

**CUSTOMS**  
**EXTERNAL POLICY**  
**SAMPLES**

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## 1 SUMMARY OF MAIN POINTS

- a) Where a client is required to produce a sample in terms of Section 22, such examination or extraction of a sample must take place under Customs supervision and must be truly representative of the whole shipment under review.
- b) Any import duties and taxes that would have been payable on samples drawn from the imported goods had the samples actually been cleared for home use, must be paid. The amount becomes payable from the date when those samples are taken.
- c) The sample document must be read in conjunction with:
  - i) Samples drawn under special and extra attendance (SC-CF-22);
  - ii) Valuation of Imports (SC-CR-A-03);
  - iii) Method 1 Valuation of Imports (SC-CR-A-05)
  - iv) Valuation of Exports (SC-CR-A-07);
  - v) Tariff Classification (SC-CR-A-09); and
  - vi) Refunds and Drawbacks (SC-DT-C-13).
- d) The information included in this document does not cover the following:
  - i) Samples of no commercial value (SC-IM-01-01); or
  - ii) Samples supplied free of charge (SC-CR-A-03).

## 2 POLICY

### 2.1 Samples drawn under Customs supervision

- a) The purposes for which Customs may take, accept or require a client to produce samples of goods at any time or when required, in quantities necessary for:
  - i) Conducting an inspection of the goods; and
  - ii) Establishing for the purpose of the Act, whether as part of such an inspection or not:
    - A) The nature or characteristics of the goods;
    - B) The quality or content of the goods;
    - C) Examination or verification of goods under a refund procedure;
    - D) The tariff classification, value or origin of the goods;
    - E) Ascertaining the duties payable thereon;
    - F) Whether the goods are:
      - I) The same goods previously cleared or released for a Customs procedure;
      - II) Compensating products obtained from specific goods; or
      - III) Identical or similar to or of the same class or kind as other goods.
    - G) Whether the goods are prohibited, restricted, sectorally controlled or counterfeit goods; or
    - H) Any other fact in relation to the goods as may be prescribed by Rule.
- b) Samples may be:
  - i) Examined, analysed or tested in any way;
  - ii) Subjected to a chemical, mechanical or technological process;
  - iii) Used for obtaining advice, including expert or technical advice, on the goods as reflected by the samples or a matter relating to the goods; or
  - iv) Utilised in any other way necessary for achieving the purposes as mentioned in (a) above.
- c) Samples may be used as:
  - i) Evidence in a court or any other Customs proceeding; or
  - ii) Trade samples.
- d) Where packages are opened for examination or for extraction of samples in terms of Section 22, such examination or extraction of samples must take place under Customs supervision and must be truly representative of the total shipment under review. Liquids must therefore be stirred or shaken and powders or other dry substances taken from the centre of the package as far as possible.

- e) The client applies for special and extra attendance.
  - i) Samples must be drawn under Customs supervision for submission to Customs to form part of a refund claim, tariff classification application or valuation determination.
  - ii) Refer to SC-CF-22-S01 for the procedure for special and extra attendance.
- f) Prior permission must be obtained from the Controller/Branch Manager and the application for permission must state the number of the declaration on which the goods were entered for warehousing and the marks and numbers of the packages to be examined or from which the samples are to be extracted. The total number of samples required must also be mentioned. The application for special attendance must be accompanied by a DA 73.
- g) The Officers attending the examination or extraction must supervise the complete operation and on completion thereof must ensure that the packages remaining in bond are sealed and secured to prevent any spills, leaks or lose, etc.
- h) Customs may require in terms of Section 107(2)(b) that the sample must be analysed by a reputable third party and in accordance with a method determined by the Commissioner. The cost of the analysis of any goods must be borne by the importer, exporter or owner of the goods.
- i) If the samples are considered to be hazardous or dangerous they must not be forwarded to Customs. A Customs Officer must visit the client's premises and verify that the literature and/or chemical analysis certificates submitted instead of the required samples can be tied-up with the goods under the Customs procedure, for example, a request for tariff classification.

## 2.2 Samples submitted to Customs

- a) Samples must be forwarded under separate cover of SC-CF-46-A01 together with the relevant claim or supporting documents.
- b) Any sample submitted with a tariff or valuation application will be retained in Customs Head Office for record purposes for a period of two (2) years;
- c) The client may request the samples to be return to them after the refund application, tariff classification or valuation determination is made for example in the case of high risk goods.
- d) Samples returned by Customs, after the required time frame, must be collected and signed for as proof of receipt. Customs will notify the client, in writing, that the sample was returned from Head Office and is available for collection thereof within five (5) days of the date of the letter.
- e) Samples not returned to or collected by the client due to insufficient information attached to sample, will be removed to the nearest States Warehouse (SC-CW-01-02).

## 2.3 Duty liability on Samples

- a) Any import duties and taxes that would have been payable on samples drawn from the imported goods had the samples actually been cleared for home use, must be paid.
- b) The duty and VAT due on the samples must be paid at the time of clearance of the entire package into home consumption. Refer to Section 22 read with Section 44(6)(c).

## 2.4 Record keeping

- a) The recipient or importer of the goods imported or exported must keep for record purposes for a period of five (5) years:
  - i) Books, accounts and documents in respect of all transactions relating to the Rules for the purpose of any acquittal procedure; and
  - ii) Any data related to such documents created by means of a computer.

- b) The five (5) year period is calculated from the end of the calendar year in which the document was created, lodged or required. (Sections 101 and 101A)
- c) Every client must produce such books, accounts and documents on demand.

## 2.5 Penalties

- a) Failure to adhere to the provisions of the Act, as set out in this document, is considered an offence
- b) Offences may render the recipient or importer liable to, as provided for in the Act:
  - i) Monetary penalties;
  - ii) Criminal prosecution; and/or
  - iii) Suspension, cancellation of registration, license or accreditation.

## 2.6 Promotion of Administrative Justice Act

- a) The Promotion of Administrative Justice Act (PAJA) No. 3 of 2000 gives effect to everyone's right to administrative action that is lawful, reasonable and procedurally fair. Any person whose rights have been adversely affected by administrative action has the right to be given written reasons, as contemplated in Section 33 of the Constitution of the Republic of South Africa, 1996. PAJA:
  - i) Provides for the review of administrative action by a court or where appropriate, an independent and impartial tribunal;
  - ii) Imposes a duty on the State to give effect to those rights;
  - iii) Promotes an efficient administration as well as good governance; and
  - iv) Creates a culture of accountability, openness and transparency in the Public Administration or in the exercise of a public power or the performance of a public function, by giving effect to the right to just administrative action.
- b) Administrative action which significantly and unfavourably affects the rights or valid expectations of any person must be procedurally fair. A fair administrative procedure depends on the circumstances of each case.
- c) A person must be given:
  - i) Written reasons of the nature and purpose of the proposed administrative action;
  - ii) A reasonable opportunity to make representations;
  - iii) A clear statement of the administrative action; and
  - iv) Adequate notice of any right of review or internal appeal, where applicable.
- d) Just administrative action requires the Customs Officer to consider all the facts presented and obtained in addition to affording the client the opportunity to be heard, prior to instituting any administrative action.
- e) Before administrative action can be taken by Customs the declarant must be allowed the opportunity to:
  - i) Obtain assistance and, in serious or complex cases, legal representation;
  - ii) Present and dispute information and arguments; and
  - iii) Appear in person.
- f) Declarants whose rights have been significantly and unfavourably affected by administrative action and who have not been given reasons for the action may, within ninety (90) days after the date on which the declarant became aware of the action, request Customs to furnish written reasons for the action.
- g) Customs must within ninety (90) days after receiving the request, give the declarant adequate reasons in writing for the administrative action. If Customs fails to furnish adequate reasons for the administrative action, it is presumed in any proceedings for judicial review that the administrative action was taken without good reason.

## 2.7 Appeals against decisions

- a) In cases where clients are not satisfied with any decision taken in terms of the Customs and Excise Act they have a right of appeal to the relevant appeal committee. The policy in this regard, as well as the process to be followed, is contained in document SC-CC-24.
- b) If a client disagrees with a decision of any appeal committee their recourse will be to lodge an application for ADR (Alternative Dispute Resolution) with the relevant appeal committee. The committee will add its comments thereto and forward the application to the ADR Unit for attention. The policy in this regard, as well as the process to be followed is contained in document SC-CC-26.

## 3 RELATED INFORMATION

### 3.1 Legislation

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	<b>Customs and Excise Act No. 91 of 1964:</b> Sections 3(1), 22, 44(6)(c), 106, 107(2)(b) and 107(3) <b>Customs and Excise Rules:</b> Rule 106.01 and 106.02 <b>WTO Trade Facilitation Agreement:</b> Section 1 Article 4 – Appeals or review procedure
Other Legislation:	<b>Promotion Of Access To Information Act No. 2 of 2000:</b> All <b>Promotion of Administrative Justice Act No. 3 of 2000:</b> Sections 3 and 5
International Instruments:	<b>Kyoto Convention General Annex Chapter 3:</b> Clearance and other Customs formalities – Standard 3.9, 3.38 and 3.42 <b>WCO SAFE Framework of Standards: Annex 1</b> – Standard 1.2.1 to 1.2.3

### 3.2 Cross references

DOCUMENT #	DOCUMENT TITLE
SC-CC-24	Internal Administrative Appeal – External Policy
SC-CC-26	Alternative Dispute Resolution – External Policy
SC-CF-22	Special and Extra Attendance – External Policy
SC-CR-A-03	Valuation of Imports – External Policy
SC-CR-A-05	Method 1 Valuation of Imports – External Policy
SC-CR-A-07	Valuation of Exports – External Policy
SC-CR-A-09	Tariff Classification – External Directive
SC-DT-C-13	Refunds and Drawbacks – External Policy
SC-IM-01-01	Samples of No Commercial Value – External Policy

### 3.3 Quality Records

DOCUMENT #	DOCUMENT TITLE
DA 73	Application of Special and Extra Attendance
SC-CR-A-02-FR01	Application for Value Determination

## 4 DEFINITIONS AND ACRONYMS

<b>ADR</b>	Alternative Dispute Resolution
<b>Appeal</b>	The act by which a person, natural or legal, who is directly affected by a decision made or omission by Customs and who deems himself/herself to be aggrieved thereby seeks redress before a competent authority
<b>Commercial</b>	Viable, saleable, profit marketable, business related industrial trade
<b>Dispute</b>	A disagreement on the interpretation of either the relevant facts involved or the law applicable thereto, or both the facts and the law
<b>Hazardous Dangerous</b> or	Samples of solids, liquids, or gases that can harm people, other living organisms, property, or the environment
<b>High Risk Goods</b>	Goods which are particularly susceptible to theft or dangerous goods. Examples of high risk goods are, but is not limited to: a) Jewellery;

	<ul style="list-style-type: none"> <li>b) Precious/semi-precious stones;</li> <li>c) Precious metals;</li> <li>d) Electronic equipment;</li> <li>e) Firearms;</li> <li>f) Sensitive information on trade secrets;</li> <li>g) Chemicals;</li> <li>h) Explosives;</li> <li>i) Alcoholic beverages;</li> <li>j) Cigarettes;</li> <li>k) Money;</li> <li>l) Coins, etc.</li> </ul>
<b>Sample</b>	<ul style="list-style-type: none"> <li>a) Articles which are representative of a particular category of goods already produced or are examples of goods the production of which is contemplated; the term does not include identical articles brought in by the same individual or sent to a single consignee, in such quantity that, taken as a whole, they no longer constitute samples under ordinary usage.</li> <li>b) Product used for trying and/or testing to see what it is like and/or how it works.</li> </ul>

## 5 DOCUMENT MANAGEMENT

<b>Policy Owner</b>	Senior Manager Governance Compliance: Customs
<b>Detail of change from previous revision</b>	<ul style="list-style-type: none"> <li>a) Updated the document from a Standard to a Policy.</li> <li>b) Removed all references to the Tax Administrative Act No. 28 of 2011 (TAA) from document in the standard "Appeals against decisions" and in the "Reference - Legislation and Rules administered by SARS" paragraphs.</li> <li>c) Added the Promotion of Administrative Justice Act (PAJA) paragraph.</li> </ul>
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