

DRAFT CUSTOMS DUTY BILL

CUSTOMS DUTY BILL

To provide for the levying, payment and recovery of customs duties on goods imported or exported from the Republic; and for matters incidental thereto.

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BE IT 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 a word or expression to which a meaning has been assigned in the Customs Control Act has the same meaning, and –

“administrative penalty” means an administrative penalty referred to in section 218;

“advance origin ruling” means a ruling issued by the customs authority on the origin of goods of a specific type, kind or brand in order to settle in advance the origin of goods of that type, kind or brand when cleared by or on behalf of the recipient of the ruling for home use or a customs procedure during the validity period of the ruling;

“advance ruling” means –

- (a) an advance tariff ruling;
- (b) an advance ruling on a valuation factor; or
- (c) an advance origin ruling;

“advance ruling on a valuation factor” means a ruling issued by the customs authority on a valuation factor applicable to the valuation of goods of a specific type, kind or brand in order to settle in advance the application of that valuation factor in the valuation of goods of that type, kind or brand when cleared by or on behalf of the recipient of the ruling for home use or a customs procedure during the validity period of the ruling;

“advance tariff ruling” means a ruling issued by the customs authority on the tariff classification of goods of a specific type, kind or brand in order to settle in advance the tariff classification of goods of that type, kind or brand when cleared by or on behalf of the recipient of the ruling for home use or a customs procedure during the validity period of the ruling;

“anti-dumping duty” means an additional import duty –

- (a) imposed on goods imported into the Republic at an export price contemplated in section 32(2)(a) of the International Trade Administrations Act, 2002 (Act No. 71 of 2002), that is less than the normal value of those goods as defined in section 32(2)(b) of that Act; and
- (b) listed in the Customs Tariff as an anti-dumping duty;

“assessment”, in relation to a duty, means a determination by the customs authority in terms of Chapter 5 of the amount of duty payable on any dutiable goods;

“at or about the same time”, in relation to the import of any goods, means within a time span of three days before or after the goods were imported, or such longer period as the customs authority may in terms of section 846 of the Customs Control Act allow in a particular case;

“buying commission” means any commission paid or payable to an agent in terms of an agreement between the agent and a buyer in the Republic to purchase¹ for the buyer goods abroad for export to the Republic or to facilitate for the buyer a purchase of goods abroad for export to the Republic, provided that –

- (a) the existence of the agreement between the agent and the buyer is substantiated by documentary evidence; and
- (b) the agent –
 - (i) acted solely on the instructions of principal relating to the purchase of the goods;
 - (ii) disclosed in the transaction with the seller of the goods that the goods are purchased or that the purchase of the goods is facilitated on behalf of a principal for export to the Republic; and
 - (iii) had no proprietary, financial or other interest in the goods, other than as an agent;

“certificate certifying a declaration of origin” means a certificate issued by an authority or other official body certifying the correctness of a declaration of origin;

“certificate of origin” means a certificate issued by an authority or other official body certifying that the goods to which it relates were produced in a specific country;

¹ —**Buying commission**” applies only to the primary method where an actual purchase price is essential. The purchase of goods for export to the Republic therefore does not include transactions which do not amount to a purchase, such as the renting, hiring, leasing of goods, the supply of goods free of charge, the replacement or exchange of goods or the acquisition of goods through barter trading, package deals, tie-in sales or similar transactions.

“certified declaration of origin” means a declaration of origin on which an authority or other official body has certified the correctness of the declaration of origin;

“correction”, in relation to –

- (a) a tariff determination or re-determination of goods, means a correction by the customs authority in terms of section **115** of an error in the tariff determination or re-determination of the goods without changing the tariff classification ascribed to the goods in the determination or re-determination;
- (b) a value determination or re-determination of goods, means a correction made by the customs authority in terms of section **135** to a value determination or re-determination of goods without changing the valuation ascribed to the goods in the determination or re-determination of the goods; or
- (c) an origin determination or re-determination of goods, means a correction by the customs authority in terms of section **173** of an error in the origin determination or re-determination of the goods without changing the origin ascribed to the goods in the determination or re-determination;

“countervailing duty” means an import duty imposed to off-set a benefit conferred by a subsidy bestowed directly or indirectly on any goods exported to the Republic;

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

“Customs Tariff” means the instrument –

- (a) issued in terms of section **12**; 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**;

“declaration of origin” means a declaration issued by the producer or supplier of goods declaring that the goods were produced in a specific country;

“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;

“disruptive competition” means the export of goods to the Republic in such increased quantities, absolute or relative to domestic production in the Republic and under conditions

as to cause or threaten to cause serious harm to the domestic industry in the Republic which produces like or directly competitive products;

“documentary evidence of origin” means any one or more of the following documents:

- (a) a certificate of origin;
- (b) a declaration of origin;
- (c) a certified declaration of origin; or
- (d) a certificate certifying a declaration of origin;

“drawback”, in relation to an import duty paid to the Commissioner in terms of this Act, means the repayment of the import duty, or part of the import duty, in any of the circumstances set out in section 69(1);

“dutiable”, in relation to goods, indicates that a duty has been imposed on the goods in the Customs Tariff;

“duty” means an import duty or export duty;

“export duty” means a duty imposed in the Customs Tariff on goods destined for export from the Republic;

“identical goods”, in relation to goods to be valued, means goods –

- (a) produced in the same country as the country in which the goods to be valued were produced, whether by the same or a different producer; and
- (b) which, apart from minor differences in appearance, are the same in all respects to the goods to be valued, including physical characteristics, quality and reputation;

“import duty” means a duty imposed in the Customs Tariff on imported goods, and includes

–

- (a) an ordinary import duty referred to in section 13(2)(a);
- (b) an anti-dumping duty referred to in section 13(2)(b);
- (c) a countervailing duty referred to in section 13(2)(c); or
- (d) a safeguard duty referred to in section 13(2)(d);

“international trade agreement” means a bilateral or multilateral agreement to which the Republic is a party and in terms of which –

- (a) goods of South African origin may be exported from the Republic to a country which is a party to the agreement under preferential tariff treatment, subject to compliance with the agreement; or
- (b) goods originating in a country which is a party to the agreement may be imported into the Republic under preferential tariff treatment, subject to compliance with the agreement;

“key assessment factor” means any of the factors referred to in section 85(1)(a) to (e);

“Minister” means the Cabinet member responsible for finance;

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

“ordinary import duty” means a duty imposed on goods imported into the Republic and specified in the Customs Tariff as an ordinary import duty;

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

“origin self-determination”, in relation to goods, means the origin ascribed to goods in terms of section 163(1) on the clearance declaration of the goods;

“origin determination”, in relation to goods, means a determination of the origin of goods by the customs authority in terms of section 164(1)(b) or(3)(b) or 166(1)(b);

“origin re-determination”, in relation to goods, means a re-determination of the origin of goods by the customs authority in terms of section 168(1)(a) or (b);

“person liable”, in relation to a duty or any interest on a duty, means –

- (a) the person who in terms of Chapter 3 must pay the duty or interest to the Commissioner; or
- (b) any other person from whom the Commissioner in terms of that Chapter recovers or is to recover the duty or interest if the person referred to in paragraph (a) fails to pay the duty or interest;

“port or place of export”, in relation to goods exported to the Republic, means the place in the exporting country –

- (a) where the goods are placed on board a vessel, aircraft, railway carriage or vehicle in which the goods will be transported across the border of that country to the Republic; or
- (b) where the goods as the accompanied baggage of a person travelling to the Republic are taken on board a vessel, aircraft, railway carriage or vehicle that will transport that person to the Republic;

“price actually paid or payable”, in relation to the purchase of goods, means the total amount paid or to be paid, either directly or indirectly, to or for the benefit of the seller in connection with the purchase of the goods, but does not include a payment passing to the seller in connection with the goods that does not directly relate to the purchase of the goods;

“purchased for export to the Republic”, in relation to goods, includes goods purchased after the goods were loaded on board a vessel, aircraft, railway carriage or vehicle for export to the Republic;

“re-assessment”, in relation to a duty on dutiable goods, means a re-calculation by the customs authority of the amount of duty payable on the goods as previously determined by –

- (a) an assessment by the customs authority in terms of section **89(2)(a)** or (b) or **90(1)(a)**; or
- (b) a re-assessment by the customs authority in terms of section **91(1)**;

“recipient”, in relation to an advance ruling, means a person to whom an advance ruling has been issued;

“refund”, in relation to a duty, administrative penalty or interest paid to the Commissioner in terms of this Act, means the repayment of the duty, penalty or interest, or any part of the duty, penalty or interest, but excludes a drawback.

“rule” means a rule made by the Commissioner in terms of section **223**;

“rules of origin” means rules setting out norms and standards for determining in which country any specific goods –

- (a) were produced; or
- (b) must be regarded as having been produced;

“**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;

“**safeguarding duty**” means a duty imposed on goods imported into the Republic to counter disruptive competition;

“**safeguard measure**” means a remedy or procedure for use in response to disruptive competition;

“**same type, kind or brand**”, in relation to goods, means goods –

- (a) falling within the same group or range of goods; and
- (b) produced –
 - (i) in the same country by the same producer; or
 - (ii) in the same country in the same industry or industry sector;

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

“**security**”, in relation to goods, means any security provided in terms of Chapter **31** of the Customs Control Act for a purpose set out in section **657** of that Act;

“**self-assessment**”, in relation to a duty, means a calculation in terms of section **88** by a person submitting a clearance declaration in respect of dutiable goods of the amount of duty payable on the goods;

“**similar goods**”, in relation to goods to be valued, means goods –

- (a) produced in the same country as the country in which the goods to be valued were produced, whether by the same or a different producer; and
- (b) which although not alike in all respects to the goods to be valued have, with due regard to their quality and reputation and the existence of a trade mark, like

characteristics and like component materials which enable them to be employed for the same purposes and to be commercially interchangeable;

“South African rules of origin” means any rules of origin contained in –

- (a) sections **180 to 190** and other applicable provisions of this Act;
- (b) rules made in terms of section **192**.

“tariff determination”, in relation to goods, means a tariff classification determined for goods by the customs authority in terms of section **106(1)(b)** or (3)(b) or **108(1)(b)**;

“tariff self-determination”, in relation to goods, means a tariff classification of goods made in terms of section **105** or **108** and stated on the clearance declaration of the goods by the person clearing the goods;

“tariff re-determination”, in relation to goods, means a tariff classification re-determined for goods by the customs authority in terms of section **110(1)(a)** or (b).

“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;²

“this Act” includes –

- (a) the Customs Tariff; and
- (b) the rules.

“transaction value”, in relation to goods purchased for export to the Republic, means the transaction value of the goods determined in accordance with section **142**;

“valuation factor” means a factor used in determining the customs value of goods of any specific type, kind or brand which remains constant in different transactions between the same parties for the same type, kind or brand of goods;

“value determination”, in relation to goods, means a determination of the customs value of goods by the customs authority in terms of section **125(1)(b)** or (3)(b) or **127(1)(b)**;

“value re-determination”, in relation to goods, means a re-determination of the customs value of goods by the customs authority in terms of section **129(1)(a)** or (b).

² Prince Edward Islands Act, 1948

“**value self-determination**”, in relation to goods, means an appraisal of the customs value of goods made in terms of section **124** and stated on the clearance declaration of the goods by the person clearing the goods;

(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 specific Chapter of this Act must be read as including –
 - (i) any rule made for the purpose, or to facilitate the implementation, of that Chapter; and
 - (ii) any provision, condition or requirement of the Customs Tariff to the extent that that provision, condition or requirement is applicable to that Chapter;
 - (b) a specific Part of a Chapter of this Act must be read as including –
 - (i) any rule made for the purpose, or to facilitate the implementation, of that Part; and
 - (ii) any provision, condition or requirement of the Customs Tariff to the extent that that provision, condition or requirement is applicable to that Part; or
 - (c) a specific section of this Act must be read as including –
 - (i) any rule made for the purpose, or to facilitate the implementation, of that section; and
 - (ii) any provision, condition or requirement of the Customs Tariff to the extent that that provision, condition or requirement is applicable to that section.

Legal status of footnotes

2. 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: Application of this Act

Goods to which this Act applies

3. This Act applies to all goods that are subject to customs control in terms of section **29** or **30** of the Customs Control Act.

Territorial application of this Act

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

- (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 whatever, 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.

Application of this Act in relation to SACU member states

5. (1) This Act applies to all goods imported into the Republic from a SACU member state and all goods destined for export from the Republic to a SACU member state, subject to any rules as must be prescribed in terms of section 7(2) of the Customs Control Act.

- (2) Unless provided otherwise in the SACU Agreement –
- (a) no import duty is payable on goods in free circulation in a SACU member state when imported into the Republic and cleared for home use in terms of Chapter 10 of the Customs Control Act; and
 - (b) no export duty is payable on goods in free circulation in the Republic when cleared in terms of the Customs Control Act for outright export from the Republic to a SACU member state.

Part 3: Administration of this Act

Commissioner to administer this Act

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

Delegations by Minister

7. (1) The Minister may delegate —
- (a) to a Deputy Minister appointed to assist the Minister any of the powers or duties assigned to the Minister in terms of this Act; or
 - (b) to the Commissioner any of the powers or duties assigned to the Minister in terms of this Act, except the power to publish or amend the Customs Tariff.

- (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

8. (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 of the powers or duties assigned to the Commissioner or the customs authority in terms of this Act; or
 - (ii) any part or aspect of any such powers or duties.
- (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.³

Part 4: Other matters

Rules to facilitate implementation of this Chapter

9. The Commissioner may in terms of section 223 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

10. 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

³ See Chapter 38 of the Customs Control Act for the reconsideration by the Commissioner of decisions taken in terms of delegated powers.

CHAPTER 2

CUSTOMS TARIFF

Purpose of this Chapter

- 11.** The purpose of this Chapter is to provide for –
- (a) a Customs Tariff imposing duties on goods imported into, or destined for export from, the Republic, replacing Schedules **1, 2, 3, 4** and **5** to the Customs and Excise Act, 1964 (Act No. 91 of 1964); and
 - (b) the amendment of the Customs Tariff.

Issue of Customs Tariff

12. (1) The Minister must, within a reasonable time after this Act took effect, by notice in the Gazette, issue a Customs Tariff replacing Schedules **1, 2, 3, 4** and **5** to the Customs and Excise Act, 1964 (Act No. 91 of 1964).

- (2) The Customs Tariff issued in terms of subsection (1) must –
- (a) be a substantial re-enactment of Schedules **1, 2, 3, 4** and **5** to the Customs and Excise Act, 1964; and
 - (b) consist of schedules, parts, items, provisions, notes and other components in substantially the same format as set out in those Schedules for the different kinds of duties.

(3) (a) Until the Minister issues a Customs Tariff in terms of subsection (1), Schedules **1, 2, 3, 4** and **5** to the Customs and Excise Act, 1964, as amended in terms of section **15** or **16**, must for all purposes be regarded to be the Customs Tariff issued in terms of subsection (1).

(b) In the event of any inconsistency between a provision of the Customs Control Act and Schedules **1, 2, 3, 4** and **5**, the provision of the Customs Control Act prevails.

Kinds of duties that may be imposed

- 13.** (1) The Customs Tariff may provide for –
- (a) import duties or safeguard measures on goods imported into the Republic;⁴ and
 - (b) export duties on goods exported from the Republic.⁵

⁴ Import duties are in terms of the Customs Control Act only payable if and when the imported goods are cleared for home use in terms of Chapter **10** of that Act.

⁵ Export duties are in terms of the Customs Control Act only payable if and when the goods destined for export are cleared for outright export in terms of that Act.

- (2) Import duties may consist of –
- (a) an ordinary import duty on imported goods specified for that duty in the Customs Tariff;
 - (b) an anti-dumping duty on imported goods specified for that duty in the Customs Tariff;
 - (c) a countervailing duty on imported goods specified for that duty in the Customs Tariff; and
 - (d) a safeguard duty on imported goods specified for that duty in the Customs Tariff.

(3) The imposition of duties may be subject to such requirements, conditions and exclusions as may be determined in the Customs Tariff.

(4) An import or export duty imposed in the Customs Tariff is a customs duty for purposes of the SACU Agreement.⁶

Granting of exemptions or relief in respect of duties

- 14.** (1) The Customs Tariff may provide for the granting of exemptions, partial exemptions or relief in respect of a duty on dutiable goods, including for –
- (a) the circumstances in which exemption, partial exemption or relief may be granted in respect of the relevant duty;
 - (b) the organ of state, body or person authorised to grant such exemptions, partial exemptions or relief.
 - (c) the persons who may apply for such exemptions, partial exemptions or relief;
 - (d) the procedures to regulate the submission, processing and consideration of applications and the granting of such exemptions, partial exemptions or relief;
 - (e) time and other limitations on the submission of applications and the granting of such exemptions, partial exemptions or relief; and
 - (f) the conditions on which such exemptions, partial exemptions or relief may be granted.

(2) No exemption or relief in terms of subsection (1) may be granted retrospectively except with the concurrence of the Minister, whether granted by the customs authority or any other authorised organ of state, body or person.

⁶ The only reason for this provision is to give effect to the provision in the SACU Agreement requiring customs duties to be defined in the legislation of member states. No customs duties are payable on the movement of goods between the Republic and other members of the Customs Union.

Amendments to Customs Tariff relating to imported goods

15. (1) The Minister must by notice in the Gazette amend the Customs Tariff in relation to imported goods –

(a) if the Cabinet member responsible for trade and industry requests the amendment for implementing –

- (i) any international obligations on tariffs and trade binding on the Republic; or
- (ii) an international agreement to which the Republic is a party, or any amendment to such agreement;

(b) to effect any changes in –

- (i) terminology used in international tariffs and trade instruments;⁷ or
- (ii) mechanisms or procedures applicable to international trade.

(2) The Minister may by notice in the Gazette amend the Customs Tariff in relation to imported goods if the–

(a) International Trade Administration Commission established by section 7 of the International Trade Administration Act, 2002 (Act No. 77 of 2002), requests the amendment for implementing measures to protect local economic activity in terms of that Act; and

(b) amendment is necessary for implementing–

- (i) national financial and fiscal policies; or
- (ii) national economic policies on the import of goods to the Republic;

(3) A request in terms of subsection (1) or (2) must be –

(a) in writing; and

(b) accompanied by –

- (i) a motivation of the reasons for the request; and
- (ii) a report of, or minutes of any relevant meeting of, the International Trade Administration Commission, if the request is made in terms of the International Trade Administration Act, 2002.

(4) The Minister may by notice in the Gazette amend the Customs Tariff –

(a) where subsection (1) does not apply; and

(b) the amendment is necessary in the public interest.

⁷ For instance the International Convention on the Harmonized Commodity Description and Coding System.

Amendments to Customs Tariff relating to goods destined for export from the Republic

16. (1) The Minister must by notice in the Gazette amend the Customs Tariff in relation to goods destined for export from the Republic if the amendment is necessary for implementing –

- (a) an international agreement to which the Republic is a party, or any amendment to such agreement; or
- (b) any changes in –
 - (i) terminology used in international tariffs and trade instruments; or
 - (ii) mechanisms or procedures applicable to international trade.

(2) The Minister may by notice in the Gazette amend⁸ the Customs Tariff in relation to goods destined for export from the Republic if the amendment is necessary for implementing –

- (a) national financial and fiscal policies; or
- (b) national economic policies on the export of goods from the Republic;

(3) If an amendment to the Customs Tariff in terms of subsection (2) is requested by another Cabinet member, the request must be –

- (a) in writing; and
- (b) accompanied by a motivation of the reasons for the request.

Extent of power to amend Customs Tariff

17. An amendment to the Customs Tariff in terms of section **15** or **16** includes –

- (a) the repeal or replacement of, or any change in, any schedule, part, item, provision, note or other component of the Customs Tariff; or
- (b) the insertion of any new schedule, part, item, provision, note or other component into the Customs Tariff.

Commencement of amendments to Customs Tariff

18. (1) An amendment to the Customs Tariff in terms of section **15** or **16** takes effect from a date specified in the notice effecting the amendment, or if no date is specified, from the date of publication of the notice.

(2) The commencement date specified in a notice for an amendment may be a date before, on or after the date of publication of the notice.

⁸ The Minister's power is limited to an amendment of an existing export tax. The Minister may not impose a new export tax in terms of this provision.

Commencement of amendments to Customs Tariff as part of budgetary tax proposals tabled in the National Assembly

19. (1) If an amendment to the Customs Tariff forms part of any tax proposals contained in a national annual or adjustments budget tabled by the Minister in the National Assembly in terms of section 27(1) or 30(1) of the Public Finance Management Act, 1999 (Act No.1 of 1999), the amendment takes effect from the time the annual or adjustments budget is tabled in the Assembly whether the amending notice referred to in section **15** or **16** is published before or after such tabling.

(2) A certificate purporting to have been issued and signed by the Secretary to Parliament that the Minister has tabled a national annual or adjustments budget contemplated in subsection (1) in the National Assembly, that an amendment to the Customs Tariff attached to the certificate formed part of tax proposals contained in the budget, and that the budget was tabled on a date and at a time specified in the certificate, must on production by any person in a court or other judicial tribunal be accepted as evidence of the facts stated therein.

(3) Subsection (1) does not apply if the amending notice referred to in section **15** or **16** specifies another date and time for the commencement of the amendment.

Submission of amendments to Customs Tariff for parliamentary scrutiny

20. (1) Any amendment to the Customs Tariff must within 12 weeks of publication of the notice referred to in section **15** or **16** be submitted to the National Assembly for parliamentary scrutiny.

- (2) If the National Assembly by resolution rejects the amendment –
- (a) the amendment lapses from the date it took effect; and
 - (b) a person –
 - (i) who has paid any duty or other amount in terms of the amendment is entitled to a refund of the duty or other amount in accordance with Chapter **4**; or
 - (ii) who is liable for any duty or other amount that would have been payable in terms of this Act had it not been for the amendment, must pay that duty or other amount to the Commissioner on demand.

CHAPTER 3

PAYMENT OF DUTIES, PENALTIES AND INTEREST

Purpose and application of this Chapter

- 21.** (1) The purpose of this Chapter is to provide for –
- (a) liability for import and export duties on dutiable goods; and
 - (b) payment and collection of –
 - (i) import and export duties on dutiable goods; and
 - (ii) penalties, interest and other amounts owed to the Commissioner in terms of this Act.⁹
- (2) This Chapter applies to all dutiable goods.

Part 1: Liability for duty

When liability for duty commences

- 22.** (1) Liability for import duty on dutiable goods imported into the Republic commences when the goods enters the Republic irrespective of whether the goods are cleared for home use or a customs procedure before or after the arrival of the goods at the place of entry referred to in section 32 or 35 of the Customs Control Act.¹⁰
- (2) The liability for export duty on dutiable goods destined for export from the Republic commences when the goods are –
- (a) cleared for outright export in terms of the Customs Control Act; or
 - (b) regarded in terms of a provision of the Customs Control Act as having been cleared for outright export.¹¹

When liability for duty ceases

- 23.** (1) Liability for import duty payable on dutiable goods imported into the Republic and as assessed in terms of Chapter 7¹² ceases –
- (a) if –

⁹ See Chapter 31 of the Customs Control Act for payment and recovery of debt owed to the Commissioner in terms of that Act. VAT, excise duties and other tax to be recovered in terms of the tax levying Act applicable to VAT, excise duties and that other tax.

¹⁰ For submission of clearance declarations before arrival at place of entry see section 163 of the Customs Control Act.

¹¹ The following provisions of the Customs Control Act apply here:
Goods under temporary export procedure – sections 390 and 391;
Goods under outward processing procedure – sections 472 and 473;

¹² For limitations on periods within which goods must be assessed or reassessed for duty purposes see section 92.

- (i) the goods are cleared for home use in terms of Chapter **10** of the Customs Control Act or are in terms of a provision of that Act regarded as having been cleared for home use in terms of Chapter **10** of that Act;¹³ and
- (ii) the duty on the goods is paid in full;
- (b) if the duty payable on the goods falls away in terms of section **520**, **521**, **522** or **523** of the Customs Control Act;
- (c) if the goods are –
 - (i) cleared in terms of the Customs Control Act for export under the export procedure¹⁴ or another customs procedure which allows the export of goods under that procedure without any separate export clearance,¹⁵ and exported from the Republic;
 - (ii) removed from the Republic by order of, and under supervision of, the customs authority;
 - (iii) destroyed under supervision of the customs authority; or
 - (iv) abandoned to the Commissioner by agreement with the Commissioner; or
- (d) if the Commissioner's claim in respect of the duty has prescribed.¹⁶

(2) Liability for export duty payable on dutiable goods to be exported from the Republic and as assessed in terms of Chapter **7**¹⁷ ceases –

¹³ The following provisions of the Customs Control Act 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**;

¹⁴ Chapter **17** of the Customs Control Act provides for the export of goods under the export procedure.

The export procedure covers the export of goods for outright export and various other customs procedures such as:

Temporary export procedure;
 Outward processing procedure;
 Export of inward processed compensating products under the inward processing procedure.

¹⁵ The following customs procedures allows goods to be exported under those procedures without any

separate export clearance:

- International transit procedure;
- Transshipment procedure;
- Temporary admission procedure;
- Stores procedure;
- Tax free shop procedure;
- Temporary export and re-importation of unaltered goods procedure;
- Inward processing procedure;
- Outward processing procedure;

¹⁶ The Prescription Act determines the period within which civil actions for amounts owing must be instituted.

- (a) if –
 - (i) the goods are cleared for outright export in terms of the Customs Control Act or are in terms of a provision of that Act regarded as having been cleared for outright export; and
 - (ii) the duty on the goods is paid in full;
- (b) if the clearance of the goods for outright export is withdrawn and it is proved that the goods were not exported from the Republic;
- (c) if the duty payable on the goods falls away in terms of section **520**, **521**, **522** or **523** of the Customs Control Act;
- (d) if the goods are destroyed under supervision of the customs authority; or
- (e) if the Commissioner’s claim in respect of the duty has prescribed.¹⁸

Time when duties become payable

24. (1) An import duty on dutiable goods imported into the Republic must be paid if and when those goods are –

- (a) cleared for home use in terms of Chapter **10** of the Customs Control Act;¹⁹
- (b) regarded in terms of a provision of that Act as having been cleared for home use in terms of Chapter **8** of that Act; or
- (c) cleared for a customs procedure that confers a partial tax due status on the goods.²⁰

(2) An export duty on dutiable goods destined for export from the Republic must be paid if and when those goods are –

- (a) cleared for outright export in terms of the Customs Control Act;²¹
- (b) regarded in terms of a provision of that Act as having been cleared for outright export; or
- (c) cleared for another customs procedure that confers a partial tax due status on the goods.²²

(3) Subsections (1) and (2) do not apply to the extent that –

- (a) payment of a duty on goods has been deferred in terms of section **25**; or

¹⁷ For limitations on periods within which goods must be assessed or reassessed for duty purposes see section **92**.

¹⁸ The Prescription Act determines the period within which civil actions for amounts owing must be instituted.

¹⁹ Section **166** of Customs Control Act determines the time of clearance.

²⁰ For instance clearance of goods for inward processing or processing for home use where exemption from duty may be partial.

²¹ Section **166** of Customs Control Act determines the time of clearance.

²² For instance clearance of goods for outward processing where exemption from duty may be partial.

- (b) the Customs Control Act in a specific case determines another time for the payment of duty on any goods.²³

Deferment of duties

25. (1) The customs authority may despite section **24** defer payment of a duty on any dutiable goods to a date or for a period determined by the customs authority.

(2) A deferment of duty in terms of subsection (1) may be granted -

- (a) in relation to specific goods, to the person liable for the payment of the duty on those goods; or
- (b) in relation to a specific category of goods, to the person or persons liable for the payment of the duty on those goods.

(3) Any deferment of duty in terms of subsection (1) is subject to any conditions –

- (a) as the Commissioner may determine, including conditions relating to the provision of security; or
- (b) as may be prescribed by rule.

(4) No interest is payable on deferred duties paid on or before the due date.²⁴

Part 2: Payment and recovery of duties

Duties constitute a debt to Commissioner for credit of National Revenue Fund

26. Any duty payable in terms of this Act –

- (a) is a debt due to the Commissioner for credit of the National Revenue Fund; and
- (b) must be paid to or recovered by the Commissioner in accordance with this Chapter and any other applicable provisions of this Act.²⁵

Payment of import duties on goods cleared for home use

27. (1) Import duty payable on imported goods cleared for home use in terms of Chapter **10** of the Customs Control Act or a customs procedure referred to in section **24(1)(c)** must be paid by the importer of the goods.

²³ See for instance sections **509** and **511** of the Customs Control Act in the case of goods cleared under simplified procedures; and section **492(1)** of that Act in the case of internationalpostal articles.

²⁴ Interest becomes payable in terms of section **51** from the due date if the duty is not paid on or before that date.

²⁵ See section **222** if debt is not paid by the date when payment is due.

(2) If the duty is not paid on due date, the Commissioner must recover the duty on the goods from any of the following:

- (a) the importer of the goods;
- (b) a person who, at the time of clearance of the goods –
 - (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;
- (c) the person who submitted –
 - (i) the clearance declaration of the goods for home use in terms of section **182** of the Customs Control Act or, if section **508** or **511(3)** of that Act applies, a full home use clearance declaration; or
 - (ii) the clearance declaration of the goods for that customs procedure;
- (d) any security covering those goods which was provided by any of the persons referred to in paragraphs (a), (b) and (c).

Payment of import duties when goods imported otherwise than through places of entry are regarded as having been cleared for home use

28. (1) If goods imported otherwise than through places of entry are for tax purposes regarded as having been cleared for home use in terms of Chapter **10** of the Customs Control Act,²⁶ any import duty payable on the goods must be paid by the person responsible for causing the goods to be regarded as having been cleared for home use.

(2) If the duty is not paid on due date, the Commissioner must recover the duty on the goods from any of the following:

- (a) the person responsible for causing the goods to be regarded as having been cleared for home use;
- (b) the operator of the vessel, aircraft, train or vehicle on board of which the goods were imported into the Republic;
- (c) the carrier in charge of the vessel, aircraft, train or vehicle; or
- (d) the importer of the goods;
- (e) a person who, at the time of import of the goods –
 - (i) was the owner of the goods;
 - (ii) had a material interest in the goods; or
 - (iii) had the right to dispose of the goods; or
- (f) any security covering those goods which was provided by any of the persons referred to in paragraphs (a), (b), (c), (d) and (e).

²⁶ See section **67** of the Customs Control Act.

Payment of import duties when non-cleared goods are regarded as having been cleared for home use

29. (1) If imported goods that have not been cleared are for tax purposes regarded as having been cleared for home use in terms of Chapter **10** of the Customs Control Act,²⁷ any import duty payable on the goods must be paid by the person responsible for causing the goods to be regarded as having been cleared for home use.

(2) If the duty is not paid on due date, the Commissioner must recover the duty on the goods from any of the following:

- (a) the person responsible for causing the goods to be regarded as having been cleared for home use;
- (b) the importer of the goods;
- (c) a person who, at the time of import of the goods –
 - (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; or
- (d) any security covering those goods which was provided by any of the persons referred to in paragraphs (a), (b) and (c).

Payment of import duties when goods under transit procedure are regarded as having been cleared for home use

30. (1) If imported goods under national or international transit are for tax purposes regarded as having been cleared for home use in terms of Chapter **10** of the Customs Control Act,²⁸ any import duty payable on the goods must be paid by the person responsible for causing the goods to be regarded as having been cleared for home use.

(2) If the duty is not paid on due date, the Commissioner must recover the duty on the goods from any of the following:

- (a) the person responsible for causing the goods to be regarded as having been cleared for home use;
- (b) the carrier who undertook to carry out the transit operation;
- (c) any other carrier subcontracted in terms of section **204(2)(d)** of the Customs Control Act to carry out the transit operation;
- (d) the importer of the goods;

²⁷ See section **110** of the Customs Control Act.

²⁸ See sections **216** and **217** of the Customs Control Act.

- (e) the person who submitted the clearance declaration in terms of section **196** of the Customs Control Act, or other document in terms of section **199(1)** of that Act, to clear the goods for transit;
- (f) a person who, at the time of clearance of the goods for transit –
 - (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; or
- (g) any security covering those goods which was provided by any of the persons referred to in paragraphs (a), (b), (c), (d), (e) and (f).

Payment of import duties when goods under transhipment procedure are regarded as having been cleared for home use

31. (1) If imported goods under transhipment are for tax purposes regarded as having been cleared for home use in terms of Chapter **10** of the Customs Control Act,²⁹ any import duty payable on the goods must be paid by the person responsible for causing the goods to be regarded as having been cleared for home use.

(2) If the duty is not paid on due date, the Commissioner must recover the duty on the goods from any of the following:

- (a) the person responsible for causing the goods to be regarded as having been cleared for home use;
- (b) the importer of the goods;
- (c) the person who submitted the clearance declaration in terms of section **227** of the Customs Control Act to clear the goods for transhipment;
- (d) a person who, at the time of clearance of the goods for transhipment –
 - (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; or
- (e) any security covering those goods which was provided by any of the persons referred to in paragraphs (a), (b), (c) and (d).

Payment of import duties when goods under temporary admission procedure are regarded as having been cleared for home use

32. If imported goods under the temporary admission procedure are for tax purposes regarded as having been cleared for home use in terms of Chapter **10** of the Customs

²⁹ See sections **239** and **240** of the Customs Control Act.

Control Act,³⁰ any import duty payable on the goods must be paid by the person responsible for causing the goods to be regarded as having been cleared for home use.

(2) If the duty is not paid on due date, the Commissioner must recover the duty on the goods from any of the following:

- (a) the person responsible for causing the goods to be regarded as having been cleared for home use;
- (b) the importer of the goods;
- (c) the person who submitted the clearance declaration in terms of section **250** of the Customs Control Act to clear the goods for temporary admission;
- (d) in the case of the temporary admission of goods on authority of a temporary admission paper referred to in section **256** of the Customs Control Act –
 - (i) the person to whom the temporary admission paper was issued; or
 - (ii) the guaranteeing association which guaranteed the temporary admission paper;
- (e) a person who, at the time of clearance of the goods for temporary admission –
 - (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; or
- (f) any security provided covering those goods which was by any of the persons referred to in paragraphs (a), (b), (c), (d) and (e).

Payment of import duties when goods under warehousing procedure are regarded as having been cleared for home use

33. (1) If imported goods under the warehousing procedure are for tax purposes regarded as having been cleared for home use in terms of Chapter **10** of the Customs Control Act,³¹ any import duty payable on the goods must be paid by the person responsible for causing the goods to be regarded as having been cleared for home use.

(2) If the duty is not paid on due date, the Commissioner must recover the duty on the goods from any of the following:

- (a) the person responsible for causing the goods to be regarded as having been cleared for home use;
- (b) the licensee of the customs warehouse where the goods were warehoused;
- (c) the person who submitted the clearance declaration in terms of section **282** of the Customs Control Act to clear the goods for warehousing;

³⁰ See sections **270** and **271** of the Customs Control Act.

³¹ See sections **295** and **296** of the Customs Control Act.

- (d) a person who, at the time stipulated for the payment of the duty –
 - (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; or
- (e) any security covering those goods which was provided by any of the persons referred to in paragraphs (a), (b), (c) and (d).

Payment of import duties when goods under tax free shop procedure are regarded as having been cleared for home use

34. (1) If imported goods under the tax free shop procedure that were not in free circulation when cleared for the tax free shop procedure are for tax purposes regarded as having been cleared for home use in terms of Chapter **10** of the Customs Control Act,³² any import duty payable on the goods must be paid by the person responsible for causing the goods to be regarded as having been cleared for home use.

(2) If the duty is not paid on due date, the Commissioner must recover the duty on the goods from any of the following:

- (a) the person responsible for causing the goods to be regarded as having been cleared for home use;
- (b) the licensee of the tax free shop; or
- (c) any security covering those goods which was provided by a person referred to in paragraphs (a) and (b).

Payment of import duties when goods under stores procedure are regarded as having been cleared for home use

35. (1) If goods under the stores procedure on board a foreign-going vessel or aircraft or cross-border train referred to in section **323**(2) of the Customs Control Act, are for tax purposes regarded as having been cleared for home use in terms of Chapter **10** of the Customs Control Act,³³ any import duty payable on the goods must be paid by the operator of the vessel, aircraft or train.

(2) If the duty referred to in subsection (1) is not paid on due date, the Commissioner must recover the duty on the goods from any of the following:

- (a) the operator of the vessel, aircraft or train
- (b) the carrier in charge of the vessel, aircraft or train; or

³² See sections **316** and **317** of the Customs Control Act.

³³ See sections **349** and **350** of the Customs Control Act.

- (c) any security covering those goods which was provided by any of the persons referred to in paragraphs (a) and (b).

(3) If imported goods under the stores procedure not yet supplied to a foreign-going vessel or aircraft or cross-border train referred to in section **323(2)** of the Customs Control Act, are for tax purposes regarded as having been cleared for home use in terms of Chapter **10** of the Customs Control Act,³⁴ any import duty payable on the goods must be paid by the person responsible for causing the goods to be regarded as having been cleared for home use.

(4) If the duty referred to in subsection (3) is not paid on due date, the Commissioner must recover the duty on the goods from any of the following:

- (a) the person responsible for causing the goods to be regarded as having been cleared for home use;
- (b) the person who submitted the clearance declaration in terms of section **333** of that Act to clear the goods for the stores procedure; or
- (c) any security covering those goods which was provided by any of the persons referred to in paragraphs (a) and (b).

Payment of import duties when goods under inward processing procedure are regarded as having been cleared for home use

36. (1) If imported goods under the inward processing procedure are for tax purposes regarded as having been cleared for home use in terms of Chapter **10** of the Customs Control Act,³⁵ any import duty payable on the goods must be paid by the person responsible for causing the goods to be regarded as having been cleared for home use.

(2) If the duty is not paid on due date, the Commissioner must recover the duty on the goods from any of the following:

- (a) the person responsible for causing the goods to be regarded as having been cleared for home use;
- (b) the importer of the goods;
- (c) the person who submitted the clearance declaration in terms of section **400** of the Customs Control Act to clear the goods for inward processing;
- (d) the licensee of the premises where the inward processing of the goods is carried out;
- (e) a person who, at the time of clearance of the goods for inward processing –
- (i) is the owner of the goods;

³⁴ See sections **349** and **350** of the Customs Control Act.

³⁵ See sections **420** or **421** of the Customs Control Act.

- (ii) has a material interest in the goods; or
- (iii) has the right to dispose of the goods; or
- (f) any security covering those goods which was provided by any of the persons referred to in paragraphs (a), (b), (c), (d) and (e).

Payment of import duties when goods under processing for home use procedure are regarded as having been cleared for home use

37. (1) If imported goods under the processing for home use procedure are for tax purposes regarded as having been cleared for home use in terms of Chapter **10** of the Customs Control Act,³⁶ any import duty payable on the goods must be paid by the person responsible for causing the goods to be regarded as having been cleared for home use.

(2) If the duty is not paid on due date, the Commissioner must recover the duty on the goods from any of the following:

- (a) the person responsible for causing the goods to be regarded as having been cleared for home use;
- (b) the importer of the goods;
- (c) the person who submitted the clearance declaration in terms of section **430** of the Customs Control Act to clear the goods for processing for home use;
- (d) the licensee of the premises where the processing for home use of the goods is carried out;
- (e) a person who, at the time of clearance of the goods for processing for home use –
 - (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; or
- (f) any security covering those goods which was provided by any of the persons referred to in paragraphs (a), (b), (c), (d) and (e).

Payment of export duties on goods cleared for outright export

38. (1) Export duty payable on goods cleared for outright export or a customs procedure referred to in section **24(2)(c)** must be paid by the exporter of the goods.

(2) If the duty is not paid on due date, the Commissioner must recover the duty on the goods from any of the following:

- (a) the exporter of the goods;
- (b) the person who submitted –

³⁶ See sections **446** and **447** of the Customs Control Act.

- (i) the clearance declaration for outright export of the goods in terms of section **359** of the Customs Control Act, or, if section **364** of that Act applies, a document in lieu of an export clearance declaration, or, if section **508** or **511(3)** of that Act applies, a full export clearance declaration; or
- (ii) the clearance declaration of the goods for that customs procedure;
- (c) a person who at the time of clearance of the goods for outright export –
 - (i) was the owner of the goods;
 - (ii) had a material interest in the goods; or
 - (iii) had the right to dispose of the goods; or
- (d) any security covering those goods which was provided by any of the persons referred to in paragraphs (a), (b) and (c).

Payment of export duties when goods exported otherwise than through places of exit are regarded as having been cleared for outright export

39. (1) If goods exported or in the process of being exported from the Republic are for tax purposes regarded as having been cleared for outright export,³⁷ any export duty payable on the goods must be paid by the person responsible for causing the goods to be regarded as having been cleared for outright export.

(2) If the duty is not paid on due date, the Commissioner must recover the duty on the goods from any of the following:

- (a) the person responsible for causing the goods to be regarded as having been cleared for outright export;
- (b) the operator of the vessel, aircraft, train or vehicle on board of which the goods were or are being exported;
- (c) the carrier in charge of that vessel, aircraft, train or vehicle;
- (d) the exporter of the goods;
- (e) a person who, at the time of loading the goods onto the vessel, aircraft, train or vehicle on board of which the goods were or are being exported –
 - (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; or
- (f) any security covering those goods which was provided by any of the persons referred to in paragraphs (a), (b), (c), (d) and (e).

³⁷ See section **67(3)** of the Customs Control Act.

Payment of export duties when goods exported without clearance are regarded as having been cleared for outright export

40. If goods exported or in the process of being exported from the Republic without clearance are for tax purposes regarded as having been cleared for outright export,³⁸ must be paid by the person responsible for causing the goods to be regarded as having been cleared for outright export.

(2) If the duty is not paid on due date, the Commissioner must recover the duty on the goods from any of the following:

- (a) the person responsible for causing the goods to be regarded as having been cleared for outright export;
- (b) the exporter of the goods;
- (c) a person who at the time of loading the goods for export –
 - (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; or
- (d) any security covering those goods which was provided by any of the persons referred to in paragraphs (a), (b) and (c).

Payment of duties when goods under outward processing procedure are regarded as having been cleared for outright export

41. (1) If goods under the outward processing procedure are for tax purposes regarded as having been cleared for outright export,³⁹ any export duty payable on the goods must be paid by the exporter of the goods

(2) If the duty is not paid on due date, the Commissioner must recover the duty on the goods from any of the following:

- (a) the exporter of the goods;
- (b) the person who submitted the clearance declaration to clear the goods for outward processing;
- (c) a person who, at the time of clearance of the goods for outward processing –
 - (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; or
- (d) any security covering those goods which was provided by any of the persons referred to in paragraphs (a), (b) and (c).

³⁸ See section 113 of the Customs Control Act

³⁹ See section 472 or 473 of the Customs Control Act.

(3) If compensating products obtained from goods under the outward processing procedure lose their tax free status as outward processed compensating products in terms of section **474** of the Customs Control Act, any import duty payable on the compensating products must be paid by the importer of the products.

(4) If the duty is not paid on due date, the Commissioner must recover the duty on the goods from any of the following:

- (a) the importer of the compensating products;
- (b) the person who submitted the clearance declaration in terms of section **466** of the Customs Control Act for the clearance of the products as outward processed compensating products for home use;
- (c) a person who, at the time of clearance of the products for home use as outward processed compensating products –
 - (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; or
- (d) any security covering those goods which was provided by any of the persons referred to in paragraphs (a), (b) and (c).

Collection of duties from agents

42. If a person mentioned in any of sections **27** to **41** as a person from whom a duty on goods may be collected, is not in the Republic or has no physical address in the Republic, or fails to pay a duty when required to do so, and has not provided security from which the Commissioner may recover the duty, the Commissioner may recover the duty from –

- (a) any person who in connection with those goods acted or gave out to be the agent of that person; or
- (b) any security covering those goods that was provided by a person referred to in paragraph (a).

Collection of duties from customs brokers

43. (1) If duty payable on goods is not paid at the time stipulated for the payment of the duty⁴⁰ or, in the case of a deferred duty, is not paid at the time stipulated for the payment of the deferred duty,⁴¹ a customs broker who submitted a clearance declaration on behalf of another person to clear the goods for home use or a customs procedure does not, despite

⁴⁰ See in section **24**(1) and (2).

⁴¹ See section **25**.

sections **27** to **42**, attract liability for payment of the duty if it is proved that the customs broker –

- (a) was not a party to the failure to pay the duty;
- (b) when becoming aware of the failure, promptly notified the customs authority; and
- (c) took all reasonable steps to prevent the failure.

(2) A customs broker who submitted a clearance declaration is not relieved of liability for payment of a duty in terms of subsection (1) if –

- (a) the customs code or the name and physical address of the person on whose behalf the declaration was submitted was not disclosed on the declaration; or
- (b) the person on whose behalf the declaration was submitted –
 - (i) is a natural person resident outside the Republic; or
 - (ii) is a juristic person with no physical address in the Republic.

Joint and several liability for payment of duties

44. The persons mentioned in sections **27** to **42** are jointly and severally liable towards the Commissioner for the payment of a duty that is or becomes payable on goods, and the Commissioner may recover the duty from any of or all those persons.

Duties collected from security

45. A person liable in terms of sections **27** to **42** for a duty payable on goods is absolved from liability towards the Commissioner if the duty is recovered in full from any security covering those goods.

Under-calculation or miscalculation of duty due to incorrect information

46. A person who paid a duty or from a duty is recovered in terms of this Chapter is liable for any under-calculation or miscalculation of the duty due to incorrect or insufficient information provided by that person, or in the clearance declaration submitted in relation to the goods, or in any document submitted in lieu of a clearance declaration, or in any supporting document.

Under-payment of duty

47. (1) The Commissioner must, subject to subsections (2) and (3), correct any under-payment⁴² of the amount of a duty on dutiable goods by recovering the amount of the under-payment from –

- (a) the person who partially paid the duty;

⁴² For refunds of amounts overcharged see section **68**.

- (b) any other person from whom the duty could have been recovered in terms of this Part; or
- (c) any security covering those goods that was provided by any of the persons referred to in paragraphs (a) and (b).

(2) If the amount of an under-payment is less than R100, the Commissioner is not obliged to recover the under- payment.

(3) Liability for an under-payment of duty on dutiable goods ceases if the Commissioner's claim in respect of the duty has prescribed.⁴³

When import duty not payable

- 48.** No import duty on dutiable goods imported into the Republic is payable –
- (a) on goods exempted from the duty;
 - (b) whilst those goods are under a customs procedure conferring a tax free status;⁴⁴ or
 - (c) if liability for the duty on those goods has ceased in terms of section **23(1)**.

When export duty not payable

- 49.** No export duty on dutiable goods cleared for outright export is payable –
- (a) on goods exempted from the duty;
 - (b) if those goods are exported under a customs procedure which allows the export of goods under that procedure without separate export clearance⁴⁵ and that customs procedure confers a tax free status⁴⁶ on the goods; or
 - (c) if liability for the duty on those goods has ceased in terms of section **23(2)**.

⁴³ The Prescription Act determines the period within which civil actions for amounts owing must be instituted.

⁴⁴ See Chapter **8** of the Customs Control Act.

⁴⁵ The following customs procedures allows goods to be exported under those procedures without any separate export clearance:

- International transit procedure;
- Transshipment procedure;
- Temporary admission procedure;
- Stores procedure;
- Tax free shop procedure;
- Temporary export and re-importation of unaltered goods procedure;
- Inward processing procedure;
- Outward processing procedure;

⁴⁶ See Chapter **8** of the Customs Control Act.

Part 3: Payment and recovery of interest and administrative penalties**Interest and administrative penalties constitute a debt to Commissioner for credit of National Revenue Fund**

50. Any interest payable in terms of this Act on the outstanding amount of a duty and any administrative penalty in terms of this Act –

- (a) is a debt due to the Commissioner for credit of the National Revenue Fund; and
- (b) must be paid to or recovered by the Commissioner in accordance with this Chapter and any other applicable provisions of this Act.⁴⁷

Interest on outstanding duties

51. (1) Duties owed to the Commissioner in terms of this Act and 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.

Recovery of interest on outstanding duties

52. (1) The Commissioner must recover the amount of interest on any outstanding duty from –

- (a) any person from whom the duty may be recovered in terms of Part 2; or
- (b) any security covering the goods on which the duty is payable which was provided by a person from whom the duty may be recovered in terms of Part 2.

(2) Interest on the outstanding amount of a duty may be recovered as if that interest is part of that duty.

(3) The Commissioner may on good grounds exempt a person from paying interest for which that person is liable in terms of subsection (1).

(4) The persons referred to in subsection (1)(a) are jointly and severally liable towards the Commissioner for the payment of interest.

Recovery of administrative penalties

53. (1) If a person has in terms of section 218 elected to pay the amount of an administrative penalty, that person must pay the penalty to the Commissioner within five days.

⁴⁷ See section 222 if debt is not paid by the date when payment is due.

(2) If the amount of the administrative penalty is not paid when due the Commissioner must recover the amount of the penalty, and any interest on the outstanding amount of the penalty, from –

- (a) the person who elected to pay the penalty; or
- (b) any security provided by that person covering the goods in connection with which the penalty was imposed.

(3) The Commissioner may on good grounds exempt a person from paying interest for which that person is liable in terms of subsection (1).

Under- payment of interest and administrative penalties

54. (1) The Commissioner must, subject to subsection (2), correct any under-payment of any interest or administrative penalty by recovering the amount under-paid from –

- (a) the person who partially paid that interest or penalty;
- (b) any person from whom that interest or penalty could have been recovered in terms of section **52** or **53**; or
- (c) any security provided by a person referred to in paragraphs (a) and (b) covering the goods in connection with which the interest or penalty was imposed.

(2) If the amount of an under-payment is less than R100, the Commissioner is not obliged to recover the under-payment.

Payment of outstanding amounts in instalments

55. The Commissioner may, subject to any conditions as the Commissioner may determine, permit the payment of outstanding amounts of duty, administrative penalties and interest, in instalments.

Part 4: Liens

Establishing of liens over goods to secure payment of debts

56. (1) In order to secure payment to the Commissioner of a debt referred to in section **26** or **47**, a lien in favour of the Commissioner may in accordance with this Part be established over any goods –

- (a) of which the debtor is the owner;
- (b) of which the debtor is the co-owner; or
- (c) in which the debtor has any title, right or interest in terms of a credit agreement under the National Credit Act, 2005 (Act No. 34 of 2005).

(2) A lien over goods in terms of this Part is established when a customs officer attaches the goods in accordance with section **57**.

(3) A lien over goods in terms of this Part serves as security for the debt owing by the debtor to the Commissioner, except –

- (a) in the case of goods of which the debtor is the co-owner, where the lien serves as security for the debt only up to the value of the debtor's share in the goods; and
- (b) in the case of goods in which the debtor has any title, right or interest in terms of a credit agreement under the National Credit Act, 2005, where the lien serves as security for the debt only up to the value of the debtor's title, right or interest in the goods.

Attachment of goods for purposes of establishing liens

57. (1) A customs officer may attach goods referred to in section **56(1)(a)**, (b) or (c) for purposes of establishing a lien in terms of this Part –

- (a) in the case of goods that are not in free circulation, regardless of where the goods happen to be or in whose possession the goods are; and
- (b) in the case of goods in free circulation, only if the goods are used, stored or found within a customs controlled area.

(2) Goods are attached when a customs officer issues a written notice of attachment to the person in whose possession or custody the goods are.

(3) A notice of attachment must –

- (a) identify the goods to which it relates;
- (b) state the date from which the goods are attached;
- (c) state that the goods are attached for purposes of establishing a lien pending payment of a debt referred to in section **26** or **50**;
- (d) state the amount of the debt; and
- (e) contain any other particulars as may be prescribed by rule.

(4) Goods attached in terms of this section may be –

- (a) sealed, marked, locked, fastened or otherwise secured or impounded by a customs officer at the place where the goods were attached; or
- (b) removed to a state warehouse or other place of security as the customs authority may determine.

Attachment of goods in which debtor has no ownership interest

58. (1) If goods are attached in terms of section 57 to secure payment of a specific debt and the debtor is not the owner or co-owner of the goods or does not have any title, right or interest in terms of a credit agreement under the National Credit Act, 2005, in the goods, the debtor must within 14 days of the date on which the goods were attached furnish proof to the customs authority that he or she is not the owner or co-owner of the goods or has no title, right or interest in terms of a credit agreement in the goods.

(2) The customs authority must immediately release the goods from the lien if it accepts proof submitted to it in terms of subsection (1).

Attachment of goods of which debtor is co-owner

59. (1) If goods of which the debtor is a co-owner are attached in terms of section 57, the debtor must promptly –

- (a) disclose to the customs authority, in writing, the fact of such co-ownership, stating the following:
 - (i) the name and address of the other co-owner;
 - (ii) the debtor's share in the goods, expressed as a percentage; and
 - (iii) any other information as may be prescribed by rule; and
- (b) submit to the customs authority a copy of any agreement in terms of which such co-ownership was established.

(2) On receipt of the written disclosure, the customs authority must –

- (a) notify the other co-owner that the goods have been attached and that a lien in favour of the Commissioner has been established over the goods; and
- (b) request the other co-owner to corroborate the debtor's share in ownership of the goods.

(3) The customs authority must release goods from a lien established in terms of this Part if the share of the debtor in the goods –

- (a) is economically insignificant or does not exist; or
- (b) cannot readily be established and excused.

Attachment of goods subject to credit agreements under National Credit Act

60. (1) If goods subject to a credit agreement under the National Credit Act, 2005 (Act No. 34 of 2005), between the debtor and a credit provider contemplated in that Act are attached in terms of section 57, the debtor must promptly –

- (a) disclose to the customs authority, in writing, the existence of the agreement, stating the following:
 - (i) the name and address of the credit grantor;
 - (ii) the amount of the principal debt under the agreement;
 - (iii) the duration of the agreement;
 - (iv) the outstanding balance under the agreement; and
 - (v) any other information as may be prescribed by rule; and
- (b) submit a copy of the agreement to the customs authority.

(2) On receipt of the written disclosure, the customs authority must –

- (a) notify the credit grantor that the goods have been attached and that a lien in favour of the Commissioner has been established over the goods; and
- (b) request the credit grantor to submit to the customs authority full particulars of the debtor's title, right or interest in the goods.

(3) The credit grantor must –

- (a) quantify the debtor's title, right or interest in the goods; and
- (b) promptly notify the customs authority of –
 - (i) the value of the debtor's title, right or interest in the goods, expressed, if determinable, as a liquid amount; and
 - (ii) details of how that value was arrived at.

(4) The customs authority must release goods from the lien established in terms of this Part if the right, title or interest of the debtor in the goods –

- (a) is economically insignificant or does not exist; or
- (b) cannot readily be established and excused.

(5) The Commissioner and the credit grantor concerned may, subject to such conditions as may be agreed between the parties, agree to dispose of the goods in order to preserve and secure the interests of the parties in the goods and in the proceeds of the disposal of the goods pending the resolution of any dispute in respect of which an interest in the goods is secured by the lien.

Effect of liens

61. (1) Goods in respect of which a lien has been established in terms of this Part may not –

- (a) without the permission of the customs authority be removed from the place where the goods were attached or to which the goods were removed;

- (b) be sold or transferred to, or relinquished in favour of, another person except in terms of this Part; or
- (c) be hypothecated, pledged, mortgaged or in any way encumbered in favour of another person.

(2) Any agreement entered into by any person in contravention of subsection (1) is null and void.

(3) The customs authority may allow the debtor, despite the lien, to continue using goods referred to in section 57(1)(b) for a purpose and on conditions as the customs authority may determine.

(4) (a) If a person enters into an agreement or uses the goods contrary to this section or any conditions imposed by the customs authority, the Commissioner may take custody of the goods and order the removal of the goods to a state warehouse or other place of security.

(b) The debtor is liable for all reasonable costs and expenses incurred by the Commissioner to take custody of and remove the goods to a state warehouse or other place of security.

Termination of liens

62. A lien established over goods in terms of this Part ends if –

- (a) the debt in respect of which the lien was established is paid to the Commissioner;
- (b) the goods are disposed of in terms of section 63; or
- (c) the customs authority for any reason releases the goods from the lien.

Disposal of lien goods

63. (1) If the debt in respect of which a lien has been established over goods in terms of this Part is not paid within a period prescribed by rule after the debt has become payable, or within any extended period granted in terms of section 846 of the Customs Control Act, the Commissioner may summarily dispose of –

- (a) the goods, if the debtor is the owner of the goods;
- (b) the debtor's share in the goods, if the debtor is the a co-owner of the goods; or
- (c) the debtor's title, right or interest in the goods in terms of a credit agreement under the National Credit Act, 2005, if the goods are subject such an agreement.

(2) Goods, or the debtor's share in the goods, or the debtor's title, right or interest in the goods in terms of a credit agreement, may be disposed of in terms of

subsection (1) 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.

(3) The debtor's title, right or interest in goods in terms of a credit agreement under the National Credit Act, 2005, may be disposed of in terms of this section only as may be agreed with the credit grantor.

(4) If goods that are subject to a lien in terms of this Part are attached in terms of a warrant of execution obtained by a third party, the Commissioner may, despite the Magistrates' Court Act, 1944 (Act No. 32 of 1944), and its rules –

- (a) remove the goods to a state warehouse or other place of security, if the goods are not already secured in a state warehouse or other place of security; and
- (b) dispose of the goods in accordance with subsection (1).

Application of proceeds realised for lien goods

64. (1) The proceeds realised for goods disposed of in terms of section **63** must be applied to pay the following claims in the order of preference as indicated below:

- (a) the debt referred to in section **26**;
- (b) any tax or penalties payable on the goods not covered by paragraph (a), and any interest payable on such tax or penalties;
- (c) any expenses incurred by the Commissioner in connection with the goods, including –
 - (i) costs of storing the goods in a state warehouse, if the goods were removed to a state warehouse; and
 - (ii) costs and expenses incurred by the Commissioner in terms of section **61** (4)(b);
- (d) any charges due in terms of section **550**(2) of the Customs Control Act to the licensee of a licensed state warehouse in connection with the goods, if the goods were removed to a licensed state warehouse;
- (e) any charges due to a person in charge of a place of security where the goods were kept, if the goods were removed to such a place; and
- (f) the debt for which a warrant of execution referred to in section **63**(4) was issued in respect of the goods, if such a warrant of execution was obtained and the Commissioner was notified of the warrant.

(2) Any surplus remaining after all claims in terms of subsection (1) have been met, must on written application by the debtor be paid to the debtor, provided that is received by the Commissioner within three years of the date of disposal of the goods.

(3) Any refund of any duty, administrative penalty or interest, or part of any duty, penalty or interest, or any other amount due to the debtor may be set off against a payment due to the debtor in terms of subsection (2)

Part 5: Other matters

Rules to facilitate implementation of this Chapter

65. The Commissioner may in terms of section **223** make rules to facilitate the implementation of this Chapter, including rules prescribing –

- (a) the methods that may be used to pay any duties and other amounts payable in terms of this Act;
- (b) receipts and other documents and other evidence that may be used as proof of payment of any duties and other amounts payable in terms of this Act;
- (c)

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

66. A person is guilty of an offence if that person –

- (a) fails to comply with section **58(1)**, **59(1)**, **60(1)** or **61(1)** or (4)(a);
- (b)

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

CHAPTER 4

REFUNDS AND DRAWBACKS

Purpose of this Chapter

- 67.** The purpose of this Chapter is to provide for –
- (a) the refund in specific circumstances of –
 - (i) any duty, administrative penalty or interest paid to the Commissioner in terms of this Act; or
 - (ii) any part of the duty, penalty or interest; and
 - (b) the drawback in specific circumstances of –
 - (i) any import duty paid to the Commissioner in terms of this Act; or
 - (ii) any part of the duty.

Circumstances in which duties, administrative penalties and interest may be refunded

- 68.** (1) The Commissioner may, subject to sections **70** and **71**, refund a duty, administrative penalty or interest paid to the Commissioner in terms of this Act –
- (a) if any of the circumstances set out in subsection (2) applies; or
 - (b) if the duty, penalty or interest is refundable in terms of –
 - (i) any other provision of this Act,⁴⁸ including a provision of the Customs Tariff; or
 - (ii) a provision of the Customs Control Act.⁴⁹
- (2) A duty, administrative penalty or interest may be refunded –
- (a) if the duty, penalty or interest was paid in error –
 - (i) on or in respect of goods or in circumstances in respect of which it was not payable;
 - (ii) by a person not liable for that duty, penalty or interest;
 - (iii) due to –
 - a clerical, typographical or other administrative mistake or an incorrect assumption on which the calculation of the duty, penalty or interest was based;
 - (iv) due to an incorrect self-assessment or assessment of that duty;
 - (v) due to an incorrect tariff classification of the goods on or in respect of which that duty, penalty or interest was paid;
 - (vi) due to an incorrect valuation of those goods; or
 - (vii) due to an incorrect origin decision in respect of those goods;

⁴⁸ See for instance **20** of this Act.

⁴⁹ See for instance sections **123(3)** and **572** of the Customs Control Act.

- (b) if, in the case of imported goods, the duty or other charge was paid on or in respect of –
- (i) goods of a higher value than the goods actually imported, due to the fact that the goods –
 - (aa) are of inferior quality;
 - (bb) are of faulty manufacture; or
 - (cc) at the time of import are not or were no longer in accordance with agreed specifications;
 - (ii) goods without taking into account any loss in volume or weight arising from natural causes whilst the goods were –
 - (aa) in temporary storage before clearance of the goods for home use; or
 - (bb) stored in a customs warehouse;
 - (iii) goods which after payment of that duty, penalty or interest but before release of the goods for home use diminished in value or deteriorated in condition;
 - (iv) goods in respect of which that duty, before the release of the goods for home use is reduced or withdrawn in terms of an amendment to the Customs Tariff;
 - (v) goods at the general rate of duty specified in the Customs Tariff for those goods and proof is produced that the goods qualify for a preferential rate of duty specified in the Customs Tariff;
 - (vi) goods that were damaged, destroyed or lost before the release of the goods for home use and section **520(2)(c)**, **521(2)(c)** or **522(2)(c)** of the Customs Control Act applies to the goods;
 - (vii) goods cleared for home use but before their release for home use were cleared for a permissible customs procedure;⁵⁰ or
 - (viii) goods cleared for home use if the customs authority refuses to release the goods for home use or withdraws the release of the goods for home use but allows the goods to be cleared for a customs procedure;⁵¹ or
- (c) if, in the case of any goods, the duty, penalty or interest was paid on or in respect of –
- (i) a quantity of goods in excess of the quantity of goods on or in respect of which it should actually have been paid;
 - (ii) goods that have subsequently been abandoned to the Commissioner in accordance with Chapter **26** of the Customs Control Act; or
 - (iii) goods that have been subsequently been destroyed under supervision of the customs authority.

⁵⁰ See section **114(1)** of the Customs Control Act.

⁵¹ See section **122** of the Customs Control Act.

(3) If a circumstance set out in subsection (2) applies only to a part of the duty, penalty or interest paid to the Commissioner or only to a part of the goods on or in respect of which the duty, penalty or interest was paid, any refund on the ground of that circumstance must be reduced proportionally.

Circumstances in which drawbacks may be given

69. (1) The Commissioner may, subject to sections **70** and **71**, give a drawback of an import duty paid on imported goods if the goods on which the duty was paid, or compensating products obtained from those goods, are exported from the Republic –

- (a) without being put into home use; or
- (b) in any other circumstances recognised by the Customs Tariff for purposes of a drawback.

(2) If a circumstance stated in subsection (1) applies only to a part of the goods on which the import duty was paid, any drawback of that duty in terms of that subsection must be reduced proportionally.

Refunds and drawbacks in terms of Customs Tariff

70. (1) If and to the extent that the Customs Tariff provides for refunds or drawbacks of duty paid on goods specified in the Customs Tariff, the Commissioner must apply the provisions of the Customs Tariff applicable to those goods when giving refunds or drawbacks on those goods.

(2) A refund or drawback on goods referred to in subsection (1) may be given only –

- (a) in accordance with the terms and conditions specified in the Customs Tariff in relation to refunds or drawbacks on those goods;
- (b) to the extent specified in the Customs Tariff; and
- (c) to –
 - (i) the person who paid the duty on the relevant goods; or
 - (ii) a person specified in the Customs Tariff in relation to refunds or drawbacks on the relevant goods.

Applications for refunds and drawbacks

71. (1) The Commissioner may refund a duty, administrative penalty or interest or a drawback of an import duty only on application by the person who paid the duty, penalty or interest, or that person's duly appointed representative.

(2) If the Customs Tariff provides for refunds or drawbacks of duty paid on goods specified in the Customs Tariff, an application referred to in subsection (1) may be lodged only by a person specified in the Customs Tariff.

Manner of applying for refunds or drawbacks

- 72.** An application for a refund or drawback referred to in section **71** must be –
- (a) submitted to the customs authority on a form as may be prescribed by rule;
 - (b) accompanied by a motivation justifying the refund or drawback;
 - (c) supported by any necessary documents and other evidence to prove –
 - (i) that the refund or drawback is justified; and
 - (ii) that the applicant is the person entitled to the refund or drawback; and
 - (d) comply with such other requirements relating to the submission of applications as may be prescribed in the rules or determined in the Customs Tariff.

Time within which applications must be submitted

73. An application for a refund or drawback referred to in section **71** must be submitted to the customs authority within a period as may be prescribed by rule or provided for in the Customs Tariff.

Consideration of applications

- 74.** (1) The Commissioner must consider an application for a refund or drawback referred to in section **71** but may refuse to consider the application if –
- (a) the application does not comply with section **72**;
 - (b) the applicant refuses to afford a customs officer a reasonable opportunity –
 - (i) to examine the goods in respect of which the application is made; or
 - (ii) to verify the reason for the application;
 - (c) the application was not submitted in accordance with the applicable time provisions referred to in section **73**; or
 - (d) the applicant is a person who –
 - (i) has persistently contravened or failed to comply with a provision of this Act; or
 - (ii) has been convicted during the five years preceding the date of the application of an offence in terms of this Act involving duty evasion.
- (2) The Commissioner may –
- (a) approve an application; or
 - (b) refuse an application.

(3) No application for a drawback may be refused by the Commissioner only because the importer at the time of importation of the goods did not state an intention of claiming a drawback when the goods, or compensating products obtained from those goods, are exported.

(4) (a) If the Commissioner approves an application for a refund or drawback of a duty, the Commissioner is not obliged to refund any interest or any administrative penalty paid in connection with the duty by reason only of the approval of the application for a refund or drawback of the duty.

(b) Paragraph (a) does not prevent a person from applying in terms of this section for a refund of any such interest or penalty.

Re-submission of previously rejected applications

75. An application for a refund or drawback referred to in section **71** that was previously rejected by the Commissioner because of non-compliance with section **74(2)(a)** or (b) may be corrected and resubmitted to the customs authority.

Refunds without application

76. (1) The Commissioner may, despite the provisions of this Chapter requiring persons claiming refunds of duties, penalties or interest to submit an application for the refund, issue a general directive authorising refunds without application of, penalties or interest paid or overpaid in error in circumstances set out in the directive.

(2) No directive issued in terms of subsection (1) may authorise refunds of duties, penalties or interest paid or overpaid due to errors in tariff classification, valuation or origin.

Minimum amounts

77. No refund or drawback may be given for amounts less than –

- (a) R100, in the case of goods imported or exported by post; or
- (b) R50, in the case of goods imported or exported otherwise than by post.

Refunds or drawbacks authorised by permits issued by other bodies or persons

78. (1) The Customs Tariff may, despite the provisions of this Chapter, provide for –

- (a) refunds or drawbacks of duty to be authorised by permit issued by an organ of state body or person other than the Commissioner;
- (b) the persons who may apply for such refunds or drawbacks;
- (c) the circumstances in which and the conditions on which such permits may be issued;

- (d) procedures to regulate the submission of such applications and the issue of such permits; and
- (e) time limitations on the submission of such applications and the issue of such permits.

(2) A permit referred to in subsection (1) may not be issued retrospectively except with the concurrence of the Minister.

Recovery of refunds and drawbacks in certain circumstances

79. (1) The Commissioner must recover a refund or drawback paid in terms of this Chapter to a person if payment of the refund or drawback –

- (a) was made in error; or
- (b) becomes recoverable by the Commissioner in terms of a provision of the Customs Control Act.⁵²

(2) The Commissioner may recover a refund or drawback from the person to whom the refund or drawback was paid as if the amount of the refund or drawback were a duty payable by that person.

Set-off of refunds or drawbacks against amounts owing

80. Where a refund or drawback is in terms of this Chapter due to a person who has failed to pay an amount of tax, duty, levy, charge, interest or administrative penalty levied or imposed under this Act or any other legislation administered by the Commissioner within the period required for payment of the amount, the Commissioner may set off the amount of such refund or drawback against the amount which that person has failed to pay.

Interest on duties refunded

81. (1) If an amount is refunded to a person in terms of this Chapter, that person is entitled, in addition to the refund, to interest on the amount of the refund at a rate determined by the Minister in terms of section **51**(1) for a period beginning on the day the amount was paid to the day the amount is refunded.

(2) Interest determined in terms of subsection (1) must be compounded on daily balances.

⁵² See for instance section **153**(1)(c) of the Customs Control Act.

Rules to facilitate implementation of this Chapter

82. The Commissioner may in terms of section **223** 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

83. 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 ASSESSMENT OF DUTIES

Purpose and application of this Chapter

- 84.** (1) The purpose of this Chapter is to provide for the assessment of duty on goods.
- (2) This Chapter applies to all dutiable goods –
- (a) imported into the Republic and –
- (i) cleared for home use or a customs procedure that renders the goods subject to the payment of import duty;⁵³ or
- (ii) regarded for tax purposes in terms of a provision of the Customs Control Act as having been cleared for home use in terms of Chapter **10** of that Act; or
- (b) exported or to be exported from the Republic and –
- (i) cleared for outright export or another customs procedure that renders the goods subject to the payment of export duty;⁵⁴ or
- (ii) regarded for tax purposes in terms of a provision of the Customs Control Act as having been cleared for outright export.

Key factors of duty assessments

- 85.** (1) When assessing goods for duty purposes, the dutiability of the goods and the amount of duty payable on the goods must be determined with reference to –
- (a) the tariff classification of the goods as determined in accordance with Chapter **6**;
- (b) (i) the customs value of those goods as determined in accordance with Chapter **7**, if the duty is imposed by value; or
- (ii) the quantity, weight, volume or measurement of those goods, if the duty is imposed by quantity, weight, volume or measurement;
- (c) the origin of those goods as determined in accordance with Chapter **8**, if the dutiability of, or the amount of duty on, the goods is affected by the origin of the goods;
- (d) the rate of duty applicable to those goods; and

⁵³ Clearance for home use in terms of Chapter **10** of the Customs Control Act renders goods subject to the payment of any import duty that may have been imposed. Clearance of imported goods for inward processing or processing for home use may render the goods subject to the payment of a part of any applicable import duty.

⁵⁴ Clearance for outright export renders goods subject to the payment of any export duty that may have been imposed. Clearance of goods for outward processing may render the goods subject to the payment of a part of any applicable export duty.

(e) any other specific factors regulating the duty or the calculation of the amount of duty that may be payable on those goods.

(2) Duty must be assessed in accordance with the applicable provisions of this Act.

(3) This section must be complied with by –

- (a) a person making a self-assessment of the duty that may be payable on goods; and
- (b) the customs authority assessing or re-assessing the duty that may be payable on goods.

Applicable rate of duty

86. (1) The rate of import duty to be applied to goods –

- (a) cleared for home use or a customs procedure that renders the goods subject to the payment of import duty, is the rate applicable to the goods at the time when the goods are cleared for home use or that customs procedure,⁵⁵ or
- (b) regarded for tax purposes in terms of a provision of the Customs Control Act as having been cleared for home use in terms of Chapter **10** of that Act, is the rate applicable to the goods at the time when the customs authority commences with the assessment of duty in terms of section **90**(1).

(2) The rate of export duty to be applied to goods –

- (a) cleared for outright export or another customs procedure that renders the goods subject to the payment of export duty, is the rate applicable to the goods at the time when the goods are cleared for outright export or that customs procedure,⁵⁶ or
- (b) regarded for tax purposes in terms of a provision of the Customs Control Act as having been cleared for outright export, is the rate applicable to the goods at the time when the customs authority commences with the assessment of duty in terms of section **90**(1).

Flat rate for low value goods

87. (1) Duty payable on any non-commercial goods of a customs value of R2 000 or less may be assessed at a flat rate of six per cent of the customs value of the goods despite any other provision of this Act determining a higher or lower rate of duty for the goods in question.

⁵⁵ For time when goods are cleared for home use or a customs procedure see section **166** of the Customs Control Act.

⁵⁶ For time when goods are cleared for a customs procedure see section **166** of the Customs Control Act.

(2) Subsection (1) does not apply if the person who has to pay the duty requests that the goods be assessed in accordance with section **86**.

Self-assessment of duty by persons clearing goods

88. (1) A person who submits a clearance declaration⁵⁷ to clear goods for home use, outright export or another customs procedure that may render the goods subject to the payment of import or export duty must –

- (a) calculate the amount of duty payable on the goods (if any) by making a self-assessment on a worksheet as may be prescribed by rule with reference to each of the key assessment factors applicable to the goods;
- (b) state on the clearance declaration –
 - (i) the amount of duty payable on the goods (if any) in accordance with the self-assessment; and
 - (ii) any other particulars concerning the self-assessment as may be prescribed by rule; and
- (c) on request by the customs authority submit the worksheet to the customs authority.

(2) A person referred to in subsection (1) must keep the worksheet for a period of at least five years.

Assessments of duty by customs authority

89. (1) The customs authority must before releasing goods cleared for home use or a customs procedure –

- (a) determine the dutiability of the goods; and
- (b) if dutiable, assess the amount of duty payable on the goods.

(2) The customs authority must assess any duty payable on the goods by either –

- (a) adopting any self-assessment of the amount of duty as stated on the clearance declaration of the goods as its own assessment of the duty payable on the goods; or
- (b) making its own assessment of the amount of any duty payable on the goods.

(3) The customs authority must give notice to the person liable for any duty payable on the goods of –

- (a) the amount of the duty as assessed in terms of subsection (2)(a) or (b); and

⁵⁷ See section **159**(1)(a) of the Customs Control Act.

- (b) the time within which that amount must be paid to the Commissioner.⁵⁸

Duty assessments when goods are regarded as having been cleared for home use or outright export

90. (1) If in terms of a provision of the Customs Control Act goods are for tax purposes regarded as having been cleared for home use in terms of Chapter **10** of that Act or for outright export and duty is payable on those goods, the customs authority must –

- (a) assess the amount of duty payable on those goods; and
(b) give notice to the person liable for the duty of –
(i) the amount of duty payable on the goods; and
(ii) the time within which that amount must be paid to the Commissioner.

(2) Before making an assessment in terms of subsection (1), the customs authority may direct the person liable for the duty –

- (a) to make a self-assessment of the duty payable on the goods, substantially in accordance with section **88**(1)(a); and
(b) to submit the self-assessment to the customs authority within a specified period.

Duty re-assessments by customs authority

91. (1) The customs authority may, subject to section **92** –

- (a) re-assess any duty payable in respect of goods as assessed by the customs authority in terms of section **89**(2)(a) or (b) or **90**(1)(a); or
(b) re-assess any duty payable in respect of goods as re-assessed in terms of paragraph (a).

(2) More than one re-assessment may, as necessary, be made in terms of subsection (1)(b).

(3) A re-assessment in terms of subsection (1) may be made in respect of goods despite the fact that –

- (a) duty on the goods has been paid; or
(b) the goods are no longer subject to customs control.

(4) When making a re-assessment in terms of subsection (1), the customs authority is not obliged to make the re-assessment with reference to all the key assessment

⁵⁸ The customs authority may in terms of section **119** of the Customs Control Act, as a pre-condition for the release of goods, require a person who submitted a clearance declaration to provide security for any shortfall on any duty that may subsequently be discovered.

factors, but may for purposes of the re-assessment accept the determination of any key assessment factor in any previous assessment.

(5) If the customs authority makes a re-assessment in terms of subsection (1), it must give notice to the person liable for the duty on the goods of –

- (a) the amount of the duty as re-assessed in terms of subsection (1); and
- (b) the time within which that amount must be paid to the Commissioner, subject to subsection (6)

(6) If an amount of duty has been paid following an assessment in terms of section **89(2)(a)** or (b) or **90(1)(a)** or a previous re-assessment in terms of subsection (1) of this section, and that amount –

- (a) is less than the amount referred to in subsection (5)(a), the person liable for the duty must pay the shortfall within the period referred to in subsection (5)(b); or
- (b) exceeds the amount referred to in subsection (5)(a), the person who paid the duty is entitled to a refund of the excess in accordance with Chapter 4.

Time limits on duty re-assessments

92. (1) A re-assessment of duty in respect of goods by the customs authority in terms of section **91(1)** may be made at any time within three years from the date of assessment of duty on the goods in terms of section **89(2)(a)** or (b) or **90(1)(a)**.

(2) Subsection (1) does not prevent the customs authority from making a re-assessment after the expiry of the period referred to in subsection (1) if the re-assessment is necessary to rectify an underpayment or non-payment of duty that occurred as a result of fraud, misrepresentation, a false declaration or non-disclosure of material facts.

Mandatory re-assessments of duty

93. The customs authority must, subject to section **92**, re-assess any duty that may be payable on a consignment of goods in terms of section **91** if the dutiability of those goods or the amount of duty paid or payable on those goods is affected by –

- (a) a tariff determination in terms of section **106(3)(b)** or **108**, or a tariff re-determination in terms of section **110**;
- (b) a value determination in terms of section **125(3)(b)** or **127**, or a value re-determination in terms of section **129**;
- (c) an origin determination in terms of section **164(3)(b)** or **166**, or an origin re-determination in terms of section **168**;

- (d) a direction in terms of section **114(2)**, **133(2)** or **172(2)** or an amendment to such a direction;
- (e) an advance ruling in terms of section **205** or an amendment to an advance ruling in terms of section **209**;
- (f) an order issued in an appeal in terms of Chapter **38** of the Customs control Act; or
- (g) an order of court.

Requests for additional information

94. The customs authority may request any of the following persons to furnish it within a specified period with any information or documents required by the customs authority for considering or making a duty assessment or re-assessment in respect of goods:

- (a) a person who submitted a clearance declaration in respect of the goods;
- (b) a person who made a self-assessment of duty payable on the goods;
- (c) a person who is liable for duty that may be payable on the goods or who has paid duty on the goods; or
- (d) the owner of the goods or any other person who has a material interest in the goods.

Duty assessments or re-assessments in absence of sufficient information

95. The customs authority may base a duty assessment or re-assessment on the best information available to it if –

- (a) particulars of the goods in respect of which the duty assessment or re-assessment is made or the underlying transaction which caused the goods to be imported into or exported from the Republic, as the case may be, are not disclosed or not sufficiently disclosed in the clearance declaration or any supporting documents; or
- (b) information or documents necessary for considering or making the duty assessment or re-assessment were not furnished following a request in terms of section **94**.

When assessments become final

96. (1) (a) If the customs authority does not in terms of section **91** make a re-assessment of duty on goods within the three years' period referred to in section **92**, any assessment made in terms of section **89(2)(a)** or (b) or **90(1)(a)** in respect of those goods becomes the final assessment of duty on those goods.

(b) If the customs authority has in terms of section **91** made one or more re-assessments of duty on goods within the three years' period referred to in section **92**, that or the latest re-assessment becomes the final assessment of duty on those goods.

(2) Subsection (1) does not apply if –

- (a) any duty re-assessment in terms of section **91** after the expiry of the three years' period referred to in section **92**, is necessary to rectify an underpayment or non-payment of duty which occurred as a result of fraud, misrepresentation, a false declaration or non-disclosure of material facts; or
- (b) the person liable for the duty –
 - (i) lodges an administrative appeal in terms of Part **3** of Chapter **38** of the Customs Control Act against the assessment or the determination of any key assessment factor⁵⁹ in respect of the assessment; or
 - (ii) institutes judicial proceedings to appeal against or for a review of the assessment or the determination of any key assessment factor in respect of the assessment.

Remedies available to aggrieved persons

- 97.** (1) A person aggrieved by a duty assessment or duty re-assessment may –
- (a) lodge an administrative appeal in terms of Part **3** of Chapter **38** of the Customs Control Act against the assessment or re-assessment, subject to subsection (3); or
 - (b) institute judicial proceedings to appeal against or for a review of the assessment or re-assessment.

- (2) An administrative appeal referred to in subsection (1)(a) –
- (a) must be lodged within a period of one month from the date of the relevant duty assessment or re-assessment; and
 - (b) may only be heard by a specialised appeal committee referred to in section **816(2)(a)** of the Customs Control Act.

(3) The proceedings referred to in Parts **2** and **4** of Chapter **38** of the Customs Control Act are not available to persons aggrieved by duty assessments or re-assessments.

Duty assessments and re-assessments presumed to be correct

98. A duty assessment by the customs authority in terms of section **89(1)(a)** or (b) or **90(1)(a)** or a re-assessment by the customs authority in terms of section **91(1)**, must be presumed to be correct , subject to –

- (a) any later re-assessment by the customs authority in terms of section **91**;
- (b) any administrative appeal in terms of Part **3** of Chapter **38** of the Customs Control Act against the assessment or re-assessment;
- (c) any appeal to, or review by, a court of the assessment or re-assessment.

⁵⁹ See section **85**.

Effect of administrative appeals or judicial proceedings on payment of duties

99. (1) The obligation on a person in terms of this Act to pay duty on goods and the right of the Commissioner to receive and recover duty in terms of this Act are not suspended by an administrative appeal in terms of Chapter **38** of the Customs Control Act or judicial proceedings in connection with that duty, but the Commissioner may, subject to the provision of security in terms of Chapter **31** of the Customs Control Act, defer payment of the duty pending the outcome of the appeal or judicial proceedings.

(2) If in terms of the outcome of an administrative appeal or judicial proceedings a person is entitled to a refund of any amount paid to the Commissioner, the Commissioner must promptly refund the amount to that person.

(3) If the Commissioner files an appeal against a decision taken in judicial proceedings referred to in subsection (2), the Commissioner is, pending the outcome of the appeal, not obliged to refund the amount.

Rules to facilitate implementation of this Chapter

100. The Commissioner may in terms of section **223** make rules to facilitate the implementation of this Chapter, including rules prescribing –

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

101. 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 TARIFF CLASSIFICATION OF GOODS

Part 1: General provisions

Purpose and application of this Chapter

102. (1) The purpose of this Chapter is to provide for the tariff classification of goods imported into or destined for export from the Republic.

(2) This Chapter applies to all goods cleared or to be cleared for home use or a customs procedure.

Tariff classification and interpretation of Customs Tariff

103. (1) The classification of any goods under a tariff heading, subheading or item specified in the Customs Tariff must be determined in accordance with this Act and the International Convention on the Harmonized Commodity Description and Coding System, subject to subsection (2).

(2) When classifying goods in terms of subsection (1) or interpreting the Customs Tariff, the Explanatory Notes and the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System issued by the Customs Co-operation Council⁶⁰ must be considered.

Keeping of updated versions of international instruments

104. The Commissioner must –

- (a) keep at SARS head office copies of –
 - (i) the International Convention on the Harmonized Commodity Description and Coding System; and
 - (ii) the Explanatory Notes and the Compendium of Classification Opinions referred to in section **103(2)**;
- (b) update from time to time these instruments with any amendments or additions notified by the Customs Co-operation Council; and
- (c) record the date of publication of the amendment or addition.

⁶⁰ Obtainable from the World Customs Organization website.

Part 2: Tariff self-determinations and tariff determinations and re-determinations**Tariff classification of goods to be stated when goods are cleared**

105. A person submitting a clearance declaration to clear goods for home use or a customs procedure must –

- (a) make a self-determination of the tariff classification of the goods irrespective of whether duty is payable on the goods; and
- (b) state the tariff classification of the goods made in terms of paragraph (a) on the clearance declaration.

Acceptance of tariff self-determinations or making of own tariff determinations by customs authority

106. (1) The customs authority may before releasing goods for home use or a customs procedure –

- (a) accept the tariff self-determination of the goods on the clearance declaration; or
- (b) refuse to accept that tariff self-determination and make its own determination of the tariff classification.

(2) The customs authority must for purposes of subsection (1)(a) be regarded as having accepted the tariff self-determination of goods as stated on the clearance declaration of the goods if it releases the goods without making its own tariff determination of the goods in terms of subsection (1)(b).

(3) If the customs authority accepts a tariff self-determination in terms of subsection (1)(a) or is regarded as having accepted a tariff self-assessment in terms of subsection (2), such acceptance –

- (a) may not be taken as a tariff determination of the goods by the customs authority in terms of subsection (1)(b); and
- (b) does not prevent the customs authority from making a tariff determination of the goods after the release of the goods.

(4) A tariff determination in terms of subsection (3)(b) may be made in respect of any goods despite the fact that –

- (a) duty on the goods has been paid; or
- (b) the goods are no longer subject to customs control.

Time limits on tariff determinations

107. (1) A tariff determination of goods in terms of section **106(3)(b)** may be made at any time, but if the goods have been assessed for duty purposes in terms of Chapter **5** no tariff determination may be made after the expiry of the period referred to in section **92**.

(2) Subsection (1) does not prevent the customs authority from making a tariff determination of any goods after the expiry of the period referred to in subsection (1) if the tariff self-determination of the goods is incorrect because of fraud, misrepresentation, a false declaration or non-disclosure of material facts.

Tariff classification in event of non-cleared goods

108. (1) If goods that must in terms of the Customs Control Act be cleared for home use or a customs procedure have not been cleared within the period applicable to the goods, the customs authority may –

- (a) direct the person who requires release of the goods or who is liable for any duty that may be payable on the goods, to make a self-determination of the tariff classification of the goods, and –
 - (i) to submit the tariff self-determination to the customs authority within a specified period; or
 - (ii) if the goods are in terms of a provision of the Customs Control Act required or allowed to be cleared despite the failure to clear the goods within the period applicable to the goods, to state the tariff self-determination on the clearance declaration; or
- (b) make its own determination of the tariff classification of the goods according to any information available to it without requiring a tariff self-determination.

(2) Sections **106** and **107** apply if the procedure in subsection (1)(a)(ii) is followed.

(3) This section does not apply if the goods are seized in terms of the Customs Control Act or any other applicable legislation.

Consistency of tariff self-determinations and tariff determinations with previous binding rulings

109. A tariff self-determination and a tariff determination of goods must be consistent with –

- (a) any previous tariff determination or re-determination that may be applicable to those goods in terms of section **114(2)**; or

- (b) any advance tariff ruling that may be applicable to those goods.

Re-determination of previous tariff determinations and re-determinations

110. (1) The customs authority may, subject to section **113**, re-determine the tariff classification of goods as –

- (a) determined by it in terms of section **106**(1)(b) or (3)(b) or **108**(1)(b); or
(b) re-determined by it in terms of paragraph (a).

(2) More than one tariff re-determination may, as necessary, be made in terms of subsection (1).

(3) A tariff re-determination in terms of subsection (1) may be made in respect of any goods despite the fact that –

- (a) duty on the goods has been paid;⁶¹ or
(b) the goods are no longer subject to customs control.

(4) A tariff re-determination in respect of goods replaces the previous tariff determination or tariff re-determination which was in force.

(5) A tariff re-determination of goods in terms of subsection (1) must be consistent with any advance tariff ruling that may be in force in respect of those goods.

Time limits on tariff re-determinations

111. (1) A tariff re-determination of goods may be made at any time, but if the goods have been assessed for duty purposes in terms of Chapter **5** no tariff re-determination may be made after the expiry of the period referred to in section **92**.

(2) Subsection (1) does not prevent the customs authority from making a tariff re-determination of any goods after the expiry of the period referred to in subsection (1) if the existing tariff determination or re-determination previously made in respect of the goods is incorrect because of fraud, misrepresentation, a false declaration or non-disclosure of material facts.

⁶¹ Section **93** compels the customs authority to carry out a re-assessment of duty payable on a consignment of goods if the duty payable on the goods is affected by a tariff re-determination in terms of section **110**.

Part 3: Provisions applicable to all tariff determinations and re-determinations**Requests for information and documents**

112. The customs authority may request any of the following persons to furnish it within a specified period with any information or documents required by the customs authority for considering or making a tariff determination or re-determination in respect of any goods:

- (a) a person who submitted a clearance declaration in respect of the goods;
- (b) a person who made an origin self-determination of the goods;
- (c) a person who is liable for duty that may be payable on the goods or who has paid duty on the goods; or
- (d) the owner of the goods or any other person who has a material interest in the goods.

Tariff determinations or re-determinations in absence of sufficient information

113. The customs authority may base a tariff determination or re-determination on the best information available to it if –

- (a) particulars of the goods in respect of which the tariff determination or re-determination is made or the underlying transaction which caused the goods to be imported into or exported from the Republic, as the case may be, are not disclosed or not sufficiently disclosed in the clearance declaration or any supporting documents; or
- (b) information or documents necessary for considering or making the tariff determination or re-determination were not furnished following a request in terms of section **112**.

Goods to which tariff determinations and re-determinations apply

114. (1) A tariff determination or re-determination of any goods applies only to the consignment of goods in respect of which it was made unless the customs authority determines otherwise in terms of subsection (2).

(2) The customs authority may direct that a tariff determination or re-determination must be applied also to goods of the same type, kind or brand –

- (a) that were previously cleared for home use or a customs procedure by or on behalf of the same person within the period of three years preceding the date of the determination or re-determination; or
- (b) that may be cleared for home use or a customs procedure by or on behalf of the same person within three years following the date of the determination or re-determination.

(3) The customs authority may at any time reconsider a direction in terms of subsection (2) and either confirm, amend or withdraw the direction.

Correction of tariff determinations and re-determinations

115. (1) The customs authority may on discovery of any error in a tariff determination or re-determination correct the error by notice to –

- (a) a person who submitted a clearance declaration in respect of the goods;
- (b) a person who made a tariff self-determination of the goods;
- (c) a person who is liable for duty that may be payable on the goods or who has paid duty on the goods; or
- (d) the owner of the goods or any other person who has a material interest in the goods.

(2) A correction in terms of subsection (1) may be made at any time, but if the goods have been assessed for duty purposes in terms of Chapter 5 no correction affecting the amount of duty payable may be made after the expiry of the period referred to in section 92.

(3) Subsection (2) does not prevent the customs authority from correcting a tariff determination or re-determination of any goods after the expiry of the period referred to in subsection (2) if the tariff determination or re-determination is incorrect because of fraud, misrepresentation, a false declaration or non-disclosure of material facts.

Remedies available to aggrieved persons

116. (1) A person aggrieved by a tariff determination, or re-determination or a correction of a tariff determination or re-determination, may –

- (a) lodge an administrative appeal in terms of Part 3 of Chapter 38 of the Customs Control Act against the determination, re-determination or correction, subject to subsection (3); or
- (b) institute judicial proceedings to appeal against or for a review of the determination, re-determination or correction.

(2) An administrative appeal referred to in subsection (1)(a) –

- (a) must be lodged within a period of one month from the date of the relevant tariff determination or re-determination or the relevant correction of the determination or re-determination; and
- (b) may only be heard by a specialised appeal committee referred to in section 806(2)(a) of the Customs Control Act.

(3) The proceedings referred to in Parts 2 and 4 of Chapter 38 of the Customs Control Act are not available to persons aggrieved by tariff determinations or re-determinations.

Tariff self-determinations and tariff determinations or re-determinations presumed to be correct except when replaced, amended, set aside or corrected

117. (1) A tariff self-determination accepted by the customs authority in terms of section 107(1)(a) must be presumed to be correct and must be applied except when replaced by a tariff determination.

(2) A tariff determination or re-determination must be presumed to be correct and must be applied except when replaced, amended, set aside or corrected, as may be appropriate, by –

- (a) the customs authority in terms of section 110, 114(2) or 115;
- (b) an advance tariff ruling in terms of Chapter 10;
- (c) a decision in an administrative appeal in terms of Part 3 of Chapter 38 of the Customs Control Act; or
- (d) a court.

Part 4: Other matters

Publication of tariff determinations

118. (1) The Commissioner may make public particulars of any tariff determination or re-determination in such a manner and containing such information as the Commissioner may determine.

Rules to facilitate implementation of this Chapter

119. The Commissioner may in terms of section 223 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

120. 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 7 VALUATION OF GOODS

Part 1: Introductory provisions

Purpose and application of this Chapter

121. (1) The purpose of this Chapter is –

- (a) to regulate the valuation of goods for customs purposes;
- (b) to enforce the use of valuation methods internationally accepted for the valuation of goods for customs purposes;⁶² and
- (c) to provide for currency conversions in the valuation of goods for customs purposes.

(2) This Chapter applies to all goods cleared or to be cleared for home use or a customs procedure.

Relevant international instruments

122. When valuing goods in terms of this Chapter, the following international instruments must be considered, but are not binding for the purpose of such valuation:

- (a) Article VII of the General Agreement on Tariffs and Trade, 1994, and the Note to Article VII of that Agreement;
- (b) the WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, 1994, and the Interpretative Notes to the Agreement;
- (c) Decisions taken by the Committee on Customs Valuation of the WTO; and
- (d) Instruments issued by the Technical Committee on Customs Valuation of the WTO, including –
 - (i) Advisory Opinions;
 - (ii) Commentaries;
 - (iii) Explanatory Notes; and
 - (iv) Case Studies; and
 - (v) Studies.

⁶² Valuation methods agreed to under the WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, 1994

Part 2: Value self-determinations and value determinations**Applicable provisions**

123. The customs value of –

- (a) goods imported into the Republic must be established in accordance with Part **4** of this Chapter, except specific imported goods mentioned in Part **5** which must be established in accordance with that Part; and
- (b) goods destined for export from the Republic must be established in accordance with Part **6** of this Chapter.

Value self-determination of goods when goods are cleared

124. (1) A person submitting a clearance declaration to clear goods for home use or a customs procedure must –

- (a) make a value self-determination of the customs value of the goods on a worksheet as may be prescribed by rule irrespective of whether duty is payable on the goods; and
- (b) state the customs value of the goods determined in terms of paragraph (a) on the clearance declaration; and
- (c) on request by the customs authority submit the worksheet to the customs authority.

(2) (a) In the case of imported goods, the clearance declaration must also indicate –

- (a) the valuation method which was used to determine the customs value of the goods; and
- (b) if the primary valuation method was use, whether the person who purchased the goods for export to the Republic and the seller have a close family, personal, employment or business relationship within the meaning of section **141**, and, if so, details of that relationship.

(3) A person referred to in subsection (1) must keep the worksheet for a period of at least five years.

Acceptance of value self-determinations or making of own value determinations by customs authority

125. (1) The customs authority may before releasing goods for home use or a customs procedure –

- (a) accept the value self-determination of the goods as stated on the clearance declaration; or

- (b) refuse to accept that value self-determination and make its own determination of the customs value of the goods.

(2) The customs authority must for purposes of subsection (1)(a) be regarded as having accepted the value self-determination of goods as stated on the clearance declaration if it releases the goods without making its own value determination of the goods in terms of subsection (1)(b).

(3) If the customs authority accepts a value self-determination in terms of subsection (1)(a) or is regarded as having accepted a value self-determination in terms of subsection (2), such acceptance –

- (a) may not be taken as a value determination of the goods by the customs authority in terms of subsection (1)(b); and
- (b) does not prevent the customs authority from making a value determination after the release of the goods.

(4) A value determination of goods in terms of subsection (3)(b) may be made in respect of any goods despite the fact that –

- (a) duty on the goods has been paid; or
- (b) the goods are no longer subject to customs control.

Time limits on value determinations

126. (1) A value determination of goods in terms of section **125**(3)(b) may be made at any time, but if the goods have been assessed for duty purposes in terms of Chapter **5** no value determination may be made after the expiry of the period referred to in section **92**.

(2) Subsection (1) does not prevent the customs authority from making a value determination of any goods after the expiry of the period referred to in subsection (1) if the value self-determination of the goods is incorrect because of fraud, misrepresentation, a false declaration or non-disclosure of material facts.

Determination of value in event of non-cleared goods

127. (1) If goods that must in terms of the Customs Control Act be cleared for home use or a customs procedure have not been cleared within the period applicable to the goods, the customs authority may –

- (a) direct the person who requires release of the goods or who is liable for any duty that may be payable on the goods, to make a value self-determination of the goods, and –

- (i) to submit the value self-determination to the customs authority within a specified period; or
 - (ii) if the goods are in terms of a provision of the Customs Control Act required or allowed to be cleared despite the failure to clear the goods within the period applicable to the goods, to state the value self-determination on the clearance declaration; or
- (b) make its own determination of the customs value of the goods according to any information available to it without requiring a value self-determination.

(2) Sections **125** and **126** apply if the procedure in subsection (1)(a)(ii) is followed.

(3) This section does not apply if the goods are seized in terms of the Customs Control Act or any other applicable legislation.

Consistency of value self-determinations and value determinations with previous binding rulings

128. The valuation factors used in making a value self-determination or value determination of any goods must be consistent with –

- (a) the valuation factors used in any previous value determination or re-determination that may be applicable to those goods in terms of section **133(2)(b)**; or
- (b) any advance ruling on a valuation factor that may be applicable to those goods.

Re-determination of previous value determinations and re-determinations

129. (1) The customs authority may, subject to section **130**, re-determine the customs valuation of goods as –

- (a) determined by it in terms of section **125(1)(b)** or (3)(b) or **127(1)(b)**; or
- (b) re-determined by it in terms of paragraph (a).

(2) More than one value re-determination may, as necessary, be made in terms of subsection (1).

(3) A value re-determination or in terms of subsection (1) may be made in respect of any goods despite the fact –

- (a) that duty on the goods has been paid;⁶³ or

⁶³ Section **93** compels the customs authority to carry out a re-assessment of duty payable on a consignment of goods if the duty payable on the goods is affected by a value re-determination of the goods in terms of section **129**.

(b) that the goods are no longer subject to customs control.

(4) A value re-determination in respect of goods replaces the previous value determination or value re-determination which was in force.

(5) Any valuation factors used in a value re-determination of goods in terms of subsection (1) must be consistent with any advance ruling of on a valuation factor that may be in force in respect of those goods.

Time limits on value re-determinations

130. (1) A value re-determination of goods may be made at any time, but if the goods have been assessed for duty purposes in terms of Chapter 5 no value re-determination or may be made after the expiry of the period referred to in section 92.

(2) Subsection (1) does not prevent the customs authority from making a value re-determination of any goods after the expiry of the period referred to in subsection (1) if the existing value determination or re-determination previously made in respect of the goods is incorrect because of fraud, misrepresentation, a false declaration or non-disclosure of material facts.

Part 3: Provisions applicable to all value determinations and re-determinations

Requests for information and documents

131. The customs authority may request any of the following persons to furnish it within a specified period with any information or documents required by the customs authority for considering or making a value determination or re-determination in respect of any goods:

- (a) a person who submitted a clearance declaration in respect of the goods;
- (b) a person who made a value self-determination of the goods;
- (c) a person who is liable for duty that may be payable on the goods or who has paid duty on the goods; or
- (d) the owner of the goods or any other person who has a material interest in the goods.

Value determinations or re-determinations in absence of sufficient information

132. The customs authority may base a value determination or re-determination on the best information available to it if –

- (a) particulars of the goods in respect of which the value determination or re-determination is made or the underlying transaction which caused the goods to be
-

- imported into or exported from the Republic, as the case may be, are not disclosed or not sufficiently disclosed in the clearance declaration or any supporting documents; or
- (b) information or documents necessary for considering or making the value determination or re-determination were not furnished following a request in terms of section 131.

Goods to which customs value determinations and re-determinations apply

133. (1) A value determination or re-determination of any goods applies only to the consignment of goods in respect of which it was made unless the customs authority determines otherwise in terms of subsection (2).

(2) The customs authority may direct that a valuation factor used in a value determination or re-determination must be applied also for determining the customs value per unit or quantity of goods of the same type, kind or brand –

- (a) that were previously cleared for home use or a customs procedure by or on behalf of the same person within three years preceding the date of the value determination or re-determination; or
- (b) that may be cleared for home use or a customs procedure by or on behalf of the same person within three years following the date of the value determination or re-determination.

(3) The customs authority may at any time reconsider a direction in terms of subsection (2) and either confirm, amend or withdraw the direction.

Rounding off of customs values

134. When determining the customs value of any goods, the amount determined must be rounded off to the nearest Rand.

Correction of value determinations and re-determinations

135. (1) The customs authority may on discovery of any error in a value determination or re-determination correct the error by notice to –

- (a) a person who submitted a clearance declaration in respect of the goods;
- (b) a person who made an origin self-determination of the goods;
- (c) a person who is liable for duty that may be payable on the goods or who has paid duty on the goods; or
- (d) the owner of the goods or any other person who has a material interest in the goods.

(2) A correction in terms of subsection (1) may be made at any time, but if the goods have been assessed for duty purposes in terms of Chapter 5 no correction affecting the amount of duty payable may be made after the expiry of the period referred to in section 92.

(3) Subsection (2) does not prevent the customs authority from correcting a value determination or re-determination of any goods after the expiry of the period referred to in subsection (2) if the value determination or re-determination is incorrect because of fraud, misrepresentation, a false declaration or non-disclosure of material facts.

Remedies available to aggrieved persons

136. (1) A person aggrieved by a value determination or re-determination or a correction of a value determination or re-determination may –

- (a) lodge an administrative appeal in terms of Part 3 of Chapter 38 of the Customs Control Act against the determination, re-determination or correction, subject to subsection (3); or
- (b) institute judicial proceedings to appeal against or for a review of the determination, re-determination or correction.

(2) An administrative appeal referred to in subsection (1)(a) –

- (a) must be lodged within a period of one month from the date of the relevant value determination or re-determination or the relevant correction of the value determination or re-determination; and
- (b) may only be heard by a specialised appeal committee referred to in section 816(2)(a) of the Customs Control Act.

(3) The proceedings referred to in Parts 2 and 4 of Chapter 38 of the Customs Control Act are not available to persons aggrieved by value determinations or re-determinations.

Value self-determinations and value determinations or re-determinations presumed to be correct except when replaced, amended, set aside or corrected

137. (1) A value self-determination accepted by the customs authority in terms of section 123(1)(a) must be presumed to be correct and must be applied except when replaced by a value determination.

(2) A value determination or re-determination must be presumed to be correct and must be applied except when replaced, amended, set aside or corrected, as may be appropriate, by –

- (a) the customs authority in terms of section **129**, **133(2)** or **135**;
- (b) an advance ruling on a valuation factor in terms of Chapter **10**;
- (c) a decision in an administrative appeal in terms of Part **3** of Chapter **38** of the Customs Control Act; or
- (e) a court.

Part 4: Valuation of imported goods

Primary valuation method

138. (1) The primary valuation method must for purposes of this Act be used for determining the customs value of a consignment of goods imported into the Republic unless that method cannot or may not in terms of section **140** be used for determining the customs value of the goods.

(2) In terms of the primary valuation method, the transaction value of the goods, determined in accordance with section **142**, must be taken as the customs value of the goods.

Alternative valuation methods

139. (1) If the primary valuation method cannot or may not in terms of section **140** be used for determining the customs value of any imported goods, the customs value of the goods must be determined in accordance with the first of the following alternative valuation methods, in the order below, that can be used to determine the customs value of the goods:

- (a) the identical goods method as set out in section **143**;
- (b) the similar goods method as set out in section **144**;
- (c) the deductive method as set out in section **145**;
- (d) the computed method as set out in section **146**; and
- (e) the fall-back method as set out in section **147**.

(2) The person who clears imported goods for home use or a customs procedure may choose that the order of applying subsections (1)(c) and (d) be reversed.

Circumstances when primary valuation method cannot or may not be used

140. (1) The circumstances when the primary valuation method cannot or may not be used for determining the customs value of a consignment of imported goods are the following:

- (a) The transaction in terms of which the goods were acquired for export to the Republic is not a contract of purchase and sale;
- (b) the transaction in terms of which the goods were acquired for export to the Republic is a contract of purchase and sale but was concluded otherwise than in the ordinary course of trade under fully competitive conditions;
- (c) there is for any reason no price actually paid or payable for the goods to use as the basis for determining a transaction value for the goods;
- (d) the price actually paid or payable for the goods is not substantiated by verifiable supporting documents;
- (e) the transaction in terms of which the goods were acquired for export to the Republic is subject to a term or condition which materially affected the price actually paid or payable for the goods, but for which a value cannot be determined;
- (f) there is a restriction as to the resale, disposal or use of the goods which materially affected the price actually paid or payable for the goods, whether the restriction was imposed in terms of legislation or the transaction in terms of which the goods were acquired for export to the Republic;
- (g) a special, arbitrary or abnormal discount, rebate or other reduction from the ordinary competitive price of the goods was or is to be given in connection with the transaction in terms of which the goods were acquired for export to the Republic, unless subsection (2) is applied;
- (h) a part of the proceeds of any resale, disposal or use of the goods accrued or will accrue to the seller, unless subsection (3) is applied;
- (i) the seller and the buyer have a close family, personal, employment or business relationship within the meaning of section **141**;
- (j) there is insufficient information to use the primary valuation method for determining the transaction value of the imported goods; or
- (k) there is reason to suspect that information provided for determining the transaction value of the imported goods is incorrect.

(2) If a special, arbitrary or abnormal discount, rebate or other reduction contemplated in subsection (1)(g) was or is to be given in connection with a transaction, the primary valuation method may despite that subsection be used for determining the customs value of the goods, provided that the amount of the discount, rebate or reduction is, in addition to the other amounts mentioned in section **142(2)**, added to the price actually paid or payable for the goods.

(3) If a part of the proceeds of any resale, disposal or use of the goods accrued or will accrue to the seller as contemplated in subsection (1)(h), the primary valuation method

may despite that subsection be used for determining the customs value of the goods, provided that the amount of the proceeds that accrued or will accrue to the seller is, in addition to the other amounts mentioned in section **142(2)**, added to the price actually paid or payable for the goods.

Relationship between contracting parties as disqualifying factor for primary valuation method

141. (1) For the purposes of section **140(1)(i)** –

- (a) a close family or personal relationship includes a relationship between a seller and a buyer as members of the same family, whether the relationship was established by –
 - (i) birth;
 - (ii) adoption;
 - (iii) marriage or other union;
 - (iv) engagement; or
 - (v) cohabitation;
- (b) a close employment relationship includes a relationship between a seller and a buyer as –
 - (i) employer and employee;
 - (ii) employees in the same firm;
 - (iii) director in the other's firm;
 - (iv) directors in the same firm; or
 - (v) employee and director in the same firm; and
- (c) a close business relationship includes a relationship between a seller and a buyer as –
 - (i) partners in the same firm;
 - (ii) a person and a firm of which that person is a partner;
 - (iii) members of the same close corporation;
 - (iv) a person and a close corporation of which that person is a member;
 - (v) a company and its controlling shareholder;
 - (vi) a controlling company and its subsidiary;
 - (vii) companies in the same group of companies;
 - (viii) companies which are directly or indirectly controlled by a third person; or
 - (ix) companies in which a third person holds or controls more than a five per cent stake in each of them.

(2) A business relationship between a seller and a buyer whereby the one acts as the agent, distributor or concessionary of the other is not a business relationship for

purposes of section 140(1)(i), provided that they are not otherwise related within the meaning of subsection (1)(a), (b) or (c) of this section.

(3) (a) The customs authority may despite section 140(1)(i) accept or use the transaction value of any imported goods as the customs value of the goods if the person clearing the goods proves, in accordance with paragraph (b) or in any other way, that the relationship between the seller and the buyer did not influence the price paid or payable for the goods.

(b) It must for purposes of paragraph (a) be accepted as sufficient proof that the relationship between the seller and the buyer did not influence the price paid or payable for the goods if the transaction value of the goods closely approximates the customs value of the goods determined in accordance with any one of the following alternative valuation methods:

- (i) the identical goods method as set out in section 143;
- (ii) the similar goods method as set out in section 144;
- (iii) the deductive method as set out in section 145; or
- (iv) the computed method as set out in section 146.

Determination of transaction value

142. (1) The transaction value of goods purchased for export to the Republic⁶⁴ is the price actually paid or payable for the goods adjusted by –

- (a) adding the amounts mentioned in subsection (2); and
- (b) deducting the amounts mentioned in subsection (3).

(2) The following amounts must be added to the price actually paid or payable for the goods by the buyer, but only to the extent that those amounts do not already form part of the price actually paid or payable by the buyer:

- (a) any commission other than buying commission;
- (b) brokerage;
- (c) the cost of –
 - (i) packing, including the cost of labour and materials; and
 - (ii) the cost of containers, which must be dealt with as being one with the goods;
- (d) the value, appropriately apportioned to the goods in accordance with any rules that may be prescribed, of any of the following items which were supplied directly or

⁶⁴ It does not matter whether the goods were purchased in the country from where the goods were exported to the Republic or on the high seas. See definition of “*export to the Republic*” in section 1 of the Customs Control Act which is wide enough to cover so-called sales on the high seas.

indirectly by the buyer free of charge or at reduced cost for use in the production, manufacture or sale for export to the Republic of the goods, namely –

- (i) materials, components, parts and articles forming part of the goods;
 - (ii) tools, dies, moulds and articles used in the production or manufacture of the goods;
 - (iii) materials consumed in the production or manufacture of the goods; and
 - (iv) engineering work, development work, art work, design work, plans and sketches undertaken elsewhere than in the Republic and necessary for the production or manufacture of the goods;
- (e) royalties and licence fees in respect of the goods, including payments for patents, trade marks and copyright and for the right to distribute or resell the goods, due directly or indirectly by the buyer as a condition of the sale of the goods for export to the Republic, but excluding charges for the right or licence to reproduce the goods in the Republic;
- (f) the value of any part of the proceeds of any subsequent resale, disposal or use of the goods that accrues directly or indirectly to the seller; and
- (g) transportation, loading, unloading, handling, insurance and associated costs incidental to delivery of the goods at the port or place of export in the country of exportation and placing those goods on board a vessel, aircraft, railway carriage or vehicle, at that port or place.

(3) The following amounts must be deducted from the price actually paid or payable for the goods by the buyer, but only to the extent that those amounts form part of the price actually paid or payable by the buyer and are distinguishable components of the price actually paid or payable:

- (a) the cost of transport of the imported goods –
- (i) from the port or place of export in the country of exportation to the place of entry in the Republic; or
 - (ii) if the goods were purchased after the goods left that port or place of export in the country of exportation, from the point where the goods were purchased to the place of entry in the Republic;
- (b) the cost of insurance of the goods –
- (i) from the port or place of export in the country of exportation to the place of entry in the Republic; or
 - (ii) if the goods were purchased after the goods left that port or place of export in the country of exportation, from the point where the goods were purchased to the place of entry in the Republic;

- (c) the loading, unloading and handling charges associated with the delivery of the goods at the place of entry in the Republic;
- (d) any expenditure incurred in the construction, erection, assembly or maintenance of, or technical assistance provided in respect of, the goods after their importation into the Republic;
- (e) the cost of transport and insurance of the goods in the Republic;
- (f) any duties and taxes paid or payable in the Republic on the importation into or the sale of the goods in the Republic;
- (g) any duties and taxes on the goods in the country of exportation from which the goods have been or will be relieved by way of refund, drawback or rebate;
- (h) buying commission;
- (i) interest charged in accordance with generally accepted accounting principles in respect of the price actually paid or payable for the goods, but this deduction is only permitted if –
 - (i) the financing arrangement in terms of which the interest is paid is in writing;
 - (ii) the buyer can prove, if requested by the customs authority, that the goods were actually purchased at the price declared as the price actually paid or payable, and that the claimed rate of interest does not exceed the level for transactions of that nature prevailing in the country where, and at the time when, the financing was provided; and
 - (iii) interest payments made by the buyer to the seller are not included in the price actually paid or payable where the payments are part of a separate, overall financing arrangement between the parties that bears no relationship to a particular sale; and
- (j) any charges for the right or licence to reproduce the goods in the Republic.

(4) Interest that must in terms of subsection (3)(i) be deducted from the price actually paid or payable for the goods excludes any –

- (a) interest arising from delayed payments; and
- (b) payments for interest made by the buyer to the seller arranged as part of the total payment made to the seller.

(5) If any amount that must in terms of subsection (3) be deducted from the price actually paid or payable for any goods, is not distinguishable as per the invoice or other supporting documentation as a component of the price actually paid or payable for the goods, the customs authority may accept any other documentary evidence that that amount is in fact a separate component of the price actually paid or payable for the goods.

(6) The customs authority may require substantiating evidence of a deduction contemplated in subsection (3) before allowing the deduction.

Determination of customs value according to identical goods method

143. (1) If the identical goods method is used for determining the customs value of a consignment of imported goods –

- (a) the transaction value per unit or quantity of identical goods as previously determined by the customs authority in respect of a purchase of such goods transacted at the same commercial level and in substantially the same quantity and exported to the Republic at or about the same time as the goods to be valued, must be taken as the customs value per unit or quantity of the imported goods, subject to any adjustments that must be made in terms of subsection (2); or
- (b) if no determination contemplated in paragraph (a) is found, the transaction value per unit or quantity of identical goods as previously determined by the customs authority in respect of a purchase of such goods transacted at either a different commercial level or quantity level, or at a different commercial level and quantity level, and exported to the Republic at or about the same time as the goods to be valued, must be taken as the customs value per unit or quantity of the imported goods, subject to any adjustments that must be made in terms of subsection (3).

(2) The transaction value of the identical goods used for a valuation in terms of subsection(1)(a) must be adjusted to compensate for any differences in costs and charges for differences in distances and modes of transport to the port or place of export between the identical goods and the goods to be valued.

(3) The transaction value of the identical goods used for a valuation in terms of subsection (1)(b) must be adjusted to compensate for any differences in –

- (a) the purchase at different commercial levels or quantity levels of the identical goods and the goods to be valued; and
- (b) costs and charges for different distances and modes of transport to the port or place of export between the identical goods and the goods to be valued.

(4) If in applying this section more than one identical goods transaction is used for determining the value of the goods to be valued, the transaction yielding the lowest value must be taken as the customs value of the goods.

Determination of customs value according to similar goods method

144. (1) If the similar goods method is used for determining the customs value of a consignment of imported goods –

- (a) the transaction value per unit or quantity of similar goods as previously determined by the customs authority in respect of a purchase of such goods transacted at the same commercial level and in substantially the same quantity and exported to the Republic at or about the same time as the goods to be valued, must be taken as the customs value per unit or quantity of the imported goods, subject to any adjustments that must be made in terms of subsection (2); or
- (b) if no determination contemplated in paragraph (a) is found, the transaction value per unit or quantity of similar goods as previously determined by the customs authority in respect of a purchase of such goods transacted at either a different commercial level or quantity level, or at a different commercial level and quantity level, and exported to the Republic at or about the same time as the goods to be valued, must be taken as the customs value per unit or quantity of the imported goods, subject to any adjustments that must be made in terms of subsection (3).

(2) The transaction value of the similar goods used for a valuation in terms of subsection (1)(a) must be adjusted to compensate for any differences in costs and charges for differences in distances and modes of transport to the port or place of export between the similar goods and the goods to be valued.

(3) The transaction value of the similar goods used for a valuation in terms of subsection (1)(b) must be adjusted to compensate for any differences in –

- (a) the purchase at different commercial levels or quantity levels of the similar goods and the goods to be valued; and
- (b) costs and charges for different distances and modes of transport to the port or place of export between the similar goods and the goods to be valued.

(4) If in applying this section more than one similar goods transaction is used for determining the value of the goods to be valued, the transaction yielding the lowest value must be taken as the customs value of the goods.

Determination of customs value according to deductive method

145. (1) If the deductive method is used for determining the customs value of a consignment of imported goods, the customs value per unit or quantity of the goods must,

subject to any adjustments in terms of subsections (2) and (3), be fixed at an amount equal to –

- (a) the price per unit or quantity at which imported identical goods are sold in the Republic –
 - (i) in the same condition as that in which they were when imported;
 - (ii) by importers of such goods to persons not related to them within the meaning of section **141**; and
 - (iii) at or about the same time the goods to be valued were imported; or
- (b) if no price per unit or quantity contemplated in paragraph (a) for imported identical goods can be determined, the price per unit or quantity at which imported similar goods are sold in the Republic –
 - (i) in the same condition as that in which they were when imported;
 - (ii) by importers to persons not related to them within the meaning of section **141**; and
 - (iii) at or about the same time the goods to be valued were imported.

(2) A price per unit or quantity of imported identical or similar goods determined in terms of subsection (1)(a) or (b) must be adjusted by deducting proportionately per unit or quantity of the goods –

- (a) usual profit margins and any usual buying commissions on the sale of the identical or similar goods used as the basis for the valuation;
- (b) general expenses usually incurred in connection with those identical or similar goods, including any direct and indirect marketing costs;
- (c) transportation, loading, unloading, handling, insurance and associated costs incidental to the transportation of those identical or similar goods from the port or place of export in the country of exportation to the importer's premises in the Republic; and
- (d) any duties and taxes paid or payable in the Republic on the importation into or the sale of those identical or similar goods in the Republic.

(3) If identical or similar imported goods are sold in the Republic only after further processing in the Republic, subsection (1)(a)(i) or (b)(i) may be disregarded when determining the price per unit or quantity at which those imported identical or similar goods are sold in the Republic, provided that such price is adjusted by deducting the value added by such processing.

(4) If the customs authority uses the deductive method for re-determining the customs value of any imported goods in terms of section **129** after any of those goods have

already been sold in the Republic, the customs authority may, in stead of determining the price per unit or quantity at which imported identical or similar goods were sold in the Republic –

- (a) determine the price per unit or quantity at which the goods to be re-valued were sold; and
- (b) use that price as the basis for applying subsection (1) of this section.

Determination of customs value according to computed method

146. If the computed method is used to determine the customs value of any imported goods, the customs value per unit or quantity of the goods must be fixed at an amount equal to –

- (a) the cost of producing such a unit or quantity, which must include, in so far as this has not been included in the price actually paid or payable for the goods –
 - (i) the cost or value of materials, services and labour in producing such unit or quantity; and
 - (ii) the cost of –
 - (aa) packing, including the cost of labour, services and materials; and
 - (bb) containers, which must be dealt with as being one with the goods in question;
- (b) the value, appropriately apportioned to the goods per such unit or quantity in a manner prescribed by rule, of any of the following items if such item was supplied, directly or indirectly, by the buyer free of charge or at reduced cost for use in connection with the production or sale for export to the Republic of the goods:
 - (i) materials, components, parts and similar articles forming part of the goods;
 - (ii) tools, dies, moulds and similar articles used in the production of the goods;
 - (iii) materials consumed in the production of the goods; and
 - (iv) engineering, development work, artwork, design work, plans and sketches undertaken elsewhere than in the Republic that were used for the production of the goods;
- (c) transportation, loading, unloading, handling, insurance and associated costs incidental to the delivery of the goods at the port or place of export and placing those goods on board a vessel, aircraft, railway carriage or vehicle, at that port or place, appropriately apportioned to the goods per such unit or quantity; and
- (d) an amount for profit and general expenses equal to that generally applicable in respect of sales of goods of the same type, kind or brand as the goods being valued, which are made by producers in the country of exportation, appropriately apportioned to the goods per such unit or quantity.

Determination of customs value according to fall-back method

147. (1) If the fall-back method is used to determine the customs value of any imported goods –

- (a) the customs value per unit or quantity of the goods must be fixed at an amount equal to a previous customs determination of the value of a unit or quantity of the same type, kind or brand of goods; or
- (b) if there is no such previous customs determination, the value of the goods must be determined in accordance with any other method that may render a fairly accurate valuation of the goods, subject to subsection (2).

(2) No value determination in terms of subsection (1)(b) may be based on –

- (a) the selling price in the Republic of goods produced in the Republic;
- (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
- (c) the selling price of goods on the domestic market of the country of origin;
- (d) the cost of production, other than computed values which have been determined in accordance with section **146**;
- (e) the price of the goods for export to a country other than the Republic;
- (f) a system of minimum customs values; or
- (g) arbitrary or fictitious values.

(3) Subsection (2) does not apply if the person required to clear the goods for home use or a customs procedure –

- (a) fails to clear the goods or to provide sufficient information in the clearance declaration for valuing the goods; and
- (b) fails to comply with a request in terms of section **133** to provide information or documents necessary for valuing the goods.

Part 5: Valuation of specific imported goods**Valuation of used goods imported by individuals for own use**

148. (1) Goods, including a motor vehicle, used by an individual outside the Republic and imported into the Republic for use by that individual in the Republic, must be valued for customs purposes according to the fall-back method referred to in section **139**(1)(e).

(2) (a) Subsection (1) does not apply to imported goods placed in terms of Part **3** of Chapter **13** of the Customs Control Act under the temporary admission procedure on authority of a temporary admission paper which indicates the value of the goods.

- (b) In the case of such goods the value indicated on the temporary

admission paper must be taken as the customs value of the goods, unless the customs authority directs that the goods be valued in accordance with the fall-back method.

Valuation of imported refurbished goods

149. Goods imported into the Republic after having been refurbished by the importer must be valued for customs purposes according to the fall-back method referred to in section 139(1)(e).

Valuation of imported carrier media

150. (1) When valuing for customs purposes imported carrier media on which software for data processing equipment is recorded, only the cost or value of the carrier medium itself must be taken into account whilst the cost or value of the software must be disregarded, provided the cost or value of the software is distinguishable from the cost or value of the carrier medium.

(2) For purposes of this section –

“**carrier medium**” includes a magnetic tape, disk, floppy disk, diskette, hard disk, CD, CD-ROM or compact disk, but does not include an integrated circuit, semi conductor or similar device or article incorporating such a circuit or device;

“**software**” does not include a sound, cinematic or video recording or computer game.

Part 6: Customs valuation of export goods

Valuation method

151. (1) The price of goods free on board the vessel, aircraft, railway carriage or vehicle at the place of exit from where the goods will be exported from the Republic must be taken as the customs value of goods to be exported in terms of the export procedure.⁶⁵

(2) When a person who has submitted an export clearance declaration to the customs authority becomes liable for any further charges relating to placing the goods free on board a vessel, aircraft, railway carriage or vehicle, that person must promptly submit to the customs authority an amended clearance declaration and additional or amended supporting documents reflecting the further charges.

⁶⁵ The export procedure applies to :

- (a) the outright export of goods;
- (b) the export of goods under –
 - (i) the temporary export procedure; or
 - (ii) the outward processing procedure; and
- (c) the export of goods as inward processed compensating products under the inward processing procedure.

Valuation of accompanied baggage

152. (1) To the extent that section **151** cannot be applied to dutiable items in the accompanied baggage of a person leaving the Republic, the customs value of those items must be determined in accordance with any method that may render a fairly accurate valuation of the goods, subject to subsection (2).

(2) No value determination in terms of subsection (1) may be based on arbitrary or fictitious values.

(3) Subsection (2) does not apply if the person concerned fails –

- (a) to provide sufficient information for valuing the goods; or
- (b) to comply with a request in terms of section **131** to provide information or documents necessary for valuing the goods.

Part 7: Currency conversions**Customs values to be expressed in South African Rand**

153. (1) The customs value of goods must be expressed in South African Rand.

(2) If any payment made or to be made in connection with goods or any other amount taken or to be taken into account in determining the customs value of goods is expressed in a foreign currency, that payment or other amount must be converted into South African Rand in accordance with this Part.

Publication of daily average currency conversion rates

154. (1) The Commissioner must for purposes of this Chapter –

- (a) in respect of each day determine the selling rate of all major currencies for conversion into the South African Rand; and
- (b) post those conversion rates on the SARS website.

(2) The Commissioner must use the daily conversion rates provided to the Commissioner by the Reserve Bank for determining the conversion rates referred to in subsection (1) for each day.

Conversion rates for currencies not published

155. If any payment made or to be made in connection with any specific goods or any other amount taken or to be taken into account in determining the customs value of those goods is expressed in a foreign currency not published in terms of section **154**, the customs authority must for purpose of valuing those goods, and on request by a person clearing the

goods, determine the conversion rate of that foreign currency into the South African Rand for the date applicable to those goods, taking into account the selling rate of that foreign currency quoted for the applicable date by at least two major banks operating in the Republic.

Applicable date for currency conversion of imported goods

156. The applicable date for a currency conversion in terms of this Part in respect of goods imported into the Republic is –

- (a) in the case of containerised goods, the date on which the container is loaded on board the vessel, aircraft, railway carriage or vehicle that will transport the goods across the border of the country of export, as endorsed on the bill of lading, arrival notification, cargo report or other document as may be prescribed by rule; or
- (b) in the case of non-containerised goods, the date of issue of the bill of lading, air waybill, consignment note or other document as may be prescribed by rule.

Applicable date for currency conversion of exported goods

157. The applicable date for a currency conversion in terms of this Part in respect of goods to be exported from the Republic is the date on which the goods are cleared for export.⁶⁶

Use of forward exchange contracts

158. Where an importer has negotiated a fixed conversion rate with a bank and a forward exchange contract has been issued, this rate will apply to all transactions which fall within the negotiated time period, provided that the invoice reflects the number and the date of the contract as well as the rate used.

Fixed rates of exchange between related parties not acceptable

159. The conversions of foreign currency into South African Rand, at fixed contract rates of exchange, negotiated between sellers and buyers related within the meaning of section **143** will not be accepted.

⁶⁶ See section **166** of the Customs Control Act.

Part 8: Other matters**Rules to facilitate implementation of this Chapter**

160. The Commissioner may in terms of section **223** 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

161. 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 8**ORIGIN*****Part 1: Introductory provisions*****Purpose and application of this Chapter**

162. (1) The purpose of this Chapter is –

- (a) to provide for the determination of the origin of goods imported into or destined for export from the Republic; and
- (b) to provide for the establishment, recognition and application of rules of origin for determining the origin of goods –
 - (i) imported into or destined for export from the Republic under an international trade agreement;
 - (ii) destined for export from the Republic to a country implementing a non-reciprocal generalised system of preferences in respect of such goods; or
 - (iii) imported into or destined for export from the Republic other than goods contemplated in subparagraph (i) or (ii).

(2) This Chapter applies to all goods cleared or to be cleared for home use or a customs procedure.

Part 2: Origin self-determinations, tariff determinations and re-determinations**Origin of goods to be stated when goods are cleared**

163. (1) A person submitting a clearance declaration to clear goods for home use or a customs procedure must –

- (a) make a self-determination of the origin of the goods irrespective of whether duty is payable on the goods; and
- (b) state the origin of the goods made in terms of paragraph (a) on the clearance declaration.

(2) If preferential treatment in terms of an international trade agreement is claimed in respect of goods referred to in subsection (1), the clearance declaration of the goods must be accompanied by such documentary evidence of origin as may be required by the customs authority.

(3) Subsection (2) does not apply to goods falling under an international trade agreement which exempts the goods from the submission of documentary evidence of origin.

Acceptance of origin self-determinations or making of own origin determinations by customs authority

164. (1) The customs authority may before releasing goods for home use or a customs procedure –

- (a) accept the origin self-determination of the goods on the clearance declaration; or
- (b) refuse to accept that origin self-determination and make its own determination of the origin of the goods.

(2) The customs authority must for purposes of subsection (1)(a) be regarded as having accepted the origin self-determination of the goods as stated on the clearance declaration if it releases the goods without making its own origin determination of the goods in terms of subsection (1)(b).

(3) If the customs authority accepts an origin self-determination in terms of subsection (1)(a) or is regarded as having accepted an origin self-assessment in terms of subsection (2), such acceptance –

- (a) may not be taken as an origin determination by the customs authority in terms of subsection (1)(b); and
- (b) does not prevent the customs authority from making an origin determination of goods after the release of the goods.

(4) An origin determination in terms of subsection (3)(b) may be made in respect of any goods despite the fact that –

- (a) duty on the goods has been made; or
- (b) the goods are no longer subject to customs control.

Time limits on origin determinations

165. (1) An origin determination of goods in terms of section **164**(3)(b) may be made at any time, but if the goods have been assessed for duty purposes in terms of Chapter **5** no origin determination may be made after the expiry of the period referred to in section **92**.

(2) Subsection (1) does not prevent the customs authority from making an origin determination of any goods after the expiry of the period referred to in subsection (1) if the origin self-determination of the goods is incorrect because of fraud, misrepresentation, a false declaration or non-disclosure of material facts.

Determination of origin in event of non-cleared goods

166. (1) If goods that must in terms of the Customs Control Act be cleared for home use or a customs procedure have not been cleared within the period applicable to the goods, the customs authority may –

- (a) direct the person who requires release of the goods or who is liable for any duty that may be payable on the goods, to make an origin self-determination of the goods, and –
 - (i) to submit the origin self-determination to the customs authority within a specified period; or
 - (ii) if the goods are in terms of a provision of the Customs Control Act required or allowed to be cleared despite the failure to clear the goods within the period applicable to the goods, to state the origin self-determination on the clearance declaration; or
- (b) make its own determination of the origin of the goods according to any information available to it without requiring an origin self-determination.

(2) Section **164** and **165** apply if the procedure in subsection (1)(a) is followed.

(3) This section does not apply if the goods are seized in terms of the Customs Control Act or any other applicable legislation.

Consistency of origin self-determinations and origin determinations with previous binding rulings

167. An origin self-determination or origin determination of goods must be consistent with –

- (a) any previous origin determination or re-determination that may be applicable to those goods in terms of section **172(2)(b)**; or
- (b) any advance origin ruling that may be applicable to those goods.

Re-determination of previous origin determinations and re-determinations

168. (1) The customs authority may, subject to section **169** re-determine the origin determination of goods as –

- (a) determined by the customs authority in terms of section **164(1)(b)** or (3)(b) or **166(1)(b)**; or
- (b) re-determined in terms of paragraph (a).

(2) More than one origin re-determination of goods may, as necessary, be made in terms of subsection (1).

(3) An origin re-determination in terms of subsection (1) may be made in respect of any goods despite the fact that –

- (a) duty on the goods has been paid,⁶⁷ or
- (b) the goods are no longer subject to customs control.

(4) An origin re-determination of goods in terms of this section replaces the previous origin determination or origin re-determination which was in force.

(5) An origin re-determination of goods in terms of subsection (1) must be consistent with any advance origin ruling that may be in force in respect of those goods.

Time limits on origin re-determinations

169. (1) An origin re-determination of goods may be made at any time, but if the goods have been assessed for duty purposes in terms of Chapter 5 no origin re-determination may be made after the expiry of the period referred to in section 92.

(2) Subsection (1) does not prevent the customs authority from making an origin re-determination of any goods after the expiry of the period referred to in subsection (1) if the existing origin determination or re-determination previously made in respect of the goods is incorrect because of fraud, misrepresentation, a false declaration or non-disclosure of material facts.

Part 3: Provisions applicable to all origin determinations and re-determinations

Requests for information and documents

170. The customs authority may request any of the following persons, to furnish it within a specified period with any information or documents required by the customs authority for considering or making an origin determination or re-determination in respect of any goods, including any documentary evidence of origin:

- (a) a person who submitted a clearance declaration in respect of the goods;
- (b) a person who made an origin self-determination of the goods;

⁶⁷ Section 93 compels the customs authority to carry out a re-assessment of duty payable on a consignment of goods if the duty payable on the goods is affected by an origin re-determination in terms of section 168.

- (c) a person who is liable for duty that may be payable on the goods or who has paid duty on the goods; or
- (d) the owner of the goods or any other person who has a material interest in the goods.

Origin determinations or re-determinations in absence of sufficient information

171. The customs authority may base an origin determination or re-determination on the best information available to it if –

- (a) particulars of the goods in respect of which the origin determination or re-determination is made or the underlying transaction which caused the goods to be imported into or exported from the Republic, as the case may be, are not disclosed or not sufficiently disclosed in the clearance declaration or any supporting documents; or
- (b) information or documents necessary for considering or making the origin determination or re-determination were not furnished following a request in terms of section **170**.

Goods to which origin determinations and re-determinations apply

172. (1) An origin determination or re-determination applies only to the consignment of goods in respect of which it was made unless the customs authority determines otherwise in terms of subsection (2).

(2) The customs authority may direct that an origin determination or re-determination made in respect of any specific goods applies also to other goods of the same type, kind or brand –

- (a) that were previously cleared for home use or a customs procedure by the same person within three years preceding the date of the determination or re-determination; or
- (b) that may be cleared for home use or a customs procedure by the same person within three years following the date of the determination or re-determination.

(3) The customs authority may at any time reconsider a direction in terms of subsection (2) and either confirm, amend or withdraw the direction.

Correction of origin determinations and re-determinations

173. (1) The customs authority may on discovery of any error in an origin determination or re-determination correct the error by notice to –

- (a) a person who submitted a clearance declaration in respect of the goods;
- (b) a person who made an origin self-determination of the goods;

- (c) a person who is liable for duty that may be payable on the goods or who has paid duty on the goods; or
- (d) the owner of the goods or any other person who has a material interest in the goods.

(2) A correction in terms of subsection (1) may be made at any time, but if the goods have been assessed for duty purposes in terms of Chapter 5 no correction affecting the amount of duty payable may be made after the expiry of the period referred to in section 92.

(3) Subsection (2) does not prevent the customs authority from correcting an origin determination or re-determination of any goods after the expiry of the period referred to in subsection (2) if the origin determination or re-determination is incorrect because of fraud, misrepresentation, a false declaration or non-disclosure of material facts.

Remedies available to aggrieved persons

174. (1) A person aggrieved by an origin determination or re-determination, or a correction of an origin determination or re-determination, may –

- (a) lodge an administrative appeal in terms of Part 3 of Chapter 38 of the Customs Control Act against the determination, re-determination or correction, subject to subsection (3); or
- (b) institute judicial proceedings to appeal against or for a review of the determination, re-determination or correction.

(2) An administrative appeal referred to in subsection (1)(a) –

- (a) must be lodged within a period of one month from the date of the relevant determination or re-determination or the relevant correction of the determination or re-determination; and
- (b) may only be heard by a specialised appeal committee referred to in section 816(2)(a) of the Customs Control Act.

(3) The proceedings referred to in Parts 2 and 4 of Chapter 38 of the Customs Control Act are not available to persons aggrieved by origin determinations or re-determinations.

Origin self-determinations and origin determinations or re-determinations presumed to be correct except when replaced, amended, set aside or corrected

175. (1) An origin self-determination accepted by the customs authority in terms of section **166**(1)(a) must be presumed to be correct and must be applied except when replaced by an origin determination.

(2) An origin determination or re-determination must be presumed to be correct and must be applied except when replaced, amended, set aside or corrected, as may be appropriate, by –

- (a) the customs authority in terms of section **168**, **172**(2) or **173**;
- (b) an advance origin ruling in terms of Chapter **10**;
- (c) a decision in an administrative appeal in terms of Part **3** of Chapter **38** of the Customs Control Act; or
- (d) a court.

Part 4: Documentary evidence of origin

When documentary evidence of origin may be requested

176. The customs authority may at any time before or after the clearance or release of goods for home use or a customs procedure request the person who has submitted a clearance declaration or made an origin self-determination in respect of those goods, the person who is liable for duty that may be payable on the goods or who has paid duty on the goods, the owner of the goods or any other person who has a material interest in the goods, to furnish it within a specified period with documentary evidence of origin in respect of the goods if such evidence is required for –

- (a) considering or making an origin determination or re-determination or a correction to an origin determination or re-determination in respect of those goods;
- (b) implementing –
 - (i) an international trade agreement;
 - (ii) economic or trade measures adopted unilaterally or under an international trade agreement; or
 - (iii) health or public order measures,
- (c) ensuring compliance with the requirements of a non-reciprocal general system of preferences implemented by another country, in the case of goods exported from the Republic to that country;
- (d) determining whether the goods are dutiable or, if dutiable, the rate of duty payable on the goods, where the payment of duty or the rate of duty is dependent on the origin of the goods;

- (e) combating fraud or duty evasion; or
- (f) statistical purposes.

Who may issue documentary evidence of origin for goods of South African origin

177. (1) A declaration of origin in respect of goods of South African origin is valid only if issued by the producer or supplier of the goods in the Republic.

(2) A certificate of origin, certified declaration of origin or certificate certifying a declaration of origin in respect of goods of South African origin is valid only if –

- (a) the certificate was issued or the certification was made by –
 - (i) the customs authority, in the case of goods which are exported to a country where those goods qualify for preferential treatment under an international trade agreement or a non-reciprocal general system of preferences; or
 - (ii) the department responsible for trade and industry or a chamber of commerce authorised by that department, in the case of goods which are exported to a country where those goods do not qualify for preferential treatment under an international trade agreement or a non-reciprocal general system of preferences; and
- (b) the certificate or certification contains the particulars as may be prescribed by rule.

Who may issue documentary evidence of origin for imported goods

178. (1) A declaration of origin in respect of goods imported into the Republic is valid only if issued by the producer or supplier of the goods in the country of export.

(2) A certificate of origin, certified declaration of origin or certificate certifying a declaration of origin in respect of goods imported into the Republic is valid only if –

- (a) the certificate was issued or the certification was made –
 - (i) in the case of goods exported from a country which qualify for preferential treatment in the Republic under an international trade agreement, by an authority or body empowered either in terms of the agreement or legislation of that country to issue such certificates or to make such certifications; or
 - (ii) in the case of goods exported from a country which do not qualify for preferential treatment in the Republic under an international trade agreement, by an authority or body empowered in terms of legislation of that country to issue such certificates or to make such certifications; and
- (b) the certificate or certification is consistent in content with any requirements as may be prescribed by rule.

Language used in documentary evidence of origin

179. (1) Documentary evidence of origin in respect of goods of South African origin must be in the English language.

(2) If documentary evidence of origin in respect of goods imported into the Republic is not in an official language of the Republic, the customs authority may require a translation of any unclear particulars on the document, but may not, as a matter of course, require such translations in all cases.

Part 5: Rules of origin**Main rule for determining origin of goods**

180. The country of origin of goods imported into or exported from the Republic is the country in which the goods were produced, as determined in accordance with section **181**.

General rules for determining origin of goods

181. (1) The question whether goods imported into the Republic were produced in a country which is a party to an international trade agreement and qualify for preferential tariff treatment in the Republic, must for purposes of this Act and the Customs Control Act be resolved in accordance with –

- (a) the South African rules of origin; and
- (b) any rules of origin contained in, or made under, the relevant agreement.

(2) The question whether goods destined to be exported from the Republic to a country where those goods qualify for preferential tariff treatment under an international trade agreement, were produced in the Republic must be resolved in accordance with –

- (a) the South African rules of origin; and
- (b) any rules of origin contained in, or made under, the agreement.

(3) The question whether goods to be exported from the Republic to a country where those goods qualify for preferential tariff treatment under a non-reciprocal general system of preferences, were produced in the Republic must be resolved in accordance with –

- (a) the South African rules of origin; and
- (b) rules of origin made for the implementation of the system by the country which implements the system.

(4) In all other cases, the country where goods imported into or exported from the Republic were produced must be established in accordance with –

- (a) the South African rules of origin; and
- (b) any rules of origin made under the WTO Agreement on Rules of Origin.

Conflicts

182. In the event of any inconsistency between a provision of the South African rules of origin and a rule referred to in –

- (a) section **181**(1)(b), (2)(b) or (3)(b), the rule referred to in that section prevails over the provision of the South African rules to the extent of the inconsistency; or
- (b) section **181**(4)(b), the provision of the South African rules prevails over a rule referred to in that section to the extent of the inconsistency.

Publication of non-South African rules of origin and measures regulating preferences

183. The Commissioner may for purposes of section **181** publish on the SARS website –

- (a) all rules of origin contained in or made under international trade agreements to which the Republic is a party, including –
 - (i) any amendments to those rules; and
 - (ii) the dates on which those rules or amendments took effect; and
- (b) all legislative and administrative measures regulating a non-reciprocal general system of preferences implemented by a country for goods of South African origin imported into that country, submitted to the Commissioner by the customs administration of that country, including –
 - (i) any amendments to those measures submitted by that customs administration; and
 - (ii) the dates on which those measures or amendments took effect, as advised by that customs administration.

Goods wholly produced in specific countries

184. (1) Where goods imported into or exported from the Republic have been wholly produced in a specific country, that country must for purposes of this Act and the Customs Control Act be taken as the country of origin of those goods.

(2) The following goods must be regarded as having been wholly produced in a country:

- (a) mineral products extracted from the soil of that country, from its territorial waters or from the sea-bed underneath its territorial waters;
- (b) products extracted from marine soil or subsoil outside that country's territorial waters, provided that the country has the sole right to exploit that soil or subsoil for those products;

- (c) fish or other products of the sea harvested or gathered from the sea by a vessel of that country;
- (d) products obtained aboard a factory ship of that country solely from products referred to in paragraph (c);
- (e) live animals born and raised in that country;
- (f) products obtained from live animals in that country;
- (g) products obtained from hunting or fishing in that country;
- (h) vegetable products harvested or gathered in that country;
- (i) scrap or waste from production or processing operations in that country, including used articles collected in that country for the recovery of raw materials; or
- (j) goods produced in that country solely from products referred to in paragraphs (a) to (i).

Goods produced in two or more countries

185. (1) Where goods imported into or exported from the Republic have been produced in two or more countries, the country in which the last substantial process in the production of the goods has been carried out which gave the goods their essential characteristics or properties, must for purposes of this Act and the Customs Control Act be taken as the country in which those goods were produced.

(2) For purposes of subsection (1) the following processes may not be taken as constituting the last substantial process in the production of goods:

- (a) a process which does not contribute, or which does contribute but only to a minor degree, to the essential characteristics or properties of the goods;
- (b) a process to preserve the goods during transportation or storage;
- (c) a process to improve the packaging or the marketable quality of the goods or to prepare the goods for transportation, such as breaking bulk, grouping of packages, sorting, grading or repacking;
- (d) a simple assembly operation; or
- (e) the mixing of goods of different origin, provided that the characteristics or properties of the resulting product are not essentially different from the characteristics or properties of the goods which have been mixed.

Goods partially produced in specific countries

186. (1) Goods imported into or exported from the Republic must be regarded as having been partially produced in a specific country if –

- (a) at least the applicable percentage referred to in subsection (2) of the production cost of those goods is represented by materials produced and labour utilised in that country;
- (b) the last process in the production of those goods has taken place in that country; and
- (c) such other processes in the production of those goods as may be prescribed by rule have taken place in that country.

(2) The applicable percentage of production cost for purposes of subsection (1)(a) is –

- (a) the percentage specified in an international trade agreement applicable to the goods;
- (b) the percentage prescribed by rule in respect of the goods, if –
 - (i) there is no international trade agreement applicable to the goods; or
 - (ii) no percentage is specified in the international trade agreement applicable to the goods; or
- (c) 25 per cent, if no percentage is specified or prescribed in terms of paragraph (a) or (b).

(3) The Commissioner must by rule prescribe the manner in which the production cost of goods must be determined for purposes of subsection (1)(a).

Accessories, spare parts and tools

187. (1) When accessories, spare parts and tools for use with a machine, appliance, apparatus or vehicle are imported into or exported from the Republic together with the machine, appliance, apparatus or vehicle, the country of origin of the machine, appliance, apparatus or vehicle must for purposes of this Act and the Customs Control Act be taken to be the country in which those accessories, spare parts and tools were produced.

(2) Subsection (1) applies to accessories, spare parts and tools only if those accessories, spare parts and tools –

- (a) are normally sold with the machine, appliance, apparatus or vehicle; and
- (b) correspond, in kind and in quantity, to the normal equipment of machines, appliances, apparatuses or vehicles of that kind.

Unassembled or disassembled articles contained in more than one consignment

188. Unassembled or disassembled articles imported into or exported from the Republic in more than one consignment when it is not feasible, for transport or production reasons, to import it in a single consignment, may, if the person clearing the articles so requests, be

treated as one article for the purpose of determining the country in which the articles were produced.

Packaging

189. (1) If packaged goods are imported into or exported from the Republic, the packaging in which the goods are contained must be regarded to have been produced in the country of origin of the goods.

(2) Subsection (1) does not apply to packaging in respect of which a duty is payable separate from the goods contained in the packaging.

(3) If packaging in which goods are contained is regarded to have the same origin as the goods, the value of the packaging may for the purposes of section **186** be taken into account in determining the production cost of the goods, but only if the goods are ordinarily sold by retail in such packaging.

Energy, plant, machinery and tools used in production of goods

190. When determining the origin of goods, no account may be taken of the origin of any energy, plant, machinery or tools used in the production of the goods.

Part 6: Other matters

Publication of determinations

191. (1) The Commissioner may make public particulars of any determination or re-determination in such a manner and containing such information as the Commissioner may determine.

Rules to facilitate implementation of this Chapter

192. The Commissioner may in terms of section **223** and taking into account international practice make rules to facilitate the implementation of this Chapter, including rules prescribing –

- (a) the format and contents of documentary evidence of origin;
- (b) principles and procedures for determining –
 - (i) the origin of goods imported into or destined to be exported from the Republic;
 - (ii) when goods qualify as goods of South African origin; and
 - (iii) when goods must be regarded as having been wholly produced in a single country or produced in more than one country;

- (c) what processes qualify as the last substantial process in the production of goods, in the case of goods produced in more than one country;
- (d)

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

193. 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 PREFERENTIAL TARIFF TREATMENT

Purpose of this Chapter

- 194.** The purpose of this Chapter is to make effective the preferential tariff treatment of –
- (a) goods of South African origin exported from the Republic to countries under –
 - (i) international trade agreements; or
 - (ii) non-reciprocal general systems of preferences; and
 - (b) goods imported into the Republic under international trade agreements.

Part 1: Imports and exports under international trade agreements

Steps to enforce international trade agreements in Republic

- 195.** The Commissioner must take all reasonable steps to enforce an international trade agreement that has been enacted into law in the Republic in terms of section **855** of the Customs Control Act to the extent that the agreement requires the performance of any acts –
- (a) in the Republic; or
 - (b) in relation to goods imported into or to be exported from the Republic under preferential tariff treatment provided for in the agreement.

Direct transport rule

196. (1) Goods imported into the Republic are not entitled to preferential tariff treatment in the Republic under an international trade agreement unless the goods were transported from the country of origin directly to the Republic.

- (2) Subsection (1) does not apply to goods imported into the Republic through a third country if the customs authority is satisfied that –
- (a) the goods –
 - (i) were transported through the third country for geographical reasons; and
 - (ii) the goods were not dealt with in the third country in any way other than –
 - (aa) to warehouse the goods;
 - (bb) to transport the goods;
 - (cc) to unload and re-load the goods; or
 - (dd) to preserve the goods; and
 - (b) the goods remained under customs control in the third country.

Rules to give effect to international trade agreements

197. The Commissioner may in terms of section **223** and taking into account international practice make rules to facilitate the implementation of this Part, including rules –

- (a) to give effect in the Republic to any international trade agreement;
- (b) to make the agreement effective in relation to goods imported into or to be exported from the Republic under preferential tariff treatment provided for in the agreement;
- (c) to enable the South African customs authority –
 - (i) to perform any customs duties required from it by the agreement;
 - (ii) to collect information required by the customs administration of a country which is party to the agreement; and
 - (iii) to furnish reports to the customs administration of that country as and when required;
- (d) to prescribe criminal sanctions and penalties for a contravention of or non-compliance with the rules;
- (e) to prevent any circumvention of the agreement by –
 - (i) transshipment, rerouting, false declaration or in any other way concerning the origin of the goods;
 - (ii) falsification of official documents; or
 - (iii) making any false declaration concerning quantities, description, classification or content of the goods; and
- (f) to provide for –
 - (i) the conditional registration of importers and exporters of goods to which the agreement applies; and
 - (ii) the refusal of applications for registration and the withdrawal of registrations in circumstances prescribed by rule;
- (g) to provide for a prohibition on –
 - (i) the import of goods under preferential tariff treatment provided for in the agreement –
 - (aa) by persons not registered; or
 - (bb) if the country of origin as established in terms of the applicable rules of origin is not a party to the agreement; or
 - (ii) the export of goods under preferential tariff treatment provided for in the agreement to a country which is party to the agreement –
 - (aa) by persons not registered; or

- (bb) if the goods are not of South African origin as established in terms of the applicable rules of origin; or
- (h) regarding any other requirements which may be necessary for the enforcement or implementation of the agreement.

Part 2: Exports to countries implementing non-reciprocal general systems of preferences

Steps to ensure compliance with non-reciprocal general systems of preferences

198. The Commissioner must take all reasonable steps to ensure that the legislative and administrative measures regulating a non-reciprocal general system of preferences of a country implementing such a system for goods of South African origin are complied with to the extent that those measures require the performance of any acts in the Republic as a precondition for benefiting from that system.

Conditions for benefiting from non-reciprocal general system of preferences

199. (1) A person exporting goods to a country implementing a non-reciprocal general system of preferences for goods of South African origin, or any other person who wants to benefit from that system of preferences, must comply with all legislative and administrative measures of that country regulating that system, including requirements relating to –

- (a) the keeping of books, accounts and other records in respect of –
 - (i) the production, and of all materials used in the production, of the goods exported to that country;
 - (ii) the purchase of, cost of, value of and payment for the goods exported to that country, and all materials, including indirect materials, used in the production of the goods exported;
 - (iii) proof of the origin of those goods in accordance with the rules of origin applicable to those goods; and
 - (iv) the export of the goods to that country; and
- (b) permitting and assisting officers of the customs administration of that country to have access to and to investigate those books, accounts and other records.

Part 3: Other matters

Rules to give effect to non-reciprocal general systems of preferences

200. The Commissioner may in terms of section **223** and taking into account international practice make rules to facilitate the implementation of this Part, including rules –

- (a) to make effective in the Republic any legislative and administrative measures regulating a non-reciprocal general system of preferences of a country implementing such a system for goods of South African origin;
- (b) to enable the South African customs authority –
 - (i) to perform any customs duties required from it in terms of those measures;
 - (ii) to collect information required by the customs administration of that country;
 - (iii) to furnish reports to the customs administration of that country as and when required; and
 - (iv) to render assistance in respect of the implementation and enforcement of those measures, including assistance with regard to any investigation by the customs administration of that country;
- (c) to prevent any circumvention of those measures by –
 - (i) transshipment, rerouting or false declaration or in any other way concerning the origin of the goods;
 - (ii) falsification of official documents; or
 - (iii) making any false declaration concerning quantities, description, classification or fibre content of goods; and
- (d) to provide for –
 - (i) the conditional registration of producers and exporters of goods to which those measures apply; and
 - (ii) the refusal of applications for registration and the withdrawal of registrations in circumstances prescribed by rule;
- (e) to provide for a prohibition on the export of goods to that country for preferential tariff treatment under that system of preferences –
 - (i) by persons not registered; or
 - (ii) if the goods are not of South African origin as established in terms of the applicable rules of origin;
- (f) to prescribe criminal sanctions and penalties for a contravention of or non-compliance with the rules; and
- (g) regarding any other requirements that may be necessary for the enforcement or implementation of those measures to enable goods of South African origin to benefit from that system of preferences.

Offences in terms of this Chapter

201. 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 10

ADVANCE RULINGS

Purpose and application of this Chapter

202. (1) The purpose of this Chapter is to provide for the issue of rulings to settle in advance the tariff classification and the determination of the valuation and origin of goods of a specific type, kind or brand cleared for home use or a customs procedure by or on behalf of a person to whom the ruling is issued.

(2) This Chapter applies to all goods in respect of which the tariff classification, valuation and origin must be determined.

Application for advance rulings

203. (1) Any person who is a licensee or registered person in terms of the Customs Control Act may apply to the customs authority for –

- (a) an advance tariff ruling;
- (b) an advance ruling on a valuation factor; or
- (c) an advance origin ruling.

(2) An application for an advance ruling –

- (a) may relate to only –
 - (i) one type, kind or brand of goods; and
 - (ii) transactions between the same parties; and
- (b) must –
 - (i) be made on an application form as may be prescribed by rule;
 - (ii) contain the information required on the application form or prescribed by rule;
 - (iii) be signed by the applicant;
 - (iv) be accompanied by any relevant supporting documents and information as may be prescribed by rule; and
 - (v) be submitted to the Commissioner.

(3) The customs authority may request the applicant to submit any additional information before giving an advance ruling.

(4) A processing fee prescribed by rule is payable in respect of each application.

Consideration of applications

204. (1) The customs authority must consider each application and may –

- (a) grant the application; or
- (b) refuse the application.

(2) The customs authority may grant an application only if –

- (a) the advance ruling will promote or facilitate implementation of this Act or the Customs Control Act; and
- (b) there is sufficient certainty as to the application of the advance ruling to the goods to which the ruling will relate.

(3) The customs authority must refuse an application if –

- (a) any of the requirements of subsection (2) are not met;
- (b) the applicant –
 - (i) is not a licensee or registered person;
 - (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
 - (v) refused or fails to provide the customs authority with additional information in connection with the application, if requested to do so; or
- (b) the application raises an issue that is the same as or substantially similar to an issue –
 - (i) that is pending before a court; or
 - (ii) that is the subject of draft legislation before Parliament or which is in the process of being prepared for introduction in Parliament.

Granting of applications

205. (1) If the customs authority grants an application, the customs authority must issue to the applicant an advance ruling, stating –

- (a) the title, number and date of the ruling;
- (b) the name and physical address of the recipient of the ruling;
- (c) whether it is an advance tariff ruling, an advance ruling on a valuation factor or an advance origin ruling, and, if an advance ruling on a valuation factor, particulars of the valuation factor to which it relates;
- (d) the type, kind or brand of goods to which the ruling relates;
- (e) particulars of the transactions to which the ruling relates, including the names of the parties to these transactions;

- (f) particulars of the ruling made;
- (g) any assumptions made or conditions imposed by the customs authority in connection with application of the ruling;
- (h) the period for which the ruling will remain valid; and
- (i) any other relevant information.

(2) An advance ruling applies only –

- (a) to goods of the type, kind or brand specified in the ruling when cleared by or on behalf of the recipient of the ruling for home use or a customs procedure during the validity period of the ruling;
- (b) in the case of an advance ruling on a valuation factor, to transactions between the parties specified in the ruling; and
- (c) in accordance with the provisions of the ruling.

(3) An advance ruling must be consistent with the provisions of this Act.

Validity period of advance rulings

206. An advance ruling is valid for a period of three years as from the date of issue unless

–

- (a) another period for the validity of the advance ruling is specified in the ruling;
- (b) the advance ruling is withdrawn by the customs authority in terms of section **210**;
- (c) the advance ruling is set aside by a court;
- (d) section **211** becomes applicable to the advance ruling; or
- (e) in the case of an advance tariff ruling, an amendment to the International Convention on the Harmonized Commodity Description and Coding System causes the advance ruling to lapse.

Binding effect of advance rulings

207. An advance ruling binds both the recipient of the ruling and the customs authority and must, to the extent applicable, be applied –

- (a) when goods of the type, kind or brand specified in the ruling are cleared for home use or a customs procedure and the recipient of the ruling or other person clearing the goods on behalf of the recipient states the tariff classification, value self-determination or origin of the goods in the clearance declaration in accordance with sections **105**, **124(1)** or **163(1)** respectively; and
- (b) when the customs authority makes a tariff determination or re-determination, a value determination or re-determination or an origin determination or re-determination in terms of Chapter **6**, **7** or **8**, respectively, in relation to goods of the type, kind or brand

specified in the ruling cleared for home use or a customs procedure by or on behalf of the recipient of the ruling.

Clearance of goods under advance rulings

208. When clearing goods for home use or a customs procedure under an advance ruling, the recipient of the ruling or other person clearing the goods on behalf of the recipient must –

- (a) furnish such information concerning the goods as the customs authority may require; and
- (b) provide proof to the customs authority that the ruling applies to those goods.

Amendment of advance rulings

209. (1) The customs authority may amend an advance ruling either on application by the recipient of the ruling or on own initiative –

- (a) to correct an error; or
- (b) in the case of an advance tariff ruling, to give effect to any amendment or addition to the International Convention on the Harmonized Commodity Description and Coding System;
- (c) in the case of an advance ruling on a valuation factor, to give effect to an amendment to the WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, 1994; or
- (d) in the case of an advance origin ruling, to give effect to any amendment to the applicable rules of origin.

(2) An advance ruling as it read immediately before an amendment in terms of subsection (1) remains, despite the amendment, effective in respect of goods for which the recipient of the ruling is contractually bound by an existing contract concluded on the basis of the advance ruling before its amendment.

(3) The un-amended version of an advance ruling remains effective in terms of subsection (2) only if the recipient of the ruling so chooses and the customs authority so authorises, and then only –

- (a) for a period of three months from the date of the amendment or for the remainder of the validity period of the advance ruling, whichever expires first; and
- (b) for determining whether any duty is payable on goods referred to in subsection (2), and if so, for assessing the amount of duty payable on those goods.

(4) The holder of an advance ruling who chooses to rely in relation to any specific goods on the un-amended version of an advance ruling, must –

- (a) notify the customs authority; and
- (b) submit to the customs authority any necessary supporting documents to prove the existence of a contract referred to in subsection (2).

(5) Subsections (2), (3) and (4) do not apply if an amendment to an advance ruling is –

- (a) in the case of an advance tariff ruling, effected to give effect to an amendment or addition to the International Convention on the Harmonized Commodity Description and Coding System; or
- (b) in the case of an advance ruling on a valuation factor, to give effect to an amendment to the WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, 1994.

Withdrawal of advance rulings

210. (1) The customs authority may at any time withdraw an advance ruling if –

- (a) the advance ruling was issued as a result of fraud, misrepresentation or incorrect or incomplete information; or
- (b) in the case of an advance origin ruling, the advance ruling is in conflict with an international trade agreement concluded by the Republic or to which the Republic becomes a party after the ruling was issued.

(2) The withdrawal of an advance ruling in terms of subsection (1)(a) without replacing the advance ruling with an amended version is effective retrospectively from the date of issue of the advance ruling.

Effect of subsequent changes in the law

211. (1) An advance ruling ceases to be effective –

- (a) if a provision of this Act affecting the advance ruling is repealed or amended and that repeal or amendment renders the advance ruling incompatible with this Act; or
- (b) if a court in a final judgment places an interpretation on a provision of this Act which renders the advance ruling legally incorrect 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).

Rules to facilitate implementation of this Chapter

212. The Commissioner may in terms of section **223** make rules to facilitate the implementation of this Chapter, including rules –

(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

213. 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 11
JUDICIAL MATTERS

General offences⁶⁸

214. 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) commits fraudulent evasion of duty or is a party to the fraudulent evasion of duty or attempts to commit fraudulent evasion of duty or assists any other person to commit fraudulent evasion of duty;
- (d) ...

Offences committed outside Republic

215. (1) A person is guilty of an offence if that person –

- (a) at a place outside the Republic designated in terms of sections **32** and **35** of the Customs Control Act 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; or
- (b) in a country which is a party to an international trade agreement referred to in Chapter **9**, commits an act in relation to goods which would have constituted an offence in terms of that Chapter had that act in relation to those goods been committed 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

⁶⁸ 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).

216. (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 terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or to both that fine and that imprisonment.

(2) A person convicted of an offence in terms of section **214(c)** or of any other offence in terms of this Act committed with the intent to evade duty is, despite any other provision of this Act, liable to a fine not exceeding R1million or three times the value of the duty to which the offence relates, whichever is the greater, or to imprisonment for a period not exceeding ten years, or to both that fine and that imprisonment.

Other punitive powers of courts in criminal actions

217. A court convicting a person for an offence in terms of this Act –

- (a) involving the non-payment or evasion of duty may summarily make an inquiry into the amount of the unpaid duty and make an order regarding the payment of that duty; or
- (b) committed with the intent to evade duty may summarily make an inquiry as to any thing that has been used in the commission of that offence, including vessels, aircraft and vehicles, and declare that thing forfeited to the state.

Administrative penalties imposed by customs authority

218. (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) agreeing to abide by the decision of the customs authority; and
- (b) paying a specified amount as an administrative penalty to the Commissioner within the time specified in the notice.

(2) The notice referred to in subsection (1) must be in a format prescribed by rule.

(3) The amount of an administrative penalty referred to in section (1)(a) –

- (a) must be determined in accordance with limits set by the Commissioner; and
- (b) may not exceed the maximum fine which may be imposed by a court upon conviction for the contravention of or non-compliance 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 38.⁶⁹

- (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 the Customs Control Act does not prevent the application of this section in relation to offences referred to in subsection (1) committed in respect of those goods.

Civil actions arising from this Act

219. (1) The Commissioner may institute any civil actions necessary for enforcing this Act, including claims for amounts owing in terms of this Act.⁷⁰

(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

220. 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

⁶⁹ The imposition of an administrative penalty cannot be subject to appeal as the person that paid the fine did so because of own choice.

⁷⁰ The Prescription Act determines the period within which civil actions for amounts owing must be instituted.

221. (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 for the payment of any duty, interest or administrative penalty claimed by the Commissioner in terms of this Act irrespective of the amount claimed.

Procedure for collection of debt if not paid by due date

222. (1) If a debt referred to in section **26** or **50** is not paid to the Commissioner by the date when payment of the debt is due, the Commissioner may file with the clerk or registrar of any competent court a statement stating –

- (a) the amount of the debt;
- (b) the date on which the payment was due; and
- (c) the name of the person by whom the debt is payable.

(2) A statement referred to in subsection (1) must be certified by or on behalf of the Commissioner as correct.

(3) A statement filed in accordance with subsection (1) has all the effects of, and any proceedings may be taken thereon, as if it were a civil judgement lawfully given in that court in favour of the Commissioner for a liquid debt of the amount specified in the statement.

(4) Notwithstanding anything contained in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), a statement for any amount whatsoever may be filed in terms of subsection (1) with the clerk of the magistrate's court having jurisdiction in respect of the person from whom the debt is collected in terms of this section.

(5) Pending the conclusion of any proceedings referred to in Chapter **38** of the Customs Control Bill regarding a dispute as to the amount of a debt payable, the statement filed in terms of subsection (1) in respect of that debt must for purposes of subsection (3) be regarded to be correct.

(6) (a) The Commissioner may by notice in writing addressed to the clerk or registrar of the relevant court, withdraw a statement referred to in subsection (1).

(b) A withdrawn statement ceases to have any effect, but does not prevent the Commissioner from instituting proceedings afresh under that subsection in respect of the debt referred to in the withdrawn statement.

CHAPTER 12

MISCELLANEOUS MATTERS

Rules

- 223.** (1) The Commissioner may make rules prescribing—
- (a) any matter that may be prescribed by rule in terms of this Act;
 - (b) the format of and 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;
 - (c) the manner in which such reports, notices or other documents must be submitted, and persons who must submit any such reports, notices or other documents;
 - (d) 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;
 - (e) the format of and contents of any permission or approval that may be issued by the customs authority in terms of a provision of this Act;
 - (f) 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; or
 - (g) 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; or
 - (ii) categories of goods;
 - (b) be limited in its application to a particular—
 - (i) category of persons to which this Act applies; or
 - (ii) category of goods.

Consultative processes before promulgation of rules

- 224.** (1) Before rules in terms of section **223** are promulgated, the Commissioner must publish the draft rules in the *Government Gazette* for public comment.
- (2) Rules made in terms of section **223** must be submitted to –
- (a) the Minister; and
 - (b) Parliament for parliamentary scrutiny.

Form or format of documents

225. 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.

Application of certain provisions of Customs Control Act

226. Sections **845** to **856** of the Customs Control Act, modified by any necessary changes as the context may require, must be applied when implementing this Act.

Schemes obtaining undue duty benefits.

227. (1) Notwithstanding anything in this Act, whenever the Commissioner is satisfied that any scheme (whether entered into or carried out before or after the commencement of this Act, and including a scheme involving the alienation of property) –

- (a) has been entered into or carried out which has the effect of granting a duty benefit to any person; and
- (b) having regard to the substance of the scheme –
 - (i) was entered into or carried out by means or in a manner which would not normally be employed for *bona fide* business purposes, other than the obtaining of a duty benefit; or
 - (ii) has created rights or obligations which would not normally be created between persons dealing at arm's length; and
- (c) was entered into or carried out solely or mainly for the purpose of obtaining a duty benefit, the Commissioner shall determine the liability for any duty imposed by this Act, and the amount thereof, as if the scheme had not been entered into or carried out, or in such manner as in the circumstances of the case he deems appropriate for the prevention or diminution of such duty benefit.

(2) For the purposes of this section –

“**scheme**” includes any transaction, operation, scheme or understanding (whether enforceable or not), including all steps and transactions by which it is carried into effect;

“**tax benefit**” includes –

- (a) any reduction in the liability of any person to pay duty; or
- (b) any increase in the entitlement of any vendor to a refund or draw back of duty;
or
- (c) any reduction in the consideration payable by any person in respect of any import or export of goods; or

(d) any other avoidance or postponement of liability for the payment of any tax, duty or levy imposed by this Act or by any other law administered by the Commissioner.

(3) Any decision of the Commissioner under this section shall be subject to objection and appeal, and whenever in proceedings relating thereto it is proved that the scheme concerned does or would result in a tax benefit, it shall be presumed, until the contrary is proved that such scheme was entered into or carried out solely or mainly for the purpose of obtaining a tax benefit.

Short title and commencement

228. This Act is called the Customs Duty Act, 20....., and takes effect on a date determined by the Minister in the Gazette.



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:

Email	sauthar@sars.gov.za
Addressed to:	The Senior Manager: Customs Legal Policy (Research & Drafting), Mrs M van Twisk
Physical Address	Khanyisa, second floor, Bronkhorst Street, Nieuw Muckleneuk, Pretoria
Facsimile No.	086 512 4088

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FEEDBACK ON THE DRAFT CUSTOMS CONTROL BILL

Page No.	Clause No.	Comment	Recommendation

FEEDBACK ON THE DRAFT CUSTOMS DUTY BILL

Page No.	Clause No.	Comment	Recommendation

General Comments: