

CUSTOMS

EXTERNAL DIRECTIVE

VALUATION OF IMPORTS

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1 SUMMARY OF MAIN POINTS

- a) Determining of Customs values are set by the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the Agreement), which involves six (6) valuation methods.
- b) The primary basis for the Customs value under the Agreement is transaction value, which is the price actually paid or payable. This method is discussed in SC-CR-A-05.
- c) Where the Customs value cannot be determined under the transaction value method (Method 1) the following methods, discussed in this document, are applied:
 - i) Identical goods method;
 - ii) Similar goods method;
 - iii) Deductive method;
 - iv) Computed method; or
 - v) Fall-back method.

2 DIRECTIVE

2.1 General Agreement on Tariff and Trade (GATT)

- a) GATT is part of South African law. In terms of Section 74A(1) the interpretation of Sections 65, 66 and 67 is subject to the Agreement. Refer to SC-CR-A-02-A02 for the Articles to the Agreement.
- b) The instruments of the Agreement must receive due consideration except where a manifest deviation from or an irreconcilable conflict with the provisions of Section 65, 66 and 67 is identified, in which case the provisions of the Act must prevail.
- c) Section 65(1) stipulates that the value for Customs duty purposes of any imported goods shall, at the time of entry for home consumption, be the transaction value thereof, within the meaning of Section 66.
- d) In terms of Article 13 of the Agreement the final determination of the Customs value of imported goods may, if necessary, be delayed provided a sufficient guarantee covering the ultimate payment of Customs duties for which the goods may be liable, is lodged.

2.2 Obligation to declare

2.2.1 Declaring a value - invoices

- a) In terms of Section 38 read with Section 39 an importer shall:
 - i) Make due entry **on a Customs declaration (see SC-CF-04 for the completion of the declaration)**;
 - ii) Provide such information as required in terms of Section 39(1)(c); and
 - iii) Answer all questions relating to the goods imported.
- b) This would include sufficient information to enable the Customs Officers to determine, in a multiparty transaction, which of the various sales is the sale of the goods, for exportation to South Africa, upon which the transaction value should be based. Refer to SC-CF-30.
- c) Before a middleman or agent declares a transaction value, based on a transaction to which he/she is not the importer, the importer must be sure that such a transaction satisfies the criteria discussed above and be prepared to submit supporting evidence as described, upon request by a Customs Official.
- d) Any importer who declares a value to Customs without the necessary supporting documentation would not be exercising reasonable care and may be subject to a penalty or other enforcement compliance action.

- e) Section 40(1)(c) read with Section 41(4)(a) states that an entry shall not be valid unless the true value of the goods on which duty is leviable, or which is required to be declared under the provisions of the Act have been declared. This includes all particulars in respect of the transaction value or of any:
- i) Commissions;
 - ii) Discounts;
 - iii) Costs;
 - iv) Charges;
 - v) Expense;
 - vi) Royalty;
 - vii) Freight;
 - viii) Duty Tax;
 - ix) Drawback;
 - x) Refund;
 - xi) Rebate;
 - xii) Remission; or
 - xiii) Other information, which relates to and has a bearing on the value shall be declared by the exporter on his/her Commercial Invoice, and such particulars shall, except where the Commissioner otherwise determines, relate to the final amount pertaining to that transaction.
- f) The commercial invoice presented for Customs clearance must be an exact representation of the transaction value. Full details and particulars of all the factors relating to the sale which have a direct or indirect influence on the transaction value must be reflected on the invoice as legislated in Section 41(4)(a) and Rule 41.
- g) Rule 41.01 and 41.05 places the burden on the importer to produce an original invoice, in one (1) of the official languages, from the supplier of the goods showing all particulars required by the Act, to make a valid entry in one (1) of the official languages.
- h) **Terms of sale:**
- i) International Commercial Terms or in short INCOTERMS 2010 are standard trade definitions most commonly used in international sales contracts and is published by the International Chamber of Commerce:
 - A) When an importer and supplier use these standard trade definitions on their invoices it confirms that the minimum requirements for the use of these terms have been met;
 - B) The terms can be added to, or modified so as to incorporate the importer and seller's specific needs, provided that such modifications do not contradict the basic INCOTERM itself; and
 - C) INCOTERMS are internationally recognised as indispensable evidence of the importer's and supplier's responsibilities for delivery under a sales contract, and are used to make international trade easier by helping traders in different countries understand each other.
 - ii) INCOTERMS 2010 will not apply unless incorporated into the contract of sale by specifying that the contract is governed by INCOTERMS 2010.

2.2.2 Value of goods not liable to ad valorem duty

- a) Section 74(1) states that the Customs value of any imported goods must be declared by the importer of such goods.
- b) The effect of this subsection is that the Customs value must be declared in respect of all goods, irrespective of whether they attract ad valorem (percentage of the value) or a specific (e.g. 100c per kg) rate of duty or are "Free" by tariff.
- c) Where, for example it has been determined that a relationship between the importer and supplier has influenced the price and it has been necessary to apply an uplift, such uplift must be applied to the commodities mentioned in the determination, irrespective of whether the goods are liable to duty or not.

2.2.3 Sample or free or no charge goods

a) Replacements for breakage

- i) In terms of Section 65(1) the value for Customs duty purposes of any imported goods shall be the transaction value thereof, within the means of Section 66. Therefore all goods imported must have a Customs value.
- ii) Goods may be imported free of charge for a variety of reasons, for example gifts, samples, replacement goods or promotional items. Most free of charge goods are consigned between related parties, although this is not always the case, for example warranty replacement goods can also be imported free of charge.
- iii) When replacement goods are sent free of charge with the original shipment to cover potential breakage in transit in that shipment, the Customs value of the free of charge items is determined by using the price of the **identical** goods as the replacement parts' Customs value. Price is obtainable on the invoice or by requesting the published export pricelist.
- iv) If replacement goods are sent at a later date there are two (2) possibilities. The replacement may be sent:
 - A) Invoiced at the original price with separate arrangements made for the original goods; or
 - B) Invoiced free of charge.
 - I) In (iv)(A) if all the conditions of Method 1 are met the value must be determined using this method; and
 - II) Where replacement goods are sent free of charge, as in (ii)(B), they must be regarded as imported in fulfilment of the original transaction. In these circumstances it would be appropriate to determine the value using the identical goods value method (Method 2) by basing the value on the price paid on the original shipment if not older than ninety (90) days.
- v) Regular importations of free of charge goods between the same importer and supplier combination should be covered by a value determination.

b) Samples supplied free of charge or of no commercial value

- i) If the goods are supplied free of charge as free samples, there will naturally not be any question of a price relevant to establish the transaction value in the confines of Method 1 and will have to be determined by using the other valuation methods in sequential order.
- ii) **Samples of no commercial value are defined in Section 38(1)(a)(iii) and more fully explained in SC-IM-01-01.**
- iii) If the samples do not conform to the provisions of **Section 38(1)(a)(iii)** the goods must be entered on a **Customs declaration** and the Customs value must be determined using valuation Methods 2 – 6 in sequential order.

c) Gifts or promotional items

- i) In the case of the importation of gifts, samples, promotional items, etc. provided free of charge, the transactions do not involve payment of any price and therefore these transactions cannot be regarded as sales under the Agreement.
- ii) Method 1 cannot be applied in these cases, because there is no price paid or payable by the importer to the foreign suppliers. Therefore, the value has to be determined by applying the other valuation Methods (2 – 6) in sequential order, as prescribed in Section 66.

2.2.4 Valuation codes

- a) Section 66(2)(c), places the onus on the importer of the goods, to declare whether or not the client is related to the supplier of the goods within the meaning of Section 66(2)(a). Rule 66.03 and 66.05 prescribes that any importer shall in the "Valuation Code" field declare if the importer is:
 - i) Related to the supplier of the goods - insert the letter "R";
 - ii) Not related to the supplier of the goods - insert the letter "N"; or
 - iii) Exempted in terms of Rule 66.01 - insert the letter "E".
- b) The valuation code is only inserted in this box of the first item, which would then be regarded as applicable to the whole consignment.

- c) Every importer shall indicate which Valuation Method is applicable to his/her goods by inserting in the field "Valuation Code" on the **Customs declaration**, after the letter "R" or "N" as required by Rule 66.03 the appropriate method number.
- d) Importers of the classes or kinds of goods specified in Rule 66.01 are exempted from this requirement.
- e) The "Valuation Method" field must be left blank if:
 - i) A value determination number is reflected in the additional information box;
 - ii) The goods are removed in bond to a destination within the Common Customs Area;
 - iii) The goods are removed in transit to a destination outside the Common Customs Area; or
 - iv) When goods are cleared with any purpose code starting with an "X" or "Z".
- f) Where a value determination has been issued to an importer in respect of goods imported from a specific supplier:
 - i) The determination number must be inserted in the field "Additional Information" in Box 50; and
 - ii) The supplier code in the "TIN" field in Box 2 of the Customs declaration. In such cases, the "Valuation Method" field must be left blank.
- g) Although it is not a requirement that the fields "Valuation Method", "Additional Information, and "Suppliers Customs Code" be filled in by importers themselves or members of their staff, they are responsible for the accuracy of the codes. It is, therefore, incumbent on them to instruct their clearing agents correctly. The procedure must be continued until such time as a value determination is issued.
- h) Failure to declare value codes, determination numbers as well as supplier codes on the Customs declaration, once they have been issued, is viewed in a serious light as it is an infringement which invalidates the declaration concerned, and constitutes an offence in terms. Failure to comply with this requirement renders the importer liable to the penalties prescribed by the Act.
- i) Rule 66.01 exempts the following goods from a **Customs** declaration; whether or not the importer is related to the supplier of the goods as required in terms of Section 66(2)(c):
 - i) Goods imported by an importer from a single supplier and which do not exceed R10 000 in value per consignment;
 - ii) Goods which are not liable to an ad valorem duty or to an ad valorem duty in addition to or as an alternative to any other duty;
 - iii) Goods cleared under the provisions of paragraphs (i) to (iv) of the proviso to Section 38(1)(a), namely:
 - A) Containers temporarily imported;
 - B) Human remains;
 - C) Goods of no commercial value; and
 - D) Goods imported under an international carnet; and
 - iv) Goods entered under rebate of duty provided for in items 403.01, 405.01, 405.02, 405.03/37.05 to 405.03/90.10, 405.04, 405.05/92.00, 405.05/00.00/02.00, 405.09, 406.00 to 408.01, 408.03, 410.03/27.10 to 411.00/85.01, 412.02 to 412.04, 412.06, 412.08 to 412.16, 412.20 to 460.06/28.35, 460.06/38.17 to 460.16/85.00 and all items of Schedule 4 Part 3.

2.3 Methods of Customs valuation on imported goods

- a) The Act defines six (6) methods of valuation which must be applied in sequential order, namely the:
 - i) Transaction value method (Method 1), which is the primary method and must be applied whenever the conditions as prescribed are fulfilled, Section 66(1);
 - ii) Identical goods value method (Method 2) - Section 66(4);
 - iii) Similar goods value method (Method 3) - Section 66(5);
 - iv) Deductive value method (Method 4) - Section 66(7);
 - v) Computed value method (Method 5) - Section 66(8); and
 - vi) Fall-Back value method (Method 6) - Section 66(9), which can only be applied if all the previous methods cannot be used.
- b) The only exception is that the sequence of the deductive value method and the computed value method may be reversed at the request of the importer in terms of Section 66(6). Subject to the

provisions of paragraph 3 of Annex III of the Agreement, Customs Officers cannot decide to reverse the order of the methods.

- c) The nature of the documentation to be produced must follow a chronological order from start to finish with regard to the transaction under review and must enable Customs to establish the:
- i) Actual amounts paid for the service or goods;
 - ii) Role and function of the parties involved **in a transaction** (importer, middleman, manufacturer, **buyer** and seller);
 - iii) Actual services performed or paid for; and
 - iv) **Substance of the documentation as it relates to the actual business and commercial reality of the transaction under consideration.**
- d) The following table sets out which Sections of the Act refers to which Article or Method of the Agreement:

ACT REFERENCE	AGREEMENT REFERENCE	VALUE METHOD
Section 66(1) read with Section 67	Article 1 read with Article 8	1 – Transaction value method
Section 66(4)	Article 2	2 – Identical Goods value method
Section 66(5)	Article 3	3 – Similar Goods value method
Section 66(7)	Article 4	4 – Deductive value method
Section 66(8)	Article 5	5 – Computed value method
Section 66(9)	Article 6	6 – Fall-Back value method

- e) Once a transaction has been moved out of the confines of Section 66(1) by Customs the client is informed that the value will be determined using one (1) of the other value methods. Customs can then not revert to Method 1, even if the value determined under the provisions of the next method is lower than the value declared by the client under Method 1.
- f) Refer to SC-CR-A-02-A02 for information on the articles to the Agreement.

2.4 The transaction value method – Method 1

- a) The transaction value [Section 66(1)] definition clearly states that the transaction value of imported goods shall be the price actually paid or payable for the imported goods. This is a real price which is actually made and not a normal price for imported goods. Actual value is the price at which, such or like goods are sold or offered for sale in the ordinary course of trade under fully competitive conditions.
- b) The price will be the **total** amount paid or payable. This means if:
- i) The payment has been effected prior to valuation the amount paid will be used; and
 - ii) The payment has not been made Customs must use the price that will be paid for the imported goods.
- c) The price actually paid or payable must be the price agreed between the parties:
- i) The agreed price need not necessary be endorsed in a written contract, but can also be evidenced by letters, telexes, fax messages or actual performances of transaction and payments;
 - ii) The agreed price may also change before the goods reach South Africa; and
 - iii) If the parties agree on a revised price before the goods reach South Africa, it would mean that a new agreement has superseded the old and the transaction value has to be based on the new price, whether higher or lower than the old agreed price.
- d) The flow of dividends or other payments from the importer to the supplier that do not relate to the imported goods are not to be included in the Customs value.
- e) The price actually paid or payable may be the result of a reduction in the form of a discount and will be admissible when the Customs value is determined. However, Customs has the right to request factual evidence to proof that the discount has been earned by the importer.

- f) Refer to SC-CR-A-05 for more information on Method 1.

2.5 The identical goods value method – Method 2

- a) If the Customs value of any imported goods cannot be ascertained by using Method 1, the **identical goods value method** (Method 2) must be used. This method is defined in Section 66(4) with specific adjustments as provided for in the Act and has the following elements:
- i) It relates to identical goods;
 - ii) The price relates to an already Customs accepted transaction value of imported goods at the same commercial level and in substantially the same quantity;
 - iii) The transaction used to determine the value has to be exported to South Africa, at or about the same time; and
 - iv) It has to be adjusted in accordance with the provisions of Section 66(4)(a).
- b) Where there is more than one (1) transaction value of identical goods which meets all requirements, the lowest of these values are to be used.
- c) Identical goods in the context Method 2 are goods which are:
- i) The same in all respects including:
 - A) Physical characteristic;
 - B) Quality; and
 - C) Reputation;
 - ii) Produced in the same country as the goods being valued; and
 - iii) Produced by the producer of the goods being valued.
- d) The definition of **identical goods excludes** imported goods for which engineering, development, artwork, etc. is undertaken in South Africa and is provided by the importer to the producer of the goods free of charge or at a reduced cost.
- e) When using Method 2 to establish the Customs value of the imported goods reference must be made to:
- i) An earlier or simultaneous Method 1 entry; and
 - ii) The comparable importation must have been exported at or about the same time as the goods being valued.
- f) In applying Method 2, Customs shall, wherever possible:
- i) Use a sale of identical goods at the same commercial or trade level and in substantially the same quantities as the goods being valued; and
 - ii) Where no such sale is found, a sale of identical goods that takes place under any one (1) of the following three (3) conditions must be used:
 - A) A sale at the same commercial level but in different quantities;
 - B) A sale at a different commercial level but in substantially the same quantities; or
 - C) A sale at a different level and in different quantities.
- g) Minor differences in appearance would not exclude goods which otherwise measure up to the definition from being regarded as identical. For example where there are no identical goods created by the same person in the country of production of the goods being valued, identical goods created by a different person in the same country may be taken into account.
- h) **Adjustments**
- i) The value of identical goods can be adjusted upwards or downwards, provided that such adjustments:
 - A) Can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment; and
 - B) Can account for demonstrated differences between the goods being valued and the identical goods to take account of:
 - I) Trade level differences;
 - II) Quantity differences;

- III) Commercial significance; and
 - IV) Differences for transportation costs due to variances in the mode and/or distance of transport.
- ii) Reference can be made to Section 66(4)(b).

i) **Time element**

- i) At or about the same time should be taken to cover a period of time, as close to the date of exportation as possible, within which commercial practises and market conditions remain the same.
- ii) The allowed period is flexible but should not exceed ninety (90) days.
- iii) It would not be practical to accept a ninety (90) day old Method 1 comparison for a commodity which is subject to violent price fluctuations.

2.6 The similar goods value method – Method 3

- a) If the value of any imported goods cannot be ascertained by using the value of identical goods, the **similar goods value method** (Method 3) must be used. This method is defined in Section 66(5) with specific adjustments as provided for in the Act and has the following elements:
- i) It relates to similar goods;
 - ii) The price relates to a transaction value of imported goods at the same commercial level and in substantially the same quantities as the goods being valued, previously accepted by Customs;
 - iii) The transaction used to determine the value has to be exported to South Africa at or about the same time; and
 - iv) It has to be adjusted in accordance with the provisions of Section 66(5).
- b) When using Method 3 by referring to an earlier or simultaneous transaction value method (Method 1) entry; the comparable importation must have been exported at or about the same time as the goods being valued.
- c) Where there is more than one (1) transaction value of similar goods which meet all requirements, the lowest of these values are to be used.
- d) Similar goods, in the context of Method 3 are goods that, although not alike in all respects:
- i) Closely resemble the goods being valued in terms of:
 - A) Component materials; and
 - B) Characteristics.
 - ii) Which enable them to:
 - A) Perform the same functions; and
 - B) Are commercially interchangeable with the goods being valued.
 - iii) Are produced in the same country as the goods being valued; and
 - iv) Are created by the producer of the goods being valued.
- e) In applying Method 3 Customs shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of similar goods that takes place under any one (1) of the following three (3) conditions may be used:
- i) A sale at the same commercial level but in different quantities;
 - ii) A sale at a different commercial level but in substantially the same quantities; or
 - iii) A sale at a different level and in different quantities.
- f) When determining whether goods are similar; due regard must be taken of the quality of the goods, their reputation and the existence of trademarks.
- g) Where there are no similar goods created by the same person in the country of production of the goods being valued, similar goods created by a different person in the same country may be used.

h) **Adjustments**

- i) The value of similar goods can be adjusted upwards or downwards, provided that such adjustments:
 - A) Can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment; and
 - B) Can account for demonstrated differences between the goods being valued and the identical goods to take account of:
 - I) Trade level differences;
 - II) Quantity differences;
 - III) Commercial significance; and
 - IV) Differences for transportation costs due to variances in the mode and/or distance of transport.
- ii) Reference can be made to Section 66(5).
- iii) The definition of similar goods excludes imported goods for which engineering, development, artwork and so forth is undertaken in South Africa and is provided by the importer to the producer of the goods free of charge or at a reduced cost.

i) **Time element**

- i) At or about the same time should be taken to cover a period of time, as close to the date of exportation as possible, within which commercial practises and market conditions remains the same.
- ii) The allowed period is flexible but should not exceed ninety (90) days.
- iii) It would not be practical to accept a ninety (90) days old transaction value method comparison for a commodity which is subject to violent price fluctuations.

2.7 The deductive value method – Method 4

- a) If the value of any imported goods cannot be determined by using the value of Method 3, the fourth (4) method or **deductive goods value method** (Method 4) must be used. This method is defined in Section 66(7).
- b) The importer may request in writing that the order of application of Method 4 and 5 be reversed.
- c) The basis to be used when apply this method is the price of the imported goods under review or identical or similar imported goods that are sold in South Africa in the same condition as that in which they were imported, and has the following elements:
 - i) Relates to the sales price in South Africa;
 - ii) Has to be in the same condition as that in which they were originally imported;
 - iii) The price relates to the unit price in the greatest aggregate quantity at which they were sold;
 - iv) Is imported and sold at or about the same time as the importation of the goods being valued;
 - v) The price is not influenced by any relationship; and
 - vi) The price is subject to deductions.
- d) **Sales price in South Africa**
 - i) When using this method, the Customs value is determined on the basis of sales in South Africa less certain specified expenses resulting from the importation and sale of the goods.
 - ii) When sales of the imported goods are not available, sales of identical or similar goods may be taken in sequential order.
 - iii) The sale in South Africa must meet the following conditions:
 - A) The goods have been resold in South Africa in the same condition as imported;
 - B) Sales of the goods being valued (or of identical or similar goods) have taken place at the same or substantially the same time of importation as the goods being valued;
 - C) If no sales took place at or about the same time of importation, it is permitted to use sales up to ninety (90) days before or after the importation of the goods being valued;
 - D) If there are no sales of identical or similar goods imported that meet all the above requirements, the importer may choose to use sales of the goods being valued after further processing;
 - E) The purchaser in South Africa must not have supplied assists, either directly or indirectly; and

- F) The purchaser must not be related to the importer from whom he/she buys goods at the first commercial level after importation.

e) **Same conditions**

- i) The Interpretative Note recognises that Method 4 would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without reasonable difficulty.
- ii) Also, there can be instances where the imported goods maintain their identity, but from such a minor element in the goods sold in South Africa, that the use of Method 4 would be unjustified.
- iii) In view of the above, each situation of this type must be considered on a case-by-case basis.

f) **Unit price**

- i) The unit price at which the greatest number of units is sold must be established. Commercial invoices will serve as the primary basis for establishing the price per unit.
- ii) The term “unit price at which goods are sold in the greatest aggregated quantity” means the price at which:
 - A) The greatest number of units is sold in sales;
 - B) To persons who are not related to the persons from whom they buy such goods; and
 - C) At the first commercial level after importation at which such sales take place.
- iii) Any sale in South Africa, in the greatest aggregated quantity as stated above, to a person who supplies (directly or indirectly) free of charge or at a reduced cost any of the elements specified in Section 67(1)(b) for use in connection with the production and sale for export to South Africa must not be taken into account in establishing the unit price (assists).
- iv) The unit price can be determined by referring to either a price list or actual sales. The use of a price list is only possible where the importer can demonstrate that the published prices represent sales actually made at that unit price. In cases where there is a uniform price to unrelated customers regardless of factors like the quantity sold or commercial lever, for example wholesaler or retailer, the price list is acceptable.
- v) If a pricelist depends on quantity sold or commercial levels, the importer must proof that the unit price declared at any particular time represents sales made in the greatest aggregated quantity across all price bands.
- vi) If the unit price is to be established from actual sales, evidence of the sale(s) of the imported, identical or similar goods at or about the time of importation will be required. With each import entry, the importer must produce either:
 - A) A copy sales invoice reflecting a sale made in the greatest aggregate quantity; or
 - B) A certified statement of the unit price containing sufficient information, for example details of the customers, order numbers to allow effective verification at audit.
- vii) If the unit price of both the imported goods and identical goods is known at or about the time of importation, the value for Customs duty purposes must always be based on the actual unit selling price, provided the goods will not be subject to some restriction, for example major processing.
- viii) When sales of the imported goods are not available, sales of identical or similar goods may be taken in sequential order.

g) **Greatest aggregate quantity**

- i) When determining the value of imported goods under Method 4 the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity is to be the basis for establishing the Customs value.
- ii) To determine the greatest aggregate quantity all sales at a given price are taken together and the sum of all the units of goods sold at that price is compared to the sum of all the units of goods sold at any other price. The greatest number of units sold at one (1) price represents the greatest aggregate quantity.
- iii) Any sale in South Africa to a person who supplied an assist should not be taken into account in establishing the unit price for the purpose of Method 4, as the value will not be a reflection of a price in the open market.

h) Time element

- i) The Customs value shall be based on the unit price at which the imported goods or identical or similar imported goods are:
 - A) Sold in South Africa; and
 - B) In the condition as imported at the earliest date after importation of the goods being valued; but
 - C) Before the expiration of the ninety (90) days after importation.
- ii) The ninety (90) day expiration period can only be used as a guideline when dealing with imported goods. If the imported product under review is a commodity which depreciates in price on a daily or weekly or monthly basis the expiration period must be adjusted accordingly. For example the price of a cell phone depreciates rapidly when a new model is introduced and the ninety (90) day period can then not be used.

i) Relationship

- i) The sales price in South Africa of the imported, identical or similar goods must be a price in the ordinary course of trade under fully competitive conditions, wherein the importer and supplier are not related to each other and price is the sole consideration.
- ii) A relationship as defined in Section 66(2)(a) could influence the transaction value of the goods under review

j) Deductions

- i) A deductive value is determined by making a deduction from the established price per unit for the entire sum of the following elements:
 - A) Commissions generally earned on a unit basis in connection with sales in South Africa for goods of the same class or kind:
 - I) Where the commission is usually paid or agreed to be paid or the additions usually made for profit and general expenses (including the direct and indirect costs of marketing the goods under review) in connection with the sales in South Africa of the imported goods of the same class or kind. Sales in South Africa of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the information can be provided, should be examined;
 - II) Where commissions are paid by an exporter to their selling agent in South Africa, the commission payment includes reimbursement for all the expenses and costs which are allowable under the deductive method, for example storage costs, and the allowable deduction is the full amount of the commission paid;
 - III) Where the exporter pays commission separately from the reimbursement of costs and expenses, both are deductible. Effectively, the commission can be equated to a profit element; and
 - IV) The commission and mark-ups to be deducted must be those which are usually paid in connection with sales in South Africa of imported goods of the same class or kind.

OR

- B) Profit and general expenses generally reflected on a unit basis in sales in South Africa for goods of the same class or kind:
 - I) Profit and general expenses must be taken as a whole;
 - II) The importer must provide the figure for this, unless the figure is inconsistent with sales of goods of the same class or kind in South Africa; and
 - III) In cases of such inconsistency, the profit and general expenses figure can be based on relevant information other than that provided by the importer.

AND

- C) The usual transport, insurance and associated costs incurred in South Africa, that is consistent with the normal range of margins for profit and general expenses of unrelated importers trading in imported goods of the same class or kind as those to be valued and at the same commercial level as that at which the importer is operating;
- D) The import duties and taxes levied in South Africa;
- E) Value added by assembly or other further processing, when applicable; and
- F) The cost of transport, insurance and related charges from the place of exportation to the place of importation in South Africa.

- ii) Whilst deductions must be made where appropriate, no deductions can be made for items not included in the value.
- iii) Depending on the volume and the manner of trade, it may be of benefit to agree an overall deduction to cover all expenses, except the included duties. Such overall deduction must be evidenced by working figures or trading accounts. The deductions must relate to the specific unit prices, for example if the importer sells at various levels, only the costs incurred at that unit price level must be used.

k) **Situations where further processing is done**

- i) If imported goods are subjected to processing in South Africa before the sale, it is still possible that the deductive method can be used if the importer so requires.
- ii) Deductions for processing can only be allowed on the basis of objective and quantifiable data, so the importer must provide suitable evidence.
- iii) The use of the deductive method would normally be applicable when, as a result of further processing, the importer must provide suitable evidence.
- iv) The use of the deductive method would not normally be applicable when, as a result of further processing, the imported goods:
 - A) Lost their identity; or
 - B) Maintain their identity but form only a minor element of the final article sold.

l) Goods of the same class or kind is defined as:

- i) Goods which fall within a group or range of goods produced by a particular industry or industry sector; and
- ii) Includes goods imported from the same country as the goods being valued as well as the goods imported from other countries.

m) **Objective and quantifiable data**

- i) Where the deductive method is used on goods where further processing has been done after importation, deductions made for the value added by the processing shall be based on objective and quantifiable data relating to the cost of such work.
- ii) Accepted industry formulas, recipes, methods of construction and other industry practices would form the basis of the calculations.

2.8 The computed value method – Method 5

2.8.1 The cost or value of production

- a) The **computed value method** (Method 5) is to be considered in the hierarchical sequence of methods, although at the importers request in writing, Method 5 can be considered before Method 4.
- b) As a general rule, the Customs value is determined under the Agreement on the basis of information readily available in South Africa. However, in order to determine a value using Method 5, it is necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside South Africa.
- c) The use of Method 5 will generally be limited to those cases where the importer and the supplier are related, as only related companies will divulge the required information to proof the various elements that make up the Customs value.
- d) The Customs value should be calculated by determining the aggregate of the relevant costs, charges and expenses or the value of:
 - i) Material employed in producing the imported goods; and
 - ii) Fabrication or other processing costs for the imported goods, for example direct and indirect labour, factory overheads and so forth.
- e) The following charges are to be added if not included in the value above:
 - i) Cost of containers which are treated as being one (1) with the goods;
 - ii) Packing costs and charges including that of labour and materials;

- iii) Assists (apportioned in a reasonable manner in accordance with the General Accepted Accounting Principles or International Financial Reporting Standards [GAAP/IFRS]);
 - iv) Inland freight and charges; and
 - v) Engineering work, artwork and the likes thereof undertaken in South Africa and charged to the producer.
- f) Add amounts for profit and general expenses, usually reflected in export sales to South Africa by producers in the country of export of goods of the same class or kind.

2.8.2 Profit and general expenses

- a) As all the detail needed to calculate the Customs value will be in the country of export normal verification is not possible. Accordingly, the producer must provide all the necessary costing of all the elements of the value. These must be accompanied by a sworn affidavit of the accuracy and completeness from a responsible officer or employee of the producer or by an independent auditor recognised as such by the law of the country concerned. The supplier must be prepared to supply facilities for any subsequent audit.
- b) The importer must demonstrate that the amount for profit and general expenses is acceptable. It is extremely unlikely that an importer could provide documentary evidence of this nature. Such information could only come from either business rivals or related subsidiaries. Business rivals have obvious reasons for not disclosing profit margins and related companies would have difficulty in proving the price was not influenced.
- c) Therefore, the **cost or value** referred to in Method 5 is to be determined on the basis of information relating to the production of the goods being valued, supplied by or on behalf of the producer. It is to be based upon the **commercial accounts of the producer**, provided that such accounts are consistent with GAAP/IFRS applied in the country where the goods are produced.
- d) Amount for **profit and general expense**
- i) The amount for **profit and general expense** is to be determined on the basis of information supplied by or on behalf of the producer.
 - ii) If the producer's figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to South Africa, information supplied by the producer cannot be relied on.
 - iii) The amount for profit and general expenses has to be taken as a whole: if in any particular case the producer's profit figure is low and the producer's general expenses are high, the producer's profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind.
 - iv) The general expenses cover the direct and indirect costs of producing and selling the goods for export.
- e) The addition of research and development costs in **Method 5** is to be considered under the term general expenses.

2.8.3 Goods of the same class or kind

- a) For the purposes of Method 5 goods of the same class or kind must be from the same country as the goods being valued.
- b) Whether goods are of the same class or kind must be determined on a case-by-case basis, with reference to the circumstances involved.
- c) In determining the usual profit and general expenses under the provision of Method 5, sales for export to South Africa of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, must be examined.

2.9 The fall-back value method – Method 6

2.9.1 Provisions or Limitations

- a) Customs values determined under the provisions of Section 66(9) must, to the greatest extent possible, be based on previously determined Customs values.
- b) When the Customs value cannot be determined under any of the previous methods of valuation, it may be determined by applying any reasonable manner of ascertaining the Customs value in terms of previous methods.
- c) In determining Customs value under this residual method, no arbitrary, factious or prohibited methods of valuation are to be used. The Customs value must be fair, reasonable, uniform and neutral, and must reflect commercial reality to the greatest extent possible.
- d) The Agreement does not provide for a specific valuation method but rather requires that the Customs value be determined:
 - i) Using reasonable means;
 - ii) Consistent with the principals and general provisions of the Agreement and Article VII of GATT 1994; and
 - iii) On the basis of data available in South Africa.
- e) The **fall-back value method** (Method 6) is often used when a particular scenario does not meet the exact conditions of the other methods. Where necessary, data from foreign sources can be used to help establish a flexible value, provided the information is available in South Africa and Customs is satisfied to its truth or accuracy.
- f) When applying the fall-back method the other valuation methods must be tried flexibly. If more than one (1) method can be applied flexibly, the normal sequence for using Method 1 to Method 5 must be taken into account.

2.9.2 Restrictions

- a) Under Method 6, the Customs value must **not** be based on:
 - i) The selling price of goods produced in South Africa;
 - ii) The higher of two (2) alternative values;
 - iii) The selling price of goods on the domestic market of the country of origin or of exportation;
 - iv) The cost of production, other than under Method 5;
 - v) The price of goods for export to a third country;
 - vi) A system of minimum Customs values; or
 - vii) Arbitrary or fictitious values.
- b) In terms of Section 65(4)(b) the Commissioner may determine a value by all reasonable ways and means in his/her power. Any statement of cost or costs of production in any invoice, affidavit, declaration, other document and evidence before him/her may be taken into account in evaluating the import transaction, as long as the method is not specifically precluded under Section 66(9)(a – g) as listed above.

2.10 Burden of proof

2.10.1 Importer's responsibility

- a) The Agreement provides that where Customs has reason to doubt the truth or accuracy of the particulars or of documents produced in support of the declaration, they may ask the importer to provide further explanation, including documents or other evidence.
- b) If after receiving the information or in the absence of a response, Customs still has reasonable doubts about the truth or accuracy of the declared value, it may be deemed that the Customs value of the imported goods cannot be determined under the provisions of Section 66(1).

- c) When a final decision is made, Customs shall communicate to the importer in writing its decision and the grounds therefore.

2.10.2 Prices below prevailing market prices

- a) The mere fact that a price is below the prevailing market price for identical goods does not mean that the transaction value method (Method 1) must be rejected.
- b) The importer must provide Customs with information and documentary evidence in order for Customs to satisfy themselves to the truth and accuracy of any statement, document or declaration presented by the importer for Customs valuation purposes.

2.10.3 Insufficient or unreliable information

- a) Customs cannot be required to depend on documentation which is incomplete in respect of relevant information or which contain (inadvertent) errors which have the effect of distorting the relevant information.
- b) Situations may arise when it becomes necessary to use the information contained in an incomplete document and to make further enquires so as to obtain information or facts missing from such a document. In addition, only a part of a document might contain inadvertent error and reliance might be placed on other parts of the document which do not have any such errors.
- c) The number and nature of the documents which are required for establishing the Customs value will vary according to the method of valuation used. It is not possible to cover all eventualities but generally the following will be required:
- i) Copies of agreements, price lists, clearing documents and other documents to verify how the import transaction has been concluded;
 - ii) The supplier's commercial invoice detailing the price, quantity and description of each item or type of item imported as requested by Section 41;
 - iii) Evidence of transport and insurance expenses;
 - iv) Proof of payment from the relevant financial institution clearly showing the beneficiary and the applicant; and
 - v) Evidence relating to other additions or deductions.
- d) Documents which are incomplete or which contain (inadvertent) errors should each be treated on its own merits and can differ from one (1) case to another. Where a Customs Officer is not satisfied that there is sufficient reliable information available to enable a determination of:
- i) The Customs value for the imported goods under review, in accordance with the provisions of Section 66(1), read with Section 67, Customs may determine, in writing, that there isn't sufficient information to determine a value under the primary method (the transaction value method); or
 - ii) The quantity and correctness of any amount that is required to be taken into account in determining a Customs value of those goods in accordance with the provisions of Section 66, then:
 - A) Where that amount would usually form part of the Customs value under the particular valuation method set out in that provision, Customs shall determine, in writing, that Customs is not satisfied with the information provided and Customs shall thereupon be taken to be unable to use that method; or
 - B) Where that amount would ordinarily be deducted from the amount that would otherwise be the Customs value under the particular valuation method set out in that provision:
 - I) If Customs determines, in writing, that the information is not sufficient and that Customs does not desire to use the method currently being utilised, it will be taken that Customs is unable to use that method; and
 - II) If Customs determines in writing, that the information is not sufficient and that Customs desires to use the method, Customs may use the method but no deduction shall be allowed on account of that amount.

2.10.4 Errors and incomplete documents

- a) Imported goods have to be valued under the Agreement on the basis of actual facts. Therefore, any documentation which contains incomplete or false information would be contrary to the intention of the Agreement.
- b) **Situations** may arise when it becomes necessary to use the information contained in an incomplete document, for example a provisional declaration as provided for in Section 39B(5)(b) or documents containing errors. Further enquires must then be made to obtain (correct) information or facts missing from such a document. The entry can be processed and the goods released by taking a provisional payment pending the furnishing of the complete information.
- c) The treatment of documents which are incomplete or which contain errors can differ from one (1) case to another.

2.11 General accepted accounting principles or International Financial Reporting Standards (GAAP/IFRS)

- a) For the purpose of the Agreement, Customs will utilise information prepared in a manner consistent with GAAP/IFRS in the country which is appropriate for the valuation in question.
- b) These standards may be broad guidelines of general application as well as detailed practices and procedures.

2.12 Apportionment of costs, charges and expenses

- a) Where it is necessary to apportion dutiable costs, charges and expenses between various lines on an import declaration, such apportionment must be made on the basis of the invoice price of each line, irrespective of the type of duty applicable. For example should the invoice price of the first item amount to 20% of the total invoice price of all the goods, 20% of the dutiable costs, charges and expenses must be allocated to that item.
- b) Any cost, charges or expenses deducted from the Customs value must be identified separately from the balance of the price actually paid or payable for the goods.
- c) Uniformity of interpretation and application can be achieved by taking the term "sale" in the widest sense, to be determined only under the provisions of Section 66(1) and Section 67 together. Under no circumstances can Method 1 and adjustments under Method 1 be separated when the truth and accuracy of the declared Customs value is investigated.
- d) Refer to Section 67 and SC-CR-A-05 for a list of the allowed adjustments that must be made to the price actually paid or payable, to the extent that they are incurred by the importer.

2.13 Point or basis of valuation (Port or place of export)

- a) The FOB contract has been retained by South Africa as the basis for valuation. Consequently, all costs, charges and expenses up to the point where the goods are loaded onto a ship or other vehicle, are dutiable.
- b) Sections 66(11) and 67(4), defines the port or place of export in the country of exportation for the purposes of Sections 66(7)(a)(ii); 66(8)(d); 67(1)(e) and 67(2)(a).
- c) Section 67(1)(e), provides for additions to the price charged for goods, to the extent that it is not already included in the price:
 - i) Transportation expenses; and
 - ii) Insurance, loading, unloading, handling and associated charges incidental to delivery of the goods to the port or place of export in the country of exportation and placing those goods on board a ship or any other vehicle at that port or place.
- d) This means that all costs, charges and expenses up to the point where the goods are loaded onto a ship or other vehicle, are dutiable.

- e) For the purpose of Sections 66 and 67 the port or place of export referred to therein shall be the place in the country of exportation where the goods in question:
 - i) Are placed on board ship or on any vehicle which conveys them from or across the border of that country; or
 - ii) If they are ships or vehicles moving under their own power, where they finally leave that country for South Africa [Section 66(11) and Section 67(4)].
- f) Section 66(10) provides that goods which are exported to South Africa from any country, but passes in transit through another country, subject to any conditions which may be prescribed by Rule, are deemed to have been exported directly from the first mentioned country.
- g) Refer to SC-CR-A-02-A01 and SC-CR-A-02-A03.

2.14 Rate of exchange or currency conversion

2.14.1 Imported goods

- a) Section 73, states that when the value of the price paid or payable for any imported goods is expressed in a foreign currency it must be converted to South African Rand by:
 - i) Using the selling rate at the date of shipment of the goods as determined by the Commissioner, in consultation with the South African Reserve Bank; or
 - ii) Using the latest rate determined before that date if no such rate is determined for such date.
- b) For the purpose of Section 73 the date of shipment will be for:
 - i) Non-containerised goods, the date of the bill of lading, air waybill, consignment note or such other document as the Commissioner may require; and
 - ii) Containerised goods, the date on which the container is taken:
 - A) On board the ship as endorsed on the bill of lading or arrival notification; or
 - B) If imported otherwise than by sea, the date of the air waybill, consignment note or such other document as the Commissioner may require.
- c) In cases where a third party's statement reflects only, for example disbursements and/or commission and separately includes a copy of the primary supplier's invoice, the two (2) different currency amounts on the two (2) invoices must be converted separately to Rand.
- d) If a master and house transport documents are issued, the particulars of the master transport document must be utilised.

2.14.2 Travellers

- a) The date to be used by travellers when converting foreign currency into South African Rand is the date of boarding the airplane to South Africa - as indicated on the passenger's ticket or boarding pass.
- b) Refer to:
 - i) Paragraph 2.15.27 on how to determine the value on the excess baggage; and
 - ii) SC-PA-01-11 for assistance with the processing of travellers.

2.14.3 Transit goods

- a) The date of shipment for goods which are exported to South Africa from any country but pass in transit through another country shall, subject to such conditions as may be prescribed by Rule, be deemed to be:
 - i) For imported goods which have been shipped through another country **in the same condition as exported** from the original country - the date of the first bill of lading; and
 - ii) For imported goods which have been shipped through another country and **received further processing** in the second country - the date on the second bill of lading **(if available) or the invoice date of the second country.**

- b) Reference can be made to Section 39A and paragraph 2.14.4, Transhipped consignments, of this document.

2.14.4 Transhipped consignments

- a) In situations where there is:
- i) No direct sailing available from the port of export to South Africa; and
 - ii) The goods are shipped via a transshipment port, where it is loaded on board a second vessel to the port of final destination in South Africa, the date that must be used for currency conversion purposes will be deemed to be:
 - A) In the case of containerised goods, the date such container is taken on board the first vessel on which it is loaded en route to South Africa, as endorsed on the bill of lading; and
 - B) In the case of non-containerised goods, the date on the bill of lading issued in respect of the first vessel on which they are loaded en route to South Africa.
- b) Reference can be made to paragraph 2.14.3 Transit goods, of this document.

2.14.5 Rand invoicing

- a) In cases where the price paid or payable is invoiced in South African Rand, the Rand amount will be accepted as basis for Customs valuation, provided it can be proved beyond doubt that it was arrived at by converting foreign currency at a rate:
- i) Concluded in a forward exchange contract; or
 - ii) Negotiated between unrelated parties, provided such Rand amount was in fact paid or is payable to the supplier.
- b) Invoiced Rand prices resulting from the following will not be accepted:
- i) The conversion of foreign currency at fixed contract rates of exchange; or
 - ii) Negotiated between related suppliers and importers; unless
 - iii) **The circumstances surrounding the sale has been examined by Customs and a Value Determination Number (VDN) has been issued verifying the acceptability, or not, of the Rand denominated invoices between related party transactions declared to Customs.**
- c) In cases where the aforementioned proof cannot be furnished, the Rand amount as reflected on the invoice must be converted back to the foreign currency amount, using the fixed contract rate of exchange negotiated between the related parties. This calculated foreign amount must then be converted to South African Rand at the appropriate official rate for Customs purposes.

2.15 Special valuation scenarios

2.15.1 Barter and compensation deals

- a) International barter and compensation deals take various forms. In general pure barter is an exchange of goods or services of approximately equal value without other adjustments. For a variety of reasons, for example taxation, statistics and book keeping, it is almost impossible to dispense entirely with money in international trade and hence pure barter is rarely encountered. Barter now usually involves more complex transactions than a straight exchange of goods.
- b) Numerous barter and compensation deals are also expressed in monetary terms, even if money never exchanges hands. The value of bartered goods may be determined, for example on the basis of current world market prices and then expressed in monetary terms.
- c) In some cases a balancing sum of money will be paid. However, the price paid need not necessarily be financial as the transfer of goods may form an acceptable alternative. When assessing barter or compensation deals for the suitability of Method 1 no part of the deal must constitute a condition for consideration [Section 66(1)(d)] for which a value cannot be fixed. If Method 1 is not appropriate, the other methods must be used sequentially. Refer to SC-CR-A-05.

- d) Barter or compensation deals must not be confused with certain sales transactions in which the supply of goods or their price is governed by factors unrelated to the transaction concerned. For example:
- i) The price of the goods is fixed by reference to the price of other goods which the importer may sell to his/her supplier; or
 - ii) The price of the imported goods depends on the purchaser's willingness to obtain from the same supplier other goods in a specified quantity or at a specified price.

2.15.2 Branch Office importation

- a) In cases where a branch office cannot be regarded as a separate legal entity under the legislation concerned there can be no sale, bearing in mind that a sale necessarily involves a transaction between two (2) separate persons or legal entities.
- b) A branch office means a subsidiary place of business, as opposed to a head office, but one (1) which is part of a single legal entity. The same procedures can also be applied to importations by employees or nominees, for example agents. It cannot, however, be applied to separate partnerships of limited companies which have merely adopted the trading name and appearances of the supplier or separate legal entities which are partially or wholly owned by the supplier.
- c) Areas of the same legal entity cannot complete a legal sale between each other, even though goods and money may be exchanged by invoices. Such invoicing can only represent an international accounting procedure for the firm's records. Accordingly, a Method 1 value based on these invoices is not appropriate.

2.15.3 Consignment goods or stock

- a) Goods consigned by a foreign supplier to his/her agent in South Africa for replenishment of the agency stocks and subsequent sale for the account and risk of the foreign supplier, will not have been imported as a result of a sale at the time of importation and cannot be valued under Method 1, for example the timber imported from Swaziland is imported on consignment and only sold in South Africa at the best price obtainable. Valuation must proceed sequentially through the various valuation methods.
- b) If the price at which the goods are to be sold are known at the time of importation the Customs value can readily be established on the basis of these prices by deducting all non-dutiable elements as prescribed in Section 67(2).
- c) The local selling price may be obtained from price lists or by reference to a recent sale of identical or similar goods.

2.15.4 Computer programmes – Carrier media

- a) Given the unique situation with regard to data of instructions (software) recorded on carrier media for data processing equipment and the fact that the software could be obtained or import via the internet, the World Trade Organisation (WTO) has made a concession with regard to the import of said software.
- b) In the valuation of recorded computer programmes classified in tariff headings 8523 only the cost or value of the carrier medium on which the data or instruction are recorded must be taken into account. The Customs value shall not, therefore, include the cost or value of the data or instructions, the so-called intellectual value, provided that this is separately distinguished from the cost or the value of the carrier medium on the invoice.
- c) For this purpose the expression carrier medium shall not be taken to include integrated circuits, semiconductors and similar devices or articles incorporating such circuits or devices. The expression data or instructions shall not be taken to include sound, cinematic or video recordings.
- d) This **WTO** concession does not apply to:
 - i) Computer games. In the case of games the full value that is the price actually paid or payable for the games must be declared for Customs duty purposes; and

- ii) Pre-loaded software, for example computer programmes loaded on laptops, computers, cell phones, and so forth.

2.15.5 Credits and debits

- a) Debits and credits relating to past shipments may not be adjusted against the invoice price of a current consignment. They must be adjusted against the consignments to which they relate. Refer to Section 41(4)(b) in this regard.
- b) The amount of credit represents an amount already paid to the supplier and accordingly is covered by the Interpretative Note to Article 1 on price actually paid or payable, which specifies that the price actually paid or payable is the total payment of the imported goods made, or to be made, to the supplier. Thus the credit is part of the price paid and for valuation purposes must be included in the transaction value.
- c) Customs' treatment of the previous transaction which gave rise to the credit must be decided separately from any decision on the proper Customs value of the present shipment. The decision whether adjustments may be made to the value of the previous shipment will depend on the legislation and the circumstances surrounding that sales transaction.

2.15.6 Cut, make and trim basis (CMT)

- a) Care must be exercised when dealing with goods that are imported on what is commonly called the CMT principle. Materials or components are often supplied by the importer, or from a third party on behalf of the importer, to the supplier or manufacturer either free of charge or at a reduced cost. The full cost of production or acquisition of these materials is includible in the Customs value, whether incorporated in the imported goods or consumed in their production.
- b) The Customs value of the imported goods will be the total cost, consisting of the cost of the material or components supplied plus the price charged by the supplier or manufacturer for the manufacturing of the imported products as Section 67(1)(b) renders any of the following dutiable:
 - i) Materials, components, parts and similar articles forming part of (or incorporated in) the goods; and
 - ii) Materials consumed in the production of the goods.
- c) The items falling under assists are in addition to charges commonly shown on an invoice, which will only reflect CMT fees. Refer to SC-CR-A-05, [paragraph 2.4.3 – Assists](#).

2.15.7 Damaged goods

- a) **Time at which goods are damaged**
 - i) When damaged goods are imported their valuation depends on the time at which they were damaged:
 - A) It may be the importer's intention to import partially or totally damaged goods, in which case the price paid or payable may be acceptable as a basis for valuation; and
 - B) If the goods are damaged after agreement of the contract but before cleared for home consumption the Customs value must take suitable account of the damages.
 - ii) In principle, valuation must relate not to the damage sustained but to the value of the damaged goods:
 - A) In practice where the goods are the subject of a bona fide sale and the price originally paid or payable on that sale could normally have been used as basis for valuation under the transaction value method;
 - B) The price offered to the supplier for the damaged goods is already reduced by the amount of any commercial compensation obtained by the importer in respect of the reduction in the value of the goods due to the damage sustained; and
 - C) No compensation must be allowed in respect of any consequent loss of profit.
- b) **Partially damaged goods (occurring after the contract of sale)**
 - i) If the importer accepts the damaged goods, they must be valued under the normal rules. Any of the valuation methods are theoretically possible, although the price for undamaged goods is not

an acceptable basis of value. In practice, one (1) of two (2) methods is likely to be the most efficient way of arriving at a suitable value:

- A) Method 1 - The Customs value may be based on a renegotiated price taking account of the damage. This price may reflect either an element of compensation by the supplier in the form of a credit note or the fact that the supplier wishes to avoid the expense of having the goods returned or both.
- B) Method 6 - The full price originally paid or payable, reduced by an amount equal to any one (1) of the following:
 - I) Estimate of the amount of damage as calculated by a surveyor independent of the importer or supplier;
 - II) Cost of repair or refurbishment; or
 - III) Insurance settlement.
- ii) The price actually paid or payable was not for the damaged goods actually imported and therefore the original transaction value method is not applicable. However, if only a portion of the shipment is found to be damaged, the price represented by the proportion of the total price which the undamaged quantity bears to the total quantity purchased, could be accepted as transaction value. The damaged portion of the shipment will be valued as described in (a) above.
- iii) The insurance settlement may not be accurate as the goods may have been under -or over insured. However, even if the price paid to the supplier is unchanged and the insurance company makes good the difference, the damage must be taken into account.
- iv) There are occasions where partially damaged goods are intentionally imported:
 - A) In some cases there will be a price paid which can be used to establish the basis of valuation; and
 - B) Sometimes the only payments made are the costs of importing the goods: the freight and insurance. In such cases the goods must have a value to make it viable to import them.

2.15.8 Treatment of duty inclusive prices

- a) Where an invoice price includes a duty or tax payable in South Africa the included duty or tax must be deducted from the price in determining the transaction value. Where there is no other deductible element involved the amount of duty or tax to be deducted must be determined.
- b) Where the price also includes other deductible elements, for example freight, such elements must first be deducted. The net price arrived at must then be treated as duty inclusive and the formula above must be applied.

2.15.9 Fish of tariff heading 03.01 taken from the high seas

- a) Ships fall under the jurisdiction of the countries in which they are registered.
- b) Fish taken from the sea (open waters, economic zones and territorial waters) by a ship of South African nationality is exempted from payment of duty and from certain other Customs requirements, in terms of General Note E of the tariff; as such fish is regarded as of South African origin.
- c) Fish taken from the high seas by ships not registered in South Africa in terms of the Merchant Shipping Act No. 57 of 1951 is regarded as being imported from the country of registration of the vessel concerned and that country must be entered in the "Box 34 - Country of Origin Code" field on the Customs declaration when the fish are entered into South Africa.
- d) The selling price of the fish in South Africa must be used as the basis for Customs valuation.
- e) In terms of Article 13 of the Agreement the final determination of the Customs value of imported goods may, if necessary, be delayed provided a sufficient guarantee covering the ultimate payment of Customs duties for which the goods may be liable, is lodged.

2.15.10 Goods in transit, transit sale or high sea sale

- a) Section 39A, requires the importer of any goods purchased from any South African consignee, after shipment but before entry thereof in to South Africa to produce the invoice relating to the purchase to the Controller/Branch Manager. The price actually paid or payable for those goods by virtue of such purchase shall for the purpose of Section 65(1) be the transaction value thereof.

- b) For the purpose of Sections 66 and 67 goods which are exported to South Africa from any country but pass in transit through another country, shall be deemed to have been exported direct from the first-mentioned country. This is subject to any conditions which may be prescribed by Rule. Refer to Sections 66(10) and 67(3).
- c) A sale in transit is treated in the same way as any other transaction for valuation purposes. The last resale price before entry of the goods forms the basis of valuation and the same rules apply.

2.15.11 Goods not in accordance with specification

- a) If the goods are re-exported, abandoned or destroyed under the provisions as prescribed by the Act and relevant rules, there is no liability of duty.
- b) If the goods are retained, they **can be**:
 - i) Wrong goods, for example a shipment of woollen gloves **where** sweaters **were** ordered - Method 1 cannot be used if there is no sale for export to South Africa.
 - ii) Those which are in fact the correct goods actually ordered but which fail to conform to the specifications in the original order to such an extent that the buyer seeks some form of reimbursement from the supplier.
 - A) Where the importer claims the goods do not conform to an agreed specification, a number of situations may arise depending on the level of agreement or disagreement between the importer and the supplier:
 - I) The supplier may alter or adapt the goods;
 - II) The supplier may pay or the importer may seek compensation; or
 - III) The goods could be rejected entirely.
 - B) The importer and supplier may not agree on the measure of non-conformity.
 - C) However, the price paid or payable for the goods still exists and since the Agreement does not make specific provisions for this situation, if all other conditions are met the value will be determined on the basis of Method 1.
 - D) If the supplier reimburses the importer for the cost of rectifying defects or refurbishing the goods this would normally be outside the sale of the goods. In such cases there are no grounds for reducing the Customs value.

2.15.12 Goods sold at dumping prices

- a) Article VI of the General Agreement on Tariffs and Trade 1994:
 - i) Defines dumping as the introduction of products of one (1) country into the commerce of another country at less than the normal value of the product; and
 - ii) Provides that dumping is to be condemned and may be counterbalanced or prevented by anti-dumping duties if:
 - A) The causes or threatens material injury to an established industry in South Africa; or
 - B) Materially hampers the establishment of a domestic industry.
- b) Valuation procedures must not be used to combat dumping. Where the existence of dumping of any description is suspected or established anti-dumping rules **must be applied**. There can therefore be no question of:
 - i) Rejecting the transaction value as a basis for valuing the dumped goods, unless one (1) of the conditions laid down in Section 66(1) is not fulfilled; or
 - ii) Adding to the transaction value an amount to take account of the margin of dumping.
- c) The treatment to be applied for the valuation of dumped goods is the same as that applied to goods imported at a price below prevailing market prices for identical goods.
- d) When a Custom value is determined under Method 4, anti-dumping and countervailing duties must be deducted as Customs duties and other national taxes.

2.15.13 Goods temporarily exported for outward processing (manufacture)

- a) Products which lose their identity and do not qualify for re-importation under Item 409.04 are dealt with under Item 409.07. Duty would normally be payable on the full value (South African and foreign

content) but provision has been made in Item 409.07 for duty to be paid on the full value of the foreign content, labour and materials only. The duty on the value of the South African content is rebated.

- b) Strict control is necessary and goods will only be admitted under Item 409.07 if the importer is in possession of a valid specified permit issued by the Director-General: Trade and Industry on the recommendation of ITAC and provided that:
 - i) The permit is obtained before the temporary export of the product; and
 - ii) Any additional conditions which may be stipulated in the said permit are complied with.
- c) Where the importer qualifies for the rebate of duty, the Customs declaration would be endorsed as indicated in paragraph 2.15.21 of goods after repair or processing abroad. Where the imported goods do not meet the conditions as prescribed in Item 409.07, duty must be brought to account on the full value.
- d) The value of the South African content exported, whether for the purpose of claiming the rebate or payment of the duty shall be taken to be the cost to the importer of acquiring it or where the importer is the manufacturer thereof, the cost to the importer of producing the exported goods.
- e) Only the value of the foreign content must be reflected in the Box "Additional Info" (Box 44). The same wording as stated in paragraph 2.15.21 of re-importation of goods after repair or processing abroad must be used.

2.15.14 Hire, lease and rental goods

- a) When goods are temporarily imported on a hire, lease or rental basis, Customs duties must be brought to account thereon. These transactions by their very nature do not constitute sales, even if the contract includes an option to purchase the goods. Therefore they cannot be appraised under the transaction value method in Section 66(1). Similarly, the methods of appraisal in Section 66(4)(5)(7) and (8) (identical, similar or deductive and computed methods) are normally inapplicable in the present circumstances. Accordingly, the imported goods would be appraised under the fall-back method provided for in Section 66(9). Refer to paragraph 2.9 of this document.
- b) Should the rental include a charge for any function, such as charges for erection or maintenance, to be undertaken by the supplier after importation of the goods, the Customs value must **not** include such charges, provided that the portion of the payment for such charges must be separately distinguished in the hire or lease agreement. If not, the full amount will be regarded as the Customs value.
- c) When determining the Customs value of imported hire or lease goods, the Customs value will be the rental or hire charges. For example:
 - i) If the charge for a 36 month contract is R1 000 per month, the Customs value will be R36 000.
 - ii) Once the total rental charges have been determined, certain adjustments may be necessary to establish the Customs value. Depending upon the terms of the contract and the principles underlying the Agreement, there may be additions or deductions.
 - iii) Where probable adjustments are concerned, dutiable elements not already included in the rental charges must be taken into account:
 - A) Additions: the factors listed in Section 67(1) could provide some guidance; and
 - B) Deductions: any elements which are not part of the Customs value must be deducted.
- d) In some cases, rental contracts include an option to buy. This option may be given at the beginning, during or at the end of the basic contract period. In the first case valuation must be based on the option price. In the last two (2) cases, rental payments provided for in the rental contract plus the residual sum required may provide a basis for the determination of the Customs value.
- e) Some hire, lease or rental agreements may stipulate that the goods will be rented out for the duration of the goods' economic life. While the past experience of the life of identical and similar goods might be useful, in most cases a solution is likely to be found by consulting with specialised firms in co-operation with the importer. A distinction has to be made with regard to economic life of new and used goods, such as using the whole economic life for used goods.

- f) To ensure that the goods are exported on the due date or any additional duty due to a change in circumstances such as an extension of the contract is paid, a provisional payment (deposit) equal to 100% of the Customs duty to be paid will be secured pending proof of export.

2.15.15 Motor vehicles or motor cycle

a) Importations by private individuals for personal use

- i) In terms of Item 407.04 of Schedule 4 one (1) **motor vehicle** may be imported **per family** under full rebate of Customs duties for personal use by private individuals that are:
- A) Immigrants who obtain permanent residence in South Africa; or
 - B) South African residents who:
 - I) Originally emigrated from South Africa; and
 - II) Obtained permanent residents' status abroad; and
 - III) Return to South Africa permanently.
- ii) The vehicle so imported must have been the personal property of the importer and must have been owned and used by him/her for a period of not less than twelve (12) months prior to the importer's departure to South Africa:
- A) In instance where the motor vehicle has not been imported because of a sale Section 71(2) comes into consideration:
 - I) Where any motor vehicle is imported by a natural person for his/her own use and not for sale, the Commissioner may, notwithstanding the provisions of Section 65(1) and 65(4); but with due regard to the provisions of Section 66 determine a value for duty purposes of such vehicle, as if it were imported into South Africa from the territory in which it was produced or manufactured; and
 - II) Reference to Section 71(2) will confirm that any determination of this nature is not arbitrary.
 - B) Where importers supply insufficient or unsatisfactory information, Customs may determine a value under Section 71(2) by employing alternative methods to determine the value. Alternative methods of valuation may be used when:
 - I) The importer has purchased the vehicle overseas at an unrealistically low or token price;
 - II) The vehicle was acquired by the importer as a gift or prize;
 - III) The vehicle was constructed overseas by the importer;
 - IV) The value of the vehicle has been altered significantly after the date of purchase, for example major restoration, modification or improvement; and/or
 - V) Use of the depreciation allowance results in an unrealistically high Customs value.
 - C) A vehicle shall not be deemed to be personally owned and used by an importer unless such importer was at all reasonable times personally present at the place where the vehicle was used. The period of use is deemed to be from the date on which physical delivery was taken of the vehicle or the date on which the vehicle was registered in the name of the importer (whichever is the later), until the date on which the vehicle was delivered by the importer to the shipper or other agent for the purpose of shipment or dispatch to South Africa.
- iii) **Used motor vehicles**
- A) If a motor vehicle is imported after the purchase without intervening use:
 - I) Given the fact that the importation follows upon a sale, the price actually paid or payable in connection with the transaction must serve as the basis for establishing the Customs value whenever the requirements and conditions of Section 66(1), the transaction value method, are fulfilled; and
 - II) If the provisions of the transaction value method cannot be applied, the Customs value must be determined by means of one (1) of the other methods specified by the Agreement, in the prescribed order of application.
 - B) If the motor vehicle is imported after additional use since the original purchase:
 - I) The question that will take precedence over all the other considerations concerning will be whether the vehicle under review can still be regarded for valuation purposes as being the same vehicle, in the same condition, as when it was last sold; and
 - II) If it cannot be regarded as the same vehicle, there is no price actually paid or payable for the vehicle in its condition at the time of valuation. Therefore the provisions of Section 66(1) cannot apply. Section 71(2) can then be utilised.
- iv) **Returning Citizens** – Customs will determine a value based on the information provided by the client.

2.15.16 Heads of state, diplomatic and other foreign representatives

- a) When Heads of state, diplomats or any other foreign representatives import motor vehicles, they can do **so** under Rebate Item 406.02. The rebate item clearly states that a motor vehicle cleared under Rebate Item 406.02 may not be offered, advertised, lent, hired, leased, pledged, given away, exchanged, sold **or otherwise disposed of** within a period of two (2) years from the date of entry under this item.
- b) It may happen that the Head of state, diplomat or foreign representatives has a car accident, high-jacking or any other unforeseen circumstances which involves the motor vehicle within the two (2) year period from the date of entry under rebate. If the vehicle is of no further use to the owner it renders such a motor vehicle liable to payment of duty.
- c) The Customs value shall be based on the value of the motor vehicle at the time of importation and not on the value of the insurance claim.
- d) If the insurance claim is paid out on a higher value than what the motor vehicle was originally declared to Customs, Customs has the right to investigate and verify the original declared value.
- e) **Temporary Imports**
 - i) Where an importer wishes to bring duty to account on a vehicle which had previously entered South Africa under cover of a temporary import permit, the Customs value is the value declared on the DA 331.
 - ii) In instances where motor vehicles are imported under cover of triptyques and carnets, the values declared on these documents must be market related.
 - iii) Where an importer, at a later stage, wishes to bring duty to account on a vehicle which has entered South Africa under cover of a triptyque or carnet, the Customs value shall be the value accepted at the time of entry, i.e. that value appearing on the triptyque or carnet.
 - iv) No allowance or deduction of value must be allowed for the period of use in South Africa.

2.15.17 Package deals

- a) Package deal transactions involve potential valuation problems and risk, for example where:
 - i) Different goods are sold and invoiced at a single overall price;
 - ii) Goods of different quality are sold and invoiced at a single overall price and only partially declared for home consumption in South Africa; and
 - iii) Different goods included in the same transaction are invoiced at individual prices established solely for tariff or other reasons.
- b) Different goods sold and invoiced at a single overall price can still be valued using Method 1 where the transaction meets the requirements of Method 1. This applies even where separate tariff headings at different rates of duty may apply to parts of the consignment. The practical problem of splitting down the consignment for tariff purposes may be solved by:
 - i) The use of prices of identical or similar goods from previous importations; or
 - ii) Price breakdowns based on GAAP/IFRS supplied by the importer.
- c) Valuation treatment of goods of different quality:
 - i) Since the overall price actually paid or payable has been agreed for a set of goods of various qualities, there is no selling price for each different quality and Section 66(1) is therefore not applicable in this instance; and
 - ii) To determine the value of imported goods of different qualities, valuation Methods 2 – 6 will have to be considered in strict sequential order.

2.15.18 Price review or escalation clause

- a) In commercial practice some contracts may include a price review or escalation clause, whereby the price is only provisionally fixed.
- i) Price escalation clause is a provision for price adjustments over the life of a contract or agreement;
 - ii) A price escalation clause is a normal part of a contract involving the importation of capital equipment or large project goods with long lead times during which the cost of production may change; and
 - iii) The final determination of the price payable is subject to certain factors which are set forth in the provisions of the contract itself.
- b) The transaction value of imported goods, defined in Section 66(1) adjusted in terms of Section 67, is based on the price actually paid or payable for the goods. In contracts containing a review clause, the transaction value of the imported goods must be based on the total final price paid or payable in accordance with the contractual stipulations.
- c) Where goods are delivered a considerable time after the placing of the original order **price reviews or escalations are common**, for example **where**:
- i) Plant and capital equipment **is** made specially to order the contract **may** specify that the final price will be determined on the basis of an agreed formula which recognises increases (or decreases) of elements such as cost of labour, raw materials, overhead costs and other inputs incurred in the production of the goods.
 - ii) Goods are imported over a period of time in which the value may fluctuate from the original price.
 - iii) Goods, for example metal ore, are imported with the final value depending on analysis of the content.
- d) Where the price review clauses have already produced their full effect by the time of valuation, no problems should arise since the price actually paid or payable is known. The situation differs where price review clauses are linked to variables which come into play some time after the goods have been imported.
- e) If, at the time of valuation, the total price paid or payable is not yet known, release of the goods will generally not be delayed on that account but will be granted against lodgement of a suitable surety in the form of a cash deposit (provisional payment) or guarantee.

2.15.19 Printed advertising matter

- a) Printed advertising matter in the nature of magazines, leaflets, booklets and the like are usually supplied at no charge, with a value for Customs reflected on the invoice. This value may be accepted provided it is not less than **R5.00 per kilogram**.
- b) Where the advertising matter is sold to the importer, the price charged may be accepted as the basis for the Customs value.

2.15.20 Profit sharing transactions

- a) Profit sharing transactions should not be confused with importations on consignment:
- i) Profit sharing is where goods are imported following a sale and provisionally invoiced at a certain price to which must be added part of the profit made when the goods are sold on the market in South Africa; and
 - ii) Transactions of this kind must be regarded as sales with a clause reserving determination of the final price.
- b) Profit sharing **must not be confused** with dividends paid to the supplier on an annual basis. Dividends are not includible in the Customs value, whereas any part of profits realised from the sale of particular imported goods remitted to the supplier is includible in the Customs value.

- c) The nature of profit sharing transactions does not rule out the application of Method 1 to determine the Customs value, but particular attention has to be paid to the conditions in Section 66(1)(c) regarding proceeds.

2.15.21 Re-importation of goods after repair or processing abroad

- a) When goods which were sent abroad for repair or processing are returned, duty would normally be payable on the full value thereof, namely the value of the product when exported plus the cost or value of the repair or processing. Provision has however been made in Item 409.04 of Schedule 4 for duty to be paid on the cost or value of the repair or processing only, provided the goods:
- i) Were exported (Customs to verify);
 - ii) Have retained their essential characteristics;
 - iii) Are returned to the exporter, no change of ownership having taken place in the interim; and
 - iv) Are identifiable on re-importation.
- b) Only the cost or value of the repair or processing must be reflected in the field "additional info" (Box 44) next to the code COR on the Customs declaration since that is the amount for import control purposes where applicable.
- c) In cases where the conditions prescribed in Item 409.04 cannot be met, duty must be brought to account on the full value.

2.15.22 Split shipments or split consignments

- a) Split shipments are those consignments which form one (1) transaction between a buyer or importer and a seller or supplier, but are imported in partial or successive shipments either through the same or different Customs Offices, for example the goods constitute a complete industrial installation or plant and are split up because:
- i) They come from different sources;
 - ii) It would be physically impossible to ship together because of the size;
 - iii) It is necessary of convenience of staggering the shipments to conform to the plant assembling schedule;
 - iv) It would be impossible or inconvenient to ship as a whole; or
 - v) **The** shipments are split for geographical reasons.
- b) Importations of industrial installations are often classified under one (1) duty free tariff heading in which case there is only the statistical value. Where there is a duty liability, it is likely that the basis of value will be the price paid or payable plus appropriate adjustments.
- c) The Customs value of each shipment must be based on the price actually paid or payable. That is an appropriate proportion of the total payment made or to be made by the importer to or for the benefit of the supplier for the goods, as reflected in the transaction concluded by the parties.
- d) If the partial shipments have been invoiced separately for each consignment, it will be necessary to add to the amount of the invoice the adjustments determined under Section 67, where appropriate making an apportionment for the total transaction, and to treat deductions similarly.
- e) If the partial shipments have not been invoiced separately, in determining its Customs value, an apportionment of the total value of the transaction could be made in a reasonable manner appropriate to the circumstances and in accordance with GAAP/IFRS.
- f) The Customs value of each consignment may not be finally determined at the time of importation, since such importations often involve elements such as engineering costs or price review clauses:
- i) If it becomes necessary to delay the final determination of the Customs value, the importer will nevertheless be able to obtain release of his/her goods from Customs by lodging a provisional payment on a provisional duty assessment by Customs; and
 - ii) The provisional value assessment may of course be amended and the provisional payment liquidated when the Customs value is finally determined.

- g) Shipments split for reasons of quantity or for geographical reasons:
- i) The logistical category covers situations where the goods are identical or sets sold at an agreed unit price. If the shipment is over a period of time, it may be necessary to verify that no adjustment to the price have been made.
 - ii) The geographical category covers situations where goods are consigned to two (2) or more ports or Customs Offices each split shipment must be valued by reference to the price paid or payable for the fraction of the whole shipment. This applies even where goods are consigned to different countries.
- h) For the apportionment of the value stage consignments must be treated in the same manner as split consignments.

2.15.23 Sole distributors, concessionaires and agents

- a) Sole agents, sole distributors or sole concessionaires are not regarded as related persons unless they fall within the ambit of Section 66(2)(a). These terms are used when the importer has by contract certain exclusivity within a certain area in respect of a foreign supplier's goods. The importer may undertake jointly to refrain from dealing in competing goods or even to deal exclusively in the goods of the particular foreign supplier.
- b) The relationship of the parties involved in the transaction is to be evaluated by an overall view of the entire situation with the result in each case governed by the facts and circumstances of the individual case and not by the labels that the parties may attach to the relationship.

2.15.24 Tie-in sales

- a) There are two (2) broad categories of tie-in sales:
- i) The price of one (1) transaction is conditioned by the terms of other transactions between the supplier and the importer. The price is not the sole consideration as it is subject to a condition for which a value cannot be determined. For example:
 - A) The supplier establishes the price of the imported goods on condition that the importer will also buy other goods in specified quantities or prices; or
 - B) The imported goods are semi-finalised goods provided by the supplier on condition that the supplier will receive a specified quantity of the finished goods.
 - ii) Counter pricing practices as a result of countertrade. Goods in international trade are paid for through the exchange of products for products or services for products. This includes:
 - A) Barter;
 - B) Counter purchase;
 - C) Evidence account;
 - D) Compensation or buy-pack;
 - E) Clearing agreement;
 - F) Switch or triangular trade;
 - G) Swap; and/or
 - H) Offset agreement.
- b) With respect to Customs valuation, the first consideration is whether the conditions of Section 66(1) read with Section 67 would or would not preclude the application thereof to any transaction involving countertrade. In view of the number of different forms of countertrade it will be necessary to take a decision on the basis of the facts of each transaction.

2.15.25 Time element

- a) Section 65(1) stipulates that the value for Customs duty purposes of any imported goods shall, at the time of entry for home consumption, be the transaction value thereof, within the meaning of Section 66. If the correct transaction value has been declared on a warehousing declaration it will be acceptable when goods are cleared ex warehouse.
- b) Under Method 1 the basis for establishing the Customs value is the actual price agreed in the sale giving rise to the importation, regardless of when the transaction took place or any market fluctuations after the date when the contract was concluded.

- c) Any determination made under Section 65(4)(a) as a result of or during the course of an **inspection** shall be deemed to have **been made** two (2) years prior to the date on which the inspection commenced [Section 65(7A)] **unless fraud can be proven** [Section 44(11)(c)].
- d) Refer to SC-DT-C-13 to verify the time elements on Valuation Refunds.

2.15.26 Transfer pricing and Customs value

- a) Transfer pricing describes a cross border transaction between two (2) related companies which leads to varying opinions as to what constitutes price influence. Customs applies an interpretation of the test value provision, which is based on provisions in the Agreement. The Agreement states that the importer must demonstrate that the transaction value closely approximates to a 'test' value previously accepted by the Customs administration.
- b) The Agreement has outlawed the use of arbitrary or fictitious values when applying the identical or similar value methods. **If** more than one (1) transaction value of identical or similar goods is found, the lowest such value shall be used to determine the Customs value.
- a) Transfer pricing documents can only be used for verification purposes and cannot be considered as sufficient evidence that the relationship between the importer and supplier did not influence the price actually paid or payable.

2.15.27 Travellers

- a) If invoices **or** price tags are available the price actually paid or payable (Method 1) applies.
- b) If the invoices **or price tags** are not available valuation Methods 1 to 5 must be eliminated sequentially. If none of them can be applied, a value must be assessed in terms of Method 6 on prices of identical or similar imported goods, previously accepted by Customs.
- c) For the date to be used by travellers when converting foreign currency into South African Rand refer to paragraph 2.14.2.
- a) For processing of Travellers refer to SC-PA-01-11.

2.15.28 Waste or scrap

- a) Waste or scrap are imported:
 - i) To be used for the benefit of the importer, or
 - ii) To be destroyed by the importer for the benefit of the supplier.
- b) Some importers specialises in the refining, treatment or the disposal of certain waste products and the only payment involved is made by the supplier to the importer for his/her services in destroying the waste. For example:
 - i) Catalysts;
 - ii) Motor vehicle parts;
 - iii) Scrap metal;
 - iv) Oil waste; and/or
 - v) Toxic waste.
- c) Sometimes the importer gains side-benefits from processing of the waste products after importation, for example using the waste as a fuel for heat or power. **These side benefits** must be taken into account when arriving at an acceptable value for duty purposes, for example using the estimated savings in fuel costs or establishing monetary compensation **to be added to the invoice price**.
- d) Imported waste **that** was not the subject of a sale cannot be appraised under Method 1. Similarly, the methods of appraisal set forth in Methods 2 to 5 may be inapplicable. **The value** will have to be appraised under Method 6, **using, for example, the cost of the service to remove the waste plus any side benefits gained**.

2.15.29 Weight

- a) In agreements regarding imports of goods sold by weight, there is an allowance for weight discrepancies within certain limits. Where a consignment is entered which is not the contracted weight, but no adjustment to the contracted price is made, the Customs value must be the price paid or payable, and Customs must ignore the weight discrepancy.
- b) Where weighing costs are incurred by the importer after the arrival of the goods in South Africa, the weighing cost, when determining the value, will not form part of the Customs value.

2.16 Sufficient guarantee

- a) Where the Customs value of the imported goods cannot be determined at the time of importation, the importer can obtain release by lodging a sufficient guarantee in the form of a provisional payment to cover the ultimate payment of Customs duties and VAT for which the goods may be liable (Article 13 of the Agreement and Section 39B).
- b) Article 13 of the Agreement is not intended to cover cases which involve violations of Customs Laws or fraud. In such situations, release of the goods or the provision of guarantee in relation to possible penalties will fall in the discretion of the Controllers/Branch Managers.
- c) The **Customs** Officer must follow-up on a regular basis with regard to any request directed to the client in writing, where a guarantee has been lodged, pending the outcome or finalisation of that request.
 - i) If an importer was requested to forward information to substantiate a deduction from the declared Customs value the **Customs** Officer must forward a written reminder to the client to remind him/her of the outstanding information.
 - ii) The client is given a reasonable time period to come back with the outstanding information, normally thirty (30) days as prescribed by Rule 65.
 - iii) After the reminder, the client must be informed that a value determination will be made, based on the information provided at the time of entry, rendering the unsupported or unconfirmed deducted charge dutiable. The provisional payment is then liquidated in favour of SARS.

2.17 Confidentiality

- a) All the information which is by nature confidential or which is provided on a confidential basis for the purpose of Customs valuation must be treated as strictly confidential in terms of Article 10 of the WTO and Section 4(3).
- b) The confidential information must not be disclosed without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

2.18 Determinations

2.18.1 Date of determination

- a) In terms of Section 65(4)(a)(i) the Commissioner may determine the Customs value, in writing of any imported goods, which needs to be ascertained or determined, by using the provisions as provided for in Section 66.
- b) In terms of Section 65(4)(b), the Commissioner may determine a value by all reasonable ways and means in his/her power, any statement of cost or costs of production in any invoice, affidavit, declaration, other document and evidence before him/her in evaluating the import transaction, as long as the method is not specifically precluded under Section 66(9)(a – g).
- c) The determination made under Section 65(4)(a)(i) will be operational:
 - i) Only in respect of the goods mentioned in the determination (specific determinations) and the person in whose name it is issued; and
 - ii) Subject to the provisions of Section 44(11)(c) and 76(B) and 65(7) and 65(7A).

- d) Section 65(4)(c)(i) provides that any determination made or issued under Section 65(4)(a):
- i) Can be amended; or
 - ii) Can be withdrawn; and/or
 - iii) A new determination can be made under Section 65(5).
- e) Section 65(7A) clearly states that **any determination made** under Section 65(4)(a) as a result of or during the course of an investigation shall:
- i) Be subject to the provisions of Section 44(11)(c);
 - ii) In respect of the goods in question, be entered for the purpose of this Act; **or**
 - iii) Be deemed to have come into operation two (2) years prior to the date on which the inspection commenced.
- f) Refer to the SC-DT-C-13 to verify the time elements on Valuation Refunds.

2.18.2 Valuation mark-ups

- a) Where a percentage mark-up per consignment has been issued to an importer as determined or confirmed by Head Office, Valuation it must be applied to the basic price charged for the imported goods. The basic price excludes any dutiable elements, such as commission, inland freight, etc. as listed under Section 67(1). Once a mark-up has been applied, the dutiable elements must be added in order to arrive at the value for duty.
- b) Where the transaction is concluded on an FOB term of sale contract and the dutiable elements included in the price is not distinguished separately on the invoice, the mark-up must be applied to the total invoiced price.

2.18.3 Duty Schedule 1 Part 2B

- a) Section 65(8)(a) stipulates that the value specified in Schedule 1 Part 2B shall, in respect of imported goods, excluding goods entered in terms of item 412.18 of Schedule 4, be the sum of:
- i) The Customs value as calculated in terms of Section 66; plus
 - ii) An increasing factor of 15%; plus
 - iii) All non-rebated duties in terms of Schedule 1 and Schedule 1 Part 2A on such goods.

2.18.4 Value-Added Tax (VAT)

- a) The Value-Added Tax Act No. 89 of 1991 Section 13(2) states that the value that must be attributed to goods imported into South Africa should be the value thereof for Customs duty purposes, plus any non-rebated duty levied in terms of the Customs and Excise Act No 91 or 1964, in respect of the importation of such goods, plus 10% of the said value.
- b) ATV is the sum of:
- i) The Customs value as calculated in terms of Section 66; plus
 - ii) All non-rebated duties; plus
 - iii) An increasing factor of 10% of the value.
- c) For goods imported from the BLNS countries the value will be calculated as above, without the 10% increasing factor as per Rule 120A.02.

2.19 Record keeping

- a) The recipient or importer of the goods imported or exported must keep the documents 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.
- d) **Literature or Samples**
 - i) The client must ensure that:
 - A) The literature is, where possible, original as copies of the original literature are often illegible and insufficient for identification purposes;
 - B) Illustrated literature is attached to the application for a value determination where evidence of this nature will be of assistance in arriving at a decision and particularly in cases where it is not possible to submit representative samples (SC-CF-49);
 - C) If literature is not available, a sketch or drawing is made and submitted, if the description leaves any doubt as to the exact nature of the article to be classified;
 - D) Literature submitted in support of a value determination of the commodity in question is identifiable with the invoiced description and are clearly marked in respect of the goods to be valued, to enable easy identification with invoiced particulars; and
 - E) The literature is legible at all times.
 - ii) The literature and samples will be retained in Head Office, Trade Administration: Valuation for record purposes.

2.20 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.

2.21 Appeals against decisions

- b) 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.
- c) Should clients be unhappy 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.
- d) If clients wish to appeal any decision in terms of VAT penalties, they are directed to the provisions of Section 215 to 220 of the Tax Administration Act No. 28 of 2011 for the percentage based penalty and Section 224 of the Tax Administration Act No. 28 of 2011 for the understatement penalty. In this regard, please consult the SARS website or nearest SARS Branch Office.

3 PRACTICE

3.1 Conversion date (Date of shipment)

- a) If the value is expressed in a foreign currency, establish the date of shipment.
- b) Imported Goods
 - i) For the purpose of Section 73 the **date of shipment** will be for:
 - A) **Non-containerised goods** is the date of the bill of lading, air waybill, consignment note or such other document as the Commissioner may require; and
 - B) **Containerised goods** is the date on which the container is taken on board the ship as endorsed on the bill of lading or arrival notification or, if imported otherwise than by sea,

the date of the air waybill, consignment note or such other document as the Commissioner may require.

- ii) If a master and house transport documents are issued, the particulars of the master transport document must be utilised.
 - iii) Cases where a third party's statement reflects only, for example disbursements, and/or commission, and separately includes a copy of the primary supplier's invoice, the two (2) different currency amounts on the two (2) invoices must be converted separately to Rand.
- c) Transit Goods - In terms of Section 39A, the **date of shipment** for goods which are exported to South Africa from any country but pass in transit through another country shall, subject to such conditions as may be prescribed by rule, be deemed to be the following:
- i) For imported goods which have been shipped through another country in the same condition as exported from the original country the shipped on board date will be the date of the first bill of lading.
 - ii) For imported goods which have been shipped through another country and received further processing in the second country, the shipped on board date will be the date on the second bill of lading.
- d) Transhipped Consignments - In situations where there is, no direct sailing available from the port of export to South Africa and the goods is shipped via a transshipment port, where it is loaded on board a second vessel to the port of final destination in South Africa, the date that must be used for currency conversion purposes will be deemed to be the following:
- i) In the case of containerised goods, the date such container is taken on board the first vessel on which it is loaded en route to South Africa, as endorsed on the bill of lading; and
 - ii) In the case of non-containerised goods, the date on the bill of lading issued in respect of the first vessel on which they are loaded en route to South Africa.

3.2 Client declares Customs value (Section 66)

- a) **The client imports** goods from overseas and must **declare** a value for Customs duty purposes.
- i) Section 65(1) stipulates that the value for Customs duty purposes of any imported goods shall, at the time of entry for home consumption **as set out in** Section 66.
 - ii) Whether or not any duties or taxes are payable at the time of entry into South Africa, a value must be **declared** for all goods.
- b) **The client verifies** the terms of sale applicable to **the** import transaction **under consideration**:
- i) The FOB contract has been retained by South Africa as the basis for valuation; **and**
 - ii) All costs, charges and expenses up to the point where the goods are loaded onto a ship or other vehicle, are dutiable.
- c) **The client calculates** a value based on the provisions of the Act, applicable to the valuation method used. The Act defines six (6) methods of valuation which must be applied in sequential order, namely the:
- i) Transaction value method (Method 1), which is the primary method and must be applied whenever the conditions as prescribed are fulfilled, Section 66(1). If the transaction value method should have been used, refer to SC-CR-A-05;
 - ii) Identical goods value method (Method 2), Section 66(4) – **see paragraph 3.3**;
 - iii) Similar goods value method (Method 3), Section 66(5) – **see paragraph 3.3**;
 - iv) Deductive value method (Method 4), Section 66(7) – **see paragraph 3.4**;
 - v) Computed value method (Method 5), Section 66(8) – **see paragraph 3.5**; and
 - vi) Fall-back value method (Method 6), Section 66(9), which can only be applied if all the previous methods cannot be used – **see paragraph 3.6**.
- d) **If the invoice is in a foreign currency** the calculated amount **must be** converted to South African Rand. In cases where a third party's statement reflects only, for example disbursements and/or commission and separately includes a copy of the primary supplier's invoice, the two (2) different currency amounts on the two (2) invoices must be converted separately to Rand.

- i) **The client establishes** which foreign currency must be converted into South African Rand, for example United States Dollars.
 - ii) Obtain the rate of exchange or conversion factor applicable for the date **determined in 3.1** and currency determined in (d)(i) above.
 - A) Section 73 states that when the value of the price paid or payable for any imported goods is expressed in a foreign currency, it must be converted to South African Rand by using the selling rate at the date of shipment of the goods as determined by the Commissioner, in consultation with the South African Reserve Bank or, if no such rate is determined for such date, the latest rate determined before that date must be used.
 - B) The rates are published on the South African Revenue Service's website. <http://www.sars.gov.za>.
 - iii) Divide the foreign amount into the applicable rate of exchange.
 - iv) Round of the Customs value to the nearest Rand - Refer to Section 65(2)(a):
 - A) If the value of any imported goods of a single denomination is in excess of one **(1)** rand, the Customs value must be calculated to the nearest rand, an amount of **fifty (50)** cents being regarded as less than one **(1)** half of one **(1)** rand; and/or
 - B) If the Customs value is less than one **(1)** rand, such value must be calculated as one **(1)** rand.
- e) **If the foreign supplier's invoice is** in Rand (Rand invoicing) **the client** must establish how the Rand amount was arrived at. If the Rand amount was:
- i) Concluded in a forward exchange contract, the number and date of the contract must be inserted on the supplier's invoice prior to the importation of the goods into South Africa.
 - ii) Converted at a fixed contract rate of exchange:
 - A) If negotiated between **unrelated** parties, provided such Rand amount was in fact paid or is payable to the supplier it may be used to calculate the value.
 - B) **If negotiated between related parties**
 - I) **In cases where** related importers arranged with their related suppliers to reflect prices also in the appropriate foreign currency, in addition to the Rand amount, the foreign currency must then be used to calculate the Customs value.
 - II) **If no arrangement mention in (I) above has been made** the Rand amount will not be accepted for Customs value purposes, unless documentary evidence can be provided that such negotiated rates also apply in transactions with unrelated importers in South Africa.
 - III) In cases where the aforementioned proof cannot be furnished, the Rand amount as reflected on the invoice must be converted back to the foreign currency amount. This will be done by using the fixed contract rate of exchange, negotiated between the related parties and then convert this calculated foreign amount to South African Rand at the appropriate official rate, for Customs purposes.
- f) **The client declares** the calculated Customs value on the Customs **declaration (see SC-CF-04):**
- i) When submitting a value to Customs the importer must ensure that the declared value can be substantiated by documentary evidence;
 - ii) If no evidence is available to verify the deduction or exclusion of an amount from the declared value the amount must be added until such time the evidence can be obtained from the supplier; **and**
 - iii) At the request of Customs, the client must produce the portfolio of evidence to substantiate the calculation of the declared value.
- g) **The client submits** the Customs **declaration**.
- h) **Where requested, the client submits supporting documents** that consists of but will not be limited to:
- i) An invoice or other evidence clearly showing the quantity and description of the goods imported;
 - ii) Documentary evidence of an entry of identical goods valued under the transaction value method;
 - iii) Evidence of transport and insurance expenses (inland transport and insurance);
 - iv) Evidence relating to other additions and/or deductions; and
 - v) Evidence to make adjustments for quantity and trade-level differences.
- i) The nature of the documentation to be produced must enable Customs to establish:

- i) The actual amounts paid for the service or goods;
 - ii) The role and function of the parties involved (importer, middleman and supplier);
 - iii) The actual services performed or paid for; and
 - iv) Must follow a chronological order from start to finish with regard to the transaction under review.
- j) Customs verifies the declared Customs value:
- i) Customs may request the client to complete a Customs and Excise Valuation Questionnaire (DA 55). Refer to paragraph 3.8.
 - ii) Where Customs agrees with the declared value, no further action is required for valuation purposes.
 - iii) Where Customs does not agree with the declared value:
 - A) The new value is communicated to the client in writing; and
 - B) A value determination number (VDN) may be issued.
- k) An amended Customs declaration must be submitted with the new value and, if applicable, under entry of duty and taxes must be brought to account.
- l) If a VDN was issued the client must:
- i) Insert the VDN and the supplier's code in the appropriate field on:
 - A) An amended Customs declaration for the consignment in question; and
 - B) All future declarations for consignments from the same suppliers.
 - ii) With regards to all previous goods obtained under the contract in question from the same supplier over the past two (2) years Customs values must be recalculated. All affected Customs declarations made over the past two (2) years must be amended with the above mentioned VDN(s) and supplier code(s) and the newly calculated value(s).
- m) Failure to declare a VDN and supplier's code on a Customs declaration, once they have been issued is an infringement that invalidates the Customs declaration, which constitutes an offence in terms of the Act and renders the client liable to the penalties provided for in the Act.

3.3 Determination under the identical or similar goods value method

- a) The client checks the calculation of the value by re-performing the task and confirms the following:
- i) That the value as calculated on the worksheet is correct; and
 - ii) Whether the amount for the Customs value has been correctly transferred to the import declaration.
- b) The client confirms that the goods being valued are identical or similar to the goods valued under the transaction value method to which they are compared.
- i) Refers the specifications; and/or physical examination, if possible; and
 - ii) Identifies any differences.
- c) The client confirms that the declared value is based upon values of identical or similar goods exported at or about the same time as the goods being valued by inspection of:
- i) The shipped on board date (on the air waybill/bill of lading) must be used as the starting procedural step number to determine the time frame; and
 - ii) The "at or about the same time" period extends ninety (90) days prior to and ninety (90) days following the exportation of the goods being valued; or
 - iii) If the market or manufacturing conditions are such that the price of the goods in question;
 - iv) Remain relatively stable over a longer period of time, more than three (3) months, the transaction value of goods exported outside that period may be considered; or
 - v) Result in frequent changes in the price of identical or similar goods, a shorter period of time may be more appropriate, for example perishables, computer equipment or cell phones.
- d) The client decides whether an adjustment is necessary to take account of different quantities or a different commercial level and obtains full details of the basis of calculation. Wherever possible, the sale of identical or similar goods to be used should be that which corresponds most closely in respect

of quality and commercial level to that of the goods being value. If such conditions do not exist, the following sales of identical or similar goods may be used:

- i) A sale at the same commercial level but in different quantities;
 - ii) A sale at a different commercial level but in substantially the same quantities; or
 - iii) A sale at a different commercial level and in different quantities.
- e) **The client inspects the international transport invoice and confirms** that the amounts declared as international transport and insurance costs are correct, and that the difference in costs has been adjusted correctly.
- f) **The client enquires and confirms** whether any other adjustments is necessary to take account of, for example differences between the transportation and associated costs incurred within the country of exportation with respect to the imported goods and the identical and similar goods, and obtain full details of what they are for and how they have been calculated.
- g) **The client obtains** all the supporting documents from the supplier and determines the Customs value.
- i) **Converts** foreign currency amount into South African Rand, or if the invoiced amount is expressed in South African Rand, ensure that all the provisions set in the Act, was adhere to. Refer to paragraphs **2.14 and 3.2(d)iv** of this document.
 - ii) **Ensures** that all the provisions set in the Act, was adhere to before submitting the Customs declaration to Customs.
 - iii) If a value cannot be determined this method cannot be used, proceed to Method 4, paragraph 2.7 and 3.4.

3.4 Determination under the deductive value method

- a) **The client checks** the calculation of the declared value **by re-performing the calculations and confirms the following:**
- i) That the value as calculated on the worksheet attached is correct; and
 - ii) **Whether** the amount for the Customs value has been correctly transferred to the import declaration.
- b) **The client confirms** that there is evidence of a sale, for example sales contract, invoices and evidence of payment.
- i) The basis for the price of the imported goods or identical or similar imported goods that are sold in South Africa in the same condition as that in which they were imported, and has the following elements:
 - ii) Relates to the sales price in South Africa;
 - iii) Has to be in the same condition as that in which they were originally imported;
 - iv) Price relates to the unit price in the greatest aggregate quantity at which they were sold;
 - v) Is imported and sold at or about the same time as the importation of the goods being valued;
 - vi) The price is not influenced by any Relationship; and
 - vii) The price is subject to deductions.
- c) When sales of the imported goods are not available, sales of identical or similar goods may be taken in sequential order.
- d) Where the deductive method is used on goods where further processing has been done after importation, deductions made for the value added by the processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.
- e) **The client confirms** that the
- i) Goods were sold after importation to persons who:
 - A) Where not related **as per the provisions of Section 66(2)(a)**, to the persons from whom they buy the goods; and

- B) Had not supplied, directly or indirectly, free of charge or at a reduced cost, any of the goods or services for use in the connection with the production and sale for export of the imported goods any assists.
- ii) Price **was** paid by the domestic purchaser. Refer to computer printout of sales and payments, photocopy of sales ledger, inventory records, sales invoices, and documentary evidence submitted to Revenue.
- iii) Unit price has been calculated correctly.
 - A) If there is one **(1)** sale of the imported goods being valued or of identical or similar goods, the unit price of the goods will be calculated from that sale;
 - B) If there is more than one **(1)** sale, the unit price will be calculated from the first commercial-level sales of the imported goods or of identical or similar imported goods, which involve the greatest number of units sold at an ordinary price; and
 - C) In determining the price per unit, no account is taken of the trade level, for example whether the sale is to a wholesaler, a distributor or a retailer.
- iv) Imported goods or identical or similar goods have been sold, either at or about the time of the importation of the goods being valued, or in the condition as imported before the expiration of **ninety (90)** days after they have been imported.
 - A) If the market or manufacturing conditions are such that the price of the goods in question;
 - B) Remains relatively stable over a longer period of time than three **(3)** months, the transaction value of goods exported outside that period may be considered; or
 - C) Result in frequent changes in the price of identical or similar goods, a shorter period of time may be more appropriate, for example perishables, computer equipment or cell phones.
- v) Sufficient number of units have been sold.
 - A) The price per unit at which the greatest number of goods is sold might not be acceptable if the number of goods sold within the time limit established in **paragraph (iv) above** is only a small percentage of the total sales of the goods; **and**
 - B) These sales may be acceptable for the purpose of establishing a price per unit if the price at which they are sold is consistent with the usual selling price of the goods.
- vi) Use of sales of goods being processed further after importation is justifiable.
 - A) When the imported goods lose their identity as a result of the further processing, Method 4 would normally not be applicable;
 - B) When the value added by the processing can be determined accurately without unreasonable difficulty, although the identity of the imported goods is lost, the application of Method 4 may be justified;
 - C) Sales of goods imported and further processed must be made within a certain period from the time of importation of the goods being valued, for example not later than **ninety (90)** days from the time the materials or components have been imported; and
 - D) The importer must indicate acceptance or selection of this method in writing.
- f) **The client verifies if** the amount of commissions or profit and general expenses is in norm with sales in South Africa of the same class or kind.
 - i) The norm should constitute a range of amounts which is obvious and evident in order for it to be regarded as the norm; or
 - ii) The amount can be calculated, for example by simple or weighted averaging, or by the use of a benchmarked amount.
- g) **The client establishes** whether the sale in **South Africa** of the goods being valued is or is not made on a commission basis. The deduction for profit and general expenses would normally be resorted to in transactions which do not involve commission.
- h) **The client confirms** that
 - i) Any other deductions, for example transportation costs within **South Africa**, duties and taxes, overseas freight charges, have been calculated correctly.
 - ii) **Costs of further processing** have been calculated correctly.
- i) **The client obtains** all the supporting documents from the importer and **determines** the Customs value.
 - i) **Converts** foreign currency amount into South African Rand, or if the invoiced amount is expressed in South African Rand, ensure that all the provisions set in the Act, was adhere to. Refer to paragraphs **2.14 and 3.2(d)iv)** of this document.

- ii) Ensures that all the provisions set in the Act, was adhere to before submitting the Customs declaration to Customs.
- iii) If a value cannot be determined this method cannot be used, proceed to the computed value method, paragraph 3.5.

3.5 Determination under the computed value method

- a) **The client confirms** that the producer is prepared to supply to Customs the necessary costing and to provide facilities for any subsequent verification which may be necessary.
 - i) If Customs is unable to satisfy itself as to the truth or accuracy of the information presented, Method 5 may not be used; **and**
 - ii) Fall-back value method will have to be used to determine a value.
- b) **The client inspects the cost accounts of the producer to confirm** that the declared cost or value under this method is based upon the commercial accounts of the producer and that such accounts are consistent with the **International Financial Reporting Standards (IFRS)** applied in the country where the goods are produced. There is a major distinction between the terms costs and value. Customs will only use the value of materials only if the costs are not available.
- c) **The client checks:**
 - i) The bill of material to confirm that the cost of the value of materials used in producing the imported goods has been identified correctly; i.e. **materials would include:**
 - A) Raw materials, such as lumber, steel, lead, clay, textiles, etc.;
 - B) Costs associated with the transportation of the raw materials to the place of production;
 - C) Partly assembled or semi-finished goods such as integrated circuits; and
 - D) Components which will eventually be assembled or used in the production of the finished products.
 - ii) **A copy of the supplier's job sheets or other costing information to confirm** that the cost of the production or other processing of the imported goods has been identified correctly. The cost of production could include:
 - A) The cost for direct and indirect labour;
 - B) Any costs for assembly where there is an assembly operation instead of a manufacturing process;
 - C) Indirect costs such as factory supervision, plant maintenance, overtime; and
 - D) The amount of internal tax imposed by the country of exportation that is directly applicable to the materials or their disposition. However, if the tax is remitted or refunded upon the exportation of the goods, it must not be included in the Customs value.
 - iii) That the cost of containers which are treated as being one **(1)** with the imported goods for Customs purposes has been identified correctly.
 - iv) That the cost of packing, whether for labour or materials, has been identified correctly.
 - v) That the value of assists has been calculated correctly and that the supplier has not included the value of the assists in the selling price.
 - A) The value of engineering, development, artwork, design work and plans and sketches undertaken in South Africa must be included if the value of such assists is changed to the producer; **and**
 - B) The value of any assist is not to be counted twice.
 - vi) **That** the costs of transport, insurance and related charges have been calculated correctly.
- d) **The client inspects the manufacturer's audited financial statements to confirm** that the amount for profit and general expenses has been identified correctly.
 - i) The amounts for profit and general expenses must be determined on the basis of information supplied by or on behalf of the producer, unless his/**her** figures are inconsistent with those usually reflected in sales of goods of the same class or kind.
 - ii) The amounts for profit and general expenses **must** be taken as a whole. It follows that if, in any particular case, the producer's profit figure is low and his/**her** general expenses are high, his/**her** profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind; and
 - iii) Where the producer can demonstrate that he/**she has valid reason for** taking a low profit on sales of the imported goods, **the** actual profit figures must be taken into account, such as an

- unforeseeable drop in demand and his/her pricing policy reflects usual pricing policies in the industry.
- iv) Where information other than that supplied by or on behalf of the producer is used for the purpose of determining a computed value, Customs must inform the importer, if the latter so requests, of the source of such information, the data used and the calculations based upon such data, subject to the provisions of Article 10 of the Agreement.
- e) **The client obtains** all the supporting documents from the importer and **determines** the Customs value.
- i) **Converts** foreign currency amount into South African Rand, or if the invoiced amount is expressed in South African Rand, ensure that all the provisions set in the Act, was adhere to. Refer to paragraphs **2.14 and 3.2(d)iv)** of this document.
- ii) **Ensures** that all the provisions set in the Act, was adhere to before submitting the Customs declaration to Customs.
- iii) If a value cannot be determined this method cannot be used, proceed to Method 6, paragraph 3.6.
- f) Evidence that should be supplied by the overseas producer of the goods, will consist of, **but will not be limited to:**
- i) All the necessary costing documents reflecting the elements of the build-up value for the producing of the imported goods under review;
- ii) Sworn affidavit of the accuracy and completeness of the information from a responsible officer or employee of the producer or by an independent auditor recognised as such by the law of the foreign country;
- iii) Importer must supply documentation to demonstrate that the amount for profit and general expenses is acceptable. General expenses covers the direct and indirect costs of producing and selling the goods for export which are not included in the cost or value of the materials and fabrication or other processing employed in producing the imported goods.
- iv) Evidence of the amounts to be added to the build-up value for the following charges:
- A) Cost of containers which are treated as being one (1) with the goods;
- B) Packing costs and charges, including that of labour or material;
- C) Assists(apportioned in a reasonable manner in accordance with IFRS);
- D) Inland freight and charges; and
- E) Engineering work, artwork etc., undertaken in South Africa and charged to the producer, if any.
- v) Information to verify the amounts added for profit and general expenses, usually reflected in export sales to South Africa, by producers in the country of export of goods of the same class or kind.

3.6 Determination under the fall-back value method

- a) **The client confirms** that the value is not based on prohibited methods as mentioned in the Act.
- i) In determining Customs value under this residual method, no arbitrary, factious or prohibited methods of valuation are to be used.
- ii) The Customs value must be fair, reasonable, uniform and neutral, and must reflect commercial reality to the greatest extent possible.
- iii) The WTO Valuation Agreement does not provide for a specific valuation method but rather requires that the Customs value be determined, using reasonable means:
- A) Consistent with the principals and general provisions of the WTO Valuation Agreement and Article VII of GATT 1994; and
- B) On the basis of data available in South Africa.
- C) Method 6 is often used when a particular scenario does not meet the exact conditions of the other methods.
- D) Where necessary, data from foreign sources can be used to help establish a flexible value, provided the information is available in South Africa and Customs is satisfied to its truth or accuracy.
- b) When applying the fall-back method, the other valuation methods must be tried flexible in hierarchical order, meaning, if more than one (1) method can be applied flexibly, the normal sequence for using the transaction value method to Method 5 must be taken into account.

- c) Under Method 6, the Customs value must **not** be based on:
- i) The selling price of goods produced in South Africa;
 - ii) The higher of two (2) alternative values;
 - iii) The selling price of goods on the domestic market of the country of origin or of exportation;
 - iv) The cost of production, other than under Method 5;
 - v) The price of goods for export to a third country;
 - vi) A system of minimum Customs values; or
 - vii) Arbitrary or fictitious values.
- d) **The client confirms** that
- i) All the transport and insurance costs and related charges associated with the imported goods have been correctly taken into account.
 - ii) Any addition, for example tooling costs, material supplied, etc., that have been incurred are declared.
- e) **The client obtains** all the supporting documents from the supplier and **determines** the Customs value.
- i) **Converts** foreign currency amount into South African Rand, or if the invoiced amount is expressed in South African Rand [paragraphs 2.14 and 3.2(d)iv)]; and
 - ii) **Ensures** that all the provisions set in the Act, was adhere to before submitting the Customs declaration to Customs.
- a) Flexibility under the fall-back method
- i) In terms of Section 65(4)(b), the Commissioner may determine a value by all reasonable ways and means in his/**her** power, any statement of cost or costs of production in any invoice, affidavit, declaration, other document and evidence before him/**her** in evaluating the import transaction, as long as the method is not specifically precluded under Section 66(9)(a – g).
 - ii) Some examples of reasonable flexibility are as follows:
 - A) **Identical Goods method** – the requirement that the identical goods must be exported to the country of importation at, or about the same time, as the goods being valued could be flexible interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for Customs valuation; Customs values of identical and similar goods already determined under the provisions of Sections 66(4) and 66(5) could be used.
 - B) **Similar Goods method** - the requirement that the similar goods must be exported at, or about the same time, as the goods being valued could be flexible interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for Customs valuation; Customs values of identical and similar goods already determined under the provisions of Sections 66(4) and 66(5) could be used.
 - C) **Deductive method** – the requirement that the goods shall have been sold in the condition as imported could be flexibly interpreted; the **ninety (90)** days requirement could be administered flexibly.

3.7 Consulting with Customs

- a) **The client** may consult with Customs to confirm if a value can be determine under Methods 2 to 6, if Method 1 does not apply. If Method 1 should have been used, refer to SC-CR-A-05.
- b) Methods 4 and 5
- i) As a general rule, the Customs value is determined under the WTO Valuation Agreement on the basis of information readily available in South Africa. However, in order to determine a value using Method 5, it is necessary to examine the costs of producing the goods being valued and other information which has to be obtained from **outside South Africa**.
 - ii) The use of Method 5 will generally be limited to those cases where the importer and the supplier are related, as only related companies will divulge the required information to **proof** the various elements that make up the Customs value.
 - iii) If the importer requested to change the order of application of Method 4 and Method 5, the order may be reverse, however, the request must be in writing and on file.

3.8 Client completes the DA 55

3.8.1 Facts of the transaction

- a) In order for Customs to determine the Customs value for ad valorem Customs duty purposes on imported goods, it is necessary to have full knowledge of the facts relating to the commercial transaction involving the imported goods. The client of the imported goods is required to furnish a written declaration of facts, in addition to the import declaration form and the commercial documents.
- b) The importer is responsible for the self-assessment of their duty and VAT liabilities with respect to imported goods and is required to calculate and declare a value for Customs duty purposes on the **Customs declaration**, which meets all of the requirements of the valuation provisions of the Act and other administrative procedures.
- c) All documentary evidence to support the declared value may not need to accompany each entry, but must be available for review when required. It is the importer's responsibility to maintain, in a manner which facilitates a review, all information and records used in the determination and declaration of the Customs value.
- d) Rule 65.01 **stipulates** that any importer shall, if requested in writing, furnish on a DA 55 or in any other manner specified in the request, full particulars as may be deemed necessary to determine the Customs value of goods imported by him/her. The importer concerned shall furnish such information not later than **thirty (30)** days from the date of such request. See **SC-CR-A-13** for guidance on the completion of the DA 55.
- e) An individual DA 55 must be completed for each supplier. Meaning the:
 - i) Importer shall complete a valuation questionnaire on request;
 - ii) Request shall be in writing; and
 - iii) Importer shall have **thirty (30)** days to submit the information required to determine a value.

3.8.2 Completes particulars on DA 55

- a) **The client ensures** that the importer's particulars declared on the DA 55 (Name, code and address):
 - i) Corresponds with the importer's particulars declared on the **Customs declaration**;
 - ii) Corresponds with the importer's particulars on the RAS 301 system; and
 - iii) Corresponds with the particulars reflected on the commercial invoice.
 - iv) Both the postal- and physical street address is declared.
- b) **The client verifies**
 - i) That the supplier's particulars declared on the DA 55:
 - A) Corresponds with the suppliers name on the commercial invoice;
 - B) Corresponds with the name declared on the **Customs declaration**; and
 - C) Is the physical street address of the supplier, including the city's name.
 - ii) That the details or the description of the goods declared on the DA 55:
 - A) Ties-up with the description of the good on the **Customs declaration**.
 - B) Consist of the total consignment. If more than one **(1)** commodity is imported from the supplier, this must also be declared i.e. chemicals, clothing and cell phones.
 - iii) **Whether** the imported goods **were** acquired through outright purchase.
 - A) Was there a sale for export to South Africa within the meaning of Section 66(1)?
 - I) If the answer is "yes", transaction value method can still be used to determine the Customs value, follow **paragraph (d)i) below**.
 - II) If the answer is "no", **continue with (B)** of this section.
 - B) Was the sale between the importer and the supplier, or did they make use of a middleman?
 - C) Confirms the total payment made by the importer to the supplier and/or for the supplier's benefit.
 - D) Requests a breakdown of charges up to the FOB point of Valuation if not reflected on the invoice. Refer to annexure SC-CR-A-02-A03.
 - E) Obtains copies of:

- I) The sale contract to verify the circumstances surrounding the sales transaction;
 - II) Published export price lists,
 - III) Bank proof of payment from the relevant financial institution; and/or
 - IV) Any other general correspondence regarding the sale under review.
- c) **The client ensures** that the basis of acquisition declared on the DA 55 can be verified, for example the list is not exhaustive:
- i) Free consignments like gifts, samples, promotional items, etc.;
 - ii) Goods imported on consignment or stock;
 - iii) Goods imported by intermediaries, who do not purchase the goods and who sell them after importation;
 - iv) Goods imported by branches of the supplier, which are not separate legal entities;
 - v) Goods imported under a hire or lease agreement;
 - vi) Goods supplied on loan, which remains the property of the sender;
 - vii) Goods (waste or scrap) imported for destruction in the country of importation, with the sender paying the importer for the services; and
 - viii) Keep a copy of:
 - A) The contract, pertaining to the goods imported, for example the hire and lease contract;
 - B) Calculation sheets on how the amount for the hire, lease or rental charges has been determined;
 - C) Audited financial statements;
 - D) Any other information required to determine a value by using the next value method; and
 - E) Any other general correspondence regarding the sale under review.
- d) **The client verifies**
- i) If the terms of sale declared on the DA 55:
 - A) Corresponds with the term of sale on the commercial invoice; and
 - B) Corresponds with the information obtained from the supplier. Each sale for export to **South Africa** may have different terms and conditions.
 - C) Keep copies of:
 - I) The sales contract, and
 - II) Any other general correspondence regarding the sale under review.
 - ii) If the supplier imposed any restriction regarding the disposal, use or subsequent resale of the imported goods which substantially influence the price to the importer. (Territorial restrictions excluded).
 - A) If the answer is “yes” ensure to elaborate on the form as requested via the note on the DA 55.
 - I) If the declared restriction, is one (1) of the following, the transaction value method can still be used to determine the Customs value.
 - II) Are imposed or required by law or by the public authorities in South Africa, for example licence, end-use, etc.
 - III) Limit the geographical area in which the goods may be resold.
 - IV) Do not substantially affect the value of the goods, for example an restriction on selling or exhibiting motor vehicles prior to a fixed date which represents the beginning of a model year or a cosmetics manufacturer stipulating that a particular distribution chain of house to house suppliers is used.
 - B) If the answer is “no”, proceed to the next step in this section.
 - C) To verify the above, keep copies of:
 - I) The sale contract to verify the circumstances surrounding the sales transaction;
 - II) Any other general correspondence regarding the sale under review, and
 - III) If the transaction value method can no longer apply, obtain the necessary information to substantiate the following method.
- e) **The client verifies** whether the sale or price is subject to some other condition or consideration.
- i) If the answer is “yes” elaborate as requested via the note on the DA 55.
 - A) Is the declared condition or consideration one (1) of the following:
 - I) The supplier establishes the price of the imported goods on the condition that the importer will also buy other goods in specified quantities,
 - II) The price of the imported goods is dependent upon the price or prices at which the importer sells other goods to the supplier, or

- III) The price is established on the basis of a form of payment not directly associated to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the supplier on the conditions that he/she will receive a specified quantity of the finished goods.
- B) Was the price negatively influenced due to the condition or consideration?
- C) Can a value be determined, with respect to the goods being valued, regardless of the condition or consideration?
- I) If not, transaction value method can no longer be used to determine the Customs value.
- II) Determine the Customs value by using one (1) of the other valuation methods in strict order of application.
- D) Keep copies of:
- I) The sale contract to verify the circumstances surrounding the sales transaction;
- II) Published export price lists;
- III) Bank proof of payment from the relevant financial institution;
- IV) Any other general correspondence regarding the sale under review; and
- V) If the transaction value method can no longer apply, obtain the necessary information to substantiate the following method.
- ii) If the answer is “no” proceed to the next step in this section.
- f) The client verifies if any part of the proceeds of subsequent resale, disposal or use of the imported goods accrues directly or indirectly to the supplier declared on the DA 55 and included in the declared value? (Royalties, License Fees and Dividends excluded).
- i) If the answered “yes” elaborate as requested via the note on the DA 55.
- A) Can any appropriate adjustment be made, in accordance with the provisions of Section 67?
- I) If proceeds are paid to the supplier, it must be added to the price paid; or
- II) If the proceed paid to the supplier is not mentioned in Section 67, the value shall be determined under valuation methods 2 – 6.
- B) Keep copies of:
- I) The sale contract to verify the circumstances surrounding the sales transaction;
- II) Published export price lists,
- III) Bank proof of payment from the relevant financial institution;
- IV) Any other general correspondence regarding the sale under review; and
- V) If the transaction value method can no longer apply, obtain the necessary information to substantiate the following method.
- ii) If the answer is “no”, proceed to the next step in this section.
- g) The client verifies if there is a relationship between the importer and the supplier.
- i) If the answer is “yes”, elaborate as requested via the note on the DA 55. If “yes” the transaction value method cannot be used to determine the value and the value shall have to be determined by using one (1) of the other methods
- A) If “yes” and the client claims that the price has not been influenced by the relationship, verify if the client supplied evidence to proof that the prices charge to him/her, by the supplier, are acceptable as open market prices or approximates the price of identical or similar goods sold to unrelated importers in South Africa?
- B) Keep copies of:
- I) The sale contract to verify the circumstances surrounding the sales transaction;
- II) Published export price lists,
- III) Bank proof of payment from the relevant financial institution;
- IV) Information to substantiate a test value as provided for in Section 66(3)(b).
- V) Any other general correspondence regarding the sale under review; and
- VI) If the transaction value method can no longer apply, obtain the necessary information to substantiate the following method.
- ii) If “no” proceed to the next procedural step in this section.
- h) The client confirms if the services of a middleman or agent was utilised to assist with the transaction and if so was commission paid to the third party.
- i) If the answer is “yes”, verify whether the commission is included in the Customs value or not. The commercial invoice may not reflect the selling commission separately.

- A) As long as the commission is included in the calculation of the Customs value it will not have an impact if the commission is not reflected separately on the invoice.
- B) If the commission is subtracted from the Customs value, call for a breakdown of the cost price reflected on the seller's invoice supported by his/her export price list. If a difference is detected, an explanation must be called for.
- ii) If the commission is not included in the invoiced price, **the client must confirm** whether payment to the supplier, middleman or agent is affected on a second invoice made out to the supplier.
 - A) Does the agent invoice the importer directly?
 - B) Who appointed the agent and for whose benefit does the intermediary act?
- i) **The client checks if the documentation** attached to the DA 55 **prove** that the commission is a bona fide buying commission.
 - i) If the answer is "yes", deduct the actual amount paid from the invoiced price, if included on the invoice.
 - ii) If the answer is "no", the amount must be added to the Customs value, if not already included therein.
 - iii) Keep copies of:
 - A) The sale contract or purchase order to establish the parties to the sale, if no sales contract or purchase order can be produced, the commission is dutiable;
 - B) The agency agreement to verify the circumstances surrounding the sales transaction;
 - C) Bank proof of payment from the relevant financial institution; and
 - D) Any other general correspondence regarding the sale under review.
- j) **The client verifies if** royalty or license fees were paid.
 - i) If the answer is "yes", verify if the royalty and license fees are dutiable. It can only be dutiable if both of the following two (2) conditions are met.
 - A) The royalty or license fee payment must be a condition of sales transaction; and
 - B) The royalty or license fee payment **must relate to the imported goods**.
 - ii) If, dutiable, obtain documentary evidence to the following questions:
 - A) A detailed description of the goods imported from the supplier;
 - B) What is manufactured from the imported goods or components?
 - C) What is the annual amount of royalties paid in respect of the goods imported from the supplier?
 - D) What is the total FOB value of the imported goods or components, liable to payment of royalties?
 - E) What is the imported content of the articles sold in **South Africa** (expressed as a percentage of total manufacturing cost) to which the royalties apply? and
 - F) When the sale was negotiated, did the importer or buyer agreed to pay the royalty or license fee as part of the sale?
 - G) Obtain a signed license or royalty agreement to verify particulars.
 - iii) If "no", proceed to procedural step number (n) of this section.
- k) **The client confirms** whether the client supply any goods free of charge or at a reduced price to the supplier.
 - i) Materials, components, parts and similar items incorporated in the imported goods;
 - A) The value to be added to the price paid or payable in determining the Customs value is the cost to the importer or manufacturing or otherwise acquiring it.
 - B) In determining the value, no allowance can be made in respect of that waste.
 - ii) Tools, dies, moulds and similar items used in the production of the imported goods;
 - A) Determination of the amount to be added to the price paid or payable may prove to be difficult because it will depend on factors which will be difficult to quantify accurately.
 - B) **Refer to** SC-CR-A-02-A02, paragraph 9.2.
 - iii) Materials consumed in the production of the imported goods, but not incorporated therein; and/or
 - A) The value of an assist in this category is the cost thereof to the importer of producing, or otherwise acquiring, it.
 - B) In determining the value, no allowance can be made for waste.
 - iv) Engineering, development, artwork, design work and plans and sketches undertaken outside **South Africa** and necessary for production of the imported goods.

- v) The value of an assist in this category is the cost thereof to the importer of producing, or otherwise acquiring, it.
- vi) Refer to SC-CR-A-02-A02 paragraph 9.3.
- vii) Obtains copies of:
- A) The sale contract and/or technical assistance agreement to verify the circumstances surrounding the sales transaction;
 - B) Request the royalty agreement if required;
 - C) The latest audited financial statement (profit and loss account); and
 - D) Any other general correspondence regarding the sale under review.
- l) The client verifies that the declaration on the DA 55 is signed and correctly completed by checking the following:
- i) The full name and not only initials of the person who completed and sign the DA 55 must be legibly printed in this field.
 - ii) The person who completed the form, designation, in relation to the company he or she represents, must be inserted in this field.
 - iii) The DA 55 can be signed by any person:
 - A) Residing or having a place of business in South Africa, or
 - B) Who is knowledgeable about the business and has the information needed to answer the questions on the form.
 - C) Where the form is completed for a company, the person signing can be a responsible representative of the company, that is:
 - I) One (1) of the above-named persons may authorise an employee, in writing, to sign on behalf of the company. A copy of this authorisation must be attached to the DA 55.
 - II) Clearing agents may sign the form on behalf of the importer when authorisation to do so in writing and a copy of the authorisation must be attached to the DA 55.
 - III) The person signing the declaration is responsible for the accuracy and completeness of the facts given on the form.
 - D) Director, owner, company secretary or manager.
 - iv) Attach a copy of the authorisation letter if not signed by the director, owner, company secretary or manager.
- m) The client verifies whether there is sufficient information and evidence attached to determine the Customs value: The nature of the documentation to be produced must enable Customs to establish the actual amounts paid for the service or goods, the role and function of the middleman, place where containers are sealed for the final time for export and follow a chronological order from start to finish with regard to the transaction under review.
- n) The client completes, sign and date stamp the Customs Valuation Questionnaire DA 55, and include it in the audit pack.

4 RELATED INFORMATION

4.1 Legislation

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	Customs and Excise Act No. 91 of 1964: Sections 39A, 41, 65, 66, 67, 71 , 72, 74 and 74A Customs and Excise Rules: Rule 39.04, 41.01, 41.02, 41.03, 41.04, 41.05, 65.01, 65.02, 65.03, 66.01, 66.02, 66.03, 66.04 and 66.05 Harmonised Tariff System: Schedule 1 part 2B Value-Added Tax Act No. 89 of 1991: Section 13(2) Tax Administration Act No. 28 of 2011: Sections 215 to 220 and 224
Other Legislation:	Merchant Shipping Act of 1951: All Promotion of Administrative Justice Act No. 3 of 2000: Section 3 and 5 Promotion Of Access To Information Act No. 2 of 2000: All
International Instruments:	WTO Agreement on Implementation of Article VII of the GATT 1994: All Kyoto Convention General Annex Chapter 9 – Information, Decisions and Rulings supplied by Customs: Standards 9.1 to 9.9

4.2 Cross references

DOCUMENT #	DOCUMENT TITLE
SC-CC-24	Internal Administrative Appeal - External Policy
SC-CC-26	Alternative Dispute Resolution - External Policy
SC-CF-04	Completion of declarations – External Manual
SC-CF-25	Provisional Payments - External Policy
SC-CF-30	Invoice Requirement for Customs – External Policy
SC-CF-49	Samples – External Policy
SC-CR-A-02-A01	Place of Export
SC-CR-A-02-A02	Articles to the WTO Valuation Agreement
SC-CR-A-02-A03	Terms of Sale
SC-CR-A-02-A04	Transfer Pricing and Customs Value – External Annex
SC-CR-A-05	Method 1 Valuation of Imports – External Directive
SC-CR-A-07	Valuation of Exports – External Directive
SC-CR-A-13	Completion of the DA 55 – External Manual
SC-DT-C-13	Refunds and Drawbacks – External Policy
SC-PA-01-11	Traveller Processing – External Policy
SC-SE-05	Security - External Policy

4.3 Quality Records

NUMBER	TITLE
DA 51	Notice of Internal Administrative Appeal in terms of the Customs and Excise Act, 1964
DA 52	Application for Alternative Dispute Resolution in terms of the Customs and Excise Act, 1964
DA 55	Customs and Excise Valuation Questionnaire
DA 304A	Customs and Excise Motor Vehicle Declaration

5 DEFINITIONS AND ACRONYMS

Actual Value	<p>c) The price at which such or like goods are:</p> <p>i) Sold for export to South Africa; or</p> <p>ii) Offered for sale in the ordinary course of trade under fully competitive conditions.</p> <p>d) To the extent to which the price of such or like goods is governed by quantity in a particular transaction, the price to be considered should uniformly be related to either:</p> <p>i) Comparable quantities; or</p> <p>ii) Quantities not less favourable to importers than those in which the greater volume of the imported goods is sold in the trade between the countries of exportation and importation.</p> <p>e) May be represented by the invoiced price, plus any non-included charges for legitimate costs which are proper elements (Section 67) of “actual value” and plus any abnormal discount or other reduction from the ordinary competitive price.</p>
Ad Valorem duty	Duty expressed as a percentage based on the Customs value of the goods, e.g. 10% ad valorem means that the duty payable is 10% of the Customs value of the goods
ADR	Alternative Dispute Resolution
Agreement	WTO Valuation Trade Agreement
Appeal	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
Associated costs	In terms of Section 67(2)(a), refer to, the costs, charges and expenses related to the physical transport from the port or place of shipment, for export to South Africa; for example delivery costs, demurrage
ATV	Added Tax Value
Audit pack	All the documentation, for example clearing documentation, agreements, forms, reports, handovers, checklists needed to support and substantiate the client’s calculation of the declared value that is under review
BLNS	The Republic of B otswana;

	The Kingdom of Lesotho ; The Republic of Namibia ; and The Kingdom of Swaziland
Bona fide	In good faith
Brokerage	Brokerage is a payment to a middleman, who does not act on his/her own account, for his/her participation in the conclusion of a contract of sale
Buying Agent	A middleman who acts for the account of an importer, rendering him/her services in connection with finding suppliers, informing the supplier or manufacturer of the desires of the importer, collecting samples, inspecting goods and in some cases, arranging the insurance, transport, storage and delivery of the goods
Buying Commission	Fees paid by an importer to a buying agent for the service of representing the importer abroad in the purchase of the goods being valued
CFR	Cost and Freight
CIF	Cost, Insurance and Freight
CIP	Carriage and Insurance Paid To
CMT	Cut, Make and Trim
Commercial Level	The commercial stage at which a sale is concluded, for example: e) Between a manufacturer and a wholesaler; or f) Between a wholesaler and a retailer; or g) Between a retailer and an end user or customer.
Commission	Payment made to an intermediary who acts on behalf of either the supplier of the goods (selling commission) or the importer (buying commission)
Condition or Consideration	Activities to be undertaken by the importer or supplier necessary for the settlement of the contract of sale, or for the determination of price
Confirming Commission	Fee paid by exporters to protect themselves against the financial risk of non-payment or insolvency on the part of the importer; can be undertaken through normal banking channels, government agencies, insurance companies or specialised commercial companies dealing with such matters
CPT	Carriage Paid To - the supplier pays the freight for the carriage of the goods to the named destination. The risk of loss of, or damage to the goods, as well as any additional costs due to events occurring after the time the goods have been delivered to the carrier, is transferred from the supplier to the importer when the goods have been delivered into the custody of the carrier.
DAF	Delivered at Frontier
DDP	Delivered Duty Paid
DDU	Delivered Duty Unpaid
Demurrage	Compensation payable for keeping vessels in port
DEQ	Delivered Ex-Quay (duty paid)
DES	Delivered Ex-Ship
Dispute	A disagreement on the interpretation of either the relevant facts involved or the law applicable thereto, or both the facts and the law
Document	Any medium designed to carry and actually carrying a record or data entries; it includes magnetic tapes and disks, microfilms and so forth.
EXW	Ex-Work
FAS	Free Alongside Ship
FCA	Free Carrier
FOB	INCOTERM: Free on Board Point of valuation: FOB contract of sale - All costs, charges and expenses up to the point where the goods are loaded onto a ship or other vehicle, are dutiable
GAAP/IFRS	Generally Accepted Accounting Principles or International Financial Reporting Standards c) GAAP/IFRS refers to the recognised consensus or substantial authoritative support within a country at a particular time as to: i) Which economic resources and obligations should be recorded as assets and liabilities; ii) Which changes in assets and liabilities should be recorded; iii) How the assets and liabilities and changes in them should be measured; iv) What information should be disclosed and how it should be disclosed; and v) which financial statements should be prepared d) The specific areas of use of GAAP/IFRS are: i) Determination of adjustments under transaction value, for example the apportionment of assists;

	<ul style="list-style-type: none"> ii) Determination of usual profit and general expenses under Method 4; and iii) Under the computed value method, determine: <ul style="list-style-type: none"> A) The costs of materials, and fabrication; and B) The costs of profit and general expenses under computed value method.
GATT	General Agreement on Tariff and Trade, the basic agreement governing international trade in many areas since 1947. Also, the organisation in Geneva created to administer the Agreement.
IAA	Internal Administrative Appeal
Identical Goods	<p>Goods which are:</p> <ul style="list-style-type: none"> a) Produced in the same country; b) Produced by the same producer; c) The same in all respects including: <ul style="list-style-type: none"> i) Physical characteristic; ii) Quality; and iii) Reputation; d) But which excludes minor differences in appearance; e) But does not include goods incorporating or reflecting: <ul style="list-style-type: none"> i) Engineering; ii) Development work; iii) Art work; iv) Design work; v) Plans; or vi) Sketches, under taken in South Africa.
Importer	<p>Includes any person who, at the time of importation:</p> <ul style="list-style-type: none"> a) Owns any goods imported; b) Carries the risk of any goods imported; c) Represents that or act as if he/she is the importer or owner of any goods imported; d) Actually brings any goods into South Africa; e) Is beneficially interested in any way whatever in any goods imported; and/or f) Acts on behalf of any person referred to in any of the bullets above.
INCOTERMS	<p>International Commercial Terms - International Rules for:</p> <ul style="list-style-type: none"> a) The interpretation of trade terms; and b) Aiming at defining the liabilities of parties as clearly and precisely as possible.
Independent Agent	A middleman who acts on his/her own account
Indirect Payment	Payment for the imported goods by the importer to a person other than the supplier, including the buyer, to satisfy any obligation of the supplier; e.g. the settlement by the importer, whether in whole or in part of a debt owed by the supplier
One (1) directly or indirectly controls the other	Normally applies to situations which go beyond usual importer or supplier or distribution arrangements and involve a position to exercise restraint or direction in respect of essential aspects relating to the management of the activities of the other person
One (1) person controls the other	One (1) person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter
Ordinary course of trade, under fully competitive conditions	<p>Excludes any transaction wherein:</p> <ul style="list-style-type: none"> a) The importer and supplier or manufacturer are not independent of each other; and b) The price is not the sole consideration and excludes from consideration prices involving special discounts limited to exclusive agents.
Package Deal	An agreement to pay a lump sum for a correlated group of goods or a group of goods sold together, the price paid or payable being the only consideration
Partner	One (1) who is associated with one (1) or more persons in the same business and shares with them its profits and risks; a member of a partnership
Partnership	An association of two (2) or more people who contribute money or property to carry on a joint business and who share profits and losses in certain proportions
PCC	Post Clearance Control
Port or Place of Export	The place in the exporting country where the goods to be exported to South Africa is loaded into a container or in the case of break bulk cargo, onto the ship or other vehicle, in which they are to be removed from that country en route to South Africa
Price Actually	The total payment made for imported goods by the importer to, or for the benefit of, the

Paid or Payable	supplier, including all payments made or to be made as a condition of sale of the imported goods by the importer to the supplier or by the importer to a third party to satisfy an obligation of the supplier
Profit Sharing	The importer pays the supplier a further sum resulting from, or to take account of, profit realised on the imported goods
Related (Relationships)	Persons shall only be deemed to be related in terms of Section 66(2)(a), if: <ul style="list-style-type: none"> a) They are officers or directors of each other's business; b) They are legally recognised partners in business; c) The one (1) is employed by the other; d) Any person directly or indirectly owns, controls or holds 5% or more of the equity share capital of both of them; e) One (1) of them directly or indirectly controls the other; f) Both of them are directly or indirectly controlled by a third person; g) Together they directly or indirectly control a third person; or h) They are members of the same family.
Restriction	Conditions which restrict the importer's freedom to use or resell the goods as he/she wishes
Royalties And License Fees	Payments to a person for inter alia, the use of that person's patent or design rights, processes, recipes, trademarks, copyrights or for know-how
SAD	Single Administrative Document
Sale	The transfer of property from one (1) party to another party for consideration
Sales transaction	Consideration means payment from one (1) party to another for the goods imported
Same class or kind	Goods produced by a particular industry or industry sector in the country from which the imported goods were exported, and falling within the same group or range of goods as the imported goods
Selling Agent	A middleman who acts for the account of a supplier, he/she seeks customers and collects orders, and in some cases he/she may arrange for storage and delivery of the goods. Selling commission is a dutiable charge and must be included in the Customs value.
Selling Commission	Fees paid by a supplier to a selling agent for the service of representing the supplier abroad or locally in the purchase of the goods being valued
Similar Goods	Goods which are: <ul style="list-style-type: none"> a) Produced in the same country as the goods being valued; b) Created by the same or different producer; and c) Which although not alike in all respects, have due regard to: <ul style="list-style-type: none"> i) Their quality and reputation; and ii) The existence of trademarks; and d) Closely resemble the goods being valued in terms of: <ul style="list-style-type: none"> i) Component materials; and ii) Characteristics which enable them to: <ul style="list-style-type: none"> A) Perform the same functions; and B) Are commercially interchangeable with the goods being valued; e) But does not include goods incorporating or reflecting: <ul style="list-style-type: none"> i) Engineering; ii) Development work; iii) Art work; iv) Design work; v) Plans; or vi) Sketches, under taken in South Africa.
Split Shipments	Consignments which form one (1) transaction between an importer and a supplier but are imported in partial or successive shipments either through the same Customs Office or through different Customs Offices
Subsequent Proceeds	Additional payments made by an importer to a supplier, either directly or indirectly resulting from the resale, disposal or use of the imported goods
Sufficient Documents or Documentation	The nature of the documentation to be produced must enable Customs to establish: <ul style="list-style-type: none"> a) The actual amounts paid for the service or goods; b) The role and function of the parties involved (importer, middleman and supplier); c) The actual services performed or paid for; and d) Must follow a chronological order from start to finish with regard to the transaction under review.
Transaction Value	Price actually paid or payable for the goods when sold for export to South Africa, adjusted in terms of Section 67

Turnover discount	A discount granted retrospectively and is dependent on a given quantity having been purchased over a specified period
Undertaken	In the contest of this document is to be understood as meaning carried out.
Valuation Committee	Three (3) or more delegated officers, convening regularly to consider and determine the value for Customs duty purposes and to discuss the valuation cases received and decide on the way forward based on the information provided by the teams
Valuation Fraud	Valuation fraud, which can be seen as any offence committed in order to (Attempt to): a) Evade payment of duties, levies or taxes on movements of commercial goods; b) Receive any repayments or other disbursements to which there is no proper entitlement; and/or c) Obtain illicit commercial advantage damaging to other legitimate business competition which leads to non-competitive local industries.
Valuation Officer	This Officer's role is to conduct real time inspections and to complete desk or field audits in respect of valuation issues, in terms of various licensed clients or traders that are found within the importing or exporting environment. Refer to definition of Role indicator.
VAT	Value-Added Tax
VDN	Value Determination Number
VPB	Value in terms of Part 2B of Schedule 1
WTO	World Trade Organisation

6 DOCUMENT MANAGEMENT

Directive Owner	Group Executive: Customs Operations
Detail of change from previous revision	a) Inserting additional paragraph on VAT appeals and literature/samples; b) Replacing bill of entry and SAD 500 with Customs declaration; c) Substitute the Republic with South Africa; d) Aligned the document with the current procedure followed by Head Office. e) Amending INCOTERMS 2000 to INCOTERMS 2010; f) Inserting references to the International Financial Reporting Standards (IFRS) when referring to GAAP
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