



**Comment Sheet
on the Draft Customs Duty Bill**

*Please provide comments in the format provided **before/on 26 February 2010** to:

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DRAFT CUSTOMS DUTY BILL

Customs Duty Bill				
CHAPTER 2		CUSTOMS TARIFF		
Page	Clause	Wording	Comment	Recommendation
25	12	In the event of any inconsistency between a provision of the Customs Control Act and Schedules 1, 2, 3, 4 and 5, the provision of the Customs Control Act prevails.	The provisions of the Schedules should prevail. Unintended effect can be given to the Schedules, for example rebates etc.	
26	14	The Customs Tariff may provide for the granting of exemptions, partial exemptions or relief in respect of a duty on dutiable goods,	Concept of "exemption" is new term. Not defined. Would this be equal to rebate items?	Define Exemption
		No exemption or relief in terms of subsection (1) may be granted retrospectively except with the concurrence of the Minister, whether granted by the customs authority or any other authorised organ of state, body or person.	Why should ITAC concur with the Min of Fin? It reduces powers of ITAC and dti.	
27	15	The Minister may by notice in the Gazette amend the Customs Tariff if it is necessary in the public interest.	Public interest is new concept. When will this apply?.	
CHAPTER 3		PAYMENT OF DUTIES, PENALTIES AND INTEREST		
Page	Clause	Wording	Comment	Recommendation
30	22	(1) Liability for import duty on dutiable goods imported into the Republic commences when the goods enters the Republic irrespective of whether the goods are cleared for home use or a customs procedure before or after the arrival of the goods at the place of entry referred to in section 32 or 35 of the Customs Control Act. (2) The liability for export duty on dutiable goods destined for export from the Republic commences when the goods are – (a) cleared for outright export in terms of the Customs Control Act; or (b) regarded in terms of a provision of the Customs Control Act as having been cleared for outright export.	"enters"	Delete the s
33	27	(1) Import duty payable on imported goods cleared for home use in terms of Chapter 10 of the Customs Control Act or a customs procedure referred to in section 24(1)(c) must be paid by the importer of the goods. (2) If the duty is not paid on due date, the Commissioner must recover the duty on the goods from any of the	Does this imply that surety can be required from an importer based on his imports?	

		<p>following:</p> <p>(a) the importer of the goods;</p> <p>(b) a person who, at the time of clearance of the goods –</p> <p>(i) is the owner of the goods;</p> <p>(ii) has a material interest in the goods; or</p> <p>(iii) has the right to dispose of the goods;</p> <p>(c) the person who submitted –</p> <p>(i) the clearance declaration of the goods for home use in terms of section 182 of the Customs Control Act or, if section 508 or 511(3) of that Act applies, a full home use clearance declaration; or</p> <p>(ii) the clearance declaration of the goods for that customs procedure;</p> <p><u>(d) any security covering those goods which was provided by any of the persons referred to in paragraphs (a), (b) and (c).</u></p>		
34	28 to 41		Very repetitive	Summarise these sections in less sections?
44	46	A person who paid a duty or from a duty is recovered in terms of this Chapter is liable for any under-calculation or miscalculation of the duty due to incorrect or insufficient information provided by that person, or in the clearance declaration submitted in relation to the goods, or in any document submitted in lieu of a clearance declaration, or in any supporting document.	Confusing wording.	Re-write the section to give effect to the intention.
46	51	(1) Duties owed to the Commissioner in terms of this Act and not paid on the due date bear interest at a rate determined by the Minister from time to time. (2) Interest determined in terms of subsection (1) must be compounded on daily balances.	How would SARS interpret due date, date from clearance or date determined in assessment?	We propose that this be cover be rule or definition.
46	53	(1) If a person has in terms of section 218 elected to pay the amount of an administrative penalty, that person must pay the penalty to the Commissioner within five days. (2) If the amount of the administrative penalty is not paid when due the Commissioner must recover the amount of the penalty, and any interest on the outstanding amount of the penalty, from – (a) the person who elected to pay the penalty; or (b) any security provided by that person covering the goods in connection with which the penalty was imposed. (3) The Commissioner may on good grounds exempt a person from paying interest for which that person is liable in terms of subsection (1).	Is a 5 day period a realistic period? Depending on the size of the penalty the debtor might not be able to obtain the funds within such a short period.	We propose that SARS allows for extension.

	58	<p>(1) If goods are attached in terms of section 57 to secure payment of a specific debt and the debtor is not the owner or co-owner of the goods or does not have any title, right or interest in terms of a credit agreement under the National Credit Act, 2005, in the goods, the debtor must within 14 days of the date on which the goods were attached furnish proof to the customs authority that he or she is not the owner or co-owner of the goods or has no title, right or interest in terms of a credit agreement in the goods.</p> <p>(2) The customs authority must immediately release the goods from the lien if it accepts proof submitted to it in terms of subsection (1).</p>	What happens if debtor has no interest to declare this? What are the consequences for not complying?	
	59	<p>(1) If goods of which the debtor is a co-owner are attached in terms of section 57, the debtor must promptly –</p> <p>(a) disclose to the customs authority, in writing, the fact of such co-ownership, stating the following:</p> <p>(i) the name and address of the other co-owner;</p> <p>(ii) the debtor's share in the goods, expressed as a percentage; and</p> <p>(iii) any other information as may be prescribed by rule; and</p> <p>(b) submit to the customs authority a copy of any agreement in terms of which such co-ownership was established.</p> <p>(2) On receipt of the written disclosure, the customs authority must –</p> <p>(a) notify the other co-owner that the goods have been attached and that a lien in favour of the Commissioner has been established over the goods; and</p> <p>(b) request the other co-owner to corroborate the debtor's share in ownership of the goods.</p> <p>(3) The customs authority must release goods from a lien established in terms of this Part if the share of the debtor in the goods –</p> <p>(a) is economically insignificant or does not exist; or</p> <p>(b) cannot readily be established and excused.</p>	What happens if debtor has no interest to declare this?	
49	60	<p>(1) If goods subject to a credit agreement under the National Credit Act, 2005 (Act No. 34 of 2005), between the debtor and a credit provider contemplated in that Act are attached in terms of section 57, the debtor must promptly –</p> <p>(a) disclose to the customs authority, in writing, the existence of the agreement, stating the following:</p>	What happens if debtor has no interest to declare this?	Allow for alternatives should the debtor not declare this when it might not be in his interest or when he is playing for time.

		<p>(i) the name and address of the credit grantor; (ii) the amount of the principal debt under the agreement; (iii) the duration of the agreement; (iv) the outstanding balance under the agreement; and (v) any other information as may be prescribed by rule; and (b) submit a copy of the agreement to the customs authority. (2) On receipt of the written disclosure, the customs authority must – (a) notify the credit grantor that the goods have been attached and that a lien in favour of the Commissioner has been established over the goods; and (b) request the credit grantor to submit to the customs authority full particulars of the debtor's title, right or interest in the goods. (3) The credit grantor must – (a) quantify the debtor's title, right or interest in the goods; and (b) promptly notify the customs authority of – (i) the value of the debtor's title, right or interest in the goods, expressed, if determinable, as a liquid amount; and (ii) details of how that value was arrived at. (4) The customs authority must release goods from the lien established in terms of this Part if the right, title or interest of the debtor in the goods – (a) is economically insignificant or does not exist; or (b) cannot readily be established and excused. (5) The Commissioner and the credit grantor concerned may, subject to such conditions as may be agreed between the parties, agree to dispose of the goods in order to preserve and secure the interests of the parties in the goods and in the proceeds of the disposal of the goods pending the resolution of any dispute in respect of which an interest in the goods is secured by the lien.</p>		
52	64	<p>(1) The proceeds realised for goods disposed of in terms of section 63 must be applied to pay the following claims in the order of preference as indicated below: (a) the debt referred to in section 26; (b) any tax or penalties payable on the goods not covered by paragraph (a), and any interest payable on such tax or penalties; (c) any expenses incurred by the Commissioner in</p>	How can the surplus due be offset against any refunds due – the debtor is entitled to both payments?	This provision should be changed

		<p>connection with the goods, including –</p> <p>(i) costs of storing the goods in a state warehouse, if the goods were removed to a state warehouse; and</p> <p>(ii) costs and expenses incurred by the Commissioner in terms of section 61 (4)(b);</p> <p>(d) any charges due in terms of section 550(2) of the Customs Control Act to the licensee of a licensed state warehouse in connection with the goods, if the goods were removed to a licensed state warehouse;</p> <p>(e) any charges due to a person in charge of a place of security where the goods were kept, if the goods were removed to such a place; and</p> <p>(f) the debt for which a warrant of execution referred to in section 63(4) was issued in respect of the goods, if such a warrant of execution was obtained and the Commissioner was notified of the warrant.</p> <p>(2) Any surplus remaining after all claims in terms of subsection (1) have been met, must on written application by the debtor be paid to the debtor, provided that is received by the Commissioner within three years of the date of disposal of the goods.</p> <p>(3) Any refund of any duty, administrative penalty or interest, or part of any duty, penalty or interest, or any other amount due to the debtor may be set off against a payment due to the debtor in terms of subsection (2)</p>		
	CHAPTER 4	REFUNDS AND DRAWBACKS		
Page	Clause	Wording	Comment	Recommendation
57	74	<p>(1) The Commissioner must consider an application for a refund or drawback referred to in section 71 but may refuse to consider the application if –</p> <p>(a) the application does not comply with section 72;</p> <p>(b) the applicant refuses to afford a customs officer a reasonable opportunity –</p> <p>(i) to examine the goods in respect of which the application is made; or</p> <p>(ii) to verify the reason for the application;</p> <p>(c) the application was not submitted in accordance with the applicable time provisions referred to in section 73; or</p> <p>(d) the applicant is a person who –</p> <p>(i) has persistently contravened or failed to comply with a provision of this Act; or</p>	<p><i>(d) the applicant is a person who –</i></p> <p><i>(i) has persistently contravened or failed to comply with a provision of this Act; or</i></p> <p><i>(ii) has been convicted during the five years preceding the date of the application of an offence in terms of this Act involving duty evasion.</i></p>	<p>The refund should not be denied where he is entitled to it and the previous issues have substantially nothing to do with refunds or drawbacks.</p>

		<p>(ii) has been convicted during the five years preceding the date of the application of an offence in terms of this Act involving duty evasion.</p> <p>(2) The Commissioner may –</p> <p>(a) approve an application; or</p> <p>(b) refuse an application.</p> <p>(3) No application for a drawback may be refused by the Commissioner only because the importer at the time of importation of the goods did not state an intention of claiming a drawback when the goods, or compensating products obtained from those goods, are exported.</p> <p>(4) (a) If the Commissioner approves an application for a refund or drawback of a duty, the Commissioner is not obliged to refund any interest or any administrative penalty paid in connection with the duty by reason only of the approval of the application for a refund or drawback of the duty.</p> <p>(b) Paragraph (a) does not prevent a person from applying in terms of this section for a refund of any such interest or penalty.</p>		
58	76	<p>(1) The Commissioner may, despite the provisions of this Chapter requiring persons claiming refunds of duties, penalties or interest to submit an application for the refund, issue a general directive authorising refunds without application of, penalties or interest paid or overpaid in error in circumstances set out in the directive.</p> <p>(2) No directive issued in terms of subsection (1) may authorise refunds of duties, penalties or interest paid or overpaid due to errors in tariff classification, valuation or origin.</p>	<p><i>(2) No directive issued in terms of subsection (1) may authorise refunds of duties, penalties or interest paid or overpaid due to errors in tariff classification, valuation or origin.</i></p>	It is not clear why this should not be allowed.
58	78	<p>(1) The Customs Tariff may, despite the provisions of this Chapter, provide for –</p> <p>(a) refunds or drawbacks of duty to be authorised by permit issued by an organ of state body or person other than the Commissioner;</p> <p>(b) the persons who may apply for such refunds or drawbacks;</p> <p>(c) the circumstances in which and the conditions on which such permits may be issued;</p> <p>(d) procedures to regulate the submission of such applications and the issue of such permits; and</p> <p>(e) time limitations on the submission of such applications and the issue of such permits.</p> <p>(2) A permit referred to in subsection (1) may not be issued retrospectively except with the concurrence of the</p>	<p>The Minister should not have the right to refuse retrospective refunds or drawbacks if justified by any other department.</p>	

		Minister.		
59	80	Where a refund or drawback is in terms of this Chapter due to a person who has failed to pay an amount of tax, duty, levy, charge, interest or administrative penalty levied or imposed under this Act or any other legislation administered by the Commissioner within the period required for payment of the amount, the Commissioner may set off the amount of such refund or drawback against the amount which that person has failed to pay.	This should only be the case if the debtor has exhausted all his appeal procedures with regard to the payment of that tax.	
CHAPTER 5 ASSESSMENT OF DUTIES				
Page	Clause	Wording	Comment	Recommendation
62	87	(1) Duty payable on any non-commercial goods of a customs value of R2 000 or less may be assessed at a flat rate of six per cent of the customs value of the goods despite any other provision of this Act determining a higher or lower rate of duty for the goods in question. (2) Subsection (1) does not apply if the person who has to pay the duty requests that the goods be assessed in accordance with section 86.	<i>non-commercial goods</i> are not defined. We assume that the duty free allowance available to returning residents would still apply.	Define <i>non-commercial goods</i> .
63	89	(1) The customs authority must before releasing goods cleared for home use or a customs procedure – (a) determine the dutiability of the goods; and (b) if dutiable, assess the amount of duty payable on the goods. (2) The customs authority must assess any duty payable on the goods by either – (a) adopting any self-assessment of the amount of duty as stated on the clearance declaration of the goods as its own assessment of the duty payable on the goods; or (b) making its own assessment of the amount of any duty payable on the goods. (3) The customs authority must give notice to the person liable for any duty payable on the goods of – (1) (a) the amount of the duty as assessed in terms of subsection (2)(a) or (b); and (2) (b) the time within which that amount must be paid to the Commissioner	(a) <i>adopting ...</i>	– accepting would be a better word.
67	97	(1) A person aggrieved by a duty assessment or duty re-assessment may – (a) lodge an administrative appeal in terms of Part 3 of Chapter 38 of the Customs Control Act against the assessment or re-assessment, subject to subsection (3);	Chapter 38 Parts 2 and 4 should be available in cases where the duty was assessed and believed to be incorrect or, in the case of Part 4 where	Change one month to 30 days and define days in line with Administrative Appeal procedure.

		<p>or</p> <p>(b) institute judicial proceedings to appeal against or for a review of the assessment or re-assessment.</p> <p>(2) An administrative appeal referred to in subsection (1)(a) –</p> <p>(a) must be lodged within a period of one month from the date of the relevant duty assessment or re-assessment; and</p> <p>(b) may only be heard by a specialised appeal committee referred to in section 816(2)(a) of the Customs Control Act.</p> <p>(3) The proceedings referred to in Parts 2 and 4 of Chapter 38 of the Customs Control Act are not available to persons aggrieved by duty assessments or re-assessments.</p>	<p>payment of the duty might have dire consequences to the company or industry concerned.</p> <p>For example, where the underpayment was as a result of what became general acceptable practice within the industry.</p>	
CHAPTER 6		TARIFF CLASSIFICATION OF GOODS		
Page	Clause	Wording	Comment	Recommendation
69	102	The purpose of this Chapter is to provide for the tariff classification of goods imported into or destined for export from the Republic.	<p>From time to time it is necessary to obtain the tariff classification of goods manufactured in South Africa for excise purposes.</p> <p>Will the tariff classification of excise goods be dealt with through the Excise Duty Act or the Customs Duty Act? This could lead to duplication in the two Acts.</p>	Allow for the TC of goods manufactured in South Africa as well.
71	107	<p>A tariff determination of goods in terms of section 106(3)(b) may be made at any time, but if the goods have been assessed for duty purposes in terms of Chapter 5 (Assessment of Duty) no tariff determination may be made after the expiry of the period referred to in section 92, ie three years.</p> <p>(2) Subsection (1) does not prevent the customs authority from making a tariff determination of any goods after the expiry of the period referred to in subsection (1) if the tariff self-determination of the goods is incorrect because of fraud, misrepresentation, a false declaration or non-disclosure of material facts.</p>	The current period of 2 years has been extended to 3 years in which SARS can assess the duty. We understand that this is to align it with other tax legislation.	
71	108	(1) If goods that must in terms of the Customs Control Act be cleared for home use or a customs procedure have not been cleared within the period applicable to the		Delete the “to” in S 108(1)(a)(i).

		<p>goods, the customs authority may –</p> <p>(a) direct the person who requires release of the goods or who is liable for any duty that may be payable on the goods, to make a self-determination of the tariff classification of the goods, and –</p> <p>(i) to submit the tariff self-determination to the customs authority within a specified period; or</p> <p>(ii) if the goods are in terms of a provision of the Customs Control Act required or allowed to be cleared despite the failure to clear the goods within the period applicable to the goods, to state the tariff self-determination on the clearance declaration; or</p> <p>(b) make its own determination of the tariff classification of the goods according to any information available to it without requiring a tariff self-determination.</p>		
72	110	<p>(1) The customs authority may, subject to section 113, re-determine the tariff classification of goods as –</p> <p>(a) determined by it in terms of section 106(1)(b) or (3)(b) or 108(1)(b); or</p> <p>(b) re-determined by it in terms of paragraph (a).</p> <p>(2) More than one tariff re-determination may, as necessary, be made in terms of subsection (1).</p> <p>(3) A tariff re-determination in terms of subsection (1) may be made in respect of any goods despite the fact that –</p> <p>(a) duty on the goods has been paid;61 or</p> <p>(b) the goods are no longer subject to customs control.</p> <p>(4) A tariff re-determination in respect of goods replaces the previous tariff determination or tariff re-determination which was in force.</p> <p>(5) A tariff re-determination of goods in terms of subsection (1) must be consistent with any advance tariff ruling that may be in force in respect of those goods.</p>	<p>We welcome these changes as opposed to the previous complicated cross reference to determinations and redeterminations.</p>	<p>However, S 110 (4) states that: “A tariff re-determination in respect of goods replaces the previous tariff determination or tariff re-determination which was in force.”</p> <p>The Act must provide for SARS to determine from which date such redetermination would be effective. In some cases it would be appropriate that the tariff determination be effective only from the date of the redetermination and not the date of the determination it replaces as it could expose the importer to a duty liability. For example, where a determination has been issued and SARS realises on a later unrelated determination that its earlier determination on similar or identical goods might be incorrect. It would be unreasonable to replace the earlier determination from its date and expose the importer to additional unforeseen duties from the date of the original determination or redetermination.</p>

72	111	<p>(1) A tariff re-determination of goods may be made at any time, but if the goods have been assessed for duty purposes in terms of Chapter 5 no tariff re-determination may be made after the expiry of the period referred to in section 92.</p> <p>(2) Subsection (1) does not prevent the customs authority from making a tariff re-determination of any goods after the expiry of the period referred to in subsection (1) if the existing tariff determination or re-determination previously made in respect of the goods is incorrect because of fraud, misrepresentation, a false declaration or non-disclosure of material facts.</p>	We understand that the 3 year period is to align the customs bill with other tax legislation.	
73	114	<p>(1) A tariff determination or re-determination of any goods applies only to the consignment of goods in respect of which it was made unless the customs authority determines otherwise in terms of subsection (2).</p> <p>(2) The customs authority may direct that a tariff determination or re-determination must be applied also to goods of the same type, kind or brand –</p> <p>(a) that were previously cleared for home use or a customs procedure by or on behalf of the same person within the period of three years preceding the date of the determination or re-determination; or</p> <p>(b) that may be cleared for home use or a customs procedure by or on behalf of the same person within three years following the date of the determination or re-determination.</p> <p>(3) The customs authority may at any time reconsider a direction in terms of subsection (2) and either confirm, amend or withdraw the direction.</p>	We understand that the 3 year period is to align the customs bill with other tax legislation.	
74	115	<p>(1) The customs authority may on discovery of any error in a tariff determination or re-determination correct the error by notice to –</p> <p>(a) a person who submitted a clearance declaration in respect of the goods;</p> <p>(b) a person who made a tariff self-determination of the goods;</p> <p>(c) a person who is liable for duty that may be payable on the goods or who has paid duty on the goods; or</p> <p>(d) the owner of the goods or any other person who has a material interest in the goods.</p> <p>(2) A correction in terms of subsection (1) may be made at any time, but if the goods have been assessed for duty purposes in terms of Chapter 5 no correction affecting the amount of duty payable may be made after the expiry</p>	We understand that the 3 year period is to align the customs bill with other tax legislation.	

		<p>of the period referred to in section 92.</p> <p>(3) Subsection (2) does not prevent the customs authority from correcting a tariff determination or re-determination of any goods after the expiry of the period referred to in subsection (2) if the tariff determination or re-determination is incorrect because of fraud, misrepresentation, a false declaration or non-disclosure of material facts.</p>		
74	116	<p>(1) A person aggrieved by a tariff determination, or re-determination or a correction of a tariff determination or re-determination, may –</p> <p>(a) lodge an administrative appeal in terms of Part 3 of Chapter 38 of the Customs Control Act against the determination, re-determination or correction, subject to subsection (3); or</p> <p>(b) institute judicial proceedings to appeal against or for a review of the determination, re-determination or correction.</p> <p>(2) An administrative appeal referred to in subsection (1)(a) –</p> <p>(a) must be lodged within a period of one month from the date of the relevant tariff determination or re-determination or the relevant correction of the determination or re-determination; and</p> <p>(b) may only be heard by a specialised appeal committee referred to in section 806(2)(a) of the Customs Control Act.</p> <p>(3) The proceedings referred to in Parts 2 and 4 of Chapter 38 of the Customs Control Act are not available to persons aggrieved by tariff determinations or re-determinations.</p>	<p>Throughout the bills reference is made to days. Only for the purposes of responding to a TC decisions must the appeal be submitted within one month. A one month period is not clear.</p>	<p>We propose that the appeal must be submitted within 30 days from the date of the determination and that days be defined in the Duty Act the same as in S 797 of the Control Bill. This will ensure consistent treatment throughout.</p> <p>We believe that the reference to section 806(2)(a) of the Customs Control Act is incorrect. Should it be S 816?</p> <p>We have further dealt with the timeframes for appeals in our response to Chapter 38 of the Customs Control Bill.</p>
75	117	<p>(1) A tariff self-determination accepted by the customs authority in terms of section 107(1)(a) must be presumed to be correct and must be applied except when replaced by a tariff determination.</p> <p>(2) A tariff determination or re-determination must be presumed to be correct and must be applied except when replaced, amended, set aside or corrected, as may be appropriate, by –</p> <p>(a) the customs authority in terms of section 110, 114(2) or 115;</p> <p>(b) an advance tariff ruling in terms of Chapter 10;</p> <p>(c) a decision in an administrative appeal in terms of Part 3 of Chapter 38 of the Customs Control Act; or</p> <p>(d) a court.</p>		<p>We believe that the reference to section 107(1)(a) is incorrect. Should it be S 106?</p>

75	118	(1) The Commissioner may make public particulars of any tariff determination or re-determination in such a manner and containing such information as the Commissioner may determine.	We welcome these changes as a step in the right direction for more transparency on TC's.	
75	119 and 120	The Commissioner may in terms of section 223 make rules to facilitate the implementation of this Chapter, including rules prescribing – And A person is guilty of an offence if that person fails to comply with sections		These sections unnecessarily lengthen the legislation and all these sections can be housed under the closings chapters of the legislation.
CHAPTER 7 VALUATION OF GOODS				
Page	Clause	Wording	Comment	Recommendation
76	122	When valuing goods in terms of this Chapter, the following international instruments must be considered, but are not binding for the purpose of such valuation: (a) Article VII of the General Agreement on Tariffs and Trade, 1994, and the Note to Article VII of that Agreement; (b) the WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, 1994, and the Interpretative Notes to the Agreement; (c) Decisions taken by the Committee on Customs Valuation of the WTO; and (d) Instruments issued by the Technical Committee on Customs Valuation of the WTO, including – (i) Advisory Opinions; (ii) Commentaries; (iii) Explanatory Notes; and (iv) Case Studies; and (v) Studies.		We propose that the “and” in S 122(d)(iii) be deleted. We further propose that a section similar to S 104 be inserted for keeping copies of the reference work.
77	124	(1) A person submitting a clearance declaration to clear goods for home use or a customs procedure must – (a) make a value self-determination of the customs value of the goods on a worksheet as may be prescribed by rule irrespective of whether duty is payable on the goods; and (b) state the customs value of the goods determined in terms of paragraph (a) on the clearance declaration; and (c) on request by the customs authority submit the worksheet to the customs authority. (2) (a) In the case of imported goods, the clearance declaration must also indicate –	S 124 (2)(b): “... details of that relationship”. To the best of our knowledge the SAD 500 does not allow for this. How will this declaration be made?	

		<p>(a) the valuation method which was used to determine the customs value of the goods; and</p> <p>(b) if the primary valuation method was use, whether the person who purchased the goods for export to the Republic and the seller have a close family, personal, employment or business relationship within the meaning of section 141, and, if so, details of that relationship.</p> <p>(3) A person referred to in subsection (1) must keep the worksheet for a period of at least five years.</p>		
78	126	<p>(1) A value determination of goods in terms of section 125(3)(b) may be made at any time, but if the goods have been assessed for duty purposes in terms of Chapter 5 no value determination may be made after the expiry of the period referred to in section 92.</p> <p>(2) Subsection (1) does not prevent the customs authority from making a value determination of any goods after the expiry of the period referred to in subsection (1) if the value self-determination of the goods is incorrect because of fraud, misrepresentation, a false declaration or non-disclosure of material facts.</p>	See our comments above with regard to the 2 and 3 year time frames.	
79	129	<p>(1) The customs authority may, subject to section 130, re-determine the customs valuation of goods as –</p> <p>(a) determined by it in terms of section 125(1)(b) or (3)(b) or 127(1)(b); or</p> <p>(b) re-determined by it in terms of paragraph (a).</p> <p>(2) More than one value re-determination may, as necessary, be made in terms of subsection (1).</p> <p>(3) A value re-determination or in terms of subsection (1) may be made in respect of any goods despite the fact –</p> <p>(a) that duty on the goods has been paid;63 or</p> <p>(b) that the goods are no longer subject to customs control.</p> <p>(4) A value re-determination in respect of goods replaces the previous value determination or value re-determination which was in force.</p> <p>(5) Any valuation factors used in a value re-determination of goods in terms of subsection (1) must be consistent with any advance ruling of on a valuation factor that may be in force in respect of those goods.</p>	<p>S 129 (4) states that: <i>“A value re-determination in respect of goods replaces the previous value determination or value re-determination which was in force”</i> The Act must provide for SARS to determine from which date such redetermination would be effective.</p>	
80	130	<p>(1) A tariff re-determination of goods may be made at any time, but if the goods have been assessed for duty purposes in terms of Chapter 5 no tariff re-determination may be made after the expiry of the period referred to in section 92.</p>	See our comments above with regard to the 2 and 3 year time frames.	

		(2) Subsection (1) does not prevent the customs authority from making a tariff re-determination of any goods after the expiry of the period referred to in subsection (1) if the existing tariff determination or re-determination previously made in respect of the goods is incorrect because of fraud, misrepresentation, a false declaration or non-disclosure of material facts.		
80	131 - 137	These sections are essentially the same as those of TC Sections 112, 113, 114, 115.	These sections are essentially the same as those of TC Sections 112, 113 and 114 and our comments apply equally.	
85	140(1)(a)	The transaction in terms of which the goods were acquired for export to the Republic is not a contract of purchase and sale	<p>First of all we believe that the definition of transaction value as contained in S 142(1) must be amended to remain in line with the Customs Valuation Code to read:</p> <p><i>“The transaction value of goods is the price actually paid or payable for the goods when sold for export to the Republic adjusted by.”</i></p> <p>We believe that the wording, sold for export, was specifically chosen to ensure that all costs associated with selling the goods are included in the CV and that any additional costs that the buyer decides to incur on his own accord be excluded, this is the reason for certain of the adjustments. Purchase for export could imply that certain other costs incurred by the buyer should be included since it is part of the purchase price from the buyer's perspective.</p> <p>We can see no reason to deviate from the sale for export for the above reasons and since this term has been</p>	

			<p>subject to international precedents and jurisprudence.</p> <p>In light of the above this section should therefore read as follows:</p> <p><i>“The transaction in terms of which the goods were <u>sold</u> for export to the Republic is not a contract of sale”.</i> A contract of sale implies that there is a purchase.</p> <p>This section further becomes superfluous since if there is no sale for export, the definition of TV has not been complied with.</p> <p>We propose that this section should rather be taken up in the rules as a non-exhaustive list of conditions under which TV might not apply.</p>	
85	140(1)(b)	the transaction in terms of which the goods were acquired for export to the Republic is a contract of purchase and sale but was concluded otherwise than in the ordinary course of trade under fully competitive conditions	This is not a provision of the Code. The reference work Sherman and Glasshoff refers to this as one of the old factors no longer affecting CV. This provision should be deleted.	
87	142(3)(i)	<p>(i) interest charged in accordance with generally accepted accounting principles in respect of the price actually paid or payable for the goods, but this deduction is only permitted if –</p> <p>(i) the financing arrangement in terms of which the interest is paid is in writing;</p> <p>(ii) the buyer can prove, if requested by the customs authority, that the goods were actually purchased at the price declared as the price actually paid or payable, and that the claimed rate of interest does not exceed the level for transactions of that nature prevailing in the country where, and at the time when, the financing was provided; and</p> <p>(iii) interest payments made by the buyer to the seller are not included in the price actually paid or payable where</p>	In terms of the code, all calculations and figures used must be made or obtained from GAAP. This requirement is not specific to interest charges.	

		<p>the payments are part of a separate, overall financing arrangement between the parties that bears no relationship to a particular sale; and</p> <p>(j) any charges for the right or licence to reproduce the goods in the Republic.</p>		
88	142(4)	<p>(4) Interest that must in terms of subsection (3)(i) be deducted from the price actually paid or payable for the goods excludes any –</p> <p>(a) interest arising from delayed payments; and</p> <p>(b) payments for interest made by the buyer to the seller arranged as part of the total payment made to the seller.</p>	<p>If delayed payments are not meant to include deferred payments, we have no objection to this section.</p> <p>We do not understand what is meant or what SARS wishes to achieve with the term:</p> <p><i>(b) payments for interest made by the buyer to the seller arranged as part of the total payment made to the seller</i></p>	
89	143(1)	<p>(1) If the identical goods method is used for determining the customs value of a consignment of imported goods –</p> <p>(a) the transaction value per unit or quantity of identical goods as previously determined by the customs authority in respect of a purchase of such goods transacted at the same commercial level and in substantially the same quantity and exported to the Republic at or about the same time as the goods to be valued, must be taken as the customs value per unit or quantity of the imported goods, subject to any adjustments that must be made in terms of subsection (2); or</p> <p>(b) if no determination contemplated in paragraph (a) is found, the transaction value per unit or quantity of identical goods as previously determined by the customs authority in respect of a purchase of such goods transacted at either a different commercial level or quantity level, or at a different commercial level and quantity level, and exported to the Republic at or about the same time as the goods to be valued, must be taken as the customs value per unit or quantity of the imported goods, subject to any adjustments that must be made in terms of subsection (3).</p>	<p><i>Previously determined</i> is not a requirement of the code. This option should be available irrespective of whether SARS has previously determined the value.</p>	
89	143(2) and (3)	<p>(2) The transaction value of the identical goods used for a valuation in terms of subsection(1)(a) must be adjusted to compensate for any differences in costs and charges</p>	<p>Subsections 2 and 3(b) are duplicates.</p>	<p>We believe that subsections 2 and 3 should read as follows: <i>(2) The transaction value of the</i></p>

		<p>for differences in distances and modes of transport to the port or place of export between the identical goods and the goods to be valued.</p> <p>(3) The transaction value of the identical goods used for a valuation in terms of subsection (1)(b) must be adjusted to compensate for any differences in –</p> <p>(a) the purchase at different commercial levels or quantity levels of the identical goods and the goods to be valued; and</p> <p>(b) costs and charges for different distances and modes of transport to the port or place of export between the identical goods and the goods to be valued.</p>		<p><i>identical goods used for a valuation in terms of subsection (1)(b) must be adjusted to compensate for any differences in the purchase at different commercial levels or quantity levels of the identical goods and the goods to be valued.</i></p> <p><i>(2) The transaction value of the identical goods used for a valuation in terms of subsection(1)(a) must be adjusted to compensate for any differences in costs and charges for differences in distances and modes of transport to the port or place of export between the identical goods and the goods to be valued.</i></p>
90	144	<p>(2) The transaction value of the identical goods used for a valuation in terms of subsection(1)(a) must be adjusted to compensate for any differences in costs and charges for differences in distances and modes of transport to the port or place of export between the identical goods and the goods to be valued.</p> <p>(3) The transaction value of the identical goods used for a valuation in terms of subsection (1)(b) must be adjusted to compensate for any differences in –</p> <p>(a) the purchase at different commercial levels or quantity levels of the identical goods and the goods to be valued; and</p> <p>(b) costs and charges for different distances and modes of transport to the port or place of export between the identical goods and the goods to be valued.</p>	Subsections 2 and 3(b) are duplicates.	<p>We believe that subsections 2 and 3 should read as follows:</p> <p><i>(2) The transaction value of the identical goods used for a valuation in terms of subsection (1)(b) must be adjusted to compensate for any differences in the purchase at different commercial levels or quantity levels of the identical goods and the goods to be valued.</i></p> <p><i>(2) The transaction value of the identical goods used for a valuation in terms of subsection(1)(a) must be adjusted to compensate for any differences in costs and charges for differences in distances and modes of transport to the port or place of export between the identical goods and the goods to be valued.</i></p>
CHAPTER 8		ORIGIN		

Page	Clause	Wording	Comment	Recommendation
99	164	<p>(1) The customs authority may before releasing goods for home use or a customs procedure –</p> <p>(a) accept the origin self-determination of the goods on the clearance declaration; or</p> <p>(b) refuse to accept that origin self-determination and make its own determination of the origin of the goods.</p> <p>(2) The customs authority must for purposes of subsection (1)(a) be regarded as having accepted the origin self-determination of the goods as stated on the clearance declaration if it releases the goods without making its own origin determination of the goods in terms of subsection (1)(b).</p> <p>(3) If the customs authority accepts an origin self-determination in terms of subsection (1)(a) or is regarded as having accepted an origin self-assessment in terms of subsection (2), such acceptance –</p> <p>(a) may not be taken as an origin determination by the customs authority in terms of subsection (1)(b); and</p> <p>(b) does not prevent the customs authority from making an origin determination of goods after the release of the goods.</p> <p>(4) An origin determination in terms of subsection (3)(b) may be made in respect of any goods despite the fact that –</p> <p>(a) duty on the goods has been made; or</p> <p>(b) the goods are no longer subject to customs control.</p>		(a) <i>duty on the goods has been made</i> should read “paid”
100	167	<p>An origin self-determination or origin determination of goods must be consistent with –</p> <p>(a) any previous origin determination or re-determination that may be applicable to those goods in terms of section 172(2)(b); or</p> <p>(b) any advance origin ruling that may be applicable to those goods.</p>		(b) any advance origin ruling that may be applicable to those goods – to the extent that it has been published.
103	174	<p>(1) A person aggrieved by an origin determination or re-determination, or a correction of an origin determination or re-determination, may –</p> <p>(a) lodge an administrative appeal in terms of Part 3 of Chapter 38 of the Customs Control Act against the determination, re-determination or correction, subject to subsection (3); or</p> <p>(b) institute judicial proceedings to appeal against or for a review of the determination, re-determination or</p>	Refer to 30 days. And Part 2 and 4 should be available for the same reasons as addressed above in similar sections.	

		<p>correction.</p> <p>(2) An administrative appeal referred to in subsection (1)(a) –</p> <p>(a) must be lodged within a period of one month from the date of the relevant determination or re-determination or the relevant correction of the determination or re-determination; and</p> <p>(b) may only be heard by a specialised appeal committee referred to in section 816(2)(a) of the Customs Control Act.</p> <p>(3) The proceedings referred to in Parts 2 and 4 of Chapter 38 of the Customs Control Act are not available to persons aggrieved by origin determinations or re-determinations.</p>		
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