

REPUBLIC OF SOUTH AFRICA

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# CUSTOMS DUTY BILL

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*(As introduced in the National Assembly (proposed section 77)  
(The English text is the official text of the Bill)*

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(MINISTER OF FINANCE)

[B 43—2013]

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# BILL

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

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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## CHAPTER 1

## INTERPRETATION, APPLICATION AND ADMINISTRATION OF THIS ACT

*Part 1**Interpretation of this Act***Interpretation** 5

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 appeal**” means an appeal in terms of Part 3 of Chapter 37 of the Customs Control Act; 10

“**administrative penalty**” means a penalty of any of the types stated in section 199;

“**advance origin ruling**” means a ruling issued by the customs authority on the origin of goods of a specific class or kind in order to settle in advance the origin of goods of that class or kind 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; 15

“**advance ruling**” means—

(a) an advance tariff ruling;

(b) an advance valuation ruling; or

(c) an advance origin ruling; 20

“**advance valuation ruling**” means a ruling issued by the customs authority on a valuation criterion applicable to the valuation of goods of a specific class or kind in order to settle in advance the application of that valuation criterion in the valuation of goods of that class or kind 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; 25

“**advance tariff ruling**” means a ruling issued by the customs authority on the tariff classification of goods of a specific class or kind in order to settle in advance the tariff classification of goods of that class or kind 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; 30

“**alternative dispute resolution**” means alternative dispute resolution in terms of Part 4 of Chapter 37 of the Customs Control Act;

“**anti-dumping duty**” means an anti-dumping duty within the meaning of the International Trade Administration Act;

“**assessment**”, in relation to a duty, means a determination by the customs authority in terms of section 83(2)(a) or (b) or 84(1)(a) and (b) of— 35

(a) the dutiability of goods; and

(b) the amount of duty payable on any dutiable goods;

“**at or about the same time**”, in relation to the valuation of goods imported or to be imported, means within a time span of not more than a number of calendar days before or after the goods were imported, as may be prescribed by rule; 40

“**buying commission**”, in relation to the valuation of goods imported or to be imported, means any commission paid or payable to an agent in terms of an agreement between the agent and a buyer in the Republic to purchase<sup>1</sup> 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— 45

(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 the buyer relating to the purchase of the goods; 50

1. “Buying commission” applies only to the primary valuation method where an actual purchase price is essential for determining the customs value of goods. The sale of goods for export to the Republic therefore does not include transactions which do not amount to a purchase and sale, such as the renting, hiring-out or 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.

- (ii) disclosed in the transaction with the seller of the goods that the goods are purchased for or by a buyer in the Republic;
  - (iii) had no proprietary or financial interest in the goods; and
  - (iv) had no other interest in the goods other than as an agent;
- “certificate certifying a declaration of origin”** means a certificate issued by an authority or body empowered to do so, certifying a declaration of origin; 5
- “certificate of origin”** means an approved form identifying goods, and in which the authority or body empowered to issue it certifies expressly that the goods to which the certificate relates originate in a specific country, and includes a declaration furnished by the producer,<sup>2</sup> supplier, exporter or other competent person; 10
- “certified declaration of origin”** means a declaration of origin certified by an authority or body empowered to do so;
- “correction”**, in relation to—
- (a) a tariff determination or re-determination of goods, means a correction by the customs authority in terms of section 102 of an error in the tariff determination or re-determination of the goods which does not have the effect of changing the tariff classification ascribed to the goods in the determination or re-determination; 15
  - (b) a value determination or re-determination of goods, means a correction made by the customs authority in terms of section 119 of an error in the value determination or re-determination of the goods which does not have the effect of changing the valuation ascribed to the goods in the determination or re-determination; or 20
  - (c) an origin determination or re-determination of goods, means a correction by the customs authority in terms of section 155 of an error in the origin determination or re-determination of the goods which does not have the effect of changing the origin ascribed to the goods in the determination or re-determination; 25
- “countervailing duty”** means a countervailing duty within the meaning of the International Trade Administration Act; 30
- “Customs Control Act”** means the Customs Control Act, ..... (Act No ..... of .....);
- “Customs Tariff”** means the Customs Tariff referred to in section 7;
- “customs value”**, in relation to goods, means the value of goods for customs purposes as calculated in accordance with Chapter 7; 35
- “declaration of origin”** means an appropriate statement as to the origin of goods made in connection with their export, by the producer,<sup>3</sup> supplier, exporter or other competent person on the commercial invoice or other document or on a form as may be prescribed by rule; 40
- “dispute settlement”** means dispute settlement in terms of Part 5 of Chapter 37 of the Customs Control Act;
- “documentary evidence of origin”** means any one or more of the following documents: 45
- (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 65(1); 50
- “due date”** means—
- (a) in relation to an amount of duty owed to the Commissioner in terms of a self-assessment referred to in section 82(1)(a) or an assessment referred to in section 83(2)(a) or (b) or 84(1)(a)— 55
    - (i) the date on or before which that amount of duty must be paid in terms of section 22 or 23; or
    - (ii) if payment of the amount has been deferred in terms of section 24—
      - (aa) the date on or before which that amount must be paid in terms of the deferment; or 60

2. The definition of “producer” in section 1 of the Customs Control Act includes a manufacturer.

3. The definition of “producer” in section 1 of the Customs Control Act includes a manufacturer.

- (bb) the date on or before which that amount must be paid in terms of section 25(4) if the deferment was suspended or withdrawn;
- (b) in relation to an under-payment of duty owed to the Commissioner in terms of an assessment referred to in section 83(2)(b) or a re-assessment referred to in section 85(1)(a) or (b)— 5
- (i) the date on or before which that under-payment must be paid in terms of section 83(4)(b) or 85(5)(b); or
- (ii) if payment of that under-payment has been deferred in terms of section 24—
- (aa) the date on or before which that under-payment must be paid in terms of the deferment; or 10
- (bb) the date on or before which that under-payment must be paid in terms of section 25(4) if the deferment was suspended or withdrawn; or
- (c) in relation to an administrative penalty, the date on or before which the penalty must be paid in terms of Chapter 11; 15
- “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; 20
- “final judgement”** means a judgement—
- (a) given or confirmed by a court of final instance; or
- (b) given by another court if the time for noting an appeal against the judgement to a higher court has expired and no appeal has been lodged; 25
- “fixed amount penalty”** means an administrative penalty of a type referred to in section 201;
- “fixed percentage penalty”** means an administrative penalty of a type referred to in section 203;
- “free on board”**, in relation to goods exported or to be exported from the Republic, includes— 30
- (a) all profits, costs, charges and expenses incidental to placing goods on board a vessel, aircraft, railway carriage or vehicle in which the goods are to be transported across the border of the Republic; or
- (b) if those goods consist of a vessel, aircraft, railway carriage or vehicle moving under its own power or on its own wheels, all profits, costs, charges and expenses up to the place where the goods leave the Republic; 35
- “general rules of origin”** means general rules of origin contemplated in section 169;
- “identical goods”**, in relation to goods being valued, means goods— 40
- (a) produced in the same country as the country in which the goods being 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 being valued, including physical characteristics, quality and reputation, 45
- but does not include goods incorporating or reflecting engineering, development work, art work, design work, plans or sketches undertaken in the Republic;
- “import duty”** means any of the following duties imposed on imported goods in the Customs Tariff: 50
- (a) An ordinary import duty;
- (b) an anti-dumping duty;
- (c) a countervailing duty; or
- (d) a safeguard duty,
- and includes a provisional duty imposed in terms of section 15;
- “International Trade Administration Act”** means the International Trade Administration Act, 2002 (Act No. 71 of 2002); 55
- “International Trade Administration Commission”** means the Commission established by section 7 of the International Trade Administration Act;

- “international trade agreement”** means a bilateral or multilateral agreement to which the Republic is a party that has been enacted into law,<sup>4</sup> whether before or after this Act took effect, and in terms of which—
- (a) goods originating in the Republic 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,
- and includes—
- (i) any protocol to the agreement;
  - (ii) any annex or appendix or other addition to the agreement or any such protocol;
  - (iii) any regulation or other measure issued under the agreement or any such protocol;
  - (iv) any amendment to the agreement or any such protocol, to any such annex, appendix or other addition, or to any such regulation or other measure; and
  - (v) any other instrument that forms part of the agreement or any such protocol;
- “key assessment factor”** means any of the factors referred to in section 80(1)(a) to (e);
- “Minister”** means the Cabinet member responsible for finance;
- “National Credit Act”** means the National Credit Act, 2005 (Act No. 34 of 2005);
- “non-prosecutable breach”**, in relation to this Act, means a breach of this Act which is not an offence in terms of this Act;
- “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 in the Customs Tariff on goods imported into the Republic which is specified in the Tariff as an ordinary import duty;
- “origin”**, in relation to goods, means the country in which the goods originated according to the rules of origin applicable to those goods;
- “origin self-determination”**, in relation to goods, means the origin ascribed to goods in terms of section 152(1) by the person clearing the goods for home use or a customs procedure;
- “origin determination”**, in relation to goods, means a determination of the origin of goods by the customs authority in terms of section 154(1);
- “origin re-determination”**, in relation to goods, means a re-determination of the origin of goods by the customs authority in terms of section 157(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 packed into containers, or if not containerised, loaded 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;
  - (b) where the goods as the accompanied or unaccompanied baggage of a person travelling to the Republic are taken on board a vessel, aircraft, railway carriage or vehicle that will transport those goods to the Republic; or
  - (c) where the goods leave the exporting country for the Republic, if those goods consist of a vessel, aircraft, railway carriage or vehicle moving under its own power or on its own wheels;
- “price actually paid or payable”**, in relation to imported 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 dividends

4. See section 921 of the Customs Control Act.

- and payments passing to the seller in connection with the goods that do not directly relate to the purchase of the goods;
- “prosecutable breach”**, in relation to this Act, means a breach of this Act which is an offence in terms of this Act;
- “prosecution avoidance penalty”** means an administrative penalty of a type 5 referred to in section 205;
- “re-assessment”**, in relation to a duty, means a re-determination by the customs authority of the dutiability of goods or the amount of duty payable on the goods as previously—
- (a) assessed by the customs authority in terms of section 83(2)(a) or (b) or 10 84(1)(a) and (b); or
- (b) re-assessed by the customs authority in terms of section 85(1)(a) or (b);
- “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 15 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 224;
- “rules of origin”** means norms and standards, and procedures, for determining the country from which any specific goods originated; 20
- “safeguard duty”** means a safeguard duty within the meaning of the International Trade Administration Act;
- “same class or kind”**, in relation to goods imported into the Republic, means goods—
- (a) falling within the same group or range of goods; and 25
- (b) produced by the same producer<sup>5</sup> or in the same industry or industry sector in the same country from which the imported goods were exported;
- “self-assessment”**, in relation to a duty, means a determination in terms of section 82(1) by a person clearing goods<sup>6</sup> of—
- (a) the dutiability of goods; and 30
- (b) the amount of duty payable on any dutiable goods;
- “similar goods”**, in relation to goods being valued, means goods—
- (a) produced in the same country as the country in which the goods being valued were produced, whether by the same or a different producer; and
- (b) which although not alike in all respects to the goods being valued have, with 35 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, but does not include goods incorporating or reflecting engineering, development work, art work, design work, plans or sketches undertaken in the Republic; 40
- “sold for export to the Republic”**, in relation to goods, includes goods sold after the goods were loaded on board a vessel, aircraft, railway carriage or vehicle for export to the Republic;
- “tariff determination”**, in relation to goods, means a determination of the tariff classification of goods by the customs authority in terms of section 100; 45
- “tariff re-determination”**, in relation to goods, means a re-determination of the tariff classification of goods by the customs authority in terms of section 101(1)(a) or (b);
- “tariff self-determination”**, in relation to goods, means the tariff classification ascribed to goods in terms of section 99 by the person clearing the goods for home 50 use or a customs procedure;
- “this Act”** includes—
- (a) the Customs Tariff;
- (b) the rules;
- (c) any notices of general application published by the Minister in terms of this 55 Act in the *Gazette*;
- (d) an international trade agreement; and

5. The definition of “producer” in section 1 of the Customs Control Act includes a manufacturer.

6. See section 166 of the Customs Control Act.

- (e) any other international agreement referred to in this Act that—
- (i) has been enacted into law whether before or after this Act took effect; and
  - (ii) is as such binding for the purposes of a matter dealt with in this Act;
- “transaction value”**, in relation to goods sold for export to the Republic, means the transaction value of the goods determined in accordance with section 131; 5
- “valuation criterion”** means a criterion or yardstick—
- (a) used in determining the customs value of goods of any specific class or kind; and
  - (b) which remains constant in different transactions between the same parties for the same class or kind of goods; 10
- “value determination”**, in relation to goods, means a determination of the customs value of goods by the customs authority in terms of section 117;
- “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 118(1)(a) or (b); 15
- “value self-determination”**, in relation to goods, means a customs valuation of goods made in terms of section 116 by the person clearing the goods for home use or a customs procedure.
- (2) In this Act, a word or expression which is a derivative or other grammatical form of a word or expression defined in subsection (1) or another provision of this Act, has a corresponding meaning unless the context indicates that another meaning is intended. 20
- (3) Unless inconsistent with the context, any reference in this Act or in the Customs Control Act to—
- (a) a specific Chapter of this Act must be read as including— 25
    - (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; 30
  - (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 35
  - (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. 40
- (4) Any reference in this Act to a person responsible for an act in relation to any goods includes a person who failed to take reasonable care to prevent the act from occurring.

## *Part 2* 45

### *Application and administration of this Act*

#### **Goods to which this Act applies**

2. This Act applies to all goods imported or to be exported from the Republic.

#### **Territorial application of this Act**

3. (1) This Act applies in the whole of the Republic.<sup>7</sup> 50
- (2) For the purposes of subsection (1) —
- (a) the continental shelf referred to in section 8 of the Maritime Zones Act, 1994(Act No. 15 of 1994), must be regarded as being part of the Republic;

<sup>7</sup> Although the Prince Edward Islands form part of the Republic, this Act does not apply to those islands. See the Prince Edward Islands Act, 1948 (Act No. 43 of 1948).

- (b) any installation or device of any kind whatsoever, including any floating or submersible drilling or production platform, constructed or being operated 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 being operated within the Republic; and 5
- (c) any goods mined or produced in the operation of such installation or device and transported to the shore, whether by vessel, pipeline or otherwise, and any person or any other goods being transported by any means to and from such installation or device must be regarded as being transported within the Republic. 10

#### **Application of this Act in relation to SACU member states**

4. (1) This Act applies to all goods imported into the Republic from a SACU member state and to all goods destined for export from the Republic to a SACU member state, subject to any rules as may be prescribed in terms of section 6(2) of the Customs Control Act. 15

(2) Unless provided otherwise in the SACU Agreement no import duty is payable on goods in free circulation in a SACU member state if those goods are imported into the Republic and—

- (a) cleared for—
  - (i) home use under Chapter 8 of the Customs Control Act; or 20
  - (ii) a customs procedure referred to in section 22(1)(b); or
- (b) for tax purposes regarded in terms of a provision of the Customs Control Act to be cleared for home use under Chapter 8 of that Act.

#### **Commissioner to administer this Act**

5. The Commissioner must— 25
- (a) administer and enforce this Act subject to the control and directions of the Minister; and
  - (b) establish and maintain administrative, financial, technological, electronic and communicative and other systems and procedures necessary for the implementation and enforcement of this Act. 30

## **CHAPTER 2**

### **CUSTOMS TARIFF**

#### **Purpose of this Chapter**

6. 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; and 35
  - (b) the amendment of the Customs Tariff.

#### **Customs Tariff**

7. There is a Customs Tariff as set out in the Annexure to be added to this Act as contemplated in section 944(2)(a) of the Customs Control Act, specifying— 40
- (a) the duties that are for purposes of this Act in force when this Act takes effect;
  - (b) the classes and kinds of goods in respect of which those duties are in force; and
  - (c) the rates of, the requirements, conditions and relief applicable to, and other matters relating to, those duties. 45

#### **Amendment of Customs Tariff relating to imported goods**

8. (1) The Minister must, by notice in the *Gazette*, amend the Customs Tariff in relation to imported goods—
- (a) if the amendment is necessary for giving effect to—
    - (i) any international obligations on tariffs and trade binding on the Republic; or 50



- (ii) an international agreement to which the Republic is a party, or any amendment to such agreement;
  - (b) if the Cabinet member responsible for trade and industry or the International Trade Administration Commission requests the amendment for implementing in accordance with the International Trade Administration Act duties or other measures to foster local economic activity; or
  - (c) if the amendment is necessary to give effect to any amendments to, and to any changes in terminology used in, international tariffs and trade instruments binding on the Republic.<sup>8</sup>
- (2) The Minister, acting in consultation with the Cabinet member responsible for trade and industry, may by notice in the *Gazette* amend the Customs Tariff in relation to imported goods where subsection (1) does not apply and the amendment is necessary—
- (a) for implementing national financial and fiscal policies; or
  - (b) in the public interest.
- (3) A request in terms of subsection (1)(b) must be—
- (a) in writing; and
  - (b) accompanied by—
    - (i) a motivation of the reasons for the request; or
    - (ii) a report or ministerial minute in terms of the International Trade Administration Act, if the request is made in terms of that Act.

#### **Amendment of Customs Tariff relating to goods destined for export from Republic**

- 9.** (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—
- (a) for implementing an international agreement to which the Republic is a party, or any amendment to such agreement; or
  - (b) to give effect to any amendments to, and to any changes in terminology used in, international tariffs and trade instruments binding on the Republic.
- (2) The Minister, acting in consultation with the Cabinet member responsible for trade and industry, may by notice in the *Gazette* amend the Customs Tariff in relation to goods destined for export from the Republic where subsection (1) does not apply and the amendment is necessary—
- (a) for implementing national financial and fiscal policies or national economic policies; or
  - (b) in the public interest.
- (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.

#### **Amendments having unforeseen or unintended consequence**

- 10.** (1) If an amendment made in terms of section 8 or 9 has a consequence which was not foreseen or intended when the amendment was made, the Minister, in consultation with the Cabinet member responsible for trade and industry, may by notice in the *Gazette* adjust the amendment to address that unforeseen or unintended consequence with effect from the date the amendment took effect or any later date as may be specified in the notice.
- (2) An adjustment to an amendment contemplated in subsection (1)—
- (a) may be made whether or not the amendment has ceased to have effect or has lapsed in terms of section 14(2); and
  - (b) must for all purposes be regarded to be part of the amendment.

#### **Extent of Minister's powers to amend Customs Tariff**

- 11.** (1) The Customs Tariff may in terms of section 8 or 9 be amended—
- (a) to repeal or replace, or to make any change in, any schedule, chapter, part, heading, subheading, item, provision, note or other component of the Customs Tariff; or

<sup>8</sup> For instance the International Convention on the Harmonized Commodity Description and Coding System, the Explanatory Notes to the Harmonised System, etc.

- (b) to insert any new schedule, chapter, part, heading, subheading, item, provision, note and other component in the Customs Tariff.
- (2) An amendment referred to in subsection (1) includes—
- (a) the imposition of a duty on any goods imported into the Republic<sup>9</sup> or exported from the Republic,<sup>10</sup> specifying—
- (i) the class or kind of goods on which, and the circumstances in which, such duty is imposed;
  - (ii) the rate of such duty;
  - (iii) the requirements and conditions applicable to, and other matters relating to, such duty; and
  - (iv) any relief, refund or drawback that may be claimed in respect of such duty, including—
    - (aa) the extent of any such relief, refund or drawback;
    - (bb) the circumstances in which, the customs procedures in respect of which and the conditions on which any such relief, refund or drawback is or may be granted; and
    - (cc) the requirements and conditions applicable to, and other matters relating to, any such relief, refund or drawback; and
- (b) changing the rate of any existing duty, or changing, repealing or replacing any existing provision relating to such duty, or inserting any new provision in relation to such duty.

#### **Commencement of amendment to Customs Tariff**

- 12.** (1) An amendment to the Customs Tariff in terms of section 8 or 9, takes effect on a date specified in the notice effecting the amendment, or if no date is specified, on the date of publication of the notice, subject to section 13.
- (2) A date specified in a notice in terms of subsection (1) as the date on which an amendment takes effect, may be a date before, on or after the date of publication of the notice.
- (3) Unless otherwise specified in a notice, an amendment commences at the beginning of the day on which the amendment takes effect in terms of subsection (1).

#### **Commencement of amendment to Customs Tariff as part of budgetary tax proposals tabled in National Assembly**

- 13.** (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 8 or 9 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 that 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 8 or 9 specifies another date and time for the commencement of the amendment.
- (4) The Commissioner may for purposes of facilitating the collection and of preventing evasion of duties imposed on goods in accordance with subsection (1), by rule prescribe requirements to be complied with by persons handling such goods at the time the tax proposals are tabled.

#### **Parliamentary ratification of amendment to Customs Tariff**

- 14.** (1) An amendment made to the Customs Tariff in terms of section 8 or 9, read with section 10, is valid up to the last day of the calendar year following the calendar year in

9. See section 22 for time when import duties become payable.

10. See section 23 for time when export duties become payable.

which it was made, but must for its continued validity thereafter be ratified by an Act of Parliament.

(2) If an amendment to the Customs Tariff is not ratified by an Act of Parliament as contemplated in subsection (1), the amendment lapses with effect from the end of the day referred to in that subsection.

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### **Provisional anti-dumping, countervailing or safeguard duty**

**15.** (1) If the International Trade Administration Commission publishes a notice in the *Gazette* stating that it is initiating in terms of the International Trade Administration Act an anti-dumping, countervailing or safeguard investigation in respect of goods imported from a specific supplier or originating from a specific country or territory specified in the notice, the Commissioner must, if the Commission so requests, by notice in the *Gazette*, provisionally impose an anti-dumping, countervailing or safeguard duty on those goods from such date, for such period and for such amount as the Commission may require.

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(2) The Commissioner must, if the Commission so requests, by notice in the *Gazette*—

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(a) amend a notice published by the Commissioner in terms of subsection (1), which may include—

(i) an extension of the period for which the provisional duty was imposed; or

(ii) a reduction or increase of the rate of the provisional duty; or

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(b) withdraw the notice.

(3) (a) A notice published by the Commissioner in terms of subsection (1) or (2) takes effect on a date specified in the notice, which may be a date before, on or after the date of publication of that notice.

(b) A notice referred to in paragraph (a) commences at the beginning of the day on which it takes effect in terms of that paragraph, unless the notice specifies otherwise.

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(4) A provisional anti-dumping, countervailing or safeguard duty imposed on goods in terms of this section must be paid and recovered in terms of this Act as if the duty has been imposed on those goods in the Customs Tariff as from the date of imposition of the provisional duty.

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(5) A provisional anti-dumping, countervailing or safeguard duty on goods lapses at the end of the period for which it was imposed unless that duty is before the end of that period definitively imposed on those goods in the Customs Tariff.

(6) If a provisional anti-dumping, countervailing or safeguard duty is definitively imposed in the Customs Tariff on the goods concerned before the end of the period for which the provisional duty was imposed and the rate of the provisional duty on the goods—

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(a) exceeds the rate of the duty definitively imposed, any excess amount paid to the Commissioner must be refunded to the person who made that excess payment; or

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(b) is less than the rate of the duty definitively imposed, the shortfall may not be recovered as an underpayment of duty.

(7) If a provisional anti-dumping, countervailing or safeguard duty is not definitively imposed in the Customs Tariff on the goods concerned before the end of the period for which the provisional duty was imposed, the amount of all payments made to the Commissioner in respect of the provisional duty must be refunded to the person who made the payments.

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(8) Chapter 4 does not apply to refunds in terms of subsection (6)(a) or (7), and the Commissioner must make those refunds to the person entitled to the refund without application in terms of that Chapter.

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(9) A refund in terms of this section is a direct charge against the National Revenue Fund.

### **Duty that is customs duty for purposes of SACU Agreement**

**16.** (1) An import duty imposed in the Customs Tariff is a customs duty for purposes of the SACU Agreement,<sup>11</sup> subject to subsection (2).

(2) An import duty which is in terms of subsection (1) a customs duty for purposes of the SACU Agreement does not include for purposes of articles 32, 33 and 34 of the Agreement an import duty paid on goods imported into the Republic for use in the Republic or another SACU member state by a government, department, administration or other organ of state, or a person or body, as specified in the Customs Tariff, and any import duty paid on such goods must for purposes of those articles be regarded to be an ordinary levy on those goods. 5 10

(3) (a) The Commissioner must, within such timeframes as the Commissioner may determine, pay the amount of an import duty collected on imported goods intended for use in another SACU member state and which is in terms of subsection (2) regarded to be an ordinary levy, to the government of that state.

(b) A payment in terms of paragraph (a) is a direct charge against the National Revenue Fund. 15

### **Duty that is customs duty for purposes of International Trade Administration Act**

**17.** An import duty imposed in the Customs Tariff is a customs duty for purposes of the International Trade Administration Act.

## **CHAPTER 3 20**

### **PAYMENT OF DUTY, PENALTY AND INTEREST**

#### **Purpose of this Chapter**

**18.** The purpose of this Chapter is—

- (a) to determine liability for import and export duties on dutiable goods; and
- (b) to ensure the payment and recovery of— 25
  - (i) import and export duties on dutiable goods; and
  - (ii) administrative penalties, interest and other amounts owed to the Commissioner in terms of this Act.<sup>12</sup>

#### ***Part 1***

#### ***Liability for duty 30***

#### **When liability for duty commences**

**19.** (1) Liability for import duty on dutiable goods imported into the Republic commences when the goods enter the Republic but if dutiable goods are cleared for home use or a customs procedure before the arrival of the goods at a place of entry referred to in section 31 or 34 of the Customs Control Act,<sup>13</sup> liability for import duty commences when the goods are cleared. 35

(2) The liability for export duty on dutiable goods destined for export from the Republic commences when the goods are—

- (a) cleared for— 40
  - (i) outright export; or

11. The 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 in free circulation between the Republic and other members of the Customs Union.

12. See Chapter 32 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 are recovered in terms of the tax levying Act applicable to VAT, excise duties and that other tax.

13. For submission of clearance declarations before arrival at place of entry, see section 170 of the Customs Control Act.

- (ii) another customs procedure that confers a tax due or partial tax due status<sup>14</sup> on the goods; or
- (b) regarded in terms of a provision of the Customs Control Act to be cleared for outright export.<sup>15</sup>

### When liability for import duty ceases

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**20.** (1) Liability for import duty on dutiable goods imported into the Republic ceases if and when—

- (a) the goods are—
  - (i) cleared for home use under Chapter 8 of the Customs Control Act;
  - (ii) cleared for a customs procedure that confers a tax due or partial tax due status on the goods;<sup>16</sup> or
  - (iii) in terms of a provision of that Act for tax purposes regarded to be cleared for home use under Chapter 8 of that Act;<sup>17</sup> and
- (b) the duty on the goods as assessed or re-assessed in terms of Chapter 5<sup>18</sup> is paid in full. 15

(2) Liability for import duty on dutiable goods imported into the Republic ceases despite non-payment of the duty—

- (a) if the duty falls away in terms of a provision of the Customs Control Act;<sup>19</sup>
- (b) if the goods are—
  - (i) cleared and released in terms of the Customs Control Act for export under the export procedure<sup>20</sup> or under another customs procedure that allows the export of goods under that procedure without submission of a separate export clearance,<sup>21</sup> and exported from the Republic;
  - (ii) removed from the Republic by order of, and under supervision of, the customs authority; 25
  - (iii) destroyed under supervision of the customs authority; or
  - (iv) abandoned to the Commissioner in accordance with Chapter 26 of the Customs Control Act; or
- (c) if the Commissioner's claim in respect of the duty has prescribed.<sup>22</sup> 30

### When liability for export duty ceases

**21.** (1) Liability for export duty on dutiable goods destined for export or exported from the Republic ceases if the duty on the goods as assessed or re-assessed in terms of Chapter 5<sup>23</sup> is paid in full.

(2) Liability for export duty on dutiable goods destined for export or exported from the Republic ceases despite non-payment of the duty— 35

14. As may be the case, for instance, for goods cleared for outward processing.

15. See section 114 of the Customs Control Act.

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

17. See section 112 of the Customs Control Act.

18. For limitations on periods within which goods may be reassessed for duty purposes, see section 86.

19. See for instance sections 544, 545, 546, 547 or 565 of the Customs Control Act.

20. The export procedure dealt with in Chapter 16 of the Customs Control Act covers the export of goods for outright export and the outbound leg of various other customs procedures such as:

- temporary admission procedure;
- temporary export procedure;
- outward processing procedure; and
- inward processing procedure.

21. The following customs procedures allow goods to be exported under those procedures without any separate export clearances:

- international transit procedure;
- transshipment procedure;
- stores procedure; and
- tax free shop procedure.

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

23. For limitations on periods within which goods may be reassessed for duty purposes see section 86.

- (a) if the clearance of the goods for outright export or the other customs procedure that conferred a tax due or partial tax due status on the goods is withdrawn and it is proved that the goods were not exported from the Republic;
- (b) if the duty payable falls away in terms of a provision of the Customs Control Act;<sup>24</sup> 5
- (c) if the goods are—
  - (i) destroyed under supervision of the customs authority; or
  - (ii) abandoned to the Commissioner in accordance with Chapter 26 of the Customs Control Act; or
- (d) if the Commissioner's claim in respect of the duty has prescribed.<sup>25</sup> 10

### **Time when import duty becomes payable**

- 22.** (1) An import duty on dutiable goods imported into the Republic becomes payable if and when the goods are—
- (a) cleared for home use under Chapter 8 of the Customs Control Act;
  - (b) cleared for a customs procedure that confers a tax due or partial tax due status on the goods;<sup>26</sup> or 15
  - (c) for tax purposes regarded in terms of a provision of the Customs Control Act to be cleared for home use under Chapter 8 of that Act.<sup>27</sup>
- (2) An import duty payable in terms of—
- (a) subsection (1)(a) or (b), must be paid within seven calendar days of the time the goods are cleared for home use under Chapter 8 of the Customs Control Act or for the relevant customs procedure; or 20
  - (b) subsection (1)(c), must be paid on or before a date specified for payment in a notice demanding payment of the duty.
- (3) For purposes of subsection (2)(a) the time of clearance of goods must be determined in accordance with section 173 of the Customs Control Act: Provided that in the case of an expedited clearance or release of goods in terms of Chapter 24 of the Customs Control Act, the time of clearance of the goods must be regarded to be the time when a clearance declaration in respect of the goods as contemplated in section 526(1), 531 or 535(1) of that Act which complies with the requirements set out in section 171(1) of that Act is accepted by the customs authority in terms of section 171(1). 25 30
- (4) Subsection (2)(a) does not apply—
- (a) to the extent that payment of an import duty on goods has been deferred in terms of section 24, and in such a case the duty must be paid on or before the deferred date determined in terms of that section; 35
  - (b) to dutiable items in the accompanied or unaccompanied baggage of a person, other than commercial goods, and in such a case any duty payable on such items must be paid on demand;<sup>28</sup> or
  - (c) to international postal articles cleared in accordance with the simplified clearance process contemplated in section 493(2) of the Customs Control Act, and in such a case any import duty payable on such postal articles must be paid before the postal article is delivered by the South African Post office to the consignee.<sup>29</sup> 40

### **Time when export duty becomes payable**

- 23.** (1) An export duty on dutiable goods destined for export from the Republic becomes payable if and when the goods are— 45
- (a) cleared for outright export in terms of the Customs Control Act;

24. See for instance section 544, 545, 546, 547 or 565 of the Customs Control Act.

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

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

27. See section 112 of the Customs Control Act.

28. See also section 481 of the Customs Control Act.

29. See also section 501 of the Customs Control Act.

- (b) cleared for another customs procedure that confers a tax due or partial tax due status on the goods being exported;<sup>30</sup> or
  - (c) for tax purposes regarded in terms of a provision of that Act as having been cleared for outright export.
- (2) An export duty payable in terms of— 5
- (a) subsection (1)(a) or (b), must be paid within seven calendar days of the time the goods are cleared for outright export or the relevant customs procedure; or
  - (b) subsection (1)(c), must be paid on or before a date specified for payment in a notice demanding payment of the duty.
- (3) For purposes of section (2)(a) the time of clearance of goods must be determined 10  
in accordance with section 173 of the Customs Control Act: Provided that in the case of an expedited clearance or release of goods in terms of Chapter 24 of the Customs Control Act, the time of clearance of the goods must be regarded to be the time when a clearance declaration in respect of the goods as contemplated in section 526(1), 531 or 535(1) of that Act which complies with the requirements set out in section 171(1) of that 15  
Act is accepted by the customs authority in terms of section 171(1).
- (4) Subsection (2)(a) does not apply—
- (a) to the extent that payment of an export duty on goods has been deferred in terms of section 24, and in such a case the duty must be paid on or before the 20  
deferred date determined in terms of that section;
  - (b) to dutiable items in the accompanied or unaccompanied baggage of a person, other than commercial goods, and in such a case any duty payable on such items must be paid on demand;<sup>31</sup> or
  - (c) to international postal articles cleared in accordance with the simplified 25  
clearance process contemplated in section 494(2) of the Customs Control Act, and in such a case any export duty payable on such postal articles must be paid on demand.<sup>32</sup>

#### **Deferment of payment of duty**

- 24.** (1) The customs authority may, despite section 22 or 23, defer payment of duty on 30  
goods to be cleared by or on behalf of a specific person, for a period and up to a maximum amount of duty determined by it.
- (2) A deferment of duty benefit on goods in terms of subsection (1)—
- (a) may be granted only on application by—
    - (i) a specific person liable for the payment of duty on those goods; or
    - (ii) the customs broker acting on behalf of that person; and 35
  - (b) is subject to such conditions, including conditions relating to the provision of security—
    - (i) as the customs authority may determine in a specific case; or
    - (ii) as may be prescribed by rule.
- (3) No interest is payable on deferred duties paid on or before the due date.<sup>33</sup> 40

#### **Grounds and procedure for suspension or withdrawal of duty deferment benefit**

- 25.** (1) The customs authority must withdraw a duty deferment benefit granted to a 45  
person if that person—
- (a) acquired the benefit under false pretences;
  - (b) is no longer engaged in the import or export of goods or related activities; or
  - (c) is sequestered or liquidated.
- (2) The customs authority may suspend or withdraw a duty deferment benefit granted 50  
to a person if—
- (a) that person—
    - (i) has in a material respect breached a condition applicable to the 50  
benefit in terms of section 24(2); or

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

31. See also section 486 of the Customs Control Act.

32. See also section 501 of the Customs Control Act.

33. Interest becomes payable in terms of section 45 from the date the goods acquired a tax due status in terms of Chapter 6 of the Customs Control Act if the duty is not paid on or before the due date.

- (ii) failed to pay within three working days after payment became due any deferred duty or other tax or amount payable by that person to the Commissioner in terms of this Act, another tax levying Act or the Customs Control Act; or
  - (b) during the validity period of the benefit, that person, or an employee of that person in a managerial position, or if that person is a juristic entity, a director, administrator or trustee of the juristic entity—
    - (i) has breached a provision of this Act, another tax levying Act or the Customs Control Act in a material respect;
    - (ii) has been convicted of an offence under this Act, another tax levying Act or the Customs Control Act; or
    - (iii) has been convicted of an offence involving fraud or dishonesty; or
  - (c) any circumstances material to the granting of the benefit have changed, including the legal status, legal identity and financial soundness of the person to whom the benefit has been granted.
- (3) Subsection (2)(b) does not apply if the person to whom the deferment benefit was granted was not a party to, or could not have prevented, or did not benefit in any material respect from, any such breach or offence by such employee, director, administrator or trustee.
- (4) If a deferment benefit is suspended or withdrawn the person to whom the deferment benefit was granted must pay any outstanding deferred amounts within three working days from the date of suspension or withdrawal.
- (5) If the customs authority intends to suspend or withdraw a deferment benefit in terms of subsection (1) or (2), it must first—
- (a) notify the person to whom the deferment benefit was granted by registered post or secured electronic means of—
    - (i) the proposed suspension or withdrawal; and
    - (ii) the reasons for the proposed suspension or withdrawal; and
  - (b) give the person to whom the deferment benefit was granted an opportunity to submit representations on the proposed suspension or withdrawal within three working days of the date the notification referred to in paragraph (a) was posted or transmitted to the person, read with section 908 of the Customs Control Act.<sup>34</sup>
- (6) Despite subsection (5), the customs authority may suspend a deferment benefit with immediate effect if circumstances so demand, and in such a case the person to whom the deferment benefit was granted is entitled to submit to the customs authority representations on the suspension within three working days after the deferment benefit has been suspended, read with section 908 of the Customs Control Act.<sup>35</sup>
- (7) If the customs authority decides to suspend or withdraw a deferment benefit, the customs authority must—
- (a) notify the person to whom the deferment benefit was granted of the decision in accordance with section 912 of the Customs Control Act, indicating—
    - (i) the period for which the benefit is suspended; or
    - (ii) the date from which the benefit is withdrawn; and
  - (b) in the notification draw the person's attention to the fact that an appeal may be lodged against the decision in terms of Part 3 of Chapter 37 of the Customs Control Act, if such appeal is available in the circumstances of the decision.

## *Part 2*

### *Payment and recovery of duty*

#### **Duty constitutes debt to Commissioner for credit of National Revenue Fund** 50

**26.** Any duty payable in terms of this Act—

- (a) is a debt owed to the Commissioner for credit of the National Revenue Fund; and

<sup>34.</sup> Section 228 makes section 908 of the Customs Control Act applicable to this Act.

<sup>35.</sup> Section 228 makes section 908 of the Customs Control Act applicable to this Act.



- (b) must be paid to or recovered by the Commissioner in accordance with this Chapter and any other applicable provisions of this Act<sup>36</sup> and the Customs Control Act.

#### **Payment of import duty on dutiable goods cleared for home use**

**27.** (1) Import duty payable on imported dutiable goods being cleared for home use under Chapter 8 of the Customs Control Act or for a customs procedure referred to in section 22(1)(b) must be paid by the person clearing the goods.<sup>37</sup> 5

(2) If the duty on the goods is not paid on or before the due date, the Commissioner may recover the duty from—

- (a) the person who is in terms of subsection (1) obliged to pay the duty and who failed to pay the duty; 10
- (b) any person who is an importer in relation to the goods, or if that person is not located in the Republic,<sup>38</sup> from—
- (i) that person; or
- (ii) the registered agent of that person representing that person in the Republic; 15
- (c) a person who, at the time of clearance of the goods, is the owner of the goods, or if that person is not located in the Republic, from—
- (i) that person; or
- (ii) the registered agent of that person representing that person in the Republic; 20
- (d) a customs broker who submitted the clearance declaration in respect of the goods, subject to section 39; or
- (e) any security covering those goods provided by any of the persons referred to in paragraphs (a), (b), (c) and (d). 25

#### **Recovery of import duty when dutiable goods imported or off-loaded otherwise than through or at place of entry are regarded cleared for home use**

**28.** (1) If dutiable goods imported otherwise than through, or off-loaded otherwise than at, a place of entry, are in terms of section 42(2) of the Customs Control Act for tax purposes regarded to be cleared for home use under Chapter 8 of that Act, the Commissioner must demand payment of any import duty payable on the goods<sup>39</sup>— 30

- (a) from the person who, whilst in physical control of the goods, committed the breach of the Customs Control Act, or was responsible for the act,<sup>40</sup> on account of which the goods were regarded to be cleared for home use;
- (b) if the person referred to in paragraph (a) is a carrier not located in the Republic,<sup>41</sup> from— 35
- (i) that carrier; or
- (ii) the registered agent of that carrier representing that carrier in the Republic; or
- (c) from any person who is an importer in relation to the goods, or if that person is not located in the Republic, from— 40
- (i) that person; or
- (ii) the registered agent of that person representing that person in the Republic.

(2) If the duty on the goods is not paid on or before the due date, the Commissioner may recover the duty from— 45

- (a) the person from whom payment of the duty was demanded in terms of subsection (1) and who failed to pay the duty;
- (b) any other person referred to in subsection (1); or
- (c) any security covering those goods provided by any of the persons referred to in subsection (1). 50

36. See section 223 if debt is not paid on or before the due date.

37. See section 166 of the Customs Control Act for person clearing goods.

38. See section 1(3)(a) of the Customs Control Act.

39. See section 152(2) of the Customs Control Act.

40. See section 1(4).

41. See section 1(3)(a) of the Customs Control Act.

**Recovery of import duty when non-cleared dutiable goods are regarded cleared for home use**

**29.** (1) If no clearance declaration is in terms of section 90(1) or (3) of the Customs Control Act submitted in respect of imported dutiable goods to which section 89 of that Act applies within the period or at the time applicable to the goods, or if the goods are diverted for home use before the expiry of that period, and the goods are in terms of section 92(1) of that Act for tax purposes regarded to be cleared for home use under Chapter 8 of that Act, the Commissioner must demand payment of any import duty payable on the goods<sup>42</sup> from—

- (a) any person who is an importer in relation to the goods, or if that person is not located in the Republic,<sup>43</sup> from—
  - (i) that person; or
  - (ii) the registered agent of that person representing that person in the Republic; or
- (b) the person who, whilst in physical control of the goods, committed the breach of the Customs Control Act, or was responsible for the act,<sup>44</sup> on account of which the goods were regarded to be cleared for home use.

(2) If the duty on the goods is not paid on or before the due date, the Commissioner may recover the duty from—

- (a) the person from whom payment of the duty was demanded in terms of subsection (1) and who failed to pay the duty;
- (b) any other person referred to in subsection (1); or
- (c) any security covering those goods provided by any of the persons referred to in subsection (1).

**Recovery of import duty when dutiable goods under customs procedure are regarded cleared for home use**

**30.** (1) If imported dutiable goods under a customs procedure, other than the stores procedure, are in terms of a provision of the Customs Control Act<sup>45</sup> for tax purposes regarded to be cleared for home use under Chapter 8 of that Act, the Commissioner must demand payment of any import duty payable on the goods—

- (a) from the person who cleared or is clearing the goods for that customs procedure;
- (b) from the person who, whilst in physical control of the goods, committed the breach of the Customs Control Act, or was responsible for the act,<sup>46</sup> on account of which the goods were regarded to be cleared for home use;
- (c) if the person referred to in paragraph (b) is a carrier not located in the Republic,<sup>47</sup> from—
  - (i) that carrier; or
  - (ii) the registered agent of that carrier representing that carrier in the Republic;
- (d) from any person who is an importer in relation to the goods, or if that person is not located in the Republic, from—
  - (i) that person; or
  - (ii) the registered agent of that person representing that person in the Republic;
- (e) from a person who, at the time of clearance of the goods for that customs procedure, is the owner of the goods, or if that person is not located in the Republic, from—
  - (i) that person; or
  - (ii) the registered agent of that person representing that person in the Republic; or
- (f) from a customs broker who submitted the clearance declaration in respect of the goods, subject to section 39.

42. See section 153(2) of the Customs Control Act.

43. See section 1(3)(a) of the Customs Control Act.

44. See section 1(4).

45. See section 112 of the Customs Control Act.

46. See section 1(4).

47. See section 1(3)(a) of the Customs Control Act.

- (2) If the duty on the goods is not paid on or before the due date, the Commissioner may recover the duty from—
- (a) the person from whom payment of the duty was demanded in terms of subsection (1) and who failed to pay the duty;
  - (b) any other person referred to in subsection (1); or
  - (c) any security covering those goods provided—
    - (i) by any of the persons referred to in subsection (1); or
    - (ii) in the case of goods cleared for the temporary admission procedure in terms of international customs arrangements, by the guaranteeing association which guaranteed the CPD or ATA carnet in terms of which the goods were or are being cleared.

**Recovery of import duty when dutiable goods under stores procedure are regarded cleared for home use**

- 31.** (1) If imported dutiable goods under the stores procedure on board a foreign-going vessel or aircraft or cross-border train referred to in section 334(2) of the Customs Control Act, are in terms of section 112, 356 or 357 of that Act for tax purposes regarded to be cleared for home use under Chapter 8 of that Act, the Commissioner must demand payment of any import duty payable on the goods from—
- (a) the on-board operator of the vessel, aircraft or train; or
  - (b) the carrier in charge of the vessel, aircraft or train, or if the carrier is not located in the Republic,<sup>48</sup> from—
    - (i) that carrier; or
    - (ii) the registered agent of that carrier representing that carrier in the Republic.
- (2) If the duty on the goods referred to in subsection (1) is not paid on or before the due date, the Commissioner may recover the duty from—
- (a) the person from whom payment of the duty was demanded in terms of subsection (1) and who failed to pay the duty;
  - (b) any other person referred to in subsection (1); or
  - (c) any security covering those goods provided by any of the persons referred to in subsection (1).
- (3) If imported dutiable goods not in free circulation and cleared for supply under the stores procedure, but not yet supplied, to a foreign-going vessel or aircraft or cross-border train referred to in section 334(2) of the Customs Control Act, are in terms of section 112 of that Act for tax purposes regarded to be cleared for home use under Chapter 8 of that Act, the Commissioner must demand payment of any import duty payable on the goods from—
- (a) the person who cleared or is clearing the goods for the stores procedure;
  - (b) the person who, whilst in physical control of the goods, committed the breach of the Customs Control Act, or was responsible for the act,<sup>49</sup> on account of which the goods were regarded to have been cleared for home use; or
  - (c) a customs broker who submitted the clearance declaration in respect of the goods, subject to section 39.
- (4) If the duty on the goods referred to in subsection (3) is not paid on or before the due date, the Commissioner may recover the duty from—
- (a) the person from whom payment of the duty was demanded in terms of subsection (3) and who failed to pay the duty;
  - (b) any other person referred to in subsection (3); or
  - (c) any security covering those goods provided by any of the persons referred to in subsection (3).

48. See section 1(3)(a) of the Customs Control Act.

49. See section 1(4).

**Payment of export duty on dutiable goods cleared for outright export or customs procedure attracting export duty**

**32.** (1) Export duty payable on dutiable goods being cleared for outright export or a customs procedure referred to in section 23(1)(b) must be paid by the person clearing the goods.<sup>50</sup> 5

(2) If the duty on the goods is not paid on or before the due date, the Commissioner may recover the duty from—

- (a) the person who is in terms of subsection (1) obliged to pay the duty and who failed to pay the duty;
- (b) any person who is an exporter in relation to the goods, or if that person is not located in the Republic,<sup>51</sup> from that person or the registered agent of that person representing that person in the Republic; 10
- (c) a person who, at the time of clearance of the goods, is the owner of the goods, or if that person is not located in the Republic, from that person or the registered agent of that person representing that person in the Republic; 15
- (d) a customs broker who submitted the clearance declaration in respect of the goods, subject to section 39; or
- (e) any security covering those goods provided by any of the persons referred to in paragraphs (a), (b), (c) and (d).

**Recovery of export duty when dutiable goods exported or loaded otherwise than through or at place of exit are regarded cleared for outright export** 20

**33.** (1) If dutiable goods exported or in the process of being exported otherwise than through, or loaded otherwise than at, a place of exit, are in terms of section 42(3) of the Customs Control Act for tax purposes regarded to be cleared for outright export, the Commissioner must demand payment of any export duty payable on the goods<sup>52</sup>— 25

- (a) from the person who whilst in physical control of the goods committed the breach of the Customs Control Act, or was responsible for the act,<sup>53</sup> on account of which the goods were regarded to be cleared for outright export;
- (b) if the person referred to in paragraph (a) is a carrier not located in the Republic,<sup>54</sup> from— 30
  - (i) that carrier; or
  - (ii) the registered agent of that carrier representing that carrier in the Republic; or
- (c) from any person who is an exporter in relation to the goods, or if that person is not located in the Republic, from— 35
  - (i) that person; or
  - (ii) the registered agent of that person representing that person in the Republic.

(2) If the duty on the goods is not paid on or before the due date, the Commissioner may recover the duty from— 40

- (a) the person from whom payment of the duty was demanded in terms of subsection (1) and who failed to pay the duty;
- (b) any other person referred to in subsection (1); or
- (c) any security covering those goods provided by any of the persons referred to in subsection (1). 45

**Recovery of export duty when non-cleared dutiable goods in free circulation are regarded cleared for outright export**

**34.** (1) If dutiable goods in free circulation that have been exported or are being exported without clearance as required by sections 93 and 94 of the Customs Control Act, are in terms of section 96(1)(b) of that Act for tax purposes regarded to be cleared 50

50. See section 166 of the Customs Control Act for person clearing goods.

51. See section 1(3)(a) of the Customs Control Act.

52. See section 157(2) of the Customs Control Act.

53. See section 1(4).

54. See section 1(3)(a) of the Customs Control Act.

for outright export, the Commissioner must demand payment of any export duty payable on the goods<sup>55</sup> from—

- (a) any person who is an exporter in relation to the goods, or if that person is not located in the Republic,<sup>56</sup> from—
    - (i) that person; or 5
    - (ii) the registered agent of that person representing that person in the Republic; or
  - (b) the person who whilst in physical control of the goods committed the breach of the Customs Control Act, or was responsible for the act,<sup>57</sup> on account of which the goods were regarded to be cleared for outright export. 10
- (2) If the duty on the goods is not paid on or before the due date, the Commissioner may recover the duty from—
- (a) the person from whom payment of the duty was demanded in terms of subsection (1) and who failed to pay the duty;
  - (b) any other person referred to in subsection (1); or 15
  - (c) any security covering those goods provided by any of the persons referred to in subsection (1).

### **Recovery of export duty when dutiable goods under customs procedure are regarded cleared for outright export**

**35.** (1) If dutiable goods exported or in the process of being exported under a customs procedure<sup>58</sup> are in terms of section 114<sup>59</sup> of the Customs Control Act for tax purposes regarded to be cleared for outright export, the Commissioner must demand payment of any export duty payable on the goods from—

- (a) the person who cleared or is clearing the goods for that customs procedure;
  - (b) any person who is an exporter in relation to the goods, or if that person is not located in the Republic,<sup>60</sup> from— 25
    - (i) that person; or
    - (ii) the registered agent of that person representing that person in the Republic; or
  - (c) a customs broker who submitted the clearance declaration in respect of the goods, subject to section 39. 30
- (2) If the duty on the goods is not paid on or before the due date, the Commissioner may recover the duty from—
- (a) the person from whom payment of the duty was demanded in terms of subsection (1) and who failed to pay the duty; 35
  - (b) any other person referred to in subsection (1); or
  - (c) any security covering those goods provided—
    - (i) by any of the persons referred to in subsection (1); or
    - (ii) in the case of goods cleared for the temporary export procedure in terms of international customs arrangements, by the guaranteeing association which guaranteed the CPD or ATA carnet in terms of which the goods were or are being cleared. 40

(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 473 of the Customs Control Act, any import duty payable on the compensating products as imported goods must be paid in accordance with section 27. 45

### **Joint and several liability for payment of duty**

**36.** (1) When applying sections 27 to 35, the persons mentioned in any of those sections are jointly and severally liable towards the Commissioner for the payment of a duty payable on dutiable goods, and the Commissioner may recover the duty from any one or more or all of those persons. 50

55. See section 158(2) of the Customs Control Act.

56. See section 1(3)(a) of the Customs Control Act.

57. See section 1(4).

58. This relates more specifically to goods exported under the temporary export or outward processing procedures.

59. See also sections 404 or 472 of the Customs Control Act.

60. See section 1(3)(a) of the Customs Control Act.

(2) Subsection (1) must in the case of customs brokers be applied subject to section 39.

### Collection of duty from agent

**37.** If a person from whom a duty on dutiable goods may be collected in terms of a provision of sections 27 to 35, is not located in the Republic,<sup>61</sup> 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— 5

- (a) the registered agent of that person in the Republic;
- (b) any person who in connection with those goods—
  - (i) acted as, or gave out to be, the agent of that person; or 10
  - (ii) acted in a fiduciary capacity; or
- (c) any security covering those goods that was provided by a person referred to in paragraph (a) or (b).

### Liability of person managing juristic entity

**38.** (1) If a person from whom a duty may be collected in terms of a provision of sections 27 to 35, is a juristic entity and that juristic entity fails to pay the 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 person managing the juristic entity, subject to subsection (2). 15

(2) The Commissioner may proceed to recover the duty from the person managing the juristic entity as contemplated in subsection (1) only— 20

- (a) after reasonable steps have been taken to recover the duty from the juristic entity itself; and
- (b) if the non-payment of the duty has been the direct result of negligence or mismanagement of the juristic entity's affairs by that person. 25

### Limitation on liability of customs broker

**39.** (1) A customs broker who submitted a clearance declaration on behalf of another person to clear dutiable goods for home use or a customs procedure does not attract liability for payment of any duty on the goods if it is proved that the customs broker— 30

- (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 in terms of subsection (1) of liability for payment of a duty if— 35

- (a) payment of the duty was deferred in terms of a duty deferment benefit granted to the customs broker;
- (b) the customs code or the name and physical address of the person on whose behalf the declaration was submitted is not disclosed on the declaration; or
- (c) the person on whose behalf the declaration was submitted is not located in the Republic and has no registered agent located in the Republic representing that person in the Republic. 40

### Duty collected from security

**40.** A person liable in terms of a provision of sections 27 to 37 for a duty payable on dutiable goods is absolved from liability towards the Commissioner if the duty is recovered in full from any security covering those goods. 45

61. See section 1(3)(a) of the Customs Control Act.

**Under-payment of duty**

- 41.** (1) The Commissioner must, subject to subsections (2) and (3), correct any under-payment<sup>62</sup> of the amount of a duty payable on dutiable goods by recovering the amount of the under-payment from—
- (a) the person who partially paid the duty; 5
  - (b) any other person from whom the duty could have been recovered in terms of this Part; or
  - (c) any security covering those goods 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 may but is not obliged to recover the under-payment. 10
- (3) Liability for an under-payment of duty on dutiable goods ceases if the Commissioner's claim in respect of the duty has prescribed.<sup>63</sup>

**When import duty not payable**

- 42.** No import duty on dutiable goods imported into the Republic is payable— 15
- (a) to the extent to which relief of duty applies to the goods;
  - (b) whilst those goods are under a customs procedure, to the extent to which that procedure confers a tax free status on the goods in relation to import duty;<sup>64</sup> or
  - (c) if liability for import duty on those goods has ceased in terms of section 20.

**When export duty not payable** 20

- 43.** No export duty on dutiable goods destined for export or exported from the Republic is payable—
- (a) to the extent to which relief of duty applies to the goods;
  - (b) to the extent to which the customs procedure under which those goods are exported confers a tax free status<sup>65</sup> on the goods in relation to export duty; or 25
  - (c) if liability for export duty on those goods has ceased in terms of section 21.

**Part 3*****Payment and recovery of interest and administrative penalty*****Interest and administrative penalty constitute debt to Commissioner for credit of National Revenue Fund** 30

- 44.** Any interest in terms of section 45 on the outstanding amount of a duty, any administrative penalty and any interest in terms of section 47 on the outstanding amount of a penalty—
- (a) is a debt owed to the Commissioner for credit of the National Revenue Fund; 35
  - and
  - (b) must be paid to or recovered by the Commissioner in accordance with this Chapter and any other applicable provisions of this Act.<sup>66</sup>

**Interest on outstanding duty**

- 45.** (1) (a) If an amount of duty assessed in terms of section 83(2)(a) or (b) or re-assessed in terms of section 85(1)(a) or (b) is not paid on or before the due date, that amount bears interest at a rate determined by the Minister from the date the goods acquired a tax due status in terms of Chapter 6 of the Customs Control Act. 40
- (b) An amount of duty assessed in terms of section 84(1)(a) bears interest at a rate determined by the Minister from the date the goods acquired a tax due status in terms of Chapter 6 of the Customs Control Act. 45

62. For refunds of amounts overcharged see section 64.

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

64. See Chapter 6 of the Customs Control Act

65. See Chapter 6 of the Customs Control Act.

66. See section 223 if debt is not paid on or before the due date.

(2) Interest referred to in subsection (1)(a) or (b) must be calculated on daily balances owing and compounded at the end of each month.

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

(b) The provisions of this Act relating to the recovery of duties apply, with any necessary changes as the context may require, to the recovery of interest payable on an outstanding amount of duty.

(4) The Commissioner may on good grounds shown and in such circumstances as the Commissioner may determine exempt a person from paying interest for which that person is liable in terms of subsection (1)(a) or (b) or (2). 10

### **Recovery of administrative penalty**

**46.** (1) If the amount of an administrative penalty, excluding a prosecution avoidance penalty, is not paid on or before the due date, the Commissioner must recover the amount of the penalty, including any interest in terms of section 47 on the outstanding amount of the penalty, from— 15

(a) the person on whom the penalty was imposed;

(b) any person who in respect of the goods in connection with which the penalty was imposed—

(i) acted as, or gave out to be, the agent of that person; or

(ii) acted in a fiduciary capacity; or 20

(c) any security provided by a person referred to in paragraph (a) or (b) covering the goods in connection with which the penalty was imposed.

(2) If the person referred to in subsection (1)(a) or (b) is a juristic entity and that juristic entity has not provided security, or sufficient security, from which the Commissioner may recover the penalty and any interest, the Commissioner may recover 25 the penalty and any interest from a person managing the juristic entity, subject to subsection (3).

(3) The Commissioner may proceed to recover the penalty and any interest from the person managing the juristic entity as contemplated in subsection (2) only—

(a) after reasonable steps have been taken to recover the penalty and any interest 30 from the juristic entity itself; and

(b) if the non-payment of the penalty and any interest has been the direct result of negligence or mismanagement of the juristic entity's affairs by that person.

### **Interest on outstanding administrative penalty**

**47.** (1) A fixed amount or fixed percentage penalty owed to the Commissioner in terms 35 of this Act and not paid on or before the due date bears interest from that date at a rate determined by the Minister.

(2) Interest determined in terms of subsection (1) must be calculated on daily balances owing and compounded at the end of each month.

(3) Interest on any outstanding amount of an administrative penalty may be recovered 40 as if that interest is part of the penalty.

(4) The Commissioner may on good grounds shown exempt a person from paying interest for which that person is liable in terms of subsection (1) or (2).

### **Under-payment of interest or administrative penalty**

**48.** (1) The Commissioner must, subject to subsection (2), correct any under-payment 45 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 other person from whom that interest or penalty could have been recovered in terms of section 45, 46 or 47; or

(c) any security provided by a person referred to in paragraphs (a) and (b) 50 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 may but is not obliged to recover the under-payment.



**Payment of outstanding amount in instalments**

- 49.** The Commissioner may in circumstances as may be prescribed by rule allow the payment of outstanding amounts of duty, administrative penalties (other than prosecution avoidance penalties) and interest to be paid in instalments—
- (a) on such conditions as may be prescribed by rule or as the Commissioner may determine in a specific case; and 5
  - (b) subject to the payment of interest in terms of sections 45 and 47 on outstanding balances.

**Part 4*****Lien and other mechanisms to secure payment of debt*** 10**Establishing of lien over goods to secure payment of debt**

- 50.** (1) In order to secure payment to the Commissioner of a debt owed to the Commissioner in terms of this Chapter, 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; 15
  - (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.
- (2) A lien over goods in terms of this Part is established when a customs officer attaches the goods in accordance with section 51. 20
- (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 25
  - (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 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 purpose of establishing lien** 30

- 51.** (1) A customs officer may attach goods referred to in section 50(1)(a), (b) or (c) for purposes of establishing a lien in terms of this Part regardless of where the goods happen to be or in whose possession the goods are.
- (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. 35
- (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 owed to the Commissioner in terms of this Chapter; 40
  - (d) state particulars and 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 45
  - (b) removed to a state warehouse or any premises licensed in terms of the Customs Control Act, as the customs authority may determine.
- (5) If any goods have been sealed, marked, locked, fastened or otherwise secured or impounded in terms of subsection (4)(a) at the place where the goods were attached—
- (a) no person may without the permission of the customs authority — 50
    - (i) open, break, destroy, alter or in any way tamper with that seal, mark or lock; or
    - (ii) remove the goods from that place; and
  - (b) the person in charge of that place must take all steps reasonable in the circumstances to prevent any contravention of paragraph (a). 55

(6) If any goods have been removed in terms of subsection (4)(b) to a state warehouse or any licensed premises no person may without the permission of the customs authority remove the goods from that warehouse or premises.

#### **Attachment of goods in which debtor has no ownership interest**

**52.** The customs authority must immediately release from a lien any goods attached in terms of section 51 if it is proved by any person claiming to be the owner of or to have a right in the goods that the debtor is not the owner or co-owner of the goods or does not have any title, right or interest in the goods in terms of a credit agreement under the National Credit Act. 5

#### **Attachment of goods of which debtor is co-owner** 10

**53.** (1) If goods of which the debtor is a co-owner are attached in terms of section 51, 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; 15
- (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—

- (i) a copy of any agreement in terms of which such co-ownership was established; or 20
- (ii) an affidavit signed by the debtor attesting to such co-ownership.

(2) On receipt of the written disclosure referred to in subsection (1)(a), 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 25
- (b) request the other co-owner to corroborate the debtor's share in ownership of the goods.

(3) If a person, other than the debtor, who is a co-owner of goods attached in terms of section 51 becomes aware of the attachment, that co-owner must immediately notify the customs authority and submit to the customs authority the information and document mentioned in subsection (1)(a)(i), (ii) and (iii) and (b). 30

(4) 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. 35

#### **Attachment of goods subject to credit agreement under National Credit Act**

**54.** (1) If goods subject to a credit agreement under the National Credit Act between the debtor and a credit provider contemplated in that Act are attached in terms of section 51, the debtor must promptly—

(a) disclose to the customs authority, in writing, the existence of the agreement, stating the following: 40

- (i) The name and address of the credit provider;
- (ii) the amount of the principal debt under the agreement;
- (iii) the duration of the agreement;
- (iv) the outstanding balance under the agreement; and 45
- (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 provider that the goods have been attached and that a lien in favour of the Commissioner has been established over the goods; and 50
- (b) request the credit provider to submit to the customs authority full particulars of the debtor's title, right or interest in the goods.

- (3) The credit provider 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 5
    - (ii) details of how that value was arrived at.
- (4) If goods subject to a credit agreement under the National Credit Act are attached in terms of section 51 and the credit provider under the agreement becomes aware of the attachment, the credit provider must immediately notify the customs authority of the credit agreement and submit to the customs authority the information mentioned in subsections (1)(a)(i) to (v) and (3) and a copy of the agreement. 10
- (5) 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. 15
- (6) The Commissioner and the credit provider 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. 20

### **Effect of lien**

- 55.** (1) Goods in respect of which a lien has been established in terms of this Part may not—
- (a) be sold or transferred to, or relinquished in favour of, another person except in accordance with this Part; or 25
  - (b) 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 51(1) for a purpose and on conditions as the customs authority may determine. 30
- (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 any licensed premises. 35
- (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 any licensed premises.
- (5) If any goods have been removed in terms of subsection (4)(a) to a state warehouse or licensed premises no person may without the permission of the customs authority remove the goods from that warehouse or premises. 40

### **Termination of lien**

- 56.** 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; 45
  - (b) the goods are sold in terms of section 57; or
  - (c) the customs authority for any reason releases the goods from the lien.

### **Sale of lien goods**

- 57.** (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, read with section 908 of the Customs Control Act,<sup>67</sup> the Commissioner may summarily sell— 50

<sup>67</sup>. Section 228 applies section 908 of the Customs Control Act to this Act.

- (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 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 sold in terms of subsection (1) in any manner determined by the Commissioner, including—
- (a) by public auction;
  - (b) by public tender; and
  - (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, may be sold in terms of this section only as may be agreed with the credit provider.
- (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 in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), the Commissioner may, despite that Act and its rules—
- (a) remove the goods to a state warehouse or any licensed premises, if the goods are not already secured in a state warehouse or licensed premises; and
  - (b) sell the goods in accordance with subsection (1).

#### **Application of proceeds realised for lien goods** 20

- 58.** (1) The proceeds realised for goods sold in terms of section 57 must be applied to pay the following claims in the order of preference as indicated below:
- (a) The debt for which the goods were attached;
  - (b) any outstanding tax or administrative penalties payable in respect of 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) state warehouse rent, if the goods were removed to a state warehouse;
    - (ii) costs incurred by the Commissioner in applying section 51(4) or 57(4); and
    - (iii) costs incurred by the Commissioner in selling the goods in terms of section 57;
  - (d) any charges owed in terms of section 575(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 owed to the licensee of the licensed premises where the goods were kept, if the goods were retained at or removed to such premises; and
  - (f) the debt for which a warrant of execution referred to in section 57(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 the application is received by the Commissioner within three years of the date of sale of the goods.
- (3) Any duty, administrative penalty or interest, or part of any duty, penalty or interest, or any other amount payable by the debtor to the Commissioner may be set off against an amount payable to the debtor in terms of subsection (2).

#### **Application of Tax Administration Act for recovery, write off or compromise of debt** 50

- 59.** (1) Part D of Chapter 11 of the Tax Administration Act, including any criminal and other sanctions contained in that Act for the enforcement of that Chapter, applies with any necessary changes as the context may require to the recovery of a debt payable to the Commissioner in terms of this Chapter.
- (2) Chapter 14 of the Tax Administration Act, including any criminal and other sanctions contained in that Act for the enforcement of that Chapter, applies with any necessary changes as the context may require to the writing off or compromise of a debt payable to the Commissioner in terms of this Chapter.

**Part 5****Other matters****Rules to facilitate application of this Chapter**

- 60.** The Commissioner may in terms of section 224 make rules to facilitate the implementation of this Chapter, including rules prescribing— 5
- (a) the methods that may or must be used to pay any duties and other amounts in terms of this Act to the Commissioner, including conditions and requirements for—
    - (i) cash payments or payments by cheque, and limits on cheque and cash payments; 10
    - (ii) electronic payments; or
    - (ii) payment in any other way;
  - (b) receipts and other documents and other evidence that may be used as proof of payment of duties and other amounts payable in terms of this Act; and
  - (c) procedures for applications for duty deferment benefits and for the amend- 15  
ment or the suspension or withdrawal of deferment benefits.

**Offences in terms of this Chapter**

- 61.** (1) A person is guilty of an offence if that person contravenes section 51(5) or (6) or 55(1) or (5).
- (2) A person to whom a deferment of duty benefit has been granted is guilty of an offence if that person contravenes or fails to comply with a condition referred to in section 24(2)(b) applicable to that person. 20
- (3) A debtor who is the co-owner of goods attached in terms of section 51 or who is a party to a credit agreement referred to in section 54 is guilty of an offence if that person fails to comply with section 53(1) or 54(1). 25
- (4) A debtor allowed to use goods attached in terms of section 51 is guilty of an offence if that person contravenes or fails to comply with a condition referred to in section 55(3) applicable to that person.
- (5) An offence referred to in subsection (1) is a Category 1 offence.

**CHAPTER 4** 30**REFUNDS AND DRAWBACKS<sup>68</sup>****Purpose and application of this Chapter**

- 62.** (1) 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 35
    - (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 40
    - (ii) any part of the duty.
- (2) This Chapter does not apply to drawbacks of any duties, administrative penalties or interest paid to the Commissioner in terms of this Act in respect of goods exported or being exported from the Republic to a SACU member state.<sup>69</sup>

**Refunds and drawbacks to be direct charges against National Revenue Fund**

- 63.** A refund or drawback in terms of this Chapter is a direct charge against the National Revenue Fund. 45

68. For refunds of provisional anti-dumping, countervailing or safeguard duties, see section 15(8).

69. This Chapter, however, does apply to duties, administrative penalties or interest paid to the Commissioner in terms of this Act in respect of goods imported into the Republic from a SACU member state.

### Circumstances in which duty, administrative penalty and interest may be refunded

- 64.** (1) The customs authority may, subject to sections 66 and 67, 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, including a provision of the Customs Tariff; or
    - (ii) a provision of the Customs Control Act.<sup>70</sup>
- (2) A duty, administrative penalty or interest may be refunded in any of the following circumstances, as may be appropriate:
- (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, electronic or other administrative fault or an incorrect assumption on which the calculation of the duty, penalty or interest was based;
    - (iv) due to an incorrect assessment of duty referred to in section 83(2)(a) or (b) or 84(1)(a) or re-assessment of duty referred to in section 85; or
    - (v) due to an incorrect key assessment factor on which the assessment was based, including—
      - (aa) an incorrect tariff classification of the goods on or in respect of which that duty, penalty or interest was paid;
      - (bb) an incorrect valuation of those goods; and
      - (cc) an incorrect origin decision in respect of those goods;
  - (b) if, in the case of imported goods—
    - (i) the duty was paid on or in respect of goods in respect of which that duty is reduced or withdrawn in terms of an amendment to the Customs Tariff;
    - (ii) the duty was paid on or in respect of 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;
    - (iii) the duty was paid on or in respect of goods cleared for home use under Chapter 8 of the Customs Control Act or for a customs procedure conferring a tax due status on the goods but before their release for home use or that customs procedure were cleared for a permissible customs procedure conferring a tax free status on the goods;<sup>71</sup> or
    - (iv) the duty was paid on or in respect of goods cleared for home use under Chapter 8 of the Customs Control Act or for a customs procedure conferring a tax due status on the goods and the customs authority refuses to release the goods for home use or that customs procedure or withdraws the release of the goods for home use or that customs procedure use but allows the goods to be cleared for another customs procedure;<sup>72</sup>
  - (c) if, in the case of goods to be exported from the Republic, the duty was paid on goods not exported from the Republic; or
  - (d) if, in the case of any goods the duty, penalty or interest was paid on or in respect of a quantity of goods in excess of the quantity of goods on or in respect of which it should actually have been paid.
- (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.
- (4) No refund may be granted in respect of any duty, penalty or interest paid on or in respect of—
- (a) prohibited goods dealt with in terms of section 781 or 782 of the Customs Control Act;
  - (b) restricted goods dealt with in terms of section 790 or 791 of that Act;

<sup>70</sup>. See for instance sections 107(4) of the Customs Control Act.

<sup>71</sup>. See for instance section 97(1) of the Customs Control Act.

<sup>72</sup>. See for instance section 106 of the Customs Control Act.

- (c) sectorally controlled goods dealt with in terms of section 799 of that Act; or
- (d) confiscated goods dealt with in terms of section 769 of that Act.

### **Circumstances in which drawback may be given**

- 65.** (1) (a) The customs authority may, subject to sections 66 and 67, give a drawback of an import duty paid on imported goods if — 5
- (i) the goods on which the duty was paid, or products manufactured from those goods or in the manufacture of which those goods were used, are exported from the Republic without going into home use; or
  - (ii) goods of a class, kind, quality and quantity comparable to the imported goods, or products manufactured from such comparable goods or in the manufacture of which such comparable goods were used, are exported from the Republic. 10
- (b) A drawback may be granted in terms of paragraph (a)(i) or (ii) only in respect of such goods, in such circumstances and in accordance with such preconditions as may be specified in the Customs Tariff.
- (2) If 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. 15
- (3) No drawback may be granted unless the exporter, before the export of the goods or of products obtained from those goods, notifies the customs authority of an intention of claiming a drawback when the goods or those products are exported. 20

### **Refunds and drawbacks provided for in Customs Tariff**

- 66.** (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 customs authority must apply the provisions of the Customs Tariff applicable to those goods when giving refunds or drawbacks on those goods. 25
- (2) A refund or drawback on goods referred to in subsection (1) may be granted only—
- (a) in accordance with the terms and conditions specified in the Customs Tariff in relation to refunds or drawbacks on those goods; and
  - (b) to the extent specified in the Customs Tariff. 30

### **Application for refund and drawback**

- 67.** The customs authority may, subject to section 72, refund a duty, administrative penalty or interest or grant 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. 35

### **Manner of applying for refund and drawback**

- 68.** (1) An application for a refund or drawback referred to in section 67 must be—
- (a) submitted to the customs authority in the form and format as may be prescribed by rule and contain the information required on the prescribed form or otherwise prescribed by rule; 40
  - (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 45
  - (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.
- (2) Submission of an amended clearance declaration in terms of section 174 of the Customs Control Act may be regarded to be an application complying with subsection (1) if—
- (a) the amended clearance declaration is submitted to correct an error as a result of which the applicant becomes entitled to a refund; and 50
  - (b) the customs authority accepts the amended clearance declaration in terms of that section.

### Time within which application must be submitted

- 69.** (1) An application for—
- (a) a refund or drawback of duty, including any interest on a duty, paid to the Commissioner on any goods must be submitted to the customs authority within a period of three years from the date on which those goods were cleared;<sup>73</sup> or 5
  - (b) a refund of an administrative penalty, including any interest on an administrative penalty, paid to the Commissioner must be submitted to the customs authority within a period of three years from the date on which the amount reclaimed in terms of the application was paid, or if the amount was paid in instalments, from the date the first instalment was paid. 10
- (2) Subsection (1) does not apply if the entitlement to, or the extent of, a refund or drawback is determined or otherwise affected by—
- (a) a decision in any administrative appeal or dispute resolution proceedings or a dispute settlement, and in such a case an application for the refund or drawback must be submitted to the customs authority within 180 calendar days from the date the decision was given or the matter was settled, as the case may be; 15
  - (b) a final judgement of a court, and in such a case an application for the refund or drawback must be submitted to the customs authority within 180 calendar days from the date the final judgement was given; or 20
  - (c) a retrospective amendment to the Customs Tariff, and in such a case an application for the refund or drawback must be submitted to the customs authority within 180 calendar days from the date the amendment was published. 25
- (3) If the grounds for a decision given in any appeal or dispute resolution proceedings referred to in subsection (2)(a) or in a final judgement referred to in subsection (2)(b) will—
- (a) when applied to other goods that were not the subject of those proceedings or judgement, also affect duties, or interest on duties, paid on those other goods, applications for refund or drawback of duty or interest paid on those other goods may in terms of subsection (2)(a) or (b) be submitted only in relation to those goods in respect of which a re-assessment of duty was made or is permissible in terms of the proviso to section 87(1)(a); or 30
  - (b) when applied to other administrative penalties, or to interest on administrative penalties, paid to the Commissioner that were not the subject of those proceedings or judgement, also affect those other penalties or interest, applications for refund of those penalties or interest may in terms of subsection (2)(a) or (b) be submitted only in relation to those penalties or interest that were paid after a date<sup>74</sup> three years prior to the date of payment of the penalty or interest that was the subject of those proceedings or judgement. 40
- (4) In this section “**clear**” means cleared for—
- (a) home use in terms of Chapter 8 of the Customs Control Act; or
  - (b) a customs procedure that confers a tax due or partial tax due status on goods, and “**clearance**” has a corresponding meaning. 45

### Consideration of application

- 70.** (1) Upon receipt of an application for a refund or drawback referred to in section 67 the customs authority must first, before considering the application on the merits, apply a process of validation to the application to determine whether—
- (a) the applicant is in terms of section 67 competent to submit the application; 50
  - (b) the application complies with section 68;
  - (c) the application was submitted within the applicable timeframe referred to in section 69(1) or (2);

73. The date of clearance of goods is the date of acceptance of the clearance declaration by Customs in terms of section 173 of the Customs Control Act.

74. This covers all payments during the period from this date up to the date of the decision or final judgement and also payments made after the date of the decision or judgement which are not consistent with the decision or judgement.



- (d) the application qualifies as a valid application in terms of section 69(3), if that section applies; and
- (e) section 65(3) has been complied with, in the case of an application for a drawback.

(2) After applying the validation process, the customs authority may either validate an application for consideration on the merits or invalidate the application. 5

(3) (a) If the customs authority invalidates an application in terms of subsection (2) it must notify the applicant of the invalidation, the date of invalidation and the reason for the invalidation.

(b) If the customs authority validates an application in terms of subsection (2), it must notify the applicant of the validation and the validation date. 10

(4) The customs authority must consider a validated application on the merits and, within 21 working days of validation of the application, either—

- (a) approve the application and pay the refund or drawback to the applicant;
- (b) refuse the application;<sup>75</sup> or 15
- (c) reject the application on technical grounds.

(5) (a) If an application for a refund or drawback of a duty is approved, the customs authority is not obliged by reason only of the fact that the application for a refund or drawback of the duty has been approved to refund any interest or any administrative penalty paid in connection with the duty. 20

(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 rejected application**

**71.** (1) An application for a refund or drawback referred to in section 67 that was rejected in terms of section 70(4)(c) on technical grounds, may be rectified and resubmitted to the customs authority. 25

(2) If an application referred to in subsection (1) is resubmitted to the customs authority within a period prescribed by rule from the date of rejection of the previous application, the resubmitted application must be regarded for purposes of section 69 to have been submitted on the date the previous application was submitted. 30

(3) A resubmitted application must be dealt with in accordance with section 70.

### **Refund without application**

**72.** (1) The Commissioner may, despite the provisions of this Chapter requiring persons claiming refund of duties, penalties or interest to submit applications for such refunds, issue a general directive authorising the refund without application of duties, penalties or interest paid or overpaid in such circumstances as may be specified in the directive. 35

(2) No general directive issued in terms of subsection (1) may authorise the refund of duties, penalties or interest paid or overpaid due to errors in the tariff, valuation or origin determination or re-determination of goods. 40

### **Minimum amount**

**73.** No refund or drawback may be granted for amounts less than—

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

### **Recovery of refund or drawback in certain circumstances** 45

**74.** (1) The customs authority 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 customs authority in terms of a provision of the Customs Control Act.<sup>76</sup> 50

75. Refusal of the application does not prevent the submission of a new application on different grounds, provided that the application is submitted within the applicable timeframe referred to in section 69.

76. See for instance section 161(1)(c) of the Customs Control Act.

(2) The customs authority 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 refund or drawback against amount owing**

**75.** (1) When a refund or drawback becomes payable in terms of this Chapter 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 customs authority may set off the amount of such refund or drawback against the amount which that person has failed to pay. 5  
10

(2) Subsection (1) may not be applied to an amount of outstanding tax, duty, levy, charge, interest or administrative penalty if the customs authority has in terms of section 830 of the Customs Control Act suspended or deferred payment of that amount pending institution or conclusion of proceedings in terms of Chapter 37.

#### **Interest payable on refund or drawback** 15

**76.** (1) If a person becomes entitled to claim a refund or drawback of a duty, administrative penalty or interest paid to the Commissioner in terms of this Act, no interest is payable on the amount of that duty, penalty or interest, except as provided for in subsection (2).

(2) If the customs authority fails to pay a refund or drawback approved in terms of section 70(4)(a) within the 21 working days' period referred to in that section, the applicant is entitled to interest, at a rate determined by the Minister, on the amount of the refund or drawback, for a period commencing on the expiry of that 21 days' period up to the date of payment of the refund or drawback. 20

(3) Interest determined in terms of subsection (2) must be calculated on daily balances owing and compounded at the end of each month. 25

#### **Rules to facilitate application of this Chapter**

**77.** The Commissioner may in terms of section 224 make rules to facilitate the implementation of this Chapter, including rules prescribing the circumstances in and procedures according to which payments, other than duties, administrative penalties and interest, made to the Commissioner may be refunded. 30

#### **Offences in terms of this Chapter<sup>77</sup>**

**78.** A person is guilty of a Category 1 offence if that person claims, or receives and keeps, any refund or drawback to which that person is not entitled.

### **CHAPTER 5** 35

#### **ASSESSMENT OF DUTY**

##### **Purpose and application of this Chapter**

- 79.** (1) The purpose of this Chapter is to provide for the assessment of duty on goods.  
(2) This Chapter applies to all goods— 40
- (a) imported into the Republic and—
    - (i) cleared for home use or another customs procedure that confers a tax due or partial tax due status on the goods;<sup>78</sup> or
    - (ii) regarded for tax purposes in terms of a provision of the Customs Control Act to be cleared for home use under Chapter 8 of that Act; or

<sup>77</sup> See also general offences in section 212 relating to fraudulent claims for refunds and drawbacks.

<sup>78</sup> Clearance for home use in terms of Chapter 8 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 or home use processing may render the goods subject to the payment of a part of any applicable import duty.

- (b) exported or to be exported from the Republic and—
  - (i) cleared for outright export or another customs procedure that confers a tax due or partial tax due status on the goods;<sup>79</sup> or
  - (ii) regarded for tax purposes in terms of a provision of the Customs Control Act to be cleared for outright export. 5

### Key factors of duty assessment

- 80.** (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; 10
  - (b) (i) the customs value of those goods as determined in accordance with Chapter 7, if the duty is imposed by value of the goods; or
    - (ii) the quantity, weight, volume, measurement or other specifics of those goods as determined in accordance with the rules or the Customs Tariff, if the duty is imposed by quantity, weight, volume, measurement or other specifics of the goods; 15
  - (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; 20
  - (d) the rate of duty applicable to those goods; and
  - (e) any other specific factors regulating the duty or the calculation of the amount of duty that may be payable on those goods.
- (2) An assessment of duty must be carried out in accordance with the applicable provisions of this Act. 25
- (3) This section must be complied with by—
- (a) any person when making a self-assessment of the duty that may be payable on goods; and
  - (b) the customs authority when assessing or re-assessing the duty that may be payable on goods. 30

### Applicable rate of duty

- 81.** (1) The rate of import duty to be applied to dutiable goods—
- (a) cleared for home use or a customs procedure that renders the goods subject to the payment of import duty,<sup>80</sup> is the rate applicable to the goods at the time when the goods are cleared for home use or that customs procedure;<sup>81</sup> or 35
  - (b) regarded for tax purposes in terms of a provision of the Customs Control Act to be cleared for home use under Chapter 8 of that Act, is the rate applicable to the goods at the date on which the goods acquired a tax due status<sup>82</sup> or at the time when the customs authority commences with the assessment of duty in terms of section 84(1), whichever yields the higher rate. 40
- (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;<sup>83</sup> or 45
  - (b) regarded for tax purposes in terms of a provision of the Customs Control Act to be cleared for outright export, is the rate applicable to the goods at the date on which the goods acquired a tax due status<sup>84</sup> or at the time when the customs

79. Clearance for outright export may render 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 part of any applicable export duty.

80. Eg. Customs procedures where a rebate of less than 100 percent apply, such as may be the case with inward processing, home use processing and compensating products imported under the outward processing procedure.

81. For time when goods are cleared for home use or a customs procedure see section 173 of the Customs Control Act.

82. See sections 152, 153, 154 and 155 of the Customs Control Act.

83. For time when goods are cleared for a customs procedure see section 173 of the Customs Control Act.

84. See sections 157, 158 and 159 of the Customs Control Act.

authority commences with the assessment of duty in terms of section 84(1), whichever yields the higher rate.

### Self-assessment of duty by person clearing goods

**82.** (1) A person clearing goods<sup>85</sup> for home use or outright export or for another customs procedure that confers a tax due or partial tax due status on the goods in relation to import or export duty must— 5

- (a) determine the dutiability of the goods and 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; 10
- (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; 15
- (c) pay the amount of duty stated on the clearance declaration to the Commissioner in accordance with section 22 or 23;<sup>86</sup> and
- (d) on request by the customs authority submit the worksheet to the customs authority. 20

(2) (a) A self-assessment must, subject to section 527, 532 or 536 of the Customs Control Act, be made when the goods are cleared. 20

(b) A person clearing goods must on discovery of any inaccuracy in a self-assessment made in respect of the goods, promptly notify the customs authority of such inaccuracy.

(3) Section 179 of the Customs Control Act applies to a worksheet referred to in subsection (1). 25

(4) This section does not apply to—

- (a) accompanied or unaccompanied baggage other than commercial goods;
- (b) international postal articles cleared in accordance with the simplified clearance process contemplated in section 493(2) of the Customs Control Act; or 30
- (c) any other category of goods—
  - (i) excluded by rule from self-assessment; or
  - (ii) exempted by the customs authority in a specific case from self-assessment. 35

### Assessment of duty by customs authority 35

**83.** (1) The customs authority must, subject to section 527, 532 or 536 of the Customs Control Act, before releasing goods cleared for home use or outright export or for another customs procedure that confers a tax due or partial tax due status on the goods in relation to import or export duty—

- (a) determine the dutiability of the goods; and 40
- (b) if dutiable, calculate the amount of duty payable on the goods (if any).

(2) The customs authority must assess duty on the goods in terms of subsection (1)(b) by either—

- (a) adopting any self-assessment of duty as stated on the clearance declaration of the goods as its own assessment of the duty on the goods; or 45
- (b) making its own assessment of duty on the goods.

(3) If the customs authority makes an assessment in terms of subsection (2)(b) the amount so assessed must be paid to the Commissioner subject subsections (4) and (5).

(4) (a) If the amount of duty as assessed in terms of subsection (2)(b) exceeds an amount of duty already paid in terms of the self-assessment, the customs authority must recover the under-payment of duty in accordance with section 41. 50

(b) If paragraph (a) applies, the outstanding amount of duty must be paid on or before a date specified for payment in a notice demanding payment of that amount.

85. See section 166 of the Customs Control Act.

86. The customs authority may in terms of section 103 of the Customs Control Act, as a pre-condition for the release of goods, require a person clearing the goods to provide security for any shortfall on any duty that may subsequently be discovered.

(5) (a) If the amount of duty as assessed in terms of subsection (2)(b) is less than an amount of duty already paid in terms of the self-assessment, the person who paid that amount of duty is entitled to a refund of the excess in accordance with and subject to Chapter 4.

(b) If paragraph (a) applies, the customs authority must give notice of the amount of the duty as assessed in terms of subsection (1)(b) to the person who paid an amount of duty on the goods. 5

#### **Duty assessment when goods are regarded cleared for home use or outright export**

**84.** (1) If in terms of a provision of the Customs Control Act goods are for tax purposes regarded to be cleared for home use under Chapter 8 of that Act, or for outright export, the customs authority must— 10

- (a) assess the goods for duty purposes;
- (b) calculate the amount of any duty payable on those goods at the rate applicable to the goods in terms of section 81(1)(b) or (2)(b); and
- (c) recover that amount in accordance with Chapter 3 from a person liable for the duty. 15

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

- (a) to make a self-assessment of the duty payable on the goods, substantially in accordance with section 82(1)(a); and 20
- (b) to submit the self-assessment to the customs authority within a specified period.

#### **Duty re-assessment by customs authority**

**85.** (1) The customs authority may at any time, subject to section 86—

- (a) make a re-assessment of duty on goods as assessed by the customs authority in terms of section 83(2)(a) or (b) or 84(1)(a) and (b); or 25
- (b) make a re-assessment of duty on 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). 30

(3) A re-assessment in terms of subsection (1) may be made in respect of goods irrespective of whether or not—

- (a) the goods have been released;
- (b) the goods are still subject to customs control; or
- (c) an amount of duty has been paid on the goods. 35

(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 each of the key assessment factors, but may for purposes of the re-assessment apply any key assessment factor as applied in any previous assessment.

(5) (a) If the amount of duty as re-assessed in terms of subsection (1) exceeds the amount of duty as assessed in terms of section 83(2)(a) or (b) or 84(1)(a) and (b) or a previous re-assessment in terms of subsection (1)(b), the customs authority must recover the under-payment of duty in accordance with section 41. 40

(b) If paragraph (a) applies, the outstanding amount of duty must be paid on or before a date specified for payment in a notice demanding payment of that amount. 45

(6) (a) If the amount of duty as re-assessed in terms of subsection (1) is less than an amount of duty that has been paid by a person liable for the duty following an assessment in terms of section 83(2)(a) or (b) or 84(1)(a) and (b) or a previous re-assessment in terms of subsection (1)(b), the person who paid that amount of duty is entitled to a refund of the excess in accordance with and subject to Chapter 4. 50

(b) If paragraph (a) applies, the customs authority must give notice of the amount of the duty as re-assessed in terms of subsection (1) to the person who paid an amount of duty on the goods.

### Time limit on duty re-assessment

- 86.** (1) A re-assessment of duty on goods in terms of section 85(1)(a) or (b) may be made only within a period of three years from the date the goods acquired a tax due status in terms of Chapter 6 of the Customs Control Act.<sup>87</sup>
- (2) A re-assessment of duty on goods is, despite subsection (1) but subject to section 87, permissible after the expiry of the three years' period referred to in that subsection—
- (a) if the re-assessment—
    - (i) is mandatory in terms of section 88(1)(a) or (b); or
    - (ii) 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; or
  - (b) if the customs authority and the person clearing the goods agree before the expiry of that period to the re-assessment.

### Limitation on goods in respect of which re-assessment may be made

- 87.** (1) A re-assessment of duty on goods in terms of section 85(1)(a) or (b) may—
- (a) in the case of goods affected by a decision in any administrative appeal or alternative dispute resolution proceedings or by a final judgement of a court, be made only in respect of the goods in respect of which the decision or final judgement was given: Provided that if the decision or judgement invalidated, changed or replaced a tariff, value or origin determination or re-determination and the grounds for that decision or judgement, if applied to a determination or re-determination made in respect of or applied to other goods, will affect the dutiability of or the amount of duty payable on those other goods, a re-assessment of duty in terms of section 85(1)(a) or (b) may be made also in respect of those other goods, provided they were cleared after a date<sup>88</sup> three years prior to the date of the determination or re-determination that was invalidated, changed or replaced by the decision or final judgement; and
  - (b) in the case of goods affected by a dispute settlement or a retrospective amendment to the Customs Tariff, be made only in respect of the goods in respect of which the settlement was made or to which the retrospective amendment applies.
- (2) In this section “clear” means cleared for—
- (a) home use in terms of Chapter 8 of the Customs Control Act; or
  - (b) a customs procedure that confers a tax due or partial tax due status on goods, and “clearance” has a corresponding meaning.

### Mandatory re-assessment of duty

- 88.** (1) The customs authority must make a re-assessment<sup>89</sup> of duty on goods in terms of section 85—
- (a) when it makes a—
    - (i) a tariff determination or tariff re-determination referred to in section 103(2);
    - (ii) a value determination or value re-determination referred to in section 120(2); or
    - (iii) an origin determination or origin re-determination referred to in section 156(2);

87. Goods that have been cleared acquire a tax due status in terms of Chapter 6 of the Customs Control Act as from the date of clearance of the goods for home use or a customs procedure conferring a tax due status on the goods, which in terms of section 173 of that Act is the date of acceptance by Customs of the clearance declaration submitted in respect of the goods.

88. This covers all clearances during the period from this date up to the date of the decision or final judgement and also clearances made after the date of the decision or judgement until the decision or judgement is implemented.

89. These re-assessments must be made at any time whether within or after the three years' period referred to in section 86(1). See section 86(2).

- (b) if the dutiability of those goods or the amount of duty paid or payable on those goods is affected by—
  - (i) a decision in any administrative appeal or alternative dispute resolution proceedings;
  - (ii) a dispute settlement; 5
  - (iii) a retrospective amendment to the Customs Tariff; or
  - (iv) a court order given or confirmed in a final judgement.

(2) This section may not be read as mandating a re-assessment of duty on goods in conflict with section 87.

#### **Request for additional information and documents** 10

**89.** 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) The person clearing the goods or who submitted the clearance declaration in respect of the goods; 15
- (b) any person who is an importer or exporter in relation to the goods;
- (c) any person who—
  - (i) is or may be held liable for duty that may or has become payable on the goods; or 20
  - (ii) has paid duty on the goods; or
- (d) the owner of the goods.

#### **Duty assessment or re-assessment in absence of sufficient information**

**90.** The customs authority may base a duty assessment or re-assessment on the best information available to it— 25

- (a) if 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; 30
- (b) if information or documents necessary for considering or making the duty assessment or re-assessment were not furnished following a request in terms of section 89; or
- (c) if no clearance declaration was submitted and the goods are in terms of the Customs Control Act for tax purposes regarded to be cleared for home use or outright export. 35

#### **Assessment and re-assessment affected by scheme conferring undue duty benefit**

**91.** (1) If a scheme, whether entered into or carried out before or after the commencement of this Act—

- (a) has the effect of conferring a duty benefit on any person; and 40
- (b) having regard to the substance of the scheme—
  - (i) was entered into or carried out by means of or in a manner which would not normally be employed for genuine 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 45
- (c) was entered into or carried out solely or mainly for the purpose of conferring a duty benefit on any person,

the customs authority must, when assessing or re-assessing the dutiability of any goods and the amount of any duty on the goods, make the assessment or reassessment as if the scheme had not been entered into or carried out, or in such manner as in the circumstances of the case the customs authority deems appropriate for the prevention or diminution of such duty benefit. 50

(2) If in any administrative appeal in terms of Part 3 of Chapter 37 of the Customs Control Act against an assessment or re-assessment made by the customs authority in terms of subsection (1) it is proved that the scheme concerned does or would result in a 55

duty benefit, it must be presumed, until the contrary is proved, that the scheme was entered into or carried out solely or mainly for the purpose of conferring a duty benefit.

(3) 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; 5

“**duty benefit**” includes—

- (a) any reduction in the liability of any person to pay a duty;
- (b) any increase in the entitlement of any person to a refund or drawback of a duty;
- (c) any reduction in the consideration payable by any person in respect of any import or export of goods; or 10
- (d) any other avoidance or postponement of liability for the payment of a duty.

#### **Remedies available to person aggrieved by duty assessment or re-assessment<sup>90</sup>**

**92.** (1) Parts 3, 4 and 5 of Chapter 37 of the Customs Control Act, as appropriate in terms of the provisions of those Parts, are available to a person aggrieved by a duty assessment or duty re-assessment. 15

(2) If a person aggrieved by a duty assessment or re-assessment, lodges in terms of Part 3 of that Chapter an administrative appeal against the assessment or re-assessment, the appeal may, if the customs authority so directs, only be heard by a specialist appeal committee referred to in section 843(2)(a) of the Customs Control Act. 20

(3) A person aggrieved by a duty assessment or re-assessment or, if an administrative appeal has been lodged against the assessment or re-assessment, by a decision taken in such appeal proceedings, may—

- (a) lodge an appeal with a court against the assessment, re-assessment or decision; or 25
- (b) institute proceedings for a review by a court of the assessment, re-assessment or decision.

#### **Duty assessment and re-assessment presumed to be correct**

**93.** A duty assessment by the customs authority in terms of section 83(1)(a) or (b) or 84(1)(a) and (b) or a re-assessment by the customs authority in terms of section 85(1)(a) or (b), must be presumed to be correct and must be applied except when replaced, amended, set aside, corrected or affected, as may be appropriate, by— 30

- (a) a subsequent re-assessment by the customs authority in terms of section 85;
- (b) a decision in any administrative appeal or alternative dispute resolution proceedings; 35
- (c) a dispute settlement;
- (d) a retrospective amendment to the Customs Tariff; or
- (e) a court order given or confirmed in a final judgement.

#### **Rules to facilitate application of this Chapter**

**94.** The Commissioner may in terms of section 224 make rules to facilitate the implementation of this Chapter, including rules prescribing the manner in and conditions on which the quantity, weight, volume or measurement of goods must be determined, if duty is imposed by quantity, weight, volume or measurement in terms of section 80(1)(b)(ii). 40

#### **Offences in terms of this Chapter** 45

**95.** (1) A person clearing goods is guilty of an offence if that person—

- (a) fails to comply with—
  - (i) section 82(1)(a) or (2)(b); or
  - (ii) a request issued by the customs authority to that person in terms of section 82(1)(d); 50

<sup>90</sup> It should be noted that as a general rule an administrative appeal and in fact none of the proceedings referred to in Chapter 37 of the Customs Control Act affects or suspends the obligation to pay a duty. See section 830 of the Customs Control Act.



- (b) makes a self-assessment which that person knows is not true or could not reasonably have believed to be true; or
- (c) in making a self-assessment—
  - (i) uses false or misleading information with the intention to mislead; or
  - (ii) omits to use accurate information with the intention to mislead. 5
- (2) A person is guilty of an offence if that person fails to comply with—
  - (a) a direction issued by the customs authority to that person in terms of section 84(2); or
  - (b) a request issued by the customs authority to that person in terms of section 89.
- (3) An offence referred to in subsection (1)(b) or (c)(i) or (ii) is a Category 1 offence. 10

## CHAPTER 6

### TARIFF CLASSIFICATION OF GOODS

#### *Part 1*

#### *General provisions*

#### **Purpose and application of this Chapter** 15

- 96.** (1) The purpose of this Chapter is—
- (a) to provide for the tariff classification of goods for customs purposes; and
  - (b) for that purpose to enforce the use of specific international standards for the tariff classification of goods.
- (2) This Chapter applies to all goods imported into or destined for export from the Republic, whether dutiable or not. 20

#### **Tariff classification and interpretation of Customs Tariff**

- 97.** (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, the International Convention on the Harmonized Commodity Description and Coding System and the Explanatory Notes issued by the Customs Co-operation Council.<sup>91</sup> 25
- (2) When classifying goods in terms of subsection (1) or interpreting the Customs Tariff the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System issued by the Customs Co-operation Council must be considered. 30
- (3) In the event of an inconsistency between an international instrument referred to in subsection (1) and a provision of this Act, the provision of this Act prevails.
- (4) To the extent that goods classifiable under a tariff heading or subheading in a Schedule of the Customs Tariff that is expressly quoted in any tariff item, are specified in that tariff item, the item concerned must be read as including only such goods classifiable under that tariff heading or subheading. 35

#### **Keeping of updated version of international instrument**

- 98.** (1) The Commissioner must—
- (a) keep at SARS head office copies of—
    - (i) the International Convention on the Harmonized Commodity Description and Coding System and the Explanatory Notes referred to in section 97(1); and 40
    - (ii) the Compendium of Classification Opinions referred to in section 97(2);
  - (b) update from time to time these instruments with any amendments or additions notified by the Customs Co-operation Council; and 45
  - (c) record the date the amendment or addition takes effect.
- (2) Whenever in any judicial or other proceedings a question arises as to—
- (a) the contents of any international instrument referred to in section 97, a copy of that instrument kept in terms of subsection (1)(a), or of an extract from such

<sup>91</sup>. Obtainable from the World Customs Organization website.

- instrument, certified by the customs authority, is admissible as evidence of the contents of such instrument or extract; or
- (b) the effective date of an amendment or addition to such an international instrument, a certificate by the customs authority stating the date recorded in terms of subsection (1)(c) as the effective date of that amendment or addition, is admissible as evidence of the effective date of that amendment or addition. 5

## *Part 2*

### *Tariff self-determination, determination and re-determination*

#### **Tariff self-determination of goods when goods are cleared**

- 99.** (1) A person clearing goods<sup>92</sup> for home use or a customs procedure must— 10
- (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.
- (2) A tariff self-determination of goods in terms of subsection (1) must be consistent with— 15
- (a) a tariff determination or re-determination that may be applicable to those goods in terms of section 106; or
- (b) an advance tariff ruling that may be applicable to those goods.
- (3) A tariff self-determination must be applied for purposes of the clearance unless replaced by a tariff determination in terms of section 100 read with section 106 if applicable. 20
- (4) A person clearing goods must on discovery of any inaccuracy in a tariff self-determination made in respect of the goods, promptly notify the customs authority of such inaccuracy. 25
- (5) This section does not apply to—
- (a) accompanied or unaccompanied baggage other than commercial goods;
- (b) international postal articles cleared in accordance with the simplified clearance process contemplated in section 493(2) of the Customs Control Act; or 30
- (c) any other category of goods—
- (i) excluded by rule from tariff self-determination; or
- (ii) exempted by the customs authority in a specific case from tariff self-determination.

#### **Tariff determination by customs authority** 35

- 100.** (1) The customs authority may at any time, subject to section 103, make a determination of the tariff classification of goods.<sup>93</sup>
- (2) A tariff determination of goods in terms of subsection (1) must be consistent with any advance tariff ruling that may be applicable to those goods.
- (3) A tariff determination in terms of subsection (1) may be made in respect of goods irrespective of whether or not— 40
- (a) the goods—
- (i) have been cleared;
- (ii) have been released;
- (iii) are dutiable; or 45
- (iv) are still subject to customs control;
- (b) a tariff self-determination has been made in respect of the goods; or
- (c) an amount of duty has been paid on the goods.
- (4) The customs authority must give notice of any tariff determination in terms of subsection (1) to the person clearing the goods. 50

92. See section 166 of the Customs Control Act.

93. Neither clearance nor a tariff self-determination of goods is a precondition for a tariff determination in terms of section 100. A tariff determination may sometimes be made in the absence of a clearance or a preceding tariff self-determination, e.g. where non-cleared goods are in terms of the Customs Control Act for tax purposes regarded to be cleared for home use.

(5) A tariff determination of goods in terms of subsection (1) replaces any tariff self-determination applicable to the goods in terms of section 99.

#### **Re-determination of previous tariff determination or re-determination**

- 101.** (1) The customs authority may at any time, subject to section 103—
- (a) re-determine the tariff classification of goods as determined by it in terms of section 100; or
  - (b) re-determine the tariff classification of goods as previously 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)(b).
- (3) A tariff re-determination of goods in terms of subsection (1) must be consistent with any advance tariff ruling that may be applicable to those goods.
- (4) A tariff re-determination in terms of subsection (1) may be made in respect of goods irrespective of whether or not—
- (a) the goods—
    - (i) have been cleared;
    - (ii) have been released;
    - (iii) are dutiable; or
    - (iv) are still subject to customs control; or
  - (b) an amount of duty has been paid on the goods.
- (5) The customs authority must give notice of any tariff re-determination in terms of subsection (1) to the person clearing the goods.
- (6) A tariff re-determination replaces the previous tariff determination or tariff re-determination applicable to the goods.

#### **Correction of error in tariff determination or re-determination**

- 102.** (1) On discovery of an error in a tariff determination or re-determination made in respect of any goods which does not affect the tariff classification ascribed to the goods in the determination or re-determination, the customs authority may correct<sup>94</sup> the error by notice to the person clearing the goods.
- (2) There are no time limits as to when a correction may be made in terms of subsection (1).

#### **Time limit on tariff determination or re-determination**

- 103.** (1) There are no time limits as to when a tariff determination or re-determination of goods may be made, but no tariff determination or re-determination may be applied for purposes of assessing or re-assessing duty on goods otherwise than in accordance with subsection (2).
- (2) A tariff determination or re-determination that affects the dutiability of goods or the amount of duty paid or payable on goods must be applied for purposes of assessing or re-assessing duty on those goods—
- (a) if the tariff determination or re-determination was made within a period of three years from the date the goods acquired a tax due status in terms of Chapter 6 of the Customs Control Act;<sup>95</sup> or
  - (b) if the tariff determination or re-determination was made, whether within or after the expiry of the three years' period referred to in paragraph (a)—
    - (i) to give effect to—
      - (aa) a decision in any administrative appeal or dispute resolution proceedings;
      - (bb) a dispute settlement;
      - (cc) a retrospective amendment to the Customs Tariff; or

94. An error in the tariff classification of goods in a tariff determination or re-determination cannot be corrected by a correction notice but only by a superseding tariff re-determination. See also definition of "correction" in section 1.

95. Goods that have been cleared acquire a tax due status in terms of Chapter 6 of the Customs Control Act as from the date of clearance of the goods for home use or a customs procedure that confers a tax due status, which in terms of section 173 of that Act is the date of acceptance by Customs of the clearance declaration submitted in respect of the goods.

- (dd) a court order given or confirmed in a final judgement;
- (ii) 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; or
- (iii) following an agreement referred to in section 86(2)(b). 5

(3) This section may not be read as permitting a re-assessment of duty on goods in conflict with section 87.

### **Request for information and documents**

**104.** 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 of goods or a correction of a tariff determination or re-determination: 10

- (a) The person clearing the goods or who submitted the clearance declaration in respect of the goods;
- (b) any person who is an importer or exporter in relation to the goods; 15
- (c) any person who—
  - (i) is or may be held liable for duty that may or has become payable on the goods; or
  - (ii) has paid duty on the goods; or
- (d) the owner of the goods. 20

### **Tariff determination or re-determination in absence of sufficient information**

**105.** The customs authority may base a tariff determination or re-determination on the best information available to it—

- (a) if particulars of the goods in respect of which the tariff determination or re-determination is made are not disclosed or not sufficiently disclosed in the clearance declaration or any supporting documents and those particulars are still not disclosed or still not sufficiently disclosed following—
  - (i) a request in terms of section 104; or
  - (ii) an amendment of the clearance declaration or any supporting documents;
- (b) in any other case, if information or documents necessary for considering or making the tariff determination or re-determination were not furnished following a request in terms of section 104; or
- (c) if no clearance declaration was submitted and the goods are in terms of the Customs Control Act for tax purposes regarded to be cleared for home use or outright export. 35

### **Goods to which tariff determination or re-determination applies**

**106.** (1) A tariff determination or re-determination of goods applies—

- (a) to the goods in respect of which it was made; and
- (b) also to all identical goods cleared for home use or a customs procedure by the same person or by a registered agent on behalf of the same person, whether the goods were cleared before or after the date of that tariff determination or re-determination. 40

(2) A tariff determination or re-determination that applies to identical goods referred to in subsection (1)(b) may not be applied for purposes of a duty assessment or re-assessment in respect of those identical goods otherwise than in accordance with section 103(2). 45

(3) A tariff self-determination made in respect of identical goods referred to in subsection (1)(b) cleared on or after the date of a tariff determination or re-determination that applies in terms of that subsection to those goods, must be consistent with that tariff determination or re-determination. 50

(4) This section may not be read as permitting a re-assessment of duty on goods in conflict with section 87.

- (5) If the customs authority makes a tariff re-determination in relation to goods for which a previous tariff determination or re-determination is in force in terms of this section, the latest tariff re-determination replaces the previous one and becomes the tariff re-determination that must be applied in terms of this section to—
- (a) the goods in respect of which it was made; and 5
  - (b) all identical goods cleared for home use or a customs procedure by the same person, whether the goods were cleared before or after the date of that latest tariff re-determination.
- (6) Subsections (2), (3) and (4) apply equally to any tariff re-determination referred to in subsection (5). 10

#### **Remedies available to person aggrieved by tariff determination or re-determination<sup>96</sup>**

- 107.** (1) Parts 3, 4 and 5 of Chapter 37 of the Customs Control Act, as may be appropriate in terms of the provisions of those Parts, are available to a person aggrieved by a tariff determination or re-determination. 15
- (2) If a person aggrieved by a tariff determination or re-determination lodges in terms of Part 3 of that Chapter an administrative appeal against the determination or re-determination, the appeal may only be heard by a specialist appeal committee referred to in section 843(2)(a) of the Customs Control Act.
- (3) A person aggrieved by a tariff determination or re-determination or, if an administrative appeal has been lodged against the determination or re-determination, by a decision taken in such appeal proceedings, may—
- (a) lodge an appeal with a court against the determination, re-determination or decision; or
  - (b) institute proceedings for a review by a court of the determination, re- 25 determination or decision.

#### **Tariff determination or re-determination presumed to be correct except when replaced, amended, set aside or corrected**

- 108.** A tariff determination or re-determination applicable to any goods must be presumed to be correct and must be applied except when replaced, amended, set aside, 30 corrected or otherwise affected, as may be appropriate, by—
- (a) a tariff re-determination in terms of section 101;
  - (b) a tariff determination or re-determination that becomes applicable to the goods in terms of section 106(1)(b) or (5)(b);
  - (c) a correction in terms of section 102; 35
  - (d) an advance tariff ruling in terms of Chapter 10;
  - (e) a decision in any administrative appeal or alternative dispute resolution proceedings;
  - (f) a dispute settlement;
  - (g) a retrospective amendment to the Customs Tariff; or 40
  - (h) a court order given or confirmed in a final judgement.

### **Part 3**

#### **Other matters**

#### **Publication of tariff determination and re-determination**

- 109.** 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. 45

<sup>96</sup> It should be noted that as a general rule an administrative appeal and in fact none of the proceedings referred to in Chapter 37 of the Customs Control Act affects or suspends the obligation to pay a duty. See section 830 of the Customs Control Act.

### Rules to facilitate application of this Chapter

**110.** The Commissioner may in terms of section 224 make rules to facilitate the implementation of this Chapter, including rules prescribing the circumstances in which information relating to any tariff determination or re-determination may be published, the kind of information that may be published and the manner in which the information must be published. 5

### Offences in terms of this Chapter

- 111.** (1) A person clearing goods is guilty of an offence if that person—
- (a) fails to comply with section 99(1) or (4);
  - (b) makes a tariff self-determination which that person knows is not true or could not reasonably have believed to be true; or 10
  - (c) in making a tariff self-determination—
    - (i) uses false or misleading information with the intention to mislead; or
    - (ii) omits to use accurate information with the intention to mislead.
- (2) A person is guilty of an offence if that person fails to comply with a request issued by the customs authority to that person in terms of section 104. 15
- (3) An offence referred to in subsection (1)(b) or (c)(i) or (ii) is a Category 1 offence.

## CHAPTER 7

### VALUATION OF GOODS

#### *Part 1*

20

#### *Introductory provisions*

### Purpose and application of this Chapter

- 112.** (1) The purpose of this Chapter is—
- (a) to provide for 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;<sup>97</sup> and 25
  - (c) to provide for currency conversions in the valuation of goods for customs purposes.
- (2) This Chapter applies to all goods imported into or destined for export from the Republic, whether dutiable or not. 30

### Relevant international instruments

- 113.** (1) When valuing imported goods in terms of this Chapter, the following international instruments are 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; 35
  - (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— 40
    - (i) Advisory Opinions;
    - (ii) Commentaries;
    - (iii) Explanatory Notes;
    - (iv) Case Studies; and 45
    - (v) Studies.
- (2) In the event of an inconsistency between an international instrument referred to in subsection (1) and a provision of this Act, the provision of this Act prevails.

<sup>97</sup> Valuation methods agreed to under the WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, 1994.

### Keeping of updated version of international instruments

- 114.** (1) The Commissioner must—
- (a) keep at SARS head office copies of the international instruments referred to in section 113;
  - (b) update from time to time these instruments with any amendments or additions notified by the World Trade Organisation; and 5
  - (c) record the date the amendment or addition took effect.
- (2) Whenever in any judicial or other proceedings a question arises as to—
- (a) the contents of any international instrument referred to in section 113, a copy of that instrument kept in terms of subsection (1)(a), or of an extract from such instrument, certified by the customs authority, may be used as evidence of the contents of such instrument or extract; or 10
  - (b) the effective date of an amendment or addition to such an international instrument, a certificate by the customs authority stating the date recorded in terms of subsection (1)(c) as the effective date of that amendment or addition, may be used as evidence of the effective date of that amendment or addition. 15

### Part 2

#### *Value self-determination, determination and re-determination*

#### Provisions to be applied for establishing customs value

- 115.** The customs value of— 20
- (a) goods imported into the Republic must be established in accordance with Part 3 of this Chapter, except specific imported goods mentioned in Part 4 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 5 of this Chapter. 25

#### Value self-determination of goods when goods are cleared

- 116.** (1) A person clearing 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 30
  - (b) state the customs value of the goods determined in terms of paragraph (a) on the clearance declaration.
- (2) In the case of imported goods the clearance declaration must also indicate—
- (a) the valuation method used to determine the customs value of the goods; and
  - (b) whether the person who sold the goods for export to the Republic and the purchaser have a family, personal, employment or business relationship within the meaning of section 130. 35
- (3) A valuation criterion used in making a value self-determination of any goods must be consistent with—
- (a) a valuation criterion that may be applicable to those goods in terms of section 123(2); or 40
  - (b) any advance valuation ruling that may be applicable to those goods.
- (4) A value self-determination must be applied for purposes of the clearance unless replaced by a value determination in terms of section 117.
- (5) A person clearing goods must on discovery of any inaccuracy in a value self-determination made in respect of the goods, promptly notify the customs authority of the inaccuracy. 45
- (6) Section 179 of the Customs Control Act applies to a worksheet referred to in subsection (1).
- (7) This section does not apply to— 50
- (a) accompanied or unaccompanied baggage other than commercial goods;
  - (b) international postal articles cleared in accordance with the simplified clearance process contemplated in section 493(2) of the Customs Control Act; or

- (c) any other category of goods—
  - (i) excluded by rule from value self-determination; or
  - (ii) exempted by the customs authority in a specific case from value self-determination.

#### **Value determination by customs authority** 5

- 117.** (1) The customs authority may at any time, subject to section 120, make a determination of the customs value of goods.<sup>98</sup>
- (2) A valuation criterion used in making a value determination of goods must be consistent with—
- (a) a valuation criterion that may be applicable to those goods in terms of section 123(2); or 10
  - (b) any advance valuation ruling that may be applicable to those goods.
- (3) A value determination in terms of subsection (1) may be made in respect of goods irrespective of whether or not—
- (a) the goods— 15
    - (i) have been cleared;
    - (ii) have been released;
    - (iii) are dutiable; or
    - (iv) are still subject to customs control;
  - (b) a value self-determination has been made in respect of the goods; or 20
  - (c) an amount of duty has been paid on the goods.
- (4) The customs authority must give notice of any value determination in terms of subsection (1) to the person clearing the goods.
- (5) A value determination of goods in terms of subsection (1) replaces any value self-determination applicable to the goods in terms of section 116. 25

#### **Re-determination of previous value determination or re-determination**

- 118.** (1) The customs authority may at any time, subject to section 120—
- (a) re-determine the customs valuation of goods as determined by it in terms of section 117; or
  - (b) re-determine the customs valuation of goods as previously re-determined by it in terms of paragraph (a). 30
- (2) More than one value re-determination may, as necessary, be made in terms of subsection (1)(b).
- (3) A valuation criterion used in making a value re-determination of any goods must be consistent with— 35
- (a) a valuation criterion that may be applicable to those goods in terms of section 123(2); or
  - (b) any advance valuation ruling that may be applicable to those goods.
- (4) A value re-determination in terms of subsection (1) may be made in respect of goods irrespective of whether or not— 40
- (a) the goods—
    - (i) have been cleared;
    - (ii) have been released;
    - (iii) are dutiable; or
    - (iv) are still subject to customs control; 45
  - (b) a value self-determination has been made in respect of the goods; or
  - (c) an amount of duty has been paid on the goods.
- (5) The customs authority must give notice of any value re-determination in terms of subsection (1) to the person clearing the goods.
- (6) A value re-determination replaces the previous value determination or value re-determination applicable to the goods. 50

<sup>98</sup> Clearance or a value self-determination is not a precondition for a value determination in terms of section 117. A value determination may sometimes be made in the absence of a clearance or value self-determination, e.g. where non-cleared goods are in terms of the Customs Control Act for tax purposes regarded to be cleared for home use.



### Correction of error in value determination or re-determination

**119.** (1) On discovery of an error in a value determination or re-determination in respect of any goods which does not affect the value ascribed to the goods in the determination or re-determination, the customs authority may correct<sup>99</sup> the error by notice to the person clearing the goods. 5

(2) There are no time limits as to when a correction may be made in terms of subsection (1).

### Time limit on value determination and re-determination

**120.** (1) There are no time limits as to when a value determination or re-determination of goods may be made, but no value determination or re-determination may be applied for purposes of assessing or re-assessing duty on goods otherwise than in accordance with subsection (2). 10

(2) A value determination or re-determination that affects the dutiability of goods or the amount of duty paid or payable on goods must be applied for purposes of assessing or re-assessing duty on those goods— 15

(a) if the value determination or re-determination was made within a period of three years from the date the goods acquired a tax due status in terms of Chapter 6 of the Customs Control Act;<sup>100</sup> or

(b) if the value determination or re-determination was made, whether within or after the expiry of the three years' period referred to in paragraph (a)— 20

(i) to give effect to—

(aa) a decision in any administrative appeal or dispute resolution proceedings;

(bb) a dispute settlement;

(cc) a retrospective amendment to the Customs Tariff; or 25

(dd) a court order given or confirmed in a final judgement;

(ii) 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; or

(iii) following an agreement referred to in section 86(2)(b). 30

(3) This section may not be read as permitting a re-assessment of duty on goods in conflict with section 87.

### Request for information and documents

**121.** 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 of goods or a correction of a value determination or re-determination: 35

(a) The person clearing the goods or who submitted the clearance declaration in respect of the goods;

(b) any person who is an importer or exporter in relation to the goods; 40

(c) any person who—

(i) is or may be held liable for duty that may be or has become payable on the goods; or

(ii) has paid duty on the goods; or

(d) the owner of the goods. 45

99. An error in the value of goods in a value determination or re-determination cannot be corrected by a correction notice but only by a superseding value re-determination. See also definition of "correction" in section 1.

100. Goods that have been cleared acquire a tax due status in terms of Chapter 6 of the Customs Control Act as from the date of clearance of the goods for home use or a customs procedure that confers a tax due status, which in terms of section 173 of that Act is the date of acceptance by Customs of the clearance declaration submitted in respect of the goods.

### **Value determination or re-determination in absence of sufficient information**

- 122.** The customs authority may base a value determination or re-determination on the best information available to it—
- (a) if 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 and those particulars are still not disclosed or still not sufficiently disclosed following—
    - (i) a request in terms of section 121; or
    - (ii) an amendment of the clearance declaration or any supporting documents;
  - (b) in any other case, if information or documents necessary for considering or making the value determination or re-determination were not furnished following a request in terms of section 121; or
  - (c) if no clearance declaration was submitted and the goods are in terms of the Customs Control Act for tax purposes regarded to be cleared for home use or outright export.

### **Goods to which value determination, re-determination and valuation criterion apply**

- 123.** (1) A value determination or re-determination of goods applies only to the goods in respect of which it was made.
- (2) A valuation criterion applied in a value determination or re-determination of goods referred to in subsection (1) must, until the customs authority decides otherwise, be applied also to goods of the same class or kind cleared for home use or a customs procedure by the same person or by a registered agent on behalf of the same person—
- (a) if and when a value determination or re-determination in respect of such goods is made in terms of section 117 or 118, whether the goods were cleared before or after the date of the value determination or re-determination referred to in subsection (1); or
  - (b) if and when a value self-determination in respect of such goods cleared on or after that date is made in terms of section 116.
- (3) Subsection (2) may not be read as permitting a re-assessment of duty on goods in conflict with section 87.

### **Rounding off of customs value**

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

### **Remedies available to person aggrieved by value determination or re-determination<sup>101</sup>**

- 125.** (1) Parts 3, 4 and 5 of Chapter 37 of the Customs Control Act as may be appropriate in terms of the provisions of those Parts, are available to a person aggrieved by a value determination or re-determination.
- (2) If a person aggrieved by the application of a specific valuation criterion in a value determination or re-determination, or by a decision in terms of section 123(2), lodges an administrative appeal in terms of Part 3 of that Chapter against the determination or re-determination on account of the application of such valuation criterion,<sup>102</sup> or against that decision, the appeal may only be heard by a specialist appeal committee referred to in section 843(2)(a) of the Customs Control Act.

<sup>101</sup>. It should be noted that as a general rule an administrative appeal and in fact none of the proceedings referred to in Chapter 37 of the Customs Control Act affects or suspends the obligation to pay a duty. See section 830 of the Customs Control Act.

<sup>102</sup>. A specialist appeal committee is compulsory only if an appeal is lodged against the application of a disputed valuation criterion. If an appeal is against some other disputed matter, such as the use of an alleged incorrect exchange rate or miscalculation of quantity, etc., the appeal must be heard in the ordinary way.

- (3) A person aggrieved by a value determination or re-determination or, if an administrative appeal has been lodged against the determination or re-determination, including an appeal referred to in subsection (2), by a decision taken in such appeal proceedings, may—
- (a) lodge an appeal with a court against the determination, re-determination or decision; or
  - (b) institute proceedings for a review by a court of the determination, re-determination or decision.

**Value determination or re-determination presumed to be correct except when replaced, amended, set aside or corrected** 10

- 126.** A value determination or re-determination applicable to any goods must be presumed to be correct and must be applied except when replaced, amended, set aside, corrected or otherwise affected, as may be appropriate, by—
- (a) a value re-determination in terms of section 118;
  - (b) a decision in terms of section 123(2);
  - (c) a correction in terms of section 119;
  - (d) an advance valuation ruling in terms of Chapter 10;
  - (e) a decision in any administrative appeal or alternative dispute resolution proceedings;
  - (f) a dispute settlement;
  - (g) a retrospective amendment to the Customs Tariff; or
  - (h) a court order given or confirmed in a final judgement.

**Part 3**

***Valuation of imported goods***

**Primary valuation method** 25

- 127.** (1) The primary valuation method must for purposes of this Act be used for determining the customs value of goods imported into the Republic unless that method cannot or may not in terms of section 129 be used for determining the customs value of those goods.
- (2) In terms of the primary valuation method, the transaction value of the goods, determined in accordance with section 131, must be taken as the customs value of the goods.

**Alternative valuation method**

- 128.** (1) If the primary valuation method cannot or may not in terms of section 129 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 132;
  - (b) the similar goods method as set out in section 133;
  - (c) the deductive method as set out in section 134;
  - (d) the computed method as set out in section 135; and
  - (e) the fall-back method as set out in section 136.
- (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 in which primary valuation method cannot or may not be used**

- 129.** (1) The circumstances in which the primary valuation method cannot or may not be used for determining the customs value of any specific imported goods are the following:
- (a) The transaction in terms of which the goods are exported to the Republic is not a contract of purchase and sale;
  - (b) the transaction in terms of which the goods were sold 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, unless subsection (2) applies;

- (c) there is for any reason no price actually paid or payable for the goods to use as basis for determining a transaction value for the goods;
- (d) the price actually paid or payable for the goods is not substantiated by supporting documents; 5
- (e) the transaction in terms of which the goods were sold for export to the Republic is subject to a term or condition which materially affected the price actually paid or payable for the goods 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 sold for export to the Republic; 10
- (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 sold for export to the Republic, unless subsection (3) is applied; 15
- (h) a part of the proceeds of any resale, disposal or use of the goods accrued or will accrue to the seller, unless subsection (4) is applied;
- (i) the seller and the buyer have a family, personal, employment or business relationship within the meaning of section 130, unless section 130(3) applies; 20
- (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 the information available for determining the transaction value of the imported goods is incorrect or defective in any respect. 25

(2) The primary valuation method may despite subsection (1)(b) be used for determining the customs value of the goods if the customs authority determines that the transaction value is acceptable.

(3) 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 131(3), added to the price actually paid or payable for the goods. 35

(4) 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 131(3), added to the price actually paid or payable for the goods. 40

#### **Relationship between contracting parties as disqualifying factor for primary valuation method**

**130.** (1) For the purposes of section 129(1)(i)—

- (a) a 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; 50
  - (iv) engagement; or
  - (v) cohabitation;
- (b) an employment relationship includes a relationship between a seller and a buyer as—
  - (i) employer and employee; 55
  - (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 business relationship includes a relationship between a seller and a buyer as—
- (i) partners in the same firm;
  - (ii) a person and a firm in which that person is a partner;
  - (iii) members of the same close corporation; 5
  - (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 the same 10 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 sole agent, distributor or concessionary of the other is not a business relationship for purposes of section 129(1)(i), provided that they are not otherwise related within the meaning of subsection (1)(a), (b) or (c) of this section. 15

(3) (a) The customs authority may despite section 129(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. 20

(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 any one of the following test values: 25

- (i) The transaction value of identical or similar goods purchased at comparable trade and quantity levels by unrelated buyers in the Republic at or about the same time as the goods being valued;
- (ii) the value, determined in terms of section 134, of identical or similar goods 30 imported into the Republic at or about the same time as the goods being valued; or
- (iii) the value, determined in terms of section 135, of identical or similar goods imported into the Republic at or about the same time as the goods being valued.

#### **Determination of transaction value** 35

**131.** (1) The transaction value of goods sold for export to the Republic is the price actually paid or payable for the goods when sold for export to the Republic, adjusted by—

- (a) adding the amounts mentioned in subsection (3); and
- (b) deducting the amounts mentioned in subsection (4). 40

(2) If the goods are sold for export to the Republic<sup>103</sup> in two or more successive transactions, the last sale before the goods arrive at the place of entry in the Republic must be used for determining the transaction value of the goods.

(3) 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: 45

- (a) Any commission other than buying commission;
- (b) brokerage;
- (c) the cost of—
  - (i) packing, including the cost of labour and materials; and 50
  - (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 indirectly by the buyer free of charge or at reduced cost for use in 55

103. It does not matter whether the goods were sold 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 or in fact any sale after the goods left the port or place of export in the country of exportation.

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; 5
- (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, trademarks and copyright and for the right to distribute or resell the goods, payable 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; 10
- (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 15
- (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. 20

(4) 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 are actual amounts that 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 from the port or place of export in the country of exportation to the place of entry in the Republic; 25
- (b) the cost of insurance of the goods from the port or place of export in the country of exportation to the place of entry in the Republic; or
- (c) the loading, unloading and handling charges associated with the delivery of the goods at the place of entry in the Republic; 30
- (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; 35
- (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) interest charged in respect of the price actually paid or payable for the goods, but this deduction is permitted only if— 40
  - (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 sold 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 45
  - (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 50
- (i) any charges for the right or licence to reproduce the goods in the Republic.

(5) Interest that must in terms of subsection (4)(h) be deducted from the price actually paid or payable for the goods excludes any—

- (a) interest paid by the buyer to the seller for default on payments; and 55
- (b) payments for interest made by the buyer to the seller arranged as part of the total payment made to the seller.

(6) If any of the amounts that must in terms of subsection (4) be deducted from the price actually paid or payable for the goods, is not distinguishable as per the invoice or other supporting document as a component of the price actually paid or payable for the goods, the customs authority may accept any other documentary evidence at the time when the value self-determination is made, as proof that that amount is in fact a separate component of the price actually paid or payable for the goods. 60

(7) The customs authority may direct that any addition contemplated in subsection (3) or any deduction contemplated in subsection (4) or any matter determining whether such addition or deduction must or may be made, be substantiated by documentary evidence submitted to the customs authority.

(8) Any calculation in terms of this section must be made in accordance with generally accepted accounting practice. 5

#### **Determination of customs value according to identical goods method**

**132.** (1) If the identical goods method is used for determining the customs value of any specific imported goods—

(a) the transaction value per unit of identical goods, as previously determined by the customs authority in terms of section 117 or 118(1)(a) or (b), which were sold for export to the Republic 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 being valued, must be taken as the customs value per unit of the goods being valued, subject to any adjustments that must be made in terms of subsection (2); or 10 15

(b) if no determination contemplated in paragraph (a) was made that can be used for purposes of that paragraph, the transaction value per unit of identical goods, as previously determined by the customs authority in terms of section 117 or 118(1)(a) or (b), which were sold for export to the Republic 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 being valued, must be taken as the customs value per unit of the goods being valued, subject to any adjustments that must be made in terms of subsection (3).<sup>104</sup> 20 25

(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 the costs and charges contemplated in section 131(3) and (4) resulting from differences in distances and modes of transport to the port or place of export, between the identical goods and the goods being valued. 30

(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 sale for export to the Republic of the identical goods and of the goods being valued, at the different commercial levels or quantity levels; and 35  
(b) the costs and charges for different distances and modes of transport to the port or place of export, between the identical goods and the goods being valued.

(4) If in applying this section more than one identical goods transaction is used for determining the value of the goods being 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** 40

**133.** (1) If the similar goods method is used for determining the customs value of any specific imported goods—

(a) the transaction value per unit of similar goods, as previously determined by the customs authority in terms of section 117 or 118(1)(a) or (b), which were sold for export to the Republic 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 being valued, must be taken as the customs value per unit of the goods being valued, subject to any adjustments that must be made in terms of subsection (2); or 45

(b) if no determination contemplated in paragraph (a) was made that can be used for purposes of that paragraph, the transaction value per unit of similar goods, as previously determined by the customs authority in terms of section 117 or 118(1)(a) or (b), which were sold for export to the Republic 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 being valued, must be taken as the customs value per unit of the 50 55

<sup>104</sup> Transaction value of goods are determined in accordance with section 131. See definition of “transaction value” in section 1.

goods being valued, subject to any adjustments that must be made in terms of subsection (3).<sup>105</sup>

(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 contemplated in section 131(3) and (4) resulting from differences in distances and modes of transport to the port or place of export, between the similar goods and the goods being valued. 5

(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 sale for export to the Republic of the similar goods and of the goods being valued at the different commercial levels or quantity levels; and 10

(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 being valued.

(4) If in applying this section more than one similar goods transaction is used for determining the value of the goods being valued, the transaction yielding the lowest value must be taken as the customs value of the goods. 15

### **Determination of customs value according to deductive method**

**134.** (1) If the deductive method is used for determining the customs value any specific imported goods, the customs value of the goods must, subject to any adjustments in terms of subsections (2) and (3), be taken as equal to— 20

(a) the price per unit at which imported identical goods are sold in the Republic, in the greatest number of units—

(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 130; and 25

(iii) at or about the same time the goods being valued were imported; or

(b) if no price per unit contemplated in paragraph (a) for imported identical goods can be determined, the price per unit at which imported similar goods are sold in the Republic, in the greatest number of units—

(i) in the same condition as that in which they were when imported; 30

(ii) by importers to persons not related to them within the meaning of section 130; and

(iii) at or about the same time the goods being valued were imported.

(2) A price per unit of imported identical or similar goods determined in terms of subsection (1)(a) or (b) must be adjusted by deducting proportionately per unit of the goods— 35

(a) usual commissions or profit on the sale of goods falling within the same group or range of goods as the goods being valued, irrespective of the country of exportation;

(b) general expenses usually incurred in connection with the sale of goods falling within the same group or range of goods as the goods being valued, irrespective of the country of exportation, including the usual direct and indirect costs of marketing goods falling within the same group or range of goods as the goods being valued; 40

(c) the cost of transportation, loading, unloading, handling and 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 45

(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. 50

(3) If imported identical or similar goods are sold in the Republic only after further processing of the goods in the Republic, subsection (1)(a)(i) or (b)(i) may be disregarded when determining the price per unit 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. 55

(4) If the deductive method is used for determining or re-determining the customs value of any imported goods in terms of section 117 or 118 after any of those goods have already been sold in the Republic, the customs authority or person applying this section

<sup>105</sup> Transaction value of goods are determined in accordance with section 131. See definition of "transaction value" in section 1.



may, instead of determining the price per unit at which imported identical or similar goods were sold in the Republic—

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

(5) If neither the goods being valued nor imported identical or similar goods were sold at or about the same time the goods being valued were imported, the transaction value of the goods being valued must, subject to subsection (1), be based on the unit price at which the goods being valued or imported identical or similar goods are sold in the Republic in the same condition as that in which they were when imported, at the earliest date after the goods being valued were imported, but not later than 90 calendar days after such importation.

#### **Determination of customs value according to computed method**

**135.** If the computed method is used to determine the customs value of any imported goods, the customs value of the goods must be computed on information supplied by the producer of the goods and must consist of the sum of—

- (a) the cost of producing the goods being valued, which must include—
  - (i) the cost or value of materials and of manufacture or other processing in producing the goods being valued; 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 being valued;
- (b) the value, appropriately apportioned to any of the following goods and services if such goods and services were 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 being valued, in so far as the value of those goods and services has not been included in the price actually paid or payable for the goods being valued, namely:
  - (i) Materials, components, parts and similar articles forming part of the goods being valued;
  - (ii) tools, dies, moulds and similar articles used in the production of the goods being valued;
  - (iii) materials consumed in the production of the goods being valued; 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 being valued;
- (c) the cost of transportation, loading, unloading, handling and insurance and associated costs incidental to the delivery of the goods being valued at the port or place of export, and of placing those goods on board a vessel, aircraft, railway carriage or vehicle at that port or place, appropriately apportioned to the goods; and
- (d) an amount for profit and general expenses equal to that generally applicable in respect of sales of goods of the same class or kind as the goods being valued, which are made and incurred by producers in the country of exportation, appropriately apportioned to the goods being valued.

#### **Determination of customs value according to fall-back method**

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

- (a) the customs value of the goods must be determined by using a previous value determination or re-determination of the same class or kind of goods; or
- (b) if there is no such previous value determination or re-determination, the value of the goods must be determined in accordance with any other method that may render a reasonable valuation of the goods, subject to subsection (2).

(2) No determination of the customs value of imported goods 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 or exportation of the goods being valued;
  - (d) the cost of production, other than computed values which have been determined in accordance with section 135;
  - (e) the price of the goods for export to a country other than the Republic; 5
  - (f) a system of minimum customs values; or
  - (g) arbitrary or fictitious values.
- (3) Subsection (2)(a) to (f) 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 10
  - (b) fails to comply with a request in terms of section 121 to provide information or documents necessary for valuing the goods.

#### **Part 4**

#### ***Valuation of specific imported goods*** 15

##### **Valuation of re-imported unaltered goods under temporary export procedure**

**137.** When goods are imported into the Republic under the temporary export procedure as re-imported unaltered goods, the customs value assigned to the goods when exported from the Republic must be taken as the customs value of those goods when reimported into the Republic. 20

##### **Valuation of used goods imported by individual for own use**

- 138.** (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 128(1)(e).
- (2) (a) Subsection (1) does not apply to imported goods cleared in terms of Part 4 of Chapter 12 of the Customs Control Act under the temporary admission procedure on authority of a CPD or ATA carnet which indicates the value of the goods. 25
- (b) In the case of such goods the value indicated on the CPD or ATA carnet 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. 30

#### **Part 5**

#### ***Valuation of goods exported or to be exported***

##### **Valuation method**

- 139.** (1) When goods are to be exported from the Republic under the export procedure,<sup>106</sup> the price of the goods free on board the vessel, aircraft, railway carriage or vehicle at the place of exit from where the goods are to be exported must for purposes of this Act be taken as the customs value of the goods. 35
- (2) If there is no such free on board price, the customs value of the goods must be the value as if the goods would have been sold at a free on board price.
- (3) If a person clearing goods for export under the export procedure 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 amend the clearance declaration in accordance with section 174 of the Customs Control Act. 40

<sup>106</sup> The export procedure applies to—

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

(4) When goods cleared under the stores procedure are to be exported from the Republic under that procedure, the price of the goods free on board the vessel, aircraft or railway carriage at the place of exit from where the goods are to be exported must for purposes of this Act be taken as the customs value of the goods.

(5) The railway terminal where goods referred to in subsection (1) or (4) were loaded on board a railway carriage must for purposes of those subsections be regarded to be the place of exit from where the goods are to be exported. 5

#### **Valuation of accompanied and unaccompanied baggage of person leaving Republic**

**140.** (1) To the extent that section 139 cannot be applied to dutiable items in the accompanied or unaccompanied 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 reasonable valuation of those items, subject to subsection (2). 10

(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— 15

(a) to provide sufficient information for valuing the goods; or

(b) to comply with a request in terms of section 121 to provide information or documents necessary for valuing the goods.

### *Part 6*

#### *Currency conversion* 20

#### **Customs value to be expressed in South African Rand**

**141.** (1) The customs value of goods must for purposes of this Act 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. 25

#### **Publication of currency conversion rate for major currency**

**142.** (1) The Commissioner must for purposes of this Act publish on the SARS website in respect of each Wednesday the selling and buying rates of each of the major currencies for conversion into South African Rand, as provided to the Commissioner by the Reserve Bank for that Wednesday. 30

(2) Subsection (1) does not apply if a Wednesday falls on a public holiday.

#### **Conversion rate for published currency**

**143.** (1) If any payment made or to be made in connection with any specific goods cleared for home use or a customs procedure, or if any other amount taken or to be taken into account in determining the customs value of those goods, is expressed in a foreign currency published in terms of section 142, the customs authority must, for the purpose of valuing those goods in South African Rand, use the conversion rate applicable for that currency in terms of subsection (2). 35 40

(2) The conversion rate for a foreign currency as published in respect of that currency for a Wednesday in terms of section 142 must be used as the rate for converting the relevant currency into South African Rand if the date of clearance of those goods falls within any of the following periods:

(a) the week commencing the following Wednesday; 45

(b) if that following Wednesday is a public holiday, the two week period commencing that Wednesday; or

(c) if that following Wednesday is a public holiday and also the last Wednesday of a calendar year, the three week period commencing that Wednesday.

**Conversion rate for currency not published**

**144.** (1) If any payment made or to be made in connection with any specific goods cleared for home use or a customs procedure, 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 142, the customs authority must for the purpose of valuing those goods in South African Rand, and on request by the person submitting the clearance declaration in respect of the goods, determine and use the rate which applied on the day before the date of clearance of those goods for converting that foreign currency into South African Rand. 5

(2) When determining a conversion rate in terms of subsection (1), the customs authority must take into account the average selling and buying rates of that foreign currency for conversion into South African Rand as quoted for that day by at least two major banks operating in the Republic. 10

**Use of forward exchange contract**

**145.** Where an importer has negotiated a fixed conversion rate with a financial institution and a forward exchange contract has been concluded, 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. 15

**Fixed rate of exchange between related parties not acceptable**

**146.** The conversion of foreign currency into South African Rand, at fixed contract rates of exchange, negotiated between sellers and buyers related within the meaning of section 130 may not be accepted unless it is proved that the relationship did not affect the rate fixed in terms of the contract. 20

**Part 7****Other matters** 25**Goods exported to Republic through other country**

**147.** For the purpose of this Chapter goods which are exported to the Republic from any country but pass in transit through another country must, subject to any conditions and requirements as may be prescribed by rule, be regarded to be exported directly to the Republic from the first-mentioned country. 30

**Publication of value determination and re-determination**

**148.** The Commissioner may make public particulars of any value determination or re-determination in such a manner and containing such information as the Commissioner may determine.

**Rules to facilitate application of this Chapter** 35

**149.** The Commissioner may in terms of section 224 make rules to facilitate the implementation of this Chapter.

**Offences in terms of this Chapter**

**150.** (1) A person clearing goods is guilty of an offence if that person— 40

- (a) fails to comply with section 116(1) or (5) or 139(3);
- (b) makes a value self-determination which that person knows is not true or could not reasonably have believed to be true; or
- (c) in making a value self-determination—
  - (i) uses false or misleading information with the intention to mislead; or
  - (ii) omits to use accurate information with the intention to mislead. 45

(2) A person is guilty of an offence if that person fails to comply with a request issued by the customs authority to that person in terms of section 121.

(3) An offence referred to in subsection (1)(b) or (c)(i) or (ii) is a Category 1 offence.

## CHAPTER 8

## ORIGIN

*Part 1**Introductory provisions***Purpose and application of this Chapter** 5

- 151.** (1) The purpose of this Chapter is—
- (a) to provide for the determination of the origin of all goods imported into or to be exported or exported from the Republic; and
  - (b) to provide for the establishment or recognition, as may be appropriate, and the application, of—
    - (i) general rules of origin for determining the origin of all goods imported into or to be exported or exported from the Republic;
    - (ii) rules of origin for determining the origin of goods imported into or to be exported or exported from the Republic when such determination is necessary for purposes of preferential tariff treatment claims under an international trade agreement; and
    - (iii) rules of origin for determining the origin of goods to be exported or exported from the Republic to a country implementing a non-reciprocal generalised system of preferences for goods of South African origin when such determination is necessary for purposes of preferential tariff treatment claims under that system of preferences.
- (2) This Chapter applies to all goods imported into or destined for export from the Republic, whether dutiable or not.

*Part 2****Origin self-determination, determination and re-determination*** 25**Origin self-determination of goods when goods are cleared**

- 152.** (1) A person clearing goods<sup>107</sup> for home use or a customs procedure must—
- (a) make a self-determination—
    - (i) of the origin of the goods in accordance with the general rules of origin, irrespective of whether duty is payable on the goods; and
    - (ii) if preferential tariff treatment under an international trade agreement or a non-reciprocal generalised system of preferences is claimed in respect of those goods, also of the origin of those goods in accordance with the rules of origin as may be applicable in terms of section 167(2), (3) or (4); and
  - (b) state on the clearance declaration the origin of the goods determined in terms of paragraph (a)(i) and, if paragraph (a)(ii) applies, also the origin of those goods determined in terms of paragraph (a)(ii).
- (2) (a) If in the case of subsection (1)(a)(ii) the origin of goods is to be determined in accordance with any procedures or other requirements in terms of the applicable international trade agreement or non-reciprocal generalised system of preferences, the clearance declaration of the goods must be accompanied by such documentary evidence of origin as may be required—
- (i) in terms of that international trade agreement or non-reciprocal generalised system of preferences; or
  - (ii) by the customs authority.
- (b) Paragraph (a) does not apply if the relevant international trade agreement or non-reciprocal generalised system of preferences exempts the goods from the submission of documentary evidence of origin.

<sup>107</sup> See section 166 of the Customs Control Act.

- (3) An origin self-determination of goods in terms of subsection (1)(a)(i) or (ii) must be consistent with—
- (a) any relevant origin determination or re-determination that may be applicable to those goods in terms of section 158(1)(b) or (5)(b) or 159(1)(b) or (5)(b); or
  - (b) any relevant advance origin ruling that may be applicable to those goods. 5
- (4) (a) An origin self-determination in terms of subsection (1)(a)(i) must be applied in relation to the goods in respect of which it was made unless replaced by an origin determination in terms of section 153 read with section 158 or 159 where applicable.
- (b) An origin self-determination in terms of subsection (1)(a)(ii) must be applied in relation to the goods in respect of which it was made unless— 10
- (i) rejected by the customs authority; or
  - (ii) replaced by an origin determination in terms of section 153 read with section 158 or 159 where applicable.
- (5) A person clearing goods must on discovery of any inaccuracy in an origin self-determination made in respect of the goods, promptly notify the customs authority 15 of the inaccuracy.
- (6) This section does not apply to—
- (a) accompanied or unaccompanied baggage other than commercial goods;
  - (b) international postal articles cleared in accordance with the simplified clearance process contemplated in section 493(2) of the Customs Control Act; 20 or
  - (c) any other goods—
    - (i) excluded by rule from origin self-determination; or
    - (ii) exempted by the customs authority in a specific case from origin self-determination. 25

#### **Origin determination by customs authority**

- 153.** (1) The customs authority may at any time, subject to section 156, make a determination of the origin of goods imported into or to be exported or exported from the Republic in accordance with—
- (a) the general rules of origin; 30
  - (b) the rules of origin applicable in terms of section 167(2) or (3) to an international trade agreement, if preferential tariff treatment under that international trade agreement is claimed in respect of the goods; or
  - (c) the rules of origin applicable in terms of section 167(4) to a non-reciprocal generalised system of preferences implemented by a country, if preferential 35 tariff treatment under that system of preferences is claimed in respect of goods to be exported or exported to that country.
- (2) (a) An origin determination of goods in terms of subsection (1) must be consistent with any relevant advance origin ruling that may be applicable to those goods.
- (b) An origin determination of goods in terms of subsection (1)(b) or (c) is subject to 40 compliance with any procedures contained in or applicable to the relevant international trade agreement or non-reciprocal generalised system of preferences.
- (3) An origin determination in terms of subsection (1) may be made in respect of goods irrespective of whether or not—
- (a) the goods— 45
    - (i) have been cleared;<sup>108</sup>
    - (ii) have been released;
    - (iii) are dutiable; or
    - (iv) are still subject to customs control;
  - (b) an origin self-determination has been made in respect of the goods; or 50
  - (c) an amount of duty has been paid on the goods.
- (4) The customs authority must give notice of any origin determination in terms of subsection (1) to the person clearing the goods.
- (5) An origin determination of goods in terms of subsection (1) replaces the corresponding origin self-determination applicable to the goods in terms of section 152. 55

108. Neither clearance nor an origin self-determination is a precondition for an origin determination in terms of section 153. An origin determination may sometimes be made in the absence of a preceding clearance or origin self-determination, e.g. where non-cleared goods are in terms of the Customs Control Act regarded to be cleared for home use.

### Re-determination of previous origin determination or re-determination

- 154.** (1) The customs authority may at any time, subject to section 156—
- (a) re-determine any origin determination of goods as determined by it in terms of section 153; or
  - (b) re-determine any previous origin re-determination of goods made by it in terms of paragraph (a). 5
- (2) More than one origin re-determination of goods may, as necessary, be made in terms of subsection (1)(b).
- (3) An origin re-determination of goods in terms of subsection (1) must be consistent with any relevant advance origin ruling that may be applicable to those goods. 10
- (4) An origin re-determination in terms of subsection (1) may be made in respect of goods irrespective of whether or not—
- (a) the goods—
    - (i) have been cleared;
    - (ii) have been released; 15
    - (iii) are dutiable; or
    - (iv) are still subject to customs control; or
  - (b) an amount of duty has been paid on the goods.
- (5) The customs authority must give notice of any origin re-determination in terms of subsection (1) to the person clearing the goods. 20
- (6) An origin re-determination replaces the previous corresponding origin determination or origin re-determination applicable to the goods.

### Correction of origin determination or re-determination

- 155.** (1) On discovery of an error in an origin determination or re-determination made in respect of any goods which does not affect the origin ascribed to the goods in the determination or re-determination, the customs authority may correct<sup>109</sup> the error by notice to the person clearing the goods. 25
- (2) There are no time limits as to when a correction may be made in terms of subsection (1).

### Time limits on origin determination and re-determination 30

- 156.** (1) There are no time limits as to when an origin determination or re-determination of goods may be made, but no origin determination or re-determination may be applied for purposes of assessing or re-assessing duty on goods otherwise than in accordance with subsection (2).
- (2) An origin determination or re-determination that affects the dutiability of the goods or the amount of duty paid or payable on the goods must be applied for purposes of assessing or re-assessing duty on those goods— 35
- (a) if the origin determination or re-determination was made within a period of three years from the date the goods acquired a tax due status in terms of Chapter 6 of the Customs Control Act;<sup>110</sup> or 40
  - (b) if the origin determination or re-determination was made, whether within or after the expiry of the three years' period referred to in paragraph (a)—
    - (i) to give effect to—
      - (aa) a decision in any administrative appeal or dispute resolution proceedings; 45
      - (bb) a dispute settlement;
      - (cc) a retrospective amendment to the Customs Tariff; or
      - (dd) a court order given or confirmed in a final judgement;

109. An origin error in an origin determination or re-determination of goods cannot be corrected by a correction notice but only by a superseding origin re-determination. See also definition of "correction" in section 1.

110. Goods that have been cleared acquire a tax due status in terms of Chapter 6 of the Customs Control Act as from the date of clearance of the goods for home use or a customs procedure that confers a tax due status, which in terms of section 173 of that Act is the date of acceptance by Customs of the clearance declaration submitted in respect of the goods.

- (ii) 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; or
  - (iii) following an agreement referred to in section 86(2)(b).
- (3) This section may not be read as permitting a re-assessment of duty on goods in conflict with section 87. 5

### **Origin determination or re-determination in absence of sufficient information**

- 157.** The customs authority may, subject to any procedures or other requirements regulating the determination of the origin of goods in terms of any applicable international trade agreement, base an origin determination or re-determination on the best information available to it— 10
- (a) if particulars of the goods in respect of which the origin determination or re-determination is made are not disclosed or not sufficiently disclosed in the clearance declaration or any supporting documents and those particulars are still not disclosed or still not sufficiently disclosed following— 15
    - (i) a request in terms of section 162; or
    - (ii) an amendment of the clearance declaration or any supporting documents;
  - (b) in any other case, if information or documents necessary for considering or making the origin determination or re-determination were not furnished following a request in terms of section 162; or 20
  - (c) if no clearance declaration was submitted and the goods are in terms of the Customs Control Act for tax purposes regarded to be cleared for home use or outright export.

### **Goods to which origin determination or re-determination made in accordance with general rules of origin apply** 25

- 158.** (1) An origin determination or re-determination of goods made in accordance with the general rules of origin applies—
- (a) to the goods in respect of which it was made; and
  - (b) also to all identical goods— 30
    - (i) produced by the same producer;<sup>111</sup> and
    - (ii) cleared for home use or a customs procedure by the same person who cleared the goods for which that origin determination or re-determination was made, whether those identical goods were cleared before or after the date of that origin determination or re-determination.
- (2) An origin determination or re-determination that applies to identical goods referred to in subsection (1)(b) may not be applied for assessing or re-assessing duty in respect of those identical goods otherwise than in accordance with section 156(2). 35
- (3) An origin self-determination in terms of section 152(1)(a)(i) made in respect of identical goods referred to in subsection (1)(b) which are cleared on or after the date of an origin determination or re-determination that applies in terms of that subsection to those goods must be consistent with that origin determination or re-determination. 40
- (4) This section may not be read as permitting a re-assessment of duty on goods in conflict with section 87.
- (5) If the customs authority makes an origin re-determination in accordance with the general rules of origin in relation to goods for which a previous origin determination or re-determination is in force in terms of this section, the latest re-determination supersedes the previous one and must be applied— 45
- (a) to the goods in respect of which it was made; and
  - (b) also to all identical goods— 50
    - (i) produced by the same producer; and
    - (ii) cleared for home use or a customs procedure by the same person who cleared the goods for which that re-determination was made, whether the goods were cleared before or after the date of that latest re-determination.
- (6) Subsections (2), (3) and (4) apply equally to any new origin re-determination referred to in subsection (5). 55

<sup>111</sup>. The definition of “producer” in section 1 of the Customs Control Act includes a manufacturer.



(7) In this section “identical goods” means goods that are not only identical in appearance, quality and physical characteristics, but also to the extent that the inputs used in their manufacturing are identical in all respects.

**Goods to which origin determination or re-determination made in accordance with rules of origin for preferential tariff treatment apply** 5

**159.** (1) An origin determination or re-determination of goods made in accordance with rules of origin as may be applicable in terms of section 167(2), (3) or (4) to an international trade agreement or non-reciprocal generalised system of preferences for purposes of preferential tariff treatment under that agreement or system, applies—

(a) to the goods in respect of which it was made; and 10

(b) for those purposes also to all identical goods—

(i) for which preferential tariff treatment may be claimed under that agreement or system;

(ii) produced by the same producer; and

(iii) cleared for home use or a customs procedure by the same person who cleared the goods for which that origin determination or re-determination was made, whether those identical goods were cleared before or after the date of that origin determination or re-determination. 15

(2) An origin determination or re-determination that applies to identical goods referred to in subsection (1)(b) may not be applied for assessing or re-assessing duty in respect of those identical goods otherwise than in accordance with section 156(2). 20

(3) An origin self-determination in terms of section 152(1)(a)(ii) made in respect of identical goods referred to in subsection (1)(b) which are cleared on or after the date of an origin determination or re-determination that applies in terms of that subsection to those goods must be consistent with that origin determination or re-determination. 25

(4) This section may not be read as permitting a re-assessment of duty on goods in conflict with section 87.

(5) If the customs authority makes an origin re-determination in accordance with the same rules of origin as those referred to in subsection (1) in relation to goods for which a previous origin determination or re-determination is in force in terms of this section, the latest re-determination supersedes the previous one and must be applied— 30

(a) to the goods in respect of which it was made; and

(b) also to all identical goods—

(i) for which preferential tariff treatment may be claimed under the applicable international trade agreement or non-reciprocal generalised system of preferences; 35

(ii) produced by the same producer; and

(iii) cleared for home use or a customs procedure by the same person who cleared the goods for which that re-determination was made, whether the goods were cleared before or after the date of that latest re-determination. 40

(6) Subsections (2), (3) and (4) apply equally to any new origin re-determination referred to in subsection (5).

(7) In this section “identical goods” means goods that are not only identical in appearance, quality and physical characteristics, but also to the extent that the inputs used in their manufacturing are identical in all respects. 45

**Remedies available to person aggrieved by origin determination or re-determination<sup>112</sup>**

**160.** (1) Parts 3, 4 and 5 of Chapter 37 of the Customs Control Act, as may be appropriate in terms of the provisions of those Parts, are available to a person aggrieved by an origin determination or re-determination. 50

(2) If a person aggrieved by an origin determination or re-determination lodges in terms of Part 3 of that Chapter an administrative appeal against the determination or re-determination, the appeal may only be heard by a specialist appeal committee referred to in section 843(2)(a) of the Customs Control Act.

<sup>112</sup> It should be noted that as a general rule an administrative appeal and in fact none of the proceedings referred to in Chapter 37 of the Customs Control Act affects or suspends the obligation to pay a duty. See section 830 of the Customs Control Act.

- (3) A person aggrieved by an origin determination or re-determination or, if an administrative appeal has been lodged against the determination or re-determination, by a decision taken in such appeal proceedings, may—
- (a) lodge an appeal with a court against the determination, re-determination or decision; or 5
  - (b) institute proceedings for a review by a court of the determination, re-determination or decision.

**Origin determination or re-determination presumed to be correct except when replaced, amended, set aside or corrected**

**161.** An origin determination or re-determination applicable to any goods must be presumed to be correct and must be applied for the purpose it was made except when replaced, amended, set aside, corrected or otherwise affected, as may be appropriate, by—

- (a) any relevant origin re-determination in terms of section 154;
- (b) an origin determination or re-determination that becomes applicable to the goods in terms of section 158(1)(b) or (5)(b) or 159(1)(b) or (5)(b); 15
- (c) a correction of that origin determination or re-determination in terms of section 155;
- (d) any relevant advance origin ruling in terms of Chapter 10;
- (e) a decision in any administrative appeal or alternative dispute resolution proceedings; 20
- (f) a dispute settlement;
- (g) a retrospective amendment to the Customs Tariff; or
- (h) a court order given or confirmed in a final judgement.

**Part 3** 25

***Documentary evidence of origin***

**When documentary evidence of origin may be requested**

**162.** (1) The customs authority may, subject to any applicable international trade agreement or non-reciprocal generalised system of preferences specifying procedures or other requirements for the verification of the origin of goods, at any time when needed for a purpose mentioned in subsection (2) request any of the following persons to furnish it within a specified period with documentary evidence of origin in respect of any goods imported into or exported or to be exported from the Republic: 30

- (a) The person clearing the goods or who submitted a clearance declaration in respect of those goods; 35
- (b) any person who is an importer or exporter in relation to the goods;
- (c) in the case of goods produced in the Republic, a person who—
  - (i) produced the goods or was in any other way involved in the production of the goods; or
  - (ii) was in any way involved in goods from which the goods were produced, directly or indirectly; or 40
- (d) a person who may issue documentary evidence of origin in respect of the goods.

(2) Documentary evidence of origin in respect of goods may be requested in terms of subsection (1) for verifying the origin of the goods when needed for— 45

- (a) considering or making an origin determination or re-determination in respect of those goods;
- (b) implementing—
  - (i) any provision of this Act, the Customs Control Act or any other applicable legislation; 50
  - (ii) an international trade agreement;
  - (iii) economic or trade measures adopted unilaterally or under an international trade agreement; or
  - (iv) health or public order measures;
- (c) ensuring compliance with the requirements of a non-reciprocal generalised system of preferences implemented by another country, in the case of goods exported from the Republic to that country; 55

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

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

- 163.** (1) A certificate of origin, certified declaration of origin or certificate certifying a declaration of origin in respect of goods of South African origin— 5
- (a) may be issued by the customs authority, the department responsible for trade and industry or a chamber of commerce authorised by that department; and
  - (b) must contain the particulars as may be— 10
    - (i) specified in any relevant international trade agreement or non-reciprocal generalised system of preferences that may apply to the goods; or
    - (ii) prescribed by rule.
- (2) A certificate of origin in respect of goods of South African origin may also be issued by the producer,<sup>113</sup> supplier or exporter of the goods on the commercial invoice or other document issued in connection with the goods or on a form as may be prescribed by rule. 15

#### **Who may issue documentary evidence of origin for imported goods**

- 164.** (1) A certificate of origin, certified declaration of origin or certificate certifying a declaration of origin in respect of goods imported into the Republic may be accepted only if— 20
- (a) issued— 20
    - (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 25
    - (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) it contains the particulars as may be— 30
    - (i) specified in the relevant international trade agreement that may be applicable; or
    - (ii) prescribed by rule.
- (2) A certificate of origin in respect of imported goods may also be issued by the producer,<sup>114</sup> supplier or exporter of the goods on the commercial invoice or other document issued in connection with the goods or on a form as may be prescribed by rule. 35

#### **Language to be used in documentary evidence of origin**

- 165.** (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. 40

### ***Part 4***

#### ***Rules of origin*** 45

#### **Main rule for determining origin of goods**

- 166.** The country of origin of goods imported into or to be exported or exported from the Republic is the country in which the goods originated, as determined in accordance with rules of origin referred to in section 167.

<sup>113</sup> The definition of “producer” in section 1 of the Customs Control Act includes a manufacturer.

<sup>114</sup> The definition of “producer” in section 1 of the Customs Control Act includes a manufacturer.

### Determination of applicable rules of origin

**167.** (1) The country in which goods imported into or to be exported or exported from the Republic originated must be determined in accordance with the general rules of origin, to the extent that the general rules of origin are applicable to such goods in terms of any rules prescribed in terms of section 178(b). 5

(2) If preferential tariff treatment is claimed under an international trade agreement in respect of goods imported into the Republic, the question whether those goods originated in a country which is a party to the agreement and whether those goods qualify for preferential tariff treatment in the Republic under the agreement, must be resolved in accordance with— 10

- (a) any rules of origin contained in, or made under, the relevant agreement; and
- (b) the general rules of origin, to the extent that the general rules of origin are applicable to such goods in terms of any rules prescribed in terms of section 178(b).

(3) If preferential tariff treatment is claimed in respect of goods to be exported or exported from the Republic to a country which is a party to an international trade agreement conferring on goods of South African origin preferential tariff treatment in that country, the question whether the goods originated in the Republic must be resolved in accordance with— 15

- (a) any rules of origin contained in, or made under, the relevant agreement; and 20
- (b) the general rules of origin, to the extent that the general rules of origin are applicable to such goods in terms of any rules prescribed in terms of section 178(b).

(4) If preferential tariff treatment is claimed in respect of goods to be exported or exported from the Republic to a country where those goods qualify for preferential tariff treatment under a non-reciprocal generalised system of preferences, the question whether the goods originated in the Republic must be resolved in accordance with— 25

- (a) rules of origin made for the implementation of the system by the country which implements the system; and
- (b) the general rules of origin, to the extent that the general rules of origin are applicable to such goods in terms of any rules prescribed in terms of section 178(b). 30

(5) In the event of any inconsistency between a rule of origin referred to in subsection (2)(a), (3)(a) or (4)(a) and a general rule of origin, the rule of origin referred to in that subsection prevails over the general rule of origin, to the extent of the inconsistency. 35

### Publication of certain rules of origin and measures regulating preferences on SARS website

**168.** The Commissioner may for purposes of section 167 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— 40
  - (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 generalised 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— 45
  - (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. 50

**Part 5****General rules of origin****Constituent parts of general rules of origin**

- 169.** (1) The general rules of origin consist of—
- (a) the rules contained in this Part; 5
  - (b) any other rules of origin as may be prescribed by rule in terms of section 178(a); and
  - (c) any rules of origin made under the WTO Agreement on Rules of Origin.
- (2) In the event of an inconsistency between rules of origin referred to in subsection (1)(a) or (b) and rules referred to in subsection (1)(c), the rules referred to in subsection (1)(c) prevail. 10

**Goods wholly produced in specific country**

- 170.** (1) Where goods imported into or to be exported 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 in which those goods originated. 15
- (2) The following goods, to the extent not already covered under subsection (1), must be regarded to be 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; 20
  - (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; 25
  - (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; 30
  - (h) fruit or 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). 35

**Goods produced in two or more countries**

- 171.** (1) Where goods imported into or to be exported 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 regarded to be the country in which those goods originated. 40
- (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; 45
  - (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; 50
  - (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 country**

**172.** (1) Goods imported into or to be exported or exported from the Republic that have been partially produced in a specific country must be regarded to have originated in that 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; 5
- (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. 10

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

- (a) the percentage as may be determined in the Customs Tariff in respect of the goods; or 15
- (b) 25 per cent, if no percentage is prescribed in terms of paragraph (a).

(3) The Commissioner may 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**

**173.** (1) When accessories, spare parts or tools for use with a machine, appliance, apparatus or vehicle are imported into or to be exported 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 regarded to be the country in which those accessories, spare parts or tools originated. 20 25

(2) Subsection (1) applies to accessories, spare parts and tools only if those accessories, spare parts or 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. 30

### **Unassembled or disassembled articles contained in more than one consignment**

**174.** Unassembled or disassembled articles imported from the same country into, or to be exported or exported from the Republic in more than one consignment when it is not feasible, for transport or production reasons, to import or export 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 originated. 35

### **Packaging**

**175.** (1) If packaged goods are imported into or to be exported 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. 40

(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 172 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. 45

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

**176.** 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 determination**

**177.** 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, subject to section 21 of the Customs Control Act. 5

**Rules to facilitate application of this Chapter**

**178.** The Commissioner may in terms of section 224 make rules to facilitate the implementation of this Chapter and any applicable international trade agreement, including rules prescribing— 10

- (a) rules of origin establishing—
  - (i) norms and standards, and procedures, for determining—
    - (aa) the origin of goods imported into or to be exported or exported from the Republic;
    - (bb) when goods to be exported or exported from the Republic qualify as goods originating in the Republic; 15
    - (cc) when goods must be regarded to be wholly produced in a single country or produced in more than one country; and
    - (dd) what processes qualify as the last substantial process in the production of goods, in the case of goods produced in more than one country; and 20
  - (ii) the form and format and contents of documentary evidence of origin; and
- (b) the circumstances in, and the purposes for, which the general rules of origin must be applied or not be applied to goods imported into or to be exported or exported from the Republic. 25

**Offences in terms of this Chapter**

- 179.** (1) A person clearing goods is guilty of an offence if that person—
- (a) fails to comply with section 152(1) or (5);
  - (b) makes an origin self-determination which that person knows is not true or could not reasonably have believed to be true; or 30
  - (c) in making an origin self-determination—
    - (i) uses false or misleading information with the intention to mislead; or
    - (ii) omits to use accurate information with the intention to mislead.
- (2) A person is guilty of an offence if that person fails to comply with a request issued by the customs authority to that person in terms of section 162(1). 35
- (3) A person who issued or who submits to the customs authority documentary evidence of origin in relation to any goods imported or to be exported or exported from the Republic is guilty of an offence if that document—
- (a) contains a false statement or incorrect information which that person knows is not true or could not reasonably have believed to be true; 40
  - (b) states, or omits to state, information which is stated or omitted with the intention to mislead;
  - (c) omits to state information or states incorrect information which that person knows or reasonably ought to have known would, if stated or stated correctly— 45
    - (i) have caused the goods to which the document relates to be subject to a duty or to a higher amount of duty; or
    - (ii) have disqualified the goods from a rebate, refund, drawback or other entitlement in terms of this Act; or
  - (d) was issued to conceal the true origin of the goods. 50
- (4) An offence referred to in subsection (1)(b) or (c)(i) or (ii) or (2) is a Category 1 offence.

## CHAPTER 9

## PREFERENTIAL TARIFF TREATMENT

**Purpose of this Chapter**

**180.** The purpose of this Chapter is to provide for matters relating to the administration of— 5

- (a) international trade agreements in relation to goods imported into or exported from the Republic under the agreement; and
- (b) non-reciprocal generalised systems of preferences implemented by a country in relation to goods exported from the Republic to that country.

**Part 1** 10***Import and export under international trade agreement*****Steps to enforce international trade agreement in Republic**

**181.** The Commissioner must take all reasonable steps, including the making of any necessary rules, to enforce an international trade agreement that has been enacted into law in the Republic as contemplated in section 921 of the Customs Control Act, or was in force prior to the date this Act took effect, to the extent that the agreement requires the performance of any acts in the Republic for the preferential tariff treatment of goods originating in— 15

- (a) a country which is a party to the agreement and imported into the Republic; or
- (b) the Republic and exported to such a country. 20

**Rules to give effect to international trade agreement**

**182.** (1) The Commissioner may in terms of section 224 make rules—

- (a) to enable the customs authority—
  - (i) to perform any customs duties required from it by an international trade agreement; 25
  - (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;
- (b) to prevent any circumvention of the agreement by— 30
  - (i) transshipment or re-routing of the goods;
  - (ii) false declarations concerning quantities, content, description, classification, value or origin of the goods; or
  - (iii) falsification of documents relating to the goods; and
- (c) to provide for— 35
  - (i) the conditional registration for purposes of the agreement of importers, exporters, producers<sup>115</sup> and suppliers of goods to which the agreement applies;
  - (ii) any requirements to be complied with in respect of such registration; and
  - (iii) the refusal of applications for registration and the amendment, withdrawal or suspension of registrations, in circumstances as may be prescribed by rule; 40
- (d) to exclude goods—
  - (i) imported into the Republic from preferential tariff treatment under the agreement— 45
    - (aa) if imported by a person not registered as an importer for purposes of the agreement; or
    - (bb) if the country of origin of the goods as established in terms of the rules of origin applicable to the agreement is not a party to the agreement; or 50

115. Includes manufacturers. See definition of “produce” in section 1 of Customs Control Act.



- (ii) to be exported or exported from the Republic from preferential tariff treatment under the agreement—
    - (aa) if exported by a person not registered as an exporter for purposes of the agreement; or
    - (bb) if the goods are not of South African origin as established in terms of the rules of origin applicable to the agreement; 5
  - (e) to prescribe the keeping of books, accounts and other records by an exporter, importer, producer, supplier or other person concerning the origin of goods imported or exported under preferential tariff treatment in terms of the agreement; or 10
  - (f) regarding any other requirements which may be necessary for the enforcement or implementation of the agreement. 15
- (2) Rules made in terms of subsection (1) may make applicable provisions of Chapter 28 of the Customs Control Act, with any modifications necessary for the enforcement or implementation of an international trade agreement, for regulating the registration of persons referred to in that subsection. 15

## *Part 2*

### *Export to country implementing non-reciprocal generalised system of preferences*

#### **Steps to ensure compliance with non-reciprocal generalised system of preferences**

**183.** The Commissioner must take all reasonable steps, including the making of any necessary rules, to ensure that the legislative and administrative measures regulating a non-reciprocal generalised 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. 20 25

#### **Conditions for benefiting from non-reciprocal generalised system of preferences**

**184.** A person exporting from the Republic goods to a country implementing a non-reciprocal generalised system of preferences for goods originating in the Republic, and any producer or supplier of those goods or any other person who wants to benefit from that system or has a material interest in the export of the goods to that country, must comply with and give effect to all legislative and administrative measures of that country regulating that system, including— 30

- (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; 35
  - (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 40
  - (iv) the export of the goods to that country;
- (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; and
- (c) any other requirements as may be prescribed by rule in terms of section 185. 45

#### **Rules to give effect to non-reciprocal generalised system of preferences**

- 185.** (1) The Commissioner may in terms of section 224 make rules—
- (a) to make effective in the Republic any legislative and administrative measures regulating a non-reciprocal generalised system of preferences of a country implementing such a system for goods of South African origin; 50
  - (b) to enable the 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; 55

- (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; 5
  - (c) to prevent any circumvention of those measures by—
    - (i) transshipment or re-routing of the goods;
    - (ii) false declarations concerning quantities, content, description, classification, value or origin of the goods; or
    - (iii) falsification of documents relating to the goods; 10
  - (d) to provide for—
    - (i) the conditional registration for purposes of that system of preferences of exporters, producers<sup>116</sup> and suppliers of goods to which those measures apply;
    - (ii) any requirements to be complied in respect of such registration; and 15
    - (iii) the refusal of applications for registration and the amendment, withdrawal or suspension of registrations in circumstances as may be prescribed by rule;
  - (e) to exclude goods to be exported or exported from the Republic from preferential tariff treatment under that system of preferences— 20
    - (i) if exported by a person not registered as an exporter for purposes of that system; or
    - (ii) if the goods are not of South African origin as established in terms of the applicable rules of origin;
  - (f) to prescribe the keeping of books, accounts and other records by an exporter, producer, supplier or other person concerning the origin of goods exported under preferential tariff treatment in terms of that system of preferences; or 25
  - (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. 30
- (2) Rules made in terms of subsection (1) may make applicable provisions of Chapter 28 of the Customs Control Act, with any modifications necessary for the enforcement or implementation of a non-reciprocal generalised system of preferences, for regulating the registration of persons referred to in that subsection.

### *Part 3* 35

#### *Other matters*

#### **Offences in terms of this Chapter**

- 186.** (1) A person is guilty of an offence if that person contravenes or fails to comply with section 184.
- (2) A person who issues a document which is used for the preferential tariff treatment of goods as contemplated in this Chapter, or who submits such a document to the customs authority for purposes of this Act, is guilty of an offence if that document— 40
- (a) contains a false statement or incorrect information which that person knows is not true or could not reasonably have believed to be true;
  - (b) states, or omits to state, information which is stated or omitted with the intention to mislead; 45
  - (c) omits to state information or states incorrect information which that person knows or reasonably ought to have known would, if stated or stated correctly, have excluded the goods to which the document relates from such preferential tariff treatment; or 50
  - (d) was issued to conceal the true origin of the goods.
- (3) An offence referred to in subsection (2) is a Category 1 offence.

<sup>116</sup> Includes manufacturers. See definition of “produce” in section 1 of Customs Control Act.

## CHAPTER 10

### ADVANCE RULING

#### Purpose and application of this Chapter

**187.** (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 class or kind cleared for home use or a customs procedure by or on behalf of a person to whom the ruling is issued. 5

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

#### Application for advance ruling 10

**188.** (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 valuation ruling; or
- (c) an advance origin ruling. 15

(2) An application for an advance ruling—

- (a) must relate to only—
  - (i) one class or kind of goods; and
  - (ii) transactions between the same parties; and
- (b) must— 20
  - (i) be made in the form and format and in accordance with any requirements 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; 25
  - (iv) be accompanied by any relevant supporting documents and information as may be prescribed by rule; and
  - (v) be submitted to the customs authority.

(3) The customs authority may request the applicant to submit any additional information that may be required before considering an application for an advance ruling. 30

(4) A fee prescribed by rule is payable in respect of each application.

#### Consideration of application

**189.** (1) The customs authority must consider each application and may—

- (a) grant the application; or 35
- (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 and 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. 40

(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 in terms of the Customs Control Act; 45
  - (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; 50
  - (iv) raises a frivolous or vexatious issue in the application; or
  - (v) refuses or fails to provide the customs authority with additional information in connection with the application, if requested to do so;
- (c) the tax matters of the applicant are not in order as contemplated in section 917 of the Customs Control Act; or 55

- (d) 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 an administrative appeal in terms of Part 3 of Chapter 37 of the Customs Control Act. 5
- (4) The applicant must be notified if the application is refused.

### **Granting of application**

- 190.** (1) If the customs authority grants an application, it must issue to the applicant an advance ruling, stating—
- (a) the title, number and date of the ruling; 10
  - (b) the name of the recipient of the ruling;
  - (c) whether it is an advance tariff ruling, an advance valuation ruling or an advance origin ruling, and, if an advance valuation ruling, particulars of the valuation criterion to which it relates;
  - (d) the class or kind of goods to which the ruling relates; 15
  - (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; 20
  - (h) the period for which the ruling will remain valid; and
  - (i) any other relevant information.
- (2) An advance ruling applies subject to the provisions of the ruling, and only—
- (a) to goods of the class or kind 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; and 25
  - (b) in the case of an advance valuation ruling, to transactions between the parties specified in the ruling.
- (3) An advance ruling must be consistent with the provisions of this Act.

### **Validity period of advance ruling** 30

- 191.** 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 195; 35
  - (c) the advance ruling is set aside by a court;
  - (d) section 196 becomes applicable to the advance ruling;
  - (e) in the case of an advance tariff ruling, an amendment to an international instrument referred to in section 97 causes the advance ruling to lapse;
  - (f) in the case of an advance ruling on a valuation criterion, an amendment to an international instrument referred to in section 113 causes the advance ruling to lapse; or 40
  - (g) in the case of an advance origin ruling, an amendment to the rules of origin applicable in terms of section 167 causes the advance ruling to lapse.

### **Binding effect of advance ruling** 45

- 192.** (1) An advance ruling binds both the recipient of the ruling and the customs authority.
- (2) An advance ruling must, to the extent applicable, be applied in—
- (a) any tariff self-determination, value self-determination or origin self-determination made in relation to goods of the class or kind specified in the ruling cleared for home use or a customs procedure by or on behalf of the recipient of the ruling; and 50
  - (b) any tariff determination or re-determination, value determination or re-determination or origin determination or re-determination made in relation to goods of the class or kind specified in the ruling cleared for home use or a customs procedure by or on behalf of the recipient of the ruling. 55

### Clearance of goods under advance ruling

**193.** 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) on request furnish such information concerning the goods as the customs authority may require; and 5
- (b) provide proof to the customs authority that the ruling applies to those goods.

### Amendment of advance ruling

**194.** (1) The customs authority may amend an advance ruling either on application by the recipient of the ruling or on own initiative— 10

- (a) to correct an error in the ruling;
- (b) in the case of an advance tariff ruling, to give effect to an amendment or addition to an international instrument referred to in section 97;
- (c) in the case of an advance valuation ruling, to give effect to an amendment to an international instrument referred to in section 113; or 15
- (d) in the case of an advance origin ruling, to give effect to an amendment to the rules of origin applicable in terms of section 167.

(2) An advance ruling as it read immediately before an amendment effected in terms of subsection (1)(a) 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. 20

(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 90 calendar days from the date of the amendment or for the remainder of the validity period of the advance ruling, whichever expires first; and 25
- (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. 30

(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). 35

(5) Subsections (2), (3) and (4) do not apply to an amendment to an advance ruling referred to in subsection (1)(b), (c) or (d).

### Withdrawal of advance ruling

**195.** (1) The customs authority must withdraw an advance ruling if—

- (a) the advance ruling was issued as a result of fraud, misrepresentation or incorrect or incomplete information; or 40
- (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. 45

### Effect of subsequent change in law

**196.** (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 50
- (b) if a court in a final judgement 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. 55

(2) 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**

**197.** The Commissioner may in terms of section 224 make rules to facilitate the implementation of this Chapter, including rules determining additional grounds on which an advance ruling may be withdrawn or ceases to be effective. 5

### **Offences in terms of this Chapter**

**198.** A person is guilty of an offence if that person fails to comply with a request issued by the customs authority to that person in terms of section 193(a).

## **CHAPTER 11 10**

### **ADMINISTRATIVE PENALTIES**

#### *Part 1*

#### *Administrative penalties for breaches of this Act*

#### **Types of administrative penalties**

**199.** There are for purposes of enforcing this Act the following types of administrative penalties: 15

- (a) A fixed amount penalty referred to in section 201;
- (b) a fixed percentage penalty referred to in section 203; and
- (c) a prosecution avoidance penalty referred to in section 205.

#### **Punishment for breaches of this Act 20**

- 200.** If a person commits a breach of this Act, the customs authority may—
- (a) in the case of a non-prosecutable breach other than a breach referred to in paragraph (b), impose a fixed amount penalty for the breach;
  - (b) in the case of a non-prosecutable breach consisting of the non- or late payment of duty or interest on duty, impose a fixed percentage penalty for the breach; 25  
or
  - (c) in the case of a prosecutable breach—
    - (i) impose a prosecution avoidance penalty for the breach; or
    - (ii) lay a charge for the institution of criminal proceedings for the breach.

#### **Fixed amount penalty 30**

**201.** (1) (a) The Minister must by notice in the *Gazette* list non-prosecutable breaches of this Act for which fixed amount penalties may be imposed.

(b) A notice in terms of paragraph (a) must list non-prosecutable breaches under different categories as set out in subsection (2).

(2) Fixed amount penalties for the different categories of non-prosecutable breaches of this Act are as follows: 35

#### **FIXED AMOUNT PENALTIES**

<b>Category of breach</b>	<b>Amount of penalty</b>
Category A	Maximum of R5 000 <sup>117</sup>
Category B	R10 000
Category C	R15 000
Category D	R20 000

40

<sup>117</sup> See section 202(3) for warning instead of penalty. A warning counts as a penalty for purposes of section 201(3).

(3) (a) If a person has been penalised in terms of section 202 for committing a non-prosecutable breach and within a period of three years after the penalty has been imposed, again commits the same non-prosecutable breach, the amount of the fixed amount penalty that may be imposed for that breach is double the applicable amount for that breach in terms of subsection (2). 5

(b) If a person has in accordance with paragraph (a) been penalised for committing a non-prosecutable breach with an amount double the applicable amount for that breach and thereafter, within the remaining part of the same three year period, again commits the same non-prosecutable breach, the amount of the fixed amount penalty that may be imposed for each time that breach was committed during the remaining part of that three year period, is three times the applicable amount for that breach in terms of subsection (2). 10

#### **Procedure for imposing fixed amount penalty**

**202.** (1) If a person commits a non-prosecutable breach of this Act listed in terms of section 201(1), the customs authority may by notice to that person impose the appropriate fixed amount penalty for the breach in accordance with section 201(2) or (3). 15

(2) A penalty imposed in terms of subsection (1) must be paid to the Commissioner on or before a date specified in the notice or to which that date may have been postponed in terms of section 908 of the Customs Control Act.<sup>118</sup> 20

(3) (a) The customs authority may for a Category A breach referred to in the Table in section 201(2) instead of imposing a fixed amount penalty for the breach issue a written warning to the person who committed the breach.

(b) A warning issued to a person in terms of paragraph (a) must for purposes of section 201(3) be regarded to be a fixed amount penalty imposed on that person. 25

#### **Fixed percentage penalty**

**203.** (1) A failure to pay to the Commissioner on or before the due date an amount of duty self-assessed in terms of section 82(1)(a) or assessed in terms of section 83(2)(a) or (b) or 84(1)(a) or an underpayment of duty arising from an assessment in terms of section 83(2)(b) or 85(1)(a) or (b) is a non-prosecutable breach of this Act for which a fixed percentage penalty may be imposed. 30

(2) A fixed percentage penalty that may be imposed in terms of subsection (1) is 10 per cent of the amount of duty payable.

#### **Procedure for imposing fixed percentage penalty**

**204.** (1) If a person commits a non-prosecutable breach referred to in section 203(1), the customs authority may by notice to that person impose a fixed percentage penalty for the breach in accordance with that section. 35

(2) A penalty imposed in terms of subsection (1) must be paid to the Commissioner on or before a date specified in the notice or to which that date may have been postponed in terms of section 908 of the Customs Control Act.<sup>119</sup> 40

#### **Prosecution avoidance penalty**

**205.** (1) A prosecution avoidance penalty may, instead of a criminal prosecution, be imposed on a person who becomes liable to prosecution for any prosecutable breach of this Act.

(2) Subsection (1) may not be applied to a person who on— 45

(a) two separate occasions paid a prosecution avoidance penalty for a Category 1 offence and within a period of five years from the date of payment of the penalty on the first occasion again becomes liable to prosecution for a Category 1 offence;

(b) three separate occasions paid a prosecution avoidance penalty for a Category 2 offence and within a period of five years from the date of payment of the 50

118. Section 228 makes section 908 of the Customs Control Act applicable to this Act.

119. Section 228 makes section 908 of the Customs Control Act applicable to this Act.

- penalty on the first occasion again becomes liable to prosecution for a Category 2 offence; or
- (c) three separate occasions paid a prosecution avoidance penalty for any offence in terms of this Act and within a period of five years from the date of payment of the penalty on the first occasion again becomes liable to prosecution for an offence in terms of this Act. 5

### **Procedure for imposing prosecution avoidance penalty**

- 206.** (1) If a person is liable to prosecution for a prosecutable breach of this Act, the customs authority may, subject to section 205(2), issue to that person a notice informing that person of the alleged breach and that prosecution can be avoided if that person elects to have the matter summarily settled by the customs authority by paying a prosecution avoidance penalty to the Commissioner on or before a date specified in the notice. 10
- (2) The amount of a prosecution avoidance penalty imposed in terms of section (1)—
- (a) must be determined in accordance with any limits as may be set by the Commissioner; and 15
- (b) may not exceed the maximum fine a court may impose upon conviction of a person for the relevant breach.
- (3) Payment of a prosecution avoidance penalty in terms of this section—
- (a) does not amount to a conviction of the person paying the penalty in respect of the relevant breach; and 20
- (b) indemnifies the person from prosecution for that breach.

## **Part 2**

### **General matters**

#### **Effect of detention, seizure or confiscation of goods on application of this Part**

- 207.** The detention, seizure or confiscation of goods in terms of the Customs Control Act does not prevent the application of this Chapter in relation to breaches of this Act committed in respect of those goods. 25

#### **Applicability of Chapter 37 proceedings<sup>120</sup>**

- 208.** (1) The proceedings contemplated in Chapter 37 of the Customs Control Act, as may be appropriate in the circumstances, apply in respect of— 30
- (a) the imposition of an administrative penalty; or
- (b) the amount of an administrative penalty.
- (2) Only the amount of a prosecution avoidance penalty and not the imposition of such a penalty is subject to proceedings in terms of Part 3, 4 or 5 of Chapter 37.<sup>121</sup>

#### **Rules to facilitate implementation of this Chapter** 35

- 209.** The Commissioner may in terms of section 224 make rules to facilitate the implementation of this Chapter, including rules prescribing the format of a notice referred to in section 202(1), 204(1) or 206(1) and the information which such a notice must contain.

#### **Offences in terms of this Chapter** 40

- 210.** A person is guilty of an offence if that person has repeatedly for at least five times within a calendar year been penalised in terms of section 202 or 204 for committing a non-prosecutable breach or breaches of this Act and that person thereafter again commits a non-prosecutable breach of this Act within the same calendar year.

120. As a general rule, none of the proceedings referred to in Chapter 37 of the Customs Control Act affects or suspends the obligation to pay an administrative penalty. See section 830 of that Act.

121. The imposition of a prosecution avoidance penalty cannot be subject to appeal as the person paying the penalty does so because of own choice.



## CHAPTER 12

## JUDICIAL MATTERS

*Part 1**Offences<sup>122</sup> and penalties***Categories of offences in terms of this Act** 5

**211.** An offence in terms of this Act must be classified as a Category 2 offence unless expressly stated that it is a Category 1 offence.

**General Category 1 offences**

**212.** (1) A person is guilty of a Category 1 offence if that person—

- (a) makes a false statement or provides false or misleading information or omits to state with the intention to mislead information in any document that must in terms of this Act—
  - (i) be submitted to the Commissioner or the customs authority; or
  - (ii) be kept or retained by that person;
- (b) submits to the Commissioner or the customs authority or produce to a customs officer a document in terms of this Act which—
  - (i) contains a false statement or misleading information which that person knows is not true or could not reasonably have believed to be true; or
  - (ii) omits to state information which was omitted with the intention to mislead;
- (c) makes use of a document for purposes of this Act which—
  - (i) contains a false statement or misleading information which that person knows is not true or could not reasonably have believed to be true; or
  - (ii) omits to state information which was omitted with the intention to mislead;
- (d) with the intention to evade duty on goods or to qualify for a refund or drawback—
  - (i) commits an unlawful act, including a breach of this Act or the Customs Control Act;
  - (ii) assists another in the commission of such an act; or
  - (iii) is a party to the commission of such an act; or
- (e) attempts to commit or assists in committing an act which is a Category 1 offence in terms of—
  - (i) this section; or
  - (ii) any other section of this Act.

(2) A person who conducts business by trading in or processing imported goods is guilty of a Category 1 offence if that person without reasonable cause for believing that duty on the goods has been paid—

- (a) buys, acquires or receives imported goods on which duty has been evaded;
- (b) is in possession of imported goods on which duty has been evaded;
- (c) sells or offers or advertise for sale imported goods on which duty has been evaded; or
- (d) processes imported goods on which duty has been evaded.

(3) If in any proceedings against a person charged with the commission of an offence referred to in subsection (2)(a), (b), (c) or (d) the following facts are proved, such proof is in the absence of evidence to the contrary which raises a reasonable doubt, sufficient evidence of the absence of reasonable cause:

- (a) That the accused is a person who conducts business by trading in or processing imported goods;
- (b) that duty on the imported goods which are the subject of the charge has been evaded; and

<sup>122</sup> 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).

- (c) that the accused person has, as the case may be, purchased, acquired, received, been found in possession of, sold, offered or advertised for sale or processed those goods.

### General Category 2 offences

- 213.** A person is guilty of a Category 2 offence if that person— 5
- (a) performs an act without the authorisation, permission or approval of the customs authority if such act may in terms of this Act only be performed on authority of such authorisation, permission or approval;
- (b) contravenes or fails to comply with a condition subject to which any authorisation, permission, approval or exemption was granted by the customs authority in terms of this Act; or 10
- (c) attempts to commit or assists in committing an act which is a Category 2 offence in terms of this section or any other section of this Act.

### Offences committed outside Republic

- 214.** (1) A person is guilty of an offence if that person— 15
- (a) at a place outside the Republic designated in terms of sections 34 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. 20
- (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 in the Republic. 25

### Penalty for Category 1 offence

- 215.** (1) A person convicted of a Category 1 offence in terms of this Act is liable to imprisonment for a period not exceeding five years or to a fine not exceeding R1 000 000 or a higher amount as may be prescribed in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or to both that fine and that imprisonment. 30
- (2) If a person convicted for an offence referred to in section 212(1)(a), (b), (c), (d) or (e)(i) or (2) is at any time within five years of the date of conviction again convicted for an offence referred to in that section, the court must consider the imposition of a period of imprisonment not exceeding the period referred to in subsection (1) without the option of a fine or both such imprisonment and a fine referred to in that subsection. 35
- (3) This section does not affect the application of section 216.

### Additional punitive powers of court in criminal proceedings

- 216.** (1) A court convicting a person for an offence in terms of this Act 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 to the Commissioner of that amount. 40
- (2) A court convicting a person for an offence referred to in section 212(1) may—
- (a) summarily make an inquiry into the amount of any duty the convicted person may have evaded in committing the offence and, in addition to any other penalty imposed on that person for committing that offence, impose a fine on that person not exceeding three times the amount of duty that was evaded; and 45
- (b) summarily make an inquiry as to anything that has been used in the commission of that offence, including any vessel, aircraft or vehicle, and declare that thing forfeited to the state. 50
- (3) A court convicting a person for an offence referred to in section 179(3), 186(2) or 212(2) may—
- (a) summarily inquire into any benefit the convicted person may have gained in committing the offence;
- (b) determine the monetary value of that benefit; and 55

- (c) in addition to any other penalty imposed on that person for committing that offence, impose a fine on that person not exceeding three times the amount of the monetary value of that benefit.

### **Penalty for Category 2 offence**

- 217.** (1) A person convicted of a Category 2 offence in terms of this Act is liable to imprisonment for a period not exceeding three years or to a fine not exceeding R500 000 or a higher amount as may be prescribed in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or to both that fine and that imprisonment. 5
- (2) A Category 2 offence is despite subsection (1) punishable as if it were a Category 1 offence if it is proved that the offence was committed to evade duty. 10

### **Liability of registered agent and person managing juristic entity**

- 218.** (1) If an importer, exporter, carrier or other person not located in the Republic commits an act (including an omission to perform an act) which is an offence in terms of this Act, the registered agent in the Republic of that importer, exporter, carrier or other person is guilty of an offence if that agent— 15
- (a) knew or should reasonably have known that the importer, exporter, carrier or other person is to commit that act and failed to take reasonable steps within the powers of the agent to prevent that importer, exporter, carrier or other person from committing that act; or
- (b) when becoming aware of that act, failed to notify the customs authority of the commission of that act. 20
- (2) If a juristic entity commits an act (including an omission to perform an act) which is an offence in terms of this Act, a person who is a director, administrator or trustee of that entity is guilty of an offence if that person—
- (a) knew or should reasonably have known that the entity is to commit that act and failed to take reasonable steps within the powers of that person to prevent the entity from committing that act; or 25
- (b) when becoming aware of that act, failed to notify the customs authority of the commission of that act.
- (3) An offence in terms of subsection (1) or (2) is— 30
- (a) a Category 1 offence if the offence committed by the importer, exporter, carrier or other person, or the juristic entity, is a Category 1 offence; or
- (b) a Category 2 offence if the offence committed by the importer, exporter, carrier or other person, or the juristic entity, is a Category 2 offence.
- (4) If a juristic entity is liable to prosecution for a breach of this Act which is an offence in terms of this Act, any person who, at the time of the commission of that breach, was a director, administrator or trustee of that juristic entity, or an employee of that entity in a managerial position, or managing on behalf of the entity any premises or business in or in connection with which that breach was committed, is in addition to the entity liable to prosecution for that breach— 40
- (a) if that person—
- (i) acting on behalf or in the interests of the entity actually committed the breach; or
- (ii) participated in the commission of the breach; or 45
- (b) if that person did not actually commit or participated in the commission of the breach, but failed to take reasonable steps within the powers of that person when becoming aware of the breach, to prevent the entity from continuing with the commission of the breach.

### **Liability of ordinary employee of juristic entity**

- 219.** If a juristic entity is liable to prosecution for a breach of this Act which is an offence in terms of this Act, any person who at the time of the commission of that breach was an employee of that entity other than an employee referred to in section 218(4) is, in addition to the entity, liable to prosecution for that breach if that person—
- (a) acting on behalf of the entity actually committed the breach; or
- (b) participated in the commission of the breach. 55

**Part 2****Other judicial matters<sup>123</sup>****Civil action arising from this Act**

**220.** (1) The Commissioner may institute any civil actions necessary for enforcing or implementing this Act, including claims for amounts owing in terms of this Act.<sup>124</sup> 5

(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 enforcement or implementation of this Act.

**Admissibility of certain statements in documents**

**221.** 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 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 produced, imported, ordered, supplied, purchased, sold, dealt with, processed, traded in or held in stock by that person, is admissible as evidence that that person has produced, imported, ordered, supplied, purchased, sold, dealt with, processed, traded in or held in stock goods of that price, value, quantity, quality, nature, strength or other characteristic. 10 15 20

**Jurisdiction of magistrate's court**

**222.** (1) A magistrate's court may hear and decide any criminal action against a person for an offence in terms of this Act and impose any penalty determined for such offence within its jurisdiction in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).

(2) A magistrate's court may hear and decide any civil action for the payment of any duty, interest, administrative penalty or other money claimed by the Commissioner in terms of this Act within its jurisdiction in terms of the Magistrates' Courts Act, 1944. 25

**Procedure for collection of debt if not paid by due date**

**223.** (1) If a debt referred to in section 26 or 44 (other than a prosecution avoidance penalty) is not paid to the Commissioner on or before the due date, the Commissioner may file with the clerk or registrar of any competent court a statement stating— 30

- (a) the amount of the debt;
- (b) the due date on which the payment was payable; 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. 35

(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. 40

(4) The amount of a debt contained in a statement filed with the clerk of a magistrate's court in accordance subsection (1) may not exceed the civil jurisdiction of the magistrate's court in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).

(5) Pending the conclusion of any proceedings referred to in Chapter 37 of the Customs Control Act 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. 45

123. Certain provisions of the Customs Control Act on judicial procedures, such as advance notice of judicial proceedings against SARS and the limitation of the period for instituting legal proceedings against SARS, equally apply to causes of action arising from the enforcement or implementation of the Customs Duty Act. See sections 896 and 897 of the Customs Control Act.

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

(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 subsection (1) in respect of the debt referred to in the withdrawn statement.

5

## CHAPTER 13

### MISCELLANEOUS MATTERS

#### Rules

- 224.** (1) The Commissioner may make rules to facilitate the implementation of this Act or any Chapter, Part or other provision of this Act, including rules prescribing— 10
- (a) any matter that may be prescribed by rule in terms of this Act;
  - (b) the form and format, 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 and the persons by whom such reports, notices or other documents must be submitted, and the persons who must submit any such reports, notices or other documents electronically; 15
  - (d) the combination or simultaneous submission of such reports, notices or other documents;
  - (e) the circumstances in, and the conditions on, which any such reports, notices or other documents may be amended or corrected, and procedures for the amendment or correction of any such reports, notices or other documents; 20
  - (f) the records that persons to whom this Act applies must keep for the purposes of this Act and the manner in which, the period for which and the place at which those records must be kept; 25
  - (g) the manner and time in which applications may be made for authorisations, permissions, approvals or exemptions that may be granted by the customs authority in terms of a provision of this Act;
  - (h) the particulars such authorisations, permissions, approvals or exemptions must contain and any conditions subject to which such authorisations, permissions, approvals or exemptions are issued; 30
  - (i) the application of the materiality principle in relation to this Act, including criteria for determining when—
    - (i) an interest in goods is to be regarded as a material or beneficial interest;
    - (ii) a benefit received by a person is to be regarded as a material benefit; 35
    - (iii) a breach of this Act is to be regarded as a material breach;
    - (iv) information required for an application in terms of this Act is to be regarded as material for the consideration of the application; and
    - (v) the circumstances in which an application in terms of this Act was granted are to be regarded as material to the granting of the application; 40
  - (j) the form and format of any notices to be given by the customs authority to any person in terms of this Act; and
  - (k) criminal sanctions for a contravention of or non-compliance with a provision of the rules or an international trade agreement. 45
- (2) Rules in terms of this section may— 45
- (a) differentiate between different—
    - (i) categories of persons to which this Act applies;
    - (ii) categories of goods;
    - (iii) categories of vessels, aircraft, trains, railway carriages or vehicles;
    - (iv) modes of transport; 50
    - (v) places of entry or exit or categories of places of entry or exit;
    - (vi) customs controlled areas or categories of customs controlled areas;
    - (vii) customs procedures;
    - (viii) types of duties; or
    - (ix) matters to which this Act applies; or 55
  - (b) be limited in its application to a particular—
    - (i) category of persons to which this Act applies;
    - (ii) category of goods;
    - (iii) category of vessels, aircraft, trains, railway carriages or vehicles;

- (iv) mode of transport;
- (v) place of entry and exit or category of places of entry or exit;
- (vi) customs controlled area or category of customs controlled areas;
- (vii) customs procedure;
- (viii) type of duty; or 5
- (ix) matter to which this Act applies.

(3) (a) Rules made in terms of this section take effect from a date specified in those rules, or if no date is specified, from the date of publication of those rules.

(b) The commencement date specified in any rules may be a date before, on or after the date of publication of those rules. 10

### **Consultative process before promulgation of rules**

**225.** (1) Before rules in terms of section 224 are promulgated, the Commissioner must publish the draft rules in the *Government Gazette* or the SARS website for public comment.

- (2) Rules made in terms of section 224 must be submitted to— 15
- (a) the Minister; and
  - (b) Parliament for parliamentary scrutiny.

### **Manner of promulgation of rules**

**226.** Where this Act states that a matter must or may be prescribed by rule, the Commissioner must prescribe that matter by rule published in the *Government Gazette* 20 unless the Commissioner by rule published in the *Gazette* indicates that that matter is to be prescribed by rule published on the SARS website.

### **Departure from, and condonation of non-compliance with, rules, conditions and requirements**

**227.** (1) The Commissioner may in extraordinary circumstances approve a departure 25 from—

- (a) a rule;
- (b) a condition or requirement imposed by the customs authority in terms of this Act; or
- (c) a requirement on any form or other document that must be submitted to the 30 customs authority in terms of this Act.

(2) The Commissioner may in extraordinary circumstances condone any non-compliance with—

- (a) a rule;
- (b) a condition or requirement imposed by the customs authority in terms of this 35 Act; or
- (c) a requirement on any form or other document that must be submitted to the customs authority in terms of this Act.

(3) Any person seeking approval in terms of subsection (1) for a departure from, or in terms of subsection (2) condonation of non-compliance with, a rule, condition or 40 requirement, may apply for such departure or condonation to the customs authority in a manner as may be prescribed by rule.

(4) In this section “extraordinary circumstances” means—

- (a) in relation to a departure from a rule, condition or requirement, circum- 45 stances—
  - (i) beyond those that ordinarily apply when that rule, condition or requirement is complied with; and
  - (ii) that are beyond the control of the person required to comply with that rule, condition or requirement; and
- (b) in relation to a condonation of any non-compliance with a rule, condition or 50 requirement, circumstances that applied when the failure to comply with that rule, condition or requirement occurred—
  - (i) beyond those that ordinarily apply when that rule, condition or requirement is complied with; and
  - (ii) that were beyond the control of the person required to comply with that 55 rule, condition or requirement.

### Application of certain provisions of Customs Control Act

**228.** (1) Sections 908 to 925 of the Customs Control Act, modified by any necessary changes as the context may require, apply for purposes of implementing or enforcing this Act except where stated otherwise or where the application of such section is inconsistent with a provision of this Act. 5

(2) In such application a reference in any of those sections to the Customs Control Act must, unless clearly inappropriate, be read as a reference to this Act as defined in section 1.

(3) Section 908 of the Customs Control Act may not be applied to extend a period— 10

(a) within which a duty must be paid;<sup>125</sup>

(b) within which a person may apply for a refund or a drawback;

(c) within which the Commissioner, the customs authority or a customs officer is required or allowed in terms of a provision of this Act to perform a specific act;

(d) referred to in section 86(1) or 206(1); or 15

(e) within which an action prescribes in terms of the Prescription Act, 1969 (Act No. 68 of 1969).

### Short title and commencement

**229.** This Act is called the Customs Duty Act, 2013, and takes effect on the date on which the Customs Control Act takes effect in terms of section 944(1) of that Act. 20

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125. Extension of the time within which a duty must be paid can only be granted in terms of section 24.

## MEMORANDUM OF OBJECTS OF CUSTOMS DUTY BILL, 2013

### 1. PURPOSE OF BILL

- 1.1 The Customs Duty Bill is intended to replace the provisions of the Customs and Excise Act, 1964, relating to the imposition and collection of import and export duties. Provisions of the current Act covering, respectively, customs control and excise duties will be contained in separate Bills, viz. a Customs Control Bill and an Excise Duty Bill.

### 2. OBJECTS OF BILL

- 2.1 The primary object of the Customs Duty Bill is to provide for the levying, payment and recovery of import and export duties on goods imported or exported from the Republic. The Bill is structured around the imposition, assessment, payment and collection of such duties.

### 3. SUMMARY OF BILL

- 3.1 A Customs Tariff which substantially re-enacts Schedules 1, 2, 3, 4 and 5 of the Customs and Excise Act, 1964, in relation to import duties will eventually be attached to this proposed Act. See in this regard section 944(2)(a) of the Customs Control Bill.
- 3.2 The Customs Tariff imposes, subject to requirements, conditions or exclusions as set out in the Tariff, import duties currently levied on imported goods. The Customs Tariff distinguishes between ordinary import duties and other duties such as anti-dumping duties, countervailing duties and safeguard duties. It contains no duties on the export of goods in line with the current position.
- 3.3 Provision is made for the Customs Tariff to be amended by the Minister by notice in the Government *Gazette*. Such amendments must be submitted to Parliament for ratification. If an amendment is not ratified it lapses as from the last calendar day following the calendar year in which it was made.
- 3.4 As a general rule imported dutiable goods attract liability for import duty in terms of the Bill when the goods enter the Republic or, if the goods are cleared before arrival in the Republic, when the clearance declaration is submitted to Customs. If an export duty is imposed in future (which is not foreseen at this stage) dutiable goods destined for export will attract liability for export duty when the goods are cleared or regarded to be cleared for outright export. Duty only becomes payable when the goods acquire a tax due status in terms of the proposed Customs Control Act, which is usually the case when the goods are cleared for home use. Provision is made for deferring payment of duty by Customs to a future date on certain conditions including the giving of security. The Bill specifies the persons who are responsible for paying the duty on dutiable goods as well as from whom the duty may be recovered in the event of the duty not being paid.
- 3.5 The Bill makes provision for refunds and drawbacks by the Commissioner in accordance with procedures set out in the Bill. As a general rule claimants are required to apply for such refunds and drawbacks.
- 3.6 Refunds of duties, administrative penalties and interest may be made only if refundable in terms of a provision of the Customs Tariff or in circumstances set out in the Bill, for example when the duty, penalty or interest was overpaid or paid in error.
- 3.7 Drawbacks may be given if imported goods on which the duty was paid or products obtained from the goods are exported from the Republic without being put into home use.



- 3.8 The Bill emphasises the self-assessment system of duty. Persons clearing goods are in terms of the Bill required, as part of the clearance process, to self-assess the dutiability of the goods and, if dutiable, the amount of duty payable. Persons clearing goods are for this purpose required to make their own tariff classification, value determination and origin determination of the goods.
- 3.9 Before releasing goods, Customs must check the self-assessment and, if incorrect, make its own assessment of dutiability and the amount of duty payable.
- 3.10 Provision is also made for Customs to re-assess the amount of duty payable even if the duty has already been paid or the goods are no longer subject to customs control. Re-assessments may, however, only be made within a period of three years from the date of acceptance of the clearance declaration by Customs, but in certain circumstances Customs may make a re-assessment after the three year period, e.g. in cases of fraud or the submission of false assessment information.
- 3.11 In terms of the Bill persons submitting clearance declarations to clear goods for home use or a customs procedure must make self-determinations of the tariff classification, the customs value and origin of the goods irrespective of whether or not duty is payable on the goods. These self-determinations must be stated on the clearance declaration.
- 3.12 A self-determination does not affect Customs' right to override the self-determination and make its own determination in relation to tariff, value or origin. Customs may at any time make a tariff, value or origin re-determination of goods, but no such re-determination may affect the assessment of duty on the goods if made after the expiry of the three year period referred to in paragraph 3.10 unless one of the exceptions apply.
- 3.13 Aggrieved persons have recourse to administrative appeals or judicial review of decisions made by Customs in connection with duty assessments or re-assessments or tariff, value or origin determinations or re-determinations, but no such action suspends a person's obligation to pay the duty on the relevant goods.
- 3.14 The Bill prescribes in detail the manner in which duty assessments and tariff, value and origin determinations must be made. For duty assessments it sets out the key assessment factors that determine duty assessments. For tariff classifications it contains criteria for correctly classifying goods of different kinds. For customs valuations it provides for the different valuation methods that must be followed in the different circumstances and for origin determinations it prescribes the rules of origin that must be applied.
- 3.15 The Bill also makes provision for systems and procedures in relation to goods imported into or exported from the Republic under preferential tariff treatment in terms of the Republic's international trade agreements. It also ensures that legislative and administrative measures regulating a non-reciprocal generalised system of preferences of a country implementing such a system for goods of South African origin are complied with when South African goods are exported to such a country.
- 3.16 Customs may in terms of the Bill issue advance rulings on the tariff, value and origin determination of goods of a specific class or kind when cleared during a future period for home use or a customs procedure by or on behalf of the person to whom the ruling is issued. Any person who is a licensee or registered person in terms of the proposed Customs Control Act may apply to Customs for an advance ruling. An advance ruling binds Customs as well as the recipient of the ruling.

- 3.17 Judicial matters covered by the Bill include offences in terms of the Bill, additional punitive powers of courts in criminal proceedings and jurisdictional matters. The Bill distinguishes between two categories of offences namely more serious Category 1 offences, which include duty evasion and other fraudulent practices such as making false statements and using documents containing false or misleading information, and less serious Category 2 offences, which include performing an act without the required authorisation, permission or approval of Customs. Persons convicted of offences in terms of the Bill are liable to imprisonment or a fine set out in the Bill.
- 3.18 The Bill also provides for a system of administrative penalties that may be imposed by Customs for breaches of the Act. Here a distinction is made between prosecutable and non-prosecutable breaches. In the case of non-prosecutable breaches, fixed amount or fixed percentage penalties may be imposed and in the case of prosecutable breaches, prosecution avoidance penalties may be paid by offenders who want to avoid criminal prosecution.
- 3.19 A fast track court procedure also ensures the speedy collection by the Commissioner of outstanding duties and interest.
- 3.20 Miscellaneous matters dealt with in the Bill include rule making powers of the Commissioner; condonation for non-compliance with rules, conditions or requirements; and the application to this Bill of certain cross-cutting provisions of the proposed Customs Control Act. Transitional provisions affecting this Bill are contained in the Customs Control Bill.

#### **4. DEPARTMENTS/BODIES/PERSONS CONSULTED**

The drafting process of the Bill involved an on-going process of consultation since 2007. A version of the Bill was circulated to customs administrations of the other SACU member states. Briefing sessions were held with the International Trade Administration Commission (ITAC), the National Treasury and with various other stakeholder departments. The Bill was released for public comment on 30 October 2009. Comments were received from a variety of stakeholders including SACU member states, government departments and representative industry. The Bill was also tabled in NEDLAC on 12 November 2009.

#### **5. FINANCIAL IMPLICATIONS**

Implementation cost which may arise from changes to systems and prescribed forms, staff training etcetera, will be covered from funds in SARS's budget.

#### **6. PARLIAMENTARY PROCEDURE**

- 6.1 The State Law Advisers and SARS are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 77 of the Constitution of the Republic of South Africa, 1996, since it contains money bill provisions.
- 6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it contains no provision pertaining to customary law or customs of traditional communities.



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