

SOUTH AFRICAN REVENUE SERVICE

NO. R. 1405

11 NOVEMBER 2016

**CUSTOMS AND EXCISE ACT, 1964
AMENDMENT OF RULES (DAR 162)**

Under sections 46A and 120 of the Customs and Excise Act, 1964, the rules published in Government Notice R.1874 of 8 December 1995 are amended to the extent set out in the Schedule hereto.

**THOMAS SWABIHI MOYANE****COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE**

- (a) By the substitution for the heading to rules 46A3 of the following heading:

“Non-reciprocal tariff treatment under the Generalised System of Preferences (GSP) granted to developing and least developed countries by the Russian Federation, the Republic of Belarus and the Republic of Kazakhstan”

- (b) By the substitution in rule 46A3.01 for paragraph (a) of the following paragraph:

- “46A3.01 (a)(i) The rules numbered 46A3 are rules contemplated in sections 46(4)(d) and 46A(4)(b) in respect of enactments–
- (aa) approved by the Interstate Council of the Euroasian Economic Community and the Customs Union Commission as stated in paragraph (b)(i); and
 - (bb) any subsequent amendments to the enactments as advised to and received from the South African Embassy in Moscow.
- (ii) In subparagraph (i)(bb), the words “any subsequent amendments” refer to the amendments endorsed on the List of Goods Originating and Imported from Developing and Least Developed Countries to the Import of Which Tariff Preferences are Applicable, stating “as amended by the Decision No. 859 of the Customs Union Commission of 09 December 2011, and Decision No. 57 of the Euroasian Economic Commission Board of 26 March 2013.
- (iii) The rules apply to the Russian Federation, the Republic of Belarus and the Republic of Kazakhstan.”

(c) By the substitution in rule 46A3.01 for paragraph (b) and the Note thereto of the following paragraph:

- “(b) (i) The information received from the South African Embassy, Moscow, is contained in an undated copy of a letter from the Euroasian Economic Commission advising that–
- (aa) the Interstate Council of the Euroasian Economic Community by its Decision No. 18 of 27 November 2009 and the Customs Union Commission by its Decision No. 130 of 27 November 2009 approved–
 - (A) the List of Developing Countries Beneficiaries of the Customs Union Tariff Preferences System;
 - (B) the List of the Least Developed Countries Beneficiaries of the Customs Union Tariff Preferences System; and
 - (C) the List of Goods Originating and Imported from Developing and Least Developed Countries to the Import of Which Tariff Preferences are Applicable;

- (bb) the lists referred to in items (a)(A), (B) and (C) shall be applied from 1 January 2010 by the Member States of the Customs Union and the Common Economic Space (the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation); and
- (cc) according to Decision No. 36 of the Interstate Council of the Euroasian Economic Community of 21 May 2010 the Agreement on Rules of Determination of Origin of Goods from Developing and Least Developed Countries dated 12 December 2008 came into force since 1 July 2010.
- (ii) The documents in English received from the South African Embassy, Moscow are:
- (aa) The lists referred to in paragraph (b)(i)(aa)(A), (B) and (C) and the Agreement referred to in subparagraph (i)(ee);
- (bb) Rules of Determination of the Origin of Goods Exported from Developing and Least Developed Countries (Exhibit to the Agreement) with Exhibit No. 1 the Generalised System of Preferences Certificate of Origin (Combined declaration and certificate – Form A) in Russian and in English and Exhibit 2, Requirements to the Execution of Goods Origin Declarations/Certificates according to Form A; and
- (cc) Requirements for filling Form A certificates.
- (iii) The documents referred to in the existing rules 46A3 published on the SARS website have been replaced by the documents stated in subparagraph (ii)”
- (d) By the substitution in rule 46A3.01 for paragraphs (c) and (d) of the following paragraphs:
- “(c) Expressions used in the rules with reference to an enactment are in respect of the documents referred to in paragraph (b)(ii) and shall, unless the context otherwise indicates, have the meaning assigned thereto in the said enactment or relevant provision of the Act or as defined in these rules.

- (d) (i) Exporters must comply with the enactments and are cautioned to study them as a whole and in context to ascertain the requirements applicable to each export.
- (ii) For the purpose of tracing an enactment relevant to a rule, where any rule or its heading reflects an alphabetical prefix or alphabetical prefixes or words and a number or numbers in brackets such a reference is to an enactment and its number referred to in paragraph (b)(i), for example:

RO Rule III	RO Rule followed by a number refers to the relevant rule of the enactment Rules of Determination of the Origin of Goods Exported from Developing and Least Developed Countries.”
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- (e) By the substitution in rule 46A3.01(e)(i) for the words preceding the expressions “**authority or authorities**” of the following words:

- (i) “In the application of provisions of the Act to any enactment–
the following expressions in any enactment of the Member States shall have the meanings assigned thereto in this paragraph:”

- (f) By the substitution in rule 46A3.01(e)(i) for the expression “**authority or authorities**” of the following expression:

“**“authority or authorities”, competent authority”, “competent authorities”, “competent national authorities”, “customs authorities”, “relevant authority”, or “competent authority authorised to issue the Certificates”** means, the Commissioner, or in accordance with any delegation in these rules, the Head Customs Operations Support in the Operational Service division of the South African Revenue Service, the Controller or any other officer;”

- (g) By the substitution in rule 46A3.01(e)(i) for the expression of “**Certificate of Origin Form A**” or “**Form A**” of the following expression”

“**Certificate of Origin Form A**” or “**Form A**” means the Generalised System of Preferences, Certificate of Origin (combined declaration and certificate) Form A referred to in the enactment specified in paragraph (b)(ii), which is issued in a beneficiary country as proof of origin and of which numbered sets are provided by the South African Revenue Service as stated in rule 46A3.16;”

- (h) By the insertion in rule 46A3.01(e)(i) after the expression of “**Certificate of Origin Form A**” or “**Form A**” of the following expression:

“**common customs territory**” means the customs territories of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation;”

- (ij) By the insertion in rule 46A3.01(e)(i) after the expression “**common customs territory**” of the following expression:

“**Customs Union Foreign Economic Activity Commodity Classification group or code**” stated in the heading to the first column of the “List of Goods Originating and Imported from Developing and Least Developed Countries to which Tariff Preferences are Applicable” and referred to in paragraph (b)(i) means for the purposes of any meaning ascribed to any expression in any provision of origin in any enactment or these rules, the provisions of Part 1 of Schedule No. 1, except national subheadings or additional section and chapter notes and the rates of duty applicable to the classification of any goods in any chapter or heading or subheading, and for the purposes of interpretation of Part 1 of Schedule No.1, includes application of the Explanatory Notes to the Harmonized System as required in terms of section 47(8)(a);”

- (k) By the substitution in rule 46A3.01(e)(i) for the expression “**customs cost**” of the following expression:

“**customs value**” means the customs value of imported goods calculated or determined in accordance with the provisions of sections 65, 66, 67 and 74A;”

- (l) By the substitution in rule 46A3.01(e)(i) for the expressions “**developing country**” and “**Direct delivery**” of the following expressions:

“**developing country**” or “**developing countries**”, includes the Republic as listed in the List of the Developing Countries Beneficiaries of the Customs Union Tariff Preferences System referred to in paragraph (b)(i);

“**Direct supply**” in respect of imported goods, means goods invoiced to an importer in the Republic by an exporter in a Member State and transported directly therefrom to that importer, arriving in the same ship, aircraft or container on which they were loaded on exportation;”

(m) By the insertion in rule 46A3.01(e)(i) of the following expression:

“**ex works price**” and referred to in RO rule III, means the price paid for the goods ex manufacturing works to the manufacturer in whose undertaking the last working or processing is carried out, provided that the price includes the value of all materials used, minus any internal taxes which are, or may be, repaid when the goods are exported.”

(n) By the insertion in rule 46A3.01(e)(i) after the expression “**ex works price**” of the following expression:

“**least developed country**” or “**least developed countries**”, includes the countries listed in “The List of the least developed countries beneficiaries of the customs union tariff preferences system referred to in paragraph (b)(i)”

(o) By the deletion in rule 46A3.01(e)(i) of the expression “**FOB basis**”

(p) By the substitution in rule 46A3.01(e)(ii) for the expression “**enactment**” of the following expression:

“**enactment**” means an enactment as defined in section 46A(1) and includes the documents referred to in paragraph (b)(ii), any amendment thereof or any directive in connection therewith approved as contemplated in paragraph (b)(i);”

(q) By the deletion in rule 46A3.01(e)(ii) of the expression “**price free ex manufacturing works**”

(r) By the substitution in rule 46A3.01(e)(ii) for the expression "**HS Code**" of the following expression:

"**Harmonized Commodity Description and Coding System**" referred to under Column 8 of "Requirements to the Execution of Goods Origin Declarations/Certificates according to the Form "A" mentioned in paragraph (b)(ii) has the meaning assigned to "Customs Union Foreign Economic Activity Commodity Classification group or code";"

(s) By the substitution for the expression "**GSP**" of the following expression:

"**GSP**" means the tariff preferences in operation in Member States in terms of which non-reciprocal preferential tariff treatment is granted for goods originating in developing countries, which include the Republic, and least developed countries;"

(t) By the deletion in rule 46A3.01(e)(ii) of the expression "**Harmonized System**";

(u) By the substitution in rule 46A3.01(e)(ii) for the expression "**invoice declaration**" of the following expression:

"**invoice declaration**" means a declaration by an exporter on the invoice or other shipping documents in respect of small consignments contemplated in RO Rule VII (Documentary evidence);"

(v) By the insertion in rule 46A3.01(e)(ii) of the following expression:

"**Member State**" means the Republic of Belarus, the Republic of Kazakhstan or the Russian Federation and are collectively referred to as "Member States";"

(w) By the substitution in rule 46A3.01(e)(ii) for the expression "**relevant enactment**" of the following expression:

"**relevant document**" means any document referred to in paragraph (b)(ii);"

(x) By the substitution in rule 46A3.01(e)(ii) for the expression "**RCO Requirements**" of the following expression:

“**RCO Requirements**” means Requirements to the Execution of Goods Origin Declarations/Certificates according to form A and the Requirements for filling Form A certificates referred to in paragraph (b)(ii)”

(y) By the substitution in rule 46A3.01(e)(ii) for the expression "**RO Rules**" of the following expression:

“**RO Rules**” means the Rules of Determination of the Origin of Goods Exported from Developing and Least Developed Countries referred to in paragraph (d);”

(z) By the substitution in rule 46A3.01(e)(ii) for the expression "**sufficiently worked**" of the following expression:

“**sufficiently worked**” means the working or processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status prescribed in RO Rule III;”

(aa) By the substitution in rule 46A3.01(e) for the words preceding item (aa) of the following words:

“(iii) for the purposes of RO Rule [2] ~~1~~–

“**boat or ship of such country**” and “**processing ship**”–“

(bb) By the substitution in rule 46A3.02 of the following rule:

“46A3.02 Exporters must ascertain precise qualifying requirements and extent of benefits from the importers or the customs authority in the Member State

The documents received are uncertified English versions of the enactments, and having regard to section 46A(7), exporters are advised, before exporting goods for which preferential tariff treatment will be claimed by the importer, to

ascertain precise qualifying requirements and the extent of any benefit from the importer or customs authority in the Member State to which the goods are exported.”

(cc) By the substitution in rule 46A3.03 for paragraph (b) of the following paragraph:

“(b) For the purposes of paragraph (a) any authorised officer within the division responsible for Trade Administration in a Controller’s office may exercise any power or duty or function conferred or imposed on customs authorities in any enactment or on any officer in terms of any other provision of this Act for the purpose of verification of the originating status of goods or the fulfilment of the other requirements of such enactment.”

(dd) By the substitution for rule 46A3.04 of the following rule:

46A3.04 “No rule”

(ee) By the substitution in rule 46A3.06 for the heading and rule of the following heading and rule:

“Rules relating to enactments of the Member States prescribing requirements concerning origin and proof of origin in respect of goods exported from developing and least developed countries

46A3.06 RO Rules of determination of the origin of goods exported from developing and least developed countries

- (a) In terms of RO Rule I, goods are regarded as originating in a developing or least developed country to which the preferential tariff treatment applies where the goods are:
- (i) entirely produced in such country (specified in RO Rule II);
 - (ii) produced in such country by using raw materials, semi-finished products or finished articles originating from another country or goods of unknown origin provided the goods have undergone sufficient treatment or processing in such country in accordance with RO Rule III.

- (b) Every exporter must determine in terms of RO Rule III whether the goods for export are considered to have undergone sufficient treatment or processing in a developing or a least developed country to which the preferential tariff treatment applies.
- (c) Originating goods are eligible, on importation into the Member State, to benefit from the relevant tariff preferences provided:
- (i) the conditions of “**direct purchase**” and “**direct supply**”, stated in RO Rule VI, are complied with;
 - (ii) a valid Certificate of Origin Form A is produced and subject to RO Rule VII–
 - (aa) a Form A is valid for 12 months from the date of issue thereof and may only be extended in the circumstances stated in Rule (V);
 - (bb) Form A must be submitted to the customs authorities in printed form, free from corrections in English;
 - (cc) the actual quantities of goods supplied may not exceed the quantity specified on the Form A by more than 5%;
 - (dd) where a Form A is damaged or lost, a duly completed duplicate may be accepted which may be applied for in accordance with the procedures specified in rule 46A3.18;
 - (ee) a presentation of Form A is not required for small consignments of a total value of not exceeding US \$ 5 000, for which procedures are prescribed in Rule 46A3.20;
 - (iii) the Customs Union Commission must have received from the developing or least developed country which have been granted tariff preferences, the names, addresses and imprints of seals of competent authorities authorised to issue certificates as specified in RO Rule VIII (Administrative Co-operation);
- (d) For the purposes of these requirements–
- (i) exporters and producers (as defined) must ensure that proper records are kept to prove the originating status of goods

exported (whether for completion of Form A or a declaration for small consignments) under the GSP scheme as specified in these rules;

(ii) exporters must produce a duly completed application form and submit the necessary supporting documents proving the originating status of the goods concerned when applying for certification of Form A.

(e) Whenever originating status is claimed for any goods contemplated in RO Rule III, the exporter shall, in addition to any other documentation that may elsewhere be specified in these rules, keep available for inspection all appropriate records to prove compliance with the conditions in terms of which goods are considered to have undergone sufficient treatment or processing in a developing or least developed country for the purposes of preferential tariff treatment in the Member States.

(f) (i) Where goods are exported from the common customs territory to the Republic for working or processing as contemplated in the penultimate paragraph of RO Rule III, the bill of entry import must be endorsed "**Goods originating in the common customs territory for working or processing in the Republic**".

(ii) In respect of goods that have been so worked or processed, the words "common customs territory cumulation" must be inserted in Box 4 of Form A as specified in rule 46A3.16(h)."

(ff) By the substitution in rule 46A3.08 for paragraph (b) of the following paragraph:

"(b) The operations not meeting the criteria of sufficient processing are listed in RO Rule IV and those operations do not confer the status of originating products, whether or not the requirements of RO Rule III are satisfied."

(gg) By the substitution for rule 46A3.09 of the following rule:

"46A3.09 Packing

The origin of packaging must be determined in terms of RO Rule V.”

(hh) By the substitution for rule 46A3.10 of the following rule:

“46A3.10 Appliances, fittings spare parts and tools intended for using jointly with machines, equipment, devices or transport facilities

The origin of appliances, fittings spare parts and intended for using jointly with machines, equipment, devices or transport facilities, must be determined in accordance with RO Rule V.”

(ii) By the substitution for rule 46A3.11 of the following rule:

“46A3.11 Sets

No rule.”

(jj) By the substitution for rule 46A3.12 of the following rule:

“46A3.12 Origin to be disregarded (RO Rule V)

Rule V provides that in determining the origin of goods “thermal and electric energy, machines, equipment and tools used for the production shall be disregarded.”

(kk) By the substitution in rule 46A3.13 for paragraph (a) of the following paragraph:

“(a) The conditions set out in enactments of the Member States for acquiring originating status must continue to be fulfilled at all times in the Republic or in the Member States.”

(ll) By the substitution in rule 46A3.13 for paragraph (b) of the following paragraph:

“(a) If originating products exported from the Republic or from the Member States to another country are returned, they must be considered as non-

originating unless it can be demonstrated to the satisfaction of the competent authorities that—

(*mm*) By the substitution in rule 46A3.14(a) for subparagraphs (i) and (ii) of the following subparagraphs:

“46A3.14 Direct purchase and direct supply (RO Rule VI)

(a) (i) RO Rule VI specifies the requirements to be complied with in respect of “direct purchase and direct supply.

(ii) When goods are exported from the Republic to a Member State, the exporter in the Republic must produce the evidence that will be required on importation into the Member State to the Controller together with the application for the issuing of Form A, the completed Form A and other prescribed export documents.”

(*nn*) By the substitution in rule 46A3.14(b) for subparagraphs (i), (ii) and (iii) of the following subparagraphs:

(i) The provisions of this rule in respect of imported goods only relate to goods originating in a Member State that are imported into the Republic for finishing or processing in the Republic as contemplated in the penultimate paragraph of RO Rule III and in rule 46A3.06(f):

(ii) The evidence required in respect of goods which have not been transported directly between the Member State and the Republic shall be produced to the Controller at the time of entry with the other documents contemplated in section 39.

(iii) If the Controller is not satisfied with the evidence and provided no false statement or a statement suspected on reasonable grounds to be false is produced, the Controller may release the goods on furnishing of a provisional payment or other security pending production of the documents necessary to prove the originating status of the goods and compliance with the requirements stated in RO Rule VI.”

(oo) By the substitution in rule 46A3.15 for the heading and paragraph (a) of the following heading and paragraph:

“46A3.15 Exhibitions or trade fairs (RO Rule VI)

- (a)(i) Subject to the conditions specified in RO Rule VI, the direct supply rule applies to goods bought by the importer at exhibitions or trade fairs.”
- (ii) When goods are exported from an exhibition or a trade fair to a Member State, the exporter in the Republic must produce the evidence that will be required on importation into the Member State to the Controller together with the Application for Certificate of Origin Form A, the completed Form A and other prescribed export documents.”

(pp) By the substitution in rule 46A3.15(b) for subparagraph (i) of the following subparagraph:

- “(i) The provisions of this rule in respect of imported goods only relate to goods originating in the common customs territory that are imported into the Republic for finishing or processing in the Republic as contemplated in the penultimate paragraph of RO Rule III and in rule 46A3.06(f).”

(qq) By the substitution in rule 46A3.15(b)(ii)(bb) for the words preceding item (A) of the following words:

“the importer must produce from the exporter in the Member State—“

(rr) By the substitution in rule 46A3.16 for the heading and paragraph (a) of the following heading and paragraph:

“46A3.16 Requirements to the execution of goods origin declarations/certificates according to the Form A

- (a) Numbered Certificates of Origin Form A have been printed and are available on application from the South African Revenue Service at the offices of the Controllers specified in paragraphs (a) and (b) of

item 200.03 of the Schedule to the Rules on application by any exporter who wishes to export originating products to a Member State.”

(ss) By the substitution in rule 46A3.16(b)(iii) for item (aa) of the following item:

“(aa)The Form A, export bill of entry, application form and supporting documents for each consignment must be delivered for processing at the office of the Controller nearest to the place of business of the exporter unless the authorised officer within the division responsible for Trade Administration otherwise determines.”

(tt) By the substitution in rule 46A3.16(h) for the words preceding subparagraph (i) of the following words:

"Form A must be completed to be authentic in accordance with the notes on the reverse thereof, the instructions in the RCO Requirements and the following requirements:"

(uu) By the substitution in rule 46A3.16(h)(ii), Box 2, for the wording for the second asterisk of the following wording:

“*If the name of the consignee in the Member State is not known at the time the certificate is issued, the words “**to order**” or the name of the Member State may be printed in this Box. The consignee’s name and address may be printed later after the words “**to order**” or after the name of the Member State (according to the RCO Requirements).”

(vv) By the substitution in rule 46A3.16(h)(ii), Box 4, for “**Russian cumulation**” of the following:

“common customs territory **cumulation**” (where goods have acquired originating status by cumulation of origin involving products originating in the common customs territory as contemplated in the penultimate paragraph of RO Rule III and in rule 46A3.06(f).

(ww) By the substitution in rule 46A3.16(h)(ii) for the instructions for Box 8 of the following:

“Enter the letter
“P”, “Y” or “Pk” in accordance with the instructions for Box 8 in the RCO Requirements.”

(xx) By the substitution in rule 46A3.16(ij) for subparagraph (iii) of the following subparagraph:

“(iii) an exporter who re-exports in the same state goods imported from the Member States or re-exports goods re-imported as contemplated in rule 46A3.13,”

(yy) By the substitution in rule 46A3.20 for the heading and paragraph (a)(i) of the following heading and paragraph:

“46A3.20 Invoice declarations for small consignments (RO Rule VII)
(a)(i) In terms of RO Rule VII, presentation of Form A is not required in respect of a small consignment of a total value not exceeding US \$ 5 000 in which case the exporter may declare the country of origin on the invoice or other shipping documents.”

(zz) By the substitution in rule 46A3.20(b)(viii) for item (bb) of the following item:

“(bb) reflect the name and capacity of the person signing the declaration in capital letters below the signature.

“The exporter of the products covered by this document declares that, except where otherwise clearly indicated, these products are of preferential origin according to the rules of origin of the Member States.

.....

(Place and date)

.....

(Signature of the exporter)”

(Note: In addition the name of the person signing the declaration has to be indicated in clear script.)”

(aaa) By the substitution in rule 46A3.20(c) for subparagraph (iii) of the following subparagraph:

“(iii) fails to notify the authorised officer within the division responsible for Trade Administration that the goods no longer fulfil the required origin conditions (for example, by change of sources or materials).”

(bbb) By the substitution in rule 46A3.21 for the heading and paragraph (a)(i) of the following heading and paragraph:

“46A3.21 Submission of proof of origin in respect of imported and exported goods (RO Rule VII)

(a)(i) These provisions are only applicable in respect of imported goods originating in the common customs territory that are imported into the Republic for treatment or processing in the Republic as contemplated in RO Rule III and rule 46A3.06(f).”

(ccc) By the substitution in rule 46A3.22 for the heading and paragraph of the following heading and paragraph:

“46A3.22 Exportation of knocked down, disassembled or other goods in more than one consignment (RO Rule V)

When exporting knocked down, disassembled or other goods in more than one consignment to a Member State, the exporter must comply with the requirements in RO Rule V.”

(ddd) By the substitution in rule 46A3.23 for the heading and paragraph (b) of the following heading and paragraph:

“46A3.23 Notification of competent authorities (RO Rule VIII)

(b) The customs stamp of which the imprint is supplied to the Customs Union Commission must be used for issuing Form A certificates as required by RO Rule VIII.”

(eee) By the substitution for rule 46A3.24 of the following rule:

“46A3.24 Mutual assistance (RO Rule VIII)

The authorised officer within the division responsible for Trade Administration shall be responsible for rendering any assistance contemplated in the relevant enactment to the customs administrations of the Member States.”

(*fff*) By the substitution in rule 46A3.25 for the heading and paragraph (c) of the following heading and subparagraph:

“46A3.25 Verification of proof of origin (RO Rule VIII)

(c) The authorised officer within the division responsible for Trade Administration shall determine whether or not to refuse entitlement to preferences in respect of imports from the Member States for cumulation purposes as contemplated in rule 46A3.06.”

(*ggg*) By the substitution in rule 46A3.26(b) for subparagraphs (iii) and (iv) of the following subparagraphs:

“(iii) documents relating to any goods imported from the Member States, including proof of origin in respect of any goods exported in the same state as imported or any goods used in the production of goods exported;

(iv) the exportation of the goods to the Member States;”

(*hhh*) By the substitution in rule 46A3.26(c) for subparagraph (ii) of the following subparagraph:

“(ii) An invoiced price is not acceptable as the ex-works price, and may be determined by the authorised officer within the division responsible for Trade Administration in consultation with the, authorised officer within the division responsible for the administration of the valuation section where—“