

DRAFT 3
RULES IN TERMS OF THE CUSTOMS DUTY ACT, 2014

Explanatory note on rule numbering: Please note that the Chapters into which these Rules are divided correspond with the Chapter numbers in the Customs Duty Act. Each rule is numbered with a combination of two numbers. The first number indicates the number of the Chapter of the Customs Duty Act under which the Rule is made which is also the Chapter number of this document in which the rule appears. The second number indicates the serial number of the Rule itself.

CHAPTER 1
MATTERS RELATING TO INTERPRETATION, APPLICATION AND
ADMINISTRATION OF CUSTOMS DUTY ACT AND THESE RULES

Part 1: Interpretational matters

Definitions for purposes of these Rules

1.1 In these Rules, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in section 1 of the Control Act, in section 1 of the Customs Duty Act or in rule 1 of the Customs Control Rules, has the meaning so assigned, and—

“Customs Control Rules” means the Customs Control Rules, 2017;

“customs procedure code”¹ or “CPC” means a code allocated by the customs authority to each customs procedure and to home use and which must be inserted on a clearance declaration when goods are cleared to indicate—

- (a) the particular procedure for which the goods are cleared or, if cleared for home use, that the goods are cleared for home use; and

¹ A list of the customs procedure codes is published on the SARS website. Also see the Declaration Completion Manual referred to in rule 7.4 of the Customs Control Rules.

(b) if the goods are at the time of clearance already under a customs procedure, also that particular procedure;

“deferment account” means an account allocated by the customs authority to a deferment benefit holder for administering the payment of duties in terms of the deferment benefit granted to that person;

“deferment benefit holder” means a person liable for the payment of duty or a customs broker to whom a duty deferment benefit has been granted in terms of section 24 of the Customs Duty Act;

“instalment payment agreement” means an agreement entered into between a person liable for the payment of outstanding amounts of duty, administrative penalties (except prosecution avoidance penalties) and interest, and the Commissioner, for payment of that outstanding amount in instalments, as envisaged in section 49 the Customs Duty Act;

“ITA” means an international trade agreement as defined in section 1 of the Customs Duty Act;

“listed non-prosecutable breach” means a breach of the Customs Duty Act listed in a notice issued by the Minister in terms of section 201(1) of that Act;

“payment advice notice” means a notice generated by the customs authority upon request by a person liable for the payment of an outstanding amount of duty, administrative penalties and interest, in respect of a payment to be made by that person, which reflects—

- (a) the name of the person making payment;
- (b) the relevant payment reference number;
- (c) the transaction or transactions being settled, and
- (d) the amount to be paid.

Part 2: Criteria for application of materiality principle in Customs Duty Act

(section 224(1)(i))

Criteria for determining when interest in goods is to be regarded material
(sections 184 and 224(1)(i)(i))

1.2 (1) An interest of a person in the export of goods to a country that implements a non-reciprocal system of preferences for goods of South African origin must be regarded as being material for purposes of section 184 of the Customs Duty Act if that person's interest in the goods being exported—

- (a) consists of an ownership interest in the goods exceeding five per cent;
- (b) entitles that person, either directly or indirectly, to take or control final decisions on the export of the goods;
- (c) entitles that person, either directly or indirectly, to control at least 30 per cent of the voting power in a juristic entity that has a material interest in the goods in terms of paragraph (a) or (b); or
- (d) consists of a close family or business relationship with another person who has a material interest in the goods in terms of paragraph (a) or (b).

(2) For purposes of subrule (1)(d)—

- (a) a close family relationship means a relationship as—
 - (i) partners in a marriage or a domestic partnership;
 - (ii) parent and child;
 - (iii) siblings; or
 - (iv) grandparent and grandchild; and
- (b) a close business relationship means a relationship as—
 - (i) employer and employee;
 - (ii) directors in the same firm;
 - (iii) director in the other's firm;
 - (iv) director and employee in the same firm;
 - (v) partners in the same firm;
 - (vi) companies in the same group of companies; or
 - (vii) companies directly or indirectly controlled by the same person.

Criteria for determining when persons benefit in material respect from breaches *(section 224(1)(i)(ii))*

1.3 Whenever it is necessary to determine for purposes of the Customs Duty Act or these Rules whether any particular person has benefitted in a material respect from a breach² of the the Control Act or a tax levying Act (including the Customs Duty Act),³ the person must be regarded to have benefitted from the breach in a material respect if the conduct constituting the breach resulted in that person unjustly—

- (a) gaining a monetary advantage in excess of R10 000; or
- (b) being granted an exemption, authorisation, duty deferment benefit, permission, approval, recognition or other special dispensation in terms of the Customs Duty Act or these Rules.

Criteria for determining when breaches are material (section 224(1)(i)(iii))

1.4 Whenever it is necessary to determine for purposes of the Customs Duty Act or these Rules whether the Control Act or a tax levying Act (including the Customs Duty Act) have been breached by a person in a material respect,⁴ the Control Act or tax levying Act must be regarded to have been breached in a material respect if the conduct that constituted the breach—

- (a) was an offence for which the perpetrator was sentenced to imprisonment of one month or more with or without the option of a fine;
- (b) was an offence for which the perpetrator was sentenced to a fine of R10 000 or more and that offence was an offence—
 - (i) for which by virtue of section 205(2) a prosecution avoidance penalty could not be imposed; or
 - (ii) referred to in section 210;
- (c) was committed by the perpetrator with the intention to deceive or mislead or to evade duty; or
- (d) resulted in the perpetrator gaining an unjust monetary advantage in excess of R10 000.

Criteria for determining when information is material for consideration or granting of applications (section 224(1)(i)(iv))

² See definition of “breach” in section 1 of the Control Act.

³ See for instance section 25(3) of the Customs Duty Act.

⁴ See for instance section 25(2)(a)(i) and (b)(i) of the Customs Duty Act.

1.5 Whenever it is necessary to determine for purposes of the Customs Duty Act or these Rules whether any information is or was material to the consideration or granting of an application by the customs authority in terms of the Customs Duty Act or these Rules,⁵ that information must be regarded to be or to have been material to the consideration or granting of the application if it deals with any of the following matters:

- (a) The legal status or legal identity of the person whose application is under consideration or has been granted;
- (b) the solvency or financial soundness of that person;
- (c) that person's record of compliance with customs legislation, or of that of an employee of that person in a managerial position, or, if that person is a juristic entity, of that of a director, administrator or trustee of the juristic entity;
- (d) whether the tax matters of that person are or were in order; or
- (e) any other matter that is or was of decisive significance in deciding the application.

Criteria for determining when non-disclosure of facts was non-disclosure of material facts (*section 224(1)(i)*)

1.6 Whenever it is necessary to determine for purposes of the Customs Duty Act or these Rules whether an underpayment or non-payment of duty occurred as a result of a non-disclosure of a material fact,⁶ the fact that was not disclosed must be regarded to have been material if that fact, had it been disclosed, would have resulted in the goods to be assessed—

- (a) as dutiable goods; or
- (b) for duty by an amount R100 more than the amount for which the goods were assessed in the absence of knowledge about that fact.

⁵ See for instance sections 25(2)(c) and 189(3)(b)(iii) of the Customs Duty Act.

⁶ See for instance sections 86(2)(a)(ii), 103(2)(b)(ii), 120(2)(b)(ii) and 156(2)(b)(ii) of the Customs Duty Act.

CHAPTER 2
CUSTOMS TARIFF⁷

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⁷ No rules required under this Chapter at this stage.

CHAPTER 3 PAYMENT OF DUTY, PENALTIES AND INTEREST

Part 1: Payment and recovery of duty, administrative penalties and interest

Methods that may be used to pay duty, administrative penalties and interest to Commissioner (section 60(a))

3.1 (1) The following payment methods may, subject to the conditions and requirements set out in respect of each method in terms of rules **3.2** to **3.6**, respectively, be used to pay duty, administrative penalties and interest to the Commissioner, subject to subrule (2):

- (a) Cash payment;
- (b) cheque payment;
- (c) payment by electronic funds transfer, including payment effected by using SWIFT message in the case of international payments;
- (d) credit push payment initiated through eFiling; and
- (e) debit or credit card payment.

(2) If a person making payment in terms of this Chapter is a registered electronic user for eFiling, the payment method referred to in subrule (1)(d) must be used, except in the case of a systems breakdown referred to in section 913 of the Control Act in which case the payment method in subrule (1)(c) may be used.⁸

Conditions and requirements for cash payments (section 60(a)(i))

- 3.2** (1) Cash payments referred to in rule **3.1(1)(a)** may be made at—
- (a) any Customs Office during the office hours determined for that Customs Office in terms of section 14(1)(c)(i) of the Control Act;⁹ or
 - (b) a bank.

⁸ Note that payments of amounts of duty deferred in terms of section 24 of the Customs Duty Act must be made by eFiling or another method determined by the Commissioner. See rule **3.16(l)**.

⁹ Note that a list of Customs Offices is published on the SARS website containing office hours and other details in relation to each office.

(2) (a) The maximum amount of cash that may be paid per transaction at a Customs Office is limited to—

- (i) R 2000,00 in bank notes;
- (ii) R 50,00 in R5 coins;
- (iii) R 20,00 in R2 coins;
- (iv) R 20,00 in R1 coins; and
- (v) R 5,00 each in 10c to 50c coins.

(b) Paragraph (a) does not apply to cash payments at a place of entry or exit made by or on behalf of travellers and crew members entering or leaving the Republic.

(3) All cash payments made at a Customs Office are rounded off to the nearest 10 cents, to the benefit of the person making payment.

- (4) A cash payment must, in the case of a payment made at a—
- (a) Customs Office as contemplated in subrule (1)(a), be accompanied by a payment reference number; and
 - (b) bank as contemplated in subrule (1)(b), be accompanied by a payment advice notice that is not older than seven calendar days.

Conditions and requirements for payment by cheque (section 60(a)(i))

3.3 (1) Cheque payments referred to in rule 3.1(1)(b) may be made at—

- (a) any Customs Office during the office hours determined for that Customs Office in terms of section 14(1)(c)(i) of the Control Act;¹⁰ or
- (b) a bank.

(2) The following conditions apply to payments made by cheque:

- (a) A cheque must be signed and made out to “South African Revenue Service” in any of the official languages of the Republic and the payment must be reflected in Rand;

¹⁰ Note that a list of Customs Offices is published on the SARS website containing office hours and other details in relation to each office.

- (b) no cheque payment by a person in respect of whom two cheques made out to the South African Revenue Service had been “referred to drawer” in the three years preceding the date of payment will be accepted, unless that person can show cause why the cheque payment should be allowed in the circumstances;
- (c) a cheque exceeding an amount of R10 000 must be bank guaranteed;
- (d) the total amount for payment made by cheque by the same person per day is R50 000, irrespective of the number of cheque payments made on that day;
- (e) post-dated cheques are not acceptable; and
- (f) a cheque payment must, in the case of a payment made at a—
 - (i) Customs Office as contemplated in subrule (1)(a), be accompanied by a payment reference number; and
 - (ii) bank as contemplated in subrule (1)(b), be accompanied by a payment advice notice that is not older than seven calendar days.

Conditions and requirements for payments by electronic funds transfer
(section 60(a)(ii))

3.4 The following conditions apply in respect of payments made by electronic funds transfer through internet banking facilities referred to in rule 3.1(1)(c):

- (a) Electronic funds transfers may be done only through internet banking facilities of banks where SARS is listed on the bank’s preconfigured beneficiary ID listing, by selecting the applicable SARS beneficiary identification code;
- (b) in the case of electronic fund transfers effected by using SWIFT message—
 - (i) payments may be done only through the internet banking facilities of a bank which supports payment effected by using SWIFT message; and
 - (ii) the SARS beneficiary identification code for foreign payments must be indicated; and
- (c) a payment by electronic funds transfer must be supported by a payment reference number.

Conditions and requirements for credit push payments initiated through eFiling (section 60(a)(iii))

3.5 (1) A person who wishes to make use of the credit push payment method referred to in rule 3.1(1)(d) must—

- (a) be registered for eFiling; and
- (b) make use of a bank that supports this payment method.

(2) A credit push payment must be supported by a payment reference number.

Conditions and requirements for debit or credit card payments (*section 60(a)(iii)*)

3.6 The following conditions apply in respect of debit or credit card payments referred to in rule **3.1(1)(e)**:

- (a) Payments by debit or credit card are acceptable only if made by or on behalf of a traveller or a crew member entering or leaving the Republic at a place of entry or exit or, in the case of rail travellers and crew, at the rail travellers terminal—
 - (i) where that traveller or crew member is processed through the Passenger Processing System; or
 - (ii) in the case of a trusted or frequent traveller, where that traveller is processed at a self-service facility for trusted or frequent travellers;
- (b) payment must be in Rand;
- (c) the traveller or crew member or other person tendering the card must be the authorised user of the card;
- (d) only approved debit or credit cards as indicated on notice boards at the relevant traveller terminal or Customs Office or on a list published on the SARS website may be accepted; and
- (e) payment by debit or credit card must be supported by a payment reference number.¹¹

Part 2: Payment of outstanding amounts in instalments (*section 49 read with section 224*)

¹¹ Note that the payment reference number in the case of a payment by a traveller contemplated in this rule is constituted by the traveller declaration number issued by the customs authority in respect of the Traveller Declaration submitted by that traveller.

Circumstances in which payment of outstanding amounts in instalments are permissible

3.7 Outstanding amounts referred to in section 49 of the Customs Duty Act may be paid in instalments only if—

- (a) the person liable for payment of the outstanding amount is a registered person or licensee;
- (b) the customs authority has granted an application referred to in rule **3.8** submitted by or on behalf of that person; and
- (c) that person has entered into an instalment payment agreement referred to in rule **3.11** with the Commissioner.

Application for instalment payment agreements

3.8 (1) (a) A licensee or registered person who is liable for payment of an outstanding amount referred to in section 49 of the Customs Duty Act and who cannot pay that amount in a single payment immediately, may apply to the Commissioner electronically through eFiling, subject to rule **41.13** of the Customs Control Rules as applied by rule **13.4** of these Rules, for permission to pay the outstanding amount in instalments.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application may be submitted to the Customs Office indicated on the SARS website for receipt of such applications.

(2) An application referred to in subrule (1) must reflect the following information:

- (a) The applicant's name and customs code;
- (b) if the application is submitted by a customs broker, registered agent or an ordinary representative¹² on behalf of the applicant, the information specified in rule **41.14** of the Customs Control Rules as applied by rule **13.5** of these Rules;¹³

¹² See definition of "ordinary representative" in rule **1.1** of the Customs Control Rules and explanatory footnote.

¹³ If the application is submitted in terms of section 920 of the Control Act, read with section 228 of the Customs Duty Act, by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of the Customs Control Act Rules as applied by rule **13.6** of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs

- (c) the reference number of any document that demanded payment from the applicant of the outstanding amount, if such a document has been issued;
- (d) the amount owed to the Commissioner and whether the amount comprises duties, administrative penalties or interest;
- (e) a concise motivation of the applicant's compliance with the qualification criteria set out in rule **3.9**, including the reason why the applicant cannot pay the outstanding amount in a single payment immediately, which may, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules as applied by rule **13.7**, be submitted in a separate supporting document;
- (f) the instalments and repayment period, which may not exceed a period of twelve months, proposed by the applicant;¹⁴ and
- (g) the name and contact details of the applicant's auditor or financial adviser, if any.

(3) An application referred to in subrule (1) must be supported by the following documents which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules, as applied by rule **13.7** of these Rules:

- (a) The applicant's bank statements for a period of six months preceding the application, certified by the bank;
- (b) documentary evidence of the applicant's income and expenditure, which may consist of—
 - (i) a copy of the applicant's audited financial statements for the financial year preceding the date of application, if any; or
 - (ii) an auditor's certificate;
- (c) documentary evidence of the applicant's compliance with the qualification criteria set out in rule **3.9**, including lists of the following:
 - (i) The applicant's anticipated income and receipts during the proposed repayment period, indicating the dates when the income or receipts are expected;

brokers and registered agents that submit applications on behalf of applicants in that capacity.

¹⁴ This period is subject to extension in terms of section 908 of the Control Act as applied by section 228 of the Customs Duty Act.

- (ii) the applicant's assets, investments and policies, including a description of the asset, the type of investment or policy, the name of the institution and the relevant values and, if applicable, maturity dates; and
 - (iii) the applicant's debtors and creditors including names, contact details and amounts owed or owing;
- (d) copies of any contracts or tenders awarded to the applicant, if any;
 - (e) if the applicant is a juristic entity, a certified copy of the document authorising the person who submitted the application on behalf of the entity, to act on behalf of the entity; and
 - (f) a certified copy of the identification document of an authorised person referred to in paragraph (e).

Qualification criteria for payment of outstanding amounts in instalments

3.9 Only persons satisfying any one or more of the following qualification criteria may apply in terms of rule **3.8** for the payment of outstanding amounts in instalments:

- (a) The applicant suffers from a temporary deficiency in assets, funds or liquidity and it is reasonably certain that that deficiency will be rectified in the near future;
- (b) the applicant anticipates income or other receipts that will be available for paying the outstanding amount;
- (c) the prospect of immediate recovery of the outstanding amount is poor or uneconomical but is likely to improve in future;
- (d) immediate recovery of the outstanding amount would be harsh in the particular case and the instalment payment agreement is unlikely to prejudice tax collection; or
- (e) the applicant has provided security as required by the customs authority.

Consideration of applications and notification of decisions

3.10 An application for permission to pay outstanding amounts in instalments referred to in rule **3.8** may be approved or refused, and the applicant is entitled to be notified of the decision.

Instalment payment agreements

3.11 (1) An instalment payment agreement must contain at least the following details:

- (a) The name and customs code of the person liable for payment of the outstanding amount;
- (b) if the person liable for payment of the outstanding amount is a juristic entity, the name of the entity's authorised officer, as well as that officer's—
 - (i) SARS tax reference number or, if that person does not have a SARS tax reference number, the number and type of his or her identification document; and
 - (ii) physical and postal addresses, contact details and capacity;
- (c) whether the outstanding amount comprises duties, administrative penalties or interest;
- (d) the amount outstanding;
- (e) the interest rate applicable;
- (f) the instalment amount;
- (g) the repayment period;
- (h) payment dates; and
- (i) conditions for—
 - (i) the repayment in instalments as may be determined by the Commissioner in the specific case to secure the collection of the outstanding amount; and
 - (ii) the amendment and termination of the agreement.

(2) An instalment payment agreement must—

- (a) be signed by the parties to the agreement; and
- (b) after being signed by the applicant, be submitted manually to any Customs Office.

(3) An instalment payment agreement must be supported by the following documents which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules, as applied by rule **13.7** of these Rules:

- (a) In the case of a natural person, a certified copy of that person's identification document;

- (b) in the case of a juristic entity, a certified copy of the document authorising the person who signed the agreement on behalf of the entity, to act on behalf of the entity; and
- (c) a certified copy of the identification document of any authorised person referred to in paragraph (b).

Part 3: Deferment of duties¹⁵

Definitions

3.12 In this Part—

“applicant”, in relation to—

- (a) a deferment benefit application contemplated in—
 - (i) section 24(2)(a)(i) of the Customs Duty Act, means the person applying for the deferment of duty benefit;
 - (ii) section 24(2)(a)(ii), means the person on whose behalf the customs broker applies for the deferment of duty benefit; and
 - (iii) section 24(2)(a)(iii), means the customs broker applying for the deferment of duty benefit; or
- (b) a deferment benefit amendment application, means the deferment benefit holder applying for the amendment;

“deferment benefit application” means an application for a deferment of duty benefit contemplated in section 24(2)(a)(i), (ii) or (iii), as the case may be;

“deferment period” in relation to a payment date falling on –

- (a) the 7th of a calendar month, means the period from the first day until the last day of the month preceding the month in which that payment date falls;
- (b) the 14th of a calendar month, means the period from the 8th day of the preceding month until the 7th day of the month in which that payment date falls; and

¹⁵ Note that import VAT is dealt with in section 13(6) of the Value Added Tax Act. The effect of this provision is that import VAT may be deferred as though the import VAT were an import duty, and that import VAT may be deferred even where import duty is not payable on the goods.

- (c) the 21st of a calendar month, means the period from the 15th day of the preceding month until the 14th day of the month in which that payment date falls;

“maximum deferment amount” means the maximum amount available for the deferral of duty under a deferment benefit granted to a person; and

“payment date” means the 7th, 14th or 21st of a month selected by the person to whom a deferment benefit is granted as the day on or before which duties deferred by that person in terms of rule 3.13(f) must be paid.

Persons who may apply for deferment of duty benefits (section 24(2)(a))

3.13 (1) Any person referred to in section 24(2)(a)(i), (ii) or (iii) of the Customs Duty Act may apply for a deferment of duty benefit in terms of that section, subject to subrules (2) and (4).¹⁶

- (2) An applicant must—
- (a) in the case of an application in terms of section 24(2)(a)(i) be a registered person¹⁷ liable for the payment of duty on goods cleared by or on behalf of such person, excluding such a person who is a non-local importer, a casual importer or the registered agent of a non-local casual importer;
 - (b) not have breached the Control Act, the Customs Duty Act, the other tax levying Acts or the Customs and Excise Act, 1964, in a material respect during a period of five years preceding the date of the application;
 - (c) have an effective accounting, record keeping and operational system consistent with generally accepted accounting practice;

¹⁶ Note that in terms of section 24(1)(a)(i) of the Act only persons liable for the payment of duty, as may be prescribed by rule, may apply for a deferment benefit. The purpose of this rule is therefore to limit the categories of persons who may in terms of section 24(1)(a)(i) apply for deferment benefits. Firstly, subrule (2) limits such applicants to registered persons clearing goods for a customs procedure or for home use, but excludes non-local importers, casual importers and registered agents of non-local casual importers from the permitted categories. Subrule (4) contains a further restriction on applicants by providing that deferment of duty in the case of goods cleared for home use out of a storage warehouse is only available to Level 2 accredited local importers and customs brokers.

¹⁷ This does not mean that customs brokers cannot apply for duty deferment benefits, provision is made for applications by customs brokers in terms of section 24(1)(a)(ii) and (iii). Note, however, the restriction in subrule (4).

- (d) be registered as an electronic user for eFiling and have an effective computerised system capable of complying with deferment of duty accounting requirements;
- (e) have sufficient financial resources and be of sound financial standing; and
- (f) be continuously engaged in the import of goods or related activities.

(3) The question whether the legislation referred to in subrule (2)(b) has been breached in a material way must be determined in accordance with rule **1.4**.

(4) A person referred to in subrule (1) complying with subrule (2), is not entitled to apply for a deferment benefit for the payment of duty on goods cleared for home use out of a storage warehouse unless that person is an importer located in the Republic with Level 2 accredited client status¹⁸ or a customs broker with Level 2 accredited client status.¹⁹

Deferment benefit applications (sections 24(2)(a) and 60(c))

3.14 (1) A deferment benefit application must be submitted to the customs authority electronically through eFiling, subject to rule **41.13** of the Customs Control Rules as applied by rule **13.4** of these Rules.

- (2) A deferment benefit application must reflect the following information:
- (a) The applicant's name and customs code;
 - (b) if a customs broker applies on behalf of the applicant in terms of section 24(2)(a)(ii), the name and customs code of the customs broker;
 - (c) if the application is submitted by an ordinary representative on behalf of the applicant, the information specified in rule **41.14** of the Customs Control Rules as applied by rule **13.5** of these Rules;²⁰
 - (d) the payment date selected by the applicant;

¹⁸ See Chapter 30 of the Control Rules.

¹⁹ Note that the customs authority will allocate a single daily payment reference number for payments in respect of multiple home use clearances out of a storage warehouse by persons not entitled to apply for the deferment benefit by virtue of subrule (4).

²⁰ If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act as applied by section 228 of the Customs Duty Act, Part 5 of Chapter 41 of the Customs Control Rules will apply.

- (e) the maximum deferment amount required by the applicant to be available under the deferment of duty benefit applied for;
 - (f) if the deferment benefit is required to remain valid for less than three years, the validity period required by the applicant;²¹
 - (g) whether the applicant requires—
 - (i) a single deferment account for all duty deferments; or
 - (ii) separate deferment accounts for different or a combination of places of entry or purposes; and
 - (h) whether the deferment benefit is required for the payment of duty payable on a clearance for which the applicant is liable –
 - (i) excluding duty payable on goods to be cleared for home use out of a storage warehouse; or
 - (ii) including duty payable on goods to be cleared for home use out of a storage warehouse;²²
 - (i) the applicant's level of accredited client status, if the deferment benefit is required for circumstances contemplated in paragraph (h)(ii);
 - (j) details of the applicant's accountant, if any, including name and SARS tax reference number or, if that person does not have a SARS tax reference number, his or her identification document number, physical address and contact details.
- (3) An application for a deferment of duty benefit must be supported by—
- (a) documentary evidence of the financial position of the applicant, which must include—
 - (i) a copy of the applicant's audited financial statements for the three financial years preceding the date of application or, in the absence of such financial statements in the case of an applicant being an individual, an auditor's certificate to the effect that the applicant has sufficient financial resources; or
 - (ii) any other credible evidence of sufficient financial resources;²³

²¹ if a period shorter than three years is not specifically applied for, the three year period referred to in rule **3.16(b)(ii)** will automatically apply.

²² Note the restriction in terms of rule **3.13(4)** on applicants in these circumstances.

²³ See rule **41.28** of the Customs Control Rules which provides that an alternative document may instead of a specific supporting document be used, provided that the alternative document is capable of being used for the purpose of confirming, substantiating or evidencing the same information for which the relevant supporting

- (b) the applicant's bank statements for a period of six months preceding the application, certified by the bank; and
- (c) if a customs broker will administer the deferment account on behalf of the applicant, a document indicating that the customs broker is duly authorised by the applicant to utilise the applicant's deferment account, should the deferment benefit be granted.

(4) (a) Supporting documents referred to in subrule (3) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules, as applied by rule 13.7 of these Rules.

(b) The customs authority may at any time request an applicant to submit any relevant additional documents required by it to prove the applicant's financial position.

Grounds for refusal of deferment benefit applications

3.15 The grounds on which a deferment benefit application may be refused include the following:

- (a) The applicant does not comply with rule 3.13(2) or (4), if applicable;
- (b) the application does not comply with rule 3.14;
- (c) the application or any supporting document contains a false or misleading statement or omits to state a fact which is material to the consideration of the application;²⁴ or
- (d) the tax matters of the applicant are not in order in accordance with section 917 of the Control Act, as applied by section 228 of the Customs Duty Act.

General conditions for deferment benefits (section 24(2)(b)(ii))

3.16 A deferment benefit is subject to the following general conditions to the extent that those general conditions are not inconsistent with any special conditions determined by the customs authority for a specific deferment benefit holder.²⁵

document is required.

²⁴ See Part 2 of Chapter 1 of these Rules for application of materiality principle.

²⁵ The customs authority may in terms of section 24(2)(b)(i), apart from conditions as prescribed by rule and applying generally to all deferment benefit holders, also determine conditions applying to a specific deferment benefit holder. Specific conditions trump general conditions.

- (a) A deferment of duty benefit granted to—
- (i) an applicant in terms of section 24(2)(a)(i) or (ii) of the Customs Duty Act may be utilised only for the payment of—
 - (aa) duty on a clearance for which the deferment benefit holder is liable: Provided that the benefit may be utilised by the benefit holder for the payment of duty payable on a clearance for home use out of a storage warehouse only if the benefit holder is an importer located in the Republic with Level 2 accredited client status or a customs broker with Level 2 accredited client status; and
 - (bb) underpayments of duty deferred in terms of item (aa) provided an amended declaration indicating the underpayment is submitted within the deferment period for that duty; or
 - (ii) a customs broker in terms of section 24(2)(a)(iii) of the Customs Duty Act may be utilised only for the payment of—
 - (aa) duty on a clearance for which the customs broker becomes liable in terms of section 39(2)(a) of the Customs Duty Act: Provided that the benefit may be utilised by the customs broker for the payment of duty payable on a clearance for home use out of a storage warehouse only if the customs broker is the holder of Level 2 accredited client status; and
 - (bb) underpayments of duty deferred in terms of item (aa) provided an amended declaration indicating the underpayment is submitted within the deferment period for that duty.
- (b) A deferment of duty benefit remains valid, subject to paragraph (c) of this subrule and section 25 of the Customs Duty Act—
- (i) if the deferment benefit was granted for a specific period of less than three years, the period for which the deferment benefit was granted; or
 - (ii) if the deferment benefit was not granted for such a specific period, for a period of three years.
- (c) A deferment of duty benefit lapses if the deferment benefit holder during the validity period of the deferment benefit ceases to be—
- (i) a registered person as contemplated in rule 3.13(2)(a) or a licensed customs broker, as the case may be; or

- (ii) the holder of Level 2 accredited client status, in the case of circumstances contemplated in rule **3.13(4)**.
- (d) The deferment benefit holder must provide security determined in accordance with section 689 of the Control Act to cover any tax risks that may arise when deferring payment of duty in terms of the deferment of duty benefit during its validity period.
- (e) If the deferment benefit holder has different deferment accounts as contemplated in rule **3.17(b)** or **(c)**, the security must cover all deferments of duty in terms of the deferment benefit granted to the deferment benefit holder, without distinction between the accounts in which those deferments are accounted for.
- (f) A deferment benefit holder may defer the payment of duty for a period not exceeding the deferment period applicable to the payment date selected by the benefit holder.
- (g) Duties deferred in terms of paragraph **(f)** must be paid on or before the said payment date of the benefit holder.
- (h) Where that payment date is not a working day, payment becomes due on the last working day before that date.
- (i) Duties deferred during the calendar month of March must be paid by 12:00 on the 29th of March.²⁶
- (j) A deferment of duty benefit may be utilised for any amount of duty referred to in paragraph **(a)** that becomes payable²⁷ by the deferment benefit holder up to but not exceeding the maximum deferment amount for which the deferment benefit was granted, irrespective of the number deferment accounts as contemplated in rule **3.17(b)** or **(c)**.
- (k) The unpaid balance outstanding on duties deferred on the deferment account of a deferment benefit holder, or if a benefit holder has more than one deferment account, the combined unpaid balances outstanding on duties deferred on all those accounts, may at no point exceed the maximum deferment amount available under that benefit holder's deferment benefit.

²⁶ There will therefore be two dates for payment in March, i.e. the payment date for March selected by the deferment benefit holder, as well as a further payment date on the 29th of March covering payments deferred after the selected payment date up to the 29th of that month.

²⁷ Import duty for which the deferment benefit is available becomes payable as set out in section 22(1) of the Customs Duty Act.

- (l) Amounts of duty deferred in terms of a deferment of duty benefit must be paid through eFiling or another payment method as determined by the Commissioner.
- (m) Any late payment is subject to the payment of interest in terms of section 44 and the imposition of fixed amount penalties in terms of section 202 of the Customs Duty Act.
- (n) If a deferment benefit holder wants to exceed the maximum deferment amount for which the deferment benefit was granted that benefit holder must lodge—
 - (i) an application in terms of rule **3.18** for an increase of the maximum deferment amount sufficient to cover the additional amount of duty to be deferred; and
 - (ii) additional security determined in terms of section 689 of the Control Act to cover the increase in the maximum deferment amount.
- (o) The deferment benefit holder may, instead of increasing the maximum amount per monthly deferment period in accordance with paragraph (n) settle or pay a portion of the deferment account sufficient to cover that amount.

Deferment accounts

3.17 An applicant whose application for deferment of duty benefit has been approved is entitled to the allocation by the customs authority of—

- (a) a single deferment account for all deferments of duty by the deferment benefit holder;
- (b) separate deferment accounts for each or a combination of the places of entry through which goods are imported for which the deferment of duty benefit of the deferment benefit holder will be utilised; or
- (c) separate deferment accounts for any other purposes, as may be agreed, for which the deferment of duty benefit of the deferment benefit holder will be utilised.

Applications for amendment of duty deferment benefit (section 60(c))

3.18 (1) A deferment benefit holder, or a customs broker acting on behalf of a deferment benefit holder, may apply for an amendment of the deferment of duty benefit by submitting an application for amendment to the customs authority

electronically through e-Filing, subject to rule **41.13** of the Customs Control Rules, as applied by rule **13.4** of these Rules.

- (2) An application referred to in subrule (1) must reflect the following:
- (a) The name and customs code of the deferment benefit holder;
 - (b) if a customs broker applies on behalf of the applicant in terms of section 24(2)(a)(ii), the name and customs code of the customs broker;
 - (c) if the application is submitted by an ordinary representative on behalf of the applicant, the information specified in rule **41.14** of the Customs Control Rules as applied by rule **13.5** of these Rules,²⁸
 - (d) the deferment account number of the holder of the deferment benefit;
 - (e) details of the amendment required; and
 - (f) the reasons for the required amendment, which may be motivated in a separate supporting document which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules, as applied by rule **13.7** of these Rules.

(3) An application for amendment of a deferment of duty benefit must, as may be applicable, be supported by the documents referred to in rule **3.14(3)**, which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules, as applied by rule **13.7** of these Rules.

Transitional rules

3.19 (1) (a) A deferment of customs duty granted or allowed by the Commissioner in terms of the Customs and Excise Act, 1964, expires²⁹ in terms of section 935B(1)(a) of the Control Act on the effective date.

(b) The amount outstanding on the effective date on duties deferred under the Customs and Excise Act, 1964, must despite paragraph (a), be paid on or

²⁸ If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act as applied by section 228 of the Customs Duty Act, Part 5 of Chapter 41 of the Customs Control Rules will apply.

²⁹ This means that no payments can, as from the effective date, be deferred in terms of a deferment granted or allowed in terms of the Customs and Excise Act, 1964. From the effective date a deferment benefit holder must utilise a new deferment benefit in terms of this Part, as may be granted pursuant to an application contemplated in rule **3.19(2)**.

before the payment date determined under the Customs and Excise Act, 1964 for payments of duties deferred.

(2) A person referred to in rule **3.13** to whom section 935B(2)(a) of the Control Act applies may apply for a deferment of duty benefit in terms of section 24 of the Customs Duty Act before the effective date at any time after a date to be determined by the Commissioner by Notice in the *Government Gazette*.³⁰

(3) If an application referred to in subrule (1) is considered and decided before the effective date,³¹ the decision on the outcome of the application comes into effect in terms of section 942(3)(c) of the Control Act on the effective date.

(4) The first deferment period in respect of a deferment benefit granted pursuant to an application referred to in subrule (2) –

- (a) starts on the effective date; and
- (b) ends on the last day of the deferment period applicable to the payment date selected and approved for the new deferment benefit under the Customs Duty Act.

Part 4: Liens and other mechanisms to secure payment of debt

Contents of notices of attachment of goods for purposes of establishing lien (section 51(3)(e))

3.20 A notice of attachment issued by a customs officer in terms of section 51(2) of the Customs Duty Act must, in addition to the particulars referred to in section 51(3)(a) to (d) of that Act, reflect—

- (a) the reference number and date of issue of the notice;
- (b) the name, contact details, designation and signature of the customs officer issuing the notice;

³⁰ Note that all deferments granted under the 1964 Act expire in terms of section 935B(1)(a) of the Control Act on the effective date. However, section 942A(3) allows these deferment holders to apply for deferment benefits and for the customs authority to consider and decide these applications before the effective date so that deferment benefits can be utilised without a break during the transition.

³¹ Section 942(3)(d) of the Control Act requires such applications to be submitted, considered and decided as if all the provisions and rules regulating these applications were in full force and effect. However, no decision takes legal effect before the effective date.

- (c) the customs code or physical address of the place where the goods are located when attached;
- (d) the name and customs code or SARS tax reference number of the person referred to in section 51(2) to whom the notice is issued or, if that person does not have a customs code or SARS tax reference number, the number and type of that person's identification document, if such identification document number is available to the customs officer;
- (e) the value of the goods;
- (f) a general description of the condition of the goods; and
- (g) whether the goods are required to be removed in terms of section 570(2) of the Control Act to a state warehouse or other licensed premises, and if so, the address of the state warehouse or premises.

Application for permission to use, or to perform restricted actions in relation to, attached goods (*sections 51(5)(a) and (6) and 55(3) and (5)*)

3.21 (1) (a) Application for permission to use attached goods in terms of section 55(3) of the Customs Duty Act or to perform a restricted action referred to in section 51(5)(a) or (6) or 55(5) in relation to attached goods, must be submitted to the customs authority electronically through eFiling, subject to rule **41.13** of the Customs Control Rules as applied by rule **13.4** of these Rules.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** of the Customs Control Rules in paper format, the application must be submitted to the Customs Office that issued the written notice of attachment in respect of the relevant goods.

(2) An application referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the applicant or, if the applicant does not have a customs code, the information specified in rule **41.15(1)** of the Customs Control Rules as applied by rule **13.5** of these Rules;
- (b) if the application is submitted by a customs broker, registered agent or an ordinary representative³² on behalf of the applicant, the information specified

³² See definition of "ordinary representative" in rule **1.1** of the Customs Control Rules and explanatory footnote.

in rule **41.14** of the Customs Control Rules as applied by rule **13.5** of these Rules;³³

- (c) the customs code or physical address of the current location of the attached goods;
- (d) the reference number of the notice of attachment, if available;
- (e) a description of the goods in respect of which the permission is required;
- (f) the proposed action to be performed in relation to those goods;
- (g) a motivation for the application which may be set out in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules as applied by rule **13.7** of these Rules; and
- (h) the period for which the goods are to be used or the date on which the proposed action is intended to take place.

Debtors' compulsory disclosures when attached goods are subject to co-ownership (*section 53(1)(a)*)

3.22 (1) (a) A debtor's disclosure of co-ownership of attached goods referred to in section 53(1)(a) of the Customs Duty Act must be submitted to the customs authority electronically through eFiling, subject to rule **41.13** of the Customs Control Rules as applied by rule **13.4** of these Rules.

(b) If a disclosure referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** of the Customs Control Rules in paper format, the disclosure must be submitted to the Customs Office serving the area where the attached goods are located.

(2) In addition to the information referred to in section 53(1)(a)(i) and (ii), a disclosure referred to in subrule (1) must reflect—

- (a) the name and customs code of the debtor or, if the debtor does not have a customs code, the information specified in rule **41.15** of the Control Rules as applied by rule **13.5** of these Rules;

³³ If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act as applied by section 228 of the Customs Duty Act, Part 5 of Chapter 41 of the Customs Control Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents who submit documents in that capacity.

- (b) the date of the disclosure;
- (c) the reference number of the notice of attachment issued in terms of section 51(2) in respect of the goods; and
- (d) a description of the attached goods of which the debtor is only a co-owner.

Notifications by co-owners other than debtors when attached goods are subject to co-ownership (section 53(3))

3.23 (1) A notification referred to in section 53(3) of the Customs Duty Act containing the information and accompanied by the documents required by that section must be submitted to the customs authority by the co-owner, other than the debtor, of the attached goods—

- (a) electronically through—
 - (i) eFiling; or
 - (ii) e-mail; or
- (b) by any of the methods contemplated in section 912(2)(a) to (c) of the Control Act.

(2) A notification submitted in terms of subrule (1)(a)(ii) or (b), must—

- (a) be on Form ... as published as a rule on the SARS website for that purpose;
- (b) if sent by e-mail, be directed to the general e-mail address of the Customs Office serving the area where the attached goods are located, as indicated on the SARS website for receipt of such notifications at that Office;
- (c) if delivered by hand, be delivered to the Customs Office referred to in paragraph (b) at the street address as indicated on the SARS website;
- (d) if sent by post, be sent by registered post to the postal address of the Customs Office referred to in paragraph (b), as indicated on the SARS website; and
- (e) if telefaxed, be sent to the fax number for the Customs Office referred to in paragraph (b), as indicated on the SARS website for receipt of such notifications at that Office.

(3) A notification referred to in this rule must be accompanied by a copy of the notice of attachment referred to in section 51(2).

Debtors' compulsory disclosures when attached goods are subject to credit agreements (section 54(1)(a))

3.24 (1) (a) A debtor's disclosure of attached goods which are subject to a credit agreement under the National Credit Act referred to in section 54(1) of the Customs Duty Act, must be submitted to the customs authority electronically through eFiling, subject to rule **41.13** of the Customs Control Rules as applied by rule **13.4** of these Rules.

(b) If a disclosure referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** of the Customs Control Rules in paper format the disclosure must be submitted to the Customs Office serving the area where the attached goods are located.

(2) In addition to the information referred to in section 54(1)(a)(i) to (iv), a disclosure referred to in subrule (1) must reflect—

- (a) the name and customs code of the debtor;
- (b) the date of the disclosure;
- (c) the reference number of the notice of attachment issued in terms of section 51(2) in respect of the goods; and
- (d) a description of the attached goods that are the subject of a credit agreement under the National Credit Act.

Notification by credit providers of value of debtors' title, right or interest in attached goods (section 54(3)(b))

3.25 (1) A notification referred to in section 54(3)(b) of the Customs Duty Act containing the information required by that section must be submitted by the credit provider to the customs authority—

- (a) electronically through –
 - (i) eFiling; or
 - (ii) e-mail; or
- (b) by any of the methods contemplated in section 912(2)(a) to (c) of the Control Act.

(2) A notification submitted in terms of subrule (1)(a)(ii) or (b) must—

- (a) be on Form ... as published as a rule on the SARS website for that purpose;

- (b) if sent through e-mail, be directed to the general e-mail address of the Customs Office serving the area where the attached goods are located, as indicated on the SARS website for receipt of such notifications at that Office;
- (c) if delivered by hand, be delivered to the Customs Office referred to in paragraph (b) at the street address as indicated on the SARS website;
- (d) if sent by post, be sent by registered post to the postal address of the Customs Office referred to in paragraph (b), as indicated on the SARS website; and
- (e) if telefaxed, be sent to the fax number for the Customs Office referred to in paragraph (b), as indicated on the SARS website for receipt of such notifications at that Office.

Notification by credit providers that attached goods are subject to credit agreement (section 54(4))

3.26 (1) A notification referred to in section 54(4) of the Customs Duty Act containing the information and accompanied by the document required by that section must be submitted by a credit provider to the customs authority—

- (a) electronically through –
 - (i) eFiling; or
 - (ii) e-mail; or
- (b) by any of the methods contemplated in section 912(2)(a) to (c) of the Control Act.

(2) A notification submitted in terms of subrule (1)(a)(ii) or (b), must—

- (a) be on Form ...as published as a rule on the SARS website for that purpose;
- (b) If sent through e-mail, be directed to the general e-mail address of the Customs Office serving the area where the attached goods are located, as indicated on the SARS website for receipt of such notifications at that Office;
- (c) if delivered by hand, be delivered to the Customs Office referred to in paragraph (b) at the street address as indicated on the SARS website;
- (d) if sent by post, be sent by registered post to the postal address of the Customs Office referred to in paragraph (b), as indicated on the SARS website; and

(e) if telefaxed, be sent to the fax number for the Customs Office referred to in paragraph (b), as indicated on the SARS website for receipt of such notifications at that Office.

(3) In addition to the information referred to in section 54(1)(a)(i) to (iv), a notification referred to in subrule (1) must reflect—

- (a) the date of the notification;
- (b) the reference number of the notice of attachment issued in terms of section 51(2) in respect of the goods, if available; and
- (c) a description of the attached goods that are the subject of a credit agreement under the National Credit Act.

Timeframe for payment of debt in respect of lien goods before sale (*section 57(1)*)

3.27 The timeframe referred to in section 57(1) within which a debt in respect of which a lien was established must be paid, is 30 calendar days after the debt has become payable.

Applications by debtors for payment of surpluses after claims have been met (*section 58(2)*)

3.28 (1) (a) An application referred to in section 58(2) of the Customs Duty Act for any surplus that remains after all claims in terms of section 58(1) have been paid, must be submitted to the customs authority electronically through eFiling, subject to rule **41.13** of the Customs Control Rules as applied by rule **13.4** of these Rules.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** of the Customs Control Rules in paper format, the application must be submitted to the Customs Office where the sale was conducted.

(2) An application referred to in subrule (1) must reflect—

- (a) the name and customs code of the applicant;

- (b) if the application is submitted by a customs broker, registered agent or an ordinary representative³⁴ on behalf of the applicant, the information specified in rule **41.14** of the Customs Control Rules as applied by rule **13.5** of these Rules;³⁵
- (c) the reference number of the notice of attachment;
- (d) the date of sale of the lien goods;
- (e) the lot numbers in respect of the goods that were sold; and
- (f) whether the debtor—
 - (i) was the sole owner or co-owner of the goods; or
 - (ii) had a share, title, right or interest in the goods in terms of a credit agreement under the National Credit Act.

(3) An application referred to in subrule (1) must be supported by documentary evidence that the debtor is the owner or co-owner of the goods, or has a share, title, right or interest in the goods, including, as may be appropriate—

- (a) any invoice issued in respect of the goods; and
- (b) a credit agreement in terms of which the debtor has a title, right or interest in the goods.

(4) Supporting documents referred to in subrule (3) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules as applied by rule **13.7** of these Rules.

Part 5: Miscellaneous

Notifications by customs brokers of failures by persons clearing goods to pay duty (section 39(1)(b))

3.29 (1) (a) A notification referred to in section 39(1)(b) of the Customs Duty Act of any failure by a person clearing dutiable goods to pay duty on the goods must

³⁴ See definition of "ordinary representative" in rule 1.1 of the Customs Control Rules and explanatory footnote.

³⁵ If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act as applied by section 228 of the Customs Duty Act, Part 5 of Chapter 41 of the Customs Control Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents who submit documents in that capacity.

be submitted to the customs authority electronically through eFiling, subject to rule **41.13** of the Customs Control Rules as applied by rule **13.4** of these Rules.

(b) If a notification referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** of the Customs Control Rules in paper format, the notification must be submitted to the Customs Office that serves the area where the goods were when cleared.

(2) A notification referred to in subrule (1) must reflect the following information:

- (a) The name and customs code of the customs broker submitting the notification;
- (b) the name and customs code of the person who cleared the goods on which duty was not paid or underpaid;
- (c) the movement reference number of the clearance declaration submitted in respect of those goods;
- (d) the amount of duty that was underpaid or not paid; and
- (e) a statement that the customs broker was not a party to the failure to pay the duty.

(3) A notification referred to in subrule (1) must be supported by the following documents to be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules, as applied by rule **13.7** of these Rules:

- (a) An explanation of the cause of the non- or under-payment of duty and, if due to an incorrect key assessment factor, particulars of—
 - (i) the error;
 - (ii) how the error occurred; and
 - (iii) whether the error was due to misrepresentation;
- (b) a statement when and how the customs broker became aware of the non- or under-payment of duty;
- (c) if there is any material discrepancy between the date of submission of the notice and the date referred to in paragraph (b), a document explaining the discrepancy; and

(d) particulars of any steps taken by the customs broker to prevent a failure to pay duty.

(4) A notification referred to in subrule (1) must be supported by the clearance instruction referred to in section 165(3) of the Control Act.

DRAFT

CHAPTER 4 REFUNDS AND DRAWBACKS

Definitions

4.1 In this Chapter—

“**applicant**” means a person who in terms of section 67 of the Customs Duty Act applies for a refund or drawback;

“**application**” means an application in terms of section 67 of the Customs Duty Act for—

- (a) a refund of a duty or administrative penalty or interest on a duty or administrative penalty; or
- (b) a drawback of an import duty.

Payment of refunds and drawbacks

4.2 A refund or drawback that becomes payable in terms of Chapter 4 of the Customs Duty Act must, subject to section 75, be paid to the person who claimed the refund or drawback by depositing the amount of the refund or drawback into the bank account designated by that person in that person’s registration or licence details.³⁶

Applications for refunds and drawbacks (*section 68(1)*)

4.3 (1) (a) An application for a refund or drawback³⁷ must be submitted to the customs authority electronically through eFiling, subject to rule **41.13** of the Customs Control Rules as applied by rule **13.4** of these Rules.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** in paper format, the application may be submitted to any Customs Office.

³⁶ The bank account into which the refunds and drawbacks of a registered or licenced person must be paid must be designated in terms of rules **28.9(3)(e)** and **29.11(3)(f)** of the Customs Control Rules. Details of this bank account must be regularly updated. For definition of “registration details” and “licence details”, see rule **1.1** of the Customs Control Rules.

³⁷ Note that in terms of section 67 only a person entitled in terms of section 65A to claim a refund or drawback may apply for a refund or drawback.

(2) An application referred to in subrule (1) must reflect the following information:

- (a) The applicant's name and customs code;
- (b) if the application is submitted by a customs broker, registered agent or an ordinary representative³⁸ on behalf of the applicant referred to in paragraph (a), the information specified in rule **41.14** of the Customs Control Rules, as applied by rule **13.5** of these Rules;³⁹
- (c) in the case of an application for—
 - (i) a refund, the movement reference number of the clearance declaration if the goods to which an application relates have been cleared; or
 - (ii) a drawback, the movement reference numbers of—
 - (aa) the clearance declaration submitted when the goods to which the application relates were imported; and
 - (bb) the clearance declaration submitted for the export of those goods, or of comparable goods, or of products manufactured from those goods or from comparable goods or in the manufacture of which those goods or comparable goods were used;⁴⁰
- (d) details relating to the refund or drawback applied for, including—
 - (i) whether it is a refund of a duty, administrative penalty or interest, or a drawback;
 - (ii) in the case of a refund of a duty, the type of duty;
 - (iii) in the case of a drawback, the drawback item number in the Customs Tariff;
 - (iv) the ground on which the refund or drawback is claimed;⁴¹
 - (v) the amount of duty, penalty or interest paid and the date of payment; and
 - (vi) the amount of refund or drawback claimed;

³⁸ See definition of "ordinary representative" in rule 1.1 of the Customs Control Rules and explanatory footnote.

³⁹ If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act, read with section 228 of the Customs Duty Act, Part 5 of Chapter 41 of Customs Control Rules as applied by rule 13.6 of these Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents who submit documents in that capacity.

⁴⁰ See section 65(1) of the Customs Duty Act which allows drawbacks also where comparable goods or products derived from the imported or comparable goods are exported.

⁴¹ Sections 64 and 65 of the Customs Duty Act set out the grounds on which payments to Customs can be reclaimed.

- (e) if the applicant relies for the refund or drawback on a decision, final judgement or amendment to the Customs Tariff as contemplated in section 69(2)(a), (b) or (c)—
 - (i) a reference to the decision, judgement or amendment in sufficient detail to identify it;
 - (ii) the date of the decision or final judgement or of publication of the amendment; and
 - (iii) the reference number of any reassessment made in respect of the goods to which the application relates as a consequence of that decision, judgement or amendment, if the application is for a refund of duty or interest on duty or for a drawback;
- (f) if the applicant relies for the refund or drawback on a decision or final judgement given in respect of other goods as contemplated in section 69(3)—
 - (i) a reference to the decision or judgement in sufficient detail to identify it;
 - (ii) a motivation of the reason why the decision or judgement should be applied also to the goods to which the application for a refund or drawback relates;
 - (iii) the reference number of any reassessment made in respect of those goods as a consequence of that decision or judgement, if the application is for a refund of duty or interest on duty or for a drawback; and
 - (iv) the date of payment of an administrative penalty or interest on a penalty, if the application is for a refund of a penalty or interest on a penalty;
- (g) a motivation of the ground relied on in terms of paragraph (d)(iv) for the refund or drawback, with specific reference to the applicable circumstances referred to in section 64 or 65 justifying the application;
- (h) a statement by the applicant indemnifying the Commissioner against any claim, loss or damage, cost and expenses arising as a result of payment of the refund or drawback to the applicant;
- (i) whether the applicant has any outstanding debt with the Commissioner as envisaged in section 75 and, if so, details of the debt;

- (j) a list of the documents relied on to substantiate the application for a refund or drawback;⁴²
- (k) a statement that the applicant is the person entitled to claim the refund or drawback; and
- (l) any other information that may be required by the customs authority for purposes of the application.

(3) The information referred to in subrule (2)(f)(ii), (g), (h), (i), (j) and (l) may be provided in separate supporting documents submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules, as applied by rule 13.7 of these Rules.

(4) No application for a drawback may be submitted by a person entitled to claim a drawback unless that person has in accordance with rule 4.6 notified the customs authority before the export of the goods to which the drawback relates of the intention to claim a drawback.

Submission of amended clearance declarations as applications for refunds (section 224(1)(g))

4.4 (1) Submission of an amended clearance declaration⁴³ in terms of section 174 of the Customs Control Act may be regarded to be an application for a refund in terms of rule 4.3 if—

- (a) the amended clearance declaration is submitted to correct an error or to change or supplement information on the declaration as a result of which the applicant becomes entitled to claim a refund; and
- (b) the customs authority accepts the amended clearance declaration in terms of that section.

(2) Rule 4.3 does not apply if an amended clearance declaration is regarded in terms of subrule (1) to be an application for a refund except as provided in subrule (3).

⁴² Policy guidelines may be consulted in order to assist in determining which supporting documents can be used to prove specific types of claims for refunds and drawbacks. These guidelines are not intended to limit an applicant in proving a claim.

⁴³ This would be an amended declaration amending the declaration submitted when the goods were imported.

(3) In order to serve as an application for a refund, an amended clearance declaration referred to in subrule (1) must—

- (a) contain a refund indicator code indicating that the declaration should be regarded to be an application for a refund;
- (b) indicate the amount of the refund;
- (c) be submitted within the period applicable to an application for a refund in terms of section 69 of the Customs Duty Act; and
- (d) be supported by separate supporting documents containing all the information required for an application in terms of rule 4.3(2).

(4) Supporting documents referred to in subrule (3)(d) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules, as applied by rule 13.7 of these Rules.

(5) (a) If the customs authority on rectifiable technical grounds rejects an amended clearance declaration as not valid for purposes of serving as an application for a refund, the amended clearance declaration may be rectified and resubmitted.

(b) Section 71(2) of the Customs Duty Act applies, with any necessary changes as the context may require, to the resubmission of an amended clearance declaration.⁴⁴

Additional supporting documents in respect of applications for refunds and drawbacks (section 68(1)(c))

4.5 (1) An application for a refund or drawback must in addition to the documents referred to in section 68(1)(b) and (c) of the Customs Duty Act and, as applicable, rule 4.3(3) or 4.4(3)(d) be supported by—

- (a) any other documents relied on to substantiate the refund or drawback; and
- (b) a worksheet setting out how the refund or drawback amount was calculated.

⁴⁴ See rule 4.7 for timeframe within which an application must be re-submitted.

(2) A supporting document referred to in subrule (1)(a) or (b) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules, as applied by rule **13.7** of these Rules.

Notification of intention to claim drawback when goods or products are exported (*section 65(3)*)

4.6 Submission of an export clearance declaration⁴⁵ containing the applicable tariff drawback item number and customs procedure code must be regarded as a notification of intention to claim a drawback referred to in section 65(3) of the Customs Duty Act.⁴⁶

Timeframe for re-submission of rejected applications (*section 71(2)*)

4.7 (1) The timeframe for re-submission of a rejected application for a refund or a drawback for purposes of section 71(2) of the Customs Duty Act is five working days from the date of rejection of the previous application.

(2) If a rectified application is not re-submitted within the timeframe referred to in subrule (1), a fresh application must be submitted if the applicant wishes to continue with the application.

⁴⁵ For content of export clearance declarations, see section 367 of the Customs Control Act.

⁴⁶ Note that goods should be timeously delivered to depots and export terminals to allow for inspections as Customs will not be liable for expenses caused by delays in the export of goods. See section 368 and 923 of the Customs Control Act.

CHAPTER 5

ASSESSMENT OF DUTY

Worksheet for purposes of self-assessment of duty⁴⁷ (section 82(1)(a))

5.1 (1) A worksheet for purposes of self-assessment of duty referred to in section 82(1)(a) of the Customs Duty Act must at least indicate—

- (a) the name and customs code of the person clearing the goods;
- (b) the goods to which it relates with reference to the line number on the clearance declaration referring to the goods;
- (c) the tariff and origin self-determinations of the goods made in terms of sections 99 and 152 by the person clearing the goods, as well as the value self-determination in the case where the duty is calculated on the customs value of the goods;
- (d) the quantity, weight, volume, measurement or other specifics of the goods, in the case where the duty is imposed by quantity, weight, volume, measurement or other specifics of the goods;
- (e) a list of all applicable key assessment factors used in the calculation of the amount of the duty,⁴⁸ and
- (f) the amount of duty payable and how this amount is calculated with reference to the applicable key assessment factors.

(2) (a) A worksheet referred to in subrule (1) must in terms of section 82(1)(d) be submitted electronically within a timeframe indicated in the request referred to in that section, subject to paragraph (b).

(b) If the person clearing the goods is authorised by rule 7.3 of the Customs Control Rules to submit clearance declarations in paper format, or if any of the circumstances contemplated in section 913(4) of the Control Act applies, a worksheet referred to in paragraph (a) may be submitted manually in paper format to the Customs Office where the clearance declaration was submitted.

⁴⁷ If duty is calculated on the customs value of goods, this worksheet must include the details referred to in rule 7.1.

⁴⁸ See definition of “key assessment factor” in section 1 of the Customs Duty Act. These other key assessment factors could include any factor regulating the duty or the calculation of the amount of the duty, such as—

* any preferential tariff claimed and the applicable international trade agreement relied on;

* any relief claimed and authorisation for such relief.

Notification to customs authority of inaccuracies in self-assessments (*section 82(2)(b)*)

5.2 (1) An amended clearance declaration submitted in terms of section 174 of the Control Act to correct information included in the clearance declaration because of an inaccuracy referred to in section 82(2)(b) of the Customs Duty Act must for purposes of that section be regarded to be a notification contemplated in that section.

(2) An amended clearance declaration referred to in subrule (1) must be supported by—

- (a) an amended worksheet reflecting any corrected calculation brought about by the correction of the inaccuracy referred to in subrule (1); and
- (b) any documentary evidence substantiating the correction.

CHAPTER 6
TARIFF CLASSIFICATION OF GOODS

Part 1: Tariff self-determination, determination and re-determination

Notification to customs authority of inaccuracies in tariff self-determinations
(section 99(4))

6.1 (1) An amended clearance declaration submitted in terms of section 174 of the Control Act to correct information included in the clearance declaration because of an inaccuracy referred to in section 99(4) of the Customs Duty Act must for purposes of that section be regarded to be a notification contemplated in that section.

(2) An amended clearance declaration referred to in subrule (1) must be supported by any documentary evidence substantiating the correction.

Notice by customs authority of correction of error in tariff determination or re-determination *(section 102(1))*

6.2 A notice of an error referred to in section 102(1) of the Customs Duty Act, of a tariff determination or re-determination made by the customs authority, must reflect—

- (a) the date of issue of the notice;
- (b) the reference number of the notice;
- (c) the name and contact details of a customs officer to whom enquiries can be directed;
- (d) the reference number and date of the tariff determination or re-determination in which the error occurred; and
- (e) details of the error and how it is corrected.

Publication of information relating to tariff determinations or re-determinations
(section 110)

6.3 (1) Information contained in a tariff determination or re-determination made in respect of goods may be made public only if—

- (a) publication of the information is likely to assist other persons required to make tariff self-determinations when clearing goods of the same class or kind; and
- (b) the person who cleared the goods has given prior written permission⁴⁹ for the information to be published, subject to subrule (2).

(2) Subrule (1)(b) does not apply if the information does not disclose—

- (a) the name or personal particulars of the person who cleared the goods in respect of which the tariff determination or re-determination was made;
- (b) the name and contact details of the person who supplied the goods;
- (c) the selling price or other particulars of the contract between the person who cleared the goods and the supplier; or
- (d) any other information that may prejudicially affect the competitive position of a person referred to in paragraph (a) or (b).

(3) Information referred to in subrule (1)—

- (a) may be published on the SARS website; and
- (b) does not bind any person, including the customs authority, except to the extent set out in section 106(1)(a) and (b).⁵⁰

Part 2: Other matters

Application for tariff determination (section 110)

6.4 (1) A person required to clear goods for home use or a customs procedure may before clearing the goods apply to the customs authority for a tariff determination of the goods in terms of section 100 of the Customs Duty Act by submitting an application in terms of this rule to the customs authority electronically through eFiling, subject to rule **41.13** of the Customs Control Rules as applied by rule **13.4** of these Rules.⁵¹

⁴⁹ In the case where a person clearing goods applies for a tariff determination in terms of rule **6.4** the applicant must indicate whether permission to publish is given or not.

⁵⁰ The tariff determination applies only to the goods in respect of which it was made and to all identical goods cleared for home use of a customs procedure by the same person or by a registered agent on behalf of that same person.

⁵¹ If Customs following an application issues a tariff determination, section 99(2) of the Customs Duty Act, read with section 106, will apply to the goods in respect of which the determination was given and also to future consignments of identical goods imported or exported by the person to whom the determination was issued.

- (2) An application referred to in subrule (1) must reflect—
- (a) the name and customs code of the person required to clear the goods or, if that person does not have a customs code yet, the information specified in rule **41.15**(1) of the Customs Control Rules as applied by rule **13.5** of these Rules;
 - (b) if the application is submitted by a customs broker, registered agent or an ordinary representative⁵² on behalf of the applicant referred to in paragraph (a), the information specified in rule **41.14** of the Customs Control Rules as applied by rule **13.5** of these Rules;⁵³
 - (c) a description of the goods, including—
 - (i) the nature, characteristics and composition of the goods;
 - (ii) the use of the goods; and
 - (iii) the trade name of the goods;
 - (d) the name, address and contact details of the producer or supplier of the goods;
 - (e) the tariff classification that is most appropriate to the goods in the opinion of the applicant;
 - (f) if the goods consist of an article composed of two or more materials—
 - (i) an indication to that effect;
 - (ii) the relative quantity by weight and volume and the value of each material, and
 - (iii) the purchase price of the article, and its approximate selling price in the Republic;
 - (g) if the goods consist of an unassembled or disassembled machine referred to in Section XVI of the Customs Tariff, which is to be imported or exported in more than one consignment—
 - (i) an indication to that effect;
 - (ii) a motivation why the goods cannot be imported or exported in one consignment;

⁵² See definition of “ordinary representative” in rule **1.1** of the Customs Control Rules and explanatory footnote.

⁵³ If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act, read with section 228 of the Customs Duty Act, Part 5 of Chapter 41 of Customs Control Rules as applied by rule **13.6** of these Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents who submit documents in that capacity.

- (iii) the number of consignments in which the goods are to be cleared;
 - (iv) the proposed shipping schedule for all the consignments; and
 - (v) the places of entry or exit intended to be used;
- (h) in the case of goods—
- (i) to be imported into the Republic, the country from which the goods are to be imported into the Republic; or
 - (ii) to be exported from the Republic, a statement that the goods are to be exported from the Republic; and
- (i) whether permission is given for the publication in terms of rule 6.3 of information to be contained in a tariff determination or re-determination made in respect of the goods and, if so, whether all the information may be published or only certain information as specified.

(3) The information referred to in subrule (2)(f)(ii) and (iii) and (g)(ii) to (v) may be provided in separate supporting documents.

- (4) An application referred to in subrule (1) must be supported by—
- (a) if the application is submitted on behalf of the applicant by an ordinary representative,⁵⁴ a document authorising that person to act as a representative;
 - (b) the invoice issued in relation to the goods or, if an invoice has not yet been issued, a pro forma invoice;
 - (c) descriptive literature in relation to the nature, characteristics and use of the goods;
 - (d) a motivation for the suggested tariff classification referred to in subrule (2)(e), taking into account the relevant tariff headings, the Harmonised Commodity and Coding System tariff section and Chapter notes, and the Harmonised System Explanatory Notes; and
 - (e) in the case of circumstances referred to in subrule (2)(g)—
 - (i) the overall packing list indicating total weight and volume of the machine;

⁵⁴ See definition of “ordinary representative” in rule 1.1 of the Customs Control Rules and explanatory footnote.

- (ii) a document containing a schematic or technical diagram or exploded view of the whole machine—
 - (aa) clearly identifying separate individual components making up the whole machine; and
 - (bb) indicating the weight and volume for each separate consignment; and
- (iii) the contract of sale and purchase for the entire project.

(5) A supporting document referred to in subrule (3) or (4) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules as applied by rule **13.7** of these Rules.

(6) An applicant who submitted an application in terms of this rule must submit to the customs authority any additional information or document as the customs authority may request in terms of section 104 of the Customs Duty Act for purposes of making a tariff determination in respect of the goods, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules as applied by rule **13.7** of these Rules.

CHAPTER 7
VALUATION OF GOODS

Part 1: Value self-determination, determination and re-determination

Particulars to be included in valuation worksheets for purposes of value self-determination by persons clearing goods (*section 116(1)(a) read with section 82(1)(a)*)

7.1 (1) If the amount of duty payable on goods is calculated on the customs value of the goods, a valuation worksheet referred to in section 116(1)(a) of the Customs Duty Act must reflect—

- (a) if an advance valuation ruling or a previous valuation determination or re-determination referred to in section 123(2) of the Customs Duty Act applies to the goods, the reference number of the advance ruling or of the value determination or re-determination;
- (b) if no such advance ruling or previous valuation determination or re-determination applies to the goods—
 - (i) in the case of imported goods—
 - (aa) the valuation method used in the value self-determination of the goods; and
 - (bb) how the factors referred to in Part 3 of Chapter 7 of that Act applicable to that valuation method were taken into account in the value self-determination of the goods; or
 - (ii) in the case of goods to be exported, how the factors referred to in Part 5 of Chapter 7 of that Act were taken into account in the value self-determination of the goods; and
- (c) where an amount that was taken into account in the value self-determination of the goods is reflected in a foreign currency, the applicable amount in foreign currency, the currency conversion rate used and the amount in South African Rand.

(2) A valuation worksheet referred to in subrule (1) must be combined with the worksheet that must be made for purposes of self-assessment of duty referred to in section 82(1)(a) of the Customs Duty Act.⁵⁵

Notification to customs authority of inaccuracies in value self-determinations
(*section 116(5)*)

7.2 (1) An amended clearance declaration submitted in terms of section 174 of the Control Act to correct information included in the clearance declaration because of an inaccuracy referred to in section 116(5) of the Customs Duty Act must for purposes of that section be regarded to be a notification contemplated in that section.

(2) An amended clearance declaration referred to in subrule (1) must be supported by—

- (a) an amended worksheet reflecting any corrected calculation brought about by the correction of the inaccuracy referred to in subrule (1); and
- (b) any documentary evidence substantiating the correction.

Notice by customs authority of correction of error in value determination or re-determination (*section 119(1)*)

7.3 A notice of an error referred to in section 119(1) of the Customs Duty Act, of a value determination or re-determination made by the customs authority must reflect—

- (a) the date of issue of the notice;
- (b) the reference number of the notice;
- (c) the name and contact details of a customs officer to whom enquiries can be directed;
- (d) the reference number and date of the value determination or re-determination in which the error occurred; and
- (e) details of the error and how it is corrected.

⁵⁵ See rule 5.1.

Requests for determining conversion rates in respect of currencies not published (*section 144(1)*)

7.4 (1) A request by a person referred to in section 144(1) of the Customs Duty Act for the customs authority to determine the currency conversion rate in respect of payments in connection with goods cleared for home use or a customs procedure or any other amount to be taken into account in determining the customs value of those goods, which is expressed in a foreign currency for which the conversion rates were not published in terms of section 142, must be submitted to the customs authority in accordance with this rule.

(2) A request referred to in subrule (1) must be submitted to the customs authority—

- (a) electronically through e-mail; or
- (b) by any of the methods contemplated in section 912(2)(a) or (c) of the Control Act.

(3) A request submitted in terms of subrule (2) must—

- (a) be on Form ...as published as a rule on the SARS website; and
- (b) be submitted by making use of the following details:
 - (i) If sent through e-mail, the e-mail must be directed to the Office of the Commissioner at the e-mail address indicated on the SARS website for receipt of such requests;
 - (ii) if delivered by hand, the request must be delivered to the Office of the Commissioner at 229 Bronkhorst Street, Le Hae La SARS Block A, Nieuw Muckleneuk, Pretoria; and
 - (iii) if telefaxed, the fax must be directed to the Office of the Commissioner and sent to the fax number indicated on the SARS website for receipt of such requests.

(4) A request referred to in subrule (1) must reflect—

- (a) the date of the request;
- (b) the name and customs code of the person submitting the request;

- (c) if the request is submitted by a customs broker, registered agent or an ordinary representative⁵⁶ on behalf of the person requesting, the information specified in rule **41.14** of the Customs Control Rules as applied by rule **13.5** of these Rules;⁵⁷
- (d) the foreign currency in which the payment or other amount to be taken into account in determining the value of the goods is expressed; and
- (e) the average selling rates in respect of imports or buying rates in respect of exports for the currency referred to in paragraph (d) on the day before the date of clearance in accordance with the records of two major banks operating in the Republic.

(5) A request referred to in subrule (1) must be supported by documentary evidence from the two major banks referred to in subrule (4)(e) of the average selling and buying rates in respect of the particular currency on the day before the date of clearance of the relevant goods.

(6) A supporting document referred to in subrule (5) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules as applied by rule **13.7** of these Rules.

(7) The applicant may, if the customs authority does not respond within two hours of submission of a request referred to in subrule (1), use the average selling or buying rate referred to in subrule (4)(e) as the applicable rate of exchange, or if the rates of the banks are not equal, the higher of the two.

Publication of information relating to value determinations or re-determinations (section 148)

7.5 (1) Information contained in a value determination or re-determination made in respect of goods may be made public only if—

⁵⁶ See definition of “ordinary representative” in rule **1.1** of the Customs Control Rules and explanatory footnote.

⁵⁷ If the request is submitted in terms of section 920 of the Control Act, read with section 228 of the Customs Duty Act, by an ordinary representative on behalf of the person requesting, the request must comply with the additional requirements set out in Part 5 of Chapter 41 of the Customs Control Rules as applied by rule **13.6** of these Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit requests on behalf of persons requesting in that capacity.

- (a) publication of the information is likely to assist other persons required to make value self-determinations when clearing goods involving the same valuation criterion; and
- (b) the person who cleared the goods has given prior written permission⁵⁸ for the information to be published, subject to subrule (2).

(2) Subrule (1)(b) does not apply if the information does not disclose—

- (a) the name or personal particulars of the person who cleared the goods in respect of which the value determination or re-determination was made;
- (b) the name and contact details of the person who supplied the goods;
- (c) the selling price or other particulars of the contract between the person who cleared the goods and the supplier; or
- (d) any other information that may prejudicially affect the competitive position of a person referred to in paragraph (a) or (b).

(3) Information referred to in subrule (1)—

- (a) may be published on the SARS website; and
- (b) does not bind any person, including the customs authority, except to the extent set out in section 123 of the Customs Duty Act.⁵⁹

Part 2: Other matters

Application for value determination (section 149)

7.6 (1) A person required to clear goods for home use or a customs procedure may before clearing the goods apply to the customs authority for a value determination in terms of section 117 of the Customs Duty Act of such goods by submitting an application in terms of this rule to the customs authority electronically through eFiling, subject to rule **41.13** of the Customs Control Rules as applied by rule **13.4** of these Rules.⁶⁰

⁵⁸ In the case where a person clearing goods applies for a value determination in terms of rule **7.6**, the applicant must indicate whether permission to publish is given or not.

⁵⁹ The value determination applies to the goods in respect of which it was made and a valuation criterion applied in such determination must be applied to all goods of the same class or kind cleared for home use of a customs procedure by the same person or by a registered agent on behalf of that same person. See section 123 of the Customs Duty Act.

⁶⁰ If Customs following an application issues a value determination, section 118(3) of the Customs Duty Act, read with section 123, will apply to the goods in respect of which the determination was given and also to future

- (2) An application referred to in subrule (1) must reflect—
- (a) the name and customs code of the person required to clear the goods or, if that person does not have a customs code yet, the information specified in rule **41.15**(1) of the Customs Control Rules as applied by rule **13.5** of these Rules;
 - (b) if the application is submitted by a customs broker, registered agent or an ordinary representative⁶¹ on behalf of the person required to clear the goods, the information specified in rule **41.14** of the Customs Control Rules as applied by rule **13.5** of these Rules;⁶²
 - (c) a general description of the goods;
 - (d) the name and address of the supplier of the goods;
 - (e) whether the goods were acquired through outright purchase, and—
 - (i) if so, the terms of sale (for example FOB, CIF, ex works etc.); or
 - (ii) if not, the basis of acquisition and the terms of acquisition;
 - (f) whether the supplier imposed any restriction regarding the disposal, use or re-sale of the imported goods which substantially influenced the price (excluding territorial restrictions), and if so—
 - (i) details of the restriction; and
 - (ii) the extent of the influence on the price;
 - (g) whether the sale is subject to some other condition or consideration for which a value cannot be determined, and if so, details of such condition or consideration;
 - (h) whether any part of the proceeds of any subsequent sale, disposal or use of the imported goods (excluding royalties, licence fees and dividends) accrue directly or indirectly to the supplier, and if so, details of the agreement with the supplier;

consignments of goods of the same class or kind imported or exported by the person to whom the determination was issued.

⁶¹ See definition of “ordinary representative” in rule **1.1** of the Customs Control Rules and explanatory footnote.

⁶² If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act, read with section 228 of the Customs Duty Act, Part 5 of Chapter 41 of the Customs Control Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents who submit documents in that capacity.

- (i) whether the applicant is related to the supplier within the meaning of section 130 of the Customs Duty Act, and if so—
 - (i) details of the relationship; and
 - (ii) the extent to which such relationship influenced the price;
- (j) whether the orders of the supplier are placed through a selling agent, and—
 - (i) if so, whether the agent's commission is included in the supplier's selling price; or
 - (ii) if not, how the commission is paid;
- (k) whether the applicant is in terms of the contract of sale obliged to pay royalties and licence fees in respect of the imported goods, and if so, details of such royalties and licence fees and the amounts payable, expressed as a percentage of the FOB value of the goods;
- (l) whether any of the following are supplied free of charge or at a reduced cost to the supplier for use in the production and sale of the imported goods to the applicant:
 - (i) Materials, components, parts or similar items incorporated in the imported goods;
 - (ii) tools, dies, moulds and similar items used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods, but not incorporated in such goods; and
 - (iv) engineering, development, artwork, design work and plans and sketches undertaken outside the Republic and necessary for production of the imported goods;
- (m) details of any goods referred to in paragraph (l)(i) to (iv) used in the production and sale of the imported goods to the applicant; and
- (n) whether permission is given for the publication in terms of rule 7.5 of information to be contained in a value determination or re-determination made in respect of the goods and if so, whether all the information may be published or only certain information as specified.

(3) The information referred to in subrule (2)(e)(i) and (ii), (f)(i) and (ii), (i)(i) and (ii), (j)(i) and (ii) and (l)(i) to (iv) and details referred to in subrule (2)(g), (h), (k) and (m) may be provided in separate supporting documents to be submitted to the

customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules as applied by rule **13.7** of these Rules.

(4) An applicant who submitted an application in terms of this rule must submit to the customs authority any additional information or document as the customs authority may request in terms of section 121 of the Customs Duty Act for purposes of making a value determination in respect of the goods subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules as applied by rule **13.7** of these Rules.

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CHAPTER 8

ORIGIN

Part 1: Matters relating to origin self-determinations, determinations and re-determinations

Notification to customs authority of inaccuracies in origin self-determinations *(section 152(5))*

8.1 (1) An amended clearance declaration submitted in terms of section 174 of the Control Act to correct information included in the clearance declaration because of an inaccuracy referred to in section 152(5) of the Customs Duty Act must for purposes of that section be regarded to be a notification of the inaccuracy contemplated in that section.

(2) An amended clearance declaration referred to in subrule (1) must be supported by any documentary evidence of origin substantiating the correction.

Notice by customs authority of origin determination or re-determination *(sections 153(4) and 154(5))*

8.2 A notice referred to in section 153(4) and 154(5) of the Customs Duty Act must reflect—

- (a) the date of issue of the notice;
- (b) the reference number of the notice;
- (c) the name and contact details of a customs officer to whom enquiries can be directed;
- (d) the customs code of the person clearing the goods to which the determination or re-determination relates, and also the customs code of the customs broker if the clearance declaration was submitted by a customs broker;
- (e) a description of the goods to which the determination or re-determination relates;
- (f) in the case of goods that have been cleared, the movement reference number of the clearance declaration that has been submitted in respect of the goods;
- (g) details of the determination or redetermination; and
- (h) the reference number of the determination or re-determination.

Notice of correction by customs authority of error in origin determination or re-determination (*section 155(1)*)

8.3 A notice of correction of an error referred to in section 155(1) of the Customs Duty Act in an origin determination or re-determination made by the customs authority must reflect—

- (a) the date of issue of the notice;
- (b) the reference number of the notice;
- (c) the name and contact details of a customs officer to whom enquiries can be directed;
- (d) the reference number of the origin determination or re-determination in which the error occurred;
- (e) details of the error and how it is corrected; and
- (f) in the case of goods that have been cleared, the movement reference number of the clearance declaration that has been submitted in respect of the goods.

Part 2: Documentary evidence of origin⁶³ for goods of South African origin exported from Republic

Application of this Part

8.4 (1) In this Part—

“**competent authority or body**”, in relation to the certification of documentary evidence of origin for goods exported from the Republic as goods of South African origin, means—

- (a) the customs authority;
- (b) the Department of Trade and Industry; or
- (c) a chamber of commerce authorised by the Department of Trade and Industry to certify documentary evidence of origin.

(2) This Part prescribes the particulars to be reflected on the following documentary evidence of origin to be used for goods exported from the Republic as goods of South African origin:

⁶³ See definition of “documentary evidence of origin” in section 1 of Customs Duty Act.

- (a) Certificates of origin issued as contemplated in section 163(1) of the Customs Duty Act by a competent authority or body;
- (b) certificates of origin issued as contemplated in section 163(2) by a producer, supplier or exporter as declarations of origin—
 - (i) on invoices or other commercial documents; or
 - (ii) otherwise than on invoices or other commercial documents;
- (c) certified declarations of origin issued as contemplated in section 163(1) by a competent authority or body; and
- (d) certificates certifying declarations of origin issued as contemplated in section 163(1) by a competent authority or body.

(3) This Part does not apply to documentary evidence of origin referred to in subrule (2) used to verify the South African origin of goods exported from the Republic to a country that is a party to an international trade agreement or that implements a generalised system of preferences providing for preferential treatment in that country for goods originating in the Republic, if the agreement or system specifies the particulars which such documentary evidence of origin must reflect for purposes of the agreement or system.⁶⁴

Particulars to be reflected by certificates of origin for goods of South African origin (*section 163(1)(b)(ii)*)

8.5 A certificate of origin referred to in rule 8.4(2)(a) verifying the origin of goods exported or to be exported from the Republic as goods of South African origin must—

- (a) reflect—
 - (i) a reference number assigned to the certificate;
 - (ii) the name or customs code of the producer or supplier of the goods;
 - (iii) the name or customs code of the exporter exporting the goods from the Republic or the customs code of that exporter's registered agent in the Republic;
 - (iv) a description of the goods in sufficient detail to enable the goods to be identified, including—

⁶⁴ See also Chapter 9 for the requirements for preferential treatment of goods of South African origin exported under an international trade agreement or a generalised system of preferences.

- (aa) any marks and numbers on the goods;
- (bb) the number and description of packages, if applicable; and
- (cc) the quantity, volume or gross weight of the goods;
- (v) the number of any commercial invoice issued in respect of the goods; and
- (vi) the name of the country to which the goods are exported;
- (b) contain a signed statement by the competent authority or body issuing the certificate—
 - (i) certifying that the goods are, based on the information presented to it or the checks performed by the competent authority or body in a specific case, of South African origin; and
 - (ii) referencing or specifying the rules of origin on which the certification referred to in subparagraph (i) is based;
- (c) state—
 - (i) the full name and capacity of the person signing the certificate on behalf of the authority or body referred to in paragraph (b); and
 - (ii) the place and date of certification; and
- (d) be authenticated by—
 - (i) the official stamp of that authority or body, placed on the certificate; or
 - (ii) an authorisation number issued by that authority or body to the producer, supplier or exporter, endorsed on the certificate.

Particulars to be reflected by declarations of origin on invoices for goods exported as goods of South African origin (section 163(2))

8.6 (1) A declaration of origin referred to in rule **8.4(2)(b)(i)** on an invoice or other commercial document issued by a producer, supplier or exporter of goods of South African origin for use to verify the South African origin of goods exported or to be exported from the Republic, must appear as an endorsement on the invoice or other commercial document.

(2) In the endorsement, the producer, supplier or exporter issuing the invoice or other commercial document must—

- (a) state at least the customs code or name of the producer, supplier or exporter;

- (b) declare that the goods described in the invoice or document are goods that originated in the Republic;
- (c) reference or specify the rules of origin on which the declaration referred to in paragraph (b) is based;
- (d) state the name of the country to which the goods are exported;
- (e) certify the declaration to be true and correct; and
- (f) state—
 - (i) the full name and capacity of the person signing the endorsement on behalf of that producer, supplier, exporter or other person; and
 - (ii) the date and place of certification.

Particulars to be reflected by declarations of origin otherwise than on invoices for goods of South African origin exported from Republic (*section 163 and definition of “declaration of origin” in section 1*)

8.7 (1) A declaration of origin referred to in rule **8.4(2)(b)(ii)** stating that goods exported or to be exported from the Republic are goods of South African origin must—

- (a) have a reference number to identify the declaration;
- (b) at least contain—
 - (i) the name or customs code of the producer, supplier or exporter of the goods issuing the declaration;
 - (ii) a description of the goods in sufficient detail to enable the goods to be identified, including—
 - (aa) any marks and numbers on the goods;
 - (bb) the number and description of packages, if applicable; and
 - (cc) the quantity, volume or gross weight of the goods;
 - (iii) the number of any commercial invoice issued in respect of the goods; and
 - (iv) the name of the country to which the goods are exported;
- (c) contain a signed statement by the producer, supplier or exporter or other competent person—
 - (i) declaring that the goods are of South African origin; and
 - (ii) referencing or specifying the rules of origin on which the declaration referred to in subparagraph (i) is based; and

(d) state the date and place of the declaration.

(2) For a declaration of origin complying with subrule (1) to qualify as a certified declaration of origin referred to in rule 8.4(2)(c)—

- (a) the declaration must be certified in the same document as true and correct by a competent authority or body; and
- (b) the certification referred to in paragraph (a) must state—
 - (i) the name of the authority or body certifying the declaration;
 - (ii) the full name and capacity of the person signing the certification on behalf of that authority or body; and
 - (iii) the place and date of certification; and
- (c) the certification must be authenticated by—
 - (i) the official stamp of that authority or body, placed on the declaration; or
 - (ii) an authorisation number issued by that authority or body to the producer, supplier or exporter, endorsed on the declaration.

Particulars to be reflected by certificates certifying declarations of origin for goods of South African origin exported from Republic (*section 163(1)(b)*)

8.8 (1) A certificate certifying a declaration of origin referred to in rule 8.4(2)(d) issued by a competent authority or body for use to verify the South African origin of goods exported or to be exported from the Republic must—

- (a) reflect at least—
 - (i) any reference number assigned to the declaration of origin to which the certificate relates;
 - (ii) the name of the producer, supplier or exporter of the goods who issued the declaration;
 - (iii) a description of the goods to which the declaration relates, in sufficient detail to enable the goods to be identified, including—
 - (aa) any marks and numbers on the goods;
 - (bb) the number and description of packages, if applicable; and
 - (cc) the quantity, volume or gross weight of the goods; and
 - (iv) the name of the country to which the goods are exported;
- (b) certify the declaration to which it relates as true and correct;
- (c) state—

- (i) the name of the authority or body issuing the certificate;
 - (ii) the full name and capacity of the person signing the certificate on behalf of that authority or body; and
 - (iii) the place and date of certification; and
- (d) be authenticated by—
- (i) the official stamp of that authority or body, placed on the certificate; or
 - (ii) an authorisation number issued by that authority or body to the producer, supplier or exporter, endorsed on the certificate.
- (2) The declaration of origin to which the certificate referred to in subrule (1) relates must be attached to the certificate.

Part 3: Documentary evidence of origin⁶⁵ for goods imported into Republic

Application of this Part

8.9 (1) In this Part—

“competent authority or body”, in relation to the certification of documentary evidence of origin for goods imported into the Republic, means an authority or body empowered to issue or certify documentary evidence of origin in a country from which the goods are exported.

- (2) This Part prescribes the particulars to be reflected on the following documentary evidence of origin to be used for goods imported into the Republic:
- (a) Certificates of origin issued as contemplated in section 164(1) of the Customs Duty Act by a competent authority or body;
 - (b) certificates of origin issued as contemplated in section 164(2) by a producer, supplier or exporter as declarations of origin—
 - (i) on invoices or other commercial documents; or
 - (ii) otherwise than on invoices or other commercial documents;
 - (c) certified declarations of origin issued as contemplated in section 164(1) by a competent authority or body; and

⁶⁵ See definition of “documentary evidence of origin” in section 1 of Customs Duty Act.

(d) certificates certifying declarations of origin issued as contemplated in section 164(1) by a competent authority or body.

(3) This Part does not apply to documentary evidence of origin used to verify the origin of goods exported to the Republic from a country that is a party to an international trade agreement that provides for preferential treatment in the Republic of goods originating in that country, if the agreement specifies the particulars which such documentary evidence of origin must reflect for purposes of the agreement.⁶⁶

Particulars to be reflected by certificates of origin for imported goods (*section 164(1)(b)(ii)*)

8.10 A certificate of origin referred to in rule 8.9(2)(a) verifying the origin of goods imported into the Republic must—

(a) reflect—

- (i) a reference number assigned to the certificate;
- (ii) the name and address of the producer or supplier of the goods;
- (iii) the name or customs code of the exporter exporting the goods to the Republic or the customs code of that exporter's registered agent in the Republic;
- (iv) a description of the goods in sufficient detail to enable the goods to be identified, including—
 - (aa) any marks and numbers on the goods;
 - (bb) the number and description of packages, if applicable; and
 - (cc) the quantity, volume or gross weight of the goods;
- (v) the number of any commercial invoice issued in respect of the goods;
- (vi) the name of the country from which the goods are exported; and
- (vii) if the goods did not originate in the country referred to in subparagraph (vi), the name of the country from which it originated; and

(b) contain a signed statement by the competent authority or body issuing the certificate certifying that the goods originated in the country from which the goods are exported or, if the goods did not originate in that country, the country referred to in paragraph (a)(vii); and

⁶⁶ See also Chapter 9 for the requirements for preferential treatment of goods imported into the Republic under an international trade agreement conferring preferential treatment.

- (c) state—
 - (i) the name of that authority or body;
 - (ii) the full name and capacity of the person signing the certificate on behalf of that authority or body; and
 - (iii) the place and date of certification; and
- (d) be authenticated by the official stamp of that authority or body or in another official way.

Particulars to be reflected by declarations of origin on commercial invoices for imported goods (*section 164(2)*)

8.11 (1) A declaration of origin on an invoice or other commercial document referred to in rule **8.9(2)(b)(i)** issued in the country of export by a producer or supplier of goods or an exporter exporting goods to the Republic for use to verify the origin of goods imported into the Republic, must appear as an endorsement on the invoice.

(2) In the endorsement the producer, supplier, or exporter issuing the invoice must—

- (a) state at least—
 - (i) the name of that producer, supplier or exporter; and
 - (ii) the customs authorisation number of that producer, supplier or exporter issued by the customs administration of the exporting country and authorising that producer, supplier or exporter to issue certificates of origin on invoices;
- (b) declare that the goods to which the invoice relates originated in the country from which the goods are exported or, if the goods did not originate in that country, the country in which it originated;
- (c) reference or specify the rules of origin on which the declaration referred to in paragraph (b) is based;
- (d) certify the declaration to be true and correct; and
- (e) state—
 - (i) the full name and capacity of the person signing the endorsement on behalf of that producer, supplier or exporter; and
 - (ii) the date and place of certification.

Particulars to be reflected by declarations of origin otherwise than on invoices for imported goods (*section 164(1)(b) and definition of “declaration of origin” in section 1*)

8.12 (1) A declaration of origin referred to in rule **8.9(2)(b)(ii)** stating the origin of goods imported into the Republic must—

- (a) have a reference number to identify the declaration;
- (b) reflect at least—
 - (i) the name of the producer or supplier of the goods or the exporter exporting the goods to the Republic, who issued the declaration;
 - (ii) a description of the goods in sufficient detail to enable the goods to be identified, including—
 - (aa) any marks and numbers on the goods;
 - (bb) the number and description of packages, if applicable; and
 - (cc) the quantity, volume or gross weight of the goods; and
 - (iii) the number of any commercial invoice issued in respect of the goods;
 - (iv) the name of the country from which the goods are exported; and
 - (v) if the goods did not originate in the country referred to in subparagraph (iv), the name of the country from which it originated; and
- (c) contain a signed statement by the producer, supplier or exporter of the goods declaring that the goods originated in the country from which the goods are exported or, if the goods did not originate in that country, the country referred to in paragraph (b)(v), and stating the date and place of the declaration.

(2) For a declaration of origin complying with subrule (1) to qualify as a certified declaration of origin referred to in rule **8.9(2)(c)**—

- (a) the declaration must be certified in the same document as true and correct by a competent authority or body;
- (b) the certification referred to in paragraph (a) must state—
 - (i) the name of that authority or body;
 - (ii) the full name and capacity of the person signing the certification on behalf of that authority or body; and
 - (iii) the place and date of certification; and
- (c) the certification must be authenticated by the official stamp of that body or authority or in another official way.

Particulars to be reflected by certificates certifying declarations of origin for imported goods (section 164(1)(b))

8.13 (1) A certificate certifying a declaration of origin referred to in rule **8.9(2)(d)** that is submitted for verifying the origin of goods imported into the Republic must be issued by a competent authority or body in the country from which the goods were exported and—

- (a) reflect—
 - (i) any reference number assigned to the declaration of origin to which the certificate relates;
 - (ii) the name of the producer or supplier of the goods or the exporter exporting the goods to the Republic, who issued the declaration;
 - (iii) a description of the goods to which the declaration relates, in sufficient detail to enable the goods to be identified, including—
 - (aa) any marks and numbers on the goods;
 - (bb) the number and description of packages, if applicable; and
 - (cc) the quantity, volume or gross weight of the goods; and
 - (iv) the name of the country declared in the declaration as the country in which the goods originated;
- (b) certify the declaration to which it relates as true and correct;
- (c) state—
 - (i) the name of the competent authority or body who issued the certificate;
 - (ii) the full name and capacity of the person signing the certificate on behalf of that authority or body; and
 - (iii) the place and date of certification; and
- (d) be authenticated by the official stamp of that authority or body or in another official way.

(2) The declaration of origin to which the certificate referred to in subrule (1) relates must be attached to the certificate.

When documentary evidence of origin must be provided for imported goods

8.14 (1) When any of the following categories of goods are imported into the Republic, the person clearing the goods for home use or a customs procedure must

submit to the customs authority documentary evidence of origin complying with this Part certified by the authority responsible in the country of export for certifying goods as goods that originated in that country:

- (a) Goods that are subject to an anti-dumping, countervailing or safeguard duty imposed on goods imported from a specific country; and
- (b) goods that are subject to a restriction imposed in terms of a law on goods imported from a specific country.

(2) Subrule (1) does not apply to goods—

- (a) cleared for international transit or transshipment; or
- (b) that as per the clearance declaration originated in a country to which a duty referred to in subrule (1)(a) or a restriction referred to in subrule (1)(b) applies.⁶⁷

(3) This rule does not affect the application of section 162 of the Customs Duty Act.

***Part 4: Customs certifications issued for goods of South African origin
exported otherwise than under ITAs or GSPs***⁶⁸

Application of this Part

8.15 This Part applies to exporters exporting goods to countries requiring documentary evidence of origin, excluding countries that are parties to ITAs or that implement GSPs for goods of South African origin.⁶⁹

Blank certificates for use as documentary evidence of origin available on SARS website

8.16 (1) Blank versions of the certificates that the customs authority may on application in terms of rule **8.17** or **8.18** issue as documentary evidence of origin for goods of South African origin for meeting the requirements of a country to which goods are exported, are published as a rule on the SARS website.

⁶⁷ In other words, if the importer acknowledges that the goods originated in a country on which the anti-dumping duty or restriction is imposed, no proof of origin is required.

⁶⁸ If an application in terms of this Part involves an inspection, the service required from Customs will be treated as a special customs service in terms of Part 3 of Chapter 1 of the Customs Control Rules.

⁶⁹ Applications for ITA or GSP blank forms and certification of such forms must be submitted in terms of Chapter 9 of these Rules.

(2) An exporter who intends to export goods to a country that requires documentary evidence of origin of the goods, may access the blank certificates on the SARS website and download the quantity to be used for that exporter's exports of goods of South African origin to that country.

Application for certification of goods as goods of South African origin

8.17 (1) An exporter that requires from the customs authority documentary evidence of origin for goods of South African origin to be exported to a country requiring such documentary evidence must apply for certification of goods as goods of South African origin by submitting an export clearance declaration in terms of section 367 of the Control Act in respect of the goods, reflecting the following information additional to the information listed in that section:

- (a) The name of the country to which the goods are to be exported;
- (b) that the goods to be exported are goods of South African origin according to the applicable rules of origin; and
- (c) the number and date of any invoice or other commercial document issued by the producer, supplier or exporter in connection with the goods.

(2) A customs broker authorised in the exporter's clearance instructions to do so, or the exporter's registered agent if the exporter is a non-local exporter, may apply on behalf of an exporter in terms of subrule (1) for certification of information on a certificate as contemplated in that subrule.

(3) An application for certification referred to in subrule (1) must be supported by—

- (a) documentary evidence that the goods originated in the Republic within the meaning of the applicable rules of origin;
- (b) the invoice or other commercial document issued by the producer, supplier or exporter of the goods;
- (c) the bill of lading, air waybill or other transport document applicable to the goods;
- (d) documents evidencing the originating status of the goods to be exported, including, as may be applicable—

- (i) accounts or internal bookkeeping records and any other documents providing direct evidence of working or processing of materials carried out by the exporter or producer to obtain those goods;
 - (ii) clearance declarations, invoices and other documents proving the originating status of materials used in the production of those goods;
 - (iii) documents proving the identity of materials used in the production of those goods and containing sufficient particulars to determine their tariff headings;
 - (iv) documents proving the value of materials used and the value they added to those goods; and
 - (v) costing records showing the calculation of the ex-works cost as defined in the applicable rules of origin;
- (e) the certificate of origin obtained from the customs authority in terms of rule **8.16**, filled in by the exporter to the extent possible before clearance of the goods; and
- (f) if the exporter is not the producer of the goods, a declaration of origin by the producer complying with rule **8.7(1)** to the extent possible before clearance of the goods.

(4) (a) Upon being notified of the release of the goods by the customs authority, the exporter⁷⁰ must present the following documents at any Customs Office designated by the Commissioner in terms of section 14 of the Control Act for certifying proof of origin:

- (i) The certificate of origin referred to in subrule (3)(e); and
- (ii) the declaration of origin by the producer referred to in subrule (3)(f), if the exporter is not the producer of the goods.

(b) A customs officer must upon presentation of those documents perform the physical certification procedure by affixing a stamp and a signature to the certificate of origin.

Application for retrospective certification of goods as goods of South African origin

⁷⁰ Note that a customs broker or registered agent referred to in subrule (2) may also present the documents referred to in subrule (4) at the relevant Customs Office for certifying proof of origin.

8.18 (1) An exporter who requires from the customs authority documentary evidence of origin for goods of South African origin already exported to a country requiring such documentary evidence must apply for retrospective certification of the goods as goods of South African origin by submitting an amended export clearance declaration in terms of section 174 of the Control Act—

- (a) providing in respect of the goods the additional information specified in rule **8.17(1)(a) to (c)**, insofar as that information has not already been provided in the clearance declaration; and
- (b) containing an indicator that the amended clearance declaration serves as an application for retrospective certification.

(2) A customs broker authorised in the exporter's clearance instructions to do so, or the exporter's registered agent if the exporter is a non-local exporter, may apply on behalf of an exporter in terms of subrule (1) for retrospective certification of information on a certificate as contemplated in that subrule.

(3) An application referred to in subrule (1) may be accepted only in the following circumstances:

- (a) Where the applicant can show that the late submission was due to—
 - (i) an error that was not the applicant's fault;
 - (ii) an omission that occurred inadvertently and in good faith; or
 - (iii) other special circumstances accepted by the customs authority as sufficient excuse for late submission; or
- (b) where the application was submitted timeously in terms of rule **8.17(4)**, but the document certifying the origin of the goods was due to a technical defect or another technical reason not accepted on importation of the goods in the country to which the goods were exported.

(4) An application referred to in subrule (1) must be supported by—

- (a) the documents referred to in rule **8.17(3)(a) to (d)**;
- (b) a certificate of origin obtained from the customs authority in terms of rule **8.16**, filled in by the exporter as far as possible;
- (c) a declaration of origin by the producer complying with rule **8.7(1)**, in the case where the exporter is not the producer of the goods; and

(d) any documents substantiating the reasons for late submission of the application.

(5) (a) Upon issuing by the customs authority of a release notification contemplated in section 174(4)(b) of the Customs Control Act, the exporter⁷¹ must present the following documents at any Customs Office designated by the Commissioner in terms of section 14 of that Act for certifying proof of origin:

- (i) The certificate of origin referred to in subrule (4)(b); and
- (ii) the declaration of origin by the producer referred to in subrule (4)(c), if the exporter is not the producer of the goods.

(b) A customs officer must upon presentation of those documents perform the physical certification procedure by affixing a stamp and a signature to the certificate of origin.

Application for replacement of certificates of origin

8.19 (1) If a certificate of origin certified in terms of rule **8.17(1)** or **8.18(1)** has been lost or destroyed, that certificate may be replaced on written application to the customs authority by the exporter of the goods to which the certification relates.

(2) (a) An application referred to in subrule (1) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13** of the Customs Control Rules as applied by rule **13.4** of these Rules.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** of the Customs Control Rules in paper format, the application must be submitted to the Customs Office referred to in rule **8.17(4)(a)** or **8.18(5)(a)**.

(3) An application referred to in subrule (1) must reflect—

(a) the name and customs code of the exporter;

⁷¹ Note that a customs broker or registered agent referred to in subrule (2) may also present the documents referred to in subrule (5) at the relevant Customs Office for certifying proof of origin.

- (b) if the application is submitted by a customs broker, registered agent or an ordinary representative⁷² on behalf of an applicant referred to in paragraph (a), the information specified in rule **41.14** of the Customs Control Rules as applied by rule **13.5** of these Rules;⁷³
- (c) the reference number and date of the certificate of origin lost or destroyed;
- (d) that the application is for a replacement of the certificate; and
- (e) the reason why a replacement is required, which may be motivated in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules as applied by rule **13.7** of these Rules.

Part 5: General rules of origin⁷⁴

Application of general rules of origin (section 178(b))

- 8.20** (1) The general rules of origin must be applied for determining the origin of—
- (a) all goods imported into the Republic, except goods referred to in subsection (2)(a); and
 - (b) all goods to be exported or exported from the Republic, except goods referred to in subsection (2)(b).
- (2) The general rules of origin do not apply to—
- (a) goods imported into the Republic and in respect of which preferential tariff treatment is or is to be claimed in the Republic under an ITA conferring preferential tariff treatment on goods originating in a country which is a party to the ITA;⁷⁵ or

⁷² See definition of “ordinary representative” in rule **1.1** of the Customs Control Rules and explanatory footnote.

⁷³ If the application is submitted in terms of section 920 of the Control Act, read with section 228 of the Customs Duty Act, by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of the Customs Control Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit applications on behalf of applicants in that capacity.

⁷⁴ See section 169 of the Customs Duty Act for the constituent parts of the general rules of origin.

⁷⁵ The origin of imported goods in respect of which preferential tariff treatment is claimed under an international trade agreement must be determined in accordance with the rules of origin in the agreement (see section 167(2)(a) of the Customs Duty Act).

- (b) goods to be exported or exported from the Republic and in respect of which preferential tariff treatment is or is to be claimed in the country to which the goods are exported under—
- (i) an ITA to which that country is a party conferring preferential tariff treatment on goods of South African origin;⁷⁶ or
 - (ii) a GSP implemented in that country for goods of South African origin.⁷⁷

Manner in which production cost of goods partially produced in a specific country is to be determined (section 171(3))⁷⁸

8.21 For purposes of section 171(1A)(a) of the Customs Duty Act, the production cost of goods referred to in that section—

- (a) includes—
- (i) the cost to the producer of all materials used directly in the production of the goods;
 - (ii) direct production expenses;
 - (iii) overhead factory expenses;
 - (iv) the cost of inside containers; and
 - (v) the cost of salaries and wages in respect of labour directly utilised in the production of those goods; and
- (b) excludes all costs incurred subsequent to the completion of the production of the goods, such as—
- (i) outside packages (including zinc linings, tarred paper and similar packaging) in which goods of that class or kind are ordinarily exported, and expenses in connection with the packing of goods therein;

⁷⁶ The question whether goods exported from the Republic are goods of South African origin for purposes of preferential tariff treatment under an international trade agreement in the country to which the goods are exported, must be determined in accordance with the rules of origin in the agreement (see section 167(3)(a) of the Customs Duty Act).

⁷⁷ The question whether goods exported from the Republic are goods of South African origin for purposes of preferential tariff treatment under a generalised system of preferences in the country to which the goods are exported, must be determined in accordance with the rules of origin made by that country for the implementation of that system (see section 167(4)(a) of the Customs Duty Act).

⁷⁸ This rule forms part of the **general rules of origin** referred to in section 169 of the Customs Duty Act. In terms of section 167 general rules of origin apply for determining the origin of goods only to the extent prescribed by rule under section 178(b) and as no such rule has been issued to apply the general rules for purposes of international trade agreements or generalised systems of preferences, the general rules will not apply when determining the origin of goods imported or exported under a trade agreement or exported under a generalised system of preferences.

- (ii) producer, supplier or exporter's profit, and the profit or remuneration of any trade broker or other person dealing with the goods in their finished form;
- (iii) royalties; and
- (iv) the cost of transport and insurance of the goods from the place of production in the country of export to the port or place of export in the that country.

Part 6: Other matters

Publication of information relating to origin determinations or re-determinations (section 177)

8.22 (1) Information contained in an origin determination or re-determination made in respect of goods may be made public only if—

- (a) publication of the information is likely to assist other persons required to make origin self-determinations when clearing goods of the same class or kind; and
- (b) the person who cleared the goods has given prior written permission⁷⁹ for the information to be published, subject to subrule (2).

(2) Subrule (1)(b) does not apply if the information does not disclose—

- (a) the name or personal particulars of the person who cleared the goods in respect of which the origin determination or re-determination was made;
- (b) the name and contact details of the person who supplied the goods;
- (c) the selling price or other particulars of the contract between the person who cleared the goods and the supplier; or
- (d) any other information that may prejudicially affect the competitive position of a person referred to in paragraph (a) or (b).

(3) Information referred to in subrule (1)—

- (a) may be published on the SARS website; and
- (b) does not bind any person, including the customs authority, except to the extent set out in section 158(1)(a) and (b).

⁷⁹ In the case where a person clearing goods applies for an origin determination in terms of rule 8.23 the applicant must indicate whether permission to publish is given or not.

Application for origin determination before clearance of goods (*section 178 read with section 174*)

8.23 (1) A person required to clear goods for home use or a customs procedure may before clearing the goods apply to the customs authority for an origin determination in terms of section 153 of the Customs Duty Act of such goods by submitting an application in terms of this rule to the customs authority electronically through eFiling, subject to rule **41.13** of the Customs Control Rules as applied by rule **13.4** of these Rules.⁸⁰

(2) An application referred to in subrule (1) must reflect—

- (a) the name and customs code of the person required to clear the goods;
- (b) if the application is submitted by a customs broker, registered agent or an ordinary representative⁸¹ on behalf of the applicant referred to in paragraph (a), the information specified in rule **41.14** of the Customs Control Rules as applied by rule **13.5** of these Rules;⁸²
- (c) a description of the goods, including—
 - (i) the nature and characteristics of the goods;
 - (ii) the use of the goods; and
 - (iii) the trade name of the goods;
- (d) the name, address and contact details of the producer or supplier of the goods;
- (e) the tariff classification of the goods that is most appropriate to the goods in the opinion of the applicant, subject to paragraph (f);
- (f) in the case of an application for an origin determination in relation to unassembled or disassembled articles referred to in section 174 of the Customs Duty Act—

⁸⁰ If Customs following an application issues an origin determination, section 152(3) of the Customs Duty Act, read with sections 158 and 159, will apply to the goods in respect of which the determination was given and also to future consignments of similar goods imported or exported by the person to whom the determination was issued.

⁸¹ See definition of "ordinary representative" in rule 1.1 of the Customs Control Rules and explanatory footnote.

⁸² If the application is submitted on behalf of the applicant by an ordinary representative in terms of section 920 of the Control Act read with section 228 of the Customs Duty Act, Part 5 of Chapter 41 of the Customs Control Rules will apply. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers or registered agents who submit documents in that capacity.

- (i) a request for such articles to be treated as one article for the purpose of determining the country in which the articles originated; and
- (ii) (aa) the tariff classification of the assembled article in terms of a tariff determination made by the customs authority; or
(bb) the reference number of an application submitted in terms of rule **6.4** for a tariff determination in relation to the assembled article;
- (iii) a motivation why the goods are not imported or exported in one consignment;
- (iv) the number of consignments in which the unassembled or disassembled articles are to be cleared;
- (v) the proposed shipping schedule for the consignments; and
- (vi) the places of entry or exit intended to be used;
- (g) in the case of goods—
 - (i) to be imported into the Republic, the country from which the goods are to be imported into the Republic; or
 - (ii) to be exported from the Republic, a statement that the goods are to be exported from the Republic; and
- (h) whether permission is given for the publication in terms of rule **8.22** of information to be contained in an origin determination or re-determination made in respect of the goods and if so, whether all the information may be published or only certain information as specified.

(3) The information referred to in subrule (2)(f) and (h) may be provided in separate supporting documents.

(4) An application referred to in subrule (1) must be supported by the following supporting documents:

- (a) Documentary evidence that the goods originated in a specific country with reference to the applicable rules of origin;
- (b) the invoice or other commercial document issued by the producer, supplier, exporter or other competent person in respect of the goods;
- (c) the bill of lading, air waybill or other transport document applicable to the goods;

- (d) documents evidencing the originating status of the goods, including, as may be applicable—
- (i) accounts or internal bookkeeping records and any other documents providing direct evidence of working or processing of materials carried out by the exporter or producer to obtain those goods;
 - (ii) clearance declarations, invoices and other documents proving the originating status of materials used in the production of those goods;
 - (iii) documents proving the identity of materials used in the production of those goods and containing sufficient particulars to determine their tariff headings;
 - (iv) documents proving the value of materials used and the value they added to those goods; and
 - (v) costing records showing the calculation of the ex-works cost applicable to the goods;
- (e) in the case of an application in circumstances referred to in subrule (2)(f) also—
- (i) the pro forma invoice;
 - (ii) descriptive literature in relation to the nature, characteristics, composition and use of the assembled article;
 - (iii) a copy of the tariff determination referred to in subrule (2)(f)(iii);
 - (iv) the overall packing list;
 - (v) the contract of sale and purchase for the assembled article; and
 - (vi) a document containing a schematic or technical diagram of the assembled article, clearly indicating the relationship between or order of assembly of the individual unassembled or disassembled articles making up the assembled article;
- (f) any photographs, plans, catalogues or other documents available to the applicant—
- (i) on the composition of the goods and their component materials; and
 - (ii) which may assist in describing the manufacturing process or the processing undergone by the materials used in the production of the goods; and
- (g) any methods of examination used to determine the composition of the goods.

(5) A supporting document referred to in subrule (3) or (4) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules as applied by rule **13.7** of these Rules.

(6) An applicant that submitted an application in terms of this rule must submit to the customs authority any additional information or document as the customs authority may request for purposes of making an origin determination in respect of the goods, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules as applied by rule **13.7** of these Rules.

DRAFT

CHAPTER 9
PREFERENTIAL TARIFF TREATMENT OF GOODS

Definitions

9.1 In this Chapter—

“goods for which a visa is required in terms of AGOA” means goods, consisting of textiles or clothing eligible for preferential treatment in terms of AGOA, as described in section 10.213 of Title 19 of the United States Code of Federal Regulations (19 CFR 10.213);

“GSP form”, in relation to—

- (a) the GSP administered by the United States of America in terms of AGOA, means any form or certificate prescribed or recognised in terms of AGOA as a requirement for goods of South African origin to qualify for preferential treatment under that Act when exported to the United States of America; or
- (b) the GSP administered by Norway, Russia or Turkey in terms of a law of that country, means any document or certificate prescribed or recognised in terms of that law of that country as a requirement for goods of South African origin to qualify for preferential treatment under that law when exported to that country;

“GSP legislative requirements”—

- (a) in relation to goods exported from the Republic to the United States of America, means the requirements contained or referred to in AGOA that must be complied with in order for goods of South African origin to receive preferential tariff treatment under AGOA when exported to the United States of America;
- (b) in relation to goods exported from the Republic to Norway, Russia or Turkey, means the requirements contained or referred to in the Norwegian, Russian or Turkish law establishing a GSP that must be complied with in order for goods of South African origin to receive preferential tariff treatment under that law when exported to that country; and

(c) includes the rules of origin to be applied for determining the origin of goods for purposes of AGOA or the Norwegian, Russian or Turkish GSP, as the case may be;

“ITA form” means any form or certificate prescribed or recognised in an ITA as a requirement for goods of South African origin to qualify for preferential treatment under that ITA when exported to a country which is a party to the ITA;

“NAFTA” means the North American Free Trade Agreement;

“Russia” means the Russian Federation.

Part 1: Goods imported into Republic under ITAs for preferential tariff treatment

Duty on importers to determine requirements for preferential tariff treatment of goods imported under ITAs

9.2 An importer who wishes to claim preferential tariff treatment under an ITA for goods imported into the Republic from a country which is a party to the ITA must, before claiming the preferential treatment, determine the specific requirements of the ITA to be complied with for such preferential tariff treatment, including the rules of origin to be used for determining the origin of goods for purposes of the ITA.⁸³

Compliance with other applicable legislation

9.3 Compliance with an ITA does not absolve an importer who imports goods from a country which is a party to the ITA from compliance with any applicable provision of the Control Act, the Customs Duty Act or other legislation.⁸⁴

⁸³ Note that international trade agreements conferring preferential tariff treatment on imported goods exported to the Republic from countries which are parties to such agreements, are as a general rule always enacted as law in the Republic. As part of the law of the Republic these agreements bind importers and other persons to which the agreement applies. See section 921 of the Control Act and the definition of “international trade agreement” in section 1 of the Customs Duty Act.

⁸⁴ Although such an importer is not required to have an importer’s registration specifically for the ITA, the importer is nevertheless required to register as a general importer in terms of section 603 of the Control Act. See also rule **28.2** of the Customs Control Rules.

Part 2: Goods of South African origin exported under ITAs for preferential tariff treatment

Duty on exporters to determine requirements for preferential tariff treatment of goods of South African origin exported under ITAs (section 181)

9.4 An exporter who wishes to claim preferential tariff treatment under an ITA for goods of South African origin exported to a country which is a party to the ITA must, before exporting the goods to that country, determine the specific requirements of the ITA to be complied with for such preferential tariff treatment, including the rules of origin to be used for determining the origin of goods for purposes of the ITA.⁸⁵

Customs authority's role to facilitate compliance with ITAs for preferential tariff treatment of goods of South African origin (section 181)

9.5 The customs authority's role to facilitate compliance with the requirements of an ITA for preferential tariff treatment of goods of South African origin includes—

- (a) the administration of a registration system for producers and exporters of goods of South African origin for purposes of the different ITAs;
- (b) the keeping, controlling and, on application, making available serially numbered forms required under the different ITAs;
- (c) the administration of a certification system to provide documentary evidence of origin for goods exported under an ITA;
- (d) the provision of assistance to customs administrations of countries which are parties to ITAs; and
- (e) the imposition of recordkeeping requirements for exporters under ITAs.

Registration of exporters of goods of South African origin for export under ITAs (section 182)⁸⁶

9.6 (1) No exporter may clear goods for export from the Republic under an ITA that confers preferential tariff treatment on goods of South African origin unless the

⁸⁵ Note that international trade agreements conferring preferential tariff treatment on goods of South African origin exported to countries which are parties to such agreements, are as a general rule always enacted as law in the Republic. As part of the law of the Republic, these agreements bind exporters and other persons to which the agreement applies. See section 921 of the Control Act and the definition of "international trade agreement" in section 1 of the Customs Duty Act.

⁸⁶ Note that these registrations are in addition to a general exporter's registration required in terms of section 603 of the Control Act. See also rule **28.3** of the Customs Control Rules.

exporter is registered in terms of Chapter 28 of the Control Act as an exporter for purposes of that ITA.⁸⁷

(2) No exporter of goods registered for purposes of SADC EPA and SACU-EFTA is entitled to the benefits⁸⁸ of an approved exporter under that agreement unless that exporter is registered in terms of Chapter 28 of the Customs Control Act also as an approved exporter for purposes of that agreement.

Registration of producers of goods of South African origin for export under ITAs (section 182)

9.7 No product may be cleared for export from the Republic as goods of South African origin under an ITA which confers preferential tariff treatment on goods of South African origin unless the producer⁸⁹ of that product is in relation to that product registered in terms of Chapter 28 of the Control Act as a producer of goods of South African origin for purposes of that ITA.⁹⁰

Qualifications for registration and renewal of registration (section 182)

9.8 No person may be registered for a purpose set out in rule **9.6** or **9.7**, and no person's registration for such a purpose may be renewed, unless—

- (a) that person qualifies for registration for that purpose, or for renewal of such registration, in terms of Chapter 28 of the Control Act read with Chapter 28 of the Customs Control Rules; and
- (b) that registration or renewal of registration is consistent with the requirements of the ITA for which that person is to be registered or re-registered.

Application for blank ITA forms for use as documentary evidence of origin (sections 181 and 182)

⁸⁷ Rule **28.3(b)** to **(e)** of the Customs Control Rules assigns exporter registration types for the different international trade agreements conferring preferential tariff treatment to goods of South African origin, each type covering exporter registrations for a specific international trade agreement.

⁸⁸ For instance to have the right to declare on an invoice or other commercial document that the goods are of South African origin.

⁸⁹ Manufacturers of goods are included under the definition of "producer" in section 1 of the Control Act.

⁹⁰ Rule **28.7(2)(a)** to **(d)** of the Customs Control Rules assigns producer registration types for the different international trade agreements conferring preferential tariff treatment to goods of South African origin, each type covering producer registrations for a specific international trade agreement.

9.9 (1) Serially numbered blanks of the forms that are required or recognised in terms of the different ITAs as documentary evidence of origin for goods of South African origin if certified by the customs authority, are on written application available from any of the Customs Offices indicated for that purpose on the SARS website.

(2) An exporter registered for a specific ITA and who intends to claim preferential tariff treatment under the ITA for goods of South African origin to be exported by that exporter to a country that is a party to the ITA, may apply to the customs authority for a quantity of blank forms referred to in subrule (1) to be used for that exporter's exports of goods of South African origin to that country.

(3) (a) An application referred to in subrule (2) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13** of the Customs Control Rules as applied by rule **13.4** of these Rules.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** of the Customs Control Rules in paper format, the application must be submitted to a Customs Office referred to in subrule (1).

(4) An application for blank forms must reflect—

- (a) the name and customs code of the exporter;
- (b) if the application is submitted by a customs broker, registered agent or an ordinary representative⁹¹ on behalf of an applicant referred to in paragraph (a), the information specified in rule **41.14** of the Customs Control Rules as applied by rule **13.5** of these Rules;⁹²
- (c) the ITA under which preferential tariff treatment is to be claimed;
- (d) the country or countries to which the exporter intends to export goods of South African origin under the ITA;
- (e) the specific blank forms required;

⁹¹ See definition of "ordinary representative" in rule **1.1** of the Customs Control Rules and explanatory footnote.

⁹² If the application is submitted in terms of section 920 of the Control Act, read with section 228 of the Customs Duty Act, by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of the Customs Control Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit applications on behalf of applicants in that capacity.

- (f) the number of blank forms required;
- (g) the class or kind, and tariff headings, of goods for which those forms will be used;
- (h) the projected number of consignments to be exported over a specified period to the country or countries referred to in paragraph (d);
- (i) a signed declaration by the exporter that the goods to be exported meet the requirements of the ITA for which the blank forms applied for will be used; and
- (j) how the goods meet the requirements for goods of South African origin with reference to the rules of origin prescribed or recognised by the ITA, which may be explained in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules as applied by rule 13.7 of these Rules.

(5) An exporter must—

- (a) account for all blank ITA forms received in terms of this rule;⁹³
- (b) in the event of any blank ITA forms being lost or destroyed, furnish the customs authority with an affidavit explaining the circumstances in which the document got lost or destroyed; and
- (c) return to the customs authority any cancelled or spoiled blank ITA forms.

(6) Blank ITA forms issued in terms of this rule may be used only by or on behalf of the exporter to whom they have been issued.

Application for certification of goods as goods of South African origin (sections 181 and 182)

9.10 (1) An exporter registered for a specific ITA and who intends to claim preferential tariff treatment under the ITA for goods of South African origin to be exported by that exporter to a country which is a party to the ITA, must apply to the customs authority for certification of the information given on the ITA form required in

⁹³ When blank ITA forms are issued to an applicant, the serial numbers of the blank forms will be recorded against the name of the applicant.

terms of that ITA,⁹⁴ by providing the following additional information in the export clearance declaration submitted in terms of section 367 of the Control Act in respect of the goods:

- (a) That preferential tariff treatment is to be claimed under an ITA to which the country to which the goods are exported is a party;
- (b) the name of the ITA under which preferential tariff treatment is to be claimed;
- (c) that the goods to be exported are goods of South African origin according to the rules of origin applicable to that ITA;
- (d) the serial number of the ITA form referred to in paragraph (a) to be submitted to the customs authority for certification; and
- (e) the number and date of any invoice or other commercial document issued by the producer, supplier or exporter in connection with the goods.

(2) A customs broker authorised in the exporter's clearance instructions to do so, or the exporter's registered agent if the exporter is a non-local exporter, may apply on behalf of an exporter in terms of subrule (1) for certification of information on an ITA form as contemplated in that subrule.

(3) An application for certification must be submitted before the goods are exported from the Republic, subject to rule **9.11**.

(4) An application for certification in terms of subrule (1) must be supported by the following documents, which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules as applied by rule **13.7** of these Rules:

- (a) Documentary evidence that the goods originated in the Republic within the meaning of the applicable rules of origin;⁹⁵
 - (b) the invoice or other commercial document issued by the producer, supplier, exporter or other competent person in respect of the goods;
 - (c) the bill of lading, air waybill or other transport document applicable to the goods;
- and

⁹⁴ For both the SADC EPA and SACU-EFTA the EUR 1 Movement Certificate is required.

⁹⁵ See section 167(3) of the Customs Duty Act.

- (d) documents evidencing the originating status of the goods to be exported, including, as may be applicable—
 - (i) accounts or internal bookkeeping records and any other documents providing direct evidence of working or processing of materials carried out by the exporter or producer to obtain those goods;
 - (ii) clearance declarations, invoices and other documents proving the originating status of materials used in the production of those goods;
 - (iii) documents proving the identity of materials used in the production of those goods and containing sufficient particulars to determine their tariff headings;
 - (iv) documents proving the value of materials used and the value they added to those goods; and
 - (v) costing records showing the calculation of the ex-works cost as defined in the relevant ITA;
- (e) the relevant ITA form obtained from the customs authority in terms of rule **9.9**, filled in by the exporter to the extent possible before clearance of the goods; and
- (f) if the exporter is not the producer of the goods, a declaration of origin by the producer complying with the relevant ITA or, if not required by the ITA, complying with rule **8.7(1)** to the extent possible before clearance of the goods.

(5) (a) Upon being notified of the release of the goods by the customs authority, the exporter⁹⁶ must present the following documents at any Customs Office designated by the Commissioner in terms of section 14 of the Control Act for certifying information provided on ITA forms:

- (i) The ITA form referred to in subrule (4)(e); and
- (ii) the declaration of origin by the producer referred to in subrule (4)(f), if the exporter is not the producer of the goods.

(b) A customs officer must upon presentation of those documents perform the physical certification procedure by affixing a stamp and a signature to the ITA form.

⁹⁶ Note that a customs broker or registered agent referred to in subrule (2) may also present the documents referred to in subrule (5) at the relevant Customs Office for certifying information provided on an ITA form.

Application for retrospective certification of goods as goods of South African origin (*sections 181 and 182*)

9.11 (1) An exporter registered for a specific ITA and who for purposes of preferential tariff treatment under the ITA in a country which is a party to the ITA requires from the customs authority documentary evidence of origin for goods of South African origin already exported to that country, must apply for retrospective certification of the goods as goods of South African origin by submitting an amended export clearance declaration in terms of section 174 of the Control Act—

- (a) providing in respect of the goods the additional information specified in rule **9.10(1)(a)** to (e), insofar as that information has not already been provided in the clearance declaration; and
- (b) containing an indicator that the amended clearance declaration serves as an application for retrospective certification.

(2) An application referred to in subrule (1) may be accepted only in the following circumstances:

- (a) Where the applicant can show that the late submission was due to—
 - (i) an error that was not the applicant's fault;
 - (ii) an omission that occurred inadvertently and in good faith; or
 - (iii) other special circumstances accepted by the customs authority as sufficient excuse for late submission; or
- (b) where the application was submitted timeously in terms of rule **9.10(3)**, but the document certifying the origin of the goods was due to a technical defect or another technical reason not accepted on importation of the goods in the country to which the goods were exported.

(3) (a) An application referred to in subrule (1) must in addition to the documents referred to in rule **9.10(4)** be supported by any documents substantiating the reasons for late submission of the application.

(b) A document referred to in paragraph (a) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules as applied by rule **13.7** of these Rules.

(4) (a) Upon issuing by the customs authority of a release notification contemplated in section 174(4)(b) of the Control Act, the exporter⁹⁷ must present the following documents at any Customs Office designated by the Commissioner in terms of section 14 of the Control Act for certifying information provided on ITA forms, to enable a customs officer to perform the physical certification procedure by affixing a stamp and a signature to the hard copy of the document:

- (i) The ITA form referred to in rule **9.10** (4)(e); and
- (ii) the declaration of origin by the producer referred to in rule **9.10** (4)(f), if the exporter is not the producer of the goods.

(b) A customs officer must upon presentation of those documents perform the physical certification procedure by affixing a stamp and a signature to the ITA form.

Application for replacement of certified ITA forms (*sections 181 and 182*)

9.12 (1) If an ITA form certified in terms of rule **9.10** or **9.11** has been lost or destroyed, that certified ITA form may be replaced on written application to the customs authority by the exporter of the goods to which the certification relates.

(2) (a) An application referred to in subrule (1) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13** of the Customs Control Rules as applied by rule **13.4** of these Rules.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** of the Customs Control Rules in paper format, the application must be submitted to the Customs Office referred to in rule **9.10(5)(a)** or **9.11(4)(a)**.

(3) An application referred to in subrule (1) must reflect—

- (a) the name and customs code of the exporter;
- (b) if the application is submitted by a customs broker, registered agent or an ordinary representative⁹⁸ on behalf of an applicant referred to in paragraph

⁹⁷ Note that a customs broker or registered agent authorised in terms of rule **9.10(2)** to apply on behalf of an exporter for certification of information on an ITA form may also present the documents referred to in subrule (4) at the relevant Customs Office for certifying such information.

⁹⁸ See definition of “ordinary representative” in rule **1.1** of the Customs Control Rules and explanatory footnote.

- (a), the information specified in rule **41.14** of the Customs Control Rules as applied by rule **13.5** of these Rules;⁹⁹
- (c) the serial number and date of the certified ITA form;
- (d) that the application is for a replacement of the certified ITA form; and
- (e) the reason why a replacement is required, which may be motivated in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules as applied by rule **13.7** of these Rules.

Recordkeeping for purposes of ITAs

9.13 (1) An exporter registered for purposes of exporting goods of South African origin to a country which is a party to an ITA must, for the period determined in the ITA or, if no period is determined, for a period of five years from the date of export of the goods, keep and maintain complete books, accounts and other records as may be required in terms of the ITA, including books, accounts and records in respect of—

- (a) the production, and all materials used in the production, of the goods exported to that country;
- (b) the purchase, cost and value of, and payment for, the goods so exported and all materials, including indirect materials, used in the production of the goods so exported;
- (c) proof of the origin of the goods exported and of all materials used in the production of such goods in accordance with the rules of origin applicable in terms of the ITA; and
- (d) the export of the goods.

(2) For the purpose of subrule (1) books, accounts and other records must in particular include the following:

- (a) Evidence of working or processing of materials carried out by the exporter or producer to obtain the goods concerned;

⁹⁹ If the application is submitted in terms of section 920 of the Control Act, read with section 228 of the Customs Duty Act, by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of the Customs Control Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit applications on behalf of applicants in that capacity.

- (b) documents proving the identity of materials used in the production and containing sufficient particulars to determine the tariff heading and subheading thereof;
- (c) documents proving the value of materials used as well as added value;
- (d) costing records showing the calculation of the ex-works cost determined in terms of the ITA;
- (e) serially numbered invoices of goods sold for export;
- (f) copies of any documentary evidence of origin in relation to the goods; and
- (g) copies of all export documents in relation to the goods, including transport documents.

(3) Any books, accounts and other records referred to in subrule (1) must be—

- (a) consistent with generally accepted accounting principles appropriate for providing evidence of the originating status of the goods and for fulfilling the other requirements of the ITA; and
- (b) prepared and kept subject to and in accordance with Part 7 of Chapter 41 of the Customs Control Rules as applied by rule **13.8** of these Rules.

Part 3: Goods of South African origin exported under GSPs for preferential tariff treatment

Duty on exporters to determine requirements for preferential tariff treatment under GSPs (sections 183 and 184)

9.14 An exporter who wishes to claim preferential tariff treatment under AGOA or a GSP implemented by Russia, Norway or Turkey for goods of South African origin exported to the United States of America, Russia,¹⁰⁰ Norway¹⁰¹ or Turkey,¹⁰² as the

¹⁰⁰ The following uncertified English translations of Russian GSP documents received from the SA Embassy in Moscow are available on the SARS website:

- * An agreement between the Governments of the Commonwealth of Independent States on the rules for determining the origin of goods from developing countries for granting tariff preferences within the GSP (Moscow, April 12, 1996);
- * Appendix to that Agreement;
- * Protocol on the amendments and addenda to the rules for determining the origin of goods from developing countries when granting tariff preferences within the general system, dated 12 April 1996;
- * Enclosure to the Protocol. (The requirements for completing the certificate of origin (Form A) - combined declaration and certificate); and

case may be, must before exporting the goods to that country determine the specific requirements of AGOA or the GSP of the other country to be complied with for such preferential tariff treatment, including the rules of origin to be used for determining the origin of goods for purposes of AGOA or that GSP.

Customs authority's role to facilitate compliance with GSP legislative requirements for preferential tariff treatment of goods of South African origin
(*section 183*)

9.15 The customs authority's role to facilitate compliance with GSP legislative requirements includes—

- (a) the administration of a registration system for producers and exporters of goods of South African origin for purposes of the different GSPs;
- (b) the keeping, controlling and, on application, making available serially numbered forms required under the different GSPs;
- (c) the administration of a certification system to provide documentary evidence of origin for goods exported for preferential treatment under a GSP;
- (d) the provision of assistance to customs administrations of countries implementing GSPs for goods of South African origin;¹⁰³ and
- (e) the imposition of recordkeeping requirements for exporters under the GSPs.

Registration of exporters of goods of South African origin exported to countries implementing GSPs¹⁰⁴ (*section 185*)

* List of goods imported into the territory of the Russian Federation to which the regime of preferences is applied.

¹⁰¹ For Norway consult the Generalised System of Preferences for import of goods from Developing Countries GSP – contained in –

* the Act on Customs Duties and Movement of Goods (21.12.2007) – Chapter 8 section 8-3 to 8-5 relates to the granting of preferential tariffs on the basis of GSPs for developing countries; and

* Regulation to the Act on Customs Duties and Movement of Goods (17.12.2008).

¹⁰² The following uncertified English translation of the Turkish GSP document, received from the Undersecretariat of Customs, Turkey, is available on the SARS website:

“Consolidated Decision on Determination of Origin of Goods Benefiting from Preferential Regime for the purpose of the Generalised System of Preferences” [No. 2001/3485], and stated to have been published and amended as follows:

- (A) Published on 30 December 2001/24626
- (B) amended on 9 October 2003/25254
- (C) amended on 24 March 2004/25408.

¹⁰³ The provision of assistance by the customs authority includes, in the case of exports under AGOA, the furnishing of reports on such exports when, and in the manner in which, required by the United States Customs Service.

¹⁰⁴ Rule 28.3(f) to (j) of the Customs Control Rules assigns exporter registration types for the different countries implementing a GSP for goods of South African origin, each type covering exporter registrations for a specific

9.16 No exporter may clear goods for export from the Republic under the GSP of a country implementing the GSP for goods of South African origin unless that person is registered in terms of Chapter 28 of the Control Act as an exporter for purposes of that country's GSP.

Registration of producers of goods of South African origin exported to countries implementing GSPs (*section 185*)

9.17 No product may be cleared for export from the Republic as goods of South African origin under the GSP of a country implementing the GSP for goods of South African origin unless the producer of that product is in relation to that product registered in terms of Chapter 28 of the Control Act as a producer of goods of South African origin for purposes of that country's GSP.¹⁰⁵

Qualifications for registration and renewal of registration

9.18 No person may be registered for a purpose set out in rule **9.16** or **9.17**, and no person's registration for such a purpose may be renewed, unless—

- (a) that person qualifies for registration for that purpose, or for renewal of such registration, in terms of Chapter 28 of the Control Act read with Chapter 28 of the Customs Control Rules; and
- (b) that registration or renewal of registration is consistent with the requirements of the GSP for which that person is to be registered or re-registered.

Application for blank GSP forms for use as documentary evidence of origin

9.19 (1) Serially numbered blanks of the forms that are required or recognised in terms of the different GSPs as documentary evidence of origin for goods of South African origin if certified by the customs authority,¹⁰⁶ are on written application available from any of the Customs Offices indicated for that purpose on the SARS website.

country's GSP.

¹⁰⁵ Rule **28.7(2)(e)** to *(h)* of the Customs Control Rules assigns producer registration types for the different countries implementing a GSP for goods of South African origin, each type covering producer registrations for a specific country's GSP.

¹⁰⁶ For AGOA the SA customs authority will only keep blank certificates of origin for textiles and clothing as these are required to be certified by the SA customs authority.

(2) An exporter registered for the GSP of a specific country and who intends to claim preferential tariff treatment under the GSP of that country for goods of South African origin to be exported by that exporter to that country, may apply to the customs authority for a quantity of blank GSP forms referred to in subrule (1) to be used for that exporter's exports of goods of South African origin to that country.

(3) (a) An application referred to in subrule (1) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13** of the Customs Control Rules as applied by rule **13.4** of these Rules.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** of the Customs Control Rules in paper format, the application must be submitted to a Customs Office referred to in subrule (1).

(4) An application for blank GSP forms must reflect—

- (a) the name and customs code of the exporter;
- (b) if the application is submitted by a customs broker, registered agent or an ordinary representative¹⁰⁷ on behalf of the applicant referred to in paragraph (a), the information specified in rule **41.14** of the Customs Control Rules as applied by rule **13.5** of these Rules;¹⁰⁸
- (c) the GSP under which preferential tariff treatment is to be claimed;
- (d) the specific blank forms required;
- (e) the number of blank forms required;
- (f) the class or kind, and tariff headings, of goods for which those forms will be used;
- (g) the projected number of consignments to be exported over a specified period to the country implementing that GSP;

¹⁰⁷ See definition of "ordinary representative" in rule **1.1** of the Customs Control Rules and explanatory footnote.

¹⁰⁸ If the application is submitted in terms of section 920 of the Control Act, read with section 228 of the Customs Duty Act, by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of the Customs Control Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit applications on behalf of applicants in that capacity.

- (h) a signed declaration by the exporter that the goods to be exported meet the requirements of the GSP for which the blank GSP forms applied for will be used; and
- (i) how the goods meet the requirements for goods of South African origin with reference to the rules of origin prescribed or recognised by the GSP, which may be explained in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules as applied by rule 13.7 of these Rules.

(5) An exporter must—

- (a) account for all blank GSP forms received in terms of this rule;¹⁰⁹
- (b) in the event of any blank GSP forms being lost or destroyed, furnish the customs authority with an affidavit explaining the circumstances in which the document got lost or destroyed; and
- (c) return to the customs authority any cancelled or spoiled blank GSP forms.

(6) Blank GSP forms issued in terms of this rule may be used only by or on behalf of the exporter to whom they have been issued.

Application for certification of goods as goods of South African origin

9.20 (1) An exporter registered for the GSP of a country implementing the GSP for goods of South African origin exported to that country and who intends to claim preferential tariff treatment under the GSP for goods of South African origin to be exported by that exporter to that country, must apply to the customs authority for certification of the information given on the GSP form required in terms of that GSP,¹¹⁰ by providing the following additional information in the export clearance declaration submitted in terms of section 367 of the Control Act in respect of the goods:

- (a) That preferential tariff treatment is to be claimed under a GSP implemented by the country to which the goods are exported;

¹⁰⁹ When blank GSP forms are issued to an applicant, the serial numbers of the blank forms will be recorded against the name of the applicant.

¹¹⁰ For AGOA the AGOA “Textile Certificate of Origin” is required. For Russia, Norway and Turkey the Certificate of Origin “Form A” is required.

- (b) the name of the GSP under which preferential tariff treatment is to be claimed;
- (c) that the goods to be exported are goods of South African origin according to the rules of origin applicable to that GSP;
- (d) the serial number of the GSP form referred to in paragraph (a) to be submitted to the customs authority for certification; and
- (e) the number and date of any invoice or other commercial document issued by the producer, supplier, exporter or other competent person in connection with the goods.

(2) A customs broker authorised in the exporter's clearance instructions to do so, or the exporter's registered agent if the exporter is a non-local exporter, may apply on behalf of an exporter in terms of subrule (1) for certification of information on a GSP form as contemplated in that subrule.

(3) An application for certification must be submitted before the goods are exported from the Republic, subject to rule **9.21**.

(4) An application for certification in terms of subrule (1) must be supported by the following documents, which must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules as applied by rule **13.7** of these Rules:

- (a) Documentary evidence that the goods originated in the Republic within the meaning of the applicable rules of origin;¹¹¹
- (b) the invoice or other commercial document issued by the producer, supplier, exporter or other competent person in respect of the goods;
- (c) the bill of lading, air waybill or other transport document applicable to the goods;
- (d) documents evidencing the originating status of the goods to be exported, including, as may be applicable—
 - (i) accounts or internal bookkeeping records and any other documents providing direct evidence of working or processing of materials carried out by the exporter or producer to obtain those goods;

¹¹¹ See section 167(4) of the Customs Duty Act.

- (ii) clearance declarations, invoices and other documents proving the originating status of materials used in the production of those goods;
 - (iii) documents proving the identity of materials used in the production of those goods and containing sufficient particulars to determine their tariff headings;
 - (iv) documents proving the value of materials used and the value they added to those goods; and
 - (v) costing records showing the calculation of the ex-works cost as defined in the relevant GSP;
- (e) the relevant GSP form obtained from the customs authority in terms of rule **9.19**, filled in by the exporter to the extent possible before clearance of the goods;
- (f) if the exporter is not the producer of the goods, a declaration of origin by the producer complying with the relevant GSP or, if not required by the GSP, complying with rule **8.7(1)** to the extent possible before clearance of the goods; and
- (g) if the goods are to be exported to the United States of America and those goods consist of goods for which a visa is required in terms of AGOA—
- (i) an AGOA visa application,¹¹² completed on the form published for that purpose on the SARS website in accordance with subrule (7); and
 - (ii) the invoice or other commercial document issued by the producer, supplier, exporter or other competent person in connection with those goods.

(5) An invoice or commercial document referred to in subrule (4)(g)(ii) must comply with any requirements as prescribed or recognised in terms of AGOA.

(6) (a) Upon being notified of the release of the goods by the customs authority, the exporter¹¹³ must present the following documents at any Customs

¹¹² Note that the applicant must on request submit to the customs authority any supporting documents that may be required for purposes of considering the application for a visa.

¹¹³ Note that a customs broker or registered agent referred to in subrule (2) may also present the documents referred to in subrule (6) at the Customs Office for certifying information provided on a GSP form.

Office designated by the Commissioner in terms of section 14 of the Control Act for certifying information provided on GSP forms:

- (i) The GSP form referred to in subrule (4)(e);
- (ii) the declaration of origin by the producer referred to in subrule (4)(f), if the exporter is not the producer of the goods; and
- (iii) the completed visa application and invoice or other commercial document referred to in subrule (4)(g), in the case of an export to the United States of America of goods for which a visa is required in terms of AGOA.

(b) A customs officer must upon presentation of those documents perform the physical certification procedure—

- (i) by affixing a stamp and a signature to the GSP form; and
- (ii) if paragraph (a)(iii) applies, by endorsing the invoice or other commercial document with the required visa, complying with AGOA requirements.

(7) An AGOA visa application form must –

- (a) be completed in accordance with the instructions printed on the form; and
- (b) reflect –

- (i) the name and customs code of the applicant;
- (ii) if the application is submitted by a customs broker or registered agent on behalf of the applicant, the information specified in rule **41.14** of the Customs Control Rules as applied by rule **13.5** of these Rules;
- (iii) the name and customs code of the producer of the goods;
- (iv) the name and address, including the country of –
 - (aa) the importer of the goods;
 - (bb) the United States/African fabric producer in respect of the goods;
 - (cc) the United States/African yarn producer in respect of the goods; and
 - (dd) the United States thread producer in respect of the goods;
- (v) the preference group which applies to the goods according to the description contained in the relevant provision of section 10.213 of Title 19 of the United States Code of Federal Regulations, which must be indicated by –

- (aa) “1”: For apparel assembled from United States-formed and cut fabric from United States yarn [19 CFR 10.213 (a)(1)];
 - (bb) “2”: For apparel assembled and further processed from US-formed and cut fabric from United States yarn [19 CFR 10.213 (a)(2)];
 - (cc) “3”: For apparel cut and assembled from United States fabric from United States yarn and thread [19 CFR 10.213 (a)(3)];
 - (dd) “4”: For apparel assembled from regional fabric from yarn originating in the United States or one or more beneficiary countries [19 CFR 10.213 (a)(4)];
 - (ee) “5”: For apparel assembled in one or lesser developed beneficiary countries [19 CFR 10.213 (a)(5)];
 - (ff) “6”: For sweaters knit to shape in chief weight or cashmere [19 CFR 10.213 (a)(6)];
 - (gg) “7”: For sweaters knit to shape with 50 per cent or more by weight or fine [19 CFR 10.213 (a)(7)];
 - (hh) “8”: For apparel cut and assembled in one or more beneficiary countries from fabrics or yarn not formed in the United States or a beneficiary country (as identified in NAFTA) or designated as not available in commercial quantities in the United States [19 CFR 10.213 (a)(8) or (a)(9)]; and
 - (ii) “9”: For hand loomed, handmade or folklore articles [19 CFR 10.213 (a)(10)];
- (vi) a description of the goods, including the total quantity in the shipment and unit in which the quantity is expressed;
 - (vii) in the case of goods indicated as preference group “9”, a statement that the article is hand loomed or handmade or the name of the folklore article;
 - (viii) in the case of goods indicated as preference group “8”, the name of the fabric or yarn that is not formed in the United States of America or a beneficiary country (as identified in NAFTA) or designated as not available in commercial quantities in the United States of America; and
 - (ix) any other information required by the customs authority on the form.

Application for retrospective certification of goods as goods of South African origin

9.21 (1) An exporter registered for the GSP of a country implementing the GSP for goods of South African origin and who, for purposes of preferential tariff treatment under the GSP, requires from the customs authority documentary evidence of origin for goods of South African origin already exported to that country, must apply for retrospective certification of the goods as goods of South African origin by submitting an amended export clearance declaration in terms of section 174 of the Control Act—

- (a) providing in respect of the goods the additional information specified in rule **9.20(1)(a) to (e)**, insofar as that information has not already been provided in the clearance declaration; and
- (b) containing an indicator that the amended clearance declaration serves as an application for retrospective certification.

(2) An application referred to in subrule (1) may be accepted only in the following circumstances:

- (a) Where the applicant can show that the late submission was due to—
 - (i) an error that was not the applicant's fault;
 - (ii) an omission that occurred inadvertently and in good faith; or
 - (iii) other special circumstances accepted by the customs authority as sufficient excuse for late submission; or
- (b) where the application was submitted timeously in terms of rule **9.20(3)**, but the document certifying the origin of the goods was due to a technical defect or another technical reason not accepted on importation of the goods in the country implementing the GSP.

(3) (a) An application referred to in subrule (1) must in addition to the documents referred to in rule **9.20(4)** be supported by any documents substantiating the reasons for late submission of the application.

(b) A document referred to in paragraph (a) must be submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules as applied by rule **13.7** of these Rules.

(4) (a) Upon issuing by the customs authority of a release notification contemplated in section 174(4)(b) of the Control Act, the exporter¹¹⁴ must present the following documents at any Customs Office designated by the Commissioner in terms of section 14 of the Control Act for certifying information provided on GSP forms:

- (i) The GSP form referred to in rule **9.20(4)(e)**;
- (ii) the declaration of origin by the producer referred to in rule **9.20(4)(f)**, if the exporter is not the producer of the goods; and
- (iii) the completed visa application and invoice or other commercial document referred to in rule **9.20(4)(g)**, in the case of an export to the United States of America of goods for which a visa is required in terms of AGOA.

(b) A customs officer must upon presentation of those documents perform the physical certification procedure—

- (i) by affixing a stamp and a signature to the GSP form; and
- (ii) if paragraph (a)(iii) applies, by endorsing the invoice or other commercial document with the required visa.

Application for replacement of certified GSP forms

9.22 (1) If a GSP form certified in terms of rule **9.20** or **9.21** has been lost or destroyed, that certified GSP form may be replaced on written application to the customs authority by the exporter of the goods to which the certification relates.

(2) (a) An application referred to in subrule (1) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13** of the Customs Control Rules as applied by rule **13.4** of these Rules.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** of the Customs Control Rules in paper format, the application must be submitted to the Customs Office referred to in rule **9.20(6)(a)** or **9.21(4)(a)**.

(3) An application referred to in subrule (1) must reflect—

¹¹⁴ Note that a customs broker or registered agent authorised in terms of rule **9.20(2)** to apply on behalf of an exporter for certification of information on a GSP form may also present the documents referred to in subrule (4) at the relevant Customs Office for certifying such information.

- (a) the name and customs code of the exporter;
- (b) if the application is submitted by a customs broker, registered agent or an ordinary representative¹¹⁵ on behalf of an applicant referred to in paragraph (a), the information specified in rule **41.14** of the Customs Control Rules as applied by rule **13.5** of these Rules;¹¹⁶
- (c) the serial number and date of the certified GSP form;
- (d) that the application is for a replacement of the certified GSP form; and
- (e) the reason why a replacement is required, which may be motivated in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules as applied by rule **13.7** of these Rules.

Recordkeeping for purposes of GSPs

9.23 (1) An exporter registered for purposes of exporting goods of South African origin to a country implementing a GSP for goods of South African origin must, for the period determined in the GSP or, if no period is determined, for a period of five years after the export of goods, keep and maintain complete books, accounts and other records as may be required in terms of the GSP, including books, accounts and records in respect of—

- (a) the production, and all materials used in the production, of the goods exported to that country;
- (b) in the case of goods exported to the United States of America in terms of AGOA—
 - (i) the types of machinery used in the production of the goods, including the number of machines used; and
 - (ii) the number of workers employed in the production of the goods;
- (c) the purchase, cost and value of, and payment for, the goods so exported and all materials, including indirect materials, used in the production of the goods so exported;

¹¹⁵ See definition of “ordinary representative” in rule **1.1** of the Customs Control Rules and explanatory footnote.

¹¹⁶ If the application is submitted in terms of section 920 of the Control Act, read with section 228 of the Customs Duty Act, by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of the Customs Control Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit applications on behalf of applicants in that capacity.

- (d) proof of the origin of the goods so exported and of all materials used in the production of those goods in accordance with the rules of origin applicable in terms of the GSP; and
- (e) the export of the goods.

(2) For the purpose of subrule (1) books, accounts and other records must in particular include the following:

- (a) Evidence of working or processing of materials carried out by the exporter or producer to obtain the goods concerned;
- (b) documents proving the identity of materials used in the production and containing sufficient particulars to determine the tariff heading and subheading thereof;
- (c) documents proving the value of materials used as well as added value;
- (d) costing records showing the calculation of the ex-works cost as determined in terms of the GSP;
- (e) serially numbered invoices of goods sold for export;
- (f) copies of any documentary evidence of origin in relation to the goods; and
- (g) copies of all export documents in relation to the goods, including transport documents.

(3) Any books, accounts and other records referred to in subrule (1) must be—

- (a) consistent with generally accepted accounting principles appropriate for providing evidence of the originating status of the goods and for fulfilling the other requirements of the GSP; and
- (b) prepared and kept subject to and in accordance with Part 7 of Chapter 41 of the Customs Control Rules as applied by rule **13.8** of these Rules.

CHAPTER 10
ADVANCE RULINGS¹¹⁷

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¹¹⁷ No rules required for this Chapter at this stage.

CHAPTER 11

ADMINISTRATIVE PENALTIES

Contents of notices imposing fixed amount penalties (*sections 202 and 209*)

11.1 A fixed amount penalty notice issued in terms of section 202(1) of the Customs Duty Act to a person who committed a listed non-prosecutable breach must contain the following information:

- (a) The name of the person who committed the breach;
- (b) that person's physical address;
- (c) the penalty notice number;
- (d) the number of the section of the Customs Duty Act or number of these Rules that has been breached;
- (e) particulars of the breach and the date on which the breach was committed;
- (f) the category in which the breach falls;
- (g) the number of times the same non-prosecutable breach has been committed within the applicable three years' cycle;¹¹⁸
- (h) the penalty amount;
- (i) due date for payment of the penalty;
- (j) the name and contact details of the customs officer issuing the notice; and
- (k) a note drawing attention to the fact that an objection may in terms of section 208 be lodged against the imposition of the penalty.

Contents of notices imposing fixed percentage penalties (*sections 204 and 209*)

11.2 A fixed percentage penalty notice issued in terms of section 204(1) of the Customs Duty Act to a person who committed a non-prosecutable breach referred to in section 203(1) must contain the following information:

- (a) The name and customs code of the person who failed to pay the duty or full amount of the duty;
- (b) that person's physical address;
- (c) the penalty notice number;
- (d) the movement reference number of the clearance declaration submitted in respect of the goods on which the duty is payable;

¹¹⁸ See section 201(3) of the Customs Duty Act for the applicable three year cycle.

- (e) the amount of the non- or underpayment of duty and the due date¹¹⁹ for payment;
- (f) the number of the section of the Customs Duty Act that has been breached;
- (g) the penalty amount;
- (h) due date for payment of the penalty;
- (i) the name and contact details of the customs officer issuing the notice; and
- (j) a note drawing attention to the fact that an objection may in terms of section 208 be lodged against the imposition of the penalty.

Contents of notices imposing prosecution avoidance penalties (*sections 206 and 209*)

11.3 A prosecution avoidance penalty notice issued in terms of section 206(1) of the Customs Duty Act to a person who allegedly committed a prosecutable breach of that Act must contain the following information:

- (a) The name of the person who allegedly committed the breach and that person's customs code, if any;
- (b) that person's physical address, if available;
- (c) the penalty notice number;
- (d) the number of the section of the Customs Duty Act or number of these Rules that has allegedly been breached;
- (e) particulars of the alleged breach and the date on which the breach was committed;
- (f) the penalty amount;
- (g) due date for payment of the penalty;
- (h) the name and contact details of the customs officer issuing the notice; and
- (i) a note drawing attention to the fact that—
 - (i) prosecution can be avoided if the person elects to have the matter summarily settled by paying the penalty before the due date; and
 - (ii) an objection may in terms of section 208 be lodged against the amount of the penalty.¹²⁰

¹¹⁹ See definition of "due date" in section 1 of the Customs Duty Act.

¹²⁰ Note that an objection in terms of section 203 of the Customs Duty Act can only be lodged against the amount of the penalty and not against the imposition of the penalty.

CHAPTER 12
JUDICIAL MATTERS¹²¹

Notification by registered agents and directors, administrators and trustees to exonerate themselves from liability for offences (section 218(1)(b) or (2)(b))

12.1 (1) (a) A notification referred to in section 218(1)(b) or (2)(b) of the Customs Duty Act must be submitted to the customs authority electronically through eFiling, subject to rule **41.13** of the Customs Control Rules as applied by rule **13.4** of these Rules.

(b) If a notification referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** of the Customs Control Rules in paper format, the notification must be submitted to the Customs Office that serves the area in which the act was committed.

(2) A notification referred to in subrule (1) must reflect the following information:

- (a) If the notification is submitted by a registered agent in terms of section 218(1)(b)—
- (i) the name and customs code of the registered agent; and
 - (ii) the customs code of the importer, exporter, carrier or other person not located in the Republic referred to in section 218(1) that committed the offence;
- (b) if the notification is submitted by a director, administrator or trustee of a juristic entity in terms of section 218(2)(b)—
- (i) the name, contact details and designation of the director, administrator or trustee; and
 - (ii) the name and customs code of the juristic entity that committed the offence, or if the entity does not have a customs code, the name and registration number or tax reference number of the juristic entity;

¹²¹ Note that certain provisions of the 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 Control Act and the rules under those sections.

- (c) a description of the act or omission that constituted the offence, and the date of commission;
- (d) particulars of any steps taken by the person submitting the notification to prevent the act or omission referred to in paragraph (c) from being committed; and
- (e) if no steps were taken to prevent the act or omission, the reason for such inaction.

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CHAPTER 13
MISCELLANEOUS MATTERS

Application for approval of departures from, or for condonation of non-compliance with, rules, conditions or requirements (section 227(3))

13.1 (1) An application for approval of a departure from, or condonation of non-compliance with, a rule, condition or requirement referred to in section 227(3) of the Customs Duty Act must be submitted to the customs authority—

- (a) electronically through—
 - (i) eFiling if this mode of submission is available for the relevant application; or
 - (ii) e-mail; or
- (b) by any of the methods contemplated in section 912(2)(a) to (c) of the Control Act.¹²²

(2) An application submitted in terms of subrule (1)(a)(ii) or (b), must—

- (a) be on Form ...as published as a rule on the SARS website;
- (b) if sent by e-mail, be directed to the Customs Legislative Policy Division at the e-mail address indicated on the SARS website for receipt of such notifications;
- (c) if delivered by hand, be delivered to the Customs Legislative Policy Division, at 381 Middel Street, Second floor Khanyisa, Nieuw Muckleneuk, Pretoria;
- (d) if sent by post, be sent by registered post to the Customs Legislative Policy Division, Private Bag X923, Pretoria, 0001; and
- (e) if telefaxed, be directed to the Customs Legislative Policy Division and sent to the fax number indicated on the SARS website for receipt of such applications.

(3) An application referred to in subrule (1) must reflect—

¹²² See section 228 of the Customs Duty Act which applies section 912 of the Control Act for purposes of the Duty Act.

- (a) the name and customs code of the applicant or, if the applicant does not have a customs code, the information specified in rule **41.15(1)** of the Customs Control Rules as applied by rule **13.5** of these Rules;
- (b) if the application is submitted by a customs broker, registered agent or an ordinary representative¹²³ on behalf of the applicant, the information specified in rule **41.14** of the Customs Control Rules as applied by rule **13.5** of these Rules;¹²⁴
- (c) whether—
 - (i) approval is sought for a departure contemplated in section 227(1)(a), (b) or (c); or
 - (ii) condonation is sought for non-compliance contemplated in section 227(2)(a), (b) or (c);
- (d) particulars of the departure for which approval is sought or the non-compliance for which condonation is sought, referencing the relevant rule, condition or requirement;
- (e) a description of the departure or non-compliance; and
- (f) the reason why the circumstances which give rise to the departure, or in which non-compliance occurred, are considered to fall within the definition of “extraordinary circumstances” as set out in section 227(4), which may be motivated in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules as applied by rule **13.7** of these Rules.

(4) An application referred to in subrule (1) must be supported by any documents that can substantiate the information relied on by the applicant in terms of subrule (3)(f).

Application for extension of timeframes or periods or postponement of dates
(section 908 of Control Act read with section 228 of Customs Duty Act)

¹²³ See definition of “ordinary representative” in rule **1.1** of the Customs Control Rules and explanatory footnote.

¹²⁴ If the application is submitted in terms of section 920 of the Control Act, read with section 228 of the customs Duty Act, by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of the Customs Control Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit applications on behalf of applicants in that capacity.

13.2 (1) In this rule a reference to section 908 of the Control Act must be read as a reference to that section—

- (a) as applied by section 228(1) and (2) of the Customs Duty Act; and
- (b) as qualified by section 228(3).

(2) A person that wishes to have a timeframe or period extended or a date postponed in terms of section 908 of the Control Act must apply for such extension or postponement in terms of this rule.

(3) (a) An application referred to in subrule (1) must be submitted to the customs authority electronically through eFiling, subject to rule **41.13** of the Customs Control Rules as applied by rule **13.4** of these Rules.

(b) If an application referred to in paragraph (a) is submitted to the customs authority in terms of rule **41.13** of the Customs Control Rules in paper format, application must be submitted to the Customs Office as may with reference to section 908(2) be appropriate in the circumstances, or as may be determined or directed by the customs authority in a specific case.

(4) An application referred to in subrule (2) must reflect the following information:

- (a) The name and customs code of the applicant, or if the applicant does not have a customs code, the information specified in rule **41.15(1)** of the Customs Control Rules as applied by rule **13.5** of these Rules;
- (b) if the application is submitted by a customs broker, registered agent or an ordinary representative¹²⁵ on behalf of the applicant, the information specified in rule **41.14** of the Customs Control Rules as applied by rule **13.5** of these Rules;¹²⁶
- (c) the relevant section of the Customs Duty Act or these Rules prescribing the timeframe, period or date which is required to be extended or postponed;

¹²⁵ See definition of “ordinary representative” in rule **1.1** of the Customs Control Rules and explanatory footnote.

¹²⁶ If the application is submitted in terms of section 920 of the Control Act, read with section 228 of the Customs Duty Act, by an ordinary representative on behalf of the applicant, the application must comply with the additional requirements set out in Part 5 of Chapter 41 of the Customs Control Rules. Note that the said Part 5 applies only to ordinary representatives which per definition exclude persons submitting documents as customs brokers or registered agents. It follows that Part 5 does not apply to customs brokers and registered agents that submit applications on behalf of applicants in that capacity.

- (d) the extended timeframe or period or postponed date applied for;
- (e) the reason why the extension or postponement is required, which may be motivated in a separate supporting document submitted to the customs authority on request, subject to and in accordance with Part 6 of Chapter 41 of the Customs Control Rules as applied by rule **13.7** of these Rules; and
- (f) whether extension of the timeframe or period or postponement of the date applied for is for purposes of—¹²⁷
 - (i) section 908(2)(a);
 - (ii) section 908(2)(b)(i);
 - (iii) section 908(2)(b)(ii)
 - (iv) section 908(2)(b)(iii)(aa);
 - (v) section 908(2)(b)(iii)(bb);
 - (vi) section 908(2)(b)(iv);
 - (vii) section 908(2)(b)(v);
 - (viii) section 908(2)(b)(vi); or
 - (ix) section 908(2)(b)(vii).

(5) An application in terms of this rule must, unless otherwise provided for in the Customs Duty Act or these Rules, be submitted prior to the expiry of the timeframe, period or date to which the extension or postponement relates.¹²⁸

¹²⁷ See section 908(2) of the Control Act as applied by section 228 of the Customs Duty Act. Section 908(2) provides the following:

“(2) An extension of a timeframe or period or a postponement of a date may be granted or applied in terms of subsection (1)—

- (a) to a specific person or category of persons; or
- (b) in relation to—
 - (i) a specific vessel, aircraft, train, railway carriage or vehicle or category of vessels, aircraft, trains, railway carriages or vehicles;
 - (ii) a specific consignment of goods;
 - (iii) consignments of the same class or kind or other category of goods imported, to be exported, loaded, off-loaded, handled, stored, processed or in any other way dealt with—
 - (aa) by the same person during a specific period; or
 - (bb) at any specific premises during a specific period;
 - (iv) goods of a specific class or kind imported, to be exported, loaded, off-loaded, handled, stored, processed or in any other way dealt with during a specific period;
 - (v) goods loaded, off-loaded, handled, stored, processed or in any other way dealt with at any specific premises;
 - (vi) a specific class or kind or other category of goods or cargo; or
 - (vii) a specific matter to which this Act applies.”

¹²⁸ Note that when submitting the application, the applicant must allow sufficient time for the consideration thereof, otherwise the applicant runs the risk of the timeframe expiring before Customs have reached a decision.

(6) In the case of an extension of a period or postponement of a date reflected on a clearance declaration or as contemplated in section 174(2A) of the Control Act—¹²⁹

- (a) submission of a clearance declaration amending that period or date may be regarded to be an application in terms of subrule (2), provided subrule (4)(f) is complied with; and
- (b) issuing of a release notification by the customs authority may be regarded to be an approval of such an application.

Electronic communication for purposes of Customs Duty Act (*section 913 of Control Act read with section 228 of Customs Duty Act*)

13.3 (1) Part 2 of Chapter 41 of the Customs Control Rules, modified by any necessary changes as the context may require, applies subject to subrule (2) to persons permitted or required to access and use a computer system administered by SARS in order to communicate electronically with the customs authority for purposes of the Customs Duty Act, either for own business or as an ordinary representative¹³⁰ on behalf of another person.

- (2) In such application—
 - (a) the registration of a person as an electronic user referred to in the Customs Control Rules for a specific computer system must be regarded to be a registration as an electronic user for that system also for purposes of the Customs Duty Act;
 - (b) an electronic user agreement concluded by an electronic user with the Commissioner in terms of the Customs Control Rules for a specific computer system must be regarded to be an electronic user agreement for that system also for purposes of the Customs Duty Act; and
 - (c) a digital signature allocated to a person in terms of the Customs Control Rules for EDI communication must be regarded to be allocated to that person for EDI communication also for purposes of the Customs Duty Act.

Communication otherwise than through electronic communication systems

¹²⁹ For example in the case of a clearance for temporary admission procedure.

¹³⁰ See definition of “ordinary representative” in rule 1.1 of the Customs Control Rules and explanatory footnote.

13.4 Part 3 of Chapter 41 of the Customs Control Rules, modified by any necessary changes as the context may require, applies to the submission of any declaration, report, statement, return, notice, notification, application, request, record or other document or communication that may or must be submitted to the customs authority in terms of the Customs Duty Act or these Rules otherwise than through electronic communication systems.

General provisions regarding information to be submitted

13.5 Part 4 of Chapter 41 of the Customs Control Rules, modified by any necessary changes as the context may require, applies to the submission of any declaration, report, statement, return, notice, notification, application, request, record or other document or communication that may or must be submitted to the customs authority in terms of the Customs Duty Act or these Rules.

Submission of documents and communications through ordinary representatives¹³¹ (section 920 of Control Act read with section 228 of Customs Duty Act)

13.6 Part 5 of Chapter 41 of the Customs Control Rules, modified by any necessary changes as the context may require, applies to the submission of a document or communication to the Commissioner or the customs authority for purposes of the Customs Duty Act in instances where the submission is made through an ordinary representative.

General provisions regulating submission of supporting documents and records

13.7 Part 6 of Chapter 41 of the Customs Control Rules, modified by any necessary changes as the context may require, applies to documents supporting the submission of any declaration, report, statement, return, notice, notification, application, request, record or other document or communication that may or must be submitted to the customs authority in terms of the Customs Duty Act or these Rules.

¹³¹ See definition of “ordinary representative” in rule 1.1 of the Customs Control Rules and explanatory footnote.

Recordkeeping and recordkeeping systems for purposes of Customs Duty Act
(section 224(1)(f) and section 919 of Control Act read with section 228 of Customs Duty Act)

13.8 (1) Part 7 of Chapter 41 of the Customs Control Rules, modified by any necessary changes as the context may require, applies to recordkeeping by and recordkeeping systems of, persons for purposes of the Customs Duty Act and these Rules.

(2) A person may integrate any recordkeeping and recordkeeping systems referred to in subrule (1) with that person's recordkeeping and systems for purposes of the Control Act.

Short title and commencement

13.9 These Rules are called the Customs Duty Rules, 2017, and take effect on the effective date as defined in section 926 of the Control Act.