or a matter relating to the goods; and
- (i) using sniffer dogs or other animals trained to use their senses for the detection of specific substances.

(4) In scheduling its inspection tasks, the customs authority must give priority to the inspection of perishable goods, live animals and other goods which because of their nature must be processed expeditiously.

(5) When removing any goods in terms of subsection (3)(f) a customs officer must –

- (a) provide a receipt for the goods; and
- (b) return the goods within a reasonable time unless the goods are detained in terms of Chapter 33.

Production of goods for inspection

694. A customs officer may, for the purpose of section 693, call on any person to produce or make available for inspection, either immediately or at a time and place specified by the customs officer, any goods in the possession or custody or under the control of that person.

Sampling of goods³²⁷

695. (1) A customs officer may take samples of goods only when, and in quantities, necessary for –

- (a) conducting an inspection of the goods in terms of section 693;
- (b) establishing for the purpose of this Act or a tax levying Act, whether as part of an inspection or not –
 - (i) the nature or characteristics of the goods;
 - (ii) the tariff classification, value or origin of the goods;
 - (iii) whether the goods are prohibited, restricted or counterfeit goods;
 - (iv) whether the goods are the same goods previously cleared and released for a customs procedure; or
 - (v) any other fact in relation to the goods as may be prescribed by rule; or

³²⁷ See Chapter 23 for sampling of goods by importers, exporters and other persons having an interest in the goods.

(c) use as evidence in a court or other proceedings referred to in Chapter **39**.

(2) Samples taken in terms of subsection (1) may be –

- (a) examined, analysed or tested in any way;
- (b) subjected to a chemical, mechanical or technological process;
- (c) used for obtaining advice, including expert or technical advice, on the goods as reflected by the samples or a matter relating to the goods; or
- (d) utilised in any other way necessary for achieving the purposes of subsection (1).

(3) Samples of any goods taken in terms of subsection (1) –

- (a) may be taken –
 - (i) without permission of any person; and
 - (ii) without payment to any person; and
- (b) must be dealt with and accounted for in a manner as may be prescribed by rule.

(4) Samples may be taken at any time –

- (a) or after the goods have been imported into the Republic, whether or not the goods have been cleared in terms of section **109**;
- (b) before the goods are exported from the Republic, whether or not the goods have been cleared in terms of section **112**; or
- (c) whilst the goods are under a customs procedure.

(5) (a) Goods forming part of a specific consignment or contained in a specific package or container must for the purpose of this Act or a tax levying Act be regarded as being of the same nature and having the same characteristics as those of samples taken from those goods, unless proved otherwise.

(b) Paragraph (a) does not apply if any documents issued in respect of the consignment, package or container indicates that the consignment consists of, or the package or container contains, goods of a dissimilar kind.

Carrying out of certain actions in relation to goods and samples by other persons

696. A customs officer may cause the actions referred to in section **693**(3)(d) to (h) or **695**(2) in relation to goods or samples be carried out by a person designated by the customs authority and in accordance with the requirements of the customs authority.

Liability for costs incurred by SARS

697. The following persons are jointly and severally liable towards the Commissioner for

the payment of any costs³²⁸ incurred by SARS in connection with the carrying out of any of the actions referred to in section 693(3)(d) to (h) or 695(2) in relation to goods or samples:

- (a) a person who –
 - (i) is the owner of the goods;
 - (ii) has a material interest in the goods; or
 - (iii) has the right to dispose of the goods;
- (b) the importer of the goods or the person on whose authority the goods were imported into the Republic; or
- (c) the exporter of the goods.

Inspection of documents

698. (1) A customs officer may inspect –

- (a) any documents –
 - (i) found during a search in terms of this Chapter of any premises, vessel, aircraft, train, railway carriage or vehicle;
 - (ii) found during a search in terms of this Chapter of any person;
 - (iii) produced on request by a customs officer in terms of this Chapter;
 - (iv) that relate to any act or omission which constitutes, or on reasonable grounds is suspected by a customs officer to constitute, a breach of this Act or a tax levying Act; or
 - (v) in respect of which a breach of this Act or a tax levying Act has been committed, or on reasonable grounds is suspected by a customs officer to have been committed;
- (b) any documents that relate to –
 - (i) any premises within a customs controlled area;
 - (ii) any premises searched in terms of section 680(2);
 - (iii) any vessel, aircraft, train, railway carriage or vehicle within a customs controlled area, or its use, cargo, passengers, crew or stores or its journey, voyage, flight or travelling schedules; or
 - (iv) any vessel, aircraft, train, railway carriage or vehicle searched in terms of section 683(2), or its use, cargo, passengers, crew or stores or its journey, voyage or flight schedules;
- (c) any documents that relate to –
 - (i) any goods within a customs controlled area, including any goods in or on any premises, vessel, aircraft, train, railway carriage or vehicle within a customs controlled area;

³²⁸ For recovery of these costs see Chapter 32.

- (ii) any goods found during a search in terms of this Chapter of any premises, vessel, aircraft, train, railway carriage or vehicle;
 - (iii) any goods found during a search in terms of this Chapter of any person;
 - (iv) any goods produced on request by a customs officer in terms of this Chapter;
 - (v) any goods in respect of which a breach of this Act or a tax levying Act has been committed, or on reasonable grounds is suspected by a customs officer to have been committed; or
 - (vi) any other goods that are subject to customs control; or
- (d) any records which that person is required to keep or exhibit in terms of –
- (i) this Act; or
 - (ii) a tax levying Act in relation to goods to which this Act applies.

(2) Inspection of documents includes, to the extent necessary for the enforcement of this Act or a tax levying Act –

- (a) examining the documents;
- (b) copying, or making extracts from, the documents; and
- (c) removing the documents in order to make copies or extracts or to carry out any further examinations.

(3) When removing any documents in terms of subsection (2)(c) a customs officer must –

- (a) provide a receipt for the documents; and
- (b) return the documents within a reasonable time unless the documents are detained in terms of Chapter 34.

Production of documents for inspection

699. (1) A customs officer may, for the purpose of section 698, call on any person to produce or make available for inspection, either immediately or at a time and place specified by the customs officer, any documents referred to in that section that are in the possession or custody or under the control of that person.

(2) A customs officer may call on any person to produce, either immediately or at a time and place specified by the customs officer, any documents which that person is required in terms of this Act or a tax levying Act to submit and has failed to submit.

Investigative powers

- 700.** (1) A customs officer may, for the purpose of this Act or a tax levying Act –
- (a) question a person concerning any premises, vessel, aircraft, train, railway carriage or vehicle inspected or searched in terms of this Chapter, or concerning any goods, documents or persons in or on such premises, vessel, aircraft, train, railway carriage or vehicle, who –
 - (i) is the owner or otherwise in charge of the premises, the vessel, aircraft, train, railway carriage or vehicle;
 - (ii) is or was the operator or a crew member of the vessel, aircraft, train, railway carriage or vehicle during the inspection or search;
 - (iii) is or was present on or in the premises, vessel, aircraft, train, railway carriage or vehicle during the inspection or search;
 - (iv) works on or in the premises, vessel, aircraft, train, railway carriage or vehicle;
 - (v) performs any duties in connection with the premises, vessel, aircraft, train, railway carriage or vehicle;
 - (vi) resides on the premises; or
 - (vii) is the owner or otherwise in possession, custody or control of, or has any interest in, or performs any duties in connection with, any goods or documents on or in the premises, vessel, aircraft, train, railway carriage or vehicle;
 - (b) question a person concerning any goods or documents inspected or found during a search in terms of this Chapter –
 - (i) who is the owner or otherwise in possession, custody or control of, or has any interest in, or performs any duties in connection with, the goods or documents; or
 - (ii) who produced the goods or documents on request by a customs officer;
 - (c) question a person stopped or called on or searched in terms of this Chapter concerning any goods or documents which that person has or had with him or her;
 - (d) question a person concerning any act or omission which constitutes, or on reasonable grounds is suspected by a customs officer to constitute, a breach of this Act or a tax levying Act; and
 - (e) take photographs or make audio or audio-visual recordings of anything or any person that –
 - (i) may be relevant for the purpose of any inspection or investigation in terms of this Act; or
 - (ii) may afford evidence for the purpose of any criminal or civil proceedings in terms of this Act or a tax levying Act.

(2) A person may be questioned in terms of this section either alone or in the presence of any other person.

Failure or refusal to produce goods or documents or to answer questions

701. (1) If a person is required in terms of section **694** or **699** to produce any goods or documents or in terms of section **700** to answer any questions, and fails or refuses to comply with the requirement, a customs officer may issue a written notice to that person directing that person to appear before that or any other customs officer at a time and place specified in the notice –

- (a) to produce any goods or documents specified in the notice; or
- (b) to answer questions concerning a matter specified in the notice.

(2) A written notice issued in terms of subsection (1) –

- (a) must be in a format prescribed by rule; and
- (b) may require the person to answer questions under oath or affirmation.

(3) (a) A person to whom a written notice is issued in terms of subsection (1), must truthfully and to the best of that person's ability answer all questions put to that person in consequence of the notice despite the fact that the answer might be self incriminating.

(b) An answer given by a person that incriminates him or her may not be used against that person in any subsequent criminal proceedings against that person.

(4) A person may be questioned in terms of this section either alone or in the presence of any other person.

Part 5: Powers of arrest

Powers of arrest of customs officers

702. The Commissioner –

- (a) may determine the category of customs officers who have the power to carry out an arrest for the purpose of enforcing this Act or a tax levying Act; and
- (b) must furnish each such customs officer with an appropriate certificate and identification card stating that the officer is authorised to carry out an arrest for the purpose of enforcing this Act or a tax levying Act.

Manner and effect of an arrest

703. (1) An arrest may be effected with or without a warrant and, unless the person being arrested submits to custody, by actually touching the body of that person or, if the circumstances so require, by forcibly confining that person's body.

(2) A customs officer effecting an arrest must, at the time of effecting the arrest or immediately after effecting the arrest –

- (a) inform the arrested person of the cause of the arrest; or
- (b) in the case of an arrest effected by virtue of a warrant, hand that person a copy of the warrant if the person arrested so demands.

(3) The effect of an arrest is that the person arrested is in lawful custody and that that person will be detained in custody until lawfully discharged or released from custody.

Arrest of persons without warrant

704. A customs officer having arresting powers may, without a warrant, arrest –

- (a) the operator of a vessel, aircraft, train, railway carriage, or vehicle who refuses –
 - (i) to comply with a lawful command of a customs officer to bring such vessel, aircraft, train or vehicle to a stop; or
 - (ii) to allow a customs officer to board the vessel, aircraft, train, railway carriage, or vehicle for the purpose of enforcing this Act or a tax levying Act;
- (b) a person who in contravention of this Act –
 - (i) entered or is suspected of having entered the Republic other than through a place of entry; or
 - (ii) is attempting or suspected of attempting to leave the Republic other than through a place of exit;
- (c) a person who –
 - (i) imports, or on reasonable grounds is suspected of having imported, goods into the Republic without complying with this Act; or
 - (ii) is in the process of exporting, or on reasonable grounds is suspected of being in the process of exporting, goods from the Republic without complying with this Act;
- (d) a person who –
 - (i) imports, or on reasonable grounds is suspected of having imported, prohibited, restricted or counterfeit goods into the Republic in contravention of any legislation applicable to such prohibited, restricted or counterfeit goods;

- (ii) is in the process of exporting, or on reasonable grounds is suspected of being in the process of exporting, prohibited, restricted or counterfeit goods from the Republic in contravention of any legislation applicable to such prohibited, restricted or counterfeit goods; or
 - (iii) is found in possession of, or on reasonable grounds is suspected of being in possession of, any prohibited, restricted or counterfeit goods in contravention of any legislation applicable to such prohibited, restricted or counterfeit goods;
- (e) a person who –
- (i) diverts, or on reasonable grounds is suspected of having diverted, imported goods for home use;
 - (ii) in any way smuggles or on reasonable grounds is suspected of smuggling, goods into or out of the Republic; or
 - (iii) is found in possession of, or on reasonable grounds is suspected of being in possession of, any goods diverted for home use or smuggled into or that are being smuggled out of the Republic;
- (f) a person who has been arrested by a customs officer and who has escaped from lawful custody;
- (g) person found impersonating a customs officer; or
- (h) person who wilfully obstructs an officer in the execution of his or her duty.

Arrest of persons under authority of warrant

705. (1) The customs authority may apply to any magistrate for a warrant authorising the arrest of a specific person.

(2) A magistrate may issue a warrant in terms of subsection (1) only on written application by the customs authority setting out under oath or affirmation –

- (a) the offence that has allegedly been committed by the person concerned;
- (b) the grounds on which the person in respect of whom the warrant is being applied for is reasonably suspected of having committed the alleged offence; and
- (c) that the offence was allegedly committed within the area of jurisdiction of that magistrate.

(3) A warrant of arrest issued by a magistrate as contemplated in subsection (2) may be executed by any customs officer and the customs officer executing such warrant must do so in accordance with the terms thereof.

Non-liability for wrongful arrest

706. (1) A customs officer arresting a person under a warrant of arrest and who, in the reasonable belief that he or she is arresting that person, arrests another person, is not liable for wrongful arrest.

(2) Any police officer, other customs officer or other person assisting a customs officer making an arrest, or who is required to detain a person so arrested, and who reasonably believes that the said person is the person whose arrest has been authorized by the warrant of arrest, is likewise not liable for such assistance or detention.

Breaking open premises for purpose of arrest

707. Any customs officer who may lawfully arrest a person in terms of this Part and who knows, or reasonably suspects, such person to be on any premises, may, if he or she first audibly demands entry into such premises and notifies the purpose for which he or she seeks entry and fails to gain entry, break open, enter and search such premises for the purpose of effecting the arrest.

Use of force in effecting arrest

708. (1) For the purposes of this section—

- (a) “**arrestor**” means a customs officer authorised to carry out the arrest of a suspect; and
- (b) “**suspect**” means any person in respect of whom an arrestor has or had a reasonable suspicion that such person is committing or has committed an offence.

(2) If any arrestor attempts to arrest a suspect and the suspect resists the attempt, or flees, or resists the attempt and flees, when it is clear that an attempt to arrest him or her is being made, and the suspect cannot be arrested without the use of force, the arrestor may, in order to effect the arrest, use such force as may be reasonably necessary and proportional in the circumstances to overcome the resistance or to prevent the suspect from fleeing: Provided that the arrestor is justified in terms of this section in using deadly force that is intended or is likely to cause death or grievous bodily harm to a suspect, only if he or she believes on reasonable grounds—

- (a) that the force is immediately necessary for the purposes of protecting the arrestor, any person lawfully assisting the arrestor or any other person from imminent or future death or grievous bodily harm;
- (b) that there is a substantial risk that the suspect will cause imminent or future death or grievous bodily harm if the arrest is delayed; or

- (c) that the offence for which the arrest is sought is in progress and is of a forcible and serious nature and involves the use of life threatening violence or a strong likelihood that it will cause grievous bodily harm.

Detention of arrested person

709. Any person arrested by a customs officer must as soon as possible be brought to a police station or, in the case of an arrest by warrant, to any other place expressly mentioned in the warrant, and further dealt with in the manner contemplated in section 50 of the Criminal Procedure Act (Act No. 51 of 1977).

Part 6: Carrying and use of arms and ammunitions

Authority to carry an official firearm

710. (1) The Commissioner may determine a category of customs officers permitted to carry firearms for the purpose of exercising their enforcement functions.

(2) The Commissioner may issue an official SARS firearm to a customs officer permitted to carry a firearm only after the officer has been trained in the use of firearms of the kind to be issued to the officer and a certificate of competency has been issued to the officer, as may be prescribed by rule.

(3) (a) The identity card of a customs officer to whom an official SARS firearm has been issued must indicate that that customs officer is permitted to carry such a firearm.

(b) Such indication on a customs officer's identity card is proof that the officer is permitted to carry an official SARS firearm.

Use of official firearms by customs officers

711. (1) A customs officer may use an official firearm only as a last resort and then only –

- (a) in self defence from imminent or future death or grievous bodily harm; or
- (b) 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.

(2) Before firing an official firearm a customs officer must, if circumstances permit –

- (a) issue a verbal warning;
- (b) if the warning has no effect, fire a warning shot; and

- (c) if the warnings have no effect, direct the line of fire in such a manner that the probable result will not be a fatal injury.

(3) Whenever a customs officer fires an official firearm, that officer must immediately report that fact in writing to the appropriate supervising customs officer in a manner as may be prescribed by rule.

Use of non-lethal weapons

712. (1) The Commissioner may authorise the use of non-lethal weapons by customs officers in such circumstances and in such a manner as may be prescribed by rule.

(2) The Commissioner may by rule prescribe the training requirements applicable to the use of such weapons, the control over such weapons, including reporting procedures and any other matter that the Commissioner may consider reasonably necessary and useful for administering the use of any non-lethal weapons.

Part 7: Border control

Customs authority official border control agency

713. (1) The customs authority may assist the South African Police Service in –

- (a) patrolling the borders of the Republic; and
- (b) preventing, combating and investigating cross-border crime.

(2) Customs officers may exercise any of their enforcement functions for the purpose of subsection (1).

Acquisition of equipment for border control

714. The Commissioner may acquire any equipment necessary for patrolling the land and sea borders of the Republic, including –

- (a) any patrol boats, aircraft and vehicles; and
- (b) any arms and ammunition required to equip or supply any customs patrol boat, aircraft or vehicle.

Customs patrol boats

715. (1) The customs officer commanding any customs patrol boat having hoisted and carrying or displaying the customs ensign or flag may chase any vessel where –

- (a) that vessel do not immediately come to a stop when signalled, ordered or required to do so; or
- (b) the operator of the vessel refuses to permit the vessel to be boarded.

(2) The customs officer commanding any customs patrol boat involved in the pursuit of a vessel as contemplated in subsection (1) may, after having obtained authorisation from the Commissioner, as a last resort and after having fired a warning, fire at or onto the fleeing vessel to compel it to come to a stop.

Right of hot pursuit by sea

716. (1) Customs officers on board a customs patrol boat may exercise on behalf of the Republic, or on behalf of a foreign state, the right of hot pursuit of any vessel in accordance with article 111 of the United Nations Convention of the Law Of the Sea (UNCLOS).

(2) The seizure of such a vessel and the arrest of any person on board such a vessel may be effected by any customs officer on board a customs patrol vessel.

Exemptions applicable to customs patrol boats, aircraft and vehicles and customs officers

717. Despite anything to the contrary contained in any other legislation –

- (a) customs patrol boats, aircraft and vehicles are exempted from –
 - (i) any registration, licensing or other requirement or any related fee normally applicable to the possession or movement of vessels, aircraft or vehicles, if clearly marked and identifiable as a customs patrol boat, aircraft or vehicle; or
 - (ii) any mooring, docking, landing or road toll fee, or any similar charge, whilst used for official duties; and
- (b) customs officers serving on board customs patrol boats are exempted from any provisions relating to their competency or certification if adequately trained and tested in accordance with the standards prescribed by rule in order to ensure their competency and certification.

Part 8: Other matters

Rules to facilitate implementation of this Chapter

718. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules –

- (a) concerning the acquisition, record-keeping, carrying, possession, use, safe-keeping, transport, theft, loss and disposal of firearms and ammunition;
- (b) concerning the manner of reporting the firing of an official firearm and the procedures to be followed in respect thereof;

- (c) concerning the type of non-lethal weapons that may be used by customs officers, the manner of their use and the safety and control measures that must be complied with in respect of such weapons;
- (d) concerning the acquisition, storage and use of arms and ammunition for use on customs patrol boats;
- (e) prescribing the manner in which customs arms, ammunition and related equipment must be marked and identified;
- (f) regarding the training and certification requirements for customs officers for the safe use of firearms and ammunition; and
- (g) any other matter that the Commissioner may consider reasonably necessary and useful for administering the provisions contained in this Part.

Offences in terms of this Chapter

719. A person is guilty of an offence if that person –

- (a) fails to comply with section

<p>NOTE: This clause will be enhanced based upon finalisation of the clauses providing for obligations of the relevant entities</p>
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CHAPTER 34

DETENTION, SEIZURE AND CONFISCATION OF GOODS

Purpose and application of this Chapter

720. (1) The purpose of this Chapter is to provide for the detention, seizure and confiscation of goods to which this Chapter applies in order to enforce the provisions of this Act or a tax levying Act.

(2) This Chapter applies, subject to sections **723** and **724**, to all goods, including documents, that in whatever way have become subject to customs control.

Application of this Chapter for enforcing legislation other than this Act or tax levying Acts

721. (1) This Chapter also applies to the enforcement of other legislation in relation to goods that become subject to customs control if the Commissioner has in terms of section **16** by agreement with the organ responsible for the administration of that legislation agreed to assist in the enforcement of that legislation.³²⁹

(2) When applying this Chapter for the enforcement of other legislation referred to in section **16**, a reference to “this Act” in this Chapter, or in a definition in section **1** of a word or expression used in this Chapter, must, unless clearly inappropriate, be read as a reference to that other legislation.

Part 1: Detention of goods

Power to detain goods

- 722.** (1) A customs officer may detain any goods to which this Chapter applies –
- (a) for the purpose of investigating or determining whether –
 - (i) a breach of this Act or a tax levying Act has been committed in relation to the goods;
 - (ii) the goods are prohibited or restricted goods; or
 - (iii) the goods have been or are being used in commissioning an offence;
 - (b) if the detention of the goods is permitted in terms of another provision of this Act; or
 - (c) in any other circumstances as may be prescribed by rule.

³²⁹ It should be noted that in terms of Chapter **35** customs have direct powers to detain and deal with goods that are prohibited or restricted goods in terms of other legislation irrespective of whether an agreement referred to in section **16** to enforce that legislation has been concluded by the Commissioner and the organ of state administering that legislation. An agreement may, however, be used to confer additional powers on customs for the enforcement of such legislation, i.e. over and above those already assigned to customs in terms of Chapter **35**.

(2) If such goods consist of documents, a customs officer may detain the documents –

- (a) for the purpose of investigating or determining whether –
 - (i) a breach of this Act or a tax levying Act has been or is being committed in relation to any goods or matter to which the document relates;
 - (ii) the document affords evidence of the commission of such a breach;
 - (iii) any goods to which the document relates are prohibited or restricted goods; or
 - (iv) any goods to which the document relates have been or are being used in the commission of an offence;
- (b) if the detention of the document is permitted in terms of another provision of this Act; or
- (c) in any other circumstances as may be prescribed by rule.

(3) A customs officer may detain goods in terms of subsection (1) or (2) wherever found in the course of exercising their enforcement functions.

Detention of prohibited and restricted goods

723. If goods are detained in terms of section **722**(1) and it is established after the detention that the goods are prohibited or restricted goods that must be detained in terms of Chapter **35** –

- (a) the goods must be regarded as having been detained in terms of that Chapter; and
- (b) that Chapter becomes applicable to the goods.

Detention of counterfeit goods

724. (1) Section **722** does not apply to the detention of goods solely by reason of the fact that the goods are counterfeit goods or goods suspected to be counterfeit goods.³³⁰

(2) Subsection (1) may not be read as preventing counterfeit goods, or goods suspected of being counterfeit goods, from being detained in terms of section **722** if the reason for the detention is not based on the fact that the goods are counterfeit goods or goods suspected of being counterfeit goods.³³¹

³³⁰ The detention of counterfeit goods on that ground is dealt with in Chapter **36**.

³³¹ This provision allows for counterfeit goods to be detained on any of the grounds set out in section **722**(1) as long as the detention is not based on the fact that the goods are counterfeit goods, for instance when counterfeit goods are diverted for home use in contravention of the Customs Control Act to avoid tax.

(3) If counterfeit goods, or goods suspected of being counterfeit goods, are detained in terms of section **722**, the provisions of this Chapter and other provisions applicable to goods detained in terms of that section apply to the goods unless the customs authority directs that Chapter **36** be applied to the goods as if the goods were detained in terms of that Chapter.

Detention notifications

725. (1) When detaining goods in terms of section **722**(1) or (2), a customs officer must issue a detention notification to –

- (a) the person who cleared the goods or on whose behalf the goods were cleared, if the goods were cleared; or
- (b) the person in whose possession the goods are, or are believed to be, at the time of detention.

(2) If the goods are at any licensed premises, the customs authority must electronically in accordance with section **849** notify the licensee of the premises of the detention.

(3) A detention notification must –

- (a) identify the goods to which it relates;
- (b) state the date from which the goods are detained;
- (c) state the reason for the detention; and
- (d) contain any other particulars as may be prescribed by rule.

Presence of persons when detained goods are inspected

726. (1) When inspecting goods that have been detained or opening any package or container containing detained goods, a customs officer –

- (a) must, on request by a person who submitted a clearance declaration in respect of the goods in terms of section **159** or on whose behalf the declaration was submitted, or that person's representative, allow that person or representative to be present during the procedure; or
- (b) may require the person who submitted the declaration or on whose behalf the declaration was submitted, or that person's representative, to be present during the procedure.

(2) Subsection (1) does not prevent a customs officer from opening a package or container or inspecting goods in the absence of a person referred to in that subsection if -

- (a) that person fails to turn up at the appointed time for the procedure; or

- (b) disclosure of the opening or inspection may obstruct the investigation of an offence involving the diversion or smuggling of goods.

Place of detention

727. (1) Goods detained in terms of section **722**(1) or (2) may, pending the action to be taken in respect of the goods, be –

- (a) kept at the place where they were detained or removed to a place of security as the customs authority may determine; or
- (b) removed to a state warehouse in terms of section **545**(3).

(2) No person may remove detained goods from the place where they are kept or stored without the permission of the customs authority.

(3) If a place where detained goods are kept or to which they were removed is not a customs controlled area, that place must for purposes of those goods be regarded to be a customs controlled area.

(4) Detained goods must be handled, stored and kept in such a way that they are reasonably secured against damage or loss.

Period of detention

728 Goods may in terms of section **722**(1) or (2) be detained for a reasonable time pending –

- (a) completion of any steps necessary to enable the customs authority to arrive at a decision concerning the action to be taken in respect of the detained goods; and
- (b) a decision on such action, including a decision on whether the goods should be seized in terms of Part **2**.

Termination of detentions

729 (1) The customs authority must immediately terminate the detention of any goods if –

- (a) the grounds for the detention of the goods have fallen away, including where security is given if the goods were detained by reason of a tax or other debt risk;
- (b) the customs authority decides not to seize the goods;
- (c) no action is taken within a reasonable time after the goods was detained;
- (d) the goods were detained in error; or
- (e) a court so orders.

(2) The customs authority must promptly notify the person to whom the detention notification was issued if the detention of the goods is terminated in terms of subsection (1).

(3) If the goods are kept at any licensed premises, the customs authority must electronically in accordance with section **849** also notify the licensee of the premises of the termination of the detention.

Part 2: Seizure of goods

Power to seize goods

730. (1) The customs authority may seize any goods to which this Chapter applies, including any goods detained in terms of section **722**(1) or (2) –

- (a) if the goods are liable to confiscation in terms of section **734**(1);
- (b) if the goods are or may be needed as evidence in any criminal proceedings;
- (c) if the seizure of the goods is permitted in terms of another provision of this Act; or
- (d) in any other circumstances as may be prescribed by rule.

(2) Goods seized in terms of subsection (1)(b) must –

- (a) be handed over to the National Prosecuting Authority or the South African Police Service or kept or stored for the purposes of the National Prosecuting Authority or the South African Police Service; and
- (b) be dealt with in accordance with the legislation regulating the criminal justice system.³³²

(3) Goods seized in terms of subsection (1)(a), (c) or (d) must be dealt with in accordance with section **545**(3) or **555**(1), if not already dealt with in accordance with any of those sections.

(4) Any goods seized in terms of this section must be handled, stored and kept in such a way that they are reasonably secured against damage or loss.

Notification of seizure

731. (1) When seizing goods in terms of section **730**, a customs officer must issue a notification to that effect –

- (a) in the case of goods that were detained in terms of section **722**(1) or (2), to the person to whom the detention notification was issued;
- (b) in the case of goods that have been seized without previous detention, to the

³³² See sections 30 to 34 of the Criminal Procedure Act, 1977.

person –

- (i) who cleared the goods or on whose behalf the goods were cleared, if the goods were cleared; or
- (ii) in whose possession the goods are, or are believed to be, at the time of seizure.

(2) If the goods are at any licensed premises, the customs authority must electronically in accordance with section **849** notify the licensee of the premises of the seizure.

(3) A notification of seizure must –

- (a) identify the goods to which it relates;
- (b) state the date from which the goods are seized;
- (c) state the reason for the seizure; and
- (d) contain any other particulars as may be prescribed by rule.

Termination of seizures

732. (1) The customs authority must immediately terminate the seizure of any goods if –

- (a) an application made in terms of section **733** for the termination of the seizure is granted;
- (b) the goods were seized in error; or
- (c) a court so orders.

(2) The customs authority must promptly notify the person to whom the notification of seizure was issued if the seizure of the goods is terminated in terms of subsection (1).

(3) If the goods are kept at any licensed premises, the customs authority must electronically in accordance with section **849** also notify the licensee of the premises of the termination of the seizure.

(4) The termination of a seizure does not reactivate any initial detention of the goods.

Termination of seizures on application by owner of goods

733. (1) The customs authority may, on application by a person who is the owner of any goods seized in terms of section **730**, terminate the seizure subject to –

- (a) payment of any tax that may be or become payable on the goods;
- (b) payment of any expenses incurred by the Commissioner in connection with the seizure, and any previous detention, of the goods;
- (c) such conditions as the customs authority may determine, including conditions requiring the payment of an administrative penalty³³³ not exceeding the customs value of the goods; and
- (d) any applicable legislation.

(2) (a) The burden to prove that a specific person is the owner of any seized goods rests with that person.

(b) In the event of disputing claims as to ownership of any goods, the customs authority may not decide the dispute, but must abide by the decision of a court.

(3) An application in terms of subsection (1) must –

- (a) motivate the reasons why the seizure should be terminated; and
- (b) contain the information and comply with such other requirements as may be prescribed by rule.

(4) The customs authority may –

- (a) on good cause shown grant an application; or
- (b) refuse the application.

(5) The customs authority must promptly notify the applicant if the application is granted and the seizure of the goods is terminated.

(6) If the goods are kept at any licensed premises, the customs authority must electronically in accordance with section 849 also notify the licensee of the premises of the termination of the seizure.

(7) The termination of a seizure does not reactivate any initial detention of the goods.

Part 3: Confiscation of goods

Confiscation of goods

734. (1) The following goods are for purposes of section 730(1)(a) liable to confiscation:

³³³ Note that this is not a spot fine referred to in section 837.

- (a) any goods in respect of which a breach of this Act or a tax levying Act has been committed;
- (b) any goods that have been used in commissioning an offence;
- (c) any goods, including a vessel, aircraft, railway carriage or vehicle or other means of transport, that have been specifically constructed, adapted, altered or fitted in any manner for the purpose of concealing goods;
- (d) any goods that must be destroyed or otherwise disposed of in terms of a requirement of this Act or any other legislation;
- (e) any document in respect of which a breach of this Act or a tax levying Act has been committed or which relates to a matter in respect of which a breach of this Act or a tax levying Act has been committed;
- (f) any goods that may be confiscated in terms of any other provision of this Act;
- (g)

NOTE: This clause will be completed based upon comments received

(2) The customs authority must by written notice to the person to whom the notification of seizure was issued in terms of section **731** confiscate³³⁴ any goods referred to in subsection (1) –

- (a) if upon expiry of 30 days from the date the goods were seized –
 - (i) no application for termination of the seizure has been submitted to the customs authority in terms of section **733**; or
 - (ii) no court application for termination of the seizure has been lodged; or
- (b) if any such application has been submitted or lodged but has been refused.

(3) Goods confiscated in terms of subsection (2) become the property of the state.

Payment of administrative penalty equal to value of missing goods to be confiscated

735. (1) If goods that are liable to confiscation are to be seized and the goods cannot readily be found, the customs authority may, in lieu of the goods, demand payment of an administrative penalty equal to the customs value of the goods from the person –

- (a) in whose possession the goods were or on reasonable grounds believed to have been immediately before the decision to seize the goods; or
- (b) who was the owner of the goods at the time of the decision to seize the goods.

(2) If the penalty is not paid within a period of five days after the demand for

³³⁴ Seizure of goods in accordance with Part 2 of this Chapter must precede confiscation.

payment was made, or such extended period as may be granted in terms of section **846**, the Commissioner may recover the amount owed as if the amount is a customs duty in terms of the Customs Duty Act on the confiscated goods.

(3) The Commissioner may on good cause shown mitigate the amount of the penalty on such conditions as the Commissioner may determine.

Withdrawal of confiscations

736. (1) The customs authority must immediately withdraw the confiscation of any goods if –

- (a) an application in terms of section **737** for withdrawal of the confiscation is granted;
- (b) the goods were confiscated in error; or
- (c) a court so orders.

(2) The customs authority must promptly notify the person to whom notice of the confiscation was given if the confiscation of the goods is withdrawn in terms of subsection (1).

(3) If the goods are kept at any licensed premises, the customs authority must electronically in accordance with section **849** also notify the licensee of the premises of the withdrawal of the confiscation.

(4) The withdrawal of a confiscation does not reactivate any initial detention or the seizure of the goods.

Withdrawal of confiscations on application by previous owners

737. (1) The customs authority may, on application by a person who was the owner of any goods confiscated in terms of section **734** before the goods were confiscated, withdraw the confiscation, subject to –

- (a) payment of any tax that may be or become payable on the goods;
- (b) payment of any expenses incurred by the Commissioner in connection with the confiscation, including the seizure and any detention, of the goods; and
- (c) such conditions as the customs authority may determine, including conditions requiring the payment of an administrative penalty not exceeding the customs value of the goods.

(2) (a) The burden to prove that a specific person was the owner of the goods before the goods were confiscated rests with that person.

(b) In the event of disputing claims as to ownership of any goods, the customs authority may not decide the dispute, but must abide by the decision of a court.

(3) An application in terms of subsection (1) must –

- (a) motivate the reasons why the confiscation should be withdrawn; and
- (b) be in a format and comply with such other requirements as may be prescribed rule.

(4) The customs authority may –

- (a) on good cause shown grant an application; or
- (b) refuse the application.

(5) The customs authority must promptly notify the applicant if the application is granted and the confiscation of the goods is withdrawn.

(6) If the goods are kept at any licensed premises, the customs authority must electronically in accordance with section **849** also notify the licensee of the premises of the withdrawal of the confiscation.

(7) The withdrawal of a confiscation does not reactivate any initial detention or seizure of the goods.

Disposal of confiscated goods

738. (1) Goods confiscated in terms of section **734** must be sold or otherwise disposed of in accordance with sections **567** to **573**, subject to subsection (2).

(2) Confiscated goods that are or may be needed as evidence in any criminal proceedings must be –

- (a) be handed over to the National Prosecuting Authority or the South African Police Service or kept or stored for the purposes of the National Prosecuting Authority or the South African Police Service; and
- (b) be dealt with in accordance with the legislation regulating the criminal justice system.³³⁵

Part 4: Other matters

Rules to facilitate implementation of this Chapter

739. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including rules –

³³⁵ See sections 30 to 34 of the Criminal Procedure Act, 1977.

(a)

NOTE: This clause will be completed after consideration of subordinate legislation and based upon comments received

Offences in terms of this Chapter

740. A person is guilty of an offence if that person –

(a) removes goods detained, seized or confiscated in terms of this Chapter otherwise than with the permission or in accordance with the instructions of the customs authority;

(b)

NOTE: This clause will be enhanced based upon finalisation of the clauses providing for obligations of the relevant entities

CHAPTER 35 PROHIBITED AND RESTRICTED GOODS

Purpose and application of this Chapter

741. (1) The purpose of this Chapter is to provide for customs participation in the implementation of legislation prohibiting or restricting the import, possession or export of certain goods.³³⁶

(2) This Chapter applies to all prohibited and restricted goods that in whatever way have become subject to customs control in terms of this Act.

Part 1: Prohibited goods

Prohibited goods

742. The following goods are prohibited goods for the purposes of this Act:³³⁷

- (a) any goods imported into the Republic in contravention of legislation, other than the Counterfeit Goods Act,³³⁸ prohibiting the importation of those goods;
- (b) any goods in the possession of a person in contravention of legislation, other than the Counterfeit Goods Act, prohibiting the possession of those goods; or
- (c) any goods in the process of being exported from the Republic in contravention of legislation, other than the Counterfeit Goods Act, prohibiting the exportation of those goods.

Clearance of prohibited goods

743. (1) No person may clear prohibited goods for home use or a customs procedure.

(2) Imported prohibited goods destined for a destination other than the Republic may, despite subsection (1) but subject to subsection (3), be cleared for transshipment or international transit, provided that the clearance of the goods for the transshipment or international transit procedure, the release of the goods for that procedure and the handling

³³⁶ It should be noted that in terms of this Chapter customs are assigned direct powers to detain and deal with goods that are prohibited or restricted goods in terms of other legislation irrespective of whether an agreement referred to in section 16 to enforce that legislation has been concluded by the Commissioner and the organ of state administering that legislation. An agreement may, however, be used to confer additional powers on customs for the enforcement of such legislation, i.e. over and above those already assigned to customs in terms of this Chapter. See also section 679.

³³⁷ To facilitate the implementation of this Act in relation to prohibited goods, SARS has on its website a list of prohibited goods to which Chapter 35 applies.

³³⁸ Counterfeit goods in the customs environment must be dealt with in accordance with Chapter 36.

or transport of the goods in terms of that procedure, is not inconsistent with the legislation referred to in section **742(a)** or (b) read with sections **193** and **224**.

(3) Subsection (2) does not apply to goods of which the import or possession is prohibited by legislation referred to in section **742(a)** or (b) for purposes of –

- (a) combating the illicit trade in narcotics, arms and ammunition, endangered species or any other goods prescribed by rule;
- (b) combating the spreading of contagious human, animal or plant diseases;
- (c) protecting the public against hazardous substances;
- (d) protecting public health or safety; or
- (e) giving effect to any international obligation binding on the Republic.

Seizure of prohibited goods

744. (1) The customs authority must, subject to section **745**, seize prohibited goods³³⁹ wherever found in the course of exercising its enforcement functions³⁴⁰.

(2) The customs authority must, subject to section **745**, seize goods as prohibited goods –

- (a) if an organ of state administering legislation referred to in section **742(a)**, (b) or (c) prohibiting the import, possession or export of goods, electronically or in writing –
 - (i) notifies the customs authority that those goods are prohibited goods in terms of that legislation; and
 - (ii) requests the customs authority to seize the goods; or
- (b) if a member of the South African Police Service, electronically or in writing, requests the customs authority to seize the goods for a contravention of legislation referred to in section **742(a)**, (b) or (c).

Certain prohibited goods excluded from seizure

745. (1) The following goods are, subject to subsection (2), excluded from seizure in terms of section **744**:

- (a) imported prohibited goods cleared in terms of section **743(2)** for transshipment or international transport, provided that the goods are –
 - (i) dealt with strictly in accordance with the provisions of this Act relating to that procedure; and

³³⁹ If a customs officer has a suspicion that any specific goods are prohibited goods but is unsure, the customs officer may detain the goods in terms of section **722(1)(a)(ii)** to determine whether the goods are prohibited goods. If it is determined that the goods are prohibited goods, this Chapter becomes applicable by virtue of section **723**.

³⁴⁰ Implementation of section **744(1)** is not subject to a request in terms of subsection (2). The only condition is that the goods are found whilst subject to customs control. See section **741(2)**.

- (ii) exported from the Republic within the period applicable to those goods in terms of that procedure;
- (b) imported prohibited goods that were on board a foreign-going vessel or aircraft when the vessel or aircraft entered the Republic, provided that –
 - (i) the goods are destined for a destination other than the Republic and remain on board that vessel or aircraft until the vessel or aircraft leaves the Republic; and
 - (ii) the vessel or aircraft does not call, dock or land at any place in the Republic; or
- (c) imported prohibited goods that were on board a foreign-going vessel or aircraft, provided that the goods –
 - (i) are not off-loaded in the Republic; and
 - (ii) are used, or exported from the Republic, on board that vessel or aircraft as stores for that vessel or aircraft.

(2) Subsection (1) does not exclude from seizure goods of which the import, possession or export is prohibited in terms of legislation referred to in section **742**(a) or (b) for purposes of –

- (a) combating the illicit trade in narcotics, arms and ammunition, endangered species or any other goods prescribed by rule;
- (b) combating the spreading of contagious human, animal or plant diseases;
- (c) protecting the public against hazardous substances;
- (d) public health or safety; or
- (e) giving effect to any international obligation binding on the Republic.

Notice of seizure

746. (1) When seizing goods in terms of section **744**(1) or (2), the customs authority must –

- (a) issue a notice to that effect –
 - (i) to the person in whose possession the goods are, or are believed to be, at the time of seizure; or
 - (ii) in the case of goods that have first been detained in terms of section **722**(1)(a)(ii), to the person to whom the detention notice was issued; and
- (b) by electronic message or facsimile transmission notify the following persons of the seizure of the goods and the date from which the goods were seized:
 - (i) the organ of state administering the legislation prohibiting the import, possession or export of the goods; and

- (ii) the organ of state or member of the South African Police Service who requested the seizure, if the goods were seized following a request in terms of section **744(2)**.

(2) A notice of seizure must –

- (a) identify the goods to which it relates;
- (b) state the date of seizure of the goods;
- (c) state the reason for the seizure; and
- (d) contain any other particulars as may be prescribed by rule.

Place where seized goods may be kept

747. (1) Goods seized in terms of section **744(1)** or (2) may, pending the action to be taken in respect of the goods, be –

- (a) kept at the place where they were seized; or
- (b) removed to and stored –
 - (i) in a state warehouse in terms of section **545(3)** or at another place determined in terms of section **555(1)**; or
 - (ii) at any other place of security most suitable in the circumstances as the customs authority may determine.

(2) No person may without the permission of the customs authority remove goods seized in terms of section **744(1)** or (2) from the place where they are kept or stored.

(3) If a place where goods are kept or to which they were removed is not a customs controlled area, that place must purposes of those goods be regarded to be a customs controlled area.

Termination of seizures

748. (1) The customs authority must immediately terminate the seizure of goods –

- (a) in the case of goods seized in terms of section **744(1)** –
 - (i) if the goods were seized in error; or
 - (ii) if the organ of state administering the legislation prohibiting the import, possession or export of the goods, electronically or in writing, requests the customs authority to terminate the seizure of the goods;
- (b) in the case of goods seized in terms of section **744(2)**, if the organ of state or member of the South African Police Service who requested the seizure of the goods, electronically or in writing, requests the customs authority to terminate the seizure; or

- (c) if a court so orders.
- (2) The customs authority may –
- (a) on application by the importer or owner of prohibited goods referred to in section **742(a)**, terminate the seizure of the goods and allow the importer or owner to clear the goods for outright export and immediately export those goods from the Republic at own expense under supervision of the customs authority, provided that –
- (i) the importer or owner did not conceal or attempt to conceal the goods, or did not divert or attempt to divert the goods for home use; and
- (ii) the possession of those goods in the Republic by the importer or owner is not illegal; or
- (b) on application by the person who intended to export prohibited goods referred to in section **742(c)** that were in free circulation before their seizure, terminate the detention of the goods and allow those goods to revert to free circulation, provided that –
- (i) that person did not conceal or attempt to conceal the goods for purposes of export; and
- (ii) the possession of those goods in the Republic by that person is not illegal.
- (3) The customs authority may, in relation to imported prohibited goods seized in terms of section **744(1)** or (2), at any time, on own initiative or on request by the organ of state administering the legislation prohibiting the import of the goods, order the importer or owner of the goods to clear the goods for outright export and immediately export the goods from the Republic at own expense under supervision of the customs authority.

Disposal of seized prohibited goods

- 749.** (1) Goods seized in terms of section **744(1)** or (2) must be dealt with in accordance with –
- (a) the legislation prohibiting the import, possession or export of the goods if that legislation provides for procedures to dispose of goods in respect of which the prohibition has been contravened;
- (b) the legislation regulating the criminal justice system if and to the extent that the goods are needed as evidence in any criminal proceedings; or
- (c) subsection (2) if and to the extent that paragraphs (a) and (b) do not apply.
- (2) The customs authority must by written notice to the person to whom the notice of seizure was issued in terms of section **746** in respect of goods referred to in subsection (1)(c) confiscate those goods–

- (a) if upon expiry of 30 days from the date the goods were seized –
 - (i) no application for termination of the seizure has been submitted to the customs authority in terms of section **748(2)** ; or
 - (ii) no court application for termination of the seizure has been lodged; or
- (b) if any such application has been submitted or lodged but has been refused.

(3) Prohibited goods referred to in subsection (1)(a) or (b) must be handed over to, or kept under customs control for the purposes of –

- (a) the organ of state administering the legislation prohibiting the import, possession or export of the goods, if the goods are to be dealt with in terms of subsection (1)(a); or
- (b) that organ of state, the National Prosecuting Authority or the South African Police Service, if the goods are to be dealt with in terms of subsection (1)(b).

(4) Goods referred to in subsection (1)(c) and confiscated in terms of subsection (2) becomes the property of the state.

(5) Prohibited goods confiscated in terms of subsection (2) and consisting of goods referred to in section **742(a)** or (b) must be destroyed or otherwise disposed of in a way that would not allow the goods into free circulation in the Republic.

(6) Prohibited goods confiscated in terms of subsection (2) and consisting of goods referred to in section **742(c)** must be disposed of in any appropriate manner, including by –

- (a) donating the goods for welfare purposes;
- (b) appropriating the goods to an organ of state, including SARS, for use by that organ of state;
- (c) making the goods available as humanitarian aid to communities in the Republic; or
- (d) destroying the goods.

Part 2: Restricted goods

Restricted goods

750. The following goods are restricted goods for purposes of this Act:³⁴¹

³⁴¹ To facilitate the implementation of this Act in relation to restricted goods, SARS has on its website a list of restricted goods to which Chapter **35** applies.

- (a) any goods imported into the Republic if those goods are subject to legislation restricting the importation of those goods otherwise than on authority of a permit or other authorisation issued in terms of that legislation;
- (b) any goods in the possession of a person if those goods are subject to legislation restricting the possession of those goods by that person otherwise than on authority of a permit or other authorisation issued in terms of that legislation; or
- (c) any goods in the process of being exported from the Republic if those goods are subject to legislation restricting the exportation of those goods otherwise than on authority of a permit or other authorisation issued in terms of that legislation.

Clearance of restricted goods

751. (1) No person may clear restricted goods in accordance with section **108** or **111** for home use or a customs procedure unless –

- (a) that person submits to the customs authority –
 - (i) a permit or other authorisation issued in terms of the legislation referred to in section **750**(a), (b) or (c) which authorises the import, possession or export of the goods; or
 - (ii) sufficient information to enable the customs authority to access the electronic database of the organ of state administering that legislation and the customs authority establishes from that database that a permit or other authorisation has been issued in terms of that legislation which authorises the import, possession or export of the goods; or
- (b) the organ of state administering that legislation submits to the customs authority in electronic format –
 - (i) a permit or other authorisation issued in terms of that legislation which authorises the import, possession or export of the goods; or
 - (ii) confirmation that such a permit or other authorisation has been issued.

(2) Imported restricted goods may, despite subsection (1) but subject to subsection (3), be cleared without a permit or other authorisation referred to in subsection (1) for –

- (a) warehousing pending compliance with the legislation referred to in section **750**(a) or (b), provided that the clearance of the goods for the warehousing procedure, the release of the goods for that procedure and the handling or transport of the goods in terms of that procedure, is not inconsistent with that legislation;³⁴² or
- (b) transshipment or international transit, provided that –
 - (i) the goods were destined for a destination other than the Republic; and

³⁴² See sections **279**(1)(d), **280**(1)(b) and **293**.

- (ii) the clearance for the transshipment or international transit procedure, the release of the goods for that procedure and the handling or transport of the goods in terms of that that procedure, is not inconsistent with the legislation referred to in section **750**(a) or (b) read with sections **193** and **224**.

(3) Subsection (2) does not apply to goods of which the import or possession is restricted in terms of legislation referred to in section **750**(a) or (b) for purposes of –

- (a) combating the illicit trade in narcotics, arms and ammunition, endangered species or any other goods prescribed by rule;
- (b) combating the spreading of contagious human, animal or plant diseases;
- (c) protecting the public against hazardous substances;
- (d) protecting public health or safety; or
- (e) giving effect to any international obligation binding on the Republic.

Seizure of restricted goods

752. (1) The customs authority must, subject to section **753**, seize restricted goods³⁴³ wherever found in the course of exercising its enforcement functions³⁴⁴ if the import, possession or export of the goods, as the case may be, is not authorised in terms of a permit or other authorisation issued in terms of legislation referred to in section **750**(a), (b) or (c) applicable to the goods.

(2) The customs authority must, subject to section **753**, seize goods as restricted goods –

- (a) if an organ of state administering legislation referred to in section **750**(a), (b) or (c) which restricts the import, possession or export of goods, electronically or in writing –
 - (i) notifies the customs authority that those goods are restricted goods to which that legislation applies and that no permit or other authorisation has been issued in terms of that legislation authorising the import, possession or export of those goods; and
 - (ii) requests the customs authority to seize the goods; or
- (b) if a member of the South African Police Service, electronically or in writing, requests the customs authority to seize the goods for a contravention of legislation referred to in section **750**(a), (b) or (c).

³⁴³ If a customs officer has a suspicion that any specific goods are restricted goods but is unsure, the customs officer may detain the goods in terms of section **722**(1)(a)(ii) to determine whether the goods are restricted goods. If it is determined that the goods are restricted goods, this Chapter becomes applicable by virtue of section **723**.

³⁴⁴ The only condition is that the goods are found whilst subject to customs control. See section **741**(2).

Certain restricted goods excluded from seizure

753. (1) The following goods are, subject to subsection (2), excluded from seizure in terms of section **752**:

- (a) imported restricted goods cleared for warehousing in terms of section **751(2)(a)** pending compliance with the legislation restricting the import or possession of the goods, provided that the required permit or other authorisation is submitted to the customs authority within the period applicable to the goods in terms of section **284**;
- (b) imported restricted goods cleared in terms of section **751(2)(b)** for the transshipment or international transit procedure, provided that the goods are –
 - (i) dealt with strictly in accordance with the provisions of this Act relating to that procedure; and
 - (ii) exported from the Republic within the period applicable to those goods in terms of that procedure;
- (c) imported restricted goods that were on board a foreign-going vessel or aircraft when the vessel or aircraft entered the Republic, provided that the goods –
 - (i) are destined for a destination other than the Republic;
 - (ii) are not off-loaded in the Republic; and
 - (iii) remain on board that vessel or aircraft until the vessel or aircraft leaves the Republic; and
- (d) restricted goods that were on board a foreign-going vessel or aircraft, provided that the goods –
 - (i) are not off-loaded in the Republic; and
 - (ii) are used, or exported from the Republic, on board that vessel or aircraft as stores for that vessel or aircraft.

(2) Subsection (1) does not exclude from seizure goods of which the import, possession or export is restricted –

- (a) to combat the illicit trade in narcotics, arms and ammunition, endangered species or any other goods prescribed by rule;
- (b) to combat the spreading of contagious human, animal or plant diseases;
- (c) to protect the public health; or
- (d) to protect the public against hazardous substances.

Notice of seizure

754. (1) When seizing goods in terms of section **752** (1) or (2), the customs authority must –

- (a) issue a detention notice to that effect –

- (i) to the person in whose possession the goods are, or are believed to be, at the time of seizure; or
 - (ii) in the case of goods that have first been detained in terms of section **722(1)(a)(ii)**, to the person to whom the detention notice was issued; and
- (b) by electronic message or facsimile transmission notify the following persons of the seizure of the goods and the date from which the goods were seized:
- (i) the organ of state administering the legislation restricting the import, possession or export of the goods; and
 - (ii) the organ of state or member of the South African Police Service who requested the seizure, if the goods were seized following a request in terms of section **752(2)**.
- (2) A notice of seizure must –
- (a) identify the goods to which it relates;
 - (b) state the date of seizure of the goods;
 - (c) state the reason for the seizure; and
 - (d) contain any other particulars as may be prescribed by rule.

Place where seized goods may be kept

755. (1) Goods seized in terms of section **752(1)** or (2) may, pending the action to be taken in respect of the goods, be –

- (a) kept at the place where they were seized; or
- (b) removed to and stored –
 - (i) in a state warehouse in terms of section **545(3)** or at another place determined in terms of section **555(1)**; or
 - (ii) at any other place of security most suitable in the circumstances as the customs authority may determine.

(2) No person may without the permission of the customs authority remove goods seized in terms of section **752(1)** or (2) from the place where they are kept or stored.

(3) If a place where goods are kept or to which they were removed is not a customs controlled area, that place must purposes of those goods be regarded to be a customs controlled area.

Termination of seizures

756. (1) The customs authority must immediately terminate the seizure of goods –

- (a) in the case of goods seized in terms of section **752(1)** –

- (i) if the goods were seized in error; or
 - (ii) if the organ of state administering the legislation restricting the import, possession or export of the goods, electronically or in writing, requests the customs authority to terminate the detention;
- (b) in the case of goods seized in terms of section **752(2)**, if the organ of state or member of the South African Police Service who requested the seizure of the goods, electronically or in writing, requests the customs authority to terminate the seizure; or
- (c) if a court so orders.

(2) The customs authority may –

- (a) on application by the importer or owner of restricted goods referred to in section **750(a)**, terminate the seizure of the goods and allow the importer or owner to clear the goods for outright export and immediately export those goods from the Republic at own expense under supervision of the customs authority, provided that –
- (i) the importer or owner did not conceal or attempt to conceal the goods, or did not divert or attempt to divert the goods for home use; and
 - (ii) the possession of those goods in the Republic by the importer or owner is not illegal; or
- (b) on application by the person who intended to export restricted goods referred to in section **750(c)** that were in free circulation before their seizure, terminate the seizure of the goods and allow those goods to revert to free circulation, provided that –
- (i) that person did not conceal or attempt to conceal the goods for purposes of export; and
 - (ii) the possession of those goods in the Republic by that person is not illegal.

(3) The customs authority may, in relation to imported restricted goods seized in terms of section **752(1)** or (2), at any time, on own initiative or on request by the organ of state administering the legislation restricting the import of the goods, order the importer or owner of the goods to clear the goods for outright export and immediately export those goods from the Republic at own expense under supervision of the customs authority.

Disposal of seized restricted goods

757. (1) Goods seized in terms of section **752(1)** or (2) must be dealt with in accordance with –

- (a) the legislation restricting the import, possession or export of the goods, if that legislation provides for procedures to dispose of goods in respect of which the restriction has been contravened; or

- (b) the legislation regulating the criminal justice system if and to the extent that the goods are needed as evidence in any criminal proceedings; or
- (c) subsection (2) if and to the extent that paragraphs (a) and (b) do not apply.

(2) The customs authority must by written notice to the person to whom the notice of seizure was issued in terms of section **754** in respect of goods referred to in subsection (1)(c) confiscate those goods –

- (a) if upon expiry of five days from the date the goods were seized –
 - (i) no application for termination of the seizure has been submitted to the customs authority in terms of section **756(2)** ; or
 - (ii) no court application for termination of the seizure has been lodged; or
- (b) if any such application has been submitted or lodged but has been refused.

(3) Restricted goods referred to in subsection (1)(a) or (b) must be handed over to, or kept under customs control for the purposes of –

- (a) the organ of state administering the legislation restricting the import, possession or export of the goods, if the goods are to be dealt with in terms of subsection (1)(a); or
- (b) that organ of state, the National Prosecuting Authority or the South African Police Service, if the goods are to be dealt with in terms of subsection (1)(b).

(4) Goods referred to in subsection (1)(c) and confiscated in terms of subsection (2) becomes the property of the state.

(5) Restricted goods confiscated in terms of subsection (2) must be disposed of in any appropriate manner, including by –

- (a) donating the goods for welfare purposes;
- (b) appropriating the goods to an organ of state, including SARS, for use by that organ of state;
- (c) making the goods available as humanitarian aid to communities in the Republic or to another country; or
- (d) destroying the goods.

(6) Restricted goods confiscated in terms of subsection (2) and consisting of goods referred to in section **750(a)** or (b) may not be disposed of in terms of subsection (5) in a way that would allow the goods into free circulation in the Republic without a permit or other authorisation issued in terms of the legislation restricting the import or possession of the goods.

Part 3: Other matters**Inconsistency of this Chapter with other legislation prohibiting or restricting the import, possession or export of goods**

758. This Chapter may not be read as affecting the implementation of other legislation referred to in section **742** or **750** prohibiting or restricting the import, possession or export of goods to the extent that this Chapter is inconsistent with that other legislation.

Rules to facilitate implementation of this Chapter

759. The Commissioner may in terms of section **842** make rules to facilitate the implementation of this Chapter, including –

- (a) to give effect to the Republic's obligations in terms of an international agreement relating to the prohibition or restriction of the import into or export from the Republic of goods to which the agreement relates, including rules –
 - (i) prohibiting the import into or export from the Republic of such goods, including goods produced through the exploitation of children; and
 - (ii) restricting the import into or export from the Republic of such goods otherwise than on authority of a permit issued by the customs authority or another organ of state;
- (b) prescribing procedures, forms and timelines in connection with applications referred to in sections **748(2)** and **756(2)**; and
- (c) prescribing the time within and manner in which the operator of a foreign-going vessel or aircraft entering the Republic must declare prohibited goods on board that vessel or aircraft.³⁴⁵

Offences in terms of this Chapter

760. (1) A person is guilty of an offence if that person –

- (a) contravenes section **743(1)** or **751(1)**;
- (b) removes goods detained, seized or confiscated in terms of this Chapter otherwise than with the permission or in accordance with the instructions of the customs authority;

(2) The imported or owner of goods is guilty of an offence if that person fails to comply with an order issued in terms of section **748(3)** or **756(3)**.

³⁴⁵ Travellers and crew members entering the Republic must in terms of section **94** declare any prohibited goods that they have with them.

CHAPTER 36 COUNTERFEIT GOODS

Definitions

761. (1) In this Chapter, unless the context otherwise indicates –
‘counterfeiting’, **‘counterfeit goods’**, **‘counterfeit goods depot’**, **‘intellectual property right’**, **‘owner’** and **‘protected goods’** have the meanings assigned thereto in the Counterfeit Goods Act, and –

“affected party”, in relation to goods suspected of being counterfeit goods –

- (a) that have been cleared for home use or a customs procedure, means –
 - (i) the person who cleared the goods;
 - (ii) the person on whose behalf the goods were cleared; or
 - (iii) a person who acts in relation to those goods on behalf of a person referred to in subparagraph (i) or (ii); or
- (b) that have not been cleared, means –
 - (i) the consignee, consignor, importer, exporter, owner, manufacturer or person having control of those goods or in whose possession the goods are; or
 - (ii) a person who acts in relation to those goods on behalf of a person referred to in subparagraph (i);

“right-holder”, in relation to protected goods, means –

- (a) the owner of an intellectual property right in respect of those protected goods;
- (b) a licensee of an intellectual property right in respect of those protected goods;
- (c) a person who has the right to import into, distribute in or export from the Republic those protected goods; or
- (d) a person who acts on behalf of a person referred to in paragraph (a), (b) or (c) to protect the intellectual property right in respect of those protected goods;

Purpose and application of this Chapter

762. (1) The purpose of this Chapter is to provide for a customs role in combating the trade in counterfeit goods imported into or in the process of being exported from the Republic.

(2) This Chapter applies to all counterfeit goods, including goods suspected to be counterfeit goods, that in whatever way have become subject to customs control, but may

not be applied to goods that have already been seized in terms of the Counterfeit Goods Act.³⁴⁶

Part 1: Detention of suspected counterfeit goods when prior application has been granted

Application for detention of suspected counterfeit goods

763. (1) A person claiming to be a right-holder in relation to any protected goods may apply to the customs authority for assistance in combating the trade in counterfeit goods that infringe the intellectual property right in respect of those protected goods by –

- (a) detaining any goods suspected of infringing that intellectual property right as and when any such goods become subject to customs control; and
- (b) dealing with such detained goods in accordance with this Chapter.

(2) An application must –

- (a) be on a form as may be prescribed by rule and contain full particulars of the matters specified therein;
- (b) give sufficient particulars of the protected goods in respect of which customs assistance is sought in terms of this Chapter;
- (c) describe the essential physical and other distinctive features, elements and characteristics of goods that may indicate that goods are counterfeit goods that infringe the intellectual property right in respect of those protected goods;
- (d) be accompanied by evidence –
 - (i) that an intellectual property right subsists in respect of the goods in respect of which customs assistance is sought in terms of this Chapter;
 - (ii) that those goods are protected goods;
 - (iii) that the applicant is a right-holder in relation to those protected goods;
 - (iv) that counterfeit goods infringing the intellectual property right in respect of those protected goods are believed on reasonable grounds to be imported into or exported from the Republic; and
 - (v) of the date on which that intellectual property right will expire; and
- (e) be accompanied by –
 - (i) an indemnity in terms of which the applicant indemnifies the Commissioner against any liability that may arise from any actions, proceedings, claims or demands whatsoever which may be made or taken against the Commissioner in providing the required assistance;

³⁴⁶ Goods seized in terms of the Counterfeit Goods Act must be dealt with in terms of that Act.

- (ii) an undertaking in terms of which the applicant undertakes to pay any costs or expenses incurred by, and any charges due to, the Commissioner in providing the required assistance; and
- (iii) an administration fee as may be prescribed by rule.

Consideration of applications

764. (1) The customs authority must promptly consider an application in terms of section **763**, and must grant the application if satisfied –

- (a) on face value of the evidence and motivations submitted by the applicant—
 - (i) that the goods in respect of which customs assistance is sought in terms of this Chapter are protected goods;
 - (ii) that an intellectual property right subsists in respect of those goods;
 - (iii) that the applicant is a right-holder in relation to those protected goods; and
 - (iv) that the fear of the applicant that the intellectual property right claimed to subsist in respect of those goods may be infringed, appears to be reasonable in the circumstances; and
- (b) that customs has the capacity to provide the required assistance.

(2) (a) When granting the application, the customs authority must determine the period for which customs assistance in terms of this Chapter will be provided in relation to the protected goods applied for.

(b) A period determined in terms of paragraph (a) may not extend beyond the date on which the intellectual property right in respect of those protected goods will expire.

Detention of suspected counterfeit goods

765. (1) If a customs officer has reasonable cause to suspect that any specific goods are counterfeit goods that infringe an intellectual property right in respect of protected goods for which an application was granted in terms of section **764**, the customs officer must –

- (a) detain the goods by issuing a detention notice to –
 - (i) any person who in relation to the suspected counterfeit goods is an affected party; or
 - (ii) the person in whose possession the goods are, or are believed to be, at the time of detention; and
- (b) by electronic message or facsimile transmission notify the right-holder who brought the application of the detention of the goods and the date from which the goods are detained.

- (2) Subsection (1) applies to any suspected counterfeit goods found –
- (a) during clearance or release procedures applicable to the goods;
 - (b) during an inspection in terms of this Act;
 - (c) when a person complies with a request by a customs officer in terms of this Act to produce any goods; or
 - (d) during a search in terms of this Act of any premises, or of any vessel, aircraft, train, railway carriage, vehicle or other means of transport, or of any person.

(3) A customs officer's suspicion in terms of subsection (1) must take into account the particulars referred to in section **763**(2)(c) stated in the right-holder's application which describe the essential physical and other distinctive features, elements and characteristics of goods that may indicate that the goods are counterfeit goods that infringe the intellectual property right in respect of the protected goods for which the application was granted.

- (4) A detention notice must –
- (a) identify the goods to which it relates;
 - (b) state the date from which the goods are detained;
 - (c) state the reason for the detention; and
 - (d) contain any other particulars as may be prescribed by rule.

(5) Goods detained in terms of subsection (1) must be dealt with in terms of Part 3.

Part 2: Detention of suspected counterfeit goods in absence of prior approved application

Discovery of suspected counterfeit goods

766. (1) If a customs officer has reasonable cause to suspect that any specific goods are counterfeit goods that infringe the intellectual property right in respect of any protected goods for which no application was made and granted in terms of Part 1, the customs officer must notify the following persons of the goods and the fact that the goods are suspected counterfeit goods:

- (a) a person who is believed by the customs officer to be a right-holder in respect of the protected goods in respect of which an intellectual property right is suspected of being infringed; and
- (b) any person who in relation to the suspected counterfeit goods is an affected party.

(2) Subsection (1) applies to any suspected counterfeit goods found –

- (a) during clearance or release procedures applicable to the goods;
- (b) during an inspection in terms of this Act;
- (c) when a person complies with a request by a customs officer in terms of this Act to produce any goods; or
- (d) during a search in terms of this Act of any premises, or of any vessel, aircraft, train, railway carriage, vehicle or other means of transport, or of any person.

(3) A notification in terms of subsection (1) must be by electronic message or facsimile transmission unless the notification is handed over in person.

(4) A customs officer is not obliged to comply with subsection (1) unless the following information is readily available to the customs officer:

- (a) the name of a person who is a right-holder in respect of the protected goods in respect of which an intellectual property right is suspected of being infringed; and
- (b) the electronic address or facsimile number of that person.

(5) Goods to which subsection (1) has been applied may not be released for home use or a customs procedure pending an application for the detention of the goods in terms of section **767**.

Application for detention of suspected counterfeit goods

767. (1) A person notified in terms of section **766**(1)(a) of suspected counterfeit goods, or any other person claiming to be a right-holder in relation to the protected goods in respect of which an intellectual property right is suspected of being infringed by those goods, may, within three days after the date of notification, apply to the customs authority for the detention of the suspected counterfeit goods and for the goods to be dealt with in terms of this Chapter.

(2) An application must –

- (a) be on a form as may be prescribed by rule and contain full particulars of the matters specified therein;
- (b) give sufficient particulars of the protected goods which are the subject of the application;
- (c) describe the essential physical and other distinctive features, elements and characteristics of goods that may indicate that the goods are counterfeit goods that infringe the intellectual property right in respect of those protected goods;
- (d) be accompanied by evidence –

- (i) that an intellectual property right subsists in respect of the goods that are the subject of the application;
 - (ii) that those goods are protected goods;
 - (iii) that the applicant is a right-holder in relation to those protected goods; and
 - (iv) of the date on which that intellectual property right will expire; and
- (e) be accompanied by –
- (i) an indemnity in terms of which the applicant indemnifies the Commissioner against any liability that may arise from any actions, proceedings, claims or demands whatsoever which may be made or taken against the Commissioner in dealing with the goods in terms of this Chapter;
 - (ii) an undertaking in terms of which the applicant undertakes to pay any costs or expenses incurred by, and any charges due to, the Commissioner in dealing with the goods in terms of this Chapter; and
 - (iii) an administration fee as may be prescribed by rule.

Consideration of applications

768. (1) The customs authority must promptly consider an application in terms of section **767**, and must grant the application if satisfied on face value of the evidence and motivations submitted by the applicant—

- (a) that the goods which are the subject of the application are protected goods;
- (b) that an intellectual property right subsists in respect of those goods;
- (c) that the applicant is a right-holder in relation to those protected goods; and
- (d) that the goods suspected to be counterfeit goods are counterfeit goods that infringe the intellectual property right in respect of those protected goods.

(2) If the application is granted –

- (a) the customs authority must detain the goods suspected to be counterfeit goods by issuing a detention notice to –
 - (i) any person who in relation to the suspected counterfeit goods is an affected party; or
 - (ii) the person in whose possession the goods are, or are believed to be, at the time of detention;
- (b) the customs authority must notify the applicant of the date of detention of the goods; and
- (c) the goods must be dealt with in terms of Part **3**.

Part 3: Procedures for detained suspected counterfeit goods**Seizure of detained goods in terms of Counterfeit Goods Act**

769. If goods detained in terms of Part 1 or 2 are seized in terms of the Counterfeit Goods Act –

- (a) the detention of the goods must be regarded as having been terminated; and
- (b) this Chapter no longer applies to the goods.

Inventory of detained goods

770. The customs authority must in accordance with any requirements as may be prescribed by rule make an inventory of goods detained in terms of Part 1 or 2.

Furnishing of personal details of affected parties to right-holders

771. (1) The customs authority must, at the request of a right-holder whose application has been granted in terms of section 764 or 768, furnish the right-holder with the name and address, and contact details, of a person who is an affected party in relation to the detained goods, if available to the customs authority.

(2) The right-holder may not use the personal details of an affected person furnished to the right-holder in terms of subsection (1) for any purpose other than for the purpose of this Chapter or the Counterfeit Goods Act.

Furnishing of samples of detained goods to right-holders

772. (1) The customs authority must, at the request of a right-holder whose application has been granted in terms of section 764 or 768, furnish the right-holder with samples of the goods detained in terms of Part 1 or 2.

- (2) The right-holder—
- (a) is responsible for the collection and return of the samples;
 - (b) must acknowledge receipt of the samples;
 - (c) must return the samples before the detention of the goods is ended;
 - (d) may not use the samples for any purpose other than for the purpose of this Chapter or the Counterfeit Goods Act; and
 - (e) must comply with such other requirements in relation to those samples as may be determined by the customs authority or as may be prescribed by rule.

(3) Any handling of or dealing with samples by the right-holder is at the risk and expense of the right-holder.

Onus on right-holders to protect their rights

773. (1) The right-holder whose application has been granted in terms of section **764** or **768** must, within a period of ten days after the detention of the goods, or within such extended period as may be granted in terms of section **846**, submit to the customs authority a notice³⁴⁷ indicating whether or not the right-holder intends to apply to a court for a finding that the detained goods are counterfeit goods that infringe an intellectual property right in respect of protected goods for which the application in terms of section **764** or **768** was granted.

(2) A copy of the notice submitted to the customs authority in terms of subsection (1) must simultaneously be submitted to a person who in relation to the detained goods is an affected party if the name and address or contact details of that person is available to or reasonably determinable by the right-holder.

(3) If the right-holder submits a notice indicating that the right-holder –

- (a) intends to apply to a court for a finding that the detained goods are counterfeit goods, the goods must be removed to a counterfeit goods depot in accordance with section **774**; or
- (b) intends not to apply to a court for a finding that the detained goods are counterfeit goods, the customs authority must immediately terminate the detention of the goods, but no such termination of a detention affects the application of the Counterfeit Goods Act in relation to those goods.

Removal of detained goods to counterfeit goods depots

774. (1) Detained goods that must in terms of section **773(3)(a)** be removed to a counterfeit goods depot must be removed by arrangement and at the risk and expense of the right-holder –

- (a) not later than the day following the day on which the notice referred to in section **773(1)** was submitted to the customs authority; or
- (b) within such extended period as may be granted in terms of section **846**.

(2) (a) The goods must be removed to a counterfeit goods depot under supervision of a customs officer.

(b) The customs officer under whose supervision the goods are removed must obtain an acknowledgement of receipt of the goods on the inventory made in terms of section **770** from the person in charge of the counterfeit goods depot.

³⁴⁷ For methods of submission of notices see section **848**.

(3) If the right-holder fails to remove the goods to a counterfeit goods depot within the applicable time referred to in subsection (1), the customs authority may arrange for the removal of the goods to a counterfeit goods depot at the risk and expense of the right-holder.

Court applications by right-holders

775. (1) If a right-holder has submitted a notice in terms of section **773**(1) indicating that the right-holder intends to apply to a court for a finding that the detained goods are counterfeit goods, the right-holder must within a period of ten days after the customs authority has been notified in terms of subsection (1), or within such extended period as may be granted in terms of section **846**, apply to a court for such a finding.

(2) A court application referred to in subsection (1) may be brought on its own or form part of any civil other proceedings instituted by the right-holder in connection with the detained goods against a person who in relation to those goods is an affected party.

(3) If the right-holder fails to comply with subsection (1), the customs authority must immediately terminate the detention of the goods, but no such termination of a detention affects the application of the Counterfeit Goods Act in relation to those goods.

Finding by court that detained goods are counterfeit goods

766. (1) If a court adjudicating an application referred to in section **775**(1) finds that the detained goods are counterfeit goods that infringe an intellectual property right in respect of protected goods for which an application in terms of section **764** or **768** was granted, the court may, in addition to any other order it may issue –

- (a) award title in the detained goods to the right-holder who brought the court application without any obligation on the right-holder to pay compensation; or
- (b) order a person who is an affected party in relation to the detained goods to disclose to the right-holder –
 - (i) the source from which those goods have been obtained;
 - (ii) the identity of the persons involved or ostensibly involved in the importation, exportation, manufacture, production and distribution of those goods; and
 - (iii) in the channels of distribution of those goods.

(2) If the court makes no award as to title in the goods as provided in subsection (1)(a), the goods must be dealt with in terms of Chapter **34** as prohibited goods.

Finding by court that detained goods are not counterfeit goods

777. If a court adjudicating an application referred to in section **775(1)** finds that the detained goods are not counterfeit goods that infringe an intellectual property right in respect of protected goods for which an application in terms of section **764** or **768** was granted –

- (a) the court may, in addition to any other order it may issue, order the right-holder who brought the application to pay damages in an amount determined by the court to a person who is an affected party in relation to the goods; and
- (b) the customs authority must terminate the detention of the goods immediately.

Discharge of goods from counterfeit goods depots

778. (1) The person in charge of a counterfeit goods depot to which goods detained in terms of Part **1** or **2** were removed –

- (a) is responsible for the safe storage of those goods in the depot;
- (b) may not give delivery of the goods to any person without the written permission of the customs authority; and
- (c) is liable for any tax payable on the goods if that person gives delivery of the goods otherwise than in accordance with such written permission.

(2) If title in the detained goods stored in a counterfeit goods depot is awarded in terms of section **776(1)(a)** to the right-holder who brought the court application, the right-holder becomes entitled to the goods provided that the right-holder may take delivery of the goods only in accordance with –

- (a) the other provisions of this Act applicable to the clearance and release of goods for home use or a customs procedure, including provisions of this Act and other applicable legislation relating to the payment of tax; and
- (b) any conditions the customs authority may impose.

(3) If the detained goods must in terms of section **776(2)** be dealt with as prohibited goods, the goods may be removed from the counterfeit goods depot where the goods are stored only in accordance with the directions of the customs authority.

(4) If the detention of goods stored in a counterfeit goods depot is terminated in terms of section **777(b)**, the goods must at the risk and expense of the person claimed to be the right-holder be returned to the place from where they were removed to the counterfeit goods depot unless the affected party and the customs authority agree otherwise.

Court applications by affected parties

779. Nothing in this Chapter may be read as preventing a person who is an affected party in relation to goods detained in terms of Part 1 or 2 from applying to a court for –

- (a) an order that the detained goods are not counterfeit goods or that the detention of the goods be terminated; or
- (b) any other appropriate relief.

Part 4: Other matters**Rules to facilitate implementation of this Chapter**

780. The Commissioner may make rules to facilitate the implementation of this Chapter, including rules –

- (a) regarding all matters required or permitted in terms of this Chapter to be prescribed by rule;
- (b) prescribing the procedures to be followed by customs officers when exercising their powers and duties in terms of this Chapter;
- (c) prescribing forms required to be completed for the purposes of this Chapter;
- (d) exempting any class or kind of goods from this Chapter;
- (e) prescribing the format and contents of indemnities or undertakings to be furnished by right-holders in terms of this Chapter;
- (f) prescribing the amount of administration fees that must accompany applications in terms of this Chapter;
- (g) prescribing any conditions or procedures relating to suspected counterfeit goods detained in terms of this Chapter; and
- (h) concerning any other matter to facilitate the application of this Chapter.

Offences in terms of this Chapter

781. (1) A person is guilty of an offence if that person –

- (a) removes goods detained in terms of this Chapter otherwise than with the permission or in accordance with the instructions of the customs authority;
- (b)

NOTE: This clause will be enhanced based upon finalisation of the clauses providing of obligations of the relevant entities
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CHAPTER 37
ADVANCE RULINGS

Definitions

782. For purposes of this Chapter, unless the context otherwise indicates –

“**advance ruling**” means –

- (a) a binding general ruling made by the Commissioner in terms of section **775**;
- (b) a binding private ruling made the Commissioner in terms of section **776**; and
- (c) a binding class ruling made the Commissioner in terms of section **787**;

“**applicant**” means a person who submitted or intends to submit an application in terms of section **783**;

“**application**” means an application for a binding private ruling or a binding class ruling in terms of section **783**;

“**binding class ruling**” means an advance ruling issued in accordance with section **787** on the interpretation or application of a provision of this Act in relation to –

- (a) a specific category of persons; or
- (b) goods or goods of a specific category imported, exported, transported, stored, processed, dealt with or otherwise handled by a specific category of persons;

“**binding general ruling**” means an advance ruling issued in accordance with section **785** on the interpretation or application of a provision of this Act in relation to –

- (a) goods in general;
- (b) persons in general; or
- (c) goods or goods of a specific category imported, exported, transported, stored, processed, dealt with or otherwise handled by persons in general;

“**binding private ruling**” means an advance ruling issued in accordance with section **786** on the interpretation or application of a provision of this Act in relation to –

- (a) a specific person;
- (b) specific goods imported, exported, transported, stored, processed or otherwise handled by a specific person.

Part 1: Applications for binding private rulings and binding class rulings**General requirements for applications**

- 783.** (1) An application for a binding private ruling or a binding class ruling must –
- (a) be made to the Commissioner on an application form as may be prescribed by rule;³⁴⁸
 - (b) contain the information required on the application form or prescribed by rule;
 - (c) indicate how the ruling will to promote or facilitate the implementation of –
 - (i) this Act;
 - (ii) a tax levying Act; or
 - (iii) legislation applicable to prohibited, restricted or counterfeit goods;
 - (d) be signed by the applicant;
 - (e) be accompanied by any relevant supporting documents and information as may be prescribed by rule; and
 - (f) be submitted to the Commissioner.

(2) The Commissioner may request the applicant to submit any additional information before giving an advance ruling.

(3) A processing fee prescribed by rule is payable in respect of each application.

General grounds for rejection of applications

- 784.** (1) The Commissioner may grant an application only if the ruling is necessary to promote or facilitate the implementation of –
- (a) this Act;
 - (b) a tax levying Act; or
 - (c) legislation applicable to prohibited, restricted or counterfeit goods.

- (2) The Commissioner must reject an application if –
- (a) the applicant –
 - (i) in the case of an application for a binding private or class ruling, is not a licensee or registered person that has an interest in the subject matter of the ruling sought;
 - (ii) has not in respect of the application complied with a requirement of this Act;
 - (iii) has made a false or misleading statement in the application or has omitted to state a fact which is material to the consideration of the application;
 - (iv) raises a frivolous or vexatious issue in the application; or

³⁴⁸ See section 844.

- (v) refused or fails to provide the Commissioner with additional information in connection with the application, if requested to do so;
- (b) the application raises an issue that is the same as or substantially similar to an issue –
 - (i) that is pending before a court;
 - (ii) that is the subject of draft legislation before Parliament or which is in the process of being prepared for introduction in Parliament; or
 - (iii) on which a class or general ruling has been issued in terms of this Act or a tax levying Act; or
- (c) the subject of the application has been identified by the Commissioner by rule as an issue in respect of which applications will not be accepted.

Part 2: Issuing, withdrawal or modification of advance rulings

Binding general rulings

785. (1) The Commissioner may at any time make a binding general ruling on the interpretation or application of a provision of this Act.

- (2) A binding general ruling must state –
 - (a) that it is a binding general ruling made under this section;
 - (b) the title, number and date of the ruling;
 - (c) the provision or provisions of this Act which is the subject of the ruling;
 - (d) whether the ruling is made in relation to goods in general or to a category of goods, and, if made in relation to a category of goods, the applicable category;
 - (e) the specific ruling made;
 - (f) any assumptions made or conditions imposed by the Commissioner in connection with the validity of the ruling;
 - (g) the period for which the ruling remains valid; and
 - (h) any other relevant information.

(3) A binding general ruling must be published, subject to section **788**, in such manner and form as the Commissioner may determine.

Binding private rulings

786. (1) The Commissioner may, on application in terms of section **783**, make a binding private ruling on the interpretation or application of a provision of this Act.

(2) A binding private ruling in terms of subsection (1) may be issued subject to conditions.

(3) A binding private ruling must state –

- (a) that it is a binding private ruling made under this section;
- (b) the title, number and date of the ruling;
- (c) the name and postal address of the applicant;
- (d) the provision or provisions of this Act which is the subject of the ruling;
- (e) a description of the goods in respect of which the ruling is made;
- (f) the specific ruling made;
- (g) any assumptions made or conditions imposed by the Commissioner in connection with the validity of the ruling;
- (h) the period for which the ruling remains valid; and
- (i) any other relevant information.

(3) The Commissioner –

- (a) must submit the binding private ruling to the applicant; and
- (b) may publish the ruling, subject to section **788**, in such manner and form as the Commissioner may determine.

Binding class rulings

787. (1) The Commissioner may, on application in terms of section **783** make a binding class ruling on the interpretation or application of any provision of this Act.

(2) A binding class ruling in terms of subsection (1) may be issued subject to conditions.

(2) A binding class ruling must state –

- (a) that it is a binding class ruling made under this section;
- (b) the title, number and date of the ruling;
- (c) the name and postal address of the applicant;
- (d) the provision or provisions of this Act which is the subject of the ruling;
- (e) a description of the specific category of persons in respect of whom the ruling is made;
- (f) the specific ruling made;
- (g) any assumptions made or conditions imposed by the Commissioner in connection with the validity of the ruling;
- (h) the period for which the ruling remains valid; and

(i) any other relevant information.

(3) The Commissioner must –

- (a) submit the binding class ruling to the applicant; and
- (b) publish the ruling, subject to section **788**, in such manner and form as the Commissioner may determine.

Confidentiality relating to identity of applicants

788. A binding private ruling or a binding class ruling must be published in terms of section **786(3)(b)** and **787(3)(b)** in a way that does not reveal the identity of the applicant for such a ruling.

Withdrawal or modification of advance rulings

789. (1) The Commissioner may withdraw or modify a an advance ruling if the withdrawal or modification will promote or facilitate the implementation of this Act, a tax levying Act or legislation applicable to prohibited, restricted or counterfeit goods.

(2) Notice of the withdrawal or modification must –

- (a) be published in a manner and form as may be determined by the Commissioner;
- (b) include the following information:
 - (i) the title or number of the advance ruling being withdrawn or modified;
 - (ii) in the case of a modification, a summary of the changes made; and
 - (iii) the effective date of the modification or withdrawal.

(3) The Commissioner must, in the case of a binding private ruling or a binding class ruling –

- (a) notify the person to whom the ruling had been given of the proposed withdrawal or modification as well as the extent of the modification; and
- (b) afford that person a reasonable opportunity to submit representations relating to the proposed withdrawal or modification.

Retrospective effect of withdrawals or modifications

790. The Commissioner may withdraw or modify an advance ruling which had been issued in error with retrospective effect, as may be determined by the Commissioner.

Part 3: Implementation of advance rulings**Binding effect of advance rulings**

791. The Commissioner must interpret and apply this Act in accordance with an advance ruling in any situation to which the advance ruling applies in terms of section **792**.

Applicability of advance rulings

792. An advance ruling applies in any specific situation only if all the following requirements are met:

- (a) the provision or provisions of this Act at issue is the subject of the advance ruling;
- (b) the advance ruling applies to the person to whom the relevant situation pertains;
- (c) the advance ruling applies to the goods to which the relevant situation pertains;
- (d) the facts or circumstances pertaining to the relevant situation are the same as the set of facts or circumstances specified in the advance ruling;
- (e) the relevant facts or circumstances fall within the effective period indicated in the advance ruling; and
- (f) any assumptions made or conditions imposed by the Commissioner in connection with the validity of the advance ruling have been satisfied or carried out.

Circumstances when advance rulings are void

793. A binding private ruling or a binding class ruling is void from its onset if –

- (a) the application was granted in circumstances where it should have been rejected in accordance with section **784(2)**; or
- (b) any condition or assumption stipulated by the Commissioner is not satisfied or carried out.

Effect of subsequent changes in the law

794. (1) An advance ruling ceases to be effective –

- (a) if a provision of this Act that is the subject of the advance ruling is repealed or amended; or
- (b) if a court in a final judgment places an interpretation on the relevant provision which differs from the advance ruling and interpreting that provision was necessary for deciding the case before the court.

(2) A judgment for purposes of subsection (1)(b) is not final unless –

- (a) that judgment is given or confirmed by a court of final instance; or
- (b) the time for noting an appeal against the judgment to a higher court has expired and no appeal has been lodged.

(3) An advance ruling ceases to be effective immediately upon the occurrence of the circumstances described in subsection (1) whether or not the Commissioner publishes a notice of withdrawal or modification in terms of section 789.

Part 4: Other matters

Rules to facilitate implementation of this Chapter

795. The Commissioner may in terms of section 842 make rules to facilitate the implementation of this Chapter, including rules prescribing –

(a)

NOTE: This clause will be completed after consideration of requirements in respect of subordinate legislation and based upon comments received

Offences in terms of this Chapter

796. A person is guilty of an offence if that person fails to comply with sections

NOTE: This clause will be completed based upon finalisation of the clauses providing for obligations of the relevant entities

CHAPTER 38
RECONSIDERATION OF DECISIONS AND DISPUTE RESOLUTION

Part 1: General provisions

Definitions

797. For the purposes of this Chapter—

“aggrieved person” or **“person aggrieved”**, in relation to a decision, means a person who is affected by the decision and who has a right to institute judicial proceedings in respect of that decision should that person elect to do so;

“alteration”, in relation to a decision, includes the substitution of a decision;

“day” means any day other than –

- (a) a Saturday, Sunday or public holiday; or
- (b) a week day that fall between 16 December of a year and 15 January of the following year, both days inclusive;

“decision”, in relation to the Commissioner, a customs officer or another SARS official, means a decision in terms of this Act or the Customs Duty Act, or in terms of a delegation or sub-delegation in terms of this Act or the Customs Duty Act, by the Commissioner, a customs officer³⁴⁹ or another SARS official who is not a customs officer, and includes –

- (a) any confirmation, alteration or repeal of such a decision;
- (b) any refusal or omission to take such a decision within the required or a reasonable time, if this Act or the Customs Duty Act requires such a decision to be taken;
- (c) any action taken as a result of such a decision; or
- (d) any refusal or omission to take action as a result of such a decision within the required or a reasonable time, if this Act or the Customs Duty Act requires such action to be taken;

“dispute” means a disagreement on –

- (a) the facts relating to a matter arising from the implementation of this Act or the Customs Duty Act;
- (b) the interpretation of the law applicable those facts; or
- (c) both the facts and the interpretation of the law applicable to those facts;

³⁴⁹ This also covers decisions taken by the “customs authority” as a power conferred in terms of this Act on the “customs authority” can, per definition of that term in section 1, only be taken by the Commissioner or a customs officer to whom the power has been delegated in terms of section 20.

“**settle**”, in relation to a dispute between the Commissioner and another person, means an agreement between the Commissioner and that other person in terms of which the dispute is settled, in whole or in part, by compromising the disputed matter in such a way that neither the Commissioner nor the other person accepts the other party’s –

- (a) version or interpretation of the facts;
- (b) interpretation of the law applicable to those facts; or
- (c) version or interpretation of the facts and the interpretation of the law applicable to those facts;

“**supervisor**”, in relation to a customs officer or another SARS official, means any official in the SARS hierarchical structure competent to issue work instructions to that customs officer or other SARS official.

Application of this Chapter

798. This Chapter applies to –

- (a) decisions of the Commissioner, customs officers or other SARS officials who are not customs officers;³⁵⁰ and
- (b) disputes arising from the implementation of this Act or the Customs Duty Act.

Proceedings for internal reconsideration of decisions

799. A decision of the Commissioner, a customs officer or another SARS official may be reconsidered and be confirmed, altered or repealed –

- (a) in terms of Part 2 of this Chapter, either –
 - (i) on initiative by the Commissioner, whether or not the Commissioner took the decision;
 - (ii) on own initiative by the customs officer or other SARS official who took the decision;
 - (iii) on initiative by the supervisor of the customs officer or other SARS official who took the decision; or
 - (iv) on written request by an aggrieved person;
- (b) on an appeal lodged by an aggrieved person in terms of Part 3 of this Chapter; or
- (c) as part of the settlement of a dispute in terms of Part 4 of this Chapter.

³⁵⁰ This includes decisions taken by customs officers and SARS officials in terms of this Chapter as supervisors of other customs officers and SARS officials.

Proceedings for dispute resolution

800. A dispute between the Commissioner and another person arising from the implementation of this Act or the Customs Duty Act may be resolved through –

- (a) any of the proceedings referred to in section **799**;
- (b) procedures for the settlement of disputes in terms of Part **4** of this Chapter;
- (c) alternative dispute resolution procedures in terms of Part **5** of this Chapter; or
- (d) judicial proceedings.

Proceedings to be instituted either personally or through duly authorised representatives

801. The proceedings available to an aggrieved person in terms of sections **799** and **800** may be instituted either personally or through a duly authorised representative.

Reasons for decisions

802. (1) A person aggrieved by a decision of the Commissioner, a customs officer or another SARS official is entitled to obtain the reasons for the decision from SARS to enable that person to consider any appropriate action, including any proceedings available to that person in terms of sections **799** and **800**.

(2) Reasons must be given in writing within 30 days of receipt of a written request by the person requiring the reasons.

Payment of amounts due to Commissioner not affected by section 799 or 800 proceedings

803. (1) No proceedings referred to in section **799** or **800** suspend or defer –

- (a) a person's obligation to pay to the Commissioner an amount due in terms of this Act or the Customs Duty Act; or
- (b) the Commissioner's right to recover from a person an amount owed in terms of this Act or the Customs Duty Act.

(2) Subsection (1) does not apply if –

- (a) the Commissioner agrees to the suspension or deferment of a payment pending conclusion of any proceedings referred to in section **799** or **800**; or
- (b) a court suspends or defers a payment pending conclusion of any such proceedings.

Part 2: Reconsideration of decisions on own initiative or on request**Purpose of this Part**

804. The purpose of this Part is to confer 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, and to confirm, alter or repeal those decisions subject to appropriate limitations where rights have accrued as a result of such decisions.

Reconsideration of own decisions

805. The Commissioner, a customs officer or another SARS official may, at any time, on own initiative or on written request by an aggrieved person –

- (a) reconsider a decision taken by him or her; and
- (b) subject to sections **808** and **809** –
 - (i) confirm, alter or repeal the decision; and
 - (ii) end or undo any action taken as a result of the decision, to the extent that this is necessary to alter or repeal the decision.

Reconsideration of decisions by Commissioner

806. The Commissioner may, at any time, on own initiative or on written request by an aggrieved person –

- (a) reconsider a decision taken by a customs officer or another SARS official; and
- (b) subject to sections **808** and **809** –
 - (i) confirm, alter or repeal the decision; and
 - (ii) end or undo any action taken as a result of the decision, to the extent that this is necessary to alter or repeal the decision.

Reconsideration of decisions by supervisors

807. An official who is a supervisor of a customs officer or another SARS official may, at any time, on own initiative or on written request by an aggrieved person –

- (a) reconsider a decision of that customs officer or other SARS official; and
- (b) subject to sections **808** and **809** –
 - (i) confirm, alter or repeal the decision; and
 - (ii) end or undo any action taken as a result of the decision, to the extent that this is necessary to alter or repeal the decision.

When decisions may or may not be reconsidered

808. (1) A decision may be reconsidered and confirmed, altered or repealed in terms of section **805**, **806** or **807** either before or after the person to whom the decision relates has been notified of the decision.

(2) If the person to whom the decision relates has been notified, the decision may not be altered or repealed if the alteration or repeal will detract from any rights that have accrued as a result of the decision, but this subsection does not apply if –

- (a) the decision relates to or affects the assessment of tax payable to the Commissioner;
- (b) the affected person agrees to the alteration or repeal of the decision;
- (c) the decision was procured by fraudulent, dishonest or any other illegal means; or
- (d) the decision is for any reason manifestly wrong or invalid.

(3) The following decisions may not be reconsidered or altered in terms of this Part:

- (a) A decision on an administrative appeal in terms of Part **3** of this Chapter;
- (b) a decision which is the subject of –
 - (i) such an appeal;
 - (ii) alternative dispute resolution proceedings in terms of Part **5** of this Chapter; or
 - (iii) judicial proceedings; and
- (c) a decision which is part of a settlement in terms of Part **4** of this Chapter.

Effective date for alteration or repeal of decisions

809. A decision may be altered or repealed in terms of section **805**, **806** or **807** with effect from a date determined by the official altering or repealing the decision, which may be a date before, on or after the decision to alter or repeal was taken.

Reconsideration of decisions on request of aggrieved persons

810. (1) An aggrieved person has no right to demand that a decision be reconsidered in terms of this Part, and the Commissioner, a customs officer or another SARS official who receives a request from an aggrieved person in terms of this Part for reconsideration of a decision is under no obligation to consider or comply with the request.

(2) Subsection (1) does not affect an aggrieved person's right to lodge an appeal in terms of Part **3**.

Part 3: Administrative appeals**Purpose of this Part**

811. The purpose of this Part is to provide for administrative appeals by persons aggrieved by decisions of customs officers or other SARS officials, including decisions taken by –

- (a) customs officers on behalf of the Commissioner or as the customs authority; and
- (b) other SARS officials on behalf of the Commissioner.

Appeals against decisions

812. (1) A person aggrieved by a decision of a customs officer or another SARS official may appeal against the decision either to –

- (a) the Commissioner; or
- (b) the official in charge of the Customs Office where that customs officer or other SARS official is stationed.

(2) If a decision falls within a category of decisions that may in terms of section **809(1)(b)** be dealt with by an appeal committee, subsection (1)(a) and (b) does not apply and the aggrieved person must appeal against the decision to the appeal committee that has jurisdiction to consider the appeal.

When appeal may not be lodged

813. An appeal in terms of this Part may not be lodged if the decision is the subject of –

- (a) alternative dispute resolution in terms of Part **3** of this Chapter; or
- (b) judicial proceedings.

How and when to appeal

814. (1) An appeal against a decision must be –

- (a) in the manner and on the form as may be prescribed by rule;
- (b) submitted to the SARS Office which communicated the decision to the appellant; and
- (c) accompanied by –
 - (i) a motivation setting out the grounds of appeal; and
 - (ii) any other documents and information as may be prescribed by rule.

(2) An appeal must reach the SARS Office referred to in subsection (1)(b) –

- (a) within 30 days from the date such person became aware of the decision; or
- (b) if that date is in dispute, within 30 days from the date such person is reasonably expected to have become aware of such decision.

(3) The period referred to in subsection (2) may not be extended in terms of section **846** by more than five days.

Time within which appeals must be decided

815. (1) An appeal in terms of this Part must be decided –

- (a) within 60 days from the date of receipt of the appeal by the SARS Office referred to in section **814**(1)(b); or
- (b) if the appeal was incomplete, within 60 days from the date on which the complete appeal was received by that SARS Office.

(2) The Commissioner may extend the period referred to in subsection (1) by no more than 30 days.

(3) An appeal must be regarded as having been upheld if the appeal is not decided within the period mentioned in subsection (1) or as extended in terms of subsection (2).

(4) Once an appeal is decided, the appellant ~~is~~ must promptly be notified of the decision, in writing.

Appeal committees

816. (1) The Commissioner may by rule –

- (a) establish appeal committees –
 - (i) to consider appeals against decisions of customs officers and other SARS officials; and
 - (ii) either to decide those appeals themselves or make recommendations to the Commissioner on the decision of such appeals; and
- (b) prescribe the categories of decisions that may or must be dealt with by appeal committees.

(2) The Commissioner may in terms of subsection (1) establish –

- (a) specialised appeal committees, for appeals against specific categories of decisions of customs officers and other SARS officials wherever stationed; or
- (b) one or more appeal committees for each SARS Office, for appeals against decisions of customs officers and other SARS officials stationed at that Office, excluding appeals against categories of decisions referred to in paragraph (a).

(3) An appeal committee may be composed of SARS officials only or of both SARS officials and other persons.

(4) The Commissioner must designate one of the members of an appeal committee as the chairperson of the committee.

Lapsing of appeals

817. An appeal in terms of section **812** lapses if the aggrieved person, before the appeal is decided –

- (a) institutes legal proceedings with regard to the relevant decision;
- (b) becomes a party to alternative dispute resolution procedures in terms of Part 5 with regard to the relevant decision; or
- (c) withdraws the appeal.

Rules to facilitate implementation of this Chapter

818. The Commissioner may in terms of section **842** make rules prescribing to facilitate the implementation of this Part, including rules prescribing –

- (a) the procedures that must be followed in connection with the lodging, consideration and decision of appeals, including any forms that may or must be used in these procedures;
- (b) the matters for which, or the circumstances in which, non-compliance with procedural requirements may be condoned;
- (c) the giving of reasons for decisions taken on appeal;
- (d) the categories of decisions that may be appealed against to an appeal committee;
- (e) the powers and duties of appeal committees;
- (f) the convening of, and procedures at, meetings of appeal committees, including quorum requirements;
- (g) matters relating to persons serving on appeal committees other than SARS officials, including –
 - (i) qualification requirements;
 - (ii) term of office;
 - (iii) conditions of appointment and remuneration;
 - (iv) ethical conduct; and
 - (v) resignation or removal from office;
- (h) administrative assistance to appeal committees; and
- (i) access to information relevant for an appeal by appeal committees.

Part 4: Settlement of disputes**Purpose of this Part**

819. The purpose of this Part is to regulate the settlement of disputes between the Commissioner and other parties, and to specify –

- (a) the circumstances when it would be inappropriate for the basic principle referred to in section **820** to be tempered; and
- (b) the circumstances when it would be appropriate for the basic principle to be tempered and a decision to be taken to settle a dispute.

Basic principle governing this Part

820. This Part must be applied against the background of –

- (a) the basic principle in law that it is the duty of the Commissioner to assess and collect taxes according to legislation enacted by Parliament and not to forgo any taxes properly chargeable and payable; and
- (b) the exception that circumstances may require the strictness and rigidity of this basic principle to be tempered where it is in the best advantage of the state.

Circumstances when inappropriate to settle

821. It is inappropriate and not to the best advantage of the state to settle a dispute when—

- (a) the dispute relates to intentional tax evasion or fraud and none of the circumstances contemplated in section **822** exist;
- (b) the settlement would be contrary to the law or a clearly established practice of the Commissioner on the matter, and no exceptional circumstances exist to justify a departure from the law or practice;
- (c) it is in the public interest to have judicial clarification of the issue and the case is appropriate for this purpose;
- (d) the pursuit of the matter through the courts will significantly promote compliance with tax legislation and the case is suitable for this purpose; or
- (e) the other party to the dispute has not complied with provisions of legislation administered by the Commissioner and the Commissioner is of the opinion that the non-compliance is of a serious nature.

Circumstances when appropriate to settle

822. (1) It is appropriate to settle a dispute when settlement of the dispute will be to the best advantage of the state, taking into account all relevant factors, including—

- (a) whether settlement would be in the interest of good management of the tax system, overall fairness and the best use of the Commissioner's resources;

- (b) whether settlement would be justified in comparison to any possible benefits that may be derived through litigation, bearing in mind—
 - (i) the cost of litigation;
 - (ii) the prospects of success in a court or dispute resolution procedures;
 - (iii) the prospects of collecting any amounts due; and
 - (iv) the costs associated with collection;
- (c) whether there are any complex factual or quantum issues in contention, or any evidentiary difficulties, which will make the case problematic or unsuitable for resolution through litigation;
- (d) whether the matter involves a situation where a participant or a group of participants in a tax avoidance arrangement has accepted the Commissioner's position in the dispute, and settlement offers the best prospect of unwinding such tax avoidance arrangements; and
- (e) whether settlement of the dispute will promote compliance with tax legislation by the person concerned or a group of taxpayers or a section of the public in a cost-effective way.

(2) Any settlement of a dispute in terms of this Chapter must be fair and equitable to the Commissioner, the other party and the state.

Who may settle disputes

- 823.** (1) A dispute may be settled in terms of this Part on behalf of the state only by –
- (a) the Commissioner; or
 - (b) a SARS official to whom the power to settle disputes on behalf of the state, or to settle that specific dispute, has been delegated by the Commissioner in terms of section 20.

(2) The Commissioner or an official referred to in subsection (1)(b) may not settle a dispute on behalf of the state if the Commissioner or that official has, or at any stage had, a personal, family, social, business, professional, employment or financial relationship with the other party to the dispute unless that relationship is trivial or irrelevant to the dispute.

Formal requirements for settlement

824. (1) A dispute settled in accordance with this Part must be in the form of a written agreement between the parties in a format as may be prescribed by rule.

- (2) The written agreement must –
- (a) set out the agreed position between the parties, including details on—

- (i) how issues at stake in the dispute were settled;
 - (ii) how each of those issues is to be dealt with in future;
 - (iii) any undertakings given by the parties;
 - (iv) the withdrawal of –
 - (aa) any administrative appeal in terms of Part 3 of this Chapter;
 - (bb) any alternative dispute resolution proceedings in terms of Part 5 of this Chapter; or
 - (cc) any judicial proceedings; and
 - (v) any arrangements for payment; and
- (b) be in full and final settlement of those issues.

Settlements conditional upon disclosure of facts

825. (1) The parties involved in a dispute must at all times disclose all relevant facts in discussions during the process of settling the dispute.

(2) A settlement is conditional upon full disclosure of all material facts known to the parties at the time of settlement.

- (3) The Commissioner is bound by a settlement unless –
- (a) material facts were not disclosed to the Commissioner; or
 - (b) there was fraud or misrepresentation of the facts.

Non-compliance

826. The Commissioner has the right to recover any outstanding amounts in full if the other party to the settlement fails to comply with any agreed payment arrangement.

Confidentiality

827. The Commissioner and other SARS officials involved in settling a dispute may not disclose the terms of any settlement otherwise than as provided for in section 22 or 828.

Record keeping and reporting

- 828.** (1) The Commissioner must—
- (a) maintain a register of all disputes settled in accordance with this Part; and
 - (b) fully document the process in terms of which each dispute was settled, which document must be signed by or on behalf of the Commissioner and the other party to the dispute.

(2) The Commissioner must within three months after the end of each financial year submit to the Auditor-General and the Minister a summary of all disputes settled during the financial year.

(3) A summary —

- (a) may not, subject to section **22**, disclose the identity of the other parties to the disputes; and
- (b) must contain details of —
 - (i) the number of disputes settled;
 - (ii) the amount of revenue forgone; and
 - (iii) the estimated amount of savings in litigation costs.

Part 5: Alternative dispute resolution

Purpose of this Part

829. The purpose of this Part is to provide for alternative dispute resolution procedures to resolve disputes between the Commissioner and persons aggrieved by decisions of the Commissioner, customs officers or other SARS officials.

Applications for alternative dispute resolution

830. A person aggrieved by a decision taken by the Commissioner, a customs officer or another SARS official, may apply in writing to the Commissioner to have the matter resolved through alternative dispute resolution procedures prescribed in terms of section **833**.

Consideration of applications

831. (1) The Commissioner must consider an application in terms of section **830**, but may refer a matter for alternative dispute resolution only if —

- (a) the applicant was unsuccessful in —
 - (i) a request for reconsideration of the decision in terms of Part **2** of this Chapter; or
 - (ii) an administrative appeal in terms of Part **3** of this Chapter;
- (b) the decision is appropriate for alternative dispute resolution; and
- (c) the decision is not subject to any judicial proceedings or pending judicial proceedings.

(2) The Commissioner may —

- (a) grant an application in terms of section **830**; or
- (b) refuse such an application if —
 - (i) subsection (1) is not complied with; or
 - (ii) alternative dispute resolution is not in the state's interests.

Alternative dispute resolution on initiative by Commissioner

832. The Commissioner may despite sections **830** and **831** agree with the other party to a dispute to have the dispute resolved through alternative dispute resolution procedures prescribed in terms of section **833**.

Alternative dispute resolution procedures

833. The Minister may, after consultation with the Cabinet member responsible for the administration of justice, make regulations prescribing—

- (a) alternative dispute resolution procedures in terms of which the Commissioner and a person aggrieved by a decision may resolve the matter; and
- (b) categories of decisions which are or are not suitable for alternative dispute resolution.

CHAPTER 39
JUDICIAL MATTERS

General offences³⁵¹

834. A person is guilty of an offence if that person –

- (a) makes a false statement or provides false or misleading information in any document which in terms of this Act must or may be submitted to the Commissioner or the customs authority;
- (b) makes use for the purposes of this Act of a document containing a false statement or misleading information which that person could not reasonably have believed to be true; or
- (c) hinders or interferes with a customs officer in the execution of that officer's official duties;
- (d) pretends to be a customs officer, or the interpreter or assistant of, or any other person accompanying a customs officer;
- (e) fails to comply with a request or direction of the customs authority or of a customs officer; or
- (f) makes a false statement or provides false or misleading information when questioned by, or complying with a request of, a customs officer;
- (g)

Offences committed outside Republic

835. (1) A person is guilty of an offence if that person at a place outside the Republic designated in terms of sections **32** and **35** to be a place of entry or exit for the Republic, commits an act which would have constituted an offence in terms of this Act had that act been committed at a place of entry or exit inside the Republic.

(2) A person charged with an offence in terms of subsection (1) may be prosecuted for that offence in any court having jurisdiction at the place where the accused happens to be.

Penalties for offences in terms of this Act

836. (1) A person convicted of an offence in terms of this Act is liable to imprisonment for a period not exceeding five years or to a fine not exceeding an amount prescribed in

³⁵¹ For criminal proceedings against corporate bodies or associations of persons other than corporate bodies, see section 332 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977). In terms of section 332(5), where a corporate body is liable to prosecution for an offence, any person who was at the time of the commission of the offence a director or servant of the corporate body must be deemed to be guilty of the offence and is personally liable to punishment for the offence unless it is proved that he did not take part in the commission of the offence and that he could not have prevented it. For the corresponding provision in relation to members of an association other than a corporate body, see section 332(7).

terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or to both that fine and that imprisonment.

Administrative penalties imposed by customs authority

837. (1) If a person contravenes or fails to comply with a provision of this Act which is an offence in terms of this Act, the customs authority may issue to that person a written notice informing that person of the alleged contravention or non-compliance and that prosecution can be avoided if that person elects to have the matter summarily settled by the customs authority by –

- (a) paying a specified amount as an administrative penalty to the Commissioner within the time specified in the notice; and
- (b) agreeing to abide by the decision of the customs authority.

(2) The notice referred to in subsection (1) must contain the information prescribed by rule.

(3) The amount of an administrative penalty imposed in terms of subsection (1)(a) –

- (a) must be determined in accordance with limits set by the Commissioner; and
- (b) may not exceed the maximum fine a court may impose upon conviction of a person for contravening or failure to comply with the relevant provision of this Act.

(4) Subsections (1) and (3) must be exercised in accordance with the directions of the Commissioner.

(5) The amount of an administrative penalty is subject to proceedings in terms of Chapter 38.³⁵²

- (6) Payment of an administrative penalty in terms of this section –
- (a) does not amount to a conviction in respect of the relevant contravention or non-compliance; and
 - (b) indemnifies the person from prosecution for that contravention or non-compliance.

(7) The detention, seizure or confiscation of goods in terms of this Act does not prevent the application of this section in relation to offences referred to in subsection (1) committed in respect of those goods.

³⁵² The imposition of an administrative penalty cannot be subject to appeal as the person that paid the fine did so because of own choice.

Civil actions arising from this Act

838. (1) The Commissioner may institute any civil actions necessary for enforcing this Act, including claims for amounts owing in terms of this Act.³⁵³

(2) The Commissioner must be cited as defendant or respondent in any civil actions against the state, including SARS and the customs authority, which arises from the application of this Act.

Admissibility of certain statements in documents

839. In any criminal or civil proceedings arising from the application of this Act, any statement in any record, letter or other document submitted, kept or received by or on behalf of any person to the effect that any goods of a particular price, value (including any commission, discount, cost, charge, expense, royalty, freight, tax, drawback, refund, rebate or other information which relates to such goods and has a bearing on such price or value), quantity, quality, nature, strength or other characteristic have been manufactured, imported, ordered, supplied, purchased, sold, dealt with, traded in or held in stock by that person, is admissible as evidence against that person as an admission that that person has manufactured, imported, ordered, supplied, purchased, sold, dealt with, traded in or held in stock goods of that price, value, quantity, quality, nature, strength or other characteristic.

Jurisdiction of magistrate's court

840. (1) A magistrate's court has jurisdiction to hear and decide any criminal action against a person for an offence in terms of this Act and to impose any penalty determined for such offence.

(2) A magistrate's court has jurisdiction to hear and decide any civil action instituted by the Commissioner against a person for the payment of any money owed by that person to the Commissioner in terms of this Act, irrespective of the amount claimed.

³⁵³ The Prescription Act determines the period within which civil actions for amounts owing must be instituted.

CHAPTER 40
MISCELLANEOUS MATTERS

Regulations

841. (1) The Minister may make regulations prescribing any matter that may be prescribed by regulation in terms of this Act.

Rules

842. (1) The Commissioner may make rules prescribing—

- (a) any matter that may be prescribed by rule in terms of this Act;
- (b) the communicative systems administered by SARS for the implementation of this Act, including the conditions and requirements for electronic communication with the Commissioner;
- (c) the contents of any report, notice or other document that must be submitted to the Commissioner, the customs authority or a customs officer in terms of a provision of this Act;
- (d) the manner in which such reports, notices or other documents must be submitted, and the persons required to submit any such reports, notices or other documents electronically;
- (e) the circumstances in, and the conditions on, which any such reports, notices or other documents may be amended, and procedures for the amendment of any such reports, notices or other documents;
- (f) the records that persons to whom this Act applies must keep for the purposes of this Act and the period for which and the place at which those records must be kept;
- (g) the contents of any permission or approval that may be issued by the customs authority in terms of a provision of this Act;
- (h) the contents of any licence or registration that the Commissioner may issue in terms of a provision of this Act;
- (i) the sizes and types of containers in which specific goods, including cigarettes, may be imported into the Republic, and the distinguishing marks or impressions that must appear on the containers of such goods;
- (j) the application of the materiality principle in relation to this Act, including criteria for determining when an interest in goods is to be regarded as material for the purposes of this Act; and
- (k) any other matter that may facilitate the implementation of this Act.

- (2) A rule in terms of this section may—
- (a) differentiate between different—
- (i) categories of persons to which this Act applies;
 - (ii) categories of goods;
 - (iii) categories of vessels, aircraft, trains, railway carriages or vehicles;
 - (iv) places of entry and exit;
 - (v) customs controlled areas or categories of customs controlled areas; or
 - (vi) categories of customs officers; or
- (b) be limited in its application to a particular—
- (i) category of persons to which this Act applies;
 - (ii) category of goods;
 - (iii) category of vessels, aircraft, trains, railway carriages or vehicles;
 - (iv) place of entry and exit;
 - (v) customs controlled areas or categories of customs controlled areas; or
 - (vi) category of customs officers.

Consultative processes before promulgation of rules

843. (1) Before rules in terms of section **842** are promulgated, the Commissioner must publish the draft rules in the *Government Gazette* for public comment.

- (2) Rules made in terms of section **842** must be submitted to –
- (a) the Minister; and
 - (b) Parliament for parliamentary scrutiny.

Form or format of documents

844. Where this Act states that the form or format of a document must or may be prescribed by rule, the Commissioner may instead of prescribing the form or format of that document by rule published in the *Government Gazette*, prescribe the form or format of that document by publishing it on the SARS website.

Departures from, and condonation of non-compliance with, rules, conditions and requirements

845. (1) The Commissioner may on good grounds shown approve a departure from –

- (a) a rule made in terms of section **842**; or
- (b) any condition or requirement imposed by the customs authority in terms of this Act.

- (2) The Commissioner may on good grounds shown condone –
- (a) any non-compliance with –

- (i) a rule made in terms of section 842; or
 - (ii) a condition or requirement imposed by the customs authority in terms of this Act; or
- (b) any deficiency in information required on any form or other document submitted by a person in terms of this Act.

Extension of time periods

846. (1) The customs authority may on good grounds shown extend any period specified in this Act as a period –

- (a) within which something must or may be done; or
- (b) for which something is or may be allowed.

(2) Subsection (1) does not apply in respect of –

- (a) the time within which a person may apply for a refund; or
- (b) a provision of this Act which requires the Commissioner, the customs authority or a customs officer to do something within a specified period.

Sworn or solemn declarations

847. When in terms of this Act a person is required to submit to the customs authority a declaration, report, statement, return or other document setting out facts or other information, a customs officer may require the person submitting the document to verify the truth of the document by way of a sworn or solemn declaration.

Methods of submission of documents to customs authority

848. (1) When in terms of this Act a person is required to submit to the customs authority or any other person a declaration, report, statement, return, notice or other document, the document may be submitted by –

- (a) delivering the document by hand;
- (b) sending the document by registered post;
- (c) telefaxing the document; or
- (d) transmitting the document by electronic means.

(2) Subsection (1) does not apply if this Act requires that the document must be submitted in a specific way.

Electronic submission of documents or communications

849. (1) When in terms of this Act a person is required or permitted to submit to the customs authority a declaration, report, statement, return, application or other document or communication electronically, the document or communication must be submitted –

- (a) to the Commissioner; and
- (b) in a specific electronic format as may be prescribed by rule.

(2) When in terms of this Act a person is required to sign any declaration, report, statement, return, application or other document or communication and that document or communication is submitted electronically, it must be electronically signed in the manner prescribed by rule.

(3) When in terms of this Act a person is required to submit to the customs authority a declaration, report, statement, return or other document or communication electronically or in a specific electronic format, the customs authority may –

- (a) condone any inability by that person to submit the declaration, report, statement, return or other document or communication electronically or in that specific electronic format; and
- (b) accept the declaration, report, statement, return or other document or communication in paper format within such period and at such place as the customs authority may determine.

(4) For purposes of this Act the electronic submission of a document or communication does not include the submission of a document or communication by telefax.

Submission of documents or communications by telefax

850. When in terms of this Act a person is permitted to submit a declaration, report, statement, return or other document or communication to the customs authority by telefaxing the document or communication, the original document or communication must be handed in at or sent by registered post to the relevant Customs Office within days of the date on which it was telefaxed.

Documents submitted and oaths and affirmations made outside Republic

851. (1) If a declaration, report, statement, return or other document which may or must be submitted in terms of this Act is submitted or presented in accordance with this Act to a customs officer of the Republic outside the Republic, that declaration, report, statement, return or other document is for the purposes of this Act as effectual and binding as if submitted in the Republic.

(2) If an oath or affirmation which may or must be made in terms of this Act is made in accordance with this Act to or before a customs officer of the Republic outside the Republic, that oath or affirmation is for the purposes of this Act as effectual and binding as if submitted or made in the Republic.

Exemptions, authorisations, permissions, approvals, recognitions and directions

852. (1) (a) Where this Act confers a power on the Commissioner, the customs authority or a customs officer to grant an exemption, authorisation, permission, approval or recognition, or to issue directions, that power includes the power to grant the exemption, authorisation, permission, approval or recognition, or to issue the direction, on such conditions or for such period as the Commissioner, the customs authority or customs officer may determine.

(b) A condition and a period determined in terms of paragraph (a) must be consistent with this Act and any applicable tax levying Act.

(2) Any exemption, authorisation, permission, approval, recognition or direction referred to in subsection (1), or any refusal to grant such exemption, authorisation, permission, approval, recognition or direction, must be communicated to the person concerned either –

- (a) in writing;
- (b) by telefax, if that person is equipped to receive telefax messages;
- (c) electronically, if that person is equipped to receive electronic messages;
- (d) by post; or
- (e) by hand.

(3) (a) Where this Act provides that an act may be carried out only on authority of an exemption, authorisation, permission, approval or recognition granted by the Commissioner, the customs authority or a customs officer, no such exemption, authorisation, permission or approval may be granted to regularise an act that has already been carried out.

(b) Paragraph (a) does not affect the application of section **705**.

Computerised recordkeeping systems

853. When a provision of this Act requires a person to keep a record in any specific manner, the Commissioner may allow that person to deviate from the prescribed requirement

and to use any appropriate computerised system for recordkeeping purposes, subject to such conditions or requirements as the customs authority may determine.

Information on SARS website admissible as evidence

854. A printout of any information downloaded from the SARS website may be used as evidence in any legal proceedings.

Publication of international agreements to which Republic is party

855. An international agreement to which Republic is a party is enacted into law in the Republic by publication of the agreement in the *Government Gazette*.

Liability for damage or loss

856. The state, the Commissioner, a customs officer or a person referred to in section 12(3) is not liable in respect of any damage or loss arising from any decisions taken or actions performed in good faith in the exercise of a power or duty assigned or delegated to the Commissioner, the customs authority, a customs officer or such person in terms of this Act.

Repeal of legislation and savings

857. (1) The legislation referred to in the table in the Schedule is hereby repealed to the extent indicated in the third column of the table, subject to subsection (2).

(2) (a) Despite the repeal of the Customs and Excise Act, 1964 (Act No. 91 of 1964), that Act continues to be applicable to the extent necessary for the imposition, administration, payment and recovery of excise duties.

(b) The Customs and Excise Act, 1964, to the extent that it continues to be applicable in terms of paragraph (a) must for purposes of this Act be regarded to be a tax levying Act in relation to excise duties.

Short title and commencement

858. This Act is called the Customs Control Act, 20....., and takes effect on a date determined by the Minister in the Gazette.

SCHEDULE
REPEAL OF LEGISLATION

Number and year	Title of Act	Extent of repeal
Act No. 91 of 1964	Customs and Excise Act	The whole
Act No. 95 of 1965	Customs and Excise Amendment Act	The whole.
Act No. 57 of 1966	Customs and Excise Amendment Act	Sections 1(1), 2 to 16.
Act No. 96 of 1967	Customs and Excise Amendment Act	Section 1 and 2.
Act No. 85 of 1968	Customs and Excise Amendment Act	The whole.
Act No. 105 of 1969	Customs and Excise Amendment Act	Sections 1 to 38 and 40.
Act No. 98 of 1970	Customs and Excise Amendment Act	The whole.
Act No. 89 of 1971	Customs and Excise Amendment Act	The whole.
Act No. 103 of 1972	Customs and Excise Amendment Act	The whole.
Act No. 68 of 1973	Customs and Excise Amendment Act	The whole.
Act No. 7 of 1974	Customs and Excise Amendment Act	The whole.
Act No. 33 of 1974	Parliamentary Service Act	Section 19.
Act No. 64 of 1974	Second Customs and Excise Amendment Act	The whole.
Act No. 71 of 1975	Customs and Excise Amendment Act	The whole.
Act No. 105 of 1976	Customs and Excise Amendment Act	The whole.
Act No. 12 of 1977	Customs and Excise Amendment Act	The whole
Act No. 112 of 1977	Second Customs and Excise Amendment Act	The whole.
Act No. 93 of 1978	Customs and Excise Amendment Act	The whole.
Act No. 110 of 1979	Customs and Excise Amendment Act	The whole.
Act No. 98 of 1980	Customs and Excise Amendment Act	The whole.
Act No. 114 of 1981	Customs and Excise Amendment Act	The whole.
Act No. 86 of 1982	Customs and Excise Amendment Act	The whole.
Act No. 89 of 1983	Customs and Excise Amendment Act	The whole.
Act No. 89 of 1984	Customs and Excise Amendment Act	Sections 1 to 12.
Act No. 101 of 1985	Customs and Excise Amendment Act	Sections 1 to 16.
Act No. 52 of 1986	Customs and Excise Amendment Act	The whole.
Act No. 97 of 1986	Transfer of Powers and Duties of the State President Act	Section 37.
Act No. 84 of 1987	Customs and Excise Amendment Act	Sections 1 to 37, 39 to 40 and 44..
Act No. 69 of 1988	Customs and Excise Amendment Act	Sections 1 to 13.

Act No. 60 of 1989	Liquor Products Act	...
Act No. 68 of 1989	Customs and Excise Amendment Act	Sections 1 to 17 and 19 to 20.
Act No. 59 of 1990	Customs and Excise Amendment Act	Sections 1 to 42 and 46 to 47.
Act No. 111 of 1991	Customs and Excise Amendment Act	The whole.
Act No. 61 of 1992	Customs and Excise Amendment Act	Sections 1 to 14.
Act No. 105 of 1992	Customs and Excise Second Amendment Act	The whole.
Act No. 98 of 1993	Customs and Excise Amendment Act	The whole.
Act No. 19 of 1994	Customs and Excise Amendment Act	Sections 1 to 13.
Act No. 45 of 1995	Customs and Excise Amendment Act	The whole.
Act No. 44 of 1996	Customs and Excise Amendment Act	The whole.
Act No. 27 of 1997	Taxation Laws Amendment Act	Sections 11 to 15 and 22.
Act No. 34 of 1997	South African Revenue Service Act	In Schedule 3: The fifth paragraph dealing with amendments to the Customs and Excise Act, No. 91 of 1964.
Act No. 30 of 1998	Taxation Laws Amendment Act	Sections 57 to 61, 63 to 66, 68 to 76.
Act No. 32 of 1999	Taxation Laws Amendment Act	Section 6, 7 and 16.
Act No. 53 of 1999	Revenue Laws Amendment Act	Sections 46 to 55 and 57 to 73.
Act No. 30 of 2000	Taxation Laws Amendment Act	Sections 58, 60 to 66
Act No. 59 of 2000	Revenue Laws Amendment Act	Sections 60 to 62.
Act No. 19 of 2001	Revenue Laws Amendment Act	Sections 36 to 41, 44 to 53.
Act No. 60 of 2001	Second Revenue Laws Amendment Act	Sections 113 to 116, 120, 121 to 124, 127 to 133, 136 and 138 to 140.
Act No. 30 of 2002	Taxation Laws Amendment Act	Sections 42 to 53, 74 to 75 and 84.
Act No. 74 of 2002	Revenue Laws Amendment Act	Sections 102 to 109, 111 to 112.
Act No. 12 of 2003	Exchange Control Amnesty and Amendment of Taxation Laws Act	Sections 39, 41 and 50.
Act No. 45 of 2003	Revenue Laws Amendment Act	Sections 131 to 137, 139 to 143, 146, 148, 150 to 154.
Act No. 16 of 2004	Taxation Laws Amendment Act	

Act No. 32 of 2004	Revenue Laws Amendment Act	Sections 66 to 72.
Act No. 34 of 2004	Second Revenue Laws Amendment Act	Sections 20 to 34.
Act No. 9 of 2005	Taxation Laws Amendment Act	Section 12.
Act No. 31 of 2005	Revenue Laws Amendment Act	Sections 85 to 86 and 88 to 95.
Act No. 32 of 2005	Revenue Laws Second Amendment Act	Sections 17 to 28.
Act No. 9 of 2006	Small Business Tax Amnesty and Amendment of Taxation Laws Act	...
Act No. 10 of 2006	Second Small Business Tax Amnesty and Amendment of Taxation Laws Act	Sections 10 and 11.
Act No. 20 of 2006	Revenue Laws Amendment Act	Sections 65 to 73.
Act No. 21 of 2006	Revenue Laws Amendment Act	Sections 8 to 9, 11, 17 to 20, 22, 30 and 34.
Act No. 8 of 2007	Taxation Laws Amendment Act
Act No. 9 of 2007	Taxation Laws Second Amendment Act	Sections 10 and 12 to 15.
Act No. 35 of 2007	Revenue Laws Amendment Act	Sections 96 to 102.
Act No. 36 of 2007	Revenue Laws Amendment Act	Sections 6 to 7, 9 to 16, 18 to 20 and 22 to 32.



Comment Sheet
on the Draft Customs Control Bill and Draft Customs Duty Bill

*Please provide comments in the format provided **before/on 26 February 2010** to:

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