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THE PRESIDENCY

No. 552 10 July 2014

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 30 of 2014: Customs Duty Act, 2014

DIE PRESIDENSIE

No. 552 10 Julie 2014

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Wet No 30 van 2014: Wet op Doeanereg, 2014



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

(English text signed by the President)
(Assented to 9 July 2014)

ACT

To provide for the imposition, assessment, payment and recovery of customs duties on goods imported or exported from the Republic; and for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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(Engelse teks deur die President geteken)
(Goedgekeur op 9 Julie 2014)

WET

Om voorsiening te maak vir die oplê, aanslag, betaling en verhaling van doeaneregte op goedere ingevoer in, of uitgevoer uit, die Republiek; en vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

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CHAPTER 1

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Part 1

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Interpretation 10

1. (1) In this Act, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Customs Control Act has the same meaning, and—

“**administrative appeal**” means an appeal in terms of Part 3 of Chapter 37 of the Customs Control Act; 15

“**administrative penalty**” means a penalty of any of the types stated in section 199;

“**advance origin ruling**” means a ruling issued by the customs authority on the origin of goods of a specific class or kind in order to settle in advance the origin of goods of that class or kind when cleared by or on behalf of the recipient of the ruling for home use or a customs procedure during the validity period of the ruling; 20

“**advance ruling**” means—

(a) an advance tariff ruling;

(b) an advance valuation ruling; or

(c) an advance origin ruling; 25

“**advance valuation ruling**” means a ruling issued by the customs authority on a valuation criterion applicable to the valuation of goods of a specific class or kind in order to settle in advance the application of that valuation criterion in the valuation of goods of that class or kind when cleared by or on behalf of the recipient of the ruling for home use or a customs procedure during the validity period of the ruling; 30

“**advance tariff ruling**” means a ruling issued by the customs authority on the tariff classification of goods of a specific class or kind in order to settle in advance the tariff classification of goods of that class or kind when cleared by or on behalf of the recipient of the ruling for home use or a customs procedure during the validity period of the ruling; 35

“**alternative dispute resolution**” means alternative dispute resolution in terms of Part 4 of Chapter 37 of the Customs Control Act;

“**anti-dumping duty**” means an anti-dumping duty within the meaning of the International Trade Administration Act;

“**assessment**”, in relation to a duty, means a determination by the customs authority in terms of section 83(2)(a) or (b) or 84(1)(a) and (b) of— 40

(a) the dutiability of goods; and

(b) the amount of duty payable on any dutiable goods;

“**at or about the same time**”, in relation to the valuation of goods imported or to be imported, means within a time span of not more than a number of calendar days before or after the goods were imported, as may be prescribed by rule; 45

“**buying commission**”, in relation to the valuation of goods imported or to be imported, means any commission paid or payable to an agent in terms of an agreement between the agent and a buyer in the Republic to purchase¹ for the buyer

1. “Buying commission” applies only to the primary valuation method where an actual purchase price is essential for determining the customs value of goods. The sale of goods for export to the Republic therefore does not include transactions which do not amount to a purchase and sale, such as the renting, hiring-out or leasing of goods, the supply of goods free of charge, the replacement or exchange of goods or the acquisition of goods through barter trading, package deals, tie-in sales or similar transactions.

226. Wyse van uitvaardiging van reëls
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HOOFSTUK 1

INTERPRETASIE, TOEPASSING EN ADMINISTRASIE VAN HIERDIE WET

Deel 1

Interpretasie van hierdie Wet

Woordomskrywing 10

1. (1) In hierdie Wet, tensy uit die samehang anders blyk, het 'n woord of uitdrukking die betekenis in die Wet op Doeanereg daaraan geheg, en beteken—
- “**aanslag**”, met betrekking tot 'n reg, 'n aanslag deur die doeanegesag ingevolge artikel 83(2)(a) of (b) of 84(1)(a) en (b) van—
 - (a) die belasbaarheid van goedere vir reg; en 15
 - (b) die bedrag van die reg betaalbaar op enige belastbare goedere;
 - “**administratiewe appèl**” 'n appèl ingevolge Deel 3 van Hoofstuk 37 van die Wet op Doeanereg;
 - “**administratiewe boete**” 'n boete van enige van die tipes in artikel 199 vermeld;
 - “**algemene reëls van oorsprong**” algemene reëls van oorsprong beoog in artikel 169;
 - “**alternatiewe geskilbeslegting**” alternatiewe geskilbeslegting ingevolge Deel 4 van Hoofstuk 37 van die Wet op Doeanereg;
 - “**anti-dumpingsreg**” 'n anti-dumpingsreg ooreenkomstig die bedoeling van die Wet op Internasionale Handelsadministrasie; 25
 - “**belasbaar**”, met betrekking tot goedere, 'n aanduiding dat 'n reg in die Doeanetarief op die goedere opgelê is;
 - “**beveiligingsreg**” 'n beveiligingsreg ooreenkomstig die bedoeling van die Wet op Internasionale Handelsadministrasie;
 - “**boete ter vermyding van vervolging**” 'n administratiewe boete van 'n tipe 30 bedoel in artikel 205;
 - “**dieselfde klas of soort**”, met betrekking tot goedere in die Republiek ingevoer, goedere wat—
 - (a) tot dieselfde groep of reeks van goedere behoort; en
 - (b) deur dieselfde produsent¹ of in dieselfde bedryf of bedryfsektor geproduseer 35 is in dieselfde land as waarvandaan die ingevoerde goedere uitgeoer is;
 - “**Doeanetarief**” die Doeanetarief bedoel in artikel 7;
 - “**doeanewaarde**”, met betrekking tot goedere, die waarde van goedere vir doeanedoeleindes soos ooreenkomstig Hoofstuk 7 bereken;
 - “**dokumentêre bewys van oorsprong**” enige een of meer van die volgende 40 dokumente:
 - (a) 'n Sertifikaat van oorsprong;
 - (b) 'n verklaring van oorsprong;
 - (c) 'n gesertifiseerde verklaring van oorsprong; of
 - (d) 'n sertifikaat wat 'n verklaring van oorsprong sertifiseer; 45
 - “**finale beslissing**” 'n beslissing—
 - (a) gegee of bevestig deur 'n hof van finale instansie; of
 - (b) gegee deur 'n ander hof indien die tyd vir die aantekening van appèl teen die beslissing na 'n hoër hof verstryk het en geen appèl aangeteken is nie;
 - “**gesertifiseerde verklaring van oorsprong**” 'n verklaring van oorsprong 50 gesertifiseer deur 'n owerheid of liggaam daartoe gemagtig;
 - “**geskilbeslegting**” geskilbeslegting ingevolge Deel 5 van Hoofstuk 37 van die Wet op Doeanereg;

1. Die woordomskrywing van “produsent” in hoofstuk 1 van die Wet op Doeanereg sluit 'n vervaardiger in.

- goods abroad for export to the Republic or to facilitate for the buyer a purchase of goods abroad for export to the Republic, provided that—
- (a) the existence of the agreement between the agent and the buyer is substantiated by documentary evidence; and
 - (b) the agent—
 - (i) acted solely on the instructions of the buyer relating to the purchase of the goods;
 - (ii) disclosed in the transaction with the seller of the goods that the goods are purchased for or by a buyer in the Republic;
 - (iii) had no proprietary or financial interest in the goods; and
 - (iv) had no other interest in the goods other than as an agent;
- “certificate certifying a declaration of origin”** means a certificate issued by an authority or body empowered to do so, certifying a declaration of origin;
- “certificate of origin”** means an approved form identifying goods, and in which the authority or body empowered to issue it certifies expressly that the goods to which the certificate relates originate in a specific country, and includes a declaration furnished by the producer,² supplier, exporter or other competent person;
- “certified declaration of origin”** means a declaration of origin certified by an authority or body empowered to do so;
- “correction”**, in relation to—
- (a) a tariff determination or re-determination of goods, means a correction by the customs authority in terms of section 102 of an error in the tariff determination or re-determination of the goods which does not have the effect of changing the tariff classification ascribed to the goods in the determination or re-determination;
 - (b) a value determination or re-determination of goods, means a correction made by the customs authority in terms of section 119 of an error in the value determination or re-determination of the goods which does not have the effect of changing the valuation ascribed to the goods in the determination or re-determination; or
 - (c) an origin determination or re-determination of goods, means a correction by the customs authority in terms of section 155 of an error in the origin determination or re-determination of the goods which does not have the effect of changing the origin ascribed to the goods in the determination or re-determination;
- “countervailing duty”** means a countervailing duty within the meaning of the International Trade Administration Act;
- “Customs Control Act”** means the Customs Control Act, 2014;
- “Customs Tariff”** means the Customs Tariff referred to in section 7;
- “customs value”**, in relation to goods, means the value of goods for customs purposes as calculated in accordance with Chapter 7;
- “declaration of origin”** means an appropriate statement as to the origin of goods made in connection with their export, by the producer,³ supplier, exporter or other competent person on the commercial invoice or other document or on a form as may be prescribed by rule;
- “dispute settlement”** means dispute settlement in terms of Part 5 of Chapter 37 of the Customs Control Act;
- “documentary evidence of origin”** means any one or more of the following documents:
- (a) A certificate of origin;
 - (b) a declaration of origin;
 - (c) a certified declaration of origin; or
 - (d) a certificate certifying a declaration of origin;

2. The definition of “producer” in section 1 of the Customs Control Act includes a manufacturer.
3. The definition of “producer” in section 1 of the Customs Control Act includes a manufacturer.

- “**gewone invoerreg**” ’n reg in die Doeanetarief opgelê op goedere in die Republiek ingevoer wat in die Tarief as ’n gewone invoerreg gespesifiseer word; “**hawe of plek van uitvoer**”, met betrekking tot goedere wat na die Republiek uitgevoer word, die plek in die land van uitvoer—
- (a) waar die goedere in houers gepak word, of indien dit nie behouer word nie, waar die goedere op ’n vaartuig, vliegtuig, spoorwegwa of voertuig gelaai word waarmee dit oor die grens van daardie land na die Republiek vervoer sal word; 5
 - (b) waar die goedere as die begeleide of onbegeleide baggasie van iemand op reis na die Republiek aan boord geneem word van ’n vaartuig, vliegtuig, spoorwegwa of voertuig wat daardie goedere na die Republiek sal vervoer; of 10
 - (c) waar die goedere die land verlaat waarvandaan dit na die Republiek uitgevoer word, indien daardie goedere ’n vaartuig, vliegtuig, spoorwegwa of voertuig is wat op sy eie krag of op sy eie wiele beweeg; 15
- “**heraanslag**”, met betrekking tot ’n reg, ’n her aanslag deur die doenegesag van die belasbaarheid van goedere vir reg of van die bedrag van reg betaalbaar op die goedere soos voorheen deur die doeanegesag—
- (a) ingevolge artikel 83(2)(a) of (b) of 84(1)(a) en (b) aangeslaan; of
 - (b) ingevolge artikel 85(1)(a) of (b) her aangeslaan; 20
- “**hierdie Wet**” ook—
- (a) die Doeanetarief;
 - (b) die reëls;
 - (c) enige algemeen-geldende kennisgewings deur die Minister ingevolge ’n bepaling van hierdie Wet in die *Staatskoerant* gepubliseer; 25
 - (d) enige internasionale handelsooreenkoms; en
 - (e) enige ander internasionale ooreenkoms wat—
 - (i) as wet verorden is hetsy voor- of nadat hierdie Wet van krag geword het; en
 - (ii) as sodanig bindend is vir doeleindes van ’n aangeleentheid waarmee in hierdie Wet gehandel word; 30
- “**identiese goedere**”, met betrekking tot goedere wat waardeer moet word, goedere—
- (a) wat geproduseer is in dieselfde land as die land waarin die goedere wat waardeer moet word, geproduseer is, hetsy deur dieselfde of ’n ander produsent; en 35
 - (b) wat, benewens onbeduidende verskille in voorkoms, in alle opsigte dieselfde is as die goedere wat waardeer moet word, met inbegrip van fisiese kenmerke, kwaliteit en reputasie, 40
- maar nie ook goedere wat ingenieurs-, ontwikkelings-, kuns- of ontwerpwerk, of planne of sketse inkorporeer of reflekteer wat in die Republiek gedoen is nie;
- “**Internasionale Handelsadministrasiekommissie**” die Internasionale Handelsadministrasiekommissie by artikel 7 van die Wet op Internasionale Handelsadministrasie ingestel;
- “**internasionale handelsooreenkoms**” ’n bilaterale of multilaterale ooreenkoms waarby die Republiek ’n party is en wat, hetsy voor of na die inwerkingtreding van hierdie Wet, tot wet verorden is,² en ingevolge waarvan— 45
- (a) goedere wat hul oorsprong in die Republiek het onder voorkeur tariefbehandeling uit die Republiek uitgevoer mag word na ’n land wat ’n party by die ooreenkoms is, behoudens voldoening aan die ooreenkoms; of
 - (b) goedere wat hul oorsprong in ’n land het wat ’n party by die ooreenkoms is, onder voorkeur tariefbehandeling in die Republiek ingevoer mag word, behoudens voldoening aan die ooreenkoms, en ook— 50
 - (i) enige protokol tot die ooreenkoms;
 - (ii) enige aanhangsel of byvoegsel of ander toevoeging tot die ooreenkoms of so ’n protokol; 55
 - (iii) enige regulasie of ander maatreël kragtens die ooreenkoms of so ’n protokol uitgereik;
 - (iv) enige wysiging van die ooreenkoms, of van so ’n protokol, van so ’n aanhangsel of toevoeging, of van so ’n regulasie of ander maatreël; en

2. Kyk artikel 921 van die Wet op Doeanereg.

- “drawback”**, in relation to an import duty paid to the Commissioner in terms of this Act, means the repayment of the import duty, or part of the import duty, in any of the circumstances set out in section 65(1);
- “due date”** means—
- (a) in relation to an amount of duty owed to the Commissioner in terms of a self-assessment referred to in section 82(1)(a) or an assessment referred to in section 83(2)(a) or (b) or 84(1)(a)— 5
 - (i) the date on or before which that amount of duty must be paid in terms of section 22 or 23; or
 - (ii) if payment of the amount has been deferred in terms of section 24— 10
 - (aa) the date on or before which that amount must be paid in terms of the deferment; or
 - (bb) the date on or before which that amount must be paid in terms of section 25(4) if the deferment was suspended or withdrawn;
 - (b) in relation to an under-payment of duty owed to the Commissioner in terms of an assessment referred to in section 83(2)(b) or a re-assessment referred to in section 85(1)(a) or (b)— 15
 - (i) the date on or before which that under-payment must be paid in terms of section 83(4)(b) or 85(5)(b); or
 - (ii) if payment of that under-payment has been deferred in terms of section 24— 20
 - (aa) the date on or before which that under-payment must be paid in terms of the deferment; or
 - (bb) the date on or before which that under-payment must be paid in terms of section 25(4) if the deferment was suspended or 25 withdrawn; or
 - (c) in relation to an administrative penalty, the date on or before which the penalty must be paid in terms of Chapter 11;
- “dutiabale”**, in relation to goods, indicates that a duty has been imposed on the goods in the Customs Tariff; 30
- “duty”** means an import duty or export duty;
- “export duty”** means a duty imposed in the Customs Tariff on goods destined for export from the Republic;
- “final judgement”** means a judgement—
- (a) given or confirmed by a court of final instance; or 35
 - (b) given by another court if the time for noting an appeal against the judgement to a higher court has expired and no appeal has been lodged;
- “fixed amount penalty”** means an administrative penalty of a type referred to in section 201;
- “fixed percentage penalty”** means an administrative penalty of a type referred to in section 203; 40
- “free on board”**, in relation to goods exported or to be exported from the Republic, includes—
- (a) all profits, costs, charges and expenses incidental to placing goods on board a vessel, aircraft, railway carriage or vehicle in which the goods are to be 45 transported across the border of the Republic; or
 - (b) if those goods consist of a vessel, aircraft, railway carriage or vehicle moving under its own power or on its own wheels, all profits, costs, charges and expenses up to the place where the goods leave the Republic;
- “general rules of origin”** means general rules of origin contemplated in section 169; 50
- “identical goods”**, in relation to goods being valued, means goods—
- (a) produced in the same country as the country in which the goods being valued were produced, whether by the same or a different producer; and
 - (b) which, apart from minor differences in appearance, are the same in all respects 55 to the goods being valued, including physical characteristics, quality and reputation,

- (v) enige ander instrument wat deel vorm van die ooreenkoms of so 'n protokol;
- “invoerreg”** enige van die volgende regte in die Doeanetarief op ingevoerde goedere opgelê:
- (a) 'n Gewone invoerreg; 5
- (b) 'n anti-dumpingsreg;
- (c) 'n kontrareg; of
- (d) 'n beveiligingsreg,
- en ook 'n voorwaardelike reg ingevolge artikel 15 opgelê;
- “kontrareg”** 'n kontrareg ooreenkomstig die bedoeling van die Wet op 10 Internasionale Handelsadministrasie;
- “koopkommissie”**, met betrekking tot die waardasie van goedere wat ingevoer is of staan te word, enige kommissie betaal of betaalbaar aan 'n agent ingevolge 'n ooreenkoms tussen die agent en 'n koper in die Republiek om namens die koper goedere in die buiteland te koop³ vir uitvoer na die Republiek, of om vir die koper 'n aankoop van goedere in die buiteland vir uitvoer na die Republiek te fasiliteer, mits— 15
- (a) die bestaan van die ooreenkoms tussen die agent en die koper deur dokumentêre bewys gestaaf word; en
- (b) die agent— 20
- (i) met betrekking tot die aankoop van die goedere uitsluitlik op instruksie van die koper gehandel het;
- (ii) in die transaksie met die verkoper van die goedere die feit openbaar het dat die goedere aangekoop word namens of deur 'n koper in die Republiek; 25
- (iii) geen eiendoms- of geldelike belang in die goedere gehad het nie; en
- (iv) geen ander belang in die goedere behalwe as agent gehad het nie;
- “Minister”** die Kabinetslid verantwoordelik vir finansies;
- “Nasionale Kredietwet”** die Nasionale Kredietwet, 2005 (Wet Nr. 34 van 2005);
- “nie-vervolgbare breuk”**, met betrekking tot hierdie Wet, 'n breuk van hierdie 30 Wet wat nie 'n misdryf ingevolge hierdie Wet is nie;
- “nie-wederkerige algemene stelsel van voorkeure”** 'n stelsel deur 'n ander land toegepas wat veroorloof dat goedere van Suid-Afrikaanse oorsprong onderworpe aan voldoening aan daardie stelsel, vry van reg of teen voorkeurskale van reg uit die Republiek na daardie land uitgevoer mag word; 35
- “ontvanger”**, met betrekking tot 'n vooruitbeslissing, iemand aan wie 'n vooruitbeslissing uitgereik is;
- “oorsprong”**, met betrekking tot goedere, die land waar die goedere, ooreenkomstig die reëls van oorsprong op daardie goedere van toepassing, hul oorsprong het; 40
- “oorsprongbepaling”**, met betrekking tot goedere, 'n bepaling deur die doeanegesag ingevolge artikel 154(1) van die oorsprong van goedere;
- “oorsprongherbepaling”**, met betrekking tot goedere, 'n herbepaling deur die doeanegesag ingevolge artikel 157(1)(a) of (b) van die oorsprong van goedere;
- “oorsprong self-bepaling”**, met betrekking tot goedere, die oorsprong ingevolge 45 artikel 152(1) aan goedere toegeken deur die persoon wat die goedere vir binnelandse gebruik of 'n doeaneprosedure klaar;
- “op of ongeveer op dieselfde tyd”**, met betrekking tot die waardasie van goedere wat ingevoer is of staan te word, binne 'n tydsverloop van hoogstens 'n aantal kalenderdae voor- of nadat die goedere ingevoer is, soos by reël voorgeskryf mag 50 word;
- “persoon aanspreeklik”**, met betrekking tot 'n reg of enige rente op 'n reg—
- (a) die persoon wat ingevolge Hoofstuk 3 die reg of rente aan die Kommissaris moet betaal; of
- (b) enige ander persoon van wie die Kommissaris ingevolge daardie Hoofstuk die 55 reg of rente verhaal of gaan verhaal, indien die persoon bedoel in paragraaf (a) versuim om die reg of rente te betaal;

3. “Koopkommissie” is slegs van toepassing by die primêre waardasiemetode waar 'n werklike koopprys noodsaaklik is vir die bepaling van die doeanewaarde van goedere. Die verkoop van goedere vir uitvoer na die Republiek sluit om daardie rede nie transaksies in wat nie neerkom op 'n koop en verkoop nie, soos die huur of verhuur van goedere, die gratis lewering van goedere, die vervanging of omruil van goedere of die verkryging van goedere deur middel van ruilhandel, meervoudige transaksies of soortgelyke transaksies.

but does not include goods incorporating or reflecting engineering, development work, art work, design work, plans or sketches undertaken in the Republic;

“import duty” means any of the following duties imposed on imported goods in the Customs Tariff:

- (a) An ordinary import duty; 5
- (b) an anti-dumping duty;
- (c) a countervailing duty; or
- (d) a safeguard duty,

and includes a provisional duty imposed in terms of section 15;

“International Trade Administration Act” means the International Trade Administration Act, 2002 (Act No. 71 of 2002); 10

“International Trade Administration Commission” means the Commission established by section 7 of the International Trade Administration Act;

“international trade agreement” means a bilateral or multilateral agreement to which the Republic is a party that has been enacted into law,⁴ whether before or after this Act took effect, and in terms of which— 15

- (a) goods originating in the Republic may be exported from the Republic to a country which is a party to the agreement under preferential tariff treatment, subject to compliance with the agreement; or
- (b) goods originating in a country which is a party to the agreement may be imported into the Republic under preferential tariff treatment, subject to compliance with the agreement, 20

and includes—

- (i) any protocol to the agreement;
- (ii) any annex or appendix or other addition to the agreement or any such protocol; 25
- (iii) any regulation or other measure issued under the agreement or any such protocol;
- (iv) any amendment to the agreement or any such protocol, to any such annex, appendix or other addition, or to any such regulation or other measure; and 30
- (v) any other instrument that forms part of the agreement or any such protocol;

“key assessment factor” means any of the factors referred to in section 80(1)(a) to (e);

“Minister” means the Cabinet member responsible for finance;

“National Credit Act” means the National Credit Act, 2005 (Act No. 34 of 2005); 35

“non-prosecutable breach”, in relation to this Act, means a breach of this Act which is not an offence in terms of this Act;

“non-reciprocal generalised system of preferences” means a system implemented by another country which allows goods of South African origin to be exported from the Republic to that country duty free or at preferential rates of duty subject to compliance with the requirements of that system; 40

“ordinary import duty” means a duty imposed in the Customs Tariff on goods imported into the Republic which is specified in the Tariff as an ordinary import duty;

“origin”, in relation to goods, means the country in which the goods originated according to the rules of origin applicable to those goods; 45

“origin self-determination”, in relation to goods, means the origin ascribed to goods in terms of section 152(1) by the person clearing the goods for home use or a customs procedure;

“origin determination”, in relation to goods, means a determination of the origin of goods by the customs authority in terms of section 154(1); 50

“origin re-determination”, in relation to goods, means a re-determination of the origin of goods by the customs authority in terms of section 157(1)(a) or (b);

“person liable”, in relation to a duty or any interest on a duty, means—

- (a) the person who in terms of Chapter 3 must pay the duty or interest to the Commissioner; or 55

4. See section 921 of the Customs Control Act.

- “prys werklik betaal of betaalbaar”**, met betrekking tot ingevoerde goedere, die totale bedrag, hetsy direk of indirek, aan of ten behoeve van die verkoper betaal of betaalbaar in verband met die aankoop van die goedere, maar nie ook dividende en betalings in verband met die goedere wat na die verkoper gaan wat nie direk betrekking het op die aankoop van die goedere nie; 5
- “reël”** ’n reël ingevolge artikel 224 deur die Kommissaris uitgevaardig;
- “reëls van oorsprong”** norme en standaarde, en prosedures, om die land te bepaal van waar bepaalde goedere hul oorsprong het;
- “reg”** ’n invoerreg of uitvoerreg;
- “regstelling”**, met betrekking tot— 10
- (a) ’n tariefbepaling of -herbepaling van goedere, ’n regstelling ingevolge artikel 102 deur die doeanegesag van ’n fout in die tariefbepaling of -herbepaling van die goedere wat nie die effek het om die tariefindeling in die bepaling of herbepaling aan die goedere toegeken, te verander nie;
- (b) ’n waardebepaling of -herbepaling van goedere, ’n regstelling ingevolge artikel 119 deur die doeanegesag van ’n fout in die waardebepaling of -herbepaling van die goedere wat nie die effek het om die waardasie in die bepaling of herbepaling aan die goedere toegeken, te verander nie; 15
- (c) ’n oorsprongbepaling of -herbepaling van goedere, ’n regstelling deur die doeanegesag ingevolge artikel 155 van ’n fout in die oorsprongbepaling of -herbepaling van die goedere wat nie die effek het om die oorsprong in die bepaling of -herbepaling aan die goedere toegeken, te verander nie; 20
- “self-aanslag”**, met betrekking tot ’n reg, ’n bepaling ingevolge artikel 82(1) deur ’n persoon wat goedere klaar⁴ van—
- (a) die belasbaarheid van goedere vir reg; en 25
- (b) die bedrag van die reg betaalbaar op enige belasbare goedere;
- “sertifikaat van oorsprong”** ’n goedgekeurde vorm wat goedere identifiseer en waarin die owerheid of liggaam gemagtig om die sertifikaat uit te reik uitdruklik sertifiseer dat die goedere waarop die sertifikaat betrekking het van ’n spesifieke land afkomstig is, en ook ’n verklaring deur die produsent⁵, verskaffer, uitvoerder of ander bevoegde persoon; 30
- “sertifikaat wat ’n verklaring van oorsprong sertifiseer”** ’n sertifikaat uitgereik deur ’n owerheid of liggaam gemagtig om so ’n sertifikaat uit te reik, wat ’n verklaring van oorsprong sertifiseer;
- “sleutelaanslagfaktor”** enige van die faktore bedoel in artikel 80(1)(a) tot (e); 35
- “soortgelyke goedere”**, met betrekking tot goedere wat waardeer moet word, goedere—
- (a) wat geproduseer is in dieselfde land as die land waarin die goedere wat waardeer moet word, geproduseer is, hetsy deur dieselfde of ’n ander produsent; en 40
- (b) wat, ofskoon nie in alle opsigte soortgelyk aan die goedere wat waardeer moet word nie, soortgelyke eienskappe en soortgelyke samestellende dele het wat, met behoorlike inagneming van die kwaliteit en reputasie daarvan en die bestaan van ’n handelsmerk, dit vir die goedere moontlik maak om vir dieselfde doeleindes gebruik te word en kommersieel uitruilbaar te wees, 45
- maar nie ook goedere wat ingenieurs-, ontwikkelings-, kuns- of ontwerpwerk, of planne of sketse inkorporeer of reflekteer wat in die Republiek gedoen is nie;
- “sperdatum vir betaling”**—
- (a) met betrekking tot ’n bedrag van reg wat ingevolge ’n self-aanslag bedoel in artikel 82(1)(a) of ’n aanslag bedoel in artikel 83(2)(a) of (b) of 84(1)(a) aan die Kommissaris verskuldig is— 50
- (i) die datum voor wanneer of waarop daardie bedrag van reg ingevolge artikel 22 of 23 betaal moet word; of
- (ii) indien betaling van die bedrag ingevolge artikel 24 uitgestel is— 55
- (aa) die datum voor wanneer of waarop daardie bedrag ingevolge die uitstel betaal moet word; of
- (bb) die datum voor wanneer of waarop daardie bedrag ingevolge artikel 25(4) betaal moet word indien die uitstel opgeskort of teruggetrek is;

4. Kyk artikel 166 van die Wet op Doeanebeheer.

5. Die woordomskriving van “produsent” in artikel 1 van die Wet op Doeanebeheer sluit ’n vervaardiger in.

- (b) any other person from whom the Commissioner in terms of that Chapter recovers or is to recover the duty or interest if the person referred to in paragraph (a) fails to pay the duty or interest;
- “port or place of export”**, in relation to goods exported to the Republic, means the place in the exporting country— 5
- (a) where the goods are packed into containers, or if not containerised, loaded on board a vessel, aircraft, railway carriage or vehicle, in which the goods will be transported across the border of that country to the Republic;
- (b) where the goods as the accompanied or unaccompanied baggage of a person travelling to the Republic are taken on board a vessel, aircraft, railway carriage or vehicle that will transport those goods to the Republic; or 10
- (c) where the goods leave the exporting country for the Republic, if those goods consist of a vessel, aircraft, railway carriage or vehicle moving under its own power or on its own wheels;
- “price actually paid or payable”**, in relation to imported goods, means the total amount paid or to be paid, either directly or indirectly, to or for the benefit of the seller in connection with the purchase of the goods, but does not include dividends and payments passing to the seller in connection with the goods that do not directly relate to the purchase of the goods; 15
- “prosecutable breach”**, in relation to this Act, means a breach of this Act which is an offence in terms of this Act; 20
- “prosecution avoidance penalty”** means an administrative penalty of a type referred to in section 205;
- “re-assessment”**, in relation to a duty, means a re-determination by the customs authority of the dutiability of goods or the amount of duty payable on the goods as previously— 25
- (a) assessed by the customs authority in terms of section 83(2)(a) or (b) or 84(1)(a) and (b); or
- (b) re-assessed by the customs authority in terms of section 85(1)(a) or (b); 30
- “recipient”**, in relation to an advance ruling, means a person to whom an advance ruling has been issued;
- “refund”**, in relation to a duty, administrative penalty or interest paid to the Commissioner in terms of this Act, means the repayment of the duty, penalty or interest, or any part of the duty, penalty or interest, but excludes a drawback;
- “rule”** means a rule made by the Commissioner in terms of section 224; 35
- “rules of origin”** means norms and standards, and procedures, for determining the country from which any specific goods originated;
- “safeguard duty”** means a safeguard duty within the meaning of the International Trade Administration Act;
- “same class or kind”**, in relation to goods imported into the Republic, means goods— 40
- (a) falling within the same group or range of goods; and
- (b) produced by the same producer⁵ or in the same industry or industry sector in the same country from which the imported goods were exported;
- “self-assessment”**, in relation to a duty, means a determination in terms of section 82(1) by a person clearing goods⁶ of— 45
- (a) the dutiability of goods; and
- (b) the amount of duty payable on any dutiable goods;
- “similar goods”**, in relation to goods being valued, means goods— 50
- (a) produced in the same country as the country in which the goods being valued were produced, whether by the same or a different producer; and
- (b) which although not alike in all respects to the goods being valued have, with due regard to their quality and reputation and the existence of a trade mark, like characteristics and like component materials which enable them to be employed for the same purposes and to be commercially interchangeable, 55
- but does not include goods incorporating or reflecting engineering, development work, art work, design work, plans or sketches undertaken in the Republic;

5. The definition of “producer” in section 1 of the Customs Control Act includes a manufacturer.

6. See section 166 of the Customs Control Act.

- (b) met betrekking tot 'n kort-betaling van reg ingevolge 'n aanslag bedoel in artikel 83(2)(b) of 'n heraanslag bedoel in artikel 85(1)(a) of (b) wat aan die Kommissaris verskuldig is—
- (i) die datum voor wanneer of waarop daardie kort-betaling ingevolge artikel 83(4)(b) of 85(5)(b) betaal moet word; of 5
 - (ii) indien die betaling van daardie kort-betaling ingevolge artikel 24 uitgestel is—
 - (aa) die datum voor wanneer of waarop daardie kort-betaling ingevolge die uitstel betaal moet word; of
 - (bb) die datum voor wanneer of waarop daardie kort-betaling ingevolge artikel 25(4) betaal moet word indien die uitstel opgeskort of teruggetrek is; of 10
- (c) met betrekking tot 'n administratiewe boete, die datum voor wanneer of waarop die boete ingevolge Hoofstuk 11 betaal moet word;
- “tariefbepaling”**, met betrekking tot goedere, 'n bepaling deur die doeanegesag ingevolge artikel 100 van die tariefindeling van goedere; 15
- “tariefherbepaling”**, met betrekking tot goedere, 'n herbepaling deur die doeanegesag ingevolge artikel 101(1)(a) of (b) van die tariefindeling van goedere;
- “tarief self-bepaling”**, met betrekking tot goedere, die tariefindeling ingevolge artikel 99 aan die goedere toegeken deur die persoon wat die goedere vir binnelandse gebruik of 'n doeaneprosedure klaar; 20
- “terugbetaling”**, met betrekking tot 'n reg, administratiewe boete of rente ingevolge hierdie Wet aan die Kommissaris betaal, die terugbetaling van die reg, boete of rente, of enige gedeelte van die reg, boete of rente, maar nie ook 'n teruggawe nie; 25
- “teruggawe”**, met betrekking tot 'n invoerreg aan die Kommissaris ingevolge hierdie Wet betaal, die terugbetaling van die invoerreg, of deel van die invoerreg, in enige van die omstandighede in artikel 65(1) vermeld;
- “transaksiewaarde”**, met betrekking tot goedere wat verkoop is vir uitvoer na die Republiek, die transaksiewaarde van die goedere ooreenkomstig artikel 131 bepaal; 30
- “uitvoerreg”** 'n reg in die Doeanetarief opgelê op goedere bestem vir uitvoer uit die Republiek;
- “vastebedragboete”** 'n administratiewe boete van 'n tipe in artikel 201 bedoel;
- “vastepersentasieboete”** 'n administratiewe boete van 'n tipe in artikel 203 bedoel; 35
- “verklaring van oorsprong”** 'n toepaslike verklaring oor die oorsprong van goedere in verband met die uitvoer van daardie goedere gemaak deur die produsent,⁶ leweransier, uitvoerder of ander bevoegde persoon op die handelsfaktuur of ander dokument of op 'n vorm soos by reël voorgeskryf mag word; 40
- “verkoop vir uitvoer na die Republiek”**, met betrekking tot goedere, ook goedere verkoop nadat die goedere aan boord van 'n vaartuig, vliegtuig, spoorwegwa of voertuig vir uitvoer na die Republiek gelaai is;
- “vervolgbare breuk”**, met betrekking tot hierdie Wet, 'n breuk van hierdie Wet wat ingevolge hierdie Wet 'n misdryf is; 45
- “vooruitbeslissing”**—
- (a) 'n vooruit tariefbeslissing;
 - (b) 'n vooruit waardasiebeslissing; of
 - (c) 'n vooruit oorsprongbeslissing; 50
- “vooruit-oorsprongbeslissing”** 'n beslissing deur die doeanegesag uitgereik betreffende die oorsprong van goedere van 'n bepaalde klas of soort, om die oorsprong van goedere van daardie klas of soort vooruit te beslis vir doeleindes van die klaring van daardie goedere vir binnelandse gebruik of 'n doeaneprosedure deur of namens die ontvanger van die beslissing tydens die geldigheidstydperk van die beslissing; 55
- “vooruit-tariefbeslissing”** 'n beslissing deur die doeanegesag uitgereik betreffende die tariefindeling van goedere van 'n bepaalde klas of soort om die tariefindeling van goedere van daardie klas of soort vooruit te beslis vir doeleindes van die klaring van daardie goedere vir binnelandse gebruik of 'n doeaneprosedure 60

6. Die woordomskriving van “produsent” in artikel 1 van die Wet op Doeanereg sluit 'n vervaardiger in.

“**sold for export to the Republic**”, in relation to goods, includes goods sold after the goods were loaded on board a vessel, aircraft, railway carriage or vehicle for export to the Republic;

“**tariff determination**”, in relation to goods, means a determination of the tariff classification of goods by the customs authority in terms of section 100; 5

“**tariff re-determination**”, in relation to goods, means a re-determination of the tariff classification of goods by the customs authority in terms of section 101(1)(a) or (b);

“**tariff self-determination**”, in relation to goods, means the tariff classification ascribed to goods in terms of section 99 by the person clearing the goods for home use or a customs procedure; 10

“**this Act**” includes—

(a) the Customs Tariff; 15
(b) the rules;
(c) any notices of general application published by the Minister in terms of this Act in the *Gazette*;

(d) an international trade agreement; and

(e) any other international agreement referred to in this Act that— 20
(i) has been enacted into law whether before or after this Act took effect; and

(ii) is as such binding for the purposes of a matter dealt with in this Act;

“**transaction value**”, in relation to goods sold for export to the Republic, means the transaction value of the goods determined in accordance with section 131;

“**valuation criterion**” means a criterion or yardstick—

(a) used in determining the customs value of goods of any specific class or kind; 25
and

(b) which remains constant in different transactions between the same parties for the same class or kind of goods;

“**value determination**”, in relation to goods, means a determination of the customs value of goods by the customs authority in terms of section 117; 30

“**value re-determination**”, in relation to goods, means a re-determination of the customs value of goods by the customs authority in terms of section 118(1)(a) or (b);

“**value self-determination**”, in relation to goods, means a customs valuation of goods made in terms of section 116 by the person clearing the goods for home use or a customs procedure. 35

(2) In this Act, a word or expression which is a derivative or other grammatical form of a word or expression defined in subsection (1) or another provision of this Act, has a corresponding meaning unless the context indicates that another meaning is intended.

(3) Unless inconsistent with the context, any reference in this Act or in the Customs Control Act to— 40

(a) a specific Chapter of this Act must be read as including—

(i) any rule made for the purpose, or to facilitate the implementation, of that Chapter; and

(ii) any provision, condition or requirement of the Customs Tariff to the extent that that provision, condition or requirement is applicable to that Chapter; 45

(b) a specific Part of a Chapter of this Act must be read as including—

(i) any rule made for the purpose, or to facilitate the implementation, of that Part; and 50

(ii) any provision, condition or requirement of the Customs Tariff to the extent that that provision, condition or requirement is applicable to that Part; or

(c) a specific section of this Act must be read as including—

(i) any rule made for the purpose, or to facilitate the implementation, of that section; and 55

(ii) any provision, condition or requirement of the Customs Tariff to the extent that that provision, condition or requirement is applicable to that section.

(4) Any reference in this Act to a person responsible for an act in relation to any goods includes a person who failed to take reasonable care to prevent the act from occurring. 60

deur of namens die ontvanger van die beslissing tydens die geldigheidstydperk van die beslissing;

“vooruit-waardasiebeslissing” ’n beslissing deur die doeanegesag uitgereik betreffende die waardasiemaatstaf van toepassing op die waardasie van goedere van ’n bepaalde klas of soort om die toepassing van daardie waardasiemaatstaf by die waardasie van goedere van daardie klas of soort vooruit te beslis vir doeleindes van die klaring van daardie goedere vir binnelandse gebruik of ’n doeaneprosedure deur of namens die ontvanger van die beslissing tydens die geldigheidstydperk van die beslissing;

“vry aan boord”, met betrekking tot goedere wat uitgevoer is of bestem is vir uitvoer uit die Republiek, ook—

- (a) alle winste, kostes, fooie en uitgawes verbonde aan die laai van goedere op ’n vaartuig, vliegtuig, spoorwegwa of voertuig waarin die goedere oor die grens van die Republiek vervoer word; of
- (b) indien daardie goedere ’n vaartuig, vliegtuig, spoorwegwa of voertuig is wat op eie krag of eie wiele beweeg, alle winste, kostes, fooie en uitgawes tot wanneer die vaartuig, vliegtuig, spoorwegwa of voertuig die plek bereik waar die goedere die Republiek verlaat;

“waardasiemaatstaf” ’n maatstaf of ander standaard—

- (a) gebruik vir die vasstelling van die doeanewaarde van goedere van enige bepaalde klas of soort; en
- (b) wat onveranderlik bly ten opsigte van verskillende transaksies tussen dieselfde partye ten aansien van goedere van dieselfde klas of soort;

“waardebepaling”, met betrekking tot goedere, ’n bepaling deur die doeanegesag ingevolge artikel 117 van die doeanewaarde van goedere;

“waardeherbepaling”, met betrekking tot goedere, ’n herbepaling deur die doeanegesag ingevolge artikel 118(1)(a) of (b) van die doeanewaarde van goedere;

“waarde self-bepaling”, met betrekking tot goedere, ’n bepaling ingevolge artikel 116 van die doeanewaarde van goedere deur die persoon wat die goedere vir binnelandse gebruik of ’n doeaneprosedure klaar;

“Wet op Doeanebeheer” die Wet op Doeanebeheer, 2014;

“Wet op Internasionale Handelsadministrasie” die Wet op Internasionale Handelsadministrasie, 2002 (Wet Nr. 71 van 2002).

(2) In hierdie Wet het ’n woord of uitdrukking wat ’n afleiding of ander grammatiese vorm is van ’n woord of uitdrukking in subartikel (1) of ’n ander bepaling van hierdie Wet omskryf, ’n ooreenstemmende betekenis, tensy dit uit die samehang blyk dat ’n ander betekenis beoog word.

(3) Tensy uit die samehang anders blyk, moet enige verwysing in hierdie Wet of in die Wet op Doeanebeheer na—

- (a) ’n bepaalde Hoofstuk van hierdie Wet uitgelê word as insluitende—
 - (i) enige reël wat vir doeleindes, of ter fasilitering van die toepassing, van daardie Hoofstuk uitgevaardig is; en
 - (ii) enige bepaling, voorwaarde of vereiste van die Doeanetarief, in soverre daardie bepaling, voorwaarde of vereiste op daardie Hoofstuk van toepassing is;
- (b) ’n bepaalde Deel van ’n Hoofstuk van hierdie Wet uitgelê word as insluitende—
 - (i) enige reël wat vir doeleindes, of ter fasilitering van die toepassing, van daardie Deel uitgevaardig is; en
 - (ii) enige bepaling, voorwaarde of vereiste van die Doeanetarief, in soverre daardie bepaling, voorwaarde of vereiste op daardie Deel van toepassing is; of
- (c) ’n bepaalde artikel van hierdie Wet uitgelê word as insluitende—
 - (i) enige reël wat vir doeleindes, of ter fasilitering van die toepassing, van daardie artikel uitgevaardig is; en
 - (ii) enige bepaling, voorwaarde of vereiste van die Doeanetarief, in soverre daardie bepaling, voorwaarde of vereiste op daardie artikel van toepassing is.

(4) Enige verwysing in hierdie Wet na iemand wat verantwoordelik is vir ’n handeling met betrekking tot enige goedere sluit iemand in wat versuim het om redelike sorg aan die dag te lê ten einde te voorkom dat die handeling plaasvind.

Part 2

Application and administration of this Act

Goods to which this Act applies

2. This Act applies to all goods imported or to be exported from the Republic.

Territorial application of this Act

5

3. (1) This Act applies in the whole of the Republic.⁷

(2) For the purposes of subsection (1) —

- (a) the continental shelf referred to in section 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), must be regarded as being part of the Republic;
- (b) any installation or device of any kind whatsoever, including any floating or submersible drilling or production platform, constructed or being operated upon, beneath or above the continental shelf for the purpose of exploring it or exploiting its natural resources must be regarded as having been constructed or as being operated within the Republic; and
- (c) any goods mined or produced in the operation of such installation or device and transported to the shore, whether by vessel, pipeline or otherwise, and any person or any other goods being transported by any means to and from such installation or device must be regarded as being transported within the Republic.

Application of this Act in relation to SACU member states

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4. (1) This Act applies to all goods imported into the Republic from a SACU member state and to all goods destined for export from the Republic to a SACU member state, subject to any rules as may be prescribed in terms of section 6(2) of the Customs Control Act.

(2) Unless provided otherwise in the SACU Agreement no import duty is payable on goods in free circulation in a SACU member state if those goods are imported into the Republic and—

- (a) cleared for—
 - (i) home use under Chapter 8 of the Customs Control Act; or
 - (ii) a customs procedure referred to in section 22(1)(b); or
- (b) for tax purposes regarded in terms of a provision of the Customs Control Act to be cleared for home use under Chapter 8 of that Act.

Commissioner to administer this Act

5. The Commissioner must—

- (a) administer and enforce this Act subject to the control and directions of the Minister; and
- (b) establish and maintain administrative, financial, technological, electronic and communicative and other systems and procedures necessary for the implementation and enforcement of this Act.

CHAPTER 2

40

CUSTOMS TARIFF

Purpose of this Chapter

6. The purpose of this Chapter is to provide for—

⁷ Although the Prince Edward Islands form part of the Republic, this Act does not apply to those islands. See the Prince Edward Islands Act, 1948 (Act No. 43 of 1948).

Deel 2

Toepassing en administrasie van hierdie Wet

Goedere waarop hierdie Wet van toepassing is

2. Hierdie Wet is van toepassing op alle goedere wat ingevoer is in, of bestem is vir uitvoer uit, die Republiek. 5

Gebiedstoepassing van hierdie Wet

3. (1) Hierdie Wet is van toepassing in die hele gebied van die Republiek.⁷
(2) Vir doeleindes van subartikel (1)—
- (a) moet die vastelandsplat bedoel in artikel 8 van die Wet op Maritieme Sones, 1994 (Wet Nr. 15 van 1994), geag word deel van die Republiek te wees; 10
 - (b) moet enige installasie of toestel van watter aard ook al, met inbegrip van enige drywende of dompelbare boor- of produksieplaatvorm, opgerig of wat bedryf word op, onder of bo die vastelandsplat vir doeleindes van eksplorasië of die ontginning van die natuurlike hulpbronne daarvan, geag word binne die Republiek opgerig of in bedryf te wees; en 15
 - (c) moet enige goedere wat by die bedryf van so 'n installasie of toestel gemyn of geproduseer en daarvandaan na die kus vervoer word, hetsy by wyse van 'n vaartuig, pypleiding of andersins, asook enige persoon of enige ander goedere op enige wyse na en vanaf so 'n installasie of toestel vervoer word, geag word binne die Republiek vervoer te word. 20

Toepassing van hierdie Wet met betrekking tot SADU lidstate

4. (1) Hierdie Wet is van toepassing op alle goedere vanaf 'n SADU lidstaat in die Republiek ingevoer en op alle goedere bestem vir uitvoer uit die Republiek na 'n SADU lidstaat, behoudens enige reëls wat ingevolge artikel 6(2) van die Wet op Doeanebeheer voorgeskryf mag word. 25
- (2) Tensy anders in die SADU Ooreenkoms bepaal, is geen invoerreg betaalbaar op goedere wat in vry sirkulasie in 'n SADU lidstaat is indien daardie goedere in die Republiek ingevoer en—
- (a) geklaar word vir—
 - (i) binnelandse gebruik ingevolge Hoofstuk 8 van die Wet op Doeanebeheer nie; of 30
 - (ii) 'n doeaneprosedure bedoel in artikel 22(1)(b) nie; of
 - (b) ingevolge 'n bepaling van die Wet op Doeanebeheer vir belastingdoeleindes geag word vir binnelandse gebruik ingevolge Hoofstuk 8 van daardie Wet geklaar te wees nie. 35

Kommissaris belas met administrasie van hierdie Wet

5. Die Kommissaris moet—
- (a) hierdie Wet behoudens die beheer en voorskrifte van die Minister administreer en toepas; en
 - (b) administratiewe, finansiële, tegnologiese, elektroniese en kommunikatiewe 40 en ander stelsels en prosedures nodig vir die administrasie en toepassing van hierdie Wet, skep en in stand hou.

HOOFSTUK 2

DOEANETARIEF

Doel van hierdie Hoofstuk 45

6. Die doel van hierdie Hoofstuk is om voorsiening te maak vir—

7. Hoewel die Prins Edward Eilande deel vorm van die Republiek, is hierdie Wet nie van toepassing op daardie eilande nie. Kyk die Wet op die Prins Edward Eilande, 1948 (Wet Nr. 43 van 1948).

- (a) a Customs Tariff imposing duties on goods imported into, or destined for export from, the Republic; and
- (b) the amendment of the Customs Tariff.

Customs Tariff

7. There is a Customs Tariff as set out in the Annexure to be added to this Act as contemplated in section 944(2)(a) of the Customs Control Act, specifying—
- (a) the duties that are for purposes of this Act in force when this Act takes effect;
 - (b) the classes and kinds of goods in respect of which those duties are in force; and
 - (c) the rates of, the requirements, conditions and relief applicable to, and other matters relating to, those duties.

Amendment of Customs Tariff relating to imported goods

8. (1) The Minister must, by notice in the *Gazette*, amend the Customs Tariff in relation to imported goods—
- (a) if the amendment is necessary for giving effect to—
 - (i) any international obligations on tariffs and trade binding on the Republic; or
 - (ii) an international agreement to which the Republic is a party, or any amendment to such agreement;
 - (b) if the Cabinet member responsible for trade and industry or the International Trade Administration Commission requests the amendment for implementing in accordance with the International Trade Administration Act duties or other measures to foster local economic activity; or
 - (c) if the amendment is necessary to give effect to any amendments to, and to any changes in terminology used in, international tariffs and trade instruments binding on the Republic.⁸
- (2) The Minister, acting in consultation with the Cabinet member responsible for trade and industry, may by notice in the *Gazette* amend the Customs Tariff in relation to imported goods where subsection (1) does not apply and the amendment is necessary—
- (a) for implementing national financial and fiscal policies; or
 - (b) in the public interest.
- (3) A request in terms of subsection (1)(b) must be—
- (a) in writing; and
 - (b) accompanied by—
 - (i) a motivation of the reasons for the request; or
 - (ii) a report or ministerial minute in terms of the International Trade Administration Act, if the request is made in terms of that Act.

Amendment of Customs Tariff relating to goods destined for export from Republic

9. (1) The Minister must by notice in the *Gazette* amend the Customs Tariff in relation to goods destined for export from the Republic if the amendment is necessary—
- (a) for implementing an international agreement to which the Republic is a party, or any amendment to such agreement; or
 - (b) to give effect to any amendments to, and to any changes in terminology used in, international tariffs and trade instruments binding on the Republic.
- (2) The Minister, acting in consultation with the Cabinet member responsible for trade and industry, may by notice in the *Gazette* amend the Customs Tariff in relation to goods destined for export from the Republic where subsection (1) does not apply and the amendment is necessary—

8. For instance the International Convention on the Harmonized Commodity Description and Coding System, the Explanatory Notes to the Harmonised System, etc.

- (a) 'n Doeanetarief wat regte oplê op goedere ingevoer in, of bestem vir uitvoer uit, die Republiek; en
- (b) die wysiging van die Doeanetarief.

Doeanetarief

7. Daar is 'n Doeanetarief soos uiteengesit in die Aanhangsel wat by hierdie Wet gevoeg moet word soos beoog in artikel 944(2)(a) van die Wet op Doeanebeheer, en wat die volgende spesifiseer:

- (a) Die regte wat vir doeleindes van hierdie Wet van krag is wanneer hierdie Wet in werking tree;
- (b) die klasse en soorte goedere ten opsigte waarvan daardie regte van krag is; en
- (c) die koers van, die vereistes, voorwaardes en verligting van toepassing op, en ander aangeleenthede betreffende, daardie regte.

Wysiging van Doeanetarief met betrekking tot ingevoerde goedere

8. (1) Die Minister moet die Doeanetarief by kennisgewing in die *Staatskoerant* met betrekking tot ingevoerde goedere wysig—

- (a) indien die wysiging nodig is om uitvoering te gee aan—
 - (i) enige internasionale verpligtinge oor tariewe en handel wat die Republiek bind; of
 - (ii) 'n internasionale ooreenkoms waarby die Republiek 'n party is, of enige wysiging van so 'n ooreenkoms;
- (b) indien die Kabinetslid verantwoordelik vir handel en nywerheid of die Internasionale Handelskommissie die wysiging versoek met die oog op die implementering, ooreenkomstig die Wet op Internasionale Administrasie, van regte of ander maatreëls ten einde plaaslike ekonomiese bedrywighede te bevorder; of
- (c) indien die wysiging nodig is om uitvoering te gee aan enige wysigings van, en enige veranderinge in die terminologie gebruik in, internasionale tariewe- en handelsinstrumente wat die Republiek bind.⁸

(2) Die Minister, handelende in oorleg met die Kabinetslid verantwoordelik vir handel en nywerheid, kan die Doeanetarief by kennisgewing in die *Staatskoerant* met betrekking tot ingevoerde goedere wysig in omstandighede waar subartikel (1) nie geld nie en die wysiging nodig is—

- (a) vir die implementering van finansiële en fiskale beleid; of
 - (b) in die openbare belang.
- (3) 'n Versoek ingevolge subartikel (1)(b) moet—
- (a) skriftelik wees; en
 - (b) vergesel wees van—
 - (i) 'n motivering van die redes vir die versoek; of
 - (ii) 'n verslag of ministeriële stuk ingevolge die Wet op Internasionale Handelsadministrasie, indien die versoek ingevolge daardie Wet gedoen word.

Wysiging van Doeanetarief met betrekking tot goedere bestem vir uitvoer uit Republiek

9. (1) Die Minister moet die Doeanetarief by kennisgewing in die *Staatskoerant* wysig met betrekking tot goedere bestem vir uitvoer indien die wysiging nodig is—

- (a) vir implementering van 'n internasionale ooreenkoms waarby die Republiek 'n party is, of van enige wysiging van so 'n ooreenkoms; of
- (b) om uitvoering te gee aan enige wysigings van, en veranderinge in die terminologie gebruik in, internasionale tariewe- en handelsinstrumente wat die Republiek bind.

(2) Die Minister, handelende in oorleg met die Kabinetslid verantwoordelik vir handel en nywerheid, kan die Doeanetarief by kennisgewing in die *Staatskoerant* wysig met betrekking tot goedere bestem vir uitvoer in omstandighede waar subartikel (1) nie geld nie en die wysiging nodig is—

8. Byvoorbeeld die International Convention on the Harmonized Commodity Description and Coding System, en die Explanatory Notes to the Harmonized System, ens.

- (a) for implementing national financial and fiscal policies or national economic policies; or
- (b) in the public interest.
- (3) If an amendment to the Customs Tariff in terms of subsection (2), is requested by another Cabinet member, the request must be— 5
 - (a) in writing; and
 - (b) accompanied by a motivation of the reasons for the request.

Amendments having unforeseen or unintended consequence

- 10. (1) If an amendment made in terms of section 8 or 9 has a consequence which was not foreseen or intended when the amendment was made, the Minister, in consultation with the Cabinet member responsible for trade and industry, may by notice in the *Gazette* adjust the amendment to address that unforeseen or unintended consequence with effect from the date the amendment took effect or any later date as may be specified in the notice. 10
- (2) An adjustment to an amendment contemplated in subsection (1)— 15
 - (a) may be made whether or not the amendment has ceased to have effect or has lapsed in terms of section 14(2); and
 - (b) must for all purposes be regarded to be part of the amendment.

Extent of Minister's powers to amend Customs Tariff

- 11. (1) The Customs Tariff may in terms of section 8 or 9 be amended— 20
 - (a) to repeal or replace, or to make any change in, any schedule, chapter, part, heading, subheading, item, provision, note or other component of the Customs Tariff; or
 - (b) to insert any new schedule, chapter, part, heading, subheading, item, provision, note and other component in the Customs Tariff. 25
- (2) An amendment referred to in subsection (1) includes—
 - (a) the imposition of a duty on any goods imported into the Republic⁹ or exported from the Republic,¹⁰ specifying—
 - (i) the class or kind of goods on which, and the circumstances in which, such duty is imposed; 30
 - (ii) the rate of such duty;
 - (iii) the requirements and conditions applicable to, and other matters relating to, such duty; and
 - (iv) any relief, refund or drawback that may be claimed in respect of such duty, including— 35
 - (aa) the extent of any such relief, refund or drawback;
 - (bb) the circumstances in which, the customs procedures in respect of which and the conditions on which any such relief, refund or drawback is or may be granted; and
 - (cc) the requirements and conditions applicable to, and other matters relating to, any such relief, refund or drawback; and 40
 - (b) changing the rate of any existing duty, or changing, repealing or replacing any existing provision relating to such duty, or inserting any new provision in relation to such duty.

Commencement of amendment to Customs Tariff 45

- 12. (1) An amendment to the Customs Tariff in terms of section 8 or 9, takes effect on a date specified in the notice effecting the amendment, or if no date is specified, on the date of publication of the notice, subject to section 13.
- (2) A date specified in a notice in terms of subsection (1) as the date on which an amendment takes effect, may be a date before, on or after the date of publication of the notice. 50

9. See section 22 for time when import duties become payable.
10. See section 23 for time when export duties become payable.

- (a) vir die implementering van finansiële en fiskale beleid of nasionale ekonomiese beleid; of
- (b) in die openbare belang.
- (3) Indien 'n wysiging van die Doeanetarief ingevolge subartikel (2), versoek word deur 'n ander Kabinetslid, moet die versoek— 5
 - (a) skriftelik wees; en
 - (b) vergesel wees van 'n motivering van die redes vir die versoek.

Wysiging met onvoorsiene of onbedoelde gevolge

- 10. (1) Indien 'n wysiging ingevolge artikel 8 of 9 aangebring 'n gevolg het wat nie voorsien of bedoel was ten tye van aanbring van die wysiging nie, kan die Minister, in oorleg met die Kabinetslid verantwoordelik vir handel en nywerheid, by kennisgewing in die *Staatskoerant* die wysiging aanpas ten einde daardie onvoorsiene of onbedoelde gevolg reg te stel met ingang van die datum waarop die wysiging van krag geword het, of enige later datum soos in die kennisgewing vermeld mag word. 10
- (2) 'n Aanpassing van 'n wysiging beoog in subartikel (1)— 15
 - (a) kan gemaak word ongeag of die wysiging opgehou het om regseffek te hê of ingevolge artikel 14(2) verval het; en
 - (b) moet vir alle doeleindes geag word deel van die wysiging te wees.

Omvang van Minister se bevoegdheid om Doeanetarief te wysig

- 11. (1) Die Doeanetarief kan ingevolge artikel 8 of 9 gewysig word ten einde— 20
 - (a) enige bylae, hoofstuk, deel, pos, subpos, item, voorsiening, opmerking of ander komponent van die Doeanetarief te herroep of te vervang, of enige verandering daarin aan te bring; of
 - (b) enige nuwe bylae, hoofstuk, deel, pos, subpos, item, voorsiening, opmerking en ander komponent in die Doeanetarief in te voeg. 25
- (2) 'n Wysiging bedoel in subartikel (1) sluit in—
 - (a) die oplê van 'n reg op enige goedere in die Republiek ingevoer⁹ of uit die Republiek uitgevoer,¹⁰ wat die volgende spesifiseer:
 - (i) Die klas of soort goedere waarop, en die omstandighede waarin, so 'n reg opgelê word; 30
 - (ii) die koers van so 'n reg;
 - (iii) die vereistes en voorwaardes van toepassing op, en ander aangeleenthede betreffende, so 'n reg; en
 - (iv) enige verligting, terugbetaling of teruggawe wat ten opsigte van so 'n reg geëis kan word, met inbegrip van— 35
 - (aa) die omvang van so 'n verligting, terugbetaling of teruggawe;
 - (bb) die omstandighede waarin, die doeaneprosedures ten opsigte waarvan en die voorwaardes waarop so 'n verligting, terugbetaling of teruggawe toegestaan word of kan word; en
 - (cc) die vereistes en voorwaardes van toepassing op, en ander 40 aangeleenthede betreffende, so 'n verligting, terugbetaling of teruggawe; en
 - (b) die verandering van die koers van 'n bestaande reg, of die verandering, herroeping of vervanging van enige bestaande bepaling betreffende so 'n reg, of die invoeging van 'n nuwe bepaling met betrekking tot so 'n reg. 45

Inwerkingtreëding van wysiging van Doeanetarief

- 12. (1) 'n Wysiging van die Doeanetarief ingevolge artikel 8 of 9, word van krag op 'n datum vermeld in die kennisgewing wat die wysiging aanbring, of indien geen datum vermeld word nie, op die datum van publikasie van die kennisgewing, behoudens artikel 13. 50
- (2) 'n Datum ingevolge subartikel (1) in 'n kennisgewing vermeld as die datum waarop 'n wysiging van krag word, kan 'n datum wees voor, op of na die datum van publikasie van die kennisgewing.

9. Kyk artikel 22 vir die tydstip wanneer invoerregte betaalbaar word.

10. Kyk artikel 23 vir die tydstip wanneer uitvoerregte betaalbaar word.

(3) Unless otherwise specified in a notice, an amendment commences at the beginning of the day on which the amendment takes effect in terms of subsection (1).

Commencement of amendment to Customs Tariff as part of budgetary tax proposals tabled in National Assembly

13. (1) If an amendment to the Customs Tariff forms part of any tax proposals contained in a national annual or adjustments budget tabled by the Minister in the National Assembly in terms of section 27(1) or 30(1) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the amendment takes effect from the time the annual or adjustments budget is tabled in the Assembly whether the amending notice referred to in section 8 or 9 is published before or after such tabling. 5 10

(2) A certificate purporting to have been issued and signed by the Secretary to Parliament that the Minister has tabled a national annual or adjustments budget contemplated in subsection (1) in the National Assembly, that an amendment to the Customs Tariff attached to the certificate formed part of tax proposals contained in that budget, and that the budget was tabled on a date and at a time specified in the certificate, must on production by any person in a court or other judicial tribunal be accepted as evidence of the facts stated therein. 15

(3) Subsection (1) does not apply if the amending notice referred to in section 8 or 9 specifies another date and time for the commencement of the amendment.

(4) The Commissioner may for purposes of facilitating the collection and of preventing evasion of duties imposed on goods in accordance with subsection (1), by rule prescribe requirements to be complied with by persons handling such goods at the time the tax proposals are tabled. 20

Parliamentary ratification of amendment to Customs Tariff

14. (1) An amendment made to the Customs Tariff in terms of section 8 or 9, read with section 10, is valid up to the last day of the calendar year following the calendar year in which it was made, but must for its continued validity thereafter be ratified by an Act of Parliament. 25

(2) If an amendment to the Customs Tariff is not ratified by an Act of Parliament as contemplated in subsection (1), the amendment lapses with effect from the end of the day referred to in that subsection. 30

Provisional anti-dumping, countervailing or safeguard duty

15. (1) If the International Trade Administration Commission publishes a notice in the *Gazette* stating that it is initiating in terms of the International Trade Administration Act an anti-dumping, countervailing or safeguard investigation in respect of goods imported from a specific supplier or originating from a specific country or territory specified in the notice, the Commissioner must, if the Commission so requests, by notice in the *Gazette*, provisionally impose an anti-dumping, countervailing or safeguard duty on those goods from such date, for such period and for such amount as the Commission may require. 35

(2) The Commissioner must, if the Commission so requests, by notice in the *Gazette*— 40

(a) amend a notice published by the Commissioner in terms of subsection (1), which may include—

(i) an extension of the period for which the provisional duty was imposed; or 45

(ii) a reduction or increase of the rate of the provisional duty; or

(b) withdraw the notice.

(3) (a) A notice published by the Commissioner in terms of subsection (1) or (2) takes effect on a date specified in the notice, which may be a date before, on or after the date of publication of that notice. 50

(3) Tensy anders in 'n kennisgewing vermeld, tree 'n wysiging in werking aan die begin van die dag waarop die wysiging ingevolge subartikel (1) van krag word.

Inwerkingtreëding van wysiging van Doeanetarief as deel van begrotingsbelastingvoorstelle in Nasionale Vergadering ter tafel gelê

13. (1) Indien 'n wysiging van die Doeanetarief deel vorm van enige belastingvoorstelle vervat in 'n nasionale jaarlikse begroting of aansuiweringsbegroting deur die Minister ingevolge artikel 27(1) of 30(1) van die Wet op die Beheer van Openbare Finansies, 1999 (Wet Nr. 1 van 1999), in die Nasionale Vergadering ter tafel gelê, tree die wysiging in werking op die tydstip waarop die jaarlikse begroting of aansuiweringsbegroting in die Vergadering ter tafel gelê word, ongeag of die wysigingskennisgewing bedoel in artikel 8 of 9 voor of na sodanige tertafellegging gepubliseer word. 5 10

(2) 'n Sertifikaat wat heet deur die Seketaris van die Parlement uitgereik en geteken te wees wat verklaar dat die Minister 'n nasionale begroting of aansuiweringsbegroting bedoel in subartikel (1) in die Nasionale Vergadering ter tafel gelê het, dat 'n wysiging van die Doeanetarief wat by die sertifikaat aangeheg is, deel gevorm het van belastingvoorstelle in daardie begroting, en dat die begroting op 'n datum en tyd vermeld in die sertifikaat ter tafel gelê is, moet by voorlegging daarvan deur enige persoon in 'n hof of ander geregtelike tribunaal aanvaar word as bewys van die feite daarin vermeld. 15 20

(3) Subartikel (1) is nie van toepassing nie as die wysigingskennisgewing bedoel in artikel 8 of 9 'n ander datum vir die inwerkingtreëding van die wysiging spesifiseer.

(4) Die Kommissaris kan ter fasilitering van die invordering van en voorkoming van ontduiking van regte ooreenkomstig subartikel (1) op goedere gehef, by reël vereistes voorskryf waaraan persone wat sodanige goedere ten tye van die tertafellegging van die belastingvoorstelle hanteer, moet voldoen. 25

Parlementêre bekragtiging van wysiging van Doeanetarief

14. (1) 'n Wysiging van die Doeanetarief ingevolge artikel 8 of 9, saamgelees met artikel 10, is geldig tot en met die laaste dag van die kalenderjaar wat volg op die kalenderjaar waarin die wysiging aangebring is, maar moet vir die voortgesette werking daarvan na daardie datum deur 'n Parlements-wet bekragtig word. 30

(2) Indien 'n wysiging van die Doeanetarief nie deur 'n Parlements-wet bekragtig word soos beoog in subartikel (1) nie, verval die wysiging met ingang van die einde van die dag bedoel in daardie subartikel.

Voorwaardelike anti-dumpingsreg, kontrareg of beveiligingsreg 35

15. (1) Indien die Internasionale Handelsadministrasiekommissie 'n kennisgewing in die *Staatskoerant* publiseer wat verklaar dat die Kommissie ingevolge die Wet op Internasionale Handelsadministrasie 'n anti-dumpings-, kontra- of beveiligings-onderzoek inisieer ten opsigte van goedere wat ingevoer word vanaf 'n spesifieke produsent in die kennisgewing vermeld, of wat hul oorsprong het in 'n bepaalde land aldus vermeld, moet die Kommissaris, indien die Kommissie dit versoek, by kennisgewing in die *Staatskoerant* 'n anti-dumpings-, kontra- of beveiligingsreg voorwaardelik op daardie goedere oplê. 40

(2) Die Kommissaris moet, indien die Kommissie dit versoek, by kennisgewing in die *Staatskoerant*— 45

(a) 'n kennisgewing ingevolge subartikel (1) gepubliseer deur die Kommissaris wysig, wat kan insluit—

(i) 'n verlenging van die tydperk waarvoor die voorwaardelike reg opgelê is; of

(ii) 'n vermindering of verhoging ten opsigte van die koers van die voorwaardelike reg; of 50

(b) die kennisgewing intrek.

(3) (a) 'n Kennisgewing ingevolge subartikel (1) of (2) deur die Kommissaris gepubliseer, word van krag op 'n datum in die kennisgewing vermeld, wat 'n datum voor, op of na die datum van publikasie van daardie kennisgewing kan wees. 55

(b) A notice referred to in paragraph (a) commences at the beginning of the day on which it takes effect in terms of that paragraph, unless the notice specifies otherwise.

(4) A provisional anti-dumping, countervailing or safeguard duty imposed on goods in terms of this section must be paid and recovered in terms of this Act as if the duty has been imposed on those goods in the Customs Tariff as from the date of imposition of the provisional duty. 5

(5) A provisional anti-dumping, countervailing or safeguard duty on goods lapses at the end of the period for which it was imposed unless that duty is before the end of that period definitively imposed on those goods in the Customs Tariff.

(6) If a provisional anti-dumping, countervailing or safeguard duty is definitively imposed in the Customs Tariff on the goods concerned before the end of the period for which the provisional duty was imposed and the rate of the provisional duty on the goods— 10

(a) exceeds the rate of the duty definitively imposed, any excess amount paid to the Commissioner must be refunded to the person who made that excess payment; or 15

(b) is less than the rate of the duty definitively imposed, the shortfall may not be recovered as an underpayment of duty.

(7) If a provisional anti-dumping, countervailing or safeguard duty is not definitively imposed in the Customs Tariff on the goods concerned before the end of the period for which the provisional duty was imposed, the amount of all payments made to the Commissioner in respect of the provisional duty must be refunded to the person who made the payments. 20

(8) Chapter 4 does not apply to refunds in terms of subsection (6)(a) or (7), and the Commissioner must make those refunds to the person entitled to the refund without application in terms of that Chapter. 25

(9) A refund in terms of this section is a direct charge against the National Revenue Fund.

Duty that is customs duty for purposes of SACU Agreement

16. (1) An import duty imposed in the Customs Tariff is a customs duty for purposes of the SACU Agreement,¹¹ subject to subsection (2). 30

(2) An import duty which is in terms of subsection (1) a customs duty for purposes of the SACU Agreement does not include for purposes of articles 32, 33 and 34 of the Agreement an import duty paid on goods imported into the Republic for use in the Republic or another SACU member state by a government, department, administration or other organ of state, or a person or body, as specified in the Customs Tariff, and any import duty paid on such goods must for purposes of those articles be regarded to be an ordinary levy on those goods. 35

(3) (a) The Commissioner must, within such timeframes as the Commissioner may determine, pay the amount of an import duty collected on imported goods intended for use in another SACU member state and which is in terms of subsection (2) regarded to be an ordinary levy, to the government of that state. 40

(b) A payment in terms of paragraph (a) is a direct charge against the National Revenue Fund.

Duty that is customs duty for purposes of International Trade Administration Act 45

17. An import duty imposed in the Customs Tariff is a customs duty for purposes of the International Trade Administration Act.

11. The reason for this provision is to give effect to the provision in the SACU Agreement requiring customs duties to be defined in the legislation of member states. No customs duties are payable on the movement of goods in free circulation between the Republic and other members of the Customs Union.

(b) 'n Kennisgewing bedoel in paragraaf (a) tree, tensy die kennisgewing anders vermeld, in werking aan die begin van die dag waarop dit ingevolge daardie paragraaf van krag word.

(4) 'n Voorwaardelike anti-dumpings-, kontra- of beveiligingsreg ingevolge hierdie artikel op goedere opgelê, moet ingevolge hierdie Wet betaal en verhaal word asof die reg op daardie goedere in die Doeanetarief vanaf die datum van oplegging van die voorwaardelike reg opgelê is. 5

(5) 'n Voorwaardelike anti-dumpings-, kontra- of beveiligingsreg op goedere verval aan die einde van die tydperk waarvoor dit opgelê is, tensy daardie reg voor die einde van daardie tydperk finaal in die Doeanetarief op daardie goedere opgelê word. 10

(6) Indien 'n voorwaardelike anti-dumpings-, kontra- of beveiligingsreg finaal in die Doeanetarief op die betrokke goedere opgelê word voor die einde van die tydperk waarvoor die voorwaardelike reg opgelê is en die koers van die voorwaardelike reg—

(a) hoër is as die koers van die reg wat finaal opgelê is, moet die bedrag van enige oor-betaling aan die Kommissaris, terugbetaal word aan die persoon wat daardie oor-betaling gedoen het; of 15

(b) laer is as die koers van die reg wat finaal opgelê is, mag die tekort nie verhaal word as 'n kort-betaling van reg nie.

(7) Indien 'n voorwaardelike anti-dumpings-, kontra- of beveiligingsreg nie finaal in die Doeanetarief op die betrokke goedere opgelê word voor die einde van die tydperk waarvoor die voorlopige reg opgelê is nie, moet die bedrag van alle betalings wat ten opsigte van die voorlopige reg aan die Kommissaris gedoen is, aan die persoon terugbetaal word wat die betalings gedoen het. 20

(8) Hoofstuk 4 is nie van toepassing op terugbetalings ingevolge subartikel (6)(a) of (7) nie, en die Kommissaris moet daardie terugbetalings doen aan die persoon wat daarop geregtig is sonder aansoek ingevolge daardie Hoofstuk. 25

(9) 'n Terugbetaling ingevolge hierdie artikel is 'n regstreekse las teen die Nasionale Inkomstefonds.

Reg wat doeanereg vir doeleindes van SADU Ooreenkoms is

16. (1) 'n Invoerreg in die Doeanetarief opgelê, is 'n doeanereg vir doeleindes van die SADU Ooreenkoms, behoudens subartikel (2).¹¹ 30

(2) 'n Invoerreg wat ingevolge subartikel (1) 'n doeanereg vir doeleindes van die SADU Ooreenkoms is, sluit vir doeleindes van klousules 32, 33 en 34 van die Ooreenkoms nie 'n invoerreg in wat betaal is op goedere in die Republiek ingevoer vir gebruik in die Republiek of in 'n ander SADU lidstaat deur 'n regering, departement, administrasie of ander staatsorgaan, of 'n persoon of liggaam, soos gespesifiseer in die Doeanetarief nie, en enige invoerreg op sodanige goedere betaal, moet vir doeleindes van daardie klousules geag word 'n gewone heffing te wees. 35

(3) (a) Die Kommissaris moet, binne die tydskaal soos die Kommissaris mag bepaal, die bedrag van 'n invoerreg ingevorder op ingevoerde goedere bestem vir gebruik in 'n ander SADU lidstaat en wat ingevolge subartikel (2) geag word 'n gewone heffing te wees, aan die regering van daardie staat betaal. 40

(b) 'n Betaling ingevolge paragraaf (a) is 'n regstreekse las teen die Nasionale Inkomstefonds.

Reg wat doeanereg vir doeleindes van Wet op Internasionale Handelsadministrasie is 45

17. 'n Invoerreg in die Doeanetarief opgelê, is 'n doeanereg vir doeleindes van die Wet op Internasionale Handelsadministrasie.

11. Die rede vir hierdie bepaling is om uitvoering te gee aan die bepaling in die SADU Ooreenkoms wat vereis dat doeaneregte in die wetgewing van lidstate omskryf word. Geen doeaneregte is op die beweging van goedere in vrye sirkulasie tussen die Republiek en ander lidstate van die Doeanes-Unie betaalbaar nie.

CHAPTER 3

PAYMENT OF DUTY, PENALTY AND INTEREST

Purpose of this Chapter

18. The purpose of this Chapter is—
- (a) to determine liability for import and export duties on dutiable goods; and 5
 - (b) to ensure the payment and recovery of—
 - (i) import and export duties on dutiable goods; and
 - (ii) administrative penalties, interest and other amounts owed to the Commissioner in terms of this Act.¹²

Part 1 10

Liability for duty

When liability for duty commences

19. (1) Liability for import duty on dutiable goods imported into the Republic commences when the goods enter the Republic but if dutiable goods are cleared for home use or a customs procedure before the arrival of the goods at a place of entry referred to in section 31 or 34 of the Customs Control Act,¹³ liability for import duty commences when the goods are cleared. 15

- (2) The liability for export duty on dutiable goods destined for export from the Republic commences when the goods are—
- (a) cleared for— 20
 - (i) outright export; or
 - (ii) another customs procedure that confers a tax due or partial tax due status¹⁴ on the goods; or
 - (b) regarded in terms of a provision of the Customs Control Act to be cleared for outright export.¹⁵ 25

When liability for import duty ceases

20. (1) Liability for import duty on dutiable goods imported into the Republic ceases if and when—
- (a) the goods are— 30
 - (i) cleared for home use under Chapter 8 of the Customs Control Act;
 - (ii) cleared for a customs procedure that confers a tax due or partial tax due status on the goods;¹⁶ or
 - (iii) in terms of a provision of that Act for tax purposes regarded to be cleared for home use under Chapter 8 of that Act;¹⁷ and
 - (b) the duty on the goods as assessed or re-assessed in terms of Chapter 5¹⁸ is paid in full. 35

12. See Chapter 32 of the Customs Control Act for payment and recovery of debt owed to the Commissioner in terms of that Act. VAT, excise duties and other tax are recovered in terms of the tax levying Act applicable to VAT, excise duties and that other tax.

13. For submission of clearance declarations before arrival at place of entry, see section 170 of the Customs Control Act.

14. As may be the case, for instance, for goods cleared for outward processing.

15. See section 114 of the Customs Control Act.

16. For instance clearance of goods for inward or home use processing where exemption from duty may be partial.

17. See section 112 of the Customs Control Act.

18. For limitations on periods within which goods may be reassessed for duty purposes, see section 86.

HOOFSTUK 3

BETALING VAN REG, BOETE EN RENTE

Doel van hierdie Hoofstuk

- 18.** Die doel van hierdie Hoofstuk is—
- (a) om aanspreeklikheid vir invoer- en uitvoerregte op belasbare goedere te bepaal; en 5
 - (b) om die betaling en invordering te verseker van—
 - (i) invoer- en uitvoerregte op belasbare goedere; en
 - (ii) administratiewe boetes, rente en ander bedrae ingevolge hierdie Wet¹² aan die Kommissaris verskuldig. 10

Deel 1

Aanspreeklikheid vir reg

Wanneer aanspreeklikheid vir reg begin

- 19.** (1) Aanspreeklikheid vir invoerreg op belasbare goedere in die Republiek ingevoer, begin wanneer die goedere die Republiek binnekom, maar indien belasbare goedere voor aankoms van die goedere by 'n plek van toegang soos bedoel in artikel 31 of 34 van die Wet op Doeanebeheer¹³ geklaar word vir binnelandse gebruik of 'n doeaneprosedure, begin aanspreeklikheid vir invoerreg wanneer die goedere geklaar word. 15
- (2) Aanspreeklikheid vir uitvoerreg op belasbare goedere bestem vir uitvoer uit die Republiek begin wanneer die goedere— 20
- (a) geklaar word vir—
 - (i) regstreekse uitvoer; of
 - (ii) 'n ander doeaneprosedure wat 'n belasting betaalbare status¹⁴ of deels-belasting betaalbare status aan die goedere verleen; of 25
 - (b) ingevolge 'n bepaling van die Wet op Doeanebeheer geag word vir regstreekse uitvoer geklaar te wees.¹⁵

Wanneer aanspreeklikheid vir invoerreg eindig

- 20.** (1) Aanspreeklikheid vir invoerreg op belasbare goedere in die Republiek ingevoer, eindig indien en wanneer— 30
- (a) die goedere—
 - (i) ingevolge Hoofstuk 8 van die Wet op Doeanebeheer vir binnelandse gebruik geklaar word;
 - (ii) vir 'n doeaneprosedure geklaar word wat 'n belasting betaalbare status of 'n deels-belasting betaalbare status aan die goedere verleen;¹⁶ of 35
 - (iii) ingevolge 'n bepaling van daardie Wet vir belastingdoeleindes geag word vir binnelandse gebruik ingevolge Hoofstuk 8 van daardie Wet geklaar te wees;¹⁷ en
 - (b) die reg op die goedere soos ingevolge Hoofstuk 5¹⁸ aangeslaan of heraangeslaan ten volle betaal is. 40

12. Kyk Hoofstuk 32 van die Wet op Doeanebeheer vir betaling en invordering van skuld ingevolge daardie Wet aan die Kommissaris verskuldig. BTW, aksynsregte en ander belasting moet ingevorderd word kragtens die belastingheffings-Wet wat ten opsigte van BTW, aksynsregte en daardie ander belasting van toepassing is.

13. Vir voorlegging van klaringsbriewe voor aankoms by plek van toegang, kyk artikel 170 van die Wet op Doeanebeheer.

14. Soos in die geval van, byvoorbeeld, goedere geklaar vir uitwaartse prosessering.

15. Kyk artikel 114 van die Wet op Doeanebeheer.

16. Byvoorbeeld die klaring van goedere vir inwaartse prosessering of binnelandse gebruikspersessering waar die vrystelling van reg gedeeltelik mag wees.

17. Kyk artikel 112 van die Wet op Doeanebeheer.

18. Kyk artikel 86 vir beperkings op tydperke waarbinne goedere heraangeslaan mag word vir doeleindes van reg.

- (2) Liability for import duty on dutiable goods imported into the Republic ceases despite non-payment of the duty—
- (a) if the duty falls away in terms of a provision of the Customs Control Act;¹⁹
 - (b) if the goods are—
 - (i) cleared and released in terms of the Customs Control Act for export under the export procedure²⁰ or under another customs procedure that allows the export of goods under that procedure without submission of a separate export clearance,²¹ and exported from the Republic; 5
 - (ii) removed from the Republic by order of, and under supervision of, the customs authority; 10
 - (iii) destroyed under supervision of the customs authority; or
 - (iv) abandoned to the Commissioner in accordance with Chapter 26 of the Customs Control Act; or
 - (c) if the Commissioner's claim in respect of the duty has prescribed.²² 15

When liability for export duty ceases

- 21.** (1) Liability for export duty on dutiable goods destined for export or exported from the Republic ceases if the duty on the goods as assessed or re-assessed in terms of Chapter 5²³ is paid in full.
- (2) Liability for export duty on dutiable goods destined for export or exported from the Republic ceases despite non-payment of the duty—
- (a) if the clearance of the goods for outright export or the other customs procedure that conferred a tax due or partial tax due status on the goods is withdrawn and it is proved that the goods were not exported from the Republic;
 - (b) if the duty payable falls away in terms of a provision of the Customs Control Act;²⁴ 25
 - (c) if the goods are—
 - (i) destroyed under supervision of the customs authority; or
 - (ii) abandoned to the Commissioner in accordance with Chapter 26 of the Customs Control Act; or 30
 - (d) if the Commissioner's claim in respect of the duty has prescribed.²⁵

Time when import duty becomes payable

- 22.** (1) An import duty on dutiable goods imported into the Republic becomes payable if and when the goods are—
- (a) cleared for home use under Chapter 8 of the Customs Control Act; 35

19. See for instance sections 544, 545, 546, 547 or 565 of the Customs Control Act.

20. The export procedure dealt with in Chapter 16 of the Customs Control Act covers the export of goods for outright export and the outbound leg of various other customs procedures such as:

- temporary admission procedure;
- temporary export procedure;
- outward processing procedure; and
- inward processing procedure.

21. The following customs procedures allow goods to be exported under those procedures without any separate export clearances:

- international transit procedure;
- transshipment procedure;
- stores procedure; and
- tax free shop procedure.

22. The Prescription Act determines the periods within which civil actions for amounts owing must be instituted.

23. For limitations on periods within which goods may be reassessed for duty purposes see section 86.

24. See for instance section 544, 545, 546, 547 or 565 of the Customs Control Act.

25. The Prescription Act determines the periods within which civil actions for amounts owing must be instituted.

- (2) Aanspreeklikheid vir invoerreg op belasbare goedere in die Republiek ingevoer, eindig ondanks nie-betaling van die reg—
- (a) indien die reg ingevolge 'n bepaling van die Wet op Doeanebeheer¹⁹ wegval;
 - (b) indien die goedere—
 - (i) ingevolge die Wet op Doeanebeheer geklaar en vrygestel word vir uitvoer onder die uitvoerprosedure²⁰ of onder 'n ander prosedure wat voorsiening maak vir die uitvoer van goedere onder daardie prosedure sonder voorlegging van 'n afsonderlike uitvoerklaaring,²¹ en uit die Republiek uitgevoer is; 5
 - (ii) op las, en onder toesig, van die doeanegesag uit die Republiek verwyder is; 10
 - (iii) onder toesig van die doeanegesag vernietig is; of
 - (iv) ooreenkomstig Hoofstuk 26 van die Wet op Doeanebeheer aan die Kommissaris oorgegee is; of
 - (c) indien die Kommissaris se eis met betrekking tot die reg verjaar het.²² 15

Wanneer aanspreeklikheid vir uitvoerreg eindig

- 21.** (1) Aanspreeklikheid vir uitvoerreg op belasbare goedere bestem vir uitvoer of uitgevoer uit die Republiek eindig wanneer die reg op die goedere soos ingevolge Hoofstuk 5²³ aangeslaan of heraangeslaan ten volle betaal is.
- (2) Aanspreeklikheid vir uitvoerreg op belasbare goedere bestem vir uitvoer of uitgevoer uit die Republiek eindig ondanks die nie-betaling van reg—
- (a) indien die klaring van die goedere vir regstreekse uitvoer of die ander doeaneprosedure wat 'n belasting betaalbare of deels-belasting betaalbare status aan die goedere verleen het, teruggetrek word en daar bewys word dat die goedere nie uit die Republiek uitgevoer is nie; 25
 - (b) indien die reg betaalbaar ingevolge 'n bepaling van die Wet op Doeanebeheer²⁴ wegval;
 - (c) indien die goedere—
 - (i) onder toesig van die doeanegesag vernietig is; of
 - (ii) ooreenkomstig Hoofstuk 26 van die Wet op Doeanebeheer aan die Kommissaris oorgegee is; of 30
 - (d) indien die Kommissaris se eis met betrekking tot die reg verjaar het.²⁵

Tydstip waarop invoerreg betaalbaar word

- 22.** (1) 'n Invoerreg op belasbare goedere in die Republiek ingevoer, word betaalbaar indien en wanneer die goedere—
- (a) ingevolge Hoofstuk 8 van die Wet op Doeanebeheer vir binnelandse gebruik geklaar word; 35

19. Kyk byvoorbeeld artikels 544, 545, 546, 547 of 565 van die Wet op Doeanebeheer.

20. Die uitvoerprosedure waarmee in Hoofstuk 16 van die Wet op Doeanebeheer gehandel word, dek die uitvoer van goedere vir regstreekse uitvoer en die uitgaande fase van verskeie ander doeaneprosedures soos:

- prosedure vir tydelike toegang;
- prosedure vir tydelike uitvoer;
- prosedure vir uitwaartse prosessering; en
- prosedure vir inwaartse prosessering.

21. Die volgende doeaneprosedures maak voorsiening vir die uitvoer van goedere onder daardie prosedures sonder enige afsonderlike uitvoerklaarings:

- prosedure vir internasionale transito;
- transverskeppingsprosedure;
- voorradeprosedure; en
- prosedure vir belastingvry-winkels.

22. Die Wet op Verjaring stel die tydperke vas waarbinne siviele regsdinge vir bedrae verskuldig, ingestel moet word.

23. Kyk artikel 86 vir beperkings ten opsigte van tydperke waarbinne goedere heraangeslaan mag word vir doeleindes van reg.

24. Kyk byvoorbeeld artikels 544, 545, 546, 547 of 565 van die Wet op Doeanebeheer.

25. Die Wet op Verjaring stel die tydperke vas waarbinne siviele regsdinge vir bedrae verskuldig, ingestel moet word.

- (b) cleared for a customs procedure that confers a tax due or partial tax due status on the goods;²⁶ or
- (c) for tax purposes regarded in terms of a provision of the Customs Control Act to be cleared for home use under Chapter 8 of that Act.²⁷
- (2) An import duty payable in terms of—
 - (a) subsection (1)(a) or (b), must be paid within seven calendar days of the time the goods are cleared for home use under Chapter 8 of the Customs Control Act or for the relevant customs procedure; or
 - (b) subsection (1)(c), must be paid on or before a date specified for payment in a notice demanding payment of the duty.
- (3) For purposes of subsection (2)(a) the time of clearance of goods must be determined in accordance with section 173 of the Customs Control Act: Provided that in the case of an expedited clearance or release of goods in terms of Chapter 24 of the Customs Control Act, the time of clearance of the goods must be regarded to be the time when a clearance declaration in respect of the goods as contemplated in section 526(1), 531 or 535(1) of that Act which complies with the requirements set out in section 171(1) of that Act is accepted by the customs authority in terms of section 171(1).
- (4) Subsection (2)(a) does not apply—
 - (a) to the extent that payment of an import duty on goods has been deferred in terms of section 24, and in such a case the duty must be paid on or before the deferred date determined in terms of that section;
 - (b) to dutiable items in the accompanied or unaccompanied baggage of a person, other than commercial goods, and in such a case any duty payable on such items must be paid on demand;²⁸ or
 - (c) to international postal articles cleared in accordance with the simplified clearance process contemplated in section 493(2) of the Customs Control Act, and in such a case any import duty payable on such postal articles must be paid before the postal article is delivered by the South African Post office to the consignee.²⁹

Time when export duty becomes payable 30

- 23.** (1) An export duty on dutiable goods destined for export from the Republic becomes payable if and when the goods are—
- (a) cleared for outright export in terms of the Customs Control Act;
 - (b) cleared for another customs procedure that confers a tax due or partial tax due status on the goods being exported;³⁰ or
 - (c) for tax purposes regarded in terms of a provision of that Act as having been cleared for outright export.
- (2) An export duty payable in terms of—
- (a) subsection (1)(a) or (b), must be paid within seven calendar days of the time the goods are cleared for outright export or the relevant customs procedure; or
 - (b) subsection (1)(c), must be paid on or before a date specified for payment in a notice demanding payment of the duty.
- (3) For purposes of section (2)(a) the time of clearance of goods must be determined in accordance with section 173 of the Customs Control Act: Provided that in the case of an expedited clearance or release of goods in terms of Chapter 24 of the Customs Control Act, the time of clearance of the goods must be regarded to be the time when a clearance declaration in respect of the goods as contemplated in section 526(1), 531 or

26. For instance clearance of goods for inward or home use processing where exemption from duty may be partial.

27. See section 112 of the Customs Control Act.

28. See also section 481 of the Customs Control Act.

29. See also section 501 of the Customs Control Act.

30. For instance clearance of goods for outward processing where exemption from duty may be partial.

- (b) vir 'n doeaneprosedure geklaar word wat 'n belasting betaalbare of deels-belasting betaalbare status aan die goedere²⁶ verleen; of
- (c) ingevolge 'n bepaling van die Wet op Doeanebeheer vir belastingdoeleindes geag word vir binnelandse gebruik ingevolge Hoofstuk 8 van daardie Wet geklaar te wees.²⁷ 5
- (2) 'n Invoerreg betaalbaar ingevolge—
- (a) subartikel (1)(a) of (b), moet betaal word binne sewe kalenderdae nadat die goedere vir binnelandse gebruik ingevolge Hoofstuk 8 van die Wet op Doeanebeheer of vir die betrokke doeaneprosedure geklaar is; of
- (b) subartikel (1)(c), moet betaal word voor of op 'n datum vir betaling bepaal in 'n kennisgewing wat betaling van die reg vereis. 10
- (3) Die tyd van klaring van goedere moet vir doeleindes van subartikel (2)(a) bepaal word ooreenkomstig artikel 173 van die Wet op Doeanebeheer: Met dien verstande dat, in die geval van 'n versnelde klaring of vrystelling van goedere ingevolge Hoofstuk 24 van die Wet op Doeanebeheer, die tyd van klaring van die goedere geag moet word die tydstip te wees waarop 'n klaringsbrief ten aansien van die goedere beoog in artikels 526(1), 531 of 535(1) van daardie Wet wat voldoen aan die vereistes uiteengesit in artikel 171(1) van daardie Wet, deur die doeanegesag ingevolge artikel 171(1) aanvaar word. 15
- (4) Subartikel (2)(a) is nie van toepassing nie— 20
- (a) insoverre betaling van 'n invoerreg op goedere ingevolge artikel 24 uitgestel is, en in so 'n geval moet die reg betaal word voor of op die uitsteldatum ingevolge daardie artikel bepaal;
- (b) op belasbare artikels, behalwe kommersiële goedere, in 'n persoon se vergeselde of onvergeselde bagasie, en in so 'n geval moet enige reg betaalbaar op sodanige artikels op aanvraag betaal word;²⁸ of 25
- (c) op internasionale posstukke wat volgens die verkorte klaringsproses beoog in artikel 493(2) van die Wet op Doeanebeheer geklaar word, en in so 'n geval moet enige reg betaalbaar op sodanige posstukke betaal word voordat die posstuk deur die Suid-Afrikaanse Posdiens aan die geadresseerde afgelewer word.²⁹ 30

Tydstip waarop uitvoerreg betaalbaar word

- 23.** (1) 'n Uitvoerreg op belasbare goedere bestem vir uitvoer uit die Republiek word betaalbaar indien en wanneer die goedere—
- (a) ingevolge die Wet op Doeanebeheer vir regstreekse uitvoer geklaar word; 35
- (b) vir 'n doeaneprosedure geklaar word wat 'n belasting betaalbare of deels-belasting betaalbare status verleen aan die goedere wat uitgevoer word;³⁰ of
- (c) ingevolge 'n bepaling van daardie Wet vir belastingdoeleindes geag word vir regstreekse uitvoer geklaar te wees. 40
- (2) 'n Uitvoerreg betaalbaar ingevolge—
- (a) subartikel (1)(a) of (b), moet betaal word binne sewe kalenderdae nadat die goedere vir regstreekse uitvoer of die betrokke doeaneprosedure geklaar word; of
- (b) subartikel (1)(c), moet betaal word voor of op 'n datum vir betaling bepaal in 'n kennisgewing wat betaling van die reg vereis. 45
- (3) Die tyd van klaring van goedere moet vir doeleindes van subartikel (2)(a) bepaal word ooreenkomstig artikel 173 van die Wet op Doeanebeheer: Met dien verstande dat, in die geval van 'n versnelde klaring of vrystelling van goedere ingevolge Hoofstuk 24 van die Wet op Doeanebeheer, die tyd van klaring van die goedere geag moet word die tydstip te wees waarop 'n klaringsbrief ten opsigte van die goedere beoog in artikels 526(1), 531 of 535(1) van daardie Wet wat voldoen aan die vereistes uiteengesit in 50

26. By die klaring van goedere vir inwaartse prosessering of prosessering vir binnelandse gebruik kan die vrystelling van reg byvoorbeeld gedeeltelik wees.

27. Kyk artikel 112 van die Wet op Doeanebeheer.

28. Kyk ook artikel 481 van die Wet op Doeanebeheer.

29. Kyk ook artikel 501 van die Wet op Doeanebeheer.

30. By die klaring van goedere vir uitwaartse prosessering kan die ontheffing van reg byvoorbeeld gedeeltelik wees.

535(1) of that Act which complies with the requirements set out in section 171(1) of that Act is accepted by the customs authority in terms of section 171(1).

(4) Subsection (2)(a) does not apply—

- (a) to the extent that payment of an export duty on goods has been deferred in terms of section 24, and in such a case the duty must be paid on or before the deferred date determined in terms of that section; 5
- (b) to dutiable items in the accompanied or unaccompanied baggage of a person, other than commercial goods, and in such a case any duty payable on such items must be paid on demand;³¹ or
- (c) to international postal articles cleared in accordance with the simplified clearance process contemplated in section 494(2) of the Customs Control Act, and in such a case any export duty payable on such postal articles must be paid on demand.³² 10

Deferment of payment of duty

24. (1) The customs authority may, despite section 22 or 23, defer payment of duty on goods to be cleared by or on behalf of a specific person, for a period and up to a maximum amount of duty determined by it. 15

(2) A deferment of duty benefit on goods in terms of subsection (1)—

- (a) may be granted only on application by—
 - (i) a specific person liable for the payment of duty on those goods; or 20
 - (ii) the customs broker acting on behalf of that person; and
- (b) is subject to such conditions, including conditions relating to the provision of security—
 - (i) as the customs authority may determine in a specific case; or
 - (ii) as may be prescribed by rule. 25

(3) No interest is payable on deferred duties paid on or before the due date.³³

Grounds and procedure for suspension or withdrawal of duty deferment benefit

25. (1) The customs authority must withdraw a duty deferment benefit granted to a person if that person—

- (a) acquired the benefit under false pretences; 30
- (b) is no longer engaged in the import or export of goods or related activities; or
- (c) is sequestered or liquidated.

(2) The customs authority may suspend or withdraw a duty deferment benefit granted to a person if—

- (a) that person— 35
 - (i) has in a material respect breached a condition applicable to the benefit in terms of section 24(2); or
 - (ii) failed to pay within three working days after payment became due any deferred duty or other tax or amount payable by that person to the Commissioner in terms of this Act, another tax levying Act or the Customs Control Act; or 40
- (b) during the validity period of the benefit, that person, or an employee of that person in a managerial position, or if that person is a juristic entity, a director, administrator or trustee of the juristic entity—
 - (i) has breached a provision of this Act, another tax levying Act or the Customs Control Act in a material respect; 45
 - (ii) has been convicted of an offence under this Act, another tax levying Act or the Customs Control Act; or

31. See also section 486 of the Customs Control Act.

32. See also section 501 of the Customs Control Act.

33. Interest becomes payable in terms of section 45 from the date the goods acquired a tax due status in terms of Chapter 6 of the Customs Control Act if the duty is not paid on or before the due date.

artikel 171(1) van daardie Wet, deur die doeanegesag ingevolge artikel 171(1) aanvaar word.

- (4) Subartikel (2)(a) is nie van toepassing nie—
- (a) insoverre betaling van 'n uitvoerreg op goedere ingevolge artikel 24 uitgestel is, en in so 'n geval moet die reg betaal word voor of op die uitsteldatum ingevolge daardie artikel bepaal; 5
 - (b) op belasbare artikels, behalwe kommersiële goedere, in 'n persoon se vergeselde of onvergeselde bagasie, en in so 'n geval moet enige reg betaalbaar op sodanige artikels op aanvraag betaal word;³¹ of
 - (c) op internasionale posstukke wat volgens die verkorte klaringsproses beoog in artikel 494(2) van die Wet op Doeanebeheer geklaar word, en in so 'n geval moet enige uitvoerreg betaalbaar op sodanige posstukke op aanvraag³² betaal word. 10

Uitstel van betaling van reg

24. (1) Die doeanegesag kan, ondanks artikel 22 of 23, betaling van 'n reg op goedere wat deur of namens 'n bepaalde persoon geklaar sal word, uitstel vir 'n tydperk en vir 'n bedrag van reg tot en met 'n maksimum bedrag deur die doeanegesag bepaal. 15

- (2) 'n Voordeel van uitstel van reg ten opsigte van goedere ingevolge subartikel (1)—
- (a) kan verleen word op aansoek deur—
 - (i) 'n bepaalde persoon wat vir die betaling van reg op daardie goedere aanspreeklik is; of 20
 - (ii) die doeanemakelaar wat namens daardie persoon handel; en
 - (b) is onderworpe aan sodanige voorwaardes, met inbegrip van voorwaardes met betrekking tot die verskaffing van sekuriteit—
 - (i) wat die doeanegesag in 'n bepaalde geval mag bepaal; of 25
 - (ii) soos by reël voorgeskryf mag word.

(3) Geen rente is betaalbaar op uitgestelde regte wat voor of op die sperdatum vir betaling³³ betaal word nie.

Gronde en prosedure vir opskorting of intrekking van voordeel van uitstel van reg

25. (1) Die doeanegesag moet 'n voordeel van uitstel van reg wat aan 'n persoon verleen is, intrek indien daardie persoon— 30

- (a) die voordeel onder valse voorwendsels verkry het;
- (b) nie meer betrokke is by die invoer of uitvoer van goedere of verwante bedrywighede nie; of
- (c) gesekwestreer of gelikwedeer word. 35

(2) Die doeanegesag kan 'n voordeel van uitstel van reg wat aan 'n persoon verleen is, intrek indien—

- (a) daardie persoon—
 - (i) 'n voorwaarde wat ingevolge artikel 24(2) op die voordeel van toepassing is, in 'n wesenlike opsig verbreek het; of 40
 - (ii) versuim het om enige uitgestelde reg of ander belasting of bedrag deur daardie persoon aan die Kommissaris betaalbaar ingevolge hierdie Wet, 'n ander belastingheffings-Wet of die Wet op Doeanebeheer, binne drie werksdae nadat betaling betaalbaar geword het, te betaal; of
- (b) daardie persoon, of 'n werknemer van daardie persoon in 'n bestuursposisie, of indien daardie persoon 'n regsenteit is, 'n direkteur, administrateur of trustee van die regsenteit, gedurende die geldigheidstydperk van die voordeel—
 - (i) 'n bepaling van hierdie Wet, 'n ander belastingheffings-Wet of die Wet op Doeanebeheer in 'n wesenlike opsig verbreek het; 50
 - (ii) skuldig bevind is aan 'n misdryf ingevolge hierdie Wet, 'n ander belastingheffings-Wet of die Wet op Doeanebeheer; of

31. Kyk ook artikel 486 van die Wet op Doeanebeheer.

32. Kyk ook artikel 501 van die Wet op Doeanebeheer.

33. Rente word ingevolge artikel 45 betaalbaar vanaf die datum waarop die goedere ingevolge Hoofdstuk 6 van die Wet op Doeanebeheer 'n belasting betaalbare status verkry indien die reg nie voor of op die sperdatum betaal word nie.

- (iii) has been convicted of an offence involving fraud or dishonesty; or
(c) any circumstances material to the granting of the benefit have changed, including the legal status, legal identity and financial soundness of the person to whom the benefit has been granted.
- (3) Subsection (2)(b) does not apply if the person to whom the deferment benefit was granted was not a party to, or could not have prevented, or did not benefit in any material respect from, any such breach or offence by such employee, director, administrator or trustee. 5
- (4) If a deferment benefit is suspended or withdrawn the person to whom the deferment benefit was granted must pay any outstanding deferred amounts within three working days from the date of suspension or withdrawal. 10
- (5) If the customs authority intends to suspend or withdraw a deferment benefit in terms of subsection (1) or (2), it must first—
- (a) notify the person to whom the deferment benefit was granted by registered post or secured electronic means of— 15
- (i) the proposed suspension or withdrawal; and
- (ii) the reasons for the proposed suspension or withdrawal; and
- (b) give the person to whom the deferment benefit was granted an opportunity to submit representations on the proposed suspension or withdrawal within three working days of the date the notification referred to in paragraph (a) was posted or transmitted to the person, read with section 908 of the Customs Control Act.³⁴ 20
- (6) Despite subsection (5), the customs authority may suspend a deferment benefit with immediate effect if circumstances so demand, and in such a case the person to whom the deferment benefit was granted is entitled to submit to the customs authority representations on the suspension within three working days after the deferment benefit has been suspended, read with section 908 of the Customs Control Act.³⁵ 25
- (7) If the customs authority decides to suspend or withdraw a deferment benefit, the customs authority must—
- (a) notify the person to whom the deferment benefit was granted of the decision in accordance with section 912 of the Customs Control Act, indicating— 30
- (i) the period for which the benefit is suspended; or
- (ii) the date from which the benefit is withdrawn; and
- (b) in the notification draw the person's attention to the fact that an appeal may be lodged against the decision in terms of Part 3 of Chapter 37 of the Customs Control Act, if such appeal is available in the circumstances of the decision. 35

Part 2

Payment and recovery of duty

Duty constitutes debt to Commissioner for credit of National Revenue Fund

26. Any duty payable in terms of this Act— 40
- (a) is a debt owed to the Commissioner for credit of the National Revenue Fund; and
- (b) must be paid to or recovered by the Commissioner in accordance with this Chapter and any other applicable provisions of this Act³⁶ and the Customs Control Act. 45

Payment of import duty on dutiable goods cleared for home use

27. (1) Import duty payable on imported dutiable goods being cleared for home use under Chapter 8 of the Customs Control Act or for a customs procedure referred to in section 22(1)(b) must be paid by the person clearing the goods.³⁷

34. Section 228 makes section 908 of the Customs Control Act applicable to this Act.

35. Section 228 makes section 908 of the Customs Control Act applicable to this Act.

36. See section 223 if debt is not paid on or before the due date.

37. See section 166 of the Customs Control Act for person clearing goods.

- (iii) skuldig bevind is aan 'n misdryf waarby bedrog of oneerlikheid betrokke was; of
- (c) enige omstandighede wat wesenlik tot die toestaan van die voordeel was, verander het, met inbegrip van die regstatus, regsidentiteit en finansiële omstandighede van die persoon aan wie die voordeel verleen is. 5
- (3) Subartikel (2)(b) is nie van toepassing nie indien die persoon aan wie die voordeel verleen is, nie betrokke was by so 'n breuk of oortreding deur so 'n werknemer, direkteur, administrateur of trustee nie, of dit nie kon verhinder het nie, of nie in enige wesenlike opsig daarby gebaat het nie.
- (4) Indien 'n uitstelvoordeel opgeskort of ingetrek word, moet die persoon aan wie die uitstelvoordeel verleen is, enige uitstaande uitgestelde bedrae binne drie werksdae vanaf die datum van opskorting of intrekking betaal. 10
- (5) Indien die doeanegesag beoog om 'n uitstelvoordeel ingevolge subartikel (1) of (2) op te skort of in te trek, moet die doeanegesag eers—
- (a) die persoon aan wie die uitstelvoordeel toegeken is by wyse van geregistreerde pos of veilige elektroniese verbinding in kennis stel van— 15
- (i) die voorgenome opskorting of intrekking; en
- (ii) die redes vir die voorgenome opskorting of intrekking; en
- (b) aan die persoon aan wie die uitstelvoordeel verleen is 'n geleentheid bied om verhoër oor die voorgenome opskorting of intrekking te rig binne drie werksdae vanaf die datum waarop die kennisgewing bedoel in paragraaf (a) aan die persoon gepos of versend is, saamgelees met artikel 908 van die Wet op Doeanebeheer.³⁴ 20
- (6) Die doeanegesag kan ondanks subartikel (5) 'n uitstelvoordeel met onmiddellike effek opskort indien omstandighede dit vereis, maar in so 'n geval is die persoon aan wie die uitstelvoordeel verleen is, geregtig om verhoër aan die doeanegesag oor die opskorting te rig binne drie werksdae nadat die voordeel van uitstel opgeskort is, saamgelees met artikel 908 van die Wet op Doeanebeheer.³⁵ 25
- (7) Indien die doeanegesag besluit om 'n uitstelvoordeel op te skort of in te trek, moet die doeanegesag— 30
- (a) die persoon aan wie die uitstelvoordeel verleen is ooreenkomstig artikel 912 van die Wet op Doeanebeheer van die besluit in kennis stel, en aandui—
- (i) vir watter tydperk die voordeel opgeskort word; of
- (ii) van watter datum af die voordeel ingetrek word; en
- (b) in die kennisgewing die persoon se aandag vestig op die feit dat appèl ingevolge Hoofstuk 37 van die Wet op Doeanebeheer teen die besluit aangeteken kan word, indien so 'n appèl in die omstandighede van die besluit beskikbaar is. 35

Deel 2

Betaling en verhaal van reg 40

Reg vestig skuld aan Kommissaris ten bate van Nasionale Inkomstefonds

26. Enige reg ingevolge hierdie Wet betaalbaar—
- (a) is 'n skuld aan die Kommissaris verskuldig ten bate van die Nasionale Inkomstefonds; en
- (b) moet betaal word aan, of verhaal word deur, die Kommissaris ooreenkomstig hierdie Hoofstuk en enige ander tersaaklike bepalings van hierdie Wet³⁶ en die Wet op Doeanebeheer. 45

Betaling van invoerreg op belasbare goedere geklaar vir binnelandse gebruik

27. (1) Invoerreg betaalbaar op ingevoerde belasbare goedere wat geklaar word vir binnelandse gebruik kragtens Hoofstuk 8 van die Wet op Doeanebeheer of vir 'n doeaneprosedure bedoel in artikel 22(1)(b), moet betaal word deur die persoon wat die goedere klaar.³⁷ 50

34. Artikel 228 maak artikel 908 van die Wet op Doeanebeheer op hierdie Wet van toepassing.

35. Artikel 228 maak artikel 908 van die Wet op Doeanebeheer op hierdie Wet van toepassing.

36. Kyk artikel 223 wanneer skuld nie betaal is voor of op die sperdatum vir betaling nie.

37. Kyk artikel 166 van die Wet op Doeanebeheer vir die persoon wat goedere klaar.

- (2) If the duty on the goods is not paid on or before the due date, the Commissioner may recover the duty from—
- (a) the person who is in terms of subsection (1) obliged to pay the duty and who failed to pay the duty;
 - (b) any person who is an importer in relation to the goods, or if that person is not located in the Republic,³⁸ from— 5
 - (i) that person; or
 - (ii) the registered agent of that person representing that person in the Republic;
 - (c) a person who, at the time of clearance of the goods, is the owner of the goods, or if that person is not located in the Republic, from— 10
 - (i) that person; or
 - (ii) the registered agent of that person representing that person in the Republic;
 - (d) a customs broker who submitted the clearance declaration in respect of the goods, subject to section 39; or 15
 - (e) any security covering those goods provided by any of the persons referred to in paragraphs (a), (b), (c) and (d).

Recovery of import duty when dutiable goods imported or off-loaded otherwise than through or at place of entry are regarded cleared for home use 20

- 28.** (1) If dutiable goods imported otherwise than through, or off-loaded otherwise than at, a place of entry, are in terms of section 42(2) of the Customs Control Act for tax purposes regarded to be cleared for home use under Chapter 8 of that Act, the Commissioner must demand payment of any import duty payable on the goods³⁹—
- (a) from the person who, whilst in physical control of the goods, committed the breach of the Customs Control Act, or was responsible for the act,⁴⁰ on account of which the goods were regarded to be cleared for home use; 25
 - (b) if the person referred to in paragraph (a) is a carrier not located in the Republic,⁴¹ from—
 - (i) that carrier; or 30
 - (ii) the registered agent of that carrier representing that carrier in the Republic; or
 - (c) from any person who is an importer in relation to the goods, or if that person is not located in the Republic, from—
 - (i) that person; or 35
 - (ii) the registered agent of that person representing that person in the Republic.
- (2) If the duty on the goods is not paid on or before the due date, the Commissioner may recover the duty from—
- (a) the person from whom payment of the duty was demanded in terms of subsection (1) and who failed to pay the duty; 40
 - (b) any other person referred to in subsection (1); or
 - (c) any security covering those goods provided by any of the persons referred to in subsection (1).

Recovery of import duty when non-cleared dutiable goods are regarded cleared for home use 45

- 29.** (1) If no clearance declaration is in terms of section 90(1) or (3) of the Customs Control Act submitted in respect of imported dutiable goods to which section 89 of that Act applies within the period or at the time applicable to the goods, or if the goods are diverted for home use before the expiry of that period, and the goods are in terms of section 92(1) of that Act for tax purposes regarded to be cleared for home use under 50

38. See section 1(3)(a) of the Customs Control Act.
39. See section 152(2) of the Customs Control Act.
40. See section 1(4).
41. See section 1(3)(a) of the Customs Control Act.

- (2) Indien die reg op die goedere nie betaal word voor die sperdatum vir betaling nie, kan die Kommissaris die reg verhaal van—
- (a) die persoon wat ingevolge subartikel (1) verplig is om die reg te betaal en wat versuim het om die reg te betaal;
 - (b) enige persoon wat 'n invoerder met betrekking tot die goedere is of, indien daardie persoon nie in die Republiek gesetel is nie,³⁸ van—
 - (i) daardie persoon; of
 - (ii) die geregistreerde agent van daardie persoon wat daardie persoon in die Republiek verteenwoordig;
 - (c) 'n persoon wat, tydens klaring van die goedere, die eienaar van die goedere is of, indien daardie persoon nie in die Republiek gesetel is nie, van—
 - (i) daardie persoon; of
 - (ii) die geregistreerde agent van daardie persoon wat daardie persoon in die Republiek verteenwoordig;
 - (d) 'n doeanemakelaar wat die klaringsbrief ten opsigte van die goedere ingedien het, behoudens artikel 39; of
 - (e) enige sekuriteit wat ter dekking van daardie goedere gestel is deur enige van die persone bedoel in paragrawe (a), (b), (c) en (d).

Verhaling van invoerreg wanneer belasbare goedere ingevoer of afgelaai anders as deur of by plek van toegang geag word vir binnelandse gebruik geklaar te wees 20

- 28.** (1) Indien belasbare goedere ingevoer anders as deur, of afgelaai anders as by, 'n plek van toegang ingevolge artikel 42(2) van die Wet op Doeanebeheer vir belastingdoeleindes geag word vir binnelandse gebruik kragtens Hoofstuk 8 van daardie Wet geklaar te wees, moet die Kommissaris betaling van enige invoerreg betaalbaar op die goedere³⁹ eis—
- (a) van enige persoon wat, terwyl daardie persoon in fisiese beheer van die goedere was, die breuk van die Wet op Doeanebeheer begaan het, of verantwoordelik was vir die handeling,⁴⁰ op grond waarvan die goedere geag word vir binnelandse gebruik geklaar te wees;
 - (b) indien die persoon bedoel in paragraaf (a) 'n vervoerder is wat nie in die Republiek gesetel is nie,⁴¹ van—
 - (i) daardie vervoerder; of
 - (ii) die geregistreerde agent van daardie vervoerder wat die vervoerder in die Republiek verteenwoordig; of
 - (c) van enige persoon wat 'n invoerder met betrekking tot die goedere is of, indien daardie persoon nie in die Republiek gesetel is nie, van—
 - (i) daardie persoon; of
 - (ii) die geregistreerde agent van daardie persoon wat daardie persoon in die Republiek verteenwoordig.
- (2) Indien die reg op die goedere nie betaal word op of voor die sperdatum vir betaling nie, kan die Kommissaris die reg verhaal van—
- (a) die persoon van wie betaling van die reg ingevolge subartikel (1) geëis is en wat versuim het om die reg te betaal;
 - (b) enige ander persoon in subartikel (1) bedoel; of
 - (c) enige sekuriteit wat ter dekking van daardie goedere gestel is deur enige van die persone in subartikel (1) bedoel.

Verhaling van invoerreg wanneer nie-geklaarde belasbare goedere geag word vir binnelandse gebruik geklaar te wees

- 29.** (1) Indien geen klaringsbrief ingevolge artikel 90(1) of (3) van die Wet op Doeanebeheer ten opsigte van ingevoerde belasbare goedere waarop artikel 89 van daardie Wet van toepassing is, ingedien is binne die tydperk of op die tyd van toepassing op die goedere nie, of indien die goedere voor die verstryking van daardie tydperk afgewend is vir binnelandse gebruik, en die goedere vir belastingdoeleindes geag word

38. Kyk artikel 1(3)(a) van die Wet op Doeanebeheer.
39. Kyk artikel 152(2) van die Wet op Doeanebeheer.
40. Kyk artikel 1(4).
41. Kyk artikel 1(3)(a) van die Wet op Doeanebeheer.

Chapter 8 of that Act, the Commissioner must demand payment of any import duty payable on the goods⁴² from—

- (a) any person who is an importer in relation to the goods, or if that person is not located in the Republic,⁴³ from—
 - (i) that person; or 5
 - (ii) the registered agent of that person representing that person in the Republic; or
- (b) the person who, whilst in physical control of the goods, committed the breach of the Customs Control Act, or was responsible for the act,⁴⁴ on account of which the goods were regarded to be cleared for home use. 10

(2) If the duty on the goods is not paid on or before the due date, the Commissioner may recover the duty from—

- (a) the person from whom payment of the duty was demanded in terms of subsection (1) and who failed to pay the duty;
- (b) any other person referred to in subsection (1); or 15
- (c) any security covering those goods provided by any of the persons referred to in subsection (1).

Recovery of import duty when dutiable goods under customs procedure are regarded cleared for home use

30. (1) If imported dutiable goods under a customs procedure, other than the stores procedure, are in terms of a provision of the Customs Control Act⁴⁵ for tax purposes regarded to be cleared for home use under Chapter 8 of that Act, the Commissioner must demand payment of any import duty payable on the goods—

- (a) from the person who cleared or is clearing the goods for that customs procedure; 25
- (b) from the person who, whilst in physical control of the goods, committed the breach of the Customs Control Act, or was responsible for the act,⁴⁶ on account of which the goods were regarded to be cleared for home use;
- (c) if the person referred to in paragraph (b) is a carrier not located in the Republic,⁴⁷ from— 30
 - (i) that carrier; or
 - (ii) the registered agent of that carrier representing that carrier in the Republic;
- (d) from any person who is an importer in relation to the goods, or if that person is not located in the Republic, from— 35
 - (i) that person; or
 - (ii) the registered agent of that person representing that person in the Republic;
- (e) from a person who, at the time of clearance of the goods for that customs procedure, is the owner of the goods, or if that person is not located in the Republic, from— 40
 - (i) that person; or
 - (ii) the registered agent of that person representing that person in the Republic; or
- (f) from a customs broker who submitted the clearance declaration in respect of the goods, subject to section 39. 45

(2) If the duty on the goods is not paid on or before the due date, the Commissioner may recover the duty from—

- (a) the person from whom payment of the duty was demanded in terms of subsection (1) and who failed to pay the duty; 50
- (b) any other person referred to in subsection (1); or

42. See section 153(2) of the Customs Control Act.

43. See section 1(3)(a) of the Customs Control Act.

44. See section 1(4).

45. See section 112 of the Customs Control Act.

46. See section 1(4).

47. See section 1(3)(a) of the Customs Control Act.

- vir binnelandse gebruik ingevolge Hoofstuk 8 van daardie Wet geklaar te wees, moet die Kommissaris betaling van enige invoerreg betaalbaar op die goedere⁴² eis van—
- (a) enige persoon wat 'n invoerder met betrekking tot die goedere is, of indien daardie persoon nie in die Republiek gesetel is⁴³ nie, van—
 - (i) daardie persoon; of 5
 - (ii) die geregistreerde agent van daardie persoon wat daardie persoon in die Republiek verteenwoordig; of
 - (b) die persoon wat, terwyl in fisiese beheer van die goedere, die breuk van die Wet op Doeanereg begaan het, of verantwoordelik was vir die handeling,⁴⁴ op grond waarvan die goedere geag word vir binnelandse gebruik geklaar te wees. 10
- (2) Indien die reg op die goedere nie betaal word op of voor die sperdatum vir betaling nie, kan die Kommissaris die reg verhaal van—
- (a) die persoon van wie betaling van die reg ingevolge subartikel (1) geëis is en wat versuim het om die reg te betaal; 15
 - (b) enige ander persoon in subartikel (1) bedoel; of
 - (c) enige sekuriteit wat ter dekking van daardie goedere gestel is deur enige van die persone bedoel in subartikel (1).

Verhaling van invoerreg wanneer belasbare goedere onder doeaneprosedure geag word vir binnelandse gebruik geklaar te wees 20

- 30.** (1) Indien ingevoerde belasbare goedere onder 'n doeaneprosedure, behalwe die voorradeprosedure, ingevolge 'n bepaling van die Wet op Doeanereg⁴⁵ vir belastingdoeleindes geag word vir binnelandse gebruik kragtens Hoofstuk 8 van daardie Wet geklaar te wees, moet die Kommissaris betaling van enige invoerreg betaalbaar op die goedere eis— 25
- (a) van die persoon wat die goedere vir daardie doeaneprosedure geklaar het of klaar;
 - (b) van die persoon wat, terwyl daardie persoon in fisiese beheer van die goedere was, die breuk van die Wet op Doeanereg begaan het, of verantwoordelik was vir die handeling,⁴⁶ op grond waarvan die goedere geag word vir binnelandse gebruik geklaar te wees; 30
 - (c) indien die persoon bedoel in paragraaf (b) 'n vervoerder is wat nie in die Republiek gesetel is⁴⁷ nie, van—
 - (i) daardie vervoerder; of
 - (ii) die geregistreerde agent van daardie vervoerder wat daardie vervoerder in die Republiek verteenwoordig; 35
 - (d) van enige persoon wat 'n invoerder met betrekking tot die goedere is, of indien daardie persoon nie in die Republiek gesetel is nie, van—
 - (i) daardie persoon; of
 - (ii) die geregistreerde agent van daardie persoon wat daardie persoon in die Republiek verteenwoordig; 40
 - (e) van 'n persoon wat ten tye van die klaring van die goedere vir daardie doeaneprosedure die eienaar van die goedere is, of indien so iemand nie in die Republiek gesetel is nie, van—
 - (i) daardie persoon; of 45
 - (ii) die geregistreerde agent van daardie persoon wat daardie persoon in die Republiek verteenwoordig; of
 - (f) van 'n doeanemakelaar wat die klaringsbrief ten opsigte van die goedere ingedien het, behoudens artikel 39.
- (2) Indien die reg op die goedere nie betaal word op of voor die sperdatum vir betaling nie, kan die Kommissaris die reg verhaal van— 50
- (a) die persoon van wie betaling van die reg ingevolge subartikel (1) geëis is en wat versuim het om die reg te betaal;
 - (b) enige ander persoon in subartikel (1) bedoel; of

42. Kyk artikel 153(2) van die Wet op Doeanereg.

43. Kyk artikel 1(3)(a) van die Wet op Doeanereg.

44. Kyk artikel 1(4).

45. Kyk artikel 112 van die Wet op Doeanereg.

46. Kyk artikel 1(4).

47. Kyk artikel 1(3)(a) van die Wet op Doeanereg.

- (c) any security covering those goods provided—
 - (i) by any of the persons referred to in subsection (1); or
 - (ii) in the case of goods cleared for the temporary admission procedure in terms of international customs arrangements, by the guaranteeing association which guaranteed the CPD or ATA carnet in terms of which the goods were or are being cleared. 5

Recovery of import duty when dutiable goods under stores procedure are regarded cleared for home use

31. (1) If imported dutiable goods under the stores procedure on board a foreign-going vessel or aircraft or cross-border train referred to in section 334(2) of the Customs Control Act, are in terms of section 112, 356 or 357 of that Act for tax purposes regarded to be cleared for home use under Chapter 8 of that Act, the Commissioner must demand payment of any import duty payable on the goods from— 10

- (a) the on-board operator of the vessel, aircraft or train; or
- (b) the carrier in charge of the vessel, aircraft or train, or if the carrier is not located in the Republic,⁴⁸ from— 15
 - (i) that carrier; or
 - (ii) the registered agent of that carrier representing that carrier in the Republic.

(2) If the duty on the goods referred to in subsection (1) is not paid on or before the due date, the Commissioner may recover the duty from— 20

- (a) the person from whom payment of the duty was demanded in terms of subsection (1) and who failed to pay the duty;
- (b) any other person referred to in subsection (1); or
- (c) any security covering those goods provided by any of the persons referred to in subsection (1). 25

(3) If imported dutiable goods not in free circulation and cleared for supply under the stores procedure, but not yet supplied, to a foreign-going vessel or aircraft or cross-border train referred to in section 334(2) of the Customs Control Act, are in terms of section 112 of that Act for tax purposes regarded to be cleared for home use under Chapter 8 of that Act, the Commissioner must demand payment of any import duty payable on the goods from— 30

- (a) the person who cleared or is clearing the goods for the stores procedure;
- (b) the person who, whilst in physical control of the goods, committed the breach of the Customs Control Act, or was responsible for the act,⁴⁹ on account of which the goods were regarded to have been cleared for home use; or 35
- (c) a customs broker who submitted the clearance declaration in respect of the goods, subject to section 39.

(4) If the duty on the goods referred to in subsection (3) is not paid on or before the due date, the Commissioner may recover the duty from— 40

- (a) the person from whom payment of the duty was demanded in terms of subsection (3) and who failed to pay the duty;
- (b) any other person referred to in subsection (3); or
- (c) any security covering those goods provided by any of the persons referred to in subsection (3). 45

Payment of export duty on dutiable goods cleared for outright export or customs procedure attracting export duty

32. (1) Export duty payable on dutiable goods being cleared for outright export or a customs procedure referred to in section 23(1)(b) must be paid by the person clearing the goods.⁵⁰ 50

(2) If the duty on the goods is not paid on or before the due date, the Commissioner may recover the duty from—

48. See section 1(3)(a) of the Customs Control Act.
49. See section 1(4).
50. See section 166 of the Customs Control Act for person clearing goods.

- (c) enige sekuriteit wat ter dekking van daardie goedere gestel is—
 - (i) deur enige van die persone bedoel in subartikel (1); of
 - (ii) in die geval van goedere geklaar ingevolge internasionale doeanereëlings vir die prosedure vir tydelike toegang, deur die vrywaringsvereniging wat die CPD of ATA carnet ingevolge waarvan die goedere geklaar is of word, gewaarborg het. 5

Verhaling van invoerreg wanneer belasbare goedere onder voorradeprosedure geag word vir binnelandse gebruik geklaar te wees

31. (1) Indien ingevoerde belasbare goedere onder die voorradeprosedure aan boord van 'n land-uitgaande vaartuig of vliegtuig of oor-grens trein bedoel in artikel 334(2) van die Wet of Doeanebeheer ingevolge artikel 112, 356 of 357 van daardie Wet vir belastingdoeleindes geag word vir binnelandse gebruik kragtens Hoofstuk 8 van daardie Wet geklaar te wees, moet die Kommissaris betaling van enige invoerreg betaalbaar op die goedere eis van—

- (a) die aanboord operateur van die vaartuig, vliegtuig of trein; of 15
- (b) die vervoerder in beheer van die vaartuig, vliegtuig of trein of, indien die vervoerder nie in die Republiek gesetel is nie,⁴⁸ van—
 - (i) daardie vervoerder; of
 - (ii) die geregistreerde agent van daardie vervoerder wat daardie vervoerder in die Republiek verteenwoordig. 20

(2) Indien die reg op die goedere bedoel in subartikel (1) nie betaal is op of voor die sperdatum vir betaling nie, kan die Kommissaris die reg verhaal van—

- (a) die persoon van wie betaling van die reg ingevolge subartikel (1) geëis is en wat versuim het om die reg te betaal;
- (b) enige ander persoon in subartikel (1) bedoel; of 25
- (c) enige sekuriteit wat ter dekking van daardie goedere gestel is deur enige van die persone in subartikel (1) bedoel.

(3) Indien ingevoerde belasbare goedere nie in vry sirkulasie nie en geklaar onder die voorradeprosedure vir verskaffing, maar wat nog nie verskaf is nie, aan 'n land-uitgaande vaartuig of vliegtuig of oor-grens trein bedoel in artikel 334(2) van die Wet op Doeanebeheer, ingevolge artikel 112 van daardie Wet vir belastingdoeleindes geag word vir binnelandse gebruik kragtens Hoofstuk 8 van daardie Wet geklaar te wees, moet die Kommissaris betaling van enige invoerreg betaalbaar op die goedere eis van—

- (a) die persoon wat die goedere vir die voorradeprosedure geklaar het, of klaar;
- (b) iemand wat, terwyl in fisiese beheer van die goedere, die breuk van die Wet op Doeanebeheer begaan het, of verantwoordelik was vir die handeling,⁴⁹ op grond waarvan die goedere geag word vir binnelandse gebruik geklaar te wees; of 35
- (c) 'n doeanemakelaar wat die klaringsbrief ten opsigte van die goedere ingedien het, behoudens artikel 39. 40

(4) Indien die reg op die goedere bedoel in subartikel (3) nie betaal is op of voor die sperdatum vir betaling nie, kan die Kommissaris die reg verhaal van—

- (a) die persoon van wie betaling van die reg ingevolge subartikel (3) geëis is en wat versuim het om die reg te betaal;
- (b) enige ander persoon in subartikel (3) bedoel; of 45
- (c) enige sekuriteit wat ter dekking van daardie goedere gestel is deur enige van die persone in subartikel (3) bedoel.

Betaling van uitvoerreg op belasbare goedere geklaar vir regstreekse uitvoer of doeaneprosedures wat goedere aan uitvoerreg blootstel

32. (1) Uitvoerreg betaalbaar op belasbare goedere wat vir regstreekse uitvoer of 'n doeaneprosedure bedoel in artikel 23(1)(b) geklaar word, moet betaal word deur die persoon wat die goedere klaar.⁵⁰ 50

(2) Indien die reg op die goedere nie betaal word op of voor die sperdatum vir betaling nie, kan die Kommissaris die reg verhaal van—

48. Kyk artikel 1(3)(a) van die Wet op Doeanebeheer.

49. Kyk artikel 1(4).

50. Kyk artikel 166 van die Wet op Doeanebeheer vir die persoon wat goedere klaar.

- (a) the person who is in terms of subsection (1) obliged to pay the duty and who failed to pay the duty;
- (b) any person who is an exporter in relation to the goods, or if that person is not located in the Republic,⁵¹ from that person or the registered agent of that person representing that person in the Republic; 5
- (c) a person who, at the time of clearance of the goods, is the owner of the goods, or if that person is not located in the Republic, from that person or the registered agent of that person representing that person in the Republic;
- (d) a customs broker who submitted the clearance declaration in respect of the goods, subject to section 39; or 10
- (e) any security covering those goods provided by any of the persons referred to in paragraphs (a), (b), (c) and (d).

Recovery of export duty when dutiable goods exported or loaded otherwise than through or at place of exit are regarded cleared for outright export

33. (1) If dutiable goods exported or in the process of being exported otherwise than through, or loaded otherwise than at, a place of exit, are in terms of section 42(3) of the Customs Control Act for tax purposes regarded to be cleared for outright export, the Commissioner must demand payment of any export duty payable on the goods⁵²— 15

- (a) from the person who whilst in physical control of the goods committed the breach of the Customs Control Act, or was responsible for the act,⁵³ on account of which the goods were regarded to be cleared for outright export; 20
- (b) if the person referred to in paragraph (a) is a carrier not located in the Republic,⁵⁴ from—
 - (i) that carrier; or
 - (ii) the registered agent of that carrier representing that carrier in the Republic; or 25
- (c) from any person who is an exporter in relation to the goods, or if that person is not located in the Republic, from—
 - (i) that person; or
 - (ii) the registered agent of that person representing that person in the Republic. 30

(2) If the duty on the goods is not paid on or before the due date, the Commissioner may recover the duty from—

- (a) the person from whom payment of the duty was demanded in terms of subsection (1) and who failed to pay the duty; 35
- (b) any other person referred to in subsection (1); or
- (c) any security covering those goods provided by any of the persons referred to in subsection (1).

Recovery of export duty when non-cleared dutiable goods in free circulation are regarded cleared for outright export 40

34. (1) If dutiable goods in free circulation that have been exported or are being exported without clearance as required by sections 93 and 94 of the Customs Control Act, are in terms of section 96(1)(b) of that Act for tax purposes regarded to be cleared for outright export, the Commissioner must demand payment of any export duty payable on the goods⁵⁵ from— 45

- (a) any person who is an exporter in relation to the goods, or if that person is not located in the Republic,⁵⁶ from—
 - (i) that person; or

51. See section 1(3)(a) of the Customs Control Act.
52. See section 157(2) of the Customs Control Act.
53. See section 1(4).
54. See section 1(3)(a) of the Customs Control Act.
55. See section 158(2) of the Customs Control Act.
56. See section 1(3)(a) of the Customs Control Act.

- (a) die persoon wat ingevolge subartikel (1) verplig is om die reg te betaal en wat versuim het om die reg te betaal;
- (b) 'n persoon wat 'n uitvoerder met betrekking tot die goedere is of, indien so 'n persoon nie in die Republiek gesetel is nie,⁵¹ van daardie persoon of die geregistreerde agent van daardie persoon wat daardie persoon in die Republiek verteenwoordig; 5
- (c) 'n persoon wat ten tye van klaring van die goedere die eienaar van die goedere is of, indien daardie persoon nie in die Republiek gesetel is nie, van daardie persoon of die geregistreerde agent van daardie persoon wat daardie persoon in die Republiek verteenwoordig; 10
- (d) 'n doeanemakelaar wat die klaringsbrief ten opsigte van die goedere ingedien het, behoudens artikel 39; of
- (e) enige sekuriteit wat ter dekking van daardie goedere gestel is deur enige van die persone in paragraawe (a), (b), (c) en (d) bedoel.

Verhaling van uitvoerreg wanneer belasbare goedere uitgevoer of gelaai anders as deur of by plek van uitgang geag word vir regstreekse uitvoer geklaar te wees 15

33. (1) Indien belasbare goedere wat uitgevoer, in die proses van uitvoer, of gelaai is anders as deur of by 'n plek van uitgang, vir belastingdoeleindes ingevolge artikel 42(3) van die Wet op Doeanebeheer geag word vir regstreekse uitvoer geklaar te wees, moet die Kommissaris betaling van enige uitvoerreg betaalbaar op die goedere⁵² eis— 20

- (a) van die persoon wat, terwyl daardie persoon in fisiese beheer van die goedere was, die breuk van die Wet op Doeanebeheer begaan het, of verantwoordelik was vir die handeling,⁵³ op grond waarvan die goedere geag word vir regstreekse uitvoer geklaar te wees;
- (b) indien die persoon bedoel in paragraaf (a) 'n vervoerder is wat nie in die Republiek gesetel⁵⁴ is nie, van— 25
 - (i) daardie persoon; of
 - (ii) die geregistreerde agent van daardie persoon wat daardie persoon in die Republiek verteenwoordig; of
- (c) van enige persoon wat 'n uitvoerder ten opsigte van die goedere is of, indien daardie persoon nie in die Republiek gesetel is nie, van— 30
 - (i) daardie persoon; of
 - (ii) die geregistreerde agent van daardie persoon wat daardie persoon in die Republiek verteenwoordig.

(2) Indien die reg op die goedere nie betaal is op of voor die sperdatum vir betaling nie, kan die Kommissaris die reg verhaal van— 35

- (a) die persoon van wie betaling van die reg ingevolge subartikel (1) geëis is en wat versuim het om die reg te betaal;
- (b) enige ander persoon in subartikel (1) bedoel; of
- (c) enige sekuriteit wat ter dekking van daardie goedere gestel is deur enige van die persone in subartikel (1) bedoel. 40

Verhaling van uitvoerreg wanneer nie-geklaarde belasbare goedere in vry sirkulasie geag word vir regstreekse uitvoer geklaar te wees

34. (1) Indien belasbare goedere in vry sirkulasie wat sonder klaring soos vereis ingevolge artikels 93 en 94 van die Wet op Doeanebeheer uitgevoer of in die proses van uitvoer is, vir belastingdoeleindes ingevolge artikel 96(1)(b) van daardie Wet geag word vir regstreekse uitvoer geklaar te wees, moet die Kommissaris betaling van enige uitvoerreg betaalbaar op die goedere⁵⁵ eis van— 45

- (a) enige persoon wat 'n uitvoerder met betrekking tot die goedere is of, indien so 'n persoon nie in die Republiek gesetel⁵⁶ is nie, van— 50
 - (i) daardie persoon; of

51. Kyk artikel 1(3)(a) van die Wet op Doeanebeheer.
52. Kyk artikel 157(2) van die wet op Doeanebeheer.
53. Kyk artikel 1(4).
54. Kyk artikel 1(3)(a).
55. Kyk artikel 158(2) van die Wet of Doeanebeheer.
56. Kyk artikel 1(3)(a) van die Wet op Doeanebeheer.

- (ii) the registered agent of that person representing that person in the Republic; or
 - (b) the person who whilst in physical control of the goods committed the breach of the Customs Control Act, or was responsible for the act,⁵⁷ on account of which the goods were regarded to be cleared for outright export. 5
- (2) If the duty on the goods is not paid on or before the due date, the Commissioner may recover the duty from—
- (a) the person from whom payment of the duty was demanded in terms of subsection (1) and who failed to pay the duty;
 - (b) any other person referred to in subsection (1); or 10
 - (c) any security covering those goods provided by any of the persons referred to in subsection (1).

Recovery of export duty when dutiable goods under customs procedure are regarded cleared for outright export

- 35.** (1) If dutiable goods exported or in the process of being exported under a customs procedure⁵⁸ are in terms of section 114⁵⁹ of the Customs Control Act for tax purposes regarded to be cleared for outright export, the Commissioner must demand payment of any export duty payable on the goods from— 15
- (a) the person who cleared or is clearing the goods for that customs procedure;
 - (b) any person who is an exporter in relation to the goods, or if that person is not located in the Republic,⁶⁰ from— 20
 - (i) that person; or
 - (ii) the registered agent of that person representing that person in the Republic; or
 - (c) a customs broker who submitted the clearance declaration in respect of the goods, subject to section 39. 25
- (2) If the duty on the goods is not paid on or before the due date, the Commissioner may recover the duty from—
- (a) the person from whom payment of the duty was demanded in terms of subsection (1) and who failed to pay the duty; 30
 - (b) any other person referred to in subsection (1); or
 - (c) any security covering those goods provided—
 - (i) by any of the persons referred to in subsection (1); or
 - (ii) in the case of goods cleared for the temporary export procedure in terms of international customs arrangements, by the guaranteeing association which guaranteed the CPD or ATA carnet in terms of which the goods were or are being cleared. 35
- (3) If compensating products obtained from goods under the outward processing procedure lose their tax free status as outward processed compensating products in terms of section 473 of the Customs Control Act, any import duty payable on the compensating products as imported goods must be paid in accordance with section 27. 40

Joint and several liability for payment of duty

- 36.** (1) When applying sections 27 to 35, the persons mentioned in any of those sections are jointly and severally liable towards the Commissioner for the payment of a duty payable on dutiable goods, and the Commissioner may recover the duty from any one or more or all of those persons. 45
- (2) Subsection (1) must in the case of customs brokers be applied subject to section 39.

57. See section 1(4).

58. This relates more specifically to goods exported under the temporary export or outward processing procedures.

59. See also sections 404 or 471 of the Customs Control Act.

60. See section 1(3)(a) of the Customs Control Act.

- (ii) die geregistreerde agent van daardie persoon wat daardie persoon in die Republiek verteenwoordig; of
 - (b) die persoon wat, terwyl daardie persoon in fisiese beheer van die goedere was, die breuk van die Wet op Doeanebeheer begaan het, of verantwoordelik was vir die handeling,⁵⁷ op grond waarvan die goedere geag word vir regstreekse uitvoer geklaar te wees. 5
- (2) Indien die reg op die goedere nie betaal word op of voor die sperdatum vir betaling nie, kan die Kommissaris die reg verhaal van—
- (a) die persoon van wie betaling van die reg ingevolge subartikel (1) geëis is en wat versuim het om die reg te betaal; 10
 - (b) enige ander persoon in subartikel (1) bedoel; of
 - (c) enige sekuriteit wat ter dekking van daardie goedere gestel is deur enige van die persone in subartikel (1) bedoel.

Verhaling van uitvoerreg wanneer belasbare goedere onder doeaneprosedure geag word vir regstreekse uitvoer geklaar te wees 15

- 35.** (1) Indien belasbare goedere uitgevoer of in die proses van uitvoer onder 'n doeaneprosedure,⁵⁸ vir belastingdoeleindes ingevolge artikel 114⁵⁹ van die Wet op Doeanebeheer geag word vir regstreekse uitvoer geklaar te wees, moet die Kommissaris betaling van enige uitvoerreg betaalbaar op die goedere eis van—
- (a) die persoon wat die goedere vir daardie doeaneprosedure geklaar het of klaar; 20
 - (b) enige persoon wat 'n uitvoerder met betrekking tot die goedere is of, indien daardie persoon nie in die Republiek gesetel⁶⁰ is nie, van—
 - (i) daardie persoon; of
 - (ii) die geregistreerde agent van daardie persoon wat daardie persoon in die Republiek verteenwoordig; of 25
 - (c) 'n doeanemakelaar wat die klaringsbrief ten opsigte van die goedere ingedien het, behoudens artikel 39.
- (2) Indien die reg op die goedere nie betaal word op of voor die sperdatum vir betaling nie, kan die Kommissaris die reg verhaal van—
- (a) die persoon van wie betaling van die reg ingevolge subartikel (1) geëis is en wat versuim het om die reg te betaal; 30
 - (b) enige ander persoon in subartikel (1) bedoel; of
 - (c) enige sekuriteit wat ter dekking van daardie goedere gestel is—
 - (i) deur enige van die persone in subartikel (1) bedoel; of
 - (ii) in die geval van goedere wat ingevolge internasionale doeanereëlings vir die prosedure vir tydelike uitvoer geklaar is, deur die vrywaringsvereniging wat die CPD of ATA carnet gewaarborg het ingevolge waarvan die goedere geklaar is of word. 35
- (3) Indien kompenenserende produkte verkry van goedere onder die prosedure vir uitwaartse prosessering hul belastingvry status as uitwaarts geprosesseerde kompenenserende produkte ingevolge artikel 473 van die Wet op Doeanebeheer verloor, moet enige invoerreg betaalbaar op die kompenenserende produkte as ingevoerde produkte ooreenkomstig artikel 27 betaal word. 40

Gesamentlike en afsonderlike aanspreeklikheid vir betaling van reg

- 36.** (1) By die toepassing van artikels 27 tot 35 is die persone bedoel in enige van daardie artikels gesamentlik en afsonderlik teenoor die Kommissaris aanspreeklik vir die betaling van 'n reg betaalbaar op belasbare goedere, en die Kommissaris kan die reg van enige een of meer van of al daardie persone verhaal. 45
- (2) Subartikel (1) moet in die geval van doeanemakelaars behoudens artikel 39 toegepas word. 50

57. Kyk artikel 1(4).

58. Hierdie het meer spesifiek betrekking op goedere wat uitgevoer word onder die prosedures vir tydelike uitvoer of uitwaartse prosessering.

59. Kyk ook artikels 404 of 471 van die Wet op Doeanebeheer.

60. Kyk artikel 1(3)(a) van die Wet op Doeanebeheer.

Collection of duty from agent

37. If a person from whom a duty on dutiable goods may be collected in terms of a provision of sections 27 to 35, is not located in the Republic,⁶¹ or fails to pay a duty when required to do so, and has not provided security from which the Commissioner may recover the duty, the Commissioner may recover the duty from— 5
- (a) the registered agent of that person in the Republic;
 - (b) any person who in connection with those goods—
 - (i) acted as, or gave out to be, the agent of that person; or
 - (ii) acted in a fiduciary capacity; or
 - (c) any security covering those goods that was provided by a person referred to in paragraph (a) or (b). 10

Liability of person managing juristic entity

38. (1) If a person from whom a duty may be collected in terms of a provision of sections 27 to 35, is a juristic entity and that juristic entity fails to pay the duty when required to do so, and has not provided security from which the Commissioner may recover the duty, the Commissioner may recover the duty from a person managing the juristic entity, subject to subsection (2). 15
- (2) The Commissioner may proceed to recover the duty from the person managing the juristic entity as contemplated in subsection (1) only—
- (a) after reasonable steps have been taken to recover the duty from the juristic entity itself; and 20
 - (b) if the non-payment of the duty has been the direct result of negligence or mismanagement of the juristic entity's affairs by that person.

Limitation on liability of customs broker

39. (1) A customs broker who submitted a clearance declaration on behalf of another person to clear dutiable goods for home use or a customs procedure does not attract liability for payment of any duty on the goods if it is proved that the customs broker— 25
- (a) was not a party to the failure to pay the duty;
 - (b) when becoming aware of the failure, promptly notified the customs authority; and 30
 - (c) took all reasonable steps to prevent the failure.
- (2) A customs broker who submitted a clearance declaration is not relieved in terms of subsection (1) of liability for payment of a duty if—
- (a) payment of the duty was deferred in terms of a duty deferment benefit granted to the customs broker; 35
 - (b) the customs code or the name and physical address of the person on whose behalf the declaration was submitted is not disclosed on the declaration; or
 - (c) the person on whose behalf the declaration was submitted is not located in the Republic and has no registered agent located in the Republic representing that person in the Republic. 40

Duty collected from security

40. A person liable in terms of a provision of sections 27 to 37 for a duty payable on dutiable goods is absolved from liability towards the Commissioner if the duty is recovered in full from any security covering those goods.

Under-payment of duty 45

41. (1) The Commissioner must, subject to subsections (2) and (3), correct any under-payment⁶² of the amount of a duty payable on dutiable goods by recovering the amount of the under-payment from—

61. See section 1(3)(a) of the Customs Control Act.

62. For refunds of amounts overcharged see section 64.

Invordering van reg van agent

37. (1) Indien 'n persoon van wie 'n reg betaalbaar op belasbare goedere ingevolge 'n bepaling van artikels 27 tot 35 ingevorder kan word, nie in die Republiek gesetel⁶¹ is nie, of versuim om 'n reg te betaal wanneer betaling geëis word, en so iemand nie sekuriteit gestel het waaruit die Kommissaris die reg kan verhaal nie, kan die Kommissaris die reg verhaal van— 5

- (a) die geregistreerde agent van daardie persoon in die Republiek;
- (b) iemand wat in verband met daardie goedere—
 - (i) as agent opgetree het vir, of voorgegee het om die agent te wees van, daardie persoon; of 10
 - (ii) in 'n fidusiëre hoedanigheid opgetree het; of
- (c) enige sekuriteit wat ter dekking van daardie goedere deur 'n persoon bedoel in paragraaf (a) of (b) gestel is. 10

Aanspreeklikheid van persoon wat regsentiteite bestuur

38. (1) Indien 'n persoon van wie 'n reg ingevolge 'n bepaling van artikels 27 tot 35 ingevorder kan word, 'n regsentiteit is en daardie regsentiteit versuim om die reg te betaal wanneer betaling geëis word, en so 'n entiteit nie sekuriteit gestel het waaruit die Kommissaris die reg kan verhaal nie, kan die Kommissaris die reg behoudens subartikel (2) verhaal van 'n persoon wat die regsentiteit bestuur. 15

(2) Die Kommissaris kan die reg van die persoon wat die regsentiteit bestuur soos in subartikel (1) beoog, verhaal slegs— 20

- (a) nadat redelike stappe gedoen is om die reg van die regsentiteit self te verhaal; en
- (b) indien die nie-betaling van die reg die direkte gevolg was van nalatigheid of wanbestuur van die entiteit se sake deur daardie persoon. 25

Beperking van aanspreeklikheid van doeanemakelaar

39. (1) 'n Doeanemakelaar wat 'n klaringsbrief namens iemand anders ingedien het om belasbare goedere te klaar vir binnelandse gebruik of 'n doeaneprosedure, doen nie aanspreeklikheid vir betaling van enige reg op die goedere op nie indien daar bewys word dat die doeanemakelaar— 30

- (a) nie aandadig was aan die versuim om die reg te betaal nie;
- (b) by bewuswording van die versuim, die doeanegesag onverwyld in kennis gestel het; en
- (c) alle redelike stappe gedoen het om die versuim te voorkom.

(2) 'n Doeanemakelaar wat 'n klaringsbrief voorgelê het, is nie ingevolge subartikel (1) van aanspreeklikheid vir betaling van 'n reg onthef nie indien— 35

- (a) betaling van die reg uitgestel is ingevolge 'n voordeel van uitstel van reg wat aan die doeanemakelaar verleen is;
- (b) die doeanekode of die naam en fisiese adres van die persoon namens wie die klaringsbrief ingedien is, nie op die klaringsbrief aangegee word nie; of 40
- (c) die persoon namens wie die klaringsbrief ingedien is, nie in die Republiek gesetel is nie en nie 'n geregistreerde agent gesetel in die Republiek het wat daardie persoon in die Republiek verteenwoordig nie.

Reg ingevorder uit sekuriteit

40. Iemand wat ingevolge 'n bepaling van artikels 27 tot 37 aanpreeklik is vir 'n reg betaalbaar op belasbare goedere, is van aanspreeklikheid teenoor die Kommissaris onthef indien die reg ten volle verhaal word uit enige sekuriteit wat daardie goedere dek. 45

Kort-betaling van reg

41. (1) Die Kommissaris moet, behoudens subartikels (2) en (3), enige kort-betaling⁶² van die bedrag van 'n reg betaalbaar op belasbare goedere regstel deur die bedrag van die kort-betaling te verhaal van— 50

61. Kyk artikel 1(3)(a) van die Wet op Doeanebeheer.

62. Kyk artikel 64 vir terugbetalings van bedrae wat oorverhaal is.

- (a) the person who partially paid the duty;
 - (b) any other person from whom the duty could have been recovered in terms of this Part; or
 - (c) any security covering those goods provided by any of the persons referred to in paragraphs (a) and (b). 5
- (2) If the amount of an under-payment is less than R100, the Commissioner may but is not obliged to recover the under-payment.
- (3) Liability for an under-payment of duty on dutiable goods ceases if the Commissioner's claim in respect of the duty has prescribed.⁶³

When import duty not payable 10

42. No import duty on dutiable goods imported into the Republic is payable—
- (a) to the extent to which relief of duty applies to the goods;
 - (b) whilst those goods are under a customs procedure, to the extent to which that procedure confers a tax free status on the goods in relation to import duty;⁶⁴ or
 - (c) if liability for import duty on those goods has ceased in terms of section 20. 15

When export duty not payable

43. No export duty on dutiable goods destined for export or exported from the Republic is payable—
- (a) to the extent to which relief of duty applies to the goods;
 - (b) to the extent to which the customs procedure under which those goods are exported confers a tax free status⁶⁵ on the goods in relation to export duty; or
 - (c) if liability for export duty on those goods has ceased in terms of section 21. 20

Part 3

Payment and recovery of interest and administrative penalty

Interest and administrative penalty constitute debt to Commissioner for credit of National Revenue Fund 25

44. Any interest in terms of section 45 on the outstanding amount of a duty, any administrative penalty and any interest in terms of section 47 on the outstanding amount of a penalty—
- (a) is a debt owed to the Commissioner for credit of the National Revenue Fund; 30
and
 - (b) must be paid to or recovered by the Commissioner in accordance with this Chapter and any other applicable provisions of this Act.⁶⁶

Interest on outstanding duty

45. (1) (a) If an amount of duty assessed in terms of section 83(2)(a) or (b) or re-assessed in terms of section 85(1)(a) or (b) is not paid on or before the due date, that amount bears interest at a rate determined by the Minister from the date the goods acquired a tax due status in terms of Chapter 6 of the Customs Control Act. 35
- (b) An amount of duty assessed in terms of section 84(1)(a) bears interest at a rate determined by the Minister from the date the goods acquired a tax due status in terms of Chapter 6 of the Customs Control Act. 40

63. The Prescription Act determines the period within which civil actions for amounts owing must be instituted.

64. See Chapter 6 of the Customs Control Act

65. See Chapter 6 of the Customs Control Act.

66. See section 223 if debt is not paid on or before the due date.

- (a) die persoon wat die reg gedeeltelik betaal het;
 - (b) enige ander persoon van wie die reg ingevolge hierdie Deel verhaal kon word; of
 - (c) enige sekuriteit wat ter dekking van daardie goedere gestel is deur enige van die persone in paragrawe (a) en (b) bedoel. 5
- (2) Indien die bedrag van 'n kort-betaling minder as R100 is, kan die Kommissaris die kort-betaling verhaal, maar is nie verplig om dit te doen nie.
- (3) Aanspreeklikheid vir 'n kort-betaling van reg op belasbare goedere verval indien die Kommissaris se eis ten opsigte van die reg verjaar.⁶³

Wanneer invoerreg nie betaalbaar is nie 10

42. Geen invoerreg is op belasbare goedere ingevoer in die Republiek betaalbaar nie—

- (a) insoverre daar verligting van reg op die goedere van toepassing is;
- (b) terwyl daardie goedere onder 'n doeaneprosedure is, insoverre daardie prosedure 'n belastingvry status met betrekking tot invoerreg aan die goedere verleen;⁶⁴ of
- (c) indien aanspreeklikheid vir invoerreg op daardie goedere ingevolge artikel 20 geëindig het. 15

Wanneer uitvoerreg nie betaalbaar is nie

43. Geen uitvoerreg is op belasbare goedere bestem vir uitvoer of uitgevoer uit die Republiek betaalbaar nie— 20

- (a) insoverre daar verligting van reg op die goedere van toepassing is;
- (b) in soverre die doeaneprosedure waaronder daardie goedere uitgevoer word 'n belastingvry status⁶⁵ met betrekking tot uitvoerreg aan die goedere verleen; of
- (c) indien aanspreeklikheid vir uitvoerreg op daardie goedere ingevolge artikel 21 geëindig het. 25

Deel 3

Betaling en verhaling van rente en administratiewe boete

Rente en administratiewe boete vestig skuld aan Kommissaris ten bate van Nasionale Inkomstefonds 30

44. Enige rente ingevolge artikel 45 op die uitstaande bedrag van 'n reg, enige administratiewe boete en enige rente ingevolge artikel 47 op die uitstaande bedrag van 'n boete—

- (a) is 'n skuld verskuldig aan die Kommissaris ten bate van die Nasionale Inkomstefonds; en
- (b) moet betaal word aan of verhaal word deur die Kommissaris ooreenkomstig hierdie Hoofstuk en enige ander tersaaklike bepalings van hierdie Wet.⁶⁶ 35

Rente op uitstaande reg

45. (1) (a) Indien 'n bedrag van reg soos ingevolge artikel 83(2)(a) of (b) aangeslaan of ingevolge artikel 85(1)(a) of (b) heraangeslaan, nie betaal word voor of op die sperdatum vir betaling nie, loop daardie bedrag rente op teen 'n koers deur die Minister bepaal vanaf die datum waarop die goedere ingevolge Hoofstuk 6 van die Wet op Doeanereg 'n belasting betaalbare status verkry het. 40

(b) 'n Bedrag van reg soos ingevolge artikel 84(1)(a) aangeslaan, loop rente op teen 'n koers deur die Minister bepaal vanaf die datum waarop die goedere ingevolge Hoofstuk 6 van die Wet op Doeanereg 'n belasting betaalbare status verkry het. 45

63. Die Wet op Verjaring bepaal die tydperk waarbinne siviele gedinge vir verskuldigde bedrae ingestel moet word.

64. Kyk Hoofstuk 6 van die Wet op Doeanereg.

65. Kyk Hoofstuk 6 van die Wet op Doeanereg.

66. Kyk artikel 223 wanneer skuld nie betaal word op of voor die sperdatum vir betaling nie.

(2) Interest referred to in subsection (1)(a) or (b) must be calculated on daily balances owing and compounded at the end of each month.

(3) (a) Interest on an outstanding amount of duty may be recovered as if that interest is part of that duty.

(b) The provisions of this Act relating to the recovery of duties apply, with any necessary changes as the context may require, to the recovery of interest payable on an outstanding amount of duty. 5

(4) The Commissioner may on good grounds shown and in such circumstances as the Commissioner may determine exempt a person from paying interest for which that person is liable in terms of subsection (1)(a) or (b) or (2). 10

Recovery of administrative penalty

46. (1) If the amount of an administrative penalty, excluding a prosecution avoidance penalty, is not paid on or before the due date, the Commissioner must recover the amount of the penalty, including any interest in terms of section 47 on the outstanding amount of the penalty, from— 15

- (a) the person on whom the penalty was imposed;
- (b) any person who in respect of the goods in connection with which the penalty was imposed—
 - (i) acted as, or gave out to be, the agent of that person; or
 - (ii) acted in a fiduciary capacity; or 20
- (c) any security provided by a person referred to in paragraph (a) or (b) covering the goods in connection with which the penalty was imposed.

(2) If the person referred to in subsection (1)(a) or (b) is a juristic entity and that juristic entity has not provided security, or sufficient security, from which the Commissioner may recover the penalty and any interest, the Commissioner may recover the penalty and any interest from a person managing the juristic entity, subject to subsection (3). 25

(3) The Commissioner may proceed to recover the penalty and any interest from the person managing the juristic entity as contemplated in subsection (2) only—

- (a) after reasonable steps have been taken to recover the penalty and any interest from the juristic entity itself; and 30
- (b) if the non-payment of the penalty and any interest has been the direct result of negligence or mismanagement of the juristic entity's affairs by that person.

Interest on outstanding administrative penalty

47. (1) A fixed amount or fixed percentage penalty owed to the Commissioner in terms of this Act and not paid on or before the due date bears interest from that date at a rate determined by the Minister. 35

(2) Interest determined in terms of subsection (1) must be calculated on daily balances owing and compounded at the end of each month.

(3) Interest on any outstanding amount of an administrative penalty may be recovered as if that interest is part of the penalty. 40

(4) The Commissioner may on good grounds shown exempt a person from paying interest for which that person is liable in terms of subsection (1) or (2).

Under-payment of interest or administrative penalty

48. (1) The Commissioner must, subject to subsection (2), correct any under-payment of any interest or administrative penalty by recovering the amount under-paid from— 45

- (a) the person who partially paid that interest or penalty;
- (b) any other person from whom that interest or penalty could have been recovered in terms of section 45, 46 or 47; or
- (c) any security provided by a person referred to in paragraphs (a) and (b) covering the goods in connection with which the interest or penalty was imposed. 50

(2) If the amount of an under-payment is less than R100, the Commissioner may but is not obliged to recover the under-payment.

(2) Rente bedoel in subartikel (1)(a) of (b) moet bereken word op daaglikse verskuldigde saldo's en aan die einde van elke maand saamgestel word.

(3) (a) Rente op 'n uitstaande bedrag van reg kan verhaal word asof daardie rente deel van daardie reg is.

(b) Die bepalings van hierdie Wet betreffende die verhaling van regte, met enige nodige veranderinge wat die samehang mag vereis, is van toepassing op die verhaling van rente betaalbaar op 'n uitstaande bedrag van reg. 5

(4) Die Kommissaris kan iemand, by die aanvoer van goeie gronde en in dié omstandighede wat die Kommissaris mag bepaal, onthef van betaling van rente waarvoor so iemand ingevolge subartikel (1)(a) of (b) of (2) aanspreeklik is. 10

Verhaling van administratiewe boete

46. (1) Indien die bedrag van 'n administratiewe boete, behalwe 'n boete ter vermyding van vervolging, nie betaal is op of voor die sperdatum vir betaling nie, moet die Kommissaris die bedrag van die boete, tesame met enige rente ingevolge artikel 47 uitstaande op die bedrag van die boete, verhaal van— 15

(a) die persoon aan wie die boete opgelê is;

(b) enige persoon wat ten opsigte van die goedere in verband waarmee die boete opgelê is—

(i) as agent opgetree het vir, of voorgegee het om die agent te wees van, daardie persoon; of 20

(ii) in 'n fidusiêre hoedanigheid opgetree het; of

(c) enige sekuriteit wat ter dekking van daardie goedere deur 'n persoon bedoel in paragraaf (a) of (b) gestel is.

(2) Indien die persoon bedoel in subartikel (1)(a) of (b) 'n regsentiteit is en daardie regsentiteit nie sekuriteit, of genoegsame sekuriteit, gestel het waaruit die Kommissaris die boete en enige rente kan verhaal nie, kan die Kommissaris die boete en rente behoudens subartikel (3) verhaal van 'n persoon wat die regsentiteit bestuur. 25

(3) Die Kommissaris kan die boete en enige rente van die persoon wat die regsentiteit bestuur soos in subartikel (2) beoog, verhaal slegs—

(a) nadat redelike stappe gedoen is om die boete en enige rente van die regsentiteit self te verhaal; en 30

(b) indien die nie-betaling van die boete en enige rente die direkte gevolg van nalatigheid of wanbestuur van die entiteit se sake deur daardie persoon was.

Rente op uitstaande administratiewe boete

47. (1) 'n Vastebedrag- of vastepersentasieboete ingevolge hierdie Wet aan die Kommissaris verskuldig en nie betaal op of voor die sperdatum vir betaling nie, loop rente vanaf daardie datum op teen 'n koers deur die Minister bepaal. 35

(2) Rente bedoel in subartikel (1) moet bereken word op daaglikse verskuldigde saldo's en aan die einde van elke maand saamgestel word.

(3) Rente op enige uitstaande bedrag van 'n administratiewe boete kan verhaal word asof daardie rente deel is van die boete. 40

(4) Die Kommissaris kan iemand by die aanvoer van goeie gronde onthef van betaling van rente waarvoor so iemand ingevolge subartikel (1) of (2) aanspreeklik is.

Kort-betaling van rente of administratiewe boetes

48. (1) Die Kommissaris moet, behoudens subartikel (2), enige kort-betaling van enige rente of administratiewe boete regstel deur die bedrag onder-betaal te verhaal van— 45

(a) die persoon wat die rente of boete gedeeltelik betaal het;

(b) enige ander persoon van wie daardie rente of boete ingevolge artikel 45, 46 of 47 verhaal kon word; of 50

(c) enige sekuriteit wat ter dekking van die goedere in verband waarmee die rente of boete opgelê is, deur 'n persoon bedoel in paragraaf (a) of (b) gestel is.

(2) Indien die bedrag van 'n kort-betaling minder as R100 is, kan die Kommissaris die kort-betaling verhaal, maar is nie verplig om dit te doen nie.

Payment of outstanding amount in instalments

- 49.** The Commissioner may in circumstances as may be prescribed by rule allow the payment of outstanding amounts of duty, administrative penalties (other than prosecution avoidance penalties) and interest to be paid in instalments—
- (a) on such conditions as may be prescribed by rule or as the Commissioner may determine in a specific case; and 5
 - (b) subject to the payment of interest in terms of sections 45 and 47 on outstanding balances.

Part 4

Lien and other mechanisms to secure payment of debt 10

Establishing of lien over goods to secure payment of debt

- 50.** (1) In order to secure payment to the Commissioner of a debt owed to the Commissioner in terms of this Chapter, a lien in favour of the Commissioner may in accordance with this Part be established over any goods—
- (a) of which the debtor is the owner; 15
 - (b) of which the debtor is the co-owner; or
 - (c) in which the debtor has any title, right or interest in terms of a credit agreement under the National Credit Act.
- (2) A lien over goods in terms of this Part is established when a customs officer attaches the goods in accordance with section 51. 20
- (3) A lien over goods in terms of this Part serves as security for the debt owing by the debtor to the Commissioner, except—
- (a) in the case of goods of which the debtor is the co-owner, where the lien serves as security for the debt only up to the value of the debtor's share in the goods; and 25
 - (b) in the case of goods in which the debtor has any title, right or interest in terms of a credit agreement under the National Credit Act where the lien serves as security for the debt only up to the value of the debtor's title, right or interest in the goods.

Attachment of goods for purpose of establishing lien 30

- 51.** (1) A customs officer may attach goods referred to in section 50(1)(a), (b) or (c) for purposes of establishing a lien in terms of this Part regardless of where the goods happen to be or in whose possession the goods are.
- (2) Goods are attached when a customs officer issues a written notice of attachment to the person in whose possession or custody the goods are. 35
- (3) A notice of attachment must—
- (a) identify the goods to which it relates;
 - (b) state the date from which the goods are attached;
 - (c) state that the goods are attached for purposes of establishing a lien pending payment of a debt owed to the Commissioner in terms of this Chapter; 40
 - (d) state particulars and the amount of the debt; and
 - (e) contain any other particulars as may be prescribed by rule.
- (4) Goods attached in terms of this section may be—
- (a) sealed, marked, locked, fastened or otherwise secured or impounded by a customs officer at the place where the goods were attached; or 45
 - (b) removed to a state warehouse or any premises licensed in terms of the Customs Control Act, as the customs authority may determine.

Betaling van uitstaande bedrag in paaieimente

- 49.** Die Kommissaris kan in omstandighede soos by reël voorgeskryf mag word, toestemming verleen dat uitstaande bedrae van reg, administratiewe boetes (behalwe boetes ter vermyding van vervolging) en rente in paaieimente betaal word—
- (a) op die voorwaardes wat by reël voorgeskryf mag word of soos die Kommissaris in 'n spesifieke geval mag bepaal; en 5
 - (b) onderworpe aan die betaling van rente ingevolge artikels 45 en 47 op uitstaande saldo's.

Deel 4

Retensiereg en ander meganismes om betaling van skuld te verseker 10

Vestiging van retensiereg op goedere om betaling van skuld te verseker

- 50.** (1) Ten einde die betaling aan die Kommissaris van 'n skuld te verseker wat ingevolge hierdie Hoofstuk aan die Kommissaris verskuldig is, kan 'n retensiereg ten gunste van die Kommissaris ooreenkomstig hierdie Deel gevestig word op enige goedere— 15
- (a) waavan die skuldenaar die eienaar is;
 - (b) waarvan die skuldenaar die mede-eienaar is; of
 - (c) waarin die skuldenaar ingevolge 'n kredietooreenkoms kragtens die Nasionale Kredietwet, enige titel, reg of belang hou.
- (2) 'n Retensiereg op goedere ingevolge hierdie Deel, word gevestig wanneer 'n doeanebeampte ooreenkomstig artikel 51 op die goedere beslag lê. 20
- (3) 'n Retensiereg op goedere ingevolge hierdie Deel dien as sekuriteit vir die skuld deur die skuldenaar aan die Kommissaris verskuldig, behalwe—
- (a) in die geval van goedere waarvan die skuldenaar mede-eienaar is, waar die retensiereg as sekuriteit vir die skuld dien slegs tot en met die waarde van die skuldenaar se aandeel in die goedere; en 25
 - (b) in die geval van goedere waarin die skuldenaar ingevolge 'n krediet-ooreenkoms kragtens die Nasionale Kredietwet enige titel, reg of belang hou, waar die retensiereg as sekuriteit vir die skuld dien slegs tot en met die waarde van die skuldenaar se titel, reg of belang in die goedere. 30

Beslaglegging op goedere ten einde retensiereg te vestig

- 51.** (1) 'n Doeanebeampte kan, ten einde 'n retensiereg ingevolge hierdie Deel te vestig, op goedere bedoel in artikel 50(1)(a), (b) of (c) beslag lê ongeag waar die goedere ook al mag wees of in wie se besit die goedere is.
- (2) Goedere word in beslag geneem wanneer 'n doeanebeampte 'n skriftelike kennisgewing van beslaglegging aan die persoon uitreik in wie se besit of bewaring die goedere is. 35
- (3) 'n Kennisgewing van beslaglegging moet—
- (a) die goedere waarop dit betrekking het, identifiseer;
 - (b) die datum vermeld vanaf wanneer die goedere in beslag geneem word; 40
 - (c) vermeld dat die goedere in beslag geneem word ten einde 'n retensiereg te vestig hangende betaling van 'n skuld ingevolge hierdie Hoofstuk aan die Kommissaris verskuldig;
 - (d) besonderhede en die bedrag van die skuld vermeld; en
 - (e) enige ander besonderhede bevat wat by reël voorgeskryf mag word. 45
- (4) Goedere waarop beslag gelê word ingevolge hierdie artikel, kan—
- (a) deur 'n doeanebeampte geseël, gemerk, gesluit, vasgemaak of andersins beveilig of geskut word by die plek waar daar op die goedere beslag gelê is; of
 - (b) verwyder word na 'n staatspakhuis of enige perseel ingevolge die Wet op Doeanebeheer gelisensieer, soos die doeanegesag mag bepaal. 50

- (5) If any goods have been sealed, marked, locked, fastened or otherwise secured or impounded in terms of subsection (4)(a) at the place where the goods were attached—
- (a) no person may without the permission of the customs authority —
 - (i) open, break, destroy, alter or in any way tamper with that seal, mark or lock; or
 - (ii) remove the goods from that place; and
 - (b) the person in charge of that place must take all steps reasonable in the circumstances to prevent any contravention of paragraph (a).
- (6) If any goods have been removed in terms of subsection (4)(b) to a state warehouse or any licensed premises no person may without the permission of the customs authority remove the goods from that warehouse or premises.

Attachment of goods in which debtor has no ownership interest

52. The customs authority must immediately release from a lien any goods attached in terms of section 51 if it is proved by any person claiming to be the owner of or to have a right in the goods that the debtor is not the owner or co-owner of the goods or does not have any title, right or interest in the goods in terms of a credit agreement under the National Credit Act.

Attachment of goods of which debtor is co-owner

- 53.** (1) If goods of which the debtor is a co-owner are attached in terms of section 51, the debtor must promptly—
- (a) disclose to the customs authority, in writing, the fact of such co-ownership, stating the following:
 - (i) The name and address of the other co-owner;
 - (ii) the debtor's share in the goods, expressed as a percentage; and
 - (iii) any other information as may be prescribed by rule; and
 - (b) submit to the customs authority—
 - (i) a copy of any agreement in terms of which such co-ownership was established; or
 - (ii) an affidavit signed by the debtor attesting to such co-ownership.
- (2) On receipt of the written disclosure referred to in subsection (1)(a), the customs authority must—
- (a) notify the other co-owner that the goods have been attached and that a lien in favour of the Commissioner has been established over the goods; and
 - (b) request the other co-owner to corroborate the debtor's share in ownership of the goods.
- (3) If a person, other than the debtor, who is a co-owner of goods attached in terms of section 51 becomes aware of the attachment, that co-owner must immediately notify the customs authority and submit to the customs authority the information and document mentioned in subsection (1)(a)(i), (ii) and (iii) and (b).
- (4) The customs authority must release goods from a lien established in terms of this Part if the share of the debtor in the goods—
- (a) is economically insignificant or does not exist; or
 - (b) cannot readily be established and excused.

Attachment of goods subject to credit agreement under National Credit Act

- 54.** (1) If goods subject to a credit agreement under the National Credit Act between the debtor and a credit provider contemplated in that Act are attached in terms of section 51, the debtor must promptly—
- (a) disclose to the customs authority, in writing, the existence of the agreement, stating the following:
 - (i) The name and address of the credit provider;
 - (ii) the amount of the principal debt under the agreement;

(5) Indien enige goedere ingevolge subartikel (4)(a) geseël, gemerk, gesluit, vasgemaak of andersins beveilig of geskut is by die plek waar daar op die goedere beslag gelê is—

- (a) mag niemand sonder die toestemming van die doeanegesag—
 - (i) daardie seël, merk of slot oopmaak, breek, vernietig, verstel of op enige ander wyse daarmee peuter nie; of
 - (ii) die goedere van daardie plek af verwyder nie; en
- (b) moet die persoon wat in beheer van daardie plek is alle stappe doen wat redelik in die omstandighede is om enige oortreding van paragraaf (a) te voorkom.

(6) Indien enige goedere ingevolge subartikel (4)(b) na 'n staatspakhuis of enige gelisensieerde perseel verwyder word, mag niemand sonder die toestemming van die doeanegesag die goedere uit daardie pakhuis, of van daardie perseel af, verwyder nie.

Beslaglegging op goedere waarin skuldenaar geen eienaarskapbelang het nie

52. Die doeanegesag moet onmiddellik goedere waarop daar ingevolge artikel 51 beslag gelê is van 'n retensiereg vrystel indien daar deur iemand wat beweer die eenaar van die goedere te wees of 'n reg in die goedere te hê, bewys word dat die skuldenaar nie die eenaar of mede-eenaar van die goedere is of ingevolge 'n kredietooreenkoms kragtens die Nasionale Kredietwet, 'n titel, reg of belang in die goedere hou nie.

Beslaglegging op goedere waarvan skuldenaar mede-eenaar is

53. (1) Indien daar ingevolge artikel 51 op goedere beslag gelê word waarvan die skuldenaar 'n mede-eenaar is, moet die skuldenaar onverwyld—

- (a) die feit van sodanige mede-eienaarskap skriftelik aan die doeanegesag met vermelding van die volgende openbaar:
 - (i) Die naam en adres van die ander mede-eenaar;
 - (ii) die skuldenaar se aandeel in die goedere, as 'n persentasie uitgedruk; en
 - (iii) enige ander inligting wat by reël voorgeskryf mag word; en
- (b) die volgende aan die doeanegesag verstrek:
 - (i) 'n Afskrif van enige ooreenkoms ingevolge waarvan sodanige mede-eienaarskap tot stand gekom het; of
 - (ii) 'n beëdigde verklaring onderteken deur die skuldenaar waarin sodanige mede-eienaarskap bevestig word.

(2) Die doeanegesag moet by ontvangs van die skriftelike stuk bedoel in subartikel (1)(a)—

- (a) die ander mede-eenaar in kennis stel dat daar op die goedere beslag gelê is en dat 'n retensiereg op die goedere gevestig is; en
- (b) die ander mede-eenaar versoek om die skuldenaar se aandeel in die eienaarskap van die goedere te staaf.

(3) Indien iemand, anders as die skuldenaar, wat 'n mede-eenaar is van goedere waarop ingevolge artikel 51 beslag gelê is van die beslaglegging bewus word, moet daardie mede-eenaar die doeanegesag onmiddellik in kennis stel en die inligting en dokument genoem in subartikel (1)(a)(i), (ii) en (iii) en (b) aan die doeanegesag verstrek.

(4) Die doeanegesag moet goedere van 'n retensiereg gevestig ingevolge hierdie Deel vrystel indien die aandeel van die skuldenaar in die goedere—

- (a) ekonomies onbeduidend is of nie bestaan nie; of
- (b) nie gereedelik vasgestel en uitgewin kan word nie.

Beslaglegging op goedere onderworpe aan kredietooreenkoms kragtens Nasionale Kredietwet

54. (1) Indien daar ingevolge artikel 51 op goedere beslag gelê word wat onderworpe is aan 'n kredietooreenkoms kragtens die Nasionale Kredietwet tussen die skuldenaar en 'n kredietverskaffer beoog in daardie Wet, moet die skuldenaar onverwyld—

- (a) die bestaan van die ooreenkoms skriftelik aan die doeanegesag met vermelding van die volgende openbaar:
 - (i) Die naam en adres van die kredietverskaffer;
 - (ii) die bedrag van die hoofskuld ingevolge die ooreenkoms;

- (iii) the duration of the agreement;
- (iv) the outstanding balance under the agreement; and
- (v) any other information as may be prescribed by rule; and
- (b) submit a copy of the agreement to the customs authority.
- (2) On receipt of the written disclosure, the customs authority must— 5
 - (a) notify the credit provider that the goods have been attached and that a lien in favour of the Commissioner has been established over the goods; and
 - (b) request the credit provider to submit to the customs authority full particulars of the debtor's title, right or interest in the goods.
- (3) The credit provider must— 10
 - (a) quantify the debtor's title, right or interest in the goods; and
 - (b) promptly notify the customs authority of—
 - (i) the value of the debtor's title, right or interest in the goods, expressed, if determinable, as a liquid amount; and
 - (ii) details of how that value was arrived at. 15
- (4) If goods subject to a credit agreement under the National Credit Act are attached in terms of section 51 and the credit provider under the agreement becomes aware of the attachment, the credit provider must immediately notify the customs authority of the credit agreement and submit to the customs authority the information mentioned in subsections (1)(a)(i) to (v) and (3) and a copy of the agreement. 20
- (5) The customs authority must release goods from the lien established in terms of this Part if the right, title or interest of the debtor in the goods—
 - (a) is economically insignificant or does not exist; or
 - (b) cannot readily be established and excused.
- (6) The Commissioner and the credit provider concerned may, subject to such 25 conditions as may be agreed between the parties, agree to dispose of the goods in order to preserve and secure the interests of the parties in the goods and in the proceeds of the disposal of the goods pending the resolution of any dispute in respect of which an interest in the goods is secured by the lien.

Effect of lien 30

- 55.** (1) Goods in respect of which a lien has been established in terms of this Part may not—
- (a) be sold or transferred to, or relinquished in favour of, another person except in accordance with this Part; or
 - (b) be hypothecated, pledged, mortgaged or in any way encumbered in favour of another person. 35
- (2) Any agreement entered into by any person in contravention of subsection (1) is null and void.
- (3) The customs authority may allow the debtor, despite the lien, to continue using goods referred to in section 51(1) for a purpose and on conditions as the customs authority may determine. 40
- (4) (a) If a person enters into an agreement or uses the goods contrary to this section or any conditions imposed by the customs authority, the Commissioner may take custody of the goods and order the removal of the goods to a state warehouse or any licensed premises. 45
- (b) The debtor is liable for all reasonable costs and expenses incurred by the Commissioner to take custody of and remove the goods to a state warehouse or any licensed premises.
- (5) If any goods have been removed in terms of subsection (4)(a) to a state warehouse or licensed premises no person may without the permission of the customs authority 50 remove the goods from that warehouse or premises.

Termination of lien

- 56.** A lien established over goods in terms of this Part ends if—
- (a) the debt in respect of which the lien was established is paid to the Commissioner; 55

- (iii) die termyn van die ooreenkoms;
 - (iv) die uitstaande balans kragtens die ooreenkoms; en
 - (v) enige ander inligting wat by reël voorgeskryf mag word; en
 - (b) 'n afskrif van die ooreenkoms aan die doeanegesag verstrek.
- (2) Die doeanegesag moet by ontvangs van die skriftelike stuk bedoel in subartikel 5
(1)(a)—
- (a) die kredietverskaffer in kennis stel dat daar op die goedere beslag gelê is en dat 'n retensiereg ten gunste van die Kommissaris op die goedere gevestig is; en
 - (b) die kredietverskaffer versoek om volle besonderhede van die skuldenaar se titel, reg of belang in die goedere aan die doeanegesag te verskaf. 10
- (3) Die kredietverskaffer moet—
- (a) die waarde van die skuldenaar se titel, reg of belang in die goedere kwantifiseer; en
 - (b) die doeanegesag onverwyld in kennis stel van—
 - (i) die waarde van die skuldenaar se titel, reg of belang in die goedere, uitgedruk as 'n likwiede bedrag indien dit bepaalbaar is; en
 - (ii) besonderhede van hoe daardie waarde bereken is. 15
- (4) Indien daar ingevolge artikel 51 beslag gelê word op goedere wat onderworpe is aan 'n kredietooreenkoms kragtens die Nasionale Kredietwet en die kredietgewer bedoel in die ooreenkoms bewus word van die beslaglegging, moet die kredietverskaffer 20 die doeanegesag onmiddellik van die kredietooreenkoms in kennis stel en die inligting bedoel in subartikels (1)(a)(i) tot (v) en (3) asook 'n afskrif van die ooreenkoms aan die doeanegesag verstrek.
- (5) Die doeanegesag moet goedere van die retensiereg gevestig ingevolge hierdie Deel vrystel indien die reg, titel of aandeel ten opsigte van die skuldenaar in die 25 goedere—
- (a) ekonomies onbeduidend is of nie bestaan nie; of
 - (b) nie gereadig vasgestel en uitgewin kan word nie.
- (6) Die Kommissaris en die kredietverskaffer kan, behoudens die voorwaardes waarop die partye mag ooreenkom, ooreenkom om die goedere te vervreem ten einde 30 die belange van die partye in die goedere en in die opbrengs van die vervreemding van die goedere in stand te hou en te verseker, hangende die beslegting van enige geskil ten opsigte waarvan 'n belang in die goedere deur die retensiereg verseker word.

Uitwerking van retensieregte

- 55.** (1) Goedere ten opsigte waarvan 'n retensiereg ingevolge hierdie Deel gevestig is, 35 mag nie—
- (a) verkoop of oorgedra word aan, of van afstand gedoen word ten gunste van, iemand anders behalwe ooreenkomstig hierdie Deel nie; of
 - (b) verhipotekeer, verpand, met verband beswaar of op enige wyse ten gunste van iemand anders beswaar word nie. 40
- (2) Enige ooreenkoms deur iemand in stryd met subartikel (1) aangegaan, is nietig.
- (3) Die doeanegesag kan die skuldenaar, ten spyte van die retensiereg, toelaat om goedere bedoel in artikel 51(1) te bly gebruik vir 'n doel en op voorwaardes soos die doeanegesag mag bepaal.
- (4) (a) Indien iemand 'n ooreenkoms aangaan of goedere gebruik in stryd met hierdie 45 artikel of enige voorwaardes deur die doeanegesag opgelê, kan die Kommissaris die goedere in bewaring neem en die verwydering van die goedere na 'n staatspakhuis of enige gelisensieerde perseel gelas.
- (b) Die skuldenaar is aanspreeklik vir alle redelike kostes en uitgawes deur die Kommissaris aangegaan om die goedere in bewaring te neem of na 'n staatspakhuis of enige gelisensieerde perseel te verwyder. 50
- (5) Indien goedere ingevolge subartikel (4)(a) na 'n staatspakhuis of gelisensieerde perseel verwyder is, mag niemand die goedere sonder die toestemming van die doeanegesag uit daardie pakhuis of van daardie perseel af verwyder nie.

Beëindiging van retensiereg

55

- 56.** 'n Retensiereg op goedere ingevolge hierdie Deel kom tot 'n einde indien—
- (a) die skuld ten opsigte waarvan die retensiereg gevestig is, aan die Kommissaris betaal word;

- (b) the goods are sold in terms of section 57; or
- (c) the customs authority for any reason releases the goods from the lien.

Sale of lien goods

57. (1) If the debt in respect of which a lien has been established over goods in terms of this Part is not paid within a period prescribed by rule after the debt has become payable, read with section 908 of the Customs Control Act,⁶⁷ the Commissioner may summarily sell— 5

- (a) the goods, if the debtor is the owner of the goods;
- (b) the debtor's share in the goods, if the debtor is the co-owner of the goods; or
- (c) the debtor's title, right or interest in the goods in terms of a credit agreement under the National Credit Act if the goods are subject to such an agreement. 10

(2) Goods, or the debtor's share in the goods, or the debtor's title, right or interest in the goods in terms of a credit agreement, may be sold in terms of subsection (1) in any manner determined by the Commissioner, including—

- (a) by public auction; 15
- (b) by public tender; and
- (c) out of hand, when appropriate.

(3) The debtor's title, right or interest in goods in terms of a credit agreement under the National Credit Act, may be sold in terms of this section only as may be agreed with the credit provider. 20

(4) If goods that are subject to a lien in terms of this Part are attached in terms of a warrant of execution obtained by a third party in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), the Commissioner may, despite that Act and its rules—

- (a) remove the goods to a state warehouse or any licensed premises, if the goods are not already secured in a state warehouse or licensed premises; and 25
- (b) sell the goods in accordance with subsection (1).

Application of proceeds realised for lien goods

58. (1) The proceeds realised for goods sold in terms of section 57 must be applied to pay the following claims in the order of preference as indicated below:

- (a) The debt for which the goods were attached; 30
- (b) any outstanding tax or administrative penalties payable in respect of the goods not covered by paragraph (a), and any interest payable on such tax or penalties;
- (c) any expenses incurred by the Commissioner in connection with the goods, including— 35
 - (i) state warehouse rent, if the goods were removed to a state warehouse;
 - (ii) costs incurred by the Commissioner in applying section 51(4) or 57(4); and
 - (iii) costs incurred by the Commissioner in selling the goods in terms of section 57; 40
- (d) any charges owed in terms of section 575(2) of the Customs Control Act to the licensee of a licensed state warehouse in connection with the goods, if the goods were removed to a licensed state warehouse;
- (e) any charges owed to the licensee of the licensed premises where the goods were kept, if the goods were retained at or removed to such premises; and 45
- (f) the debt for which a warrant of execution referred to in section 57(4) was issued in respect of the goods, if such a warrant of execution was obtained and the Commissioner was notified of the warrant.

⁶⁷. Section 228 applies section 908 of the Customs Control Act to this Act.

- (b) die goedere ingevolge artikel 57 verkoop word; of
- (c) die doeanegesag die goedere om enige rede van die retensiereg onthef.

Verkoop van retensiereg goedere

57. (1) Indien die skuld ten opsigte waarvan daar ingevolge hierdie Deel 'n retensiereg op goedere gevestig is, nie betaal word binne 'n tydperk soos by reël voorgeskryf nadat die skuld betaalbaar geword het nie, saamgelees met artikel 908 van die Wet op Doeanebeheer,⁶⁷ kan die Kommissaris summier—

- (a) die goedere verkoop, indien die skuldenaar die eienaar van die goedere is;
- (b) die skuldenaar se aandeel in die goedere verkoop, indien die skuldenaar die mede-eienaar van die goedere is; of
- (c) die skuldenaar se titel, reg of belang in die goedere ingevolge 'n kredietooreenkoms kragtens die Nasionale Kredietwet verkoop indien die goedere aan so 'n ooreenkoms onderworpe is.

(2) Goedere, of die skuldenaar se aandeel in die goedere, of die skuldenaar se titel, reg of belang in die goedere ingevolge 'n kredietooreenkoms, kan ingevolge subartikel (1) verkoop word op enige wyse deur die Kommissaris bepaal, insluitende—

- (a) by wyse van openbare veiling;
- (b) by wyse van openbare tender; en
- (c) uit die hand, waar toepaslik.

(3) Die skuldenaar se titel, reg of aandeel in goedere ingevolge 'n kredietooreenkoms kragtens die Nasionale Kredietwet kan ingevolge hierdie artikel verkoop word, maar slegs soos ooreengekom met die kredietverskaffer.

(4) Indien daar ingevolge 'n eksekusielasbrief bekom deur 'n derde party ingevolge die Wet op Landdroshoue, 1944 (Wet Nr. 32 van 1944), op goedere beslag gelê word wat ingevolge hierdie Deel aan 'n retensiereg onderworpe is, kan die Kommissaris ondanks daardie Wet en sy reëls—

- (a) die goedere na 'n staatspakhuis of enige gelisensieerde perseel verwyder, indien die goedere nie alreeds in 'n staatspakhuis of op 'n gelisensieerde perseel beveilig is nie; en
- (b) die goedere ooreenkomstig subartikel (1) verkoop.

Aanwending van opbrengs uit retensiereg goedere verkry

58. (1) Die opbrengs verkry uit goedere ingevolge artikel 57 verkoop, moet ter betaling van die volgende eise aangewend word in die rangorde van voorkeur soos hieronder aangedui:

- (a) Die skuld waarvoor daar op die goedere beslag gelê is;
- (b) enige uitstaande belasting of administratiewe boetes betaalbaar ten opsigte van die goedere en nie deur paragraaf (a) gedek nie, asook enige rente betaalbaar op sodanige belasting of boetes;
- (c) enige koste deur die Kommissaris in verband met die goedere aangegaan, met inbegrip van—
 - (i) staatspakhuisuur, indien die goedere na 'n staatspakhuis verwyder is;
 - (ii) koste deur die Kommissaris aangegaan by die toepassing van artikel 51(4) of 57(4); en
 - (iii) koste deur die Kommissaris aangegaan by die verkoop van die goedere ingevolge artikel 57;
- (d) enige fooie ingevolge artikel 575(2) van die Wet op Doeanebeheer verskuldig aan die lisensiehouer van 'n gelisensieerde staatspakhuis in verband met die goedere, indien die goedere na 'n gelisensieerde staatspakhuis verwyder is;
- (e) enige fooie verskuldig aan die lisensiehouer van die gelisensieerde perseel waar die goedere gehou is, indien die goedere gehou is by of verwyder is na so 'n perseel; en
- (f) die skuld waarvoor 'n eksekusielasbrief bedoel in artikel 57(4) ten opsigte van die goedere uitgereik is, indien so 'n eksekusielasbrief bekom is en die Kommissaris van die lasbrief in kennis gestel is.

67. Artikel 228 maak artikel 908 van die Wet op Doeanebeheer van toepassing op hierdie Wet.

(2) Any surplus remaining after all claims in terms of subsection (1) have been met, must on written application by the debtor be paid to the debtor, provided that the application is received by the Commissioner within three years of the date of sale of the goods.

(3) Any duty, administrative penalty or interest, or part of any duty, penalty or interest, or any other amount payable by the debtor to the Commissioner may be set off against an amount payable to the debtor in terms of subsection (2). 5

Application of Tax Administration Act for recovery, write off or compromise of debt

59. (1) Part D of Chapter 11 of the Tax Administration Act, including any criminal and other sanctions contained in that Act for the enforcement of that Chapter, applies with any necessary changes as the context may require to the recovery of a debt payable to the Commissioner in terms of this Chapter. 10

(2) Chapter 14 of the Tax Administration Act, including any criminal and other sanctions contained in that Act for the enforcement of that Chapter, applies with any necessary changes as the context may require to the writing off or compromise of a debt payable to the Commissioner in terms of this Chapter. 15

Part 5

Other matters

Rules to facilitate application of this Chapter 20

60. The Commissioner may in terms of section 224 make rules to facilitate the implementation of this Chapter, including rules prescribing—

(a) the methods that may or must be used to pay any duties and other amounts in terms of this Act to the Commissioner, including conditions and requirements for— 25

(i) cash payments or payments by cheque, and limits on cheque and cash payments;

(ii) electronic payments; or

(iii) payment in any other way;

(b) receipts and other documents and other evidence that may be used as proof of payment of duties and other amounts payable in terms of this Act; and 30

(c) procedures for applications for duty deferment benefits and for the amendment or the suspension or withdrawal of deferment benefits.

Offences in terms of this Chapter

61. (1) A person is guilty of an offence if that person contravenes section 51(5) or (6) or 55(1) or (5). 35

(2) A person to whom a deferment of duty benefit has been granted is guilty of an offence if that person contravenes or fails to comply with a condition referred to in section 24(2)(b) applicable to that person.

(3) A debtor who is the co-owner of goods attached in terms of section 51 or who is a party to a credit agreement referred to in section 54 is guilty of an offence if that person fails to comply with section 53(1) or 54(1). 40

(4) A debtor allowed to use goods attached in terms of section 51 is guilty of an offence if that person contravenes or fails to comply with a condition referred to in section 55(3) applicable to that person. 45

(5) An offence referred to in subsection (1) is a Category 1 offence.

(2) Enige surplus wat oorbly nadat alle eise ingevolge subartikel (1) ten volle betaal is, moet op skriftelike aansoek deur die skuldenaar aan die skuldenaar betaal word, mits die aansoek binne drie jaar na die verkoop van die goedere deur die Kommissaris ontvang word.

(3) Enige reg, administratiewe boete of rente, of deel van enige reg, boete of rente, of enige ander bedrag deur die skuldenaar aan die Kommissaris betaalbaar, kan in berekening gebring word teen 'n bedrag wat ingevolge subartikel (2) aan die skuldenaar betaalbaar is. 5

Toepassing van Wet op Belastingadministrasie vir verhaling of afskryf van skuld of toeweging van belastingskuld 10

59. (1) Deel D van Hoofstuk 11 van die Wet op Belastingadministrasie, met inbegrip van enige strafregtelike- en ander strafmaatreëls in daardie Wet vervat vir die toepassing van daardie Hoofstuk, is met enige nodige veranderinge wat die samehang mag vereis, van toepassing op die verhaling van 'n skuld wat ingevolge hierdie Hoofstuk aan die Kommissaris betaalbaar is. 15

(2) Hoofstuk 14 van die Wet op Belastingadministrasie, met inbegrip van enige strafregtelike- en ander strafmaatreëls in daardie Wet vervat vir die toepassing van daardie Hoofstuk, is met enige nodige veranderinge wat die samehang mag vereis, van toepassing op die afskryf van 'n skuld of die toeweging van belastingskulde wat ingevolge hierdie Hoofstuk aan die Kommissaris betaalbaar is. 20

Deel 5

Ander Aangeleenthede

Reëls ter fasilitering van hierdie Hoofstuk

60. Die Kommissaris kan ingevolge artikel 224 reëls uitvaardig om die toepassing van hierdie Hoofstuk te fasiliteer, met inbegrip van reëls wat voorskryf— 25

- (a) die metodes wat gebruik kan of moet word om enige regte en ander bedrae aan die Kommissaris ingevolge hierdie Wet te betaal, met inbegrip van voorwaardes en vereistes vir—
 - (i) kontant- of tjekbetalings, en beperkings op tjek- en kontantbetalings; 30
 - (ii) elektroniese betalings; of
 - (iii) betaling op enige ander wyse;
- (b) kwitansies en ander dokumente en ander getuienis wat gebruik kan word as bewys van betaling van regte en ander bedrae wat ingevolge hierdie Wet betaalbaar is; en
- (c) prosedures vir aansoeke om voordele van uitstel van reg en vir die wysiging 35 of intrekking van uitstelvoordele.

Misdrywe ingevolge hierdie Hoofstuk

61. (1) Iemand is aan 'n misdryf skuldig indien so iemand artikel 51(5) of (6) of 55(1) of (5) oortree.

(2) Iemand aan wie 'n voordeel van uitstel van reg toegeken is, is aan 'n misdryf skuldig indien so iemand 'n voorwaarde bedoel in artikel 24(2)(b) van toepassing op so iemand, oortree of versuim om daaraan te voldoen. 40

(3) 'n Skuldenaar wat die mede-eienaar is van goedere waarop ingevolge artikel 51 beslag gelê is of wat 'n party is tot 'n kredietooreenkoms bedoel in artikel 54, is aan 'n misdryf skuldig indien so iemand versuim om aan artikel 53(1) of 54(1) te voldoen. 45

(4) 'n Skuldenaar wat toegelaat word om goedere te gebruik waarop ingevolge artikel 51 beslag gelê is, is aan 'n misdryf skuldig indien daardie persoon 'n voorwaarde bedoel in artikel 55(3) van toepassing op daardie persoon oortree of versuim om daaraan te voldoen.

(5) 'n Misdryf bedoel in subartikel (1) is 'n Kategorie 1 misdryf. 50

CHAPTER 4

REFUNDS AND DRAWBACKS⁶⁸

Purpose and application of this Chapter

- 62.** (1) The purpose of this Chapter is to provide for—
- (a) the refund in specific circumstances of— 5
 - (i) any duty, administrative penalty or interest paid to the Commissioner in terms of this Act; or
 - (ii) any part of the duty, penalty or interest; and
 - (b) the drawback in specific circumstances of— 10
 - (i) any import duty paid to the Commissioner in terms of this Act; or
 - (ii) any part of the duty.
- (2) This Chapter does not apply to drawbacks of any duties, administrative penalties or interest paid to the Commissioner in terms of this Act in respect of goods exported or being exported from the Republic to a SACU member state.⁶⁹

Refunds and drawbacks to be direct charges against National Revenue Fund 15

63. A refund or drawback in terms of this Chapter is a direct charge against the National Revenue Fund.

Circumstances in which duty, administrative penalty and interest may be refunded

- 64.** (1) The customs authority may, subject to sections 66 and 67, refund a duty, administrative penalty or interest paid to the Commissioner in terms of this Act— 20
- (a) if any of the circumstances set out in subsection (2) applies; or
 - (b) if the duty, penalty or interest is refundable in terms of—
 - (i) any other provision of this Act, including a provision of the Customs Tariff; or
 - (ii) a provision of the Customs Control Act.⁷⁰ 25
- (2) A duty, administrative penalty or interest may be refunded in any of the following circumstances, as may be appropriate:
- (a) If the duty, penalty or interest was paid in error—
 - (i) on or in respect of goods or in circumstances in respect of which it was not payable; 30
 - (ii) by a person not liable for that duty, penalty or interest;
 - (iii) due to a clerical, typographical, electronic or other administrative fault or an incorrect assumption on which the calculation of the duty, penalty or interest was based;
 - (iv) due to an incorrect assessment of duty referred to in section 83(2)(a) or (b) or 84(1)(a) or re-assessment of duty referred to in section 85; or
 - (v) due to an incorrect key assessment factor on which the assessment was based, including—
 - (aa) an incorrect tariff classification of the goods on or in respect of which that duty, penalty or interest was paid; 40
 - (bb) an incorrect valuation of those goods; and
 - (cc) an incorrect origin decision in respect of those goods;
 - (b) if, in the case of imported goods—
 - (i) the duty was paid on or in respect of goods in respect of which that duty is reduced or withdrawn in terms of an amendment to the Customs Tariff; 45

68. For refunds of provisional anti-dumping, countervailing or safeguard duties, see section 15(8).

69. This Chapter, however, does apply to duties, administrative penalties or interest paid to the Commissioner in terms of this Act in respect of goods imported into the Republic from a SACU member state.

70. See for instance sections 107(4) of the Customs Control Act.

HOOFSTUK 4

TERUGBETALING EN TERUGGAWE⁶⁸

Doel en toepassing van hierdie Hoofstuk

- 62.** (1) Die doel van hierdie Hoofstuk is om voorsiening te maak vir—
- (a) die terugbetaling in bepaalde omstandighede van— 5
 - (i) enige reg, administratiewe boete of rente ingevolge hierdie Wet aan die Kommissaris betaal; of
 - (ii) enige gedeelte van die reg, boete of rente; en
 - (b) die teruggawe in bepaalde omstandighede van— 10
 - (i) enige invoerreg ingevolge hierdie Wet aan die Kommissaris betaal; of
 - (ii) enige gedeelte van die reg.
- (2) Hierdie Hoofstuk is nie van toepassing op teruggawes van enige regte, administratiewe boetes of rente ingevolge hierdie Wet aan die Kommissaris betaal ten opsigte van goedere wat uit die Republiek na 'n SADU lidstaat uitgevoer is of word nie.⁶⁹ 15

Terugbetaling en teruggawe regstreekse laste teen Nasionale Inkomstefonds

63. 'n Terugbetaling of teruggawe ingevolge hierdie Hoofstuk is 'n regstreekse las teen die Nasionale Inkomstefonds.

Omstandighede waarin reg, administratiewe boete en rente terugbetaal mag word

- 64.** (1) Die doeanegesag kan, behoudens artikels 66 en 67, 'n reg, administratiewe boete of rente ingevolge hierdie Wet aan die Kommissaris betaal, terugbetaal— 20
- (a) indien enige van die omstandighede vermeld in subartikel (2) van toepassing is; of
 - (b) indien die reg, boete of rente terugbetaalbaar is ingevolge— 25
 - (i) enige ander bepaling van hierdie Wet, met inbegrip van 'n bepaling van die Doeanetarief; of
 - (ii) 'n bepaling van die Wet op Doeanebeheer.⁷⁰
- (2) 'n Reg, administratiewe boete of rente kan terugbetaal word in enige van die volgende omstandighede, soos toepaslik mag wees:
- (a) Indien die reg, boete of rente foutiewelik betaal is— 30
 - (i) op of ten opsigte van goedere of in omstandighede ten opsigte waarvan dit nie betaalbaar was nie;
 - (ii) deur iemand wat nie vir daardie reg, boete of rente aanspreeklik is nie;
 - (iii) as gevolg van 'n klerklike -, tik-, elektroniese of ander administratiewe fout, of 'n verkeerde veronderstelling waarop die berekening van die reg, boete of rente baseer is; 35
 - (iv) as gevolg van 'n foutiewe aanslag van reg bedoel in artikel 83(2)(a) of (b) of 84(1)(a) of heraanslag van reg bedoel in artikel 85; of
 - (v) as gevolg van 'n foutiewe sleutelaanslagfaktor waarop die aanslag baseer is, met inbegrip van— 40
 - (aa) 'n foutiewe tariefindeling van die goedere op of ten opsigte waarvan daardie reg, boete of rente betaal is;
 - (bb) 'n foutiewe waardering van die goedere; en
 - (cc) 'n foutiewe besluit oor oorsprong ten opsigte van die goedere;
 - (b) indien, in die geval van ingevoerde goedere— 45
 - (i) die reg betaal is op of ten opsigte van goedere ten opsigte waarvan daardie reg ingevolge 'n wysiging van die Doeanetarief verminder of ingetrek is;

68. Kyk artikel 15(8) vir teruggawes van voorlopige anti-dumpings-, kontra- of beveiligingsregte.

69. Hierdie Hoofstuk is eger wel van toepassing op regte, administratiewe boetes of rente ingevolge hierdie Wet aan die Kommissaris betaal ten opsigte van goedere vanaf 'n SADU lidstaat in die Republiek ingevoer.

70. Kyk byvoorbeeld artikel 107(4) van die Wet op Doeanebeheer.

- (ii) the duty was paid on or in respect of goods at the general rate of duty specified in the Customs Tariff for those goods and proof is produced that the goods qualify for a preferential rate of duty specified in the Customs Tariff;
 - (iii) the duty was paid on or in respect of goods cleared for home use under Chapter 8 of the Customs Control Act or for a customs procedure conferring a tax due status on the goods but before their release for home use or that customs procedure were cleared for a permissible customs procedure conferring a tax free status on the goods;⁷¹ or 5
 - (iv) the duty was paid on or in respect of goods cleared for home use under Chapter 8 of the Customs Control Act or for a customs procedure conferring a tax due status on the goods and the customs authority refuses to release the goods for home use or that customs procedure or withdraws the release of the goods for home use or that customs procedure use but allows the goods to be cleared for another customs procedure;⁷² 10 15
 - (c) if, in the case of goods to be exported from the Republic, the duty was paid on goods not exported from the Republic; or
 - (d) if, in the case of any goods the duty, penalty or interest was paid on or in respect of a quantity of goods in excess of the quantity of goods on or in respect of which it should actually have been paid. 20
- (3) If a circumstance set out in subsection (2) applies only to a part of the duty, penalty or interest paid to the Commissioner or only to a part of the goods on or in respect of which the duty, penalty or interest was paid, any refund on the ground of that circumstance must be reduced proportionally. 25
- (4) No refund may be granted in respect of any duty, penalty or interest paid on or in respect of—
- (a) prohibited goods dealt with in terms of section 781 or 782 of the Customs Control Act;
 - (b) restricted goods dealt with in terms of section 790 or 791 of that Act; 30
 - (c) sectorally controlled goods dealt with in terms of section 799 of that Act; or
 - (d) confiscated goods dealt with in terms of section 769 of that Act.

Circumstances in which drawback may be given

- 65.** (1) (a) The customs authority may, subject to sections 66 and 67, give a drawback of an import duty paid on imported goods if — 35
- (i) the goods on which the duty was paid, or products manufactured from those goods or in the manufacture of which those goods were used, are exported from the Republic without going into home use; or
 - (ii) goods of a class, kind, quality and quantity comparable to the imported goods, or products manufactured from such comparable goods or in the manufacture of which such comparable goods were used, are exported from the Republic. 40
- (b) A drawback may be granted in terms of paragraph (a)(i) or (ii) only in respect of such goods, in such circumstances and in accordance with such preconditions as may be specified in the Customs Tariff.
- (2) If subsection (1) applies only to a part of the goods on which the import duty was paid, any drawback of that duty in terms of that subsection must be reduced proportionally. 45
- (3) No drawback may be granted unless the exporter, before the export of the goods or of products obtained from those goods, notifies the customs authority of an intention of claiming a drawback when the goods or those products are exported. 50

71. See for instance section 97(1) of the Customs Control Act.

72. See for instance section 106 of the Customs Control Act.

- (ii) die reg betaal is op of ten opsigte van goedere teen die gewone koers van reg in die Doeanetarief vir daardie goedere gespesifiseer, en bewys gelewer word dat die goedere kwalifiseer vir 'n voorkeur koers van reg in die Doeanetarief gespesifiseer;
 - (iii) die reg betaal is op of ten opsigte van goedere geklaar vir binnelandse gebruik kragtens Hoofstuk 8 van die Wet op Doeanereg of vir 'n doeaneprosedure wat 'n belasting betaalbare status aan die goedere verleen, maar voor die vrystelling daarvan vir binnelandse gebruik of daardie doeaneprosedure geklaar is vir 'n toelaatbare doeaneprosedure wat 'n belastingvry status aan die goedere verleen;⁷¹ of 5 10
 - (iv) die reg betaal is op of ten opsigte van goedere geklaar vir binnelandse gebruik ingevolge Hoofstuk 8 van die Wet op Doeanereg of vir 'n doeaneprosedure wat 'n belasting betaalbare status aan die goedere verleen en die doeanegesag vrystelling van die goedere vir binnelandse gebruik of daardie doeaneprosedure weier of die vrystelling van die goedere vir binnelandse gebruik of daardie doeaneprosedure intrek, maar toelaat dat die goedere vir 'n ander prosedure geklaar word;⁷² 15
 - (c) indien, in die geval van goedere wat uit die Republiek uitgevoer staan te word, die reg betaal is op goedere wat nie uit die Republiek uitgevoer is nie; of
 - (d) indien, in die geval van enige goedere, die reg, boete of rente betaal is op of ten opsigte van 'n hoeveelheid goedere wat meer is as die hoeveelheid goedere waarop of ten opsigte waarvan die reg in werklikheid betaal moes word. 20
- (3) Indien 'n omstandigheid vermeld in subartikel (2) slegs geld vir 'n gedeelte van die reg, boete of rente aan die Kommissaris betaal, of slegs vir 'n deel van die goedere op of ten opsigte waarvan die reg, boete of rente betaal is, moet enige terugbetaling op grond van daardie omstandigheid, proporsioneel verminder word. 25
- (4) Geen terugbetaling mag toegestaan word nie ten opsigte van enige reg, boete of rente wat betaal is op of ten opsigte van—
- (a) verbode goedere waarmee ingevolge artikel 781 of 782 van die Wet op Doeanereg gehandel word; 30
 - (b) beperkte goedere waarmee ingevolge artikel 790 of 791 van daardie Wet gehandel word;
 - (c) sektor-beheerde goedere waarmee ingevolge artikel 799 van daardie Wet gehandel word; of 35
 - (d) gekonfiskeerde goedere waarmee ingevolge artikel 769 van daardie Wet gehandel word.

Omstandighede waarin teruggawe gedoen kan word

- 65.** (1) (a) Die doeanegesag kan, behoudens artikels 66 en 67, 'n teruggawe doen van 'n invoerreg wat op ingevoerde goedere betaal is, indien— 40
- (i) die goedere waarop die reg betaal is, of produkte vervaardig van daardie goedere of in die vervaardiging waarvan daardie goedere gebruik is, uit die Republiek uitgevoer word sonder dat die goedere in binnelandse gebruik gegaan het; of
 - (ii) goedere van 'n klas, soort, kwaliteit of hoeveelheid vergelykbaar met die ingevoerde goedere, of produkte vervaardig van sodanige vergelykbare goedere of in die vervaardiging waarvan sodanige vergelykbare goedere gebruik is, uit die Republiek uitgevoer word. 45
- (b) 'n Teruggawe kan ingevolge paragraaf (a)(i) of (ii) gemaak word slegs ten opsigte van dié goedere, in dié omstandighede en ooreenkomstig dié voorvereistes wat in die Doeanetarief gespesifiseer mag word. 50
- (2) Indien subartikel (1) geld vir slegs 'n gedeelte van die goedere waarop die invoerreg betaal is, moet enige teruggawe ingevolge daardie subartikel van daardie reg proporsioneel verminder word.
- (3) Geen teruggawe mag toegestaan word nie tensy die uitvoerder die doeanegesag, voor die uitvoer van die goedere of van produkte verkry van daardie goedere, van 'n voorneme in kennis stel om 'n teruggawe te eis wanneer die goedere of daardie produkte uitgevoer word. 55

71. Kyk byvoorbeeld artikel 97(1) van die Wet op Doeanereg.

72. Kyk byvoorbeeld artikel 106 van die Wet op Doeanereg.

Refunds and drawbacks provided for in Customs Tariff

66. (1) If, and to the extent that, the Customs Tariff provides for refunds or drawbacks of duty paid on goods specified in the Customs Tariff, the customs authority must apply the provisions of the Customs Tariff applicable to those goods when giving refunds or drawbacks on those goods. 5

(2) A refund or drawback on goods referred to in subsection (1) may be granted only—

- (a) in accordance with the terms and conditions specified in the Customs Tariff in relation to refunds or drawbacks on those goods; and
- (b) to the extent specified in the Customs Tariff. 10

Application for refund and drawback

67. The customs authority may, subject to section 72, refund a duty, administrative penalty or interest or grant a drawback of an import duty only on application by the person who paid the duty, penalty or interest, or that person's duly appointed representative. 15

Manner of applying for refund and drawback

68. (1) An application for a refund or drawback referred to in section 67 must be—
(a) submitted to the customs authority in the form and format as may be prescribed by rule and contain the information required on the prescribed form or otherwise prescribed by rule; 20

- (b) accompanied by a motivation justifying the refund or drawback;
- (c) supported by any necessary documents and other evidence to prove—
 - (i) that the refund or drawback is justified; and
 - (ii) that the applicant is the person entitled to the refund or drawback; and
- (d) comply with such other requirements relating to the submission of applications as may be prescribed in the rules or determined in the Customs Tariff. 25

(2) Submission of an amended clearance declaration in terms of section 174 of the Customs Control Act may be regarded to be an application complying with subsection (1) if—

- (a) the amended clearance declaration is submitted to correct an error as a result of which the applicant becomes entitled to a refund; and 30
- (b) the customs authority accepts the amended clearance declaration in terms of that section.

Time within which application must be submitted

69. (1) An application for— 35

- (a) a refund or drawback of duty, including any interest on a duty, paid to the Commissioner on any goods must be submitted to the customs authority within a period of three years from the date on which those goods were cleared;⁷³ or
- (b) a refund of an administrative penalty, including any interest on an administrative penalty, paid to the Commissioner must be submitted to the customs authority within a period of three years from the date on which the amount reclaimed in terms of the application was paid, or if the amount was paid in instalments, from the date the first instalment was paid. 40

73. The date of clearance of goods is the date of acceptance of the clearance declaration by Customs in terms of section 173 of the Customs Control Act.

Terugbetaling en teruggawe waarvoor in Doeanetarief voorsiening gemaak word

66. (1) Indien, en insoverre, die Doeanetarief voorsiening maak vir terugbetalings of teruggawes van reg wat betaal is op goedere in die Doeanetarief gespesifiseer, moet die doeanegesag uitvoering gee aan die bepalings van die Doeanetarief wat vir daardie goedere geld. 5

(2) 'n Terugbetaling of teruggawe op goedere bedoel in subartikel (1) kan toegestaan word slegs—

- (a) ooreenkomstig die bepalings en voorwaardes in die Doeanetarief met betrekking tot terugbetalings en teruggawes op daardie goedere gespesifiseer; en 10
- (b) insoverre in die Doeanetarief gespesifiseer.

Aansoek om terugbetaling en teruggawe

67. Die doeanegesag kan, behoudens artikel 72, 'n reg, administratiewe boete of rente terugbetaal, of 'n teruggawe van 'n invoerreg toestaan, slegs op aansoek deur iemand wat die reg, boete of rente betaal het, of daardie persoon se behoorlik aangestelde verteenwoordiger. 15

Wyse waarop aansoek om terugbetaling en teruggawe gedoen word

68. (1) 'n Aansoek om 'n terugbetaling of teruggawe bedoel in artikel 67 moet—

- (a) by die doeanegesag ingedien word in die vorm en formaat soos by reël voorgeskryf mag word en die inligting bevat wat op die voorgeskrewe vorm vereis word of andersins by reël voorgeskryf mag word; 20
- (b) vergesel gaan van 'n motivering wat die terugbetaling of teruggawe regverdig;
- (c) deur enige nodige dokumente en ander bewys gerugsteun word ter bewys daarvan dat— 25
 - (i) die terugbetaling of teruggawe geregverdig is; en
 - (ii) die applikant die persoon is wat op die terugbetaling of teruggawe geregtig is; en
- (d) aan die ander vereistes met betrekking tot die indiening van aansoeke voldoen; soos in die reëls voorgeskryf of in die Doeanetarief bepaal mag word. 30

(2) Indiening van 'n gewysigde klaringsbrief ingevolge artikel 174 van die Wet op Doeanebeheer kan geag word 'n aansoek te wees wat aan subartikel (1) voldoen indien—

- (a) die gewysigde klaringsbrief ingedien word om 'n fout reg te stel op grond waarvan die applikant op 'n terugbetaling geregtig word; en 35
- (b) die doeanegesag die gewysigde klaringsbrief ingevolge daardie artikel aanvaar.

Tydperk waarbinne aansoek ingedien moet word

69. 'n Aansoek om— 40

- (a) 'n terugbetaling of teruggawe van reg, met inbegrip van enige rente op 'n reg, wat op enige goedere aan die Kommissaris betaal is, moet binne 'n tydperk van drie jaar vanaf die datum waarop daardie goedere geklaar is by die doeanegesag ingedien word;⁷³ of 45
- (b) 'n terugbetaling van 'n administratiewe boete, met inbegrip van enige rente op 'n administratiewe boete, wat aan die Kommissaris betaal is, moet binne 'n tydperk van drie jaar vanaf die datum waarop die bedrag betaal is wat ingevolge die aansoek teruggeëis word, of indien die bedrag in paaiemente betaal is, vanaf die datum waarop die eerste paaiement betaal is, by die doeanegesag ingedien word. 50

73. Die datum van klaring van goedere is die datum van aanvaarding van die klaringsbrief deur Doeane, ingevolge artikel 173 van die Wet op Doeanebeheer.

- (2) Subsection (1) does not apply if the entitlement to, or the extent of, a refund or drawback is determined or otherwise affected by—
- (a) a decision in any administrative appeal or dispute resolution proceedings or a dispute settlement, and in such a case an application for the refund or drawback must be submitted to the customs authority within 180 calendar days from the date the decision was given or the matter was settled, as the case may be;
 - (b) a final judgement of a court, and in such a case an application for the refund or drawback must be submitted to the customs authority within 180 calendar days from the date the final judgement was given; or
 - (c) a retrospective amendment to the Customs Tariff, and in such a case an application for the refund or drawback must be submitted to the customs authority within 180 calendar days from the date the amendment was published.
- (3) If the grounds for a decision given in any appeal or dispute resolution proceedings referred to in subsection (2)(a) or in a final judgement referred to in subsection (2)(b) will—
- (a) when applied to other goods that were not the subject of those proceedings or judgement, also affect duties, or interest on duties, paid on those other goods, applications for refund or drawback of duty or interest paid on those other goods may in terms of subsection (2)(a) or (b) be submitted only in relation to those goods in respect of which a re-assessment of duty was made or is permissible in terms of the proviso to section 87(1)(a); or
 - (b) when applied to other administrative penalties, or to interest on administrative penalties, paid to the Commissioner that were not the subject of those proceedings or judgement, also affect those other penalties or interest, applications for refund of those penalties or interest may in terms of subsection (2)(a) or (b) be submitted only in relation to those penalties or interest that were paid after a date⁷⁴ three years prior to the date of payment of the penalty or interest that was the subject of those proceedings or judgement.
- (4) In this section “clear” means cleared for—
- (a) home use in terms of Chapter 8 of the Customs Control Act; or
 - (b) a customs procedure that confers a tax due or partial tax due status on goods, and “clearance” has a corresponding meaning.

Consideration of application

- 70.** (1) Upon receipt of an application for a refund or drawback referred to in section 67 the customs authority must first, before considering the application on the merits, apply a process of validation to the application to determine whether—
- (a) the applicant is in terms of section 67 competent to submit the application;
 - (b) the application complies with section 68;
 - (c) the application was submitted within the applicable timeframe referred to in section 69(1) or (2);
 - (d) the application qualifies as a valid application in terms of section 69(3), if that section applies; and
 - (e) section 65(3) has been complied with, in the case of an application for a drawback.
- (2) After applying the validation process, the customs authority may either validate an application for consideration on the merits or invalidate the application.
- (3) (a) If the customs authority invalidates an application in terms of subsection (2) it must notify the applicant of the invalidation, the date of invalidation and the reason for the invalidation.
- (b) If the customs authority validates an application in terms of subsection (2), it must notify the applicant of the validation and the validation date.

⁷⁴. This covers all payments during the period from this date up to the date of the decision or final judgement and also payments made after the date of the decision or judgement which are not consistent with the decision or judgement.

- (2) Subartikel (1) is nie van toepassing nie indien die aanspraak op, of die omvang van die bedrag van, 'n terugbetaling of teruggawe bepaal of andersins geraak word deur—
- (a) 'n beslissing in enige administratiewe appèl of geskilbeslegting verrigtinge of die skikking van 'n dispuut, en in so 'n geval moet 'n aansoek om die terugbetaling of teruggawe by die doeanegesag ingedien word binne 180 kalenderdae vanaf die datum waarop die beslissing gegee of die saak geskik is, na gelang van die geval; 5
 - (b) 'n finale beslissing van 'n hof, en in so 'n geval moet 'n aansoek om die terugbetaling of teruggawe by die doeanegesag ingedien word binne 180 kalenderdae vanaf die datum waarop die finale beslissing gegee is; of 10
 - (c) 'n wysiging van die Doeanetarief wat terugwerkend van krag is, en in so 'n geval moet die aansoek om terugbetaling of teruggawe by die doeanegesag ingedien word binne 180 kalenderdae vanaf die datum van publikasie van die wysiging. 15
- (3) Indien die gronde vir 'n beslissing gegee in 'n appèl of geskilbeslegting verrigtinge bedoel in subartikel (2)(a) of in 'n finale beslissing bedoel in subartikel (2)(b)—
- (a) wanneer dit toegepas word op ander goedere wat nie die onderwerp van daardie verrigtinge of hofbeslissing was nie, ook regte, of rente op regte, raak wat op daardie ander goedere betaal is, mag aansoeke om terugbetaling of teruggawe van reg of rente op daardie ander goedere betaal, ingevolge subartikel (2)(a) of (b) ingedien word slegs met betrekking tot daardie goedere ten opsigte waarvan 'n heraanslag van reg ingevolge die voorbehoudsbepaling by subartikel 87(1)(a) gedoen is of toelaatbaar is; of 20
 - (b) wanneer toegepas op ander administratiewe boetes, of op rente op administratiewe boetes, aan die Kommissaris betaal wat nie die onderwerp van daardie verrigtinge of hofbeslissing was nie, ook daardie ander boetes of rente raak, mag aansoeke om terugbetaling van daardie boetes of rente ingevolge subartikel (2)(a) of (b) ingedien word slegs met betrekking tot daardie boetes of rente betaal na 'n datum⁷⁴ drie jaar voor die datum van betaling van die boete of rente wat die onderwerp van daardie verrigtinge of hofbeslissing was. 30
- (4) In hierdie artikel beteken “**klaar**” klaar vir—
- (a) binnelandse gebruik ingevolge Hoofstuk 8 van die Wet op Doeanebeheer; of
 - (b) 'n doeaneprosedure wat 'n belasting betaalbare status of deels-belasting betaalbare status aan goedere verleen, 35
- en het “klaring” 'n ooreenstemmende betekenis.

Oorweging van aansoek

- 70.** (1) By ontvangs van 'n aansoek om terugbetaling of teruggawe bedoel in artikel 67, moet die doeanegesag eers, vóór oorweging van die aansoek op die meriete, die aansoek aan 'n proses van validasie onderwerp ten einde te bepaal of—
- (a) die applikant ingevolge artikel 67 regtens bevoeg is om die aansoek in te dien;
 - (b) die aansoek aan artikel 68 voldoen;
 - (c) die aansoek binne die toepaslike tydskaal bedoel in artikel 69(1) of (2) ingedien is; 45
 - (d) die aansoek ingevolge artikel 69(3) as 'n geldige aansoek kwalifiseer, indien daardie artikel van toepassing is; en
 - (e) daar, in die geval van 'n aansoek om 'n teruggawe, aan artikel 65(3) voldoen is.
- (2) Na toepassing van die validasieproses kan die doeanegesag die aansoek òf geldig bevind vir oorweging op die meriete òf ongeldig bevind. 50
- (3) (a) Indien die doeanegesag 'n aansoek ingevolge subartikel (2) ongeldig bevind, moet die doeanegesag kennis aan die applikant gee van die ongeldigbevinding, die datum van ongeldigbevinding en die rede vir die ongeldigbevinding.
- (b) Indien die doeanegesag 'n aansoek ingevolge subartikel (2) geldig bevind, moet die doeanegesag kennis aan die applikant gee van die geldigbevinding en die datum van geldigbevinding. 55

74. Alle betalings gedurende die tydperk vanaf hierdie datum tot en met die datum van die besluit of finale hofbeslissing word hierdeur gedek, asook betalings wat na die datum van die besluit of hofbeslissing gemaak is wat nie met die besluit of hofbeslissing bestaanbaar is nie.

- (4) The customs authority must consider a validated application on the merits and, within 21 working days of validation of the application, either—
- (a) approve the application and pay the refund or drawback to the applicant;
 - (b) refuse the application;⁷⁵ or
 - (c) reject the application on technical grounds. 5
- (5) (a) If an application for a refund or drawback of a duty is approved, the customs authority is not obliged by reason only of the fact that the application for a refund or drawback of the duty has been approved to refund any interest or any administrative penalty paid in connection with the duty.
- (b) Paragraph (a) does not prevent a person from applying in terms of this section for a refund of any such interest or penalty. 10

Re-submission of rejected application

- 71.** (1) An application for a refund or drawback referred to in section 67 that was rejected in terms of section 70(4)(c) on technical grounds, may be rectified and resubmitted to the customs authority. 15
- (2) If an application referred to in subsection (1) is resubmitted to the customs authority within a period prescribed by rule from the date of rejection of the previous application, the resubmitted application must be regarded for purposes of section 69 to have been submitted on the date the previous application was submitted.
- (3) A resubmitted application must be dealt with in accordance with section 70. 20

Refund without application

- 72.** (1) The Commissioner may, despite the provisions of this Chapter requiring persons claiming refund of duties, penalties or interest to submit applications for such refunds, issue a general directive authorising the refund without application of duties, penalties or interest paid or overpaid in such circumstances as may be specified in the directive. 25
- (2) No general directive issued in terms of subsection (1) may authorise the refund of duties, penalties or interest paid or overpaid due to errors in the tariff, valuation or origin determination or re-determination of goods.

Minimum amount 30

- 73.** No refund or drawback may be granted for amounts less than—
- (a) R50, in the case of goods imported or exported by post; or
 - (b) R100, in the case of goods imported or exported otherwise than by post.

Recovery of refund or drawback in certain circumstances

- 74.** (1) The customs authority must recover a refund or drawback paid in terms of this Chapter to a person if payment of the refund or drawback— 35
- (a) was made in error; or
 - (b) becomes recoverable by the customs authority in terms of a provision of the Customs Control Act.⁷⁶
- (2) The customs authority may recover a refund or drawback from the person to whom the refund or drawback was paid as if the amount of the refund or drawback were a duty payable by that person. 40

Set-off of refund or drawback against amount owing

- 75.** (1) When a refund or drawback becomes payable in terms of this Chapter to a person who has failed to pay an amount of tax, duty, levy, charge, interest or administrative penalty levied or imposed under this Act or any other legislation administered by the Commissioner within the period required for payment of the 45

75. Refusal of the application does not prevent the submission of a new application on different grounds, provided that the application is submitted within the applicable timeframe referred to in section 69.

76. See for instance section 161(1)(c) of the Customs Control Act.

- (4) Die doeanegesag moet 'n aansoek wat geldig bevind is op die meriete oorweeg en, binne 21 werksdae na geldigbevinding van die aansoek, die aansoek òf—
- (a) goedkeur en die terugbetaling of teruggawe aan die applikant doen;
 - (b) afkeur;⁷⁵ òf
 - (c) op tegniese gronde verwerp. 5
- (5) (a) Indien 'n aansoek om terugbetaling of teruggawe van 'n reg goedgekeur word, is die doeanegesag nie verplig om, slegs vanweë die feit dat die aansoek om terugbetaling of teruggawe van die reg goedgekeur is, enige rente of enige administratiewe boete wat in verband met die reg betaal is, terug te betaal nie.
- (b) Paragraaf (a) verhinder niemand om ingevolge hierdie artikel aansoek om 'n terugbetaling van sodanige rente of boete te doen nie. 10

Her-indiening van verworpe aansoek

71. (1) 'n Aansoek om terugbetaling of teruggawe bedoel in artikel 67 wat ingevolge artikel 70(4)(c) op tegniese gronde verwerp is, kan reggestel en by die doeanegesag heringedien word. 15
- (2) Indien 'n aansoek bedoel in subartikel (1) binne 'n tydperk by reël voorgeskryf vanaf die datum van afkeuring van die vorige aansoek by die doeanegesag heringedien word, moet die heringediende aansoek vir doeleindes van artikel 69 geag word ingedien te gewees het op die datum waarop die vorige aansoek ingedien is.
- (3) Met 'n heringediende aansoek moet daar mee gehandel word ooreenkomstig artikel 70. 20

Terugbetaling sonder aansoek

72. (1) Ondanks die bepalings van hierdie Hoofstuk waarvolgens persone wat terugbetaling van regte, boetes of rente eis aansoeke om sodanige terugbetalings moet indien, kan die Kommissaris 'n algemene lasgewing uitreik wat die terugbetaling sonder aansoek magtig van regte, boetes of rente betaal of oor-betaal in dié omstandighede soos in die lasgewing vermeld mag word. 25
- (2) Geen algemene lasgewing ingevolge subartikel (1) uitgereik, mag die terugbetaling magtig van regte, boetes of rente betaal of oor-betaal as gevolg van foute in die tarief-, waarde- of oorsprongbepaling of -herbepaling van goedere nie. 30

Minimum bedrag

73. Geen terugbetaling of teruggawe mag toegestaan word vir bedrae minder as—
- (a) R50 nie, in die geval van goedere per pos in- of uitvoer; of
 - (b) R100 nie, in die geval van goedere anders as per pos in- of uitvoer.

Verhaling van terugbetaling of teruggawe in sekere omstandighede 35

74. (1) Die doeanegesag moet 'n terugbetaling of teruggawe ingevolge hierdie Hoofstuk aan iemand betaal, verhaal indien betaling van die terugbetaling of teruggawe—
- (a) foutiewelik gedoen is; of
 - (b) ingevolge 'n bepaling van die Wet op Doeanebeheer deur die doeanegesag verhaalbaar raak.⁷⁶ 40
- (2) Die doeanegesag kan 'n terugbetaling of teruggawe van die persoon verhaal aan wie die terugbetaling of teruggawe gedoen is, asof die bedrag van die terugbetaling of teruggawe 'n reg betaalbaar deur daardie persoon is.

Verrekening van terugbetaling of teruggawe teen bedrag verskuldig 45

75. (1) Wanneer 'n terugbetaling of teruggawe ingevolge hierdie Hoofstuk betaalbaar word aan iemand wat versuim het om 'n bedrag aan belasting, reg, heffing, gelde, rente of administratiewe boete gehê of opgelê ingevolge hierdie Wet of enige ander wetgewing deur die Kommissaris geadministreer, binne die tydperk vereis vir betaling

75. Afkeuring van die aansoek verhinder nie die voorlegging van 'n nuwe aansoek op ander gronde nie, mits die aansoek binne die toepaslike tydskaal bedoel in artikel 69 ingedien word.

76. Kyk byvoorbeeld artikel 161(1)(c) van die Wet op Doeanebeheer.

amount, the customs authority may set off the amount of such refund or drawback against the amount which that person has failed to pay.

(2) Subsection (1) may not be applied to an amount of outstanding tax, duty, levy, charge, interest or administrative penalty if the customs authority has in terms of section 830 of the Customs Control Act suspended or deferred payment of that amount pending institution or conclusion of proceedings in terms of Chapter 37. 5

Interest payable on refund or drawback

76. (1) If a person becomes entitled to claim a refund or drawback of a duty, administrative penalty or interest paid to the Commissioner in terms of this Act, no interest is payable on the amount of that duty, penalty or interest, except as provided for in subsection (2). 10

(2) If the customs authority fails to pay a refund or drawback approved in terms of section 70(4)(a) within the 21 working days' period referred to in that section, the applicant is entitled to interest, at a rate determined by the Minister, on the amount of the refund or drawback, for a period commencing on the expiry of that 21 days' period up to the date of payment of the refund or drawback. 15

(3) Interest determined in terms of subsection (2) must be calculated on daily balances owing and compounded at the end of each month.

Rules to facilitate application of this Chapter

77. The Commissioner may in terms of section 224 make rules to facilitate the implementation of this Chapter, including rules prescribing the circumstances in and procedures according to which payments, other than duties, administrative penalties and interest, made to the Commissioner may be refunded. 20

Offences in terms of this Chapter⁷⁷

78. A person is guilty of a Category 1 offence if that person claims, or receives and keeps, any refund or drawback to which that person is not entitled. 25

CHAPTER 5

ASSESSMENT OF DUTY

Purpose and application of this Chapter

79. (1) The purpose of this Chapter is to provide for the assessment of duty on goods. 30

(2) This Chapter applies to all goods—

(a) imported into the Republic and—

(i) cleared for home use or another customs procedure that confers a tax due or partial tax due status on the goods;⁷⁸ or

(ii) regarded for tax purposes in terms of a provision of the Customs Control Act to be cleared for home use under Chapter 8 of that Act; or 35

(b) exported or to be exported from the Republic and—

77. See also general offences in section 212 relating to fraudulent claims for refunds and drawbacks.

78. Clearance for home use in terms of Chapter 8 of the Customs Control Act renders goods subject to the payment of any import duty that may have been imposed. Clearance of imported goods for inward or home use processing may render the goods subject to the payment of a part of any applicable import duty.

van die bedrag te betaal, kan die doeanegesag die bedrag van so 'n terugbetaling of teruggawe verreken teen die bedrag wat so iemand versuim het om te betaal.

(2) Subartikel (1) mag nie toegepas word ten opsigte van 'n bedrag van uitstaande belasting, reg, heffing, gelde, rente of administratiewe boete nie indien die doeanegesag ingevolge artikel 830 van die Wet op Doeanereg betaling van daardie bedrag hangende die instel of afhandeling van verrigtinge ingevolge Hoofstuk 37 opgeskort of uitgestel het. 5

Rente betaalbaar op terugbetaling of teruggawe

76. (1) Indien iemand daarop geregtig word om 'n terugbetaling of teruggawe te eis van 'n reg, administratiewe boete of rente ingevolge hierdie Wet aan die Kommissaris betaal, is geen rente op die bedrag van daardie reg, boete of rente betaalbaar behalwe soos in subartikel (2) bepaal nie. 10

(2) Indien die doeanegesag versuim om 'n terugbetaling of teruggawe wat ingevolge artikel 70(4)(a) goedgekeur is binne die 21 werksdae tydperk bedoel in daardie artikel te betaal, is die applikant op rente, teen 'n koers deur die Minister bepaal, op die bedrag van die terugbetaling of teruggawe geregtig, vir 'n tydperk wat begin op die verstryking van daardie 21 dae tydperk tot en met die datum van betaling van die terugbetaling of teruggawe. 15

(3) Rente ingevolge subartikel (2) bepaal, moet bereken word op daaglikse verskuldigde saldo's en aan die einde van elke maand saamgestel word. 20

Reëls ter fasilitering van toepassing van hierdie Hoofstuk

77. Die Kommissaris kan ingevolge artikel 224 reëls uitvaardig om die implementering van hierdie Hoofstuk te fasiliteer, met inbegrip van reëls wat voorskryf die omstandighede waarin en prosedures waarvolgens betalings, anders as regte, administratiewe boetes en rente, aan die Kommissaris gedoen, terugbetaal kan word. 25

Misdrywe ingevolge hierdie Hoofstuk⁷⁷

78. Iemand is aan 'n Kategorie 1 misdryf skuldig indien so iemand enige terugbetaling of teruggawe waarop so iemand nie geregtig is nie eis, of ontvang en hou.

HOOFSTUK 5

AANSLAG VAN REGTE 30

Doel en toepassing van hierdie Hoofstuk

79. (1) Die doel van hierdie Hoofstuk is om vir die aanslag van reg op goedere voorsiening te maak.

(2) Hierdie Hoofstuk is van toepassing op alle goedere wat—

(a) in die Republiek ingevoer word en— 35

(i) geklaar word vir binnelandse gebruik of 'n ander doeaneprosedure wat 'n belasting betaalbare status of deels-belasting betaalbare status aan die goedere verleen;⁷⁸ of

(ii) vir belastingdoeleinde ingevolge 'n bepaling van die Wet op Doeanereg geag word vir binnelandse gebruik ingevolge Hoofstuk 8 van daardie Wet geklaar te wees; of 40

(b) uit die Republiek uitgevoer is of gaan word en—

77. Kyk ook algemene misdrywe in artikel 212 wat met bedrieglike eise vir terugbetalings en teruggawes verband hou.

78. Klaring vir binnelandse gebruik ingevolge Hoofstuk 8 van die Wet op Doeanereg stel die goedere onderhewig aan die betaling van invoerreg wat op die goedere opgelê mag wees. Klaring van ingevoerde goedere vir inwaartse- of binnelandse gebruikspersessering kan die goedere onderhewig stel aan die betaling van 'n gedeelte van enige invoerreg wat mag geld.

- (i) cleared for outright export or another customs procedure that confers a tax due or partial tax due status on the goods;⁷⁹ or
- (ii) regarded for tax purposes in terms of a provision of the Customs Control Act to be cleared for outright export.

Key factors of duty assessment 5

- 80.** (1) When assessing goods for duty purposes, the dutiability of the goods and the amount of duty payable on the goods must be determined with reference to—
- (a) the tariff classification of the goods as determined in accordance with Chapter 6;
 - (b) (i) the customs value of those goods as determined in accordance with Chapter 7, if the duty is imposed by value of the goods; or 10
 - (ii) the quantity, weight, volume, measurement or other specifics of those goods as determined in accordance with the rules or the Customs Tariff, if the duty is imposed by quantity, weight, volume, measurement or other specifics of the goods; 15
 - (c) the origin of those goods as determined in accordance with Chapter 8, if the dutiability of, or the amount of duty on, the goods is affected by the origin of the goods;
 - (d) the rate of duty applicable to those goods; and 20
 - (e) any other specific factors regulating the duty or the calculation of the amount of duty that may be payable on those goods.
- (2) An assessment of duty must be carried out in accordance with the applicable provisions of this Act.
- (3) This section must be complied with by— 25
- (a) any person when making a self-assessment of the duty that may be payable on goods; and
 - (b) the customs authority when assessing or re-assessing the duty that may be payable on goods.

Applicable rate of duty 30

- 81.** (1) The rate of import duty to be applied to dutiable goods—
- (a) cleared for home use or a customs procedure that renders the goods subject to the payment of import duty,⁸⁰ is the rate applicable to the goods at the time when the goods are cleared for home use or that customs procedure;⁸¹ or
 - (b) regarded for tax purposes in terms of a provision of the Customs Control Act to be cleared for home use under Chapter 8 of that Act, is the rate applicable to the goods at the date on which the goods acquired a tax due status⁸² or at the time when the customs authority commences with the assessment of duty in terms of section 84(1), whichever yields the higher rate. 35
- (2) The rate of export duty to be applied to goods— 40
- (a) cleared for outright export or another customs procedure that renders the goods subject to the payment of export duty, is the rate applicable to the goods at the time when the goods are cleared for outright export or that customs procedure;⁸³ or

79. Clearance for outright export may render goods subject to the payment of any export duty that may have been imposed. Clearance of goods for outward processing may render the goods subject to the payment of part of any applicable export duty.

80. Eg. Customs procedures where a rebate of less than 100 percent apply, such as may be the case with inward processing, home use processing and compensating products imported under the outward processing procedure.

81. For time when goods are cleared for home use or a customs procedure see section 173 of the Customs Control Act.

82. See sections 152, 153, 154 and 155 of the Customs Control Act.

83. For time when goods are cleared for a customs procedure see section 173 of the Customs Control Act.

- (i) geklaar word vir regstreekse uitvoer of 'n ander doeaneprosedure wat 'n belasting betaalbare status of 'n deels-belasting betaalbare status aan die goedere verleen;⁷⁹ of
- (ii) vir belastingdoeleindes ingevolge 'n bepaling van die Wet op Doeanebeheer geag word vir regstreekse uitvoer geklaar te wees. 5

Sleutelfaktore vir aanslag van reg

- 80.** (1) Wanneer goedere vir belastingdoeleindes aangeslaan word, moet die belasbaarheid van die goedere en die bedrag van reg betaalbaar op die goedere bepaal word met verwysing na—
- (a) die tariefindeling van die goedere soos ooreenkomstig Hoofstuk 6 bepaal; 10
 - (b) (i) die doeanewaarde van daardie goedere soos ooreenkomstig Hoofstuk 7 bepaal, indien die reg per waarde van die goedere opgelê word; of
 - (ii) die hoeveelheid, gewig, volume, afmeting of ander hoedanighede van daardie goedere soos ooreenkomstig die reëls of die Doeanetarief bepaal, indien die reg per hoeveelheid, gewig, volume, afmeting of ander hoedanighede van die goedere opgelê word; 15
 - (c) die oorsprong van daardie goedere soos ooreenkomstig Hoofstuk 8 bepaal, indien die belasbaarheid van, of die bedrag van reg op, die goedere beïnvloed word deur die oorsprong van die goedere;
 - (d) die koers van reg wat op daardie goedere van toepassing is; en 20
 - (e) enige ander spesifieke faktore wat die reg of die berekening van die bedrag van reg wat op die goedere betaalbaar mag wees, reguleer.
- (2) 'n Aanslag van reg moet ooreenkomstig die toepaslike bepalings van hierdie Wet gedoen word.
- (3) Hierdie artikel moet toegepas word deur— 25
- (a) iemand wanneer so iemand 'n self-aanslag van die reg wat op goedere betaalbaar mag wees, doen; en
 - (b) die doeanegesag wanneer die doeanegesag 'n aanslag of heraanslag van die reg wat op goedere betaalbaar mag wees, doen.

Toepaslike koers van reg 30

- 81.** (1) Die koers van invoerreg wat toegepas moet word op belasbare goedere wat—
- (a) geklaar word vir binnelandse gebruik of 'n doeaneprosedure wat die goedere aan die betaling van invoerreg onderworpe stel,⁸⁰ is die koers wat vir die goedere geld ten tye van klaring van die goedere vir binnelandse gebruik of daardie doeaneprosedure;⁸¹ of 35
 - (b) vir belastingdoeleindes ingevolge 'n bepaling van die Wet op Doeanebeheer geag word vir binnelandse gebruik ingevolge Hoofstuk 8 van daardie Wet geklaar te wees, is die koers wat vir die goedere geld op die datum waarop die goedere 'n belasting betaalbare status verkry⁸² of op die tydstip waarop die doeanegesag ingevolge artikel 84(1) met die aanslag van reg begin, watter koers ook al die hoogste is. 40
- (2) Die koers van uitvoerreg wat toegepas moet word op goedere wat—
- (a) geklaar word vir regstreekse uitvoer of 'n ander doeaneprosedure wat die goedere aan die betaling van uitvoerreg onderworpe stel, is die koers wat vir die goedere geld ten tye van klaring van die goedere vir regstreekse uitvoer of daardie doeaneprosedure;⁸³ of 45

79. Klaring vir regstreekse uitvoer kan goedere onderhewig stel aan die betaling van enige uitvoerreg wat op die goedere opgelê mag wees. Klaring van goedere vir uitwaartse prosessering kan die goedere onderhewig stel aan die betaling van 'n gedeelte van enige uitvoerreg wat mag geld.

80. Bv. doeaneprosedures waar 'n korting van minder as 100 persent van toepassing is, soos wat die geval mag wees met inwaartse prosessering, binnelandse gebruiksprosessering en kompenserende produkte wat onder die prosedure vir uitwaartse prosessering ingevoer word.

81. Vir die tydstip waarop goedere vir binnelandse gebruik of 'n doeaneprosedure geklaar word, kyk artikel 173 van die Wet op Doeanebeheer.

82. Kyk artikels 152, 153, 154 en 155 van die Wet op Doeanebeheer.

83. Vir die tydstip waarop goedere vir 'n doeaneprosedure geklaar word, kyk artikel 173 van die Wet op Doeanebeheer.

- (b) regarded for tax purposes in terms of a provision of the Customs Control Act to be cleared for outright export, is the rate applicable to the goods at the date on which the goods acquired a tax due status⁸⁴ or at the time when the customs authority commences with the assessment of duty in terms of section 84(1), whichever yields the higher rate.

5

Self-assessment of duty by person clearing goods

82. (1) A person clearing goods⁸⁵ for home use or outright export or for another customs procedure that confers a tax due or partial tax due status on the goods in relation to import or export duty must—

- (a) determine the dutiability of the goods and calculate the amount of duty payable on the goods (if any) by making a self-assessment, on a worksheet as may be prescribed by rule, with reference to each of the key assessment factors applicable to the goods; 10
- (b) state on the clearance declaration— 15
- (i) the amount of duty payable on the goods (if any) in accordance with the self-assessment; and
- (ii) any other particulars concerning the self-assessment as may be prescribed by rule;
- (c) pay the amount of duty stated on the clearance declaration to the Commissioner in accordance with section 22 or 23;⁸⁶ and 20
- (d) on request by the customs authority submit the worksheet to the customs authority.

(2) (a) A self-assessment must, subject to section 527, 532 or 536 of the Customs Control Act, be made when the goods are cleared.

(b) A person clearing goods must on discovery of any inaccuracy in a self-assessment made in respect of the goods, promptly notify the customs authority of such inaccuracy. 25

(3) Section 179 of the Customs Control Act applies to a worksheet referred to in subsection (1).

(4) This section does not apply to—

- (a) accompanied or unaccompanied baggage other than commercial goods; 30
- (b) international postal articles cleared in accordance with the simplified clearance process contemplated in section 493(2) of the Customs Control Act; or
- (c) any other category of goods— 35
- (i) excluded by rule from self-assessment; or
- (ii) exempted by the customs authority in a specific case from self-assessment.

Assessment of duty by customs authority

83. (1) The customs authority must, subject to section 527, 532 or 536 of the Customs Control Act, before releasing goods cleared for home use or outright export or for another customs procedure that confers a tax due or partial tax due status on the goods in relation to import or export duty— 40

- (a) determine the dutiability of the goods; and
- (b) if dutiable, calculate the amount of duty payable on the goods (if any).

(2) The customs authority must assess duty on the goods in terms of subsection (1)(b) by either— 45

- (a) adopting any self-assessment of duty as stated on the clearance declaration of the goods as its own assessment of the duty on the goods; or
- (b) making its own assessment of duty on the goods.

(3) If the customs authority makes an assessment in terms of subsection (2)(b) the amount so assessed must be paid to the Commissioner subject to subsections (4) and (5). 50

84. See sections 157, 158 and 159 of the Customs Control Act.

85. See section 166 of the Customs Control Act.

86. The customs authority may in terms of section 103 of the Customs Control Act, as a pre-condition for the release of goods, require a person clearing the goods to provide security for any shortfall on any duty that may subsequently be discovered.

- (b) vir belastingdoeleindes ingevolge 'n bepaling van die Wet op Doeanereg geag word vir regstreekse uitvoer geklaar te wees, is die koers wat vir die goedere geld op die datum waarop die goedere 'n belasting betaalbare status verkry⁸⁴ of op die tydstip waarop die doeanegesag ingevolge artikel 84(1) met die aanslag van reg begin, watter koers ook al die hoogste is. 5

Self-aanslag van reg deur persone wat goedere klaar

82. (1) Iemand wat goedere klaar⁸⁵ vir binnelandse gebruik of regstreekse uitvoer of vir 'n ander doeaneprosedure wat 'n belasting betaalbare status of 'n deels-belasting betaalbare status met betrekking tot invoer- of uitvoerreg aan die goedere verleen, moet— 10

- (a) die belasbaarheid vir reg van die goedere bepaal en die bedrag van reg betaalbaar op die goedere (indien enige) bereken deur 'n self-aanslag te doen op 'n werkstaat, soos by reël voorgeskryf mag word, met verwysing na elk van die sleutelaanslagfaktore wat op die goedere van toepassing is; 15
- (b) op die klaringsbrief die volgende vermeld: 15
- (i) Die bedrag van reg ooreenkomstig die self-aanslag op die goedere betaalbaar (indien enige); en
- (ii) enige ander besonderhede rakende die self-aanslag soos by reël voorgeskryf mag word;
- (c) ooreenkomstig artikel 22 of 23 die bedrag van reg op die klaringsbrief 20 vermeld aan die Kommissaris betaal;⁸⁶ en
- (d) op versoek deur die doeanegesag die werkstaat aan die doeanegesag verstrek.

(2) (a) 'n Self-aanslag moet, behoudens artikel 527, 532 of 536 van die Wet op Doeanereg, gedoen word wanneer die goedere geklaar word. 25

(b) Iemand wat goedere klaar, moet wanneer daar in 'n self-aanslag ten opsigte van goedere gedoen enige onakkuraatheid aan die lig kom, die doeanegesag onverwyld daarvan in kennis stel.

(3) Artikel 179 van die Wet op Doeanereg is van toepassing op 'n werkstaat in subartikel (1) bedoel.

(4) Hierdie artikel is nie van toepassing nie op— 30

- (a) vergeselde of onvergeselde bagasie anders as kommersiële goedere;
- (b) internasionale posstukke geklaar volgens die verkorte klaringsproses beoog in artikel 493(2) van die Wet op Doeanereg; of
- (c) enige ander kategorie goedere— 35
- (i) by reël van self-aanslag uitgesluit; of
- (ii) in 'n bepaalde geval deur die doeanegesag van self-aanslag onthef.

Aanslag van reg deur doeanegesag

83. (1) Die doeanegesag moet, behoudens artikel 527, 532 of 536 van die Wet op Doeanereg, voor die vrystelling van goedere geklaar vir binnelandse gebruik of regstreekse uitvoer of vir 'n ander doeaneprosedure wat 'n belasting betaalbare status of deels-belasting betaalbare status met betrekking tot invoer- of uitvoerreg aan die goedere verleen— 40

- (a) die belasbaarheid van die goedere bepaal; en
- (b) indien belasbaar, die bedrag van reg bereken wat op die goedere betaalbaar is (indien enige). 45

(2) Die doeanegesag moet ingevolge subartikel (1)(b) reg op die goedere aanslaan deur—

- (a) òf enige self-aanslag van reg soos op die klaringsbrief vermeld, te aanvaar;
- (b) òf sy eie aanslag van reg op die goedere te doen.

(3) Indien die doeanegesag 'n aanslag ingevolge subartikel (2)(b) doen, moet die bedrag aldus aangeslaan aan die Kommissaris betaal word behoudens subartikels (4) en (5). 50

84. Kyk artikels 157, 158 en 159 van die Wet op Doeanereg.

85. Kyk artikel 166 van die Wet op Doeanereg.

86. Die doeanegesag kan ingevolge artikel 103 van die Wet op Doeanereg, as 'n voorvereiste vir die vrystelling van goedere, vereis dat iemand wat die goedere klaar sekuriteit moet stel vir enige tekort op enige reg wat op 'n later tydstip ontdek mag word.

(4) (a) If the amount of duty as assessed in terms of subsection (2)(b) exceeds an amount of duty already paid in terms of the self-assessment, the customs authority must recover the under-payment of duty in accordance with section 41.

(b) If paragraph (a) applies, the outstanding amount of duty must be paid on or before a date specified for payment in a notice demanding payment of that amount. 5

(5) (a) If the amount of duty as assessed in terms of subsection (2)(b) is less than an amount of duty already paid in terms of the self-assessment, the person who paid that amount of duty is entitled to a refund of the excess in accordance with and subject to Chapter 4.

(b) If paragraph (a) applies, the customs authority must give notice of the amount of the duty as assessed in terms of subsection (1)(b) to the person who paid an amount of duty on the goods. 10

Duty assessment when goods are regarded cleared for home use or outright export

84. (1) If in terms of a provision of the Customs Control Act goods are for tax purposes regarded to be cleared for home use under Chapter 8 of that Act, or for outright export, the customs authority must— 15

- (a) assess the goods for duty purposes;
- (b) calculate the amount of any duty payable on those goods at the rate applicable to the goods in terms of section 81(1)(b) or (2)(b); and
- (c) recover that amount in accordance with Chapter 3 from a person liable for the duty. 20

(2) Before making an assessment in terms of subsection (1), the customs authority may direct a person liable for the duty—

- (a) to make a self-assessment of the duty payable on the goods, substantially in accordance with section 82(1)(a); and 25
- (b) to submit the self-assessment to the customs authority within a specified period.

Duty re-assessment by customs authority

85. (1) The customs authority may at any time, subject to section 86—

- (a) make a re-assessment of duty on goods as assessed by the customs authority in terms of section 83(2)(a) or (b) or 84(1)(a) and (b); or 30
- (b) make a re-assessment of duty on goods as re-assessed in terms of paragraph (a).

(2) More than one re-assessment may, as necessary, be made in terms of subsection (1)(b). 35

(3) A re-assessment in terms of subsection (1) may be made in respect of goods irrespective of whether or not—

- (a) the goods have been released;
- (b) the goods are still subject to customs control; or
- (c) an amount of duty has been paid on the goods. 40

(4) When making a re-assessment in terms of subsection (1), the customs authority is not obliged to make the re-assessment with reference to each of the key assessment factors, but may for purposes of the re-assessment apply any key assessment factor as applied in any previous assessment.

(5) (a) If the amount of duty as re-assessed in terms of subsection (1) exceeds the amount of duty as assessed in terms of section 83(2)(a) or (b) or 84(1)(a) and (b) or a previous re-assessment in terms of subsection (1)(b), the customs authority must recover the under-payment of duty in accordance with section 41. 45

(b) If paragraph (a) applies, the outstanding amount of duty must be paid on or before a date specified for payment in a notice demanding payment of that amount. 50

(6) (a) If the amount of duty as re-assessed in terms of subsection (1) is less than an amount of duty that has been paid by a person liable for the duty following an assessment in terms of section 83(2)(a) or (b) or 84(1)(a) and (b) or a previous re-assessment in terms of subsection (1)(b), the person who paid that amount of duty is entitled to a refund of the excess in accordance with and subject to Chapter 4. 55

(4) (a) Indien die bedrag van reg soos ingevolge subartikel (2)(b) aangeslaan meer is as die bedrag van reg alreeds ingevolge die self-aanslag betaal, moet die doeanegesag die kort-betaling van reg ooreenkomstig artikel 41 verhaal.

(b) Indien paragraaf (a) geld, moet die uitstaande bedrag van reg betaal word op of voor 'n datum vir betaling vermeld in 'n kennisgewing wat betaling van daardie bedrag vereis. 5

(5) (a) Indien die bedrag van reg soos ingevolge subartikel (2)(b) aangeslaan minder is as 'n bedrag van reg alreeds ingevolge die self-aanslag betaal, is die persoon wat daardie bedrag van reg betaal het geregtig op 'n terugbetaling ooreenkomstig en behoudens Hoofstuk 4 van die bedrag van die oorbetaling. 10

(b) Indien paragraaf (a) geld, moet die doeanegesag aan die persoon wat 'n bedrag van reg op die goedere betaal het kennis gee van die bedrag van die reg ingevolge subartikel (1)(b) aangeslaan.

Aanslag van reg wanneer goedere geag word geklaar te wees vir binnelandse gebruik of regstreekse uitvoer 15

84. (1) Indien goedere ingevolge 'n bepaling van die Wet op Doeanebeheer vir belastingdoeleindes geag word vir binnelandse gebruik ingevolge Hoofstuk 8 van daardie Wet, of vir regstreekse uitvoer geklaar te wees, moet die doeanegesag—

- (a) die goedere vir doeleindes van reg aanslaan;
- (b) die bedrag van enige reg betaalbaar op daardie goedere bereken teen die koers wat ingevolge artikel 81(1)(b) of (2)(b) op die goedere van toepassing is; en 20
- (c) daardie bedrag ooreenkomstig Hoofstuk 3 verhaal van 'n persoon wat vir die reg aanspreeklik is.

(2) Voordat die doeanegesag 'n aanslag ingevolge subartikel (1) doen, kan die doeanegesag iemand wat aanspreeklik is vir die reg gelas— 25

- (a) om 'n self-aanslag van die reg betaalbaar op die goedere wesenlik volgens artikel 82(1)(a) te doen; en
- (b) om die self-aanslag binne 'n bepaalde tydperk aan die doeanegesag voor te lê.

Heraanslag van reg deur doeanegesag

85. (1) Die doeanegesag kan te eniger tyd, behoudens artikel 86— 30

- (a) 'n heraan­slag van reg doen op goedere soos deur die doeanegesag ingevolge artikel 83(2)(a) of (b) of 84(1)(a) en (b) aangeslaan; of
- (b) 'n heraan­slag van reg doen op goedere soos ingevolge paragraaf (a) heraangeslaan.

(2) Meer as een heraan­slag kan, soos nodig, ingevolge subartikel (1)(b) gedoen word. 35

(3) 'n Heraanslag ingevolge subartikel (1) kan ten opsigte van goedere gedoen word ongeag of—

- (a) die goedere vrygestel is of nie;
- (b) die goedere steeds aan doeanebeheer onderworpe is of nie; of
- (c) 'n bedrag van reg op die goedere betaal is of nie. 40

(4) Wanneer die doeanegesag 'n heraan­slag ingevolge subartikel (1) doen, is die doeanegesag nie verplig om die heraan­slag te doen met verwysing na elkeen van die sleutelaanslagfaktore nie, maar kan vir doeleindes van die heraan­slag enige sleutelaanslagfaktor toepas soos dit in enige vorige aanslag toegepas is.

(5) (a) Indien die bedrag van reg soos ingevolge subartikel (1) heraan­geslaan, meer is as die bedrag van reg soos ingevolge artikel 83(2)(a) of (b) of 84(1)(a) en (b) of 'n vorige heraan­slag ingevolge subartikel (1)(b) aangeslaan, moet die doeanegesag die kort-betaling van reg ooreenkomstig artikel 41 verhaal. 45

(b) Indien paragraaf (a) geld, moet die uitstaande bedrag van reg betaal word op of voor 'n datum vir betaling vermeld in 'n kennisgewing wat betaling van daardie bedrag vereis. 50

(6) (a) Indien die bedrag van reg soos ingevolge subartikel (1) heraan­geslaan minder is as die bedrag van reg wat deur iemand aanspreeklik vir die reg betaal is na 'n aanslag ingevolge artikel 83(2)(a) of (b) of 84(1)(a) en (b) of 'n vorige heraan­slag ingevolge subartikel (1)(b), is die persoon wat daardie bedrag van reg betaal het geregtig op 'n terugbetaling ooreenkomstig en behoudens Hoofstuk 4 van die bedrag van die oor-betaling. 55

(b) If paragraph (a) applies, the customs authority must give notice of the amount of the duty as re-assessed in terms of subsection (1) to the person who paid an amount of duty on the goods.

Time limit on duty re-assessment

86. (1) A re-assessment of duty on goods in terms of section 85(1)(a) or (b) may be made only within a period of three years from the date the goods acquired a tax due status in terms of Chapter 6 of the Customs Control Act.⁸⁷ 5

(2) A re-assessment of duty on goods is, despite subsection (1) but subject to section 87, permissible after the expiry of the three years' period referred to in that subsection—

(a) if the re-assessment— 10

(i) is mandatory in terms of section 88(1)(a) or (b); or

(ii) is necessary to rectify an underpayment or non-payment of duty that occurred as a result of fraud, misrepresentation, a false declaration or non-disclosure of material facts; or

(b) if the customs authority and the person clearing the goods agree before the expiry of that period to the re-assessment. 15

Limitation on goods in respect of which re-assessment may be made

87. (1) A re-assessment of duty on goods in terms of section 85(1)(a) or (b) may—

(a) in the case of goods affected by a decision in any administrative appeal or 20

alternative dispute resolution proceedings or by a final judgement of a court, be made only in respect of the goods in respect of which the decision or final judgement was given: Provided that if the decision or judgement invalidated,

changed or replaced a tariff, value or origin determination or re-determination and the grounds for that decision or judgement, if applied to a determination 25

or re-determination made in respect of or applied to other goods, will affect the dutiability of or the amount of duty payable on those other goods, a re-assessment of duty in terms of section 85(1)(a) or (b) may be made also in 30

respect of those other goods, provided they were cleared after a date⁸⁸ three years prior to the date of the determination or re-determination that was 30

invalidated, changed or replaced by the decision or final judgement; and (b) in the case of goods affected by a dispute settlement or a retrospective amendment to the Customs Tariff, be made only in respect of the goods in respect of which the settlement was made or to which the retrospective amendment applies.

(2) In this section “clear” means cleared for— 35

(a) home use in terms of Chapter 8 of the Customs Control Act; or

(b) a customs procedure that confers a tax due or partial tax due status on goods, and “clearance” has a corresponding meaning.

Mandatory re-assessment of duty

88. (1) The customs authority must make a re-assessment⁸⁹ of duty on goods in terms of section 85— 40

(a) when it makes a—

87. Goods that have been cleared acquire a tax due status in terms of Chapter 6 of the Customs Control Act as from the date of clearance of the goods for home use or a customs procedure conferring a tax due status on the goods, which in terms of section 173 of that Act is the date of acceptance by Customs of the clearance declaration submitted in respect of the goods.

88. This covers all clearances during the period from this date up to the date of the decision or final judgement and also clearances made after the date of the decision or judgement until the decision or judgement is implemented.

89. These re-assessments must be made at any time whether within or after the three years' period referred to in section 86(1). See section 86(2).

(b) Indien paragraaf (a) geld, moet die doeanegesag die persoon wat 'n bedrag van reg op die goedere betaal het, kennis gee van die bedrag van die reg soos ingevolge subartikel (1) heraangeslaan.

Tydsbeperking op heraanslag van reg

86. (1) 'n Heraanslag van reg op goedere ingevolge artikel 85(1)(a) of (b) kan gedoen word slegs binne 'n tydperk van drie jaar nadat die goedere ingevolge Hoofstuk 6 van die Wet op Doeanereg 'n belasting betaalbare status verkry het.⁸⁷ 5

(2) 'n Heraanslag van reg op goedere is, ongeag subartikel (1) maar behoudens artikel 87, na die verstryking van die tydperk van drie jaar bedoel in daardie subartikel toelaatbaar— 10

(a) indien die heraanslag—

(i) ingevolge artikel 88(1)(a) of (b) verpligtend is; of

(ii) nodig is om 'n kort-betaling of nie-betaling van reg wat die gevolg was van bedrog, wanvoorstelling, 'n vals klaringsbrief of die nie-
openbaarmaking van wesenlike feite, reg te stel; of 15

(b) indien die doeanegesag en die persoon wat die goedere klaar voor die verstryking van daardie tydperk op die heraanslag ooreenkom.

Beperking op goedere ten opsigte waarvan heraanslag gedoen kan word

87. (1) 'n Heraanslag van reg op goedere ingevolge artikel 85(1)(a) of (b) kan—

(a) in die geval van goedere wat geraak word deur 'n beslissing in enige administratiewe appèl of alternatiewe geskilbeslegtingsverrigtinge of deur 'n finale hofbeslissing, gedoen word slegs ten opsigte van die goedere ten opsigte waarvan die beslissing of finale hofbeslissing gegee is: Met dien verstande dat indien die beslissing of hofbeslissing 'n tarief-, waarde- of oorsprongbepaling of -herbepaling ongeldig verklaar, verander of vervang het, en die gronde vir daardie beslissing of hofbeslissing, indien toegepas op 'n bepaling of herbepaling gedoen ten opsigte van of toegepas op ander goedere, die belasbaarheid van, of die bedrag van reg betaalbaar op, daardie ander goedere sal raak, kan 'n heraanslag van reg ingevolge artikel 85(1)(a) of (b) ook ten opsigte van daardie ander goedere gedoen word, mits die goedere geklaar is na 'n datum⁸⁸ drie jaar voor die datum van die bepaling of herbepaling wat ongeldig verklaar, verander of vervang is deur die beslissing of finale hofbeslissing; en 25

(b) in die geval van goedere wat geraak word deur die skikking van 'n dispuut of 'n terugwerkende wysiging van die Doeanetarief, gedoen word slegs ten opsigte van die goedere ten opsigte waarvan die skikking gemaak is of waarop die terugwerkende wysiging van toepassing is. 35

(2) In hierdie artikel beteken “**klaar**” klaar vir—

(a) binnelandse gebruik ingevolge Hoofstuk 8 van die Wet op Doeanereg; of

(b) 'n doeaneprosedure wat 'n belasting betaalbare status of deels-belasting betaalbare status aan die goedere verleen, 40

en het “klaring” 'n ooreenstemmende betekenis.

Verpligte heraanslag van reg

88. (1) Die doeanegesag moet ingevolge artikel 85 'n heraanslag⁸⁹ van reg op goedere ingevolge artikel 85 doen— 45

(a) wanneer die doeanegesag—

87. Goedere wat geklaar is, verkry ingevolge Hoofstuk 6 van die Wet op Doeanereg 'n belasting betaalbare status vanaf die datum van klaring van die goedere vir binnelandse gebruik of 'n doeaneprosedure wat 'n belasting betaalbare status aan die goedere verleen, watter datum ingevolge artikel 173 van die Wet op Doeanereg die datum van aanvaarding deur Doeanereg van die klaringsbrief is wat ten opsigte van die goedere ingedien is.

88. Hierdie dek alle klarings gedurende die tydperk vanaf hierdie datum tot en met die datum van die beslissing of finale hofbevel, asook klarings gemaak na die datum van die beslissing of hofbeslissing totdat die besluit of hofbeslissing geïmplementeer word.

89. Hierdie heraanslae moet te eniger tyd gedoen word, of dit binne die drie jaar tydperk bedoel in artikel 86(1) val, of nie. Kyk artikel 86(2).

- (i) a tariff determination or tariff re-determination referred to in section 103(2);
 - (ii) a value determination or value re-determination referred to in section 120(2); or
 - (iii) an origin determination or origin re-determination referred to in section 156(2);
 - (b) if the dutiability of those goods or the amount of duty paid or payable on those goods is affected by—
 - (i) a decision in any administrative appeal or alternative dispute resolution proceedings;
 - (ii) a dispute settlement;
 - (iii) a retrospective amendment to the Customs Tariff; or
 - (iv) a court order given or confirmed in a final judgement.
- (2) This section may not be read as mandating a re-assessment of duty on goods in conflict with section 87.

Request for additional information and documents

89. The customs authority may request any of the following persons to furnish it within a specified period with any information or documents required by the customs authority for considering or making a duty assessment or re-assessment in respect of goods:

- (a) The person clearing the goods or who submitted the clearance declaration in respect of the goods;
- (b) any person who is an importer or exporter in relation to the goods;
- (c) any person who—
 - (i) is or may be held liable for duty that may be or has become payable on the goods; or
 - (ii) has paid duty on the goods; or
- (d) the owner of the goods.

Duty assessment or re-assessment in absence of sufficient information

90. The customs authority may base a duty assessment or re-assessment on the best information available to it—

- (a) if particulars of the goods in respect of which the duty assessment or re-assessment is made or the underlying transaction which caused the goods to be imported into or exported from the Republic, as the case may be, are not disclosed or not sufficiently disclosed in the clearance declaration or any supporting documents;
- (b) if information or documents necessary for considering or making the duty assessment or re-assessment were not furnished following a request in terms of section 89; or
- (c) if no clearance declaration was submitted and the goods are in terms of the Customs Control Act for tax purposes regarded to be cleared for home use or outright export.

Assessment and re-assessment affected by scheme conferring undue duty benefit

91. (1) If a scheme, whether entered into or carried out before or after the commencement of this Act—

- (a) has the effect of conferring a duty benefit on any person; and
- (b) having regard to the substance of the scheme—
 - (i) was entered into or carried out by means of or in a manner which would not normally be employed for genuine business purposes, other than the obtaining of a duty benefit; or
 - (ii) has created rights or obligations which would not normally be created between persons dealing at arm's length; and
- (c) was entered into or carried out solely or mainly for the purpose of conferring a duty benefit on any person,

the customs authority must, when assessing or re-assessing the dutiability of any goods and the amount of any duty on the goods, make the assessment or reassessment as if the

- (i) 'n tariefbepaling of tariefherbepaling bedoel in artikel 103(2) doen;
 - (ii) 'n waardebepaling of waardeherbepaling bedoel in artikel 120(2) doen;
of
 - (iii) 'n oorsprongbepaling of oorsprongherbepaling bedoel in artikel 156(2) doen; 5
 - (b) indien die belasbaarheid van daardie goedere of die bedrag van reg betaal of betaalbaar op daardie goedere geraak word deur—
 - (i) 'n beslissing in enige administratiewe appèl of alternatiewe geskilbeslegtingsverrigtinge; 10
 - (ii) die skikking van 'n geskil; 10
 - (iii) 'n terugwerkende wysiging van die Doeanetarief; of
 - (iv) 'n hofbevel gegee of bevestig in 'n finale hofbeslissing.
- (2) Hierdie artikel mag nie uitgelê word om 'n heraanslag van reg op goedere in stryd met artikel 87 te veroorloof nie.

Versoek om verdere inligting en dokumente 15

89. Die doeanegesag kan enige van die volgende persone versoek om binne 'n bepaalde tydperk enige inligting of dokumente wat die doeanegesag benodig om 'n aanslag of heraanslag van reg op goedere te oorweeg of te doen, aan die doeanegesag te verskaf:

- (a) Die persoon wat goedere klaar of die klaringsbrief ten opsigte van die goedere ingedien het; 20
- (b) enige persoon wat 'n invoerder of uitvoerder met betrekking tot goedere is;
- (c) enige persoon wat—
 - (i) aanspreeklik is of aanspreeklik gehou kan word vir reg wat op die goedere betaalbaar mag wees of geword het; of 25
 - (ii) die reg op die goedere betaal het; of
- (d) die eienaar van die goedere.

Aanslag of heraanslag van reg in afwesigheid van voldoende inligting

90. Die doeanegesag kan 'n aanslag of heraanslag van reg baseer op die beste inligting tot die doeanegesag se beskikking— 30

- (a) indien besonderhede van die goedere ten opsigte waarvan die aanslag of heraanslag van reg gedoen word, of die onderliggende transaksie na aanleiding waarvan die goedere ingevoer is in of uitgevoer is uit die Republiek, na gelang van die geval, nie verstrek of voldoende verstrek word in die klaringsbrief of enige ondersteunende dokumente nie; 35
- (b) indien inligting of dokumente wat vir die oorweging of doen van die aanslag of heraanslag van reg nodig is, nie verskaf word na 'n versoek uitgereik ingevolge artikel 89 nie; of
- (c) indien geen klaringsbrief ingedien is nie en die goedere ingevolge die Wet op Doeanereg vir belastingdoeleindes geag word vir binnelandse gebruik of regstreekse uitvoer geklaar te wees. 40

Aanslag en heraanslag geraak deur skemas wat onbehoorlike voordeel ten opsigte van reg verleen

91. (1) Indien 'n skema, ongeag of dit aangegaan of ten uitvoer gebring is voor of na die inwerkingtreding van hierdie Wet— 45

- (a) die uitwerking het dat dit 'n voordeel ten opsigte van reg aan iemand verleen; en
 - (b) met inagneming van die inhoud van die skema—
 - (i) aangegaan of uitgevoer is deur middel van of op 'n wyse wat nie normaalweg vir doodgewone eerlike besigheidsdoeleindes aangewend sou word nie, anders as om 'n voordeel ten opsigte van reg te bekom; of 50
 - (ii) regte of verpligtinge skep wat nie normaalweg tussen persone geskep sou word wat doodgewoon besigheid doen nie; en
 - (c) aangegaan of uitgevoer is uitsluitlik of hoofsaaklik met die doel om 'n voordeel ten opsigte van reg aan enige persoon te verleen, 55
- moet die doeanegesag wanneer die doeanegesag die goedere vir belasbaarheid en die bedrag van enige reg aanslaan of heraanlaan, die aanslag of heraanslag doen asof die

scheme had not been entered into or carried out, or in such manner as in the circumstances of the case the customs authority deems appropriate for the prevention or diminution of such duty benefit.

(2) If in any administrative appeal in terms of Part 3 of Chapter 37 of the Customs Control Act against an assessment or re-assessment made by the customs authority in terms of subsection (1) it is proved that the scheme concerned does or would result in a duty benefit, it must be presumed, until the contrary is proved, that the scheme was entered into or carried out solely or mainly for the purpose of conferring a duty benefit. 5

(3) For the purposes of this section—
“**scheme**” includes any transaction, operation, scheme or understanding (whether enforceable or not), including all steps and transactions by which it is carried into effect; 10
“**duty benefit**” includes—

- (a) any reduction in the liability of any person to pay a duty;
- (b) any increase in the entitlement of any person to a refund or drawback of a duty; 15
- (c) any reduction in the consideration payable by any person in respect of any import or export of goods; or
- (d) any other avoidance or postponement of liability for the payment of a duty.

Remedies available to person aggrieved by duty assessment or re-assessment⁹⁰

92. (1) Parts 3, 4 and 5 of Chapter 37 of the Customs Control Act, as appropriate in terms of the provisions of those Parts, are available to a person aggrieved by a duty assessment or duty re-assessment. 20

(2) If a person aggrieved by a duty assessment or re-assessment, lodges in terms of Part 3 of that Chapter an administrative appeal against the assessment or re-assessment, the appeal may, if the customs authority so directs, only be heard by a specialist appeal committee referred to in section 843(2)(a) of the Customs Control Act. 25

(3) A person aggrieved by a duty assessment or re-assessment or, if an administrative appeal has been lodged against the assessment or re-assessment, by a decision taken in such appeal proceedings, may—
(a) lodge an appeal with a court against the assessment, re-assessment or decision; or 30
(b) institute proceedings for a review by a court of the assessment, re-assessment or decision.

Duty assessment and re-assessment presumed to be correct

93. A duty assessment by the customs authority in terms of section 83(1)(a) or (b) or 84(1)(a) and (b) or a re-assessment by the customs authority in terms of section 85(1)(a) or (b), must be presumed to be correct and must be applied except when replaced, amended, set aside, corrected or affected, as may be appropriate, by— 35

- (a) a subsequent re-assessment by the customs authority in terms of section 85;
- (b) a decision in any administrative appeal or alternative dispute resolution proceedings; 40
- (c) a dispute settlement;
- (d) a retrospective amendment to the Customs Tariff; or
- (e) a court order given or confirmed in a final judgement.

Rules to facilitate application of this Chapter 45

94. The Commissioner may in terms of section 224 make rules to facilitate the implementation of this Chapter, including rules prescribing the manner in and conditions on which the quantity, weight, volume or measurement of goods must be

⁹⁰ It should be noted that as a general rule an administrative appeal and in fact none of the proceedings referred to in Chapter 37 of the Customs Control Act affects or suspends the obligation to pay a duty. See section 830 of the Customs Control Act.

skema nie aangegaan of uitgevoer is nie, of op 'n wyse wat die doeanegesag in die omstandighede van die geval as gepas beskou om so 'n voordeel ten opsigte van reg te voorkom of te verminder.

(2) Indien daar tydens enige administratiewe appèl ingevolge Deel 3 van Hoofstuk 37 van die Wet op Doeanereg teen 'n aanslag of heraanslag ingevolge subartikel (1) deur die doeanegesag gedoen, bewys gelewer word dat die betrokke skema 'n voordeel ten opsigte van reg tot gevolg het of sal hê, moet daar vermoed word, totdat die teendeel bewys word, dat die skema aangegaan of uitgevoer is uitsluitlik of hoofsaaklik met die doel om 'n voordeel ten opsigte van reg te verleen. 5

(3) Vir doeleindes van hierdie artikel beteken— 10
“skema” ook enige transaksie, besigheid, plan of ooreenkoms (hetsy afdwingbaar of nie), met inbegrip van alle stappe en transaksies waardeur dit tot uitvoer gebring word; “voordeel ten opsigte van reg” ook—

- (a) enige vermindering in die aanspreeklikheid van iemand om 'n reg te betaal;
- (b) enige versterking van iemand se aanspraak op 'n terugbetaling of teruggawe van 'n reg;
- (c) enige vermindering in die teenprestasie betaalbaar deur iemand ten opsigte van enige invoer of uitvoer van goedere; of
- (d) enige ander vermyding of uitstel van aanspreeklikheid vir die betaling van 'n reg. 20

Regsmiddele tot beskikking van persone verontreg deur aanslag of heraanslag van reg⁹⁰

92. (1) Dele 3, 4 en 5 van Hoofstuk 37 van die Wet op Doeanereg, soos toepaslik ingevolge die bepalings van daardie Dele, is beskikbaar vir iemand wat deur 'n aanslag of heraanslag van reg verontreg voel. 25

(2) Indien iemand wat verontreg voel deur 'n aanslag of heraanslag van reg 'n administratiewe appèl ingevolge Deel 3 van daardie Hoofstuk teen die aanslag of heraanslag aanteken, kan die appèl, indien die doeanegesag aldus gelas, slegs deur 'n spesialis appèlkomitee bedoel in artikel 843(2)(a) van die Wet op Doeanereg aangehoor word. 30

(3) Iemand wat verontreg voel deur 'n aanslag of heraanslag van reg of, indien 'n administratiewe appèl teen die aanslag of heraanslag aangeteken is, deur 'n besluit in sodanige appèlverrigtinge geneem, kan—

- (a) appèl by 'n hof teen die aanslag, heraanslag of besluit aanteken; of
- (b) regstappe doen vir die hersiening van die aanslag, heraanslag of besluit deur 'n hof. 35

Aanslag en heraanslag van reg vermoed korrek te wees

93. 'n Aanslag van reg deur die doeanegesag ingevolge artikel 83(1)(a) of (b) of 84(1)(a) en (b) of 'n heraanslag deur die doeanegesag ingevolge artikel 85(1)(a) of (b), moet vermoed word korrek te wees en moet toegepas word behalwe wanneer dit vervang, gewysig, ter syde gestel, reggestel of geraak word, soos toepaslik mag wees, deur—

- (a) 'n latere heraanslag deur die doeanegesag ingevolge artikel 85;
- (b) 'n beslissing in enige administratiewe appèl of alternatiewe geskilbeslegtingsverrigtinge; 45
- (c) die skikking van 'n dispuut;
- (d) 'n terugwerkende wysiging van die Doeanetarief; of
- (e) 'n hofbevel gegee in of bevestig deur 'n finale hofbeslissing.

Reëls ter fasilitering van implementering van hierdie Hoofstuk

94. Die Kommissaris kan ingevolge artikel 224 reëls uitvaardig ter fasilitering van die implementering van hierdie Hoofstuk, met inbegrip van reëls wat voorskryf die wyse waarin en die voorwaardes waarop die hoeveelheid, gewig, volume of afmeting van

90. Let daarop dat as algemene reël 'n administratiewe appèl, en trouens geen van die verrigtinge bedoel in Hoofstuk 37 van die Wet op Doeanereg, nie die verpligting om 'n reg te betaal, raak of opskort nie. Kyk artikel 830 van die Wet op Doeanereg.

determined, if duty is imposed by quantity, weight, volume or measurement in terms of section 80(1)(b)(ii).

Offences in terms of this Chapter

- 95.** (1) A person clearing goods is guilty of an offence if that person—
- (a) fails to comply with— 5
 - (i) section 82(1)(a) or (2)(b); or
 - (ii) a request issued by the customs authority to that person in terms of section 82(1)(d);
 - (b) makes a self-assessment which that person knows is not true or could not reasonably have believed to be true; or 10
 - (c) in making a self-assessment—
 - (i) uses false or misleading information with the intention to mislead; or
 - (ii) omits to use accurate information with the intention to mislead.
- (2) A person is guilty of an offence if that person fails to comply with— 15
- (a) a direction issued by the customs authority to that person in terms of section 84(2); or
 - (b) a request issued by the customs authority to that person in terms of section 89.
- (3) An offence referred to in subsection (1)(b) or (c)(i) or (ii) is a Category 1 offence.

CHAPTER 6

TARIFF CLASSIFICATION OF GOODS 20

Part 1

General provisions

Purpose and application of this Chapter

- 96.** (1) The purpose of this Chapter is—
- (a) to provide for the tariff classification of goods for customs purposes; and 25
 - (b) for that purpose to enforce the use of specific international standards for the tariff classification of goods.
- (2) This Chapter applies to all goods imported into or destined for export from the Republic, whether dutiable or not.

Tariff classification and interpretation of Customs Tariff 30

- 97.** (1) The classification of any goods under a tariff heading, subheading or item specified in the Customs Tariff must be determined in accordance with this Act, the International Convention on the Harmonized Commodity Description and Coding System and the Explanatory Notes issued by the Customs Co-operation Council.⁹¹
- (2) When classifying goods in terms of subsection (1) or interpreting the Customs Tariff the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System issued by the Customs Co-operation Council must be considered. 35
- (3) In the event of an inconsistency between an international instrument referred to in subsection (1) and a provision of this Act, the provision of this Act prevails. 40
- (4) To the extent that goods classifiable under a tariff heading or subheading in a Schedule of the Customs Tariff that is expressly quoted in any tariff item, are specified in that tariff item, the item concerned must be read as including only such goods classifiable under that tariff heading or subheading.

⁹¹. Obtainable from the World Customs Organization website.

goedere bepaal moet word, indien reg ingevolge artikel 80(1)(b)(ii) volgens hoeveelheid, gewig, volume of afmeting opgelê word.

Misdrywe ingevolge hierdie Hoofstuk

- 95.** (1) Iemand wat goedere klaar, is aan 'n misdryf skuldig indien so iemand—
- (a) versuim om te voldoen aan— 5
 - (i) artikel 82(1)(a) of (2)(b); of
 - (ii) 'n versoek deur die doeanegesag aan daardie persoon ingevolge artikel 82(1)(d) gerig;
 - (b) 'n self-aanslag doen wat so iemand weet nie waar is nie, of nie redelikerwyse as waar kon beskou het nie; of 10
 - (c) tydens die doen van 'n self-aanslag—
 - (i) vals of misleidende inligting gebruik met die oogmerk om te mislei; of
 - (ii) versuim om akkurate inligting te gebruik met die oogmerk om te mislei.
- (2) Iemand is aan 'n misdryf skuldig indien so iemand versuim om te voldoen aan—
- (a) 'n lasgewing deur die Kommissaris aan so iemand ingevolge artikel 84(2) uitgereik; of 15
 - (b) 'n versoek deur die doeanegesag aan so iemand ingevolge artikel 89 uitgereik.
- (3) 'n Misdryf bedoel in subartikel (1)(b) of (c)(i) of (ii) is 'n Kategorie 1 misdryf.

HOOFSTUK 6

TARIEFINDELING VAN GOEDERE 20

Deel 1

Algemene bepalings

Doel en toepassing van hierdie Hoofstuk

- 96.** (1) Die doel van hierdie Hoofstuk is—
- (a) om voorsiening te maak vir die tariefindeling van goedere vir 25 doeanedoeleindes; en
 - (b) om vir daardie doel die gebruik van bepaalde internasionale standaarde vir die tariefindeling van goedere afdwingbaar te maak.
- (2) Hierdie Hoofstuk is van toepassing op alle goedere ingevoer in, of bestem vir uitvoer uit, die Republiek ongeag of daardie goedere belasbaar is of nie. 30

Tariefindeling en interpretasie van Doeanetarief

- 97.** (1) Die indeling van goedere onder 'n tariefpos, -subpos of -item in die Doeanetarief gespesifiseer, moet ooreenkomstig hierdie Wet, die “International Convention on Harmonized Commodity Description and Coding System” en die “Explanatory Notes” uitgevaardig deur die “Customs Co-operation Council”⁹¹ bepaal 35 word.
- (2) Wanneer goedere ingevolge subartikel (1) ingedeel of die Doeanetarief geïnterpreteer word, moet die “Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System” uitgereik deur die “Customs Co-operation Council” in ag geneem word. 40
- (3) In die geval van 'n teenstrydigheid tussen 'n internasionale instrument bedoel in subartikel (1) en 'n bepaling van hierdie Wet, geniet die bepaling van hierdie Wet voorrang.
- (4) In soverre goedere wat indeelbaar is onder 'n tariefpos of -subpos in 'n Bylae van die Doeanetarief wat uitdruklik in enige tariefitem vermeld word, in daardie tariefitem gespesifiseer word, moet die betrokke item uitgelê word om slegs sodanige goedere indeelbaar onder daardie tariefpos of -subpos in te sluit. 45

91. Beskikbaar op die World Customs Organization webwerf.

Keeping of updated version of international instrument

- 98.** (1) The Commissioner must—
- (a) keep at SARS head office copies of—
 - (i) the International Convention on the Harmonized Commodity Description and Coding System and the Explanatory Notes referred to in section 97(1); and 5
 - (ii) the Compendium of Classification Opinions referred to in section 97(2);
 - (b) update from time to time these instruments with any amendments or additions notified by the Customs Co-operation Council; and
 - (c) record the date the amendment or addition takes effect. 10
- (2) Whenever in any judicial or other proceedings a question arises as to—
- (a) the contents of any international instrument referred to in section 97, a copy of that instrument kept in terms of subsection (1)(a), or of an extract from such instrument, certified by the customs authority, is admissible as evidence of the contents of such instrument or extract; or 15
 - (b) the effective date of an amendment or addition to such an international instrument, a certificate by the customs authority stating the date recorded in terms of subsection (1)(c) as the effective date of that amendment or addition, is admissible as evidence of the effective date of that amendment or addition.

Part 2 20

Tariff self-determination, determination and re-determination

Tariff self-determination of goods when goods are cleared

- 99.** (1) A person clearing goods⁹² for home use or a customs procedure must—
- (a) make a self-determination of the tariff classification of the goods irrespective of whether duty is payable on the goods; and 25
 - (b) state the tariff classification of the goods made in terms of paragraph (a) on the clearance declaration.
- (2) A tariff self-determination of goods in terms of subsection (1) must be consistent with—
- (a) a tariff determination or re-determination that may be applicable to those goods in terms of section 106; or 30
 - (b) an advance tariff ruling that may be applicable to those goods.
- (3) A tariff self-determination must be applied for purposes of the clearance unless replaced by a tariff determination in terms of section 100 read with section 106 if applicable. 35
- (4) A person clearing goods must on discovery of any inaccuracy in a tariff self-determination made in respect of the goods, promptly notify the customs authority of such inaccuracy.
- (5) This section does not apply to—
- (a) accompanied or unaccompanied baggage other than commercial goods; 40
 - (b) international postal articles cleared in accordance with the simplified clearance process contemplated in section 493(2) of the Customs Control Act; or
 - (c) any other category of goods—
 - (i) excluded by rule from tariff self-determination; or 45
 - (ii) exempted by the customs authority in a specific case from tariff self-determination.

Tariff determination by customs authority

- 100.** (1) The customs authority may at any time, subject to section 103, make a determination of the tariff classification of goods.⁹³ 50

92. See section 166 of the Customs Control Act.

93. Neither clearance nor a tariff self-determination of goods is a precondition for a tariff determination in terms of section 100. A tariff determination may sometimes be made in the absence of a clearance or a preceding tariff self-determination, e.g. where non-cleared goods are in terms of the Customs Control Act for tax purposes regarded to be cleared for home use.

Bewaring van bygewerkte weergawe van internasionale instrument

- 98.** (1) Die Kommissaris moet—
- (a) by die SAID hoofkantoor afskrifte hou van—
 - (i) die “International Convention on the Harmonized Commodity Description and Coding System” en die “Explanatory Notes” bedoel in artikel 97(1); en 5
 - (ii) die “Compendium of Classification Opinions” bedoel in artikel 97(2);
 - (b) van tyd tot tyd hierdie instrumente bywerk wat betref enige wysigings of byvoegings waarvan die “Customs Co-operation Council” kennis gee; en
 - (c) die datum van inwerkingtreding van die wysiging of byvoeging aanteken. 10
- (2) Wanneer in enige regs- of ander verrigtinge ’n vraag ontstaan aangaande—
- (a) die inhoud van enige internasionale instrument bedoel in artikel 97, is ’n afskrif van daardie instrument ingevolge subartikel (1)(a) bewaar, of van ’n uittreksel uit so ’n instrument, deur die doeanegesag gesertifiseer, toelaatbaar as getuienis van die inhoud van so ’n instrument of uittreksel; of 15
 - (b) die datum van inwerkingtreding van ’n wysiging van of byvoeging by so ’n internasionale instrument, is ’n sertifikaat deur die doeanegesag wat die datum vermeld wat ingevolge artikel (1)(c) aangeteken is as die datum van inwerkingtreding van daardie wysiging of byvoeging, as getuienis van die datum van inwerkingtreding van daardie wysiging of byvoeging toelaatbaar. 20

Deel 2

Tarief self-bepaling, -bepaling en -herbepaling

Tarief self-bepaling van goedere wanneer goedere geklaar word

- 99.** (1) Iemand wat goedere klaar⁹² vir binnelandse gebruik of ’n doeaneprosedure moet— 25
- (a) ’n self-bepaling van die tariefindeling van die goedere doen ongeag of daar reg op die goedere betaalbaar is of nie; en
 - (b) die tariefindeling van die goedere ingevolge paragraaf (a) gedoen, op die klaringsbrief vermeld.
- (2) ’n Tarief self-bepaling van goedere ingevolge subartikel (1), moet bestaanbaar 30 wees met—
- (a) ’n tariefbepaling of -herbepaling wat ingevolge artikel 106 vir daardie goedere mag geld; of
 - (b) ’n vooruit-tariefbeslissing wat vir daardie goedere mag geld.
- (3) ’n Tarief self-bepaling moet vir doeleindes van die klaring toegepas word tensy dit 35 deur ’n tariefbepaling ingevolge artikel 100, gelees met artikel 106 indien toepaslik, vervang word.
- (4) Iemand wat goedere klaar, moet wanneer daar enige onakkuraatheid in ’n tarief self-bepaling gedoen ten opsigte van die goedere aan die lig kom, die doeanegesag onverwyld daarvan in kennis stel. 40
- (5) Hierdie artikel is nie van toepassing nie op—
- (a) vergeselde of onvergeselde baggasie, anders as kommersiële goedere;
 - (b) internasionale posstukke geklaar volgens die verkorte klaringsproses beoog in artikel 493(2) van die Wet op Doeanebeheer; of
 - (c) enige ander kategorie goedere— 45
 - (i) by reël van tarief self-bepaling uitgesluit; of
 - (ii) in ’n bepaalde geval deur die doeanegesag van tarief self-bepaling onthef.

Tariefbepaling deur doeanegesag

- 100.** (1) Die doeanegesag kan te eniger tyd, behoudens artikel 103, ’n bepaling van 50 die tariefindeling van goedere doen.⁹³

92. Kyk artikel 166 van die Wet op Doeanebeheer.

93. Nóg klaring nóg tarief self-bepaling van goedere is ’n voorvereiste vir ’n tariefbepaling ingevolge artikel 100. ’n Tariefbepaling kan soms in die afwesigheid van ’n klaring of ’n voorafgaande tarief self-bepaling gedoen word, bv. in die geval waar ongeklaarde goedere ingevolge die Wet op Doeanebeheer vir doeanedoeleindes geag word vir binnelandse gebruik geklaar te wees.

- (2) A tariff determination of goods in terms of subsection (1) must be consistent with any advance tariff ruling that may be applicable to those goods.
- (3) A tariff determination in terms of subsection (1) may be made in respect of goods irrespective of whether or not—
- (a) the goods— 5
 - (i) have been cleared;
 - (ii) have been released;
 - (iii) are dutiable; or
 - (iv) are still subject to customs control;
 - (b) a tariff self-determination has been made in respect of the goods; or 10
 - (c) an amount of duty has been paid on the goods.
- (4) The customs authority must give notice of any tariff determination in terms of subsection (1) to the person clearing the goods.
- (5) A tariff determination of goods in terms of subsection (1) replaces any tariff self-determination applicable to the goods in terms of section 99. 15

Re-determination of previous tariff determination or re-determination

- 101.** (1) The customs authority may at any time, subject to section 103—
- (a) re-determine the tariff classification of goods as determined by it in terms of section 100; or
 - (b) re-determine the tariff classification of goods as previously re-determined by it in terms of paragraph (a). 20
- (2) More than one tariff re-determination may, as necessary, be made in terms of subsection (1)(b).
- (3) A tariff re-determination of goods in terms of subsection (1) must be consistent with any advance tariff ruling that may be applicable to those goods. 25
- (4) A tariff re-determination in terms of subsection (1) may be made in respect of goods irrespective of whether or not—
- (a) the goods— 30
 - (i) have been cleared;
 - (ii) have been released;
 - (iii) are dutiable; or
 - (iv) are still subject to customs control; or
 - (b) an amount of duty has been paid on the goods.
- (5) The customs authority must give notice of any tariff re-determination in terms of subsection (1) to the person clearing the goods. 35
- (6) A tariff re-determination replaces the previous tariff determination or tariff re-determination applicable to the goods.

Correction of error in tariff determination or re-determination

- 102.** (1) On discovery of an error in a tariff determination or re-determination made in respect of any goods which does not affect the tariff classification ascribed to the goods in the determination or re-determination, the customs authority may correct⁹⁴ the error by notice to the person clearing the goods. 40
- (2) There are no time limits as to when a correction may be made in terms of subsection (1).

Time limit on tariff determination or re-determination 45

- 103.** (1) There are no time limits as to when a tariff determination or re-determination of goods may be made, but no tariff determination or re-determination may be applied for purposes of assessing or re-assessing duty on goods otherwise than in accordance with subsection (2).

94. An error in the tariff classification of goods in a tariff determination or re-determination cannot be corrected by a correction notice but only by a superseding tariff re-determination. See also definition of “correction” in section 1.

- (2) 'n Tariefbepaling van goedere ingevolge subartikel (1) moet bestaanbaar wees met enige vooruit-tariefbeslissing wat vir daardie goedere mag geld.
- (3) 'n Tariefbepaling ingevolge subartikel (1) kan ten opsigte van goedere gedoen word ongeag of—
- (a) die goedere— 5
 - (i) geklaar is of nie;
 - (ii) vrygestel is of nie;
 - (iii) belasbaar is of nie; of
 - (iv) steeds aan doeanebeheer onderworpe is of nie;
 - (b) 'n tarief self-bepaling ten opsigte van die goedere gedoen is of nie; of 10
 - (c) 'n bedrag van reg op die goedere betaal is of nie.
- (4) Die doeanegesag moet aan die persoon wat die goedere klaar, kennis gee van enige tariefbepaling ingevolge subartikel (1).
- (5) 'n Tariefbepaling van goedere ingevolge subartikel (1), vervang enige tarief self-bepaling wat ingevolge artikel 99 vir die goedere geld. 15

Herbepaling van vorige tariefbepaling of -herbepaling

- 101.** (1) Die doeanegesag kan te eniger tyd, behoudens artikel 103—
- (a) die tariefindeling van goedere soos ingevolge artikel 100 deur die doeanegesag bepaal, herbepaal; of
 - (b) die tariefindeling van goedere soos ingevolge paragraaf (a) deur die doeanegesag bepaal, herbepaal. 20
- (2) Meer as een tariefherbepaling kan, soos nodig, ingevolge subartikel (1)(b) gedoen word.
- (3) 'n Tariefherbepaling van goedere ingevolge subartikel (1) moet bestaanbaar wees met enige vooruit-tariefbeslissing wat vir daardie goedere mag geld. 25
- (4) 'n Tariefherbepaling ingevolge subartikel (1) mag ten opsigte van goedere gemaak word ongeag of—
- (a) die goedere— 30
 - (i) geklaar is of nie;
 - (ii) vrygestel is of nie;
 - (iii) belasbaar is of nie; of
 - (iv) steeds aan doeanebeheer onderworpe is of nie; of
 - (b) 'n bedrag van reg op die goedere betaal is of nie.
- (5) Die doeanegesag moet aan die persoon wat die goedere klaar, kennis gee van enige tariefherbepaling ingevolge subartikel (1). 35
- (6) 'n Tariefherbepaling vervang die vorige tariefbepaling of tariefherbepaling wat vir die goedere geld.

Regstelling van fout in tariefbepaling of -herbepaling

- 102.** (1) Wanneer daar in 'n tariefbepaling of -herbepaling ten opsigte van goedere gedoen 'n fout ontdek word wat nie die tariefindeling raak wat in die bepaling of herbepaling aan die goedere toegeken is nie, kan die doeanegesag die fout by kennisgewing aan die persoon wat die goedere klaar, regstel.⁹⁴
- (2) Daar is geen tydsbeperkings wat betref wanneer 'n regstelling ingevolge subartikel (1) gedoen kan word nie.

Tydsbeperking op tariefbepaling of -herbepaling 45

- 103.** (1) Daar is geen tydsbeperkings wat betref wanneer 'n tariefbepaling of -herbepaling van goedere gedoen kan word nie, maar geen tariefbepaling of -herbepaling mag vir doeleindes van 'n aanslag of heraanslag van reg op goedere toegepas word anders as ooreenkomstig subartikel (2) nie.

⁹⁴. 'n Fout in die tariefindeling van goedere in 'n tariefbepaling of -herbepaling kan nie deur 'n regstellingskennisgewing reggestel word nie, maar slegs deur 'n tariefherbepaling wat die vorige bepaling vervang. Kyk ook omskrywing van "regstelling" in artikel 1.

- (2) A tariff determination or re-determination that affects the dutiability of goods or the amount of duty paid or payable on goods must be applied for purposes of assessing or re-assessing duty on those goods—
- (a) if the tariff determination or re-determination was made within a period of three years from the date the goods acquired a tax due status in terms of Chapter 6 of the Customs Control Act;⁹⁵ or 5
 - (b) if the tariff determination or re-determination was made, whether within or after the expiry of the three years' period referred to in paragraph (a)—
 - (i) to give effect to—
 - (aa) a decision in any administrative appeal or dispute resolution 10 proceedings;
 - (bb) a dispute settlement;
 - (cc) a retrospective amendment to the Customs Tariff; or
 - (dd) a court order given or confirmed in a final judgement;
 - (ii) to rectify an underpayment or non-payment of duty that occurred as a 15 result of fraud, misrepresentation, a false declaration or non-disclosure of material facts; or
 - (iii) following an agreement referred to in section 86(2)(b).
- (3) This section may not be read as permitting a re-assessment of duty on goods in conflict with section 87. 20

Request for information and documents

- 104.** The customs authority may request any of the following persons to furnish it within a specified period with any information or documents required by the customs authority for considering or making a tariff determination or re-determination of goods or a correction of a tariff determination or re-determination: 25
- (a) The person clearing the goods or who submitted the clearance declaration in respect of the goods;
 - (b) any person who is an importer or exporter in relation to the goods;
 - (c) any person who—
 - (i) is or may be held liable for duty that may or has become payable on the 30 goods; or
 - (ii) has paid duty on the goods; or
 - (d) the owner of the goods.

Tariff determination or re-determination in absence of sufficient information

- 105.** The customs authority may base a tariff determination or re-determination on the best information available to it— 35
- (a) if particulars of the goods in respect of which the tariff determination or re-determination is made are not disclosed or not sufficiently disclosed in the clearance declaration or any supporting documents and those particulars are still not disclosed or still not sufficiently disclosed following— 40
 - (i) a request in terms of section 104; or
 - (ii) an amendment of the clearance declaration or any supporting documents;
 - (b) in any other case, if information or documents necessary for considering or making the tariff determination or re-determination were not furnished following a request in terms of section 104; or 45
 - (c) if no clearance declaration was submitted and the goods are in terms of the Customs Control Act for tax purposes regarded to be cleared for home use or outright export.

95. Goods that have been cleared acquire a tax due status in terms of Chapter 6 of the Customs Control Act as from the date of clearance of the goods for home use or a customs procedure that confers a tax due status, which in terms of section 173 of that Act is the date of acceptance by Customs of the clearance declaration submitted in respect of the goods.

- (2) 'n Tariefbepaling of -herbepaling wat die belasbaarheid van goedere of die bedrag van reg betaal of betaalbaar op goedere raak, moet vir doeleindes van 'n aanslag of heraanslag van reg op daardie goedere toegepas word—
- (a) indien die tariefbepaling of -herbepaling gedoen word binne 'n tydperk van drie jaar vanaf die datum waarop die goedere ingevolge Hoofstuk 6 van die Wet op Doeanereg 'n belasting betaalbare status verkry het;⁹⁵ of 5
 - (b) indien die tariefbepaling of -herbepaling, hetsy binne of na verstryking van die drie jaar tydperk bedoel in paragraaf (a), gedoen is—
 - (i) om uitvoering te gee aan—
 - (aa) 'n beslissing in enige administratiewe appèl of geskilbeslegtingsverrigtinge; 10
 - (bb) die skikking van 'n dispuut;
 - (cc) 'n terugwerkende wysiging van die Doeanetarief; of
 - (dd) 'n hofbevel gegee of bevestig in 'n finale hofbeslissing;
 - (ii) om 'n kort-betaling of nie-betaling van reg wat die gevolg was van bedrog, wanvoorstelling, 'n vals klaringsbrief of die nie-openbaarmaking van wesenlike feite, reg te stel; of 15
 - (iii) na aanleiding van 'n ooreenkoms bedoel in artikel 86(2)(b).
- (3) Hierdie artikel mag nie uitgelê word om 'n heraanslag van reg op goedere in stryd met artikel 87 te veroorloof nie. 20

Versoek om inligting en dokumente

- 104.** Die doeanegesag kan enige van die volgende persone versoek om binne 'n bepaalde tydperk enige inligting of dokumente te verskaf wat die doeanegesag benodig om 'n tariefbepaling of -herbepaling van goedere, of 'n regstelling van 'n tariefbepaling of -herbepaling, te oorweeg of te doen: 25
- (a) Die persoon wat goedere klaar of die klaringsbrief ten opsigte van die goedere ingedien het;
 - (b) enige persoon wat 'n invoerder of uitvoerder met betrekking tot die goedere is;
 - (c) enige persoon wat— 30
 - (i) aanspreeklik is of aanspreeklik gehou kan word vir reg wat op die goedere betaalbaar mag wees of geword het; of
 - (ii) reg op die goedere betaal het; of
 - (d) die eienaar van die goedere.

Tariefbepaling of -herbepaling in afwesigheid van voldoende inligting 35

- 105.** Die doeanegesag kan 'n tariefbepaling of -herbepaling baseer op die beste inligting tot die doeanegesag se beskikking—
- (a) indien besonderhede van die goedere ten opsigte waarvan die tariefbepaling of -herbepaling gedoen word nie verstrekkend of voldoende verstrekkend word in die klaringsbrief of enige ondersteunende dokumente nie, en daardie besonderhede steeds nie verstrekkend of voldoende verstrekkend word nie nadat— 40
 - (i) 'n versoek ingevolge artikel 104 uitgereik is; of
 - (ii) 'n wysiging van die klaringsbrief of enige ondersteunende dokumente gedoen is;
 - (b) in enige ander geval, indien inligting of dokumente wat nodig is om 'n tariefbepaling of -herbepaling te oorweeg of te doen, nie na 'n versoek ingevolge artikel 104 verskaf word nie; of 45
 - (c) indien geen klaringsbrief ingedien is nie en die goedere ingevolge die Wet op Doeanereg vir belastingdoeleindes geag word vir binnelandse gebruik of regstreekse uitvoer geklaar te wees. 50

95. Goedere wat geklaar word, verkry ingevolge Hoofstuk 6 van die Wet op Doeanereg 'n belasting betaalbare status vanaf die datum van klaring van die goedere vir binnelandse gebruik of 'n doeaneprosedure wat 'n belasting betaalbare status verleen, wat ingevolge artikel 173 van daardie Wet die datum is waarop Doeanereg die klaringsbrief aanvaar wat ten opsigte van die goedere ingedien is.

Goods to which tariff determination or re-determination applies

- 106.** (1) A tariff determination or re-determination of goods applies—
- (a) to the goods in respect of which it was made; and
 - (b) also to all identical goods cleared for home use or a customs procedure by the same person or by a registered agent on behalf of the same person, whether the goods were cleared before or after the date of that tariff determination or re-determination. 5
- (2) A tariff determination or re-determination that applies to identical goods referred to in subsection (1)(b) may not be applied for purposes of a duty assessment or re-assessment in respect of those identical goods otherwise than in accordance with section 103(2). 10
- (3) A tariff self-determination made in respect of identical goods referred to in subsection (1)(b) cleared on or after the date of a tariff determination or re-determination that applies in terms of that subsection to those goods, must be consistent with that tariff determination or re-determination. 15
- (4) This section may not be read as permitting a re-assessment of duty on goods in conflict with section 87.
- (5) If the customs authority makes a tariff re-determination in relation to goods for which a previous tariff determination or re-determination is in force in terms of this section, the latest tariff re-determination replaces the previous one and becomes the tariff re-determination that must be applied in terms of this section to— 20
- (a) the goods in respect of which it was made; and
 - (b) all identical goods cleared for home use or a customs procedure by the same person, whether the goods were cleared before or after the date of that latest tariff re-determination. 25
- (6) Subsections (2), (3) and (4) apply equally to any tariff re-determination referred to in subsection (5).

Remedies available to person aggrieved by tariff determination or re-determination⁹⁶

- 107.** (1) Parts 3, 4 and 5 of Chapter 37 of the Customs Control Act, as may be appropriate in terms of the provisions of those Parts, are available to a person aggrieved by a tariff determination or re-determination. 30
- (2) If a person aggrieved by a tariff determination or re-determination lodges in terms of Part 3 of that Chapter an administrative appeal against the determination or re-determination, the appeal may only be heard by a specialist appeal committee referred to in section 843(2)(a) of the Customs Control Act. 35
- (3) A person aggrieved by a tariff determination or re-determination or, if an administrative appeal has been lodged against the determination or re-determination, by a decision taken in such appeal proceedings, may— 40
- (a) lodge an appeal with a court against the determination, re-determination or decision; or
 - (b) institute proceedings for a review by a court of the determination, re-determination or decision.

Tariff determination or re-determination presumed to be correct except when replaced, amended, set aside or corrected 45

- 108.** A tariff determination or re-determination applicable to any goods must be presumed to be correct and must be applied except when replaced, amended, set aside, corrected or otherwise affected, as may be appropriate, by—
- (a) a tariff re-determination in terms of section 101;
 - (b) a tariff determination or re-determination that becomes applicable to the goods in terms of section 106(1)(b) or (5)(b); 50
 - (c) a correction in terms of section 102;
 - (d) an advance tariff ruling in terms of Chapter 10;
 - (e) a decision in any administrative appeal or alternative dispute resolution proceedings; 55

⁹⁶ It should be noted that as a general rule an administrative appeal and in fact none of the proceedings referred to in Chapter 37 of the Customs Control Act affects or suspends the obligation to pay a duty. See section 830 of the Customs Control Act.

Goedere waarvoor tariefbepaling of -herbepaling geld

- 106.** (1) 'n Tariefbepaling of -herbepaling van goedere geld—
- (a) vir die goedere ten opsigte waarvan dit gedoen is; en
 - (b) ook vir alle identiese goedere deur dieselfde persoon of deur 'n geregistreerde agent namens dieselfde persoon vir binnelandse gebruik of 'n doeaneprosedure geklaar, ongeag of die goedere voor of na die datum van daardie tariefbepaling of -herbepaling geklaar is. 5
- (2) 'n Tariefbepaling of -herbepaling wat vir identiese goedere bedoel in subartikel (1)(b) geld, mag nie anders as ooreenkomstig artikel 103(2) vir doeleindes van 'n aanslag of heraanslag van reg ten opsigte van daardie identiese goedere toegepas word nie. 10
- (3) 'n Tarief self-bepaling gedoen ten opsigte van identiese goedere bedoel in subartikel (1)(b) wat geklaar word op of na die datum van 'n tariefbepaling of -herbepaling wat ingevolge daardie subartikel vir daardie goedere geld, moet met daardie tariefbepaling of -herbepaling bestaanbaar wees. 15
- (4) Hierdie artikel mag nie uitgelê word om 'n heraanslag van reg op goedere in stryd met artikel 87 te veroorloof nie.
- (5) Indien die doeanegesag 'n tariefherbepaling doen met betrekking tot goedere ten opsigte waarvan daar 'n vorige tariefbepaling of -herbepaling ingevolge hierdie artikel van krag is, vervang die jongste tariefherbepaling die vorige een en word dit die tariefherbepaling wat ingevolge hierdie artikel geld vir— 20
- (a) die goedere ten opsigte waarvan dit gedoen is; en
 - (b) alle identiese goedere deur dieselfde persoon vir binnelandse gebruik of 'n doeaneprosedure geklaar, ongeag of die goedere voor of na die datum van daardie jongste tariefherbepaling geklaar is. 25
- (6) Subartikels (2), (3) en (4) is insgelyks op enige tariefherbepaling bedoel in subartikel (5) van toepassing.

Regsmiddele tot beskikking van persone wat verontreg voel deur tariefbepaling of -herbepaling⁹⁶

- 107.** (1) Dele 3, 4 en 5 van Hoofstuk 37 van die Wet op Doeanebeheer, soos toepaslik ingevolge die bepalings van daardie Dele, is beskikbaar vir iemand wat deur 'n tariefbepaling of -herbepaling verontreg voel. 30
- (2) Indien iemand wat verontreg voel deur 'n tariefbepaling of -herbepaling, 'n administratiewe appèl ingevolge Deel 3 van daardie Hoofstuk teen die bepaling of herbepaling aanteken, kan die appèl slegs deur 'n spesialis appèlkomitee bedoel in artikel 843(2)(a) van die Wet op Doeanebeheer aangehoor word. 35
- (3) Iemand wat verontreg voel deur 'n tariefbepaling of -herbepaling of, indien 'n administratiewe appèl teen die bepaling of herbepaling aangeteken is, deur 'n besluit geneem in sodanige appèlverrigtinge, kan— 40
- (a) appèl by 'n hof aanteken teen die bepaling, herbepaling of besluit; of
 - (b) regstappe doen vir die hersiening van die bepaling, herbepaling of besluit deur 'n hof.

Tariefbepaling of -herbepaling vermoed korrek te wees behalwe wanneer vervang, gewysig, ter syde gestel of reggestel

- 108.** 'n Tariefbepaling of -herbepaling wat vir goedere geld, moet vermoed word korrek te wees en moet toegepas word behalwe wanneer dit vervang, gewysig, ter syde gestel, reggestel of andersins geraak word, soos toepaslik mag wees, deur— 45
- (a) 'n tariefherbepaling ingevolge artikel 101;
 - (b) 'n tariefbepaling of -herbepaling wat ingevolge artikel 106(1)(b) of (5)(b) vir die goedere geld; 50
 - (c) 'n regstelling ingevolge artikel 102;
 - (d) 'n vooruit-tariefbeslissing ingevolge Hoofstuk 10;
 - (e) 'n besluit in enige administratiewe appèl of alternatiewe geskilbeslegtingsverrigtinge;

⁹⁶ Let daarop dat as algemene reël 'n administratiewe appèl nie, en trouens geen van die verrigtinge bedoel in Hoofstuk 37 van die Wet op Doeanebeheer nie, die verpligting om 'n reg te betaal, raak of opskort nie. Kyk artikel 830 van die Wet op Doeanebeheer.

- (f) a dispute settlement;
- (g) a retrospective amendment to the Customs Tariff; or
- (h) a court order given or confirmed in a final judgement.

Part 3

Other matters

5

Publication of tariff determination and re-determination

109. The Commissioner may make public particulars of any tariff determination or re-determination in such a manner and containing such information as the Commissioner may determine.

Rules to facilitate application of this Chapter

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110. The Commissioner may in terms of section 224 make rules to facilitate the implementation of this Chapter, including rules prescribing the circumstances in which information relating to any tariff determination or re-determination may be published, the kind of information that may be published and the manner in which the information must be published.

15

Offences in terms of this Chapter

- 111.** (1) A person clearing goods is guilty of an offence if that person—
- (a) fails to comply with section 99(1) or (4);
 - (b) makes a tariff self-determination which that person knows is not true or could not reasonably have believed to be true; or
 - (c) in making a tariff self-determination—
 - (i) uses false or misleading information with the intention to mislead; or
 - (ii) omits to use accurate information with the intention to mislead.
- (2) A person is guilty of an offence if that person fails to comply with a request issued by the customs authority to that person in terms of section 104.
- (3) An offence referred to in subsection (1)(b) or (c)(i) or (ii) is a Category 1 offence.

CHAPTER 7

VALUATION OF GOODS

Part 1

Introductory provisions

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Purpose and application of this Chapter

- 112.** (1) The purpose of this Chapter is—
- (a) to provide for the valuation of goods for customs purposes;
 - (b) to enforce the use of valuation methods internationally accepted for the valuation of goods for customs purposes;⁹⁷ and
 - (c) to provide for currency conversions in the valuation of goods for customs purposes.
- (2) This Chapter applies to all goods imported into or destined for export from the Republic, whether dutiable or not.

Relevant international instruments

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- 113.** (1) When valuing imported goods in terms of this Chapter, the following international instruments are binding for the purpose of such valuation:
- (a) Article VII of the General Agreement on Tariffs and Trade, 1994, and the Note to Article VII of that Agreement;

⁹⁷ Valuation methods agreed to under the WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, 1994.

- (f) die skikking van 'n dispuut;
- (g) 'n terugwerkende wysiging van die Doeanetarief; of
- (h) 'n hofbevel gegee of bevestig in 'n finale hofbeslissing.

Deel 3

Ander aangeleenthede

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Publikasie van tariefbepaling en -herbepaling

109. Die Kommissaris kan besonderhede van enige tariefbepaling of -herbepaling bekend maak op die wyse en bevattende die inligting wat die Kommissaris mag bepaal.

Reëls ter fasilitering van hierdie Hoofstuk

110. Die Kommissaris kan ingevolge artikel 224 reëls uitvaardig om die implementering van hierdie Hoofstuk te fasiliteer, met inbegrip van reëls wat voorskryf die omstandighede waarin inligting met betrekking tot enige tariefbepaling of -herbepaling gepubliseer mag word, die tipe inligting wat gepubliseer mag word en die wyse waarop die inligting gepubliseer moet word.

Misdrywe ingevolge hierdie Hoofstuk

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- 111.** (1) Iemand wat goedere klaar, is aan 'n misdryf skuldig indien so iemand—
- (a) versuim om aan artikel 99(1) of (4) te voldoen;
 - (b) 'n tarief self-bepaling doen wat so iemand weet nie waar is nie of nie redelikerwyse as waar kon beskou het nie; of
 - (c) tydens die doen van 'n tarief self-bepaling—
(i) vals of misleidende inligting gebruik met die oogmerk om te mislei; of
(ii) versuim om akkurate inligting te gebruik met die oogmerk om te mislei.
- (2) Iemand is aan 'n misdryf skuldig indien so iemand versuim om te voldoen aan 'n versoek deur die doeanegesag ingevolge artikel 104 aan so iemand uitgereik.
- (3) 'n Misdryf bedoel in subartikel (1)(b) of (c)(i) of (ii) is 'n Kategorie 1 misdryf.

HOOFSTUK 7

WAARDEBEPALING VAN GOEDERE

Deel 1

Inleidende bepalings

Doel en toepassing van hierdie Hoofstuk

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- 112.** (1) Die doel van hierdie Hoofstuk is—
- (a) om vir die waardering van goedere vir doeanedoeleindes voorsiening te maak;
 - (b) om die gebruik van internasionaal-aanvaarde waarderingmetodes vir die waardering van goedere vir doeanedoeleindes verpligtend te maak;⁹⁷ en
 - (c) om vir valutaomskakelings in die waardering van goedere vir doeanedoeleindes voorsiening te maak.
- (2) Hierdie Hoofstuk is van toepassing op alle goedere ingevoer in, of bestem vir uitvoer uit, die Republiek ongeag of die goedere belasbaar is of nie.

Tersaaklike internasionale instrumente

- 113.** (1) Wanneer ingevoerde goedere ingevolge hierdie Hoofstuk waardeer word, is die volgende internasionale instrumente vir doeleindes van so 'n waardering bindend:
- (a) “Article VII of the General Agreement on Tariffs and Trade”, 1994, en die “Note to Article VII” van daardie Ooreenkoms;

97. Waarderingsmetodes waarop daar kragtens die WHO se “Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade”, 1994, ooreengekom is.

- (b) the WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, 1994, and the Interpretative Notes to the Agreement;
 - (c) Decisions taken by the Committee on Customs Valuation of the WTO; and
 - (d) Instruments issued by the Technical Committee on Customs Valuation of the WTO, including— 5
 - (i) Advisory Opinions;
 - (ii) Commentaries;
 - (iii) Explanatory Notes;
 - (iv) Case Studies; and 10
 - (v) Studies.
- (2) In the event of an inconsistency between an international instrument referred to in subsection (1) and a provision of this Act, the provision of this Act prevails.

Keeping of updated version of international instruments

- 114.** (1) The Commissioner must— 15
- (a) keep at SARS head office copies of the international instruments referred to in section 113;
 - (b) update from time to time these instruments with any amendments or additions notified by the World Trade Organisation; and
 - (c) record the date the amendment or addition took effect. 20
- (2) Whenever in any judicial or other proceedings a question arises as to—
- (a) the contents of any international instrument referred to in section 113, a copy of that instrument kept in terms of subsection (1)(a), or of an extract from such instrument, certified by the customs authority, may be used as evidence of the contents of such instrument or extract; or 25
 - (b) the effective date of an amendment or addition to such an international instrument, a certificate by the customs authority stating the date recorded in terms of subsection (1)(c) as the effective date of that amendment or addition, may be used as evidence of the effective date of that amendment or addition.

Part 2 30

Value self-determination, determination and re-determination

Provisions to be applied for establishing customs value

- 115.** The customs value of—
- (a) goods imported into the Republic must be established in accordance with Part 3 of this Chapter, except specific imported goods mentioned in Part 4 35 which must be established in accordance with that Part; and
 - (b) goods destined for export from the Republic must be established in accordance with Part 5 of this Chapter.

Value self-determination of goods when goods are cleared

- 116.** (1) A person clearing goods for home use or a customs procedure must— 40
- (a) make a value self-determination of the customs value of the goods on a worksheet as may be prescribed by rule irrespective of whether duty is payable on the goods; and
 - (b) state the customs value of the goods determined in terms of paragraph (a) on the clearance declaration. 45
- (2) In the case of imported goods the clearance declaration must also indicate—
- (a) the valuation method used to determine the customs value of the goods; and

- (b) die WHO “Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade” 1994, en die “Interpretative Notes to the Agreement”;
 - (c) besluite geneem deur die “Committee on Customs Valuation of the WTO”; en
 - (d) “Instruments issued by the Technical Committee on Customs Valuation of the WTO”, met inbegrip van— 5
 - (i) “Advisory Opinions”;
 - (ii) “Commentaries”;
 - (iii) “Explanatory Notes”;
 - (iv) “Case Studies”; en 10
 - (v) “Studies.”
- (2) In die geval van enige onbestaanbaarheid tussen ’n internasionale instrument bedoel in subartikel (1) en ’n bepaling van hierdie Wet, geniet die bepaling van hierdie Wet voorrang.

Bewaring van bygewerkte weergawe van internasionale instrument 15

- 114.** (1) Die Kommissaris moet—
- (a) by die SAID hoofkantoor afskrifte van die internasionale instrumente bedoel in artikel 113 hou;
 - (b) van tyd tot tyd hierdie instrumente bywerk wat betref enige wysigings of byvoegings waarvan die “World Trade Organisation” kennis gee; en 20
 - (c) die datum aanteken waarop die wysiging van krag word.
- (2) Wanneer ’n vraag in enige regs- of ander verrigtinge ontstaan oor—
- (a) die inhoud van enige internasionale instrument bedoel in artikel 113, kan ’n afskrif van daardie instrument ingevolge subartikel (1)(a) gehou, of van ’n uittreksel uit so ’n instrument, deur die doeanegesag gesertifiseer, as getuienis van die inhoud van so ’n instrument of uittreksel gebruik word; of 25
 - (b) die datum waarop ’n wysiging of byvoeging tot so ’n internasionale instrument van krag geword het, kan ’n sertifikaat deur die doeanegesag wat die datum vermeld wat ingevolge artikel (1)(c) aangeteken is as die datum waarop daardie wysiging of byvoeging van krag geword het, as getuienis 30 gebruik word van die datum waarop daardie wysiging of byvoeging van krag geword het.

Deel 2

Waarde self-bepaling, waardebeplating en -herbepaling

Bepalings wat vir vasstelling van doeanewaardes toegepas moet word 35

- 115.** Die doeanewaarde van—
- (a) goedere in die Republiek ingevoer, moet volgens Deel 3 van hierdie Hoofstuk vasgestel word, behalwe spesifieke ingevoerde goedere in Deel 4 genoem wat volgens daardie Deel vasgestel moet word; en
 - (b) goedere bestem vir uitvoer uit die Republiek moet volgens Deel 5 van hierdie Hoofstuk vasgestel word. 40

Waarde self-bepaling van goedere tydens klaring

- 116.** (1) Iemand wat goedere klaar vir binnelandse gebruik of ’n doeaneprosedure moet—
- (a) ’n waarde self-bepaling van die doeanewaarde van die goedere doen op ’n werkstaat soos by reël voorgeskryf mag word, ongeag of daar reg op die goedere betaalbaar is of nie; en 45
 - (b) die doeanewaarde van die goedere ingevolge paragraaf (a) bepaal, op die klaringsbrief vermeld.
- (2) In die geval van ingevoerde goedere moet die klaringsbrief ook die volgende aandui: 50
- (a) Die waarderingsmetode wat gebruik is om die doeanewaarde van die goedere te bepaal; en

- (b) whether the person who sold the goods for export to the Republic and the purchaser have a family, personal, employment or business relationship within the meaning of section 130.
- (3) A valuation criterion used in making a value self-determination of any goods must be consistent with— 5
 - (a) a valuation criterion that may be applicable to those goods in terms of section 123(2); or
 - (b) any advance valuation ruling that may be applicable to those goods.
- (4) A value self-determination must be applied for purposes of the clearance unless replaced by a value determination in terms of section 117. 10
- (5) A person clearing goods must on discovery of any inaccuracy in a value self-determination made in respect of the goods, promptly notify the customs authority of the inaccuracy.
- (6) Section 179 of the Customs Control Act applies to a worksheet referred to in subsection (1). 15
- (7) This section does not apply to—
 - (a) accompanied or unaccompanied baggage other than commercial goods;
 - (b) international postal articles cleared in accordance with the simplified clearance process contemplated in section 493(2) of the Customs Control Act; or 20
 - (c) any other category of goods—
 - (i) excluded by rule from value self-determination; or
 - (ii) exempted by the customs authority in a specific case from value self-determination.

Value determination by customs authority 25

- 117.** (1) The customs authority may at any time, subject to section 120, make a determination of the customs value of goods.⁹⁸
- (2) A valuation criterion used in making a value determination of goods must be consistent with—
 - (a) a valuation criterion that may be applicable to those goods in terms of section 123(2); or 30
 - (b) any advance valuation ruling that may be applicable to those goods.
 - (3) A value determination in terms of subsection (1) may be made in respect of goods irrespective of whether or not—
 - (a) the goods— 35
 - (i) have been cleared;
 - (ii) have been released;
 - (iii) are dutiable; or
 - (iv) are still subject to customs control;
 - (b) a value self-determination has been made in respect of the goods; or 40
 - (c) an amount of duty has been paid on the goods.
 - (4) The customs authority must give notice of any value determination in terms of subsection (1) to the person clearing the goods.
 - (5) A value determination of goods in terms of subsection (1) replaces any value self-determination applicable to the goods in terms of section 116. 45

Re-determination of previous value determination or re-determination

- 118.** (1) The customs authority may at any time, subject to section 120—
 - (a) re-determine the customs valuation of goods as determined by it in terms of section 117; or
 - (b) re-determine the customs valuation of goods as previously re-determined by it 50 in terms of paragraph (a).
- (2) More than one value re-determination may, as necessary, be made in terms of subsection (1)(b).

98. Clearance or a value self-determination is not a precondition for a value determination in terms of section 117. A value determination may sometimes be made in the absence of a clearance or value self-determination, e.g. where non-cleared goods are in terms of the Customs Control Act for tax purposes regarded to be cleared for home use.

- (b) of die persoon wat die goedere vir uitvoer na die Republiek verkoop het en die koper 'n familie-, persoonlike, werks- of besigheidsverwantskap ooreenkomstig die bedoeling van artikel 130 het.
- (3) 'n Waardasiemaatstaf wat gebruik is om 'n waarde self-bepaling van enige goedere te doen, moet bestaanbaar wees met— 5
- (a) 'n waardasiemaatstaf wat ingevolge artikel 123(2) vir daardie goedere mag geld; of
- (b) enige vooruit-waardasiebeslissing wat vir daardie goedere mag geld.
- (4) 'n Waarde self-bepaling moet vir doeleindes van die klaring toegepas word tensy dit vervang word deur 'n waardebeplanning ingevolge artikel 117. 10
- (5) Iemand wat goedere klaar, moet wanneer daar in 'n waarde self-bepaling ten opsigte van die goedere gedoen enige onakkuraatheid aan die lig kom, die doeanegesag onverwyld van die onakkuraatheid in kennis stel.
- (6) Artikel 179 van die Wet op Doeanebeheer is op 'n werkstaat bedoel in subartikel (1) van toepassing. 15
- (7) Hierdie artikel is nie van toepassing nie op—
- (a) vergeselde en onvergeselde bagasie anders as kommersiële goedere;
- (b) internasionale posstukke geklaar volgens die verkorte klaringsproses beoog in artikel 493(2) van die Wet op Doeanebeheer; of
- (c) enige ander kategorie goedere wat— 20
- (i) by reël van waarde self-bepaling uitgesluit is; of
- (ii) in 'n bepaalde geval deur die doeanegesag van waarde self-bepaling onthef is.

Waardebepaling deur doeanegesag

- 117.** (1) Die doeanegesag kan te eniger tyd, behoudens artikel 120, 'n bepaling van die doeanewaarde van goedere doen.⁹⁸ 25
- (2) 'n Waardasiemaatstaf wat gebruik word wanneer 'n waardebeplanning van goedere gedoen word, moet bestaanbaar wees met—
- (a) 'n waardasiemaatstaf wat ingevolge artikel 123(2) op daardie goedere van toepassing mag wees; of 30
- (b) 'n vooruit-waardasiebeslissing wat vir daardie goedere mag geld.
- (3) 'n Waardebepaling ingevolge subartikel (1), kan ten opsigte van goedere gedoen word ongeag of—
- (a) die goedere— 35
- (i) geklaar is of nie;
- (ii) vrygestel is of nie;
- (iii) belasbaar is of nie; of
- (iv) steeds aan doeanebeheer onderworpe is of nie;
- (b) daar 'n waarde self-bepaling ten opsigte van die goedere gedoen is of nie; of
- (c) daar 'n bedrag van reg op die goedere betaal is of nie. 40
- (4) Die doeanegesag moet aan die persoon wat die goedere klaar, kennis gee van enige waardebeplanning ingevolge subartikel (1) gedoen.
- (5) 'n Waardebepaling van goedere ingevolge subartikel (1), vervang enige waarde self-bepaling wat ingevolge artikel 116 vir die goedere geld.

Herbepaling van vorige waardebeplanning of -herbepaling 45

- 118.** (1) Die doeanegesag kan te eniger tyd, behoudens artikel 120—
- (a) die doeanewaarde van goedere soos bepaal deur die doeanegesag ingevolge artikel 117, herbepaal; of
- (b) die doeanewaarde van goedere soos voorheen ingevolge paragraaf (a) deur die doeanegesag bepaal, herbepaal. 50
- (2) Meer as een waardeherbepaling kan, soos nodig, ingevolge subartikel (1)(b) gedoen word.

98. Klaring of 'n waarde self-bepaling is nie 'n voorvereiste vir 'n waardebeplanning ingevolge artikel 117 nie. 'n Waardebeplanning kan soms in die afwesigheid van 'n klaring of waarde self-bepaling gedoen word, bv. waar ongeklaarde goedere ingevolge die Wet op Doeanebeheer vir belastingdoeleindes geag word vir binnelandse gebruik geklaar te wees.

- (3) A valuation criterion used in making a value re-determination of any goods must be consistent with—
- (a) a valuation criterion that may be applicable to those goods in terms of section 123(2); or
 - (b) any advance valuation ruling that may be applicable to those goods. 5
- (4) A value re-determination in terms of subsection (1) may be made in respect of goods irrespective of whether or not—
- (a) the goods—
 - (i) have been cleared;
 - (ii) have been released; 10
 - (iii) are dutiable; or
 - (iv) are still subject to customs control;
 - (b) a value self-determination has been made in respect of the goods; or
 - (c) an amount of duty has been paid on the goods.
- (5) The customs authority must give notice of any value re-determination in terms of subsection (1) to the person clearing the goods. 15
- (6) A value re-determination replaces the previous value determination or value re-determination applicable to the goods.

Correction of error in value determination or re-determination

- 119.** (1) On discovery of an error in a value determination or re-determination in respect of any goods which does not affect the value ascribed to the goods in the determination or re-determination, the customs authority may correct⁹⁹ the error by notice to the person clearing the goods. 20
- (2) There are no time limits as to when a correction may be made in terms of subsection (1). 25

Time limit on value determination and re-determination

- 120.** (1) There are no time limits as to when a value determination or re-determination of goods may be made, but no value determination or re-determination may be applied for purposes of assessing or re-assessing duty on goods otherwise than in accordance with subsection (2). 30
- (2) A value determination or re-determination that affects the dutiability of goods or the amount of duty paid or payable on goods must be applied for purposes of assessing or re-assessing duty on those goods—
- (a) if the value determination or re-determination was made within a period of three years from the date the goods acquired a tax due status in terms of Chapter 6 of the Customs Control Act;¹⁰⁰ or 35
 - (b) if the value determination or re-determination was made, whether within or after the expiry of the three years' period referred to in paragraph (a)—
 - (i) to give effect to—
 - (aa) a decision in any administrative appeal or dispute resolution proceedings; 40
 - (bb) a dispute settlement;
 - (cc) a retrospective amendment to the Customs Tariff; or
 - (dd) a court order given or confirmed in a final judgement;
 - (ii) to rectify an underpayment or non-payment of duty that occurred as a result of fraud, misrepresentation, a false declaration or non-disclosure of material facts; or 45
 - (iii) following an agreement referred to in section 86(2)(b).
- (3) This section may not be read as permitting a re-assessment of duty on goods in conflict with section 87. 50

99. An error in the value of goods in a value determination or re-determination cannot be corrected by a correction notice but only by a superseding value re-determination. See also definition of "correction" in section 1.

100. Goods that have been cleared acquire a tax due status in terms of Chapter 6 of the Customs Control Act as from the date of clearance of the goods for home use or a customs procedure that confers a tax due status, which in terms of section 173 of that Act is the date of acceptance by Customs of the clearance declaration submitted in respect of the goods.

- (3) 'n Waardasiemaatstaf wat gebruik word om 'n waardeherbepaling van enige goedere te doen, moet bestaanbaar wees met—
- (a) 'n waardasiemaatstaf wat ingevolge artikel 123(2) vir daardie goedere mag geld; of
 - (b) enige vooruit-waardasiebeslissing wat vir daardie goedere mag geld. 5
- (4) 'n Waardeherbepaling ingevolge subartikel (1), kan ten opsigte van goedere gedoen word ongeag of—
- (a) die goedere—
 - (i) geklaar is of nie;
 - (ii) vrygestel is of nie; 10
 - (iii) belasbaar is of nie; of
 - (iv) steeds aan doeanebeheer onderworpe is of nie;
 - (b) daar 'n waarde self-bepaling ten opsigte van die goedere gedoen is of nie; of
 - (c) daar 'n bedrag van reg op die goedere betaal is of nie.
- (5) Die doeanegesag moet die persoon wat die goedere klaar, kennis gee van enige waardeherbepaling ingevolge subartikel (1) gedoen. 15
- (6) 'n Waardeherbepaling van goedere ingevolge subartikel (1), vervang die vorige waardeherbepaling of waardeherbepaling wat vir die goedere geld.

Regstelling van fout in waardeherbepaling of -herbepaling

- 119.** (1) Wanneer daar in 'n waardeherbepaling of -herbepaling ten opsigte van goedere 20
gedoen 'n fout ontdek word wat nie die waarde raak wat in die bepaling of herbepaling
aan die goedere toegeken is nie, kan die doeanegesag die fout by kennisgewing aan die
persoon wat die goedere klaar, regstel.⁹⁹
- (2) Daar is geen tydsbeperkings wat betref wanneer 'n regstelling ingevolge
subartikel (1) gedoen kan word nie. 25

Tydsbeperking op waardeherbepaling en -herbepaling

- 120.** (1) Daar is geen tydsbeperkings wat betref wanneer 'n waardeherbepaling of
-herbepaling van goedere gedoen kan word nie, maar geen waardeherbepaling of
-herbepaling mag vir doeleindes van aanslag of heraanslag van reg op goedere toegepas
word anders as ooreenkomstig subartikel (2) nie. 30
- (2) 'n Waardeherbepaling of -herbepaling wat die belasbaarheid van goedere of die
bedrag van reg betaal of betaalbaar op goedere raak, moet vir doeleindes van aanslag of
heraanslag van reg op daardie goedere toegepas word—
- (a) indien die waardeherbepaling of -herbepaling gedoen word binne 'n tydperk van
drie jaar vanaf die datum waarop die goedere ingevolge Hoofstuk 6 van die 35
Wet op Doeanereg 'n belasting betaalbare status verkry het;¹⁰⁰ of
 - (b) indien die waardeherbepaling of -herbepaling gedoen is, hetsy binne of na
verstryking van die drie jaar tydperk bedoel in paragraaf (a)—
 - (i) om uitvoering te gee aan—
 - (aa) 'n beslissing in enige administratiewe appèl of geskilbeslegtings- 40
verrigtinge;
 - (bb) die skikking van 'n dispuut;
 - (cc) 'n terugwerkende wysiging van die Doeanetarief; of
 - (dd) 'n hofbevel gegee of bevestig in 'n finale hofbeslissing;
 - (ii) om 'n kort-betaling of nie-betaling van reg wat die gevolg was van 45
bedrog, wanvoorstelling, 'n vals klaringsbrief of die nie-openbaar-
making van wesenlike feite, reg te stel; of
 - (iii) na aanleiding van 'n ooreenkoms bedoel in artikel 86(2)(b).
- (3) Hierdie artikel mag nie uitgelê word om 'n heraanslag van reg op goedere in stryd
met artikel 87 te veroorloof nie. 50

99. 'n Fout in die waarde van goedere in 'n waardeherbepaling of -herbepaling kan nie deur 'n
regstellingskennisgewing reggestel word nie, maar slegs deur 'n daaropvolgende waardeherbepaling.
Kyk ook omskrywing van "regstelling" in artikel 1.

100. Goedere wat geklaar is, verkry ingevolge Hoofstuk 6 van die Wet op Doeanereg 'n belasting
betaalbare status vanaf die datum van klaring van die goedere vir binnelandse gebruik of vir 'n
doeaneprosedure wat 'n belasting betaalbare status verleen, wat ingevolge artikel 173 van daardie
Wet die datum is waarop Doeanereg die klaringsbrief ingedien ten opsigte van die goedere aanvaar.

Request for information and documents

121. The customs authority may request any of the following persons to furnish it within a specified period with any information or documents required by the customs authority for considering or making a value determination or re-determination of goods or a correction of a value determination or re-determination: 5

- (a) The person clearing the goods or who submitted the clearance declaration in respect of the goods;
- (b) any person who is an importer or exporter in relation to the goods;
- (c) any person who—
 - (i) is or may be held liable for duty that may be or has become payable on the goods; or 10
 - (ii) has paid duty on the goods; or
- (d) the owner of the goods.

Value determination or re-determination in absence of sufficient information

122. The customs authority may base a value determination or re-determination on the best information available to it— 15

- (a) if particulars of the goods in respect of which the value determination or re-determination is made or the underlying transaction which caused the goods to be imported into or exported from the Republic, as the case may be, are not disclosed or not sufficiently disclosed in the clearance declaration or any supporting documents and those particulars are still not disclosed or still not sufficiently disclosed following—
 - (i) a request in terms of section 121; or
 - (ii) an amendment of the clearance declaration or any supporting documents;
- (b) in any other case, if information or documents necessary for considering or making the value determination or re-determination were not furnished following a request in terms of section 121; or 25
- (c) if no clearance declaration was submitted and the goods are in terms of the Customs Control Act for tax purposes regarded to be cleared for home use or outright export. 30

Goods to which value determination, re-determination and valuation criterion apply

123. (1) A value determination or re-determination of goods applies only to the goods in respect of which it was made.

(2) A valuation criterion applied in a value determination or re-determination of goods referred to in subsection (1) must, until the customs authority decides otherwise, be applied also to goods of the same class or kind cleared for home use or a customs procedure by the same person or by a registered agent on behalf of the same person— 35

- (a) if and when a value determination or re-determination in respect of such goods is made in terms of section 117 or 118, whether the goods were cleared before or after the date of the value determination or re-determination referred to in subsection (1); or 40
- (b) if and when a value self-determination in respect of such goods cleared on or after that date is made in terms of section 116.

(3) Subsection (2) may not be read as permitting a re-assessment of duty on goods in conflict with section 87. 45

Rounding off of customs value

124. When determining the customs value of any goods, the amount determined must be rounded off to the nearest Rand.

Versoek om inligting en dokumente

121. Die doeanegesag kan enige van die volgende persone versoek om binne 'n bepaalde tydperk enige inligting of dokumente deur die doeanegesag benodig om 'n waardebeplanning of -herbeplanning van goedere of 'n regstelling van 'n waardebeplanning of -herbeplanning te oorweeg of te doen, aan die doeanegesag te verskaf: 5

- (a) Die persoon wat goedere klaar of wat die klaringsbrief ten opsigte van die goedere ingedien het;
- (b) enige persoon wat 'n invoerder of uitvoerder met betrekking tot die goedere is;
- (c) enige persoon wat— 10
 - (i) aanspreeklik is of aanspreeklik gehou kan word vir reg wat op die goedere betaalbaar mag word of geword het; of
 - (ii) reg op die goedere betaal het; of
- (d) die eienaar van die goedere.

Waardebeplanning of -herbeplanning in afwesigheid van voldoende inligting 15

122. Die doeanegesag kan 'n waardebeplanning of -herbeplanning baseer op die beste inligting tot die doeanegesag se beskikking—

- (a) indien besonderhede van die goedere ten opsigte waarvan die waardebeplanning of -herbeplanning gedoen is, of die onderliggende transaksie na aanleiding waarvan die goedere ingevoer is in of uitvoer is uit die Republiek, na gelang van die geval, nie verskaf of voldoende verskaf word in die klaringsbrief of enige ondersteunende dokumente nie, en daardie besonderhede steeds nie verskaf of voldoende verskaf word nie nadat— 20
 - (i) 'n versoek ingevolge artikel 121 uitgereik is; of
 - (ii) 'n wysiging van die klaringsbrief of enige ondersteunende dokumente 25 gedoen is;
- (b) in enige ander geval, indien inligting of dokumente wat nodig is om die waardebeplanning of -herbeplanning te doen, nie verskaf is nadat 'n versoek ingevolge artikel 121 uitgereik is nie; of
- (c) indien geen klaringsbrief ingedien is nie en die goedere ingevolge die Wet op Doeanereg vir belastingdoeleindes geag word vir binnelandse gebruik of regstreekse uitvoer geklaar te wees. 30

Goedere waarvoor waardebeplanning, -herbeplanning en waardasiemaatstaf geld

123. (1) 'n Waardebeplanning of -herbeplanning van enige goedere geld slegs vir die goedere ten opsigte waarvan dit gedoen is. 35

(2) 'n Waardasiemaatstaf wat toegepas is in 'n waardebeplanning of -herbeplanning van goedere bedoel in subartikel (1) moet, totdat die doeanegesag anders besluit, ook toegepas word op goedere van dieselfde klas of soort wat deur dieselfde persoon of deur 'n geregistreerde agent namens dieselfde persoon vir binnelandse gebruik of 'n doeaneprosedure geklaar is— 40

- (a) indien en wanneer 'n waardebeplanning of -herbeplanning ingevolge artikel 117 of 118 ten opsigte van sodanige goedere gedoen word, ongeag of die goedere voor of na die datum van die waardebeplanning of -herbeplanning bedoel in subartikel (1) geklaar is; of
- (b) indien en wanneer 'n waarde self-beplanning ten opsigte van sodanige goedere 45 geklaar op of voor daardie datum, ingevolge artikel 116 gedoen is.

(3) Subartikel (2) mag nie uitgelê word om 'n heranslag van reg op goedere in stryd met artikel 87 te veroorloof nie.

Afronding van doeanewaarde

124. Wanneer die doeanewaarde van enige goedere bepaal word, moet die bedrag 50 aldus bepaal, afgerond word tot die naaste Rand.

Remedies available to person aggrieved by value determination or re-determination¹⁰¹

125. (1) Parts 3, 4 and 5 of Chapter 37 of the Customs Control Act as may be appropriate in terms of the provisions of those Parts, are available to a person aggrieved by a value determination or re-determination. 5

(2) If a person aggrieved by the application of a specific valuation criterion in a value determination or re-determination, or by a decision in terms of section 123(2), lodges an administrative appeal in terms of Part 3 of that Chapter against the determination or re-determination on account of the application of such valuation criterion,¹⁰² or against that decision, the appeal may only be heard by a specialist appeal committee referred to in section 843(2)(a) of the Customs Control Act. 10

(3) A person aggrieved by a value determination or re-determination or, if an administrative appeal has been lodged against the determination or re-determination, including an appeal referred to in subsection (2), by a decision taken in such appeal proceedings, may— 15

- (a) lodge an appeal with a court against the determination, re-determination or decision; or
- (b) institute proceedings for a review by a court of the determination, re-determination or decision.

Value determination or re-determination presumed to be correct except when replaced, amended, set aside or corrected 20

126. A value determination or re-determination applicable to any goods must be presumed to be correct and must be applied except when replaced, amended, set aside, corrected or otherwise affected, as may be appropriate, by—

- (a) a value re-determination in terms of section 118; 25
- (b) a decision in terms of section 123(2);
- (c) a correction in terms of section 119;
- (d) an advance valuation ruling in terms of Chapter 10;
- (e) a decision in any administrative appeal or alternative dispute resolution proceedings; 30
- (f) a dispute settlement;
- (g) a retrospective amendment to the Customs Tariff; or
- (h) a court order given or confirmed in a final judgement.

Part 3

Valuation of imported goods 35

Primary valuation method

127. (1) The primary valuation method must for purposes of this Act be used for determining the customs value of goods imported into the Republic unless that method cannot or may not in terms of section 129 be used for determining the customs value of those goods. 40

(2) In terms of the primary valuation method, the transaction value of the goods, determined in accordance with section 131, must be taken as the customs value of the goods.

Alternative valuation method

128. (1) If the primary valuation method cannot or may not in terms of section 129 be used for determining the customs value of any imported goods, the customs value of the 45

101. It should be noted that as a general rule an administrative appeal and in fact none of the proceedings referred to in Chapter 37 of the Customs Control Act affects or suspends the obligation to pay a duty. See section 830 of the Customs Control Act.

102. A specialist appeal committee is compulsory only if an appeal is lodged against the application of a disputed valuation criterion. If an appeal is against some other disputed matter, such as the use of an alleged incorrect exchange rate or miscalculation of quantity, etc., the appeal must be heard in the ordinary way.

Regsmiddele tot beskikking van persoon verontreg deur waardebeplating of -herbepaling¹⁰¹

125. (1) Dele 3, 4 en 5 van Hoofstuk 37 van die Wet op Doeanebeheer soos toepaslik ingevolge die bepalings van daardie Dele, is tot die beskikking van 'n persoon wat verontreg voel deur 'n waardebeplating of -herbepaling. 5

(2) Indien iemand wat verontreg voel deur die toepassing van 'n bepaalde waardasiemaatstaf¹⁰² in 'n waardebeplating of -herbepaling of deur 'n besluit ingevolge artikel 123(2), 'n administratiewe appèl ingevolge Deel 3 van daardie Hoofstuk teen die bepaling of herbepaling of teen daardie besluit aanteken, kan die appèl slegs deur 'n spesialis appèlkomitee bedoel in artikel 843(2)(a) van die Wet op Doeanebeheer 10 aangehoor word.

(3) Iemand wat verontreg voel deur 'n waardebeplating of -herbepaling, of indien 'n administratiewe appèl, met inbegrip van 'n appèl bedoel in subartikel (2), teen die bepaling of herbepaling aangeteken is, deur 'n besluit geneem in sodanige appèl verrigtinge, kan— 15

- (a) appèl by 'n hof teen die bepaling, herbepaling of besluit aanteken; of
- (b) regstappe vir die hersiening deur 'n hof van die bepaling, herbepaling of besluit instel.

Waardebeplating en herbepaling vermoed korrek te wees behalwe wanneer vervang, gewysig, ter syde gestel of reggestel 20

126. 'n Waardebeplating of -herbepaling wat vir enige goedere geld, moet vermoed word korrek te wees en moet toegepas word tensy dit vervang, gewysig, ter syde gestel, reggestel of geraak word, na gelang van die geval, deur—

- (a) 'n waardeherbepaling ingevolge artikel 118;
- (b) 'n besluit ingevolge artikel 123(2); 25
- (c) 'n regstelling ingevolge artikel 119;
- (d) 'n vooruit-waardasiebeslissing ingevolge Hoofstuk 10;
- (e) 'n besluit in enige administratiewe appèl of alternatiewe geskilbeslegtingsverrigtinge;
- (f) die skikking van 'n dispuut; 30
- (g) 'n terugwerkende wysiging van die Doeanetarief; of
- (h) 'n hofbevel gegee in of bevestig deur 'n finale hofbeslissing.

Deel 3

Waardering van ingevoerde goedere

Primêre waarderingsmetode 35

127. (1) Die primêre waarderingsmetode moet vir doeleindes van hierdie Wet gebruik word om die doeanewaarde van goedere ingevoer in die Republiek te bepaal, tensy daardie metode ingevolge artikel 129 nie gebruik kan of mag word om die doeanewaarde van daardie goedere te bepaal nie.

(2) Ingevolge die primêre waarderingsmetode moet die transaksiewaarde van die goedere, volgens artikel 131 bepaal, as die doeanewaarde van die goedere geneem word. 40

Alternatiewe waarderingsmetodes

128. (1) Indien die primêre waarderingsmetode ingevolge artikel 129 nie gebruik kan of mag word vir die bepaling van die doeanewaarde van enige ingevoerde goedere nie, moet die doeanewaarde van die goedere bepaal word volgens die eerste van die 45

101. Dit dien daarop gelet te word dat as algemene reël 'n administratiewe appèl nie, en trouens geen van die verrigtinge bedoel in Hoofstuk 37 van die Wet op Doeanebeheer nie, die verpligting om 'n reg te betaal raak of opskort nie. Kyk artikel 830 van die Wet op Doeanebeheer.

102. 'n Spesialis appèlkomitee is verpligtend slegs indien appèl teen die toepassing van 'n betwiste waardasiemaatstaf aangeteken word. Indien die appèl teen 'n ander betwiste aangeleentheid soos die gebruik van 'n beweerde verkeerde wisselkoers of verkeerde berekening van hoeveelheid, ens., is, moet die appèl op die gewone wyse aangehoor word.

goods must be determined in accordance with the first of the following alternative valuation methods, in the order below, that can be used to determine the customs value of the goods:

- (a) The identical goods method as set out in section 132;
- (b) the similar goods method as set out in section 133; 5
- (c) the deductive method as set out in section 134;
- (d) the computed method as set out in section 135; and
- (e) the fall-back method as set out in section 136.

(2) The person who clears imported goods for home use or a customs procedure may choose that the order of applying subsections (1)(c) and (d) be reversed. 10

Circumstances in which primary valuation method cannot or may not be used

129. (1) The circumstances in which the primary valuation method cannot or may not be used for determining the customs value of any specific imported goods are the following:

- (a) The transaction in terms of which the goods are exported to the Republic is not a contract of purchase and sale; 15
- (b) the transaction in terms of which the goods were sold for export to the Republic is a contract of purchase and sale but was concluded otherwise than in the ordinary course of trade under fully competitive conditions, unless subsection (2) applies; 20
- (c) there is for any reason no price actually paid or payable for the goods to use as basis for determining a transaction value for the goods;
- (d) the price actually paid or payable for the goods is not substantiated by supporting documents;
- (e) the transaction in terms of which the goods were sold for export to the Republic is subject to a term or condition which materially affected the price actually paid or payable for the goods for which a value cannot be determined; 25
- (f) there is a restriction as to the resale, disposal or use of the goods which materially affected the price actually paid or payable for the goods, whether the restriction was imposed in terms of legislation or the transaction in terms of which the goods were sold for export to the Republic; 30
- (g) a special, arbitrary or abnormal discount, rebate or other reduction from the ordinary competitive price of the goods was or is to be given in connection with the transaction in terms of which the goods were sold for export to the Republic, unless subsection (3) is applied; 35
- (h) a part of the proceeds of any resale, disposal or use of the goods accrued or will accrue to the seller, unless subsection (4) is applied;
- (i) the seller and the buyer have a family, personal, employment or business relationship within the meaning of section 130, unless section 130(3) applies;
- (j) there is insufficient information to use the primary valuation method for determining the transaction value of the imported goods; or 40
- (k) there is reason to suspect that the information available for determining the transaction value of the imported goods is incorrect or defective in any respect.

(2) The primary valuation method may despite subsection (1)(b) be used for determining the customs value of the goods if the customs authority determines that the transaction value is acceptable. 45

(3) If a special, arbitrary or abnormal discount, rebate or other reduction contemplated in subsection (1)(g) was or is to be given in connection with a transaction, the primary valuation method may despite that subsection be used for determining the customs value of the goods, provided that the amount of the discount, rebate or reduction is, in addition to the other amounts mentioned in section 131(3), added to the price actually paid or payable for the goods. 50

(4) If a part of the proceeds of any resale, disposal or use of the goods accrued or will accrue to the seller as contemplated in subsection (1)(h), the primary valuation method 55

volgende alternatiewe waarderingsmetodes, in die volgorde hieronder aangedui, wat wel gebruik kan word om die doeanewaarde van die goedere te bepaal:

- (a) Die identiese goedere metode soos in artikel 132 uiteengesit;
- (b) die soortgelyke goedere metode soos in artikel 133 uiteengesit;
- (c) die deduktiewe metode soos in artikel 134 uiteengesit; 5
- (d) die gekomputeerde metode soos in artikel 135 uiteengesit; en
- (e) die terugval metode soos in artikel 136 uiteengesit.

(2) Iemand wat ingevoerde goedere klaar vir binnelandse gebruik of 'n doeaneprosedure kan kies dat die volgorde van die toepassing van subartikels (1)(c) en (d) omgeruil moet word. 10

Omstandighede waarin primêre waarderingsmetode nie gebruik kan of mag word nie

129. (1) Die omstandighede waarin die primêre waarderingsmetode nie gebruik kan of mag word vir die bepaling van die doeanewaarde van enige spesifieke ingevoerde goedere nie, is die volgende: 15

- (a) Die transaksie ingevolge waarvan die goedere na die Republiek uitgevoer word, is nie 'n koopkontrak nie;
- (b) die transaksie ingevolge waarvan die goedere verkoop is vir uitvoer na die Republiek is wel 'n koopkontrak maar is aangegaan op 'n ander wyse as in die gewone loop van besigheid onder volkome mededingende omstandighede, tensy subartikel (2) van toepassing is; 20
- (c) daar is om enige rede nie 'n prys werklik betaal of betaalbaar vir die goedere om te gebruik as basis vir die bepaling van 'n transaksiewaarde vir die goedere nie;
- (d) die prys werklik betaal of betaalbaar vir die goedere word nie deur stawende dokumente bevestig nie; 25
- (e) die transaksie ingevolge waarvan die goedere verkoop is vir uitvoer na die Republiek is onderworpe aan 'n bepaling of voorwaarde wat die prys werklik betaal of betaalbaar vir die goedere wesenlik beïnvloed het, maar waarvoor 'n waarde nie bepaal kan word nie; 30
- (f) daar is 'n beperking met betrekking tot die herverkoop, vervreemding of gebruik van die goedere wat die prys werklik betaal of betaalbaar vir die goedere wesenlik beïnvloed het, hetsy die beperking opgelê is ingevolge wetgewing of die transaksie ingevolge waarvan die goedere verkoop is vir uitvoer na die Republiek; 35
- (g) 'n spesiale, arbitrêre of buitengewone afslag, korting of ander vermindering van die gewone mededingende prys van die goedere is gegee of sal gegee word in verband met die transaksie ingevolge waarvan die goedere vir uitvoer na die Republiek verkoop is, tensy subartikel (3) toegepas word;
- (h) 'n gedeelte van die opbrengs van enige herverkoop, vervreemding of gebruik van die goedere het die verkoper toegeval of sal die verkoper toeval, tensy subartikel (4) toegepas word; 40
- (i) die verkoper en die koper het 'n familie-, persoonlike, werks- of besigheidsverwantskap ooreenkomstig die bedoeling van artikel 130, tensy artikel 130(3) toegepas word; 45
- (j) daar is onvoldoende inligting om die primêre waarderingsmetode te gebruik om die transaksiewaarde van die ingevoerde goedere te bepaal; of
- (k) daar is rede om te vermoed dat die inligting beskikbaar om die transaksiewaarde van die ingevoerde goedere te bepaal in enige opsig foutief of gebrekkig is. 50

(2) Die primêre waarderingsmetode kan ondanks subartikel (1)(b) vir bepaling van die doeanewaarde van die goedere gebruik word indien die doeanegesag bepaal dat die transaksiewaarde wel aanvaarbaar is.

(3) Indien 'n spesiale, arbitrêre of buitengewone afslag, korting of ander vermindering beoog in subartikel (1)(g), gegee is of sal word in verband met 'n transaksie, kan die primêre waarderingsmetode ondanks daardie subartikel vir die bepaling van die doeanewaarde van die goedere gebruik word, mits die bedrag van die afslag, korting of vermindering, benewens die ander bedrae genoem in artikel 131(1), bygetel word by die prys werklik betaal of betaalbaar vir die goedere. 55

(4) Indien 'n gedeelte van die opbrengs van enige herverkoop, vervreemding of gebruik van die goedere die verkoper toegeval het of sal toeval soos beoog in subartikel 60

may despite that subsection be used for determining the customs value of the goods, provided that the amount of the proceeds that accrued or will accrue to the seller is, in addition to the other amounts mentioned in section 131(3), added to the price actually paid or payable for the goods.

Relationship between contracting parties as disqualifying factor for primary valuation method 5

130. (1) For the purposes of section 129(1)(i)—

- (a) a family or personal relationship includes a relationship between a seller and a buyer as members of the same family, whether the relationship was established by— 10
 - (i) birth;
 - (ii) adoption;
 - (iii) marriage or other union;
 - (iv) engagement; or
 - (v) cohabitation; 15
- (b) an employment relationship includes a relationship between a seller and a buyer as—
 - (i) employer and employee;
 - (ii) employees in the same firm;
 - (iii) director in the other's firm; 20
 - (iv) directors in the same firm; or
 - (v) employee and director in the same firm; and
- (c) a business relationship includes a relationship between a seller and a buyer as— 25
 - (i) partners in the same firm;
 - (ii) a person and a firm in which that person is a partner;
 - (iii) members of the same close corporation;
 - (iv) a person and a close corporation of which that person is a member;
 - (v) a company and its controlling shareholder;
 - (vi) a controlling company and its subsidiary; 30
 - (vii) companies in the same group of companies;
 - (viii) companies which are directly or indirectly controlled by the same person; or
 - (ix) companies in which a third person holds or controls more than a five per cent stake in each of them. 35

(2) A business relationship between a seller and a buyer whereby the one acts as the sole agent, distributor or concessionary of the other is not a business relationship for purposes of section 129(1)(i), provided that they are not otherwise related within the meaning of subsection (1)(a), (b) or (c) of this section.

(3) (a) The customs authority may despite section 129(1)(i) accept or use the transaction value of any imported goods as the customs value of the goods if the person clearing the goods proves, in accordance with paragraph (b) or in any other way, that the relationship between the seller and the buyer did not influence the price paid or payable for the goods. 40

(b) It must for purposes of paragraph (a) be accepted as sufficient proof that the relationship between the seller and the buyer did not influence the price paid or payable for the goods if the transaction value of the goods closely approximates any one of the following test values: 45

- (i) The transaction value of identical or similar goods purchased at comparable trade and quantity levels by unrelated buyers in the Republic at or about the same time as the goods being valued; 50
- (ii) the value, determined in terms of section 134, of identical or similar goods imported into the Republic at or about the same time as the goods being valued; or
- (iii) the value, determined in terms of section 135, of identical or similar goods imported into the Republic at or about the same time as the goods being valued. 55

(1)(h), kan die primêre waarderingsmetode ondanks daardie subartikel vir die bepaling van die doeanewaarde van die goedere gebruik word, mits die bedrag van die opbrengs wat die verkoper toegeval het of sal toeval, benewens die ander bedrae genoem in artikel 131(3), bygetel sal word by die prys werklik betaal of betaalbaar vir die goedere.

Verwantskap tussen kontrakterende partye as diskwalifiserende faktor vir primêre waarderingsmetode 5

130. (1) Vir doeleindes van artikel 129(1)(i)—

- (a) sluit 'n familie- of persoonlike verwantskap in 'n verwantskap tussen 'n verkoper en koper as lede van dieselfde familie, ongeag of die verwantskap ontstaan het deur— 10
 - (i) geboorte;
 - (ii) aanneming;
 - (iii) huwelik of ander verbintenis;
 - (iv) verlowing; of
 - (v) 'n saamleef-verhouding; 15
- (b) sluit 'n werksverwantskap in 'n verwantskap tussen 'n verkoper en 'n koper as— 20
 - (i) werkgewer en werknemer;
 - (ii) werknemers in dieselfde firma;
 - (iii) direkteur in die ander se firma; 20
 - (iv) direkteure in dieselfde firma; of
 - (v) werknemer en direkteur in dieselfde firma; en
- (c) sluit 'n besigheidsverwantskap in 'n verwantskap tussen 'n verkoper en 'n koper as— 25
 - (i) vennote in dieselfde firma; 25
 - (ii) 'n persoon en 'n firma waarin daardie persoon 'n vennoot is;
 - (iii) lede van dieselfde beslote korporasie;
 - (iv) 'n persoon en 'n beslote korporasie waarvan daardie persoon 'n lid is;
 - (v) 'n maatskappy en sy beherende aandeelhouer;
 - (vi) 'n beherende maatskappy en sy filiaal; 30
 - (vii) maatskappye in dieselfde groep van maatskappye;
 - (viii) maatskappye wat direk of indirek deur dieselfde persoon beheer word; of
 - (ix) maatskappye waarin 'n derde persoon meer as 'n vyf persent belang in elkeen hou of beheer.

(2) 'n Besigheidsverwantskap tussen 'n verkoper en 'n koper waarvolgens die een party as die alleenagent, -verspreider of konsessiehouer van die ander optree, is nie 'n besigheidsverwantskap vir doeleindes van artikel 129(1)(i) nie, mits die partye nie op 'n ander wyse ooreenkomstig die bedoeling van subartikel (1)(a), (b) of (c) van hierdie artikel verwant is nie. 35

(3) (a) Die doeanegesag kan ondanks artikel 129(1)(i) die transaksiewaarde van enige goedere as die doeanewaarde van die goedere aanvaar of gebruik indien die persoon wat die goedere klaar, bewys ooreenkomstig paragraaf (b) of op enige ander wyse lewer dat die verwantskap tussen die verkoper en die koper nie die prys betaal of betaalbaar vir die goedere beïnvloed het nie. 40

(b) Daar moet vir doeleindes van paragraaf (a) as voldoende bewys aanvaar word dat die verwantskap tussen die verkoper en koper nie die prys betaal of betaalbaar vir die goedere beïnvloed het indien die transaksiewaarde van die goedere ongeveer dieselfde is as enige van die volgende toetswaardes nie: 45

- (i) Die transaksiewaarde van identiese of soortgelyke goedere wat deur nie-verwante kopers in die Republiek gekoop is teen vergelykbare handels- en hoeveelhedsvlakke en op of ongeveer op dieselfde tyd as die goedere wat waardeur word; 50
- (ii) die waarde, ingevolge artikel 134 bepaal, van identiese of soortgelyke goedere wat in die Republiek ingevoer is op of ongeveer op dieselfde tyd as die goedere wat waardeur word; of 55
- (iii) die waarde, ingevolge artikel 135 bepaal, van identiese of soortgelyke goedere wat in die Republiek ingevoer is op of ongeveer op dieselfde tyd as die goedere wat waardeur word.

Determination of transaction value

- 131.** (1) The transaction value of goods sold for export to the Republic is the price actually paid or payable for the goods when sold for export to the Republic, adjusted by—
- (a) adding the amounts mentioned in subsection (3); and 5
 - (b) deducting the amounts mentioned in subsection (4).
- (2) If the goods are sold for export to the Republic¹⁰³ in two or more successive transactions, the last sale before the goods arrive at the place of entry in the Republic must be used for determining the transaction value of the goods.
- (3) The following amounts must be added to the price actually paid or payable for the goods by the buyer, but only to the extent that those amounts do not already form part of the price actually paid or payable by the buyer: 10
- (a) Any commission other than buying commission;
 - (b) brokerage;
 - (c) the cost of— 15
 - (i) packing, including the cost of labour and materials; and
 - (ii) the cost of containers, which must be dealt with as being one with the goods;
 - (d) the value, appropriately apportioned to the goods in accordance with any rules that may be prescribed, of any of the following items which were supplied directly or indirectly by the buyer free of charge or at reduced cost for use in the production, manufacture or sale for export to the Republic of the goods, namely— 20
 - (i) materials, components, parts and articles forming part of the goods;
 - (ii) tools, dies, moulds and articles used in the production or manufacture of the goods; 25
 - (iii) materials consumed in the production or manufacture of the goods; and
 - (iv) engineering work, development work, art work, design work, plans and sketches undertaken elsewhere than in the Republic and necessary for the production or manufacture of the goods; 30
 - (e) royalties and licence fees in respect of the goods, including payments for patents, trademarks and copyright and for the right to distribute or resell the goods, payable directly or indirectly by the buyer as a condition of the sale of the goods for export to the Republic, but excluding charges for the right or licence to reproduce the goods in the Republic; 35
 - (f) the value of any part of the proceeds of any subsequent resale, disposal or use of the goods that accrues directly or indirectly to the seller; and
 - (g) transportation, loading, unloading, handling, insurance and associated costs incidental to delivery of the goods at the port or place of export in the country of exportation and placing those goods on board a vessel, aircraft, railway carriage or vehicle at that port or place. 40
- (4) The following amounts must be deducted from the price actually paid or payable for the goods by the buyer, but only to the extent that those amounts are actual amounts that form part of the price actually paid or payable by the buyer and are distinguishable components of the price actually paid or payable: 45
- (a) The cost of transport of the imported goods from the port or place of export in the country of exportation to the place of entry in the Republic;
 - (b) the cost of insurance of the goods from the port or place of export in the country of exportation to the place of entry in the Republic;
 - (c) the loading, unloading and handling charges associated with the delivery of the goods at the place of entry in the Republic; 50

103. It does not matter whether the goods were sold in the country from where the goods were exported to the Republic or on the “high seas”. See definition of “*export to the Republic*” in section 1 of the Customs Control Act which is wide enough to cover so-called sales on the high seas or in fact any sale after the goods left the port or place of export in the country of exportation.

Bepaling van transaksiewaarde

- 131.** (1) Die transaksiewaarde van goedere verkoop vir uitvoer na die Republiek is die prys werklik betaal of betaalbaar vir die goedere ten tye van die verkoop daarvan vir uitvoer na die Republiek, soos aangepas deur—
- (a) die bedrae genoem in subartikel (3) daarby te tel; en 5
 - (b) die bedrae genoem in subartikel (4) daarvan af te trek.
- (2) Indien die goedere in twee of meer opeenvolgende transaksies verkoop word vir uitvoer na die Republiek¹⁰³ moet die laaste verkooptransaksie voordat die goedere by die plek van toegang in die Republiek aankom, gebruik word om die transaksiewaarde van die goedere te bepaal. 10
- (3) Die volgende bedrae moet bygetel word by die prys werklik deur die koper betaal of betaalbaar vir die goedere, maar net in soverre daardie bedrae nie reeds deel vorm van die prys werklik betaal of betaalbaar deur die koper nie:
- (a) Enige kommissie behalwe koopkommissie; 15
 - (b) makelaarsfooie; 15
 - (c) die koste van—
 - (i) verpakkingsmateriaal, met inbegrip van die koste van arbeid en materiaal; en
 - (ii) die koste van houers, wat gesien moet word as synde deel van die goedere; 20
 - (d) die waarde, toepaslik aan die goedere toegeken ooreenkomstig enige reëls wat voorgeskryf mag word, van enige van die volgende items wat gratis of teen 'n verminderde prys direk of indirek deur die koper verskaf is vir gebruik in die produksie, vervaardiging of verkoop vir uitvoer van die goedere na die Republiek, te wete— 25
 - (i) stowwe, komponente, onderdele en artikels wat deel van die goedere vorm;
 - (ii) gereedskap, matryse, gietvorms en artikels wat in die produksie of vervaardiging van die goedere gebruik is;
 - (iii) stowwe in die produksie of vervaardiging van die goedere gebruik; en 30
 - (iv) ingenieurs-, ontwikkelings-, kuns- of ontwerpwerk, of planne en sketse wat elders as in die Republiek gedoen en noodsaaklik vir die produksie of vervaardiging van die goedere is;
 - (e) tantième en lisensiefooie ten opsigte van die goedere, met inbegrip van betalings vir patente, handelsmerke en outeursreg en vir die reg om die goedere te versprei of te herverkoop, wat direk of indirek deur die koper as 'n voorwaarde vir die verkoop van die goedere vir uitvoer na die Republiek betaalbaar is, maar met uitsluiting van gelde vir die reg of magtiging om die goedere in die Republiek te reproduseer; 35
 - (f) die waarde van enige gedeelte van die opbrengs van enige daaropvolgende herverkoop, vervreemding of gebruik van die goedere wat die verkoper direk of indirek toeval; en 40
 - (g) die vervoer-, laai-, aflaai-, hanterings-, versekerings- en gepaardgaande kostes wat verband hou met die aflewering van die goedere by die hawe of plek van uitvoer in die land van uitvoer en die laai van daardie goedere aan boord van 'n vaartuig, vliegtuig, spoorwegwa of voertuig by daardie hawe of plek. 45
- (4) Die volgende bedrae moet afgetrek word van die prys werklik deur die koper betaal of betaalbaar vir die goedere, maar net in soverre daardie bedrae werklike bedrae is wat deel vorm van die prys werklik betaal of betaalbaar en onderskeibare komponente van die prys werklik betaal of betaalbaar is: 50
- (a) Die koste van vervoer van die ingevoerde goedere vanaf die hawe of plek van uitvoer in die land van uitvoer na die plek van toegang in die Republiek;
 - (b) die koste van versekering van die goedere vanaf die hawe of plek van uitvoer in die land van uitvoer na die plek van toegang in die Republiek;
 - (c) die laai-, aflaai- en hanteringskoste verbonde aan die aflewering van die goedere by die plek van toegang in die Republiek; 55

103. Dit maak nie saak of die goedere in die land waarvandaan dit na die Republiek uitgevoer word of op die oop see verkoop word nie. Kyk woordomsyrywing van "uitvoer na die Republiek" in artikel 1 van die Wet op Doeanebeheer wat wyd genoeg is om verkope op die oop see te dek, of trouens enige verkooptransaksie wat plaasvind nadat die goedere die hawe of plek van uitgang in die land van uitvoer verlaat het.

- (d) any expenditure incurred in the construction, erection, assembly or maintenance of, or technical assistance provided in respect of, the goods after their importation into the Republic;
- (e) the cost of transport and insurance of the goods in the Republic;
- (f) any duties and taxes paid or payable in the Republic on the importation into or the sale of the goods in the Republic; 5
- (g) any duties and taxes on the goods in the country of exportation from which the goods have been or will be relieved by way of refund, drawback or rebate;
- (h) interest charged in respect of the price actually paid or payable for the goods, but this deduction is permitted only if— 10
 - (i) the financing arrangement in terms of which the interest is paid is in writing;
 - (ii) the buyer can prove, if requested by the customs authority, that the goods were actually sold at the price declared as the price actually paid or payable, and that the claimed rate of interest does not exceed the level for transactions of that nature prevailing in the country where, and at the time when, the financing was provided; and 15
 - (iii) interest payments made by the buyer to the seller are not included in the price actually paid or payable where the payments are part of a separate, overall financing arrangement between the parties that bears no relationship to a particular sale; and 20
- (i) any charges for the right or licence to reproduce the goods in the Republic.
- (5) Interest that must in terms of subsection (4)(h) be deducted from the price actually paid or payable for the goods excludes any—
 - (a) interest paid by the buyer to the seller for default on payments; and 25
 - (b) payments for interest made by the buyer to the seller arranged as part of the total payment made to the seller.
- (6) If any of the amounts that must in terms of subsection (4) be deducted from the price actually paid or payable for the goods, is not distinguishable as per the invoice or other supporting document as a component of the price actually paid or payable for the goods, the customs authority may accept any other documentary evidence at the time when the value self-determination is made, as proof that that amount is in fact a separate component of the price actually paid or payable for the goods. 30
- (7) The customs authority may direct that any addition contemplated in subsection (3) or any deduction contemplated in subsection (4) or any matter determining whether such addition or deduction must or may be made, be substantiated by documentary evidence submitted to the customs authority. 35
- (8) Any calculation in terms of this section must be made in accordance with generally accepted accounting practice.

Determination of customs value according to identical goods method 40

- 132.** (1) If the identical goods method is used for determining the customs value of any specific imported goods—
- (a) the transaction value per unit of identical goods, as previously determined by the customs authority in terms of section 117 or 118(1)(a) or (b), which were sold for export to the Republic at the same commercial level and in substantially the same quantity and exported to the Republic at or about the same time as the goods being valued, must be taken as the customs value per unit of the goods being valued, subject to any adjustments that must be made in terms of subsection (2); or 45
 - (b) if no determination contemplated in paragraph (a) was made that can be used for purposes of that paragraph, the transaction value per unit of identical goods, as previously determined by the customs authority in terms of section 117 or 118(1)(a) or (b), which were sold for export to the Republic at either a different commercial level or quantity level, or at a different commercial level and quantity level, and exported to the Republic at or about the same time as the goods being valued, must be taken as the customs value per unit of the 50 55

- (d) enige uitgawes aangegaan met die konstruksie, oprigting, montering of onderhoud van, of tegniese bystand verleen in verband met, die goedere nadat die goedere in die Republiek ingevoer is;
- (e) die koste van vervoer en versekering van die goedere in die Republiek;
- (f) enige regte en belastinge in die Republiek betaal of betaalbaar op die invoer, of die verkoop, van die goedere in die Republiek; 5
- (g) enige regte en belastinge op die goedere in die land van uitvoer ten opsigte waarvan verligting aan die goedere by wyse van terugbetaling, teruggawe of korting verleen is of sal word;
- (h) rente gehef ten opsigte van die prys werklik betaal of betaalbaar vir die goedere, maar hierdie aftrekking is toelaatbaar slegs indien— 10
- (i) die finansieringsreëling ingevolge waarvan die rente betaal is op skrif is;
- (ii) die koper bewys kan lewer, indien deur die doeanegesag daartoe versoek, dat die goedere werklik verkoop is teen die prys verklaar as die prys werklik betaal of betaalbaar, en dat die rentekoers waarop daar aanspraak gemaak word nie hoër is as die vlak wat algemeen geld vir transaksies van daardie aard in die land waar, en op die tydstip toe, die finansiering verskaf is nie; en 15
- (iii) rentebetelings deur die koper aan die verkoper gemaak, nie in die prys werklik betaal of betaalbaar ingesluit is nie waar die betalings deel vorm van 'n afsonderlike, oorkoepelende finansieringsreëling tussen die partye wat nie met 'n spesifieke verkoop verband hou nie; en 20
- (i) enige gelde vir die reg of magtiging om die goedere in die Republiek te reproduseer.
- (5) Rente wat ingevolge subartikel (4)(h) afgetrek moet word van die prys werklik betaal of betaalbaar vir die goedere, sluit enige— 25
- (a) rente wat deur die koper aan die verkoper betaal moet word vir versuime om te betaal, uit; en
- (b) betalings vir rente deur die koper aan die verkoper gemaak soos ooreengekom as deel van die totale betaling aan die verkoper, uit. 30
- (6) Indien enige van die bedrae wat ingevolge subartikel (4) afgetrek moet word van die prys werklik betaal of betaalbaar vir dié goedere, nie volgens die faktuur of ander stawende dokument onderskei kan word as 'n komponent van die prys werklik betaal of betaalbaar vir die goedere nie, kan die doeanegesag enige ander dokumentêre getuienis ten tye van die waarde self-bepaling as bewys aanvaar dat daardie bedrag inderdaad 'n afsonderlike komponent van die prys werklik betaal of betaalbaar vir die goedere is. 35
- (7) Die doeanegesag kan gelas dat enige byvoeging beoog in subartikel (3) of enige aftrekking beoog in subartikel (4) of enige aangeleentheid wat bepaal of so 'n byvoeging of aftrekking gemaak moet of kan word, deur dokumentêre getuienis aan die doeanegesag voorgelê, gestaaf moet word. 40
- (8) Enige berekening ingevolge hierdie artikel moet volgens algemeen aanvaarde rekeningkundige praktyk gedoen word.

Bepaling van doeanewaarde volgens identiese goedere metode

- 132.** (1) Indien die identiese goedere metode gebruik word vir die bepaling van die doeanewaarde van enige spesifieke ingevoerde goedere— 45
- (a) moet die transaksiewaarde per eenheid van identiese goedere, soos voorheen ingevolge artikel 117 of 118(1)(a) of (b) deur die doeanegesag bepaal, wat vir uitvoer na die Republiek verkoop is teen dieselfde handelsvlak en in wesenlik dieselfde hoeveelhede en na die Republiek uitgevoer is op of ongeveer op dieselfde tyd as die goedere wat waardeur word, geneem word as die doeanewaarde per eenheid van die goedere wat waardeur word, behoudens enige aanpassings wat ingevolge subartikel (2) gedoen moet word; of 50
- (b) indien geen bepaling beoog in paragraaf (a) gedoen is wat vir doeleindes van daardie paragraaf gebruik kan word nie, moet die transaksiewaarde per eenheid van identiese goedere, soos voorheen ingevolge artikel 117 of 118(1)(a) of (b) deur die doeanegesag bepaal, wat vir uitvoer na die Republiek verkoop is, hetsy teen 'n ander handels- of hoeveelhedsvlak of teen 'n ander handels- en hoeveelhedsvlak, en na die Republiek uitgevoer is op of ongeveer op dieselfde tyd as die goedere wat waardeur word, geneem word as die 55

goods being valued, subject to any adjustments that must be made in terms of subsection (3).¹⁰⁴

(2) The transaction value of the identical goods used for a valuation in terms of subsection(1)(a) must be adjusted to compensate for any differences in the costs and charges contemplated in section 131(3) and (4) resulting from differences in distances and modes of transport to the port or place of export, between the identical goods and the goods being valued. 5

(3) The transaction value of the identical goods used for a valuation in terms of subsection (1)(b) must be adjusted to compensate for any differences in—

- (a) the sale for export to the Republic of the identical goods and of the goods being valued, at the different commercial levels or quantity levels; and 10
- (b) the costs and charges for different distances and modes of transport to the port or place of export, between the identical goods and the goods being valued.

(4) If in applying this section more than one identical goods transaction is used for determining the value of the goods being valued, the transaction yielding the lowest value must be taken as the customs value of the goods. 15

Determination of customs value according to similar goods method

133. (1) If the similar goods method is used for determining the customs value of any specific imported goods—

- (a) the transaction value per unit of similar goods, as previously determined by the customs authority in terms of section 117 or 118(1)(a) or (b), which were sold for export to the Republic at the same commercial level and in substantially the same quantity and exported to the Republic at or about the same time as the goods being valued, must be taken as the customs value per unit of the goods being valued, subject to any adjustments that must be made in terms of subsection (2); or 20

- (b) if no determination contemplated in paragraph (a) was made that can be used for purposes of that paragraph, the transaction value per unit of similar goods, as previously determined by the customs authority in terms of section 117 or 118(1)(a) or (b), which were sold for export to the Republic at either a different commercial level or quantity level, or at a different commercial level and quantity level, and exported to the Republic at or about the same time as the goods being valued, must be taken as the customs value per unit of the goods being valued, subject to any adjustments that must be made in terms of subsection (3).¹⁰⁵ 25

(2) The transaction value of the similar goods used for a valuation in terms of subsection (1)(a) must be adjusted to compensate for any differences in costs and charges contemplated in section 131(3) and (4) resulting from differences in distances and modes of transport to the port or place of export, between the similar goods and the goods being valued. 30

(3) The transaction value of the similar goods used for a valuation in terms of subsection (1)(b) must be adjusted to compensate for any differences in—

- (a) the sale for export to the Republic of the similar goods and of the goods being valued at the different commercial levels or quantity levels; and 35
- (b) costs and charges for different distances and modes of transport to the port or place of export, between the similar goods and the goods being valued. 40

(4) If in applying this section more than one similar goods transaction is used for

104. Transaction value of goods are determined in accordance with section 131. See definition of “transaction value” in section 1.

105. Transaction value of goods are determined in accordance with section 131. See definition of “transaction value” in section 1.

doanewaarde per eenheid van die goedere wat waardeer word, behoudens enige aanpassings wat ingevolge subartikel (3) gemaak moet word.¹⁰⁴

(2) Die transaksiewaarde van die identiese goedere gebruik vir 'n waardering ingevolge subartikel (1)(a) moet aangepas word om te kompenseer vir enige verskille in koste en gelde beoog in artikel 131(3) en (4) wat voortvloei uit verskille in afstand en wyses van vervoer na die hawe of plek van uitvoer, tussen die identiese goedere en die goedere wat waardeer word. 5

(3) Die transaksiewaarde van die identiese goedere wat gebruik is vir 'n waardering ingevolge subartikel (1)(b) moet aangepas word om te kompenseer vir enige verskille in— 10

(a) die verkoop vir uitvoer na die Republiek van die identiese goedere en van die goedere wat waardeer word, teen die verskillende handelsvlakke of hoeveelheidsvlakke; en

(b) die kostes en gelde vir verskillende afstande en wyses van vervoer na die hawe of plek van uitvoer, tussen die identiese goedere en die goedere wat waardeer word. 15

(4) Indien daar by die toepassing van hierdie artikel meer as een identiese goedere transaksie gebruik word om die waarde te bepaal van die goedere wat waardeer word, moet die transaksie wat die laagste waarde oplewer as die doanewaarde van die goedere geneem word. 20

Bepaling van doanewaarde volgens soortgelyke goedere metode

133. (1) Indien die soortgelyke goedere metode gebruik word vir die bepaling van die doanewaarde van enige spesifieke ingevoerde goedere—

(a) moet die transaksiewaarde per eenheid van soortgelyke goedere, soos voorheen ingevolge artikel 117 of 118(1)(a) of (b) deur die doanegesag bepaal, wat vir uitvoer na die Republiek verkoop is teen dieselfde handelsvlak en in wesenlik dieselfde hoeveelheid en na die Republiek uitgevoer is op of ongeveer op dieselfde tyd as die goedere wat waardeer word, geneem word as die doanewaarde per eenheid van die goedere wat waardeer word, behoudens enige aanpassings wat ingevolge subartikel (2) gemaak moet word; of 25 30

(b) indien geen bepaling beoog in paragraaf (a) gemaak is wat vir doeleindes van daardie paragraaf gebruik kan word nie, moet die transaksiewaarde per eenheid van soortgelyke goedere, soos voorheen ingevolge artikel 117 of 118(1)(a) of (b) deur die doanegesag bepaal, wat vir uitvoer na die Republiek verkoop is, hetsy teen 'n ander handelsvlak of hoeveelheidsvlak of teen 'n ander handelsvlak en hoeveelheidsvlak, en na die Republiek uitgevoer is op of ongeveer op dieselfde tyd as die goedere wat waardeer word, geneem word as die doanewaarde per eenheid van die goedere wat waardeer word, behoudens enige aanpassings wat ingevolge subartikel (3) gemaak moet word.¹⁰⁵ 35 40

(2) Die transaksiewaarde van die soortgelyke goedere wat gebruik is vir 'n waardering ingevolge subartikel (1)(a) moet aangepas word om te kompenseer vir enige verskille in die koste en gelde beoog in artikel 131(3) en (4) wat voortvloei uit verskille in afstand en wyses van vervoer na die hawe of plek van uitvoer, tussen die identiese goedere en die goedere wat waardeer word.

(3) Die transaksiewaarde van die soortgelyke goedere wat gebruik is vir 'n waardering ingevolge subartikel (1)(b) moet aangepas word om te kompenseer vir enige verskille in— 45

(a) die verkoop vir uitvoer na die Republiek van die soortgelyke goedere en van die goedere wat waardeer word, teen die verskillende handelsvlakke of hoeveelheidsvlakke; en 50

(b) die kostes en gelde vir verskillende afstande en wyses van vervoer na die hawe of plek van uitvoer, tussen die soortgelyke goedere en die goedere wat waardeer word.

(4) Indien daar by die toepassing van hierdie artikel meer as een soortgelyke goedere transaksie gebruik word om die waarde te bepaal van die goedere wat waardeer word, 55

104. Transaksiewaarde van goedere word volgens artikel 131 bepaal. Kyk woordomsyrywing van "transaksiewaarde" in artikel 1.

105. Transaksiewaarde van goedere word volgens artikel 131 bepaal. Kyk woordomsyrywing van "transaksiewaarde" in artikel 1.

determining the value of the goods being valued, the transaction yielding the lowest value must be taken as the customs value of the goods.

Determination of customs value according to deductive method

134. (1) If the deductive method is used for determining the customs value any specific imported goods, the customs value of the goods must, subject to any adjustments in terms of subsections (2) and (3), be taken as equal to— 5

- (a) the price per unit at which imported identical goods are sold in the Republic, in the greatest number of units—
 - (i) in the same condition as that in which they were when imported;
 - (ii) by importers of such goods to persons not related to them within the meaning of section 130; and 10
 - (iii) at or about the same time the goods being valued were imported; or
- (b) if no price per unit contemplated in paragraph (a) for imported identical goods can be determined, the price per unit at which imported similar goods are sold in the Republic, in the greatest number of units— 15
 - (i) in the same condition as that in which they were when imported;
 - (ii) by importers to persons not related to them within the meaning of section 130; and
 - (iii) at or about the same time the goods being valued were imported. 20

(2) A price per unit of imported identical or similar goods determined in terms of subsection (1)(a) or (b) must be adjusted by deducting proportionately per unit of the goods— 20

- (a) usual commissions or profit on the sale of goods falling within the same group or range of goods as the goods being valued, irrespective of the country of exportation; 25
- (b) general expenses usually incurred in connection with the sale of goods falling within the same group or range of goods as the goods being valued, irrespective of the country of exportation, including the usual direct and indirect costs of marketing goods falling within the same group or range of goods as the goods being valued; 30
- (c) the cost of transportation, loading, unloading, handling and insurance and associated costs incidental to the transportation of those identical or similar goods from the port or place of export in the country of exportation to the importer's premises in the Republic; and
- (d) any duties and taxes paid or payable in the Republic on the importation into or the sale of those identical or similar goods in the Republic. 35

(3) If imported identical or similar goods are sold in the Republic only after further processing of the goods in the Republic, subsection (1)(a)(i) or (b)(i) may be disregarded when determining the price per unit at which those imported identical or similar goods are sold in the Republic, provided that such price is adjusted by deducting the value added by such processing. 40

(4) If the deductive method is used for determining or re-determining the customs value of any imported goods in terms of section 117 or 118 after any of those goods have already been sold in the Republic, the customs authority or person applying this section may, instead of determining the price per unit at which imported identical or similar goods were sold in the Republic— 45

- (a) determine the price per unit at which the goods being valued were sold; and
- (b) use that price as the basis for applying subsection (1) of this section.

(5) If neither the goods being valued nor imported identical or similar goods were sold at or about the same time the goods being valued were imported, the transaction value of the goods being valued must, subject to subsection (1), be based on the unit price at which the goods being valued or imported identical or similar goods are sold in the Republic in the same condition as that in which they were when imported, at the earliest 50

moet die die transaksie wat die laagste waarde oplewer as die doeanewaarde van die goedere geneem word.

Bepaling van doeanewaarde volgens deduktiewe metode

134. (1) Indien die deduktiewe metode gebruik word vir die bepaling van die doeanewaarde van enige spesifieke ingevoerde goedere, moet die doeanewaarde van die goedere, behoudens enige aanpassings ingevolge subartikels (2) en (3), geneem word gelyk te wees aan— 5

- (a) die prys per eenheid waarteen ingevoerde identiese goedere in die Republiek verkoop word, in die grootste aantal eenhede—
 - (i) in dieselfde toestand as waarin dit was toe dit ingevoer is; 10
 - (ii) deur invoerders van sodanige goedere aan persone wat nie ooreenkomstig die bedoeling van artikel 130 aan hulle verwant is nie; en
 - (iii) op of ongeveer op dieselfde tyd as wanneer die goedere wat waardeer word, ingevoer is; of
- (b) indien geen prys per eenheid beoog in paragraaf (a) vir ingevoerde identiese goedere bepaal kan word nie, die prys per eenheid waarteen ingevoerde soortgelyke goedere in die Republiek verkoop word, in die grootste aantal eenhede—
 - (i) in dieselfde toestand as waarin dit was toe dit ingevoer is; 15
 - (ii) deur invoerders aan persone wat nie ooreenkomstig die bedoeling van artikel 130 aan hulle verwant is nie; en 20
 - (iii) op of ongeveer op dieselfde tyd as wanneer die goedere wat waardeer word, ingevoer is.

(2) 'n Prys per eenheid van ingevoerde identiese of soortgelyke goedere ingevolge subartikel (1)(a) of (b) bepaal, moet aangepas word deur proporsioneel per eenheid van die goedere die volgende af te trek: 25

- (a) Gewone kommissies of wins op die verkoop van goedere wat tot dieselfde groep of reeks goedere behoort as die goedere wat waardeer word, ongeag vanaf watter land dit uitgevoer word;
- (b) algemene uitgawes wat gewoonlik aangegaan word in verband met die verkoop van goedere wat tot dieselfde groep of reeks goedere behoort as die goedere wat waardeer word, ongeag die land van uitvoer, met inbegrip van die gewone direkte en indirekte bemarkingskoste van goedere wat tot dieselfde groep of reeks goedere behoort as die goedere wat waardeer word;
- (c) die vervoer-, laai-, aflaai-, hanterings- en versekeringskoste en gepaardgaande koste wat verband hou met die vervoer van daardie identiese of soortgelyke goedere vanaf die hawe of plek van uitvoer in die land van uitvoer na die invoerder se perseel in die Republiek; en 30
- (d) enige regte en belastinge in die Republiek betaal of betaalbaar op die invoer of die verkoop van daardie identiese of soortgelyke goedere in die Republiek. 35 40

(3) Indien ingevoerde identiese of soortgelyke goedere in die Republiek verkoop word eers nadat verdere prosessering van die goedere in die Republiek plaasgevind het, kan subartikel (1)(a)(i) of (b)(i) buite rekening gelaat word wanneer die prys per eenheid bepaal word waarteen daardie ingevoerde identiese of soortgelyke goedere in die Republiek verkoop word, mits daardie prys aangepas word deur die aftrekking van die waarde wat deur sodanige prosessering toegevoeg is. 45

(4) Indien die deduktiewe metode gebruik word vir die bepaling of herbepaling ingevolge artikels 117 en 118 van die doeanewaarde van enige ingevoerde goedere nadat enige van daardie goedere alreeds in die Republiek verkoop is, kan die doeanegesag of persoon wat hierdie artikel toepas, in plaas daarvan om die prys per eenheid te bepaal waarteen ingevoerde identiese of soortgelyke goedere in die Republiek verkoop is— 50

- (a) die prys per eenheid bepaal waarteen die goedere wat waardeer word, verkoop is; en
- (b) daardie prys as die basis vir die toepassing van subartikel (1) van hierdie artikel gebruik. 55

(5) Indien nòg die goedere wat waardeer word nòg die ingevoerde identiese of soortgelyke goedere verkoop is op of ongeveer op dieselfde tyd as wat die goedere wat waardeer word, ingevoer is, moet die transaksiewaarde van die goedere wat waardeer word, behoudens subartikel (1), gebaseer word op die eenheidsprys waarteen die goedere wat waardeer word of die ingevoerde identiese of soortgelyke goedere in die Republiek verkoop word in dieselfde toestand as waarin dit was toe dit ingevoer is, op 60

date after the goods being valued were imported, but not later than 90 calendar days after such importation.

Determination of customs value according to computed method

135. If the computed method is used to determine the customs value of any imported goods, the customs value of the goods must be computed on information supplied by the producer of the goods and must consist of the sum of— 5

- (a) the cost of producing the goods being valued, which must include—
 - (i) the cost or value of materials and of manufacture or other processing in producing the goods being valued; and
 - (ii) the cost of— 10
 - (aa) packing, including the cost of labour, services and materials; and
 - (bb) containers, which must be dealt with as being one with the goods being valued;
- (b) the value, appropriately apportioned to any of the following goods and services if such goods and services were supplied, directly or indirectly, by the buyer free of charge or at reduced cost for use in connection with the production or sale for export to the Republic of the goods being valued, in so far as the value of those goods and services has not been included in the price actually paid or payable for the goods being valued, namely: 15
 - (i) Materials, components, parts and similar articles forming part of the goods being valued; 20
 - (ii) tools, dies, moulds and similar articles used in the production of the goods being valued;
 - (iii) materials consumed in the production of the goods being valued; and
 - (iv) engineering, development work, artwork, design work, plans and sketches, undertaken elsewhere than in the Republic that were used for the production of the goods being valued; 25
- (c) the cost of transportation, loading, unloading, handling and insurance and associated costs incidental to the delivery of the goods being valued at the port or place of export, and of placing those goods on board a vessel, aircraft, railway carriage or vehicle at that port or place, appropriately apportioned to the goods; and 30
- (d) an amount for profit and general expenses equal to that generally applicable in respect of sales of goods of the same class or kind as the goods being valued, which are made and incurred by producers in the country of exportation, appropriately apportioned to the goods being valued. 35

Determination of customs value according to fall-back method

136. (1) If the fall-back method is used to determine the customs value of any imported goods—

- (a) the customs value of the goods must be determined by using a previous value determination or re-determination of the same class or kind of goods; or 40
 - (b) if there is no such previous value determination or re-determination, the value of the goods must be determined in accordance with any other method that may render a reasonable valuation of the goods, subject to subsection (2).
- (2) No determination of the customs value of imported goods in terms of subsection (1)(b), may be based on— 45
- (a) the selling price in the Republic of goods produced in the Republic;
 - (b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
 - (c) the selling price of goods on the domestic market of the country of origin or exportation of the goods being valued; 50

die vroegste datum nadat die goedere wat waardeer word, ingevoer is, maar nie later as 90 dae na sodanige invoer nie.

Bepaling van doeanewaarde volgens gekomputeerde metode

135. Indien die gekomputeerde metode gebruik word om die doeanewaarde van enige ingevoerde goedere te bepaal, moet die doeanewaarde van die goedere bereken word op inligting deur die produsent van die goedere verskaf en moet bestaan uit die somtotaal van— 5

- (a) die koste van produksie van die goedere wat waardeer word, wat moet insluit—
 - (i) die koste of waarde van grondstowwe en van vervaardiging of ander prosessering om die goedere wat waardeer word, te produseer; en 10
 - (ii) die koste van—
 - (aa) verpakkingsmateriaal, met inbegrip van die koste van arbeid, dienste en grondstowwe; en
 - (bb) houers, wat beskou moet word as synde deel van die goedere wat waardeer word; 15
- (b) die waarde, soos toepaslik aan enige van die volgende goedere en dienste toegeken indien sodanige goedere of dienste, direk of indirek, deur die koper gratis of teen 'n verminderde prys verskaf is vir gebruik in verband met die produksie of verkoop vir uitvoer na die Republiek van die goedere wat waardeer word, in soverre die waarde van daardie goedere en dienste nie ingesluit is by die prys werklik betaal of betaalbaar vir die goedere wat waardeer word nie, te wete—
 - (i) grondstowwe, komponente, onderdele en soortgelyke artikels wat deel vorm van die goedere wat waardeer word; 25
 - (ii) gereedskap, matryse, gietvorms en soortgelyke artikels gebruik in die produksie van die goedere wat waardeer word;
 - (iii) grondstowwe gebruik in die produksie van die goedere wat waardeer word; en
 - (iv) ingenieurs-, ontwikkelings-, kuns- of ontwerpwerk, of planne en sketse, elders as in die Republiek gedoen en wat gebruik is vir die produksie van die goedere wat waardeer word; 30
- (c) die koste van vervoer, laai, aflaai, hantering en versekering en gepaardgaande koste wat verband hou met die aflewering van die goedere wat waardeer word by die hawe of plek van uitvoer, en van die laai van die goedere op 'n vaartuig, vliegtuig, spoorwegwa of voertuig by daardie hawe of plek, soos toepaslik aan die goedere toegeken; en 35
- (d) 'n bedrag vir wins en algemene uitgawes gelykstaande aan die bedrag algemeen van toepassing ten opsigte van verkope van goedere van dieselfde klas of soort as die goedere wat waardeer word, wat gemaak en aangegaan is deur produsente in die land van uitvoer, soos toepaslik toegeken aan die goedere wat waardeer word. 40

Bepaling van doeanewaarde volgens terugval metode

136. (1) Indien die terugval metode gebruik word om die doeanewaarde van enige ingevoerde goedere te bepaal— 45

- (a) moet die doeanewaarde van die goedere bepaal word deur van 'n vorige waardebeoordeling of -herbeoordeling van goedere van dieselfde klas of soort gebruik te maak; of
 - (b) indien daar nie so 'n vorige waardebeoordeling of -herbeoordeling is nie, moet die waarde van die goedere volgens enige ander metode bepaal word wat 'n redelike waardering van die goedere kan oplewer, behoudens subartikel (2). 50
- (2) Geen bepaling van die doeanewaarde van ingevoerde goedere ingevolge subartikel (1)(b), mag gebaseer word nie op—
- (a) die verkoopprijs in die Republiek van goedere wat in die Republiek geproduseer is; 55
 - (b) 'n stelsel wat voorsiening maak vir die aanvaarding vir doeanedoelendes van die hoogste van twee alternatiewe waardes;
 - (c) die verkoopprijs van goedere op die binnelandse mark van die land van oorsprong of uitvoer van die goedere wat waardeer word;

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- (d) the cost of production, other than computed values which have been determined in accordance with section 135;
 - (e) the price of the goods for export to a country other than the Republic;
 - (f) a system of minimum customs values; or
 - (g) arbitrary or fictitious values. 5
- (3) Subsection (2)(a) to (f) does not apply if the person required to clear the goods for home use or a customs procedure—
- (a) fails to clear the goods or to provide sufficient information in the clearance declaration for valuing the goods; and
 - (b) fails to comply with a request in terms of section 121 to provide information 10 or documents necessary for valuing the goods.

Part 4

Valuation of specific imported goods

Valuation of re-imported unaltered goods under temporary export procedure

137. When goods are imported into the Republic under the temporary export procedure as re-imported unaltered goods, the customs value assigned to the goods when exported from the Republic must be taken as the customs value of those goods when reimported into the Republic. 15

Valuation of used goods imported by individual for own use

138. (1) Goods, including a motor vehicle, used by an individual outside the Republic and imported into the Republic for use by that individual in the Republic, must be valued for customs purposes according to the fall-back method referred to in section 128(1)(e). 20

(2) (a) Subsection (1) does not apply to imported goods cleared in terms of Part 4 of Chapter 12 of the Customs Control Act under the temporary admission procedure on authority of a CPD or ATA carnet which indicates the value of the goods. 25

(b) In the case of such goods the value indicated on the CPD or ATA carnet must be taken as the customs value of the goods, unless the customs authority directs that the goods be valued in accordance with the fall-back method.

Part 5

Valuation of goods exported or to be exported 30

Valuation method

139. (1) When goods are to be exported from the Republic under the export procedure,¹⁰⁶ the price of the goods free on board the vessel, aircraft, railway carriage or vehicle at the place of exit from where the goods are to be exported must for purposes of this Act be taken as the customs value of the goods. 35

(2) If there is no such free on board price, the customs value of the goods must be the value as if the goods would have been sold at a free on board price.

(3) If a person clearing goods for export under the export procedure becomes liable for any further charges relating to placing the goods free on board a vessel, aircraft,

106. The export procedure applies to—

- (a) the outright export of goods;
- (b) the export of goods under—
 - (i) the outbound leg of the temporary export procedure;
 - (ii) the outbound leg of the temporary admission procedure; or
 - (iii) the outward processing procedure; and
- (c) the export of goods as inward processed compensating products under the inward processing procedure.

- (d) die koste van produksie, anders as berekende waardes wat ooreenkomstig artikel 135 bepaal is;
 - (e) die prys van die goedere vir uitvoer na 'n ander land as die Republiek;
 - (f) 'n stelsel van minimum doeanewaardes; of
 - (g) arbitrêre of fiktiewe waardes. 5
- (3) Subartikel (2)(a) tot (f) is nie van toepassing nie indien iemand wat die goedere vir binnelandse gebruik of 'n doeaneprosedure moet klaar—
- (a) versuim om die goedere te klaar of om voldoende inligting op die klaringsbrief te verskaf om die goedere te waardeer; en
 - (b) versuim om te voldoen aan 'n versoek ingevolge artikel 121 om inligting of 10 dokumente te verskaf wat nodig is om die goedere te waardeer.

Deel 4

Waardering van spesifieke ingevoerde goedere

Waardering van heringevoerde onveranderde goedere onder prosedure vir tydelike uitvoer 15

137. Wanneer goedere onder die prosedure vir tydelike uitvoer in die Republiek ingevoer word as heringevoerde onveranderde goedere, moet die doeanewaarde tydens uitvoer aan die goedere toegeken, as die doeanewaarde van daardie goedere geneem word wanneer dit in die Republiek heringevoer word.

Waardering van gebruikte goedere deur individu vir eie gebruik ingevoer 20

138. (1) Goedere, met inbegrip van 'n motorvoertuig, wat deur 'n individu buite die Republiek gebruik is en in die Republiek ingevoer word vir gebruik deur daardie individu in die Republiek, moet vir doeanedoelindes volgens die terugval metode bedoel in artikel 128(1)(e) waardeer word.

(2) (a) Subartikel (1) is nie van toepassing nie op ingevoerde goedere wat ingevolge 25 Deel 4 van Hoofstuk 12 van die Wet op Doeanebeheer geklaar is onder die prosedure vir tydelike toegang op gesag van 'n CPD of ATA carnet wat die waarde van die goedere aandui.

(b) In die geval van sodanige goedere moet die waarde op die CPD of ATA carnet aangedui, as die doeanewaarde van die goedere geneem word, tensy die doeanegesag 30 gelas dat die goedere volgens die terugval metode waardeer moet word.

Deel 5

Waardering van goedere wat uitgevoer is of gaan word

Waarderingsmetode

139. (1) Wanneer goedere uit die Republiek onder die uitvoerprosedure uitgevoer 35 word,¹⁰⁶ moet die prys van die goedere vry aan boord die vaartuig, vliegtuig, spoorwegwa of voertuig by die plek van uitgang waarvandaan die goedere uitgevoer sal word, vir doeleindes van hierdie Wet as die doeanewaarde van die goedere geneem word.

(2) Indien daar nie so 'n vry aan boord prys is nie, is die doeanewaarde van die 40 goedere die waarde wat dit sou wees as die goedere teen 'n vry aan boord prys verkoop is.

(3) Indien iemand wat goedere vir uitvoer onder die uitvoerprosedure klaar vir enige verdere gelde aanspreeklik word betreffende die laai van die goedere op 'n vaartuig,

106. Die uitvoerprosedure is van toepassing op—

- (a) die regstreekse uitvoer van goedere;
- (b) die uitvoer van goedere onder—
 - (i) die uitwaartse fase van die prosedure vir tydelike uitvoer;
 - (ii) die uitwaartse fase van die prosedure vir tydelike toelating; of
 - (iii) die prosedure vir uitwaartse prosessering; en
- (c) die uitvoer van goedere as inwaarts geprosesseerde kompenserende produkte onder die prosedure vir inwaartse prosessering.

railway carriage or vehicle, that person must promptly amend the clearance declaration in accordance with section 174 of the Customs Control Act.

(4) When goods cleared under the stores procedure are to be exported from the Republic under that procedure, the price of the goods free on board the vessel, aircraft or railway carriage at the place of exit from where the goods are to be exported must for purposes of this Act be taken as the customs value of the goods. 5

(5) The railway terminal where goods referred to in subsection (1) or (4) were loaded on board a railway carriage must for purposes of those subsections be regarded to be the place of exit from where the goods are to be exported.

Valuation of accompanied and unaccompanied baggage of person leaving Republic 10

140. (1) To the extent that section 139 cannot be applied to dutiable items in the accompanied or unaccompanied baggage of a person leaving the Republic, the customs value of those items must be determined in accordance with any method that may render a reasonable valuation of those items, subject to subsection (2).

(2) No value determination in terms of subsection (1) may be based on arbitrary or fictitious values. 15

(3) Subsection (2) does not apply if the person concerned fails—

(a) to provide sufficient information for valuing the goods; or

(b) to comply with a request in terms of section 121 to provide information or documents necessary for valuing the goods. 20

Part 6

Currency conversion

Customs value to be expressed in South African Rand

141. (1) The customs value of goods must for purposes of this Act be expressed in South African Rand. 25

(2) If any payment made or to be made in connection with goods or any other amount taken or to be taken into account in determining the customs value of goods is expressed in a foreign currency, that payment or other amount must be converted into South African Rand in accordance with this Part.

Publication of currency conversion rate for major currencies 30

142. (1) The Commissioner must for purposes of this Act publish on the SARS website in respect of each Wednesday the selling and buying rates of each of the major currencies for conversion into South African Rand, as provided to the Commissioner by the Reserve Bank for that Wednesday.

(2) Subsection (1) does not apply if a Wednesday falls on a public holiday. 35

Conversion rate for published currencies

143. (1) If any payment made or to be made in connection with any specific goods cleared for home use or a customs procedure, or if any other amount taken or to be taken into account in determining the customs value of those goods, is expressed in a foreign currency published in terms of section 142, the customs authority must, for the purpose of valuing those goods in South African Rand, use the conversion rate applicable for that currency in terms of subsection (2). 40

(2) The conversion rate for a foreign currency as published in respect of that currency for a Wednesday in terms of section 142 must be used as the rate for converting the relevant currency into South African Rand if the date of clearance of those goods falls within any of the following periods: 45

(a) the week commencing the following Wednesday;

vliegtuig, spoorwegwa of voertuig, moet so iemand onverwyld die klaringsbrief ooreenkomstig artikel 174 van die Wet op Doeanebeheer wysig.

(4) Wanneer goedere geklaar kragtens die voorradeprosedure onder daardie prosedure uit die Republiek uitgevoer word, moet die prys van die goedere vry aan boord die vaartuig, vliegtuig, spoorwegwa of voertuig by die plek van uitgang waarvandaan die goedere uitgevoer sal word, vir doeleindes van hierdie Wet as die doeanewaarde van die goedere geneem word. 5

(5) Die spoorwegterminaal waar die goedere bedoel in subartikel (1) of (4) aan boord 'n spoorwegwa gelaai word, moet vir doeleindes van daardie subartikels geag word die plek van uitgang te wees waarvandaan die goedere uitgevoer word. 10

Waardering van vergeselde en onvergeselde bagasie van persoon wat Republiek verlaat

140. (1) In soverre artikel 139 nie toegepas kan word op belasbare items in die vergeselde en onvergeselde bagasie van iemand wat die Republiek verlaat nie, moet die doeanewaarde van daardie items bepaal word volgens enige metode wat 'n redelike waardering van daardie items mag oplewer, behoudens subartikel (2). 15

(2) 'n Waardebepaling ingevolge subartikel (1) mag nie op arbitrêre of fiktiewe waardes gebaseer word nie.

(3) Subartikel (2) is nie van toepassing nie indien die betrokke persoon versuim—

(a) om voldoende inligting te verskaf om die waarde van die goedere te kan bepaal; of 20

(b) om te voldoen aan 'n versoek ingevolge artikel 121 om inligting of dokumente te verskaf wat nodig is om die waarde van die goedere te bepaal.

Deel 6

Valutaomskakeling

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Doeanewaarde uitgedruk te word in Suid-Afrikaanse Rand

141. (1) Die doeanewaarde van goedere moet vir doeleindes van hierdie Wet in Suid-Afrikaanse Rand uitgedruk word.

(2) Indien enige betaling wat in verband met goedere gemaak is of moet word of enige ander bedrag wat by die bepaling van die doeanewaarde van goedere in ag geneem is of moet word, in 'n buitelandse geldeenheid uitgedruk is, moet daardie betaling of ander bedrag ooreenkomstig hierdie Deel tot Suid-Afrikaanse Rand omgeskakel word. 30

Publikasie van valutaomskakelingskoers vir hoofgeldeenhede

142. (1) Die Kommissaris moet vir doeleindes van hierdie Wet ten opsigte van elke Woensdag die verkoop- en koopkoerse van elk van die hoofgeldeenhede vir omskakeling tot Suid-Afrikaanse Rand, soos deur die Reserwebank aan die Kommissaris verskaf, op die SAID webwerf publiseer. 35

(2) Subartikel (1) is nie van toepassing indien 'n Woensdag op 'n openbare vakansiedag val nie.

Omskakelingskoers vir gepubliseerde geldeenhede

40

143. (1) Indien enige betaling wat in verband met enige spesifieke goedere geklaar vir binnelandse gebruik of 'n doeaneprosedure gemaak is of moet word, of enige ander bedrag wat by die bepaling van die doeanewaarde van daardie goedere in ag geneem is of moet word, in 'n buitelandse geldeenheid uitgedruk is wat ingevolge artikel 142 gepubliseer is, moet die doeanegesag, ten einde daardie goedere in Suid-Afrikaanse Rand te waardeer, die omskakelingskoers gebruik wat ingevolge subartikel (2) vir daardie geldeenheid geld. 45

(2) Die omskakelingskoers vir 'n buitelandse geldeenheid soos ingevolge artikel 142 ten opsigte van daardie geldeenheid vir 'n Woensdag gepubliseer, moet as die koers vir omskakeling van die betrokke geldeenheid tot Suid-Afrikaanse Rand gebruik word indien die datum van klaring van daardie goedere binne enige van die volgende tydperke val: 50

(a) die week wat op die daaropvolgende Woensdag begin;

- (b) if that following Wednesday is a public holiday, the two week period commencing that Wednesday; or
- (c) if that following Wednesday is a public holiday and also the last Wednesday of a calendar year, the three week period commencing that Wednesday.

Conversion rate for currency not published 5

144. (1) If any payment made or to be made in connection with any specific goods cleared for home use or a customs procedure, or any other amount taken or to be taken into account in determining the customs value of those goods, is expressed in a foreign currency not published in terms of section 142, the customs authority must for the purpose of valuing those goods in South African Rand, and on request by the person submitting the clearance declaration in respect of the goods, determine and use the rate which applied on the day before the date of clearance of those goods for converting that foreign currency into South African Rand. 10

(2) When determining a conversion rate in terms of subsection (1), the customs authority must take into account the average selling and buying rates of that foreign currency for conversion into South African Rand as quoted for that day by at least two major banks operating in the Republic. 15

Use of forward exchange contract

145. Where an importer has negotiated a fixed conversion rate with a financial institution and a forward exchange contract has been concluded, this rate will apply to all transactions which fall within the negotiated time period, provided that the invoice reflects the number and the date of the contract as well as the rate used. 20

Fixed rate of exchange between related parties not acceptable

146. The conversion of foreign currency into South African Rand, at fixed contract rates of exchange, negotiated between sellers and buyers related within the meaning of section 130 may not be accepted unless it is proved that the relationship did not affect the rate fixed in terms of the contract. 25

Part 7

Other matters

Goods exported to Republic through other country 30

147. For the purpose of this Chapter goods which are exported to the Republic from any country but pass in transit through another country must, subject to any conditions and requirements as may be prescribed by rule, be regarded to be exported directly to the Republic from the first-mentioned country.

Publication of value determination and re-determination 35

148. The Commissioner may make public particulars of any value determination or re-determination in such a manner and containing such information as the Commissioner may determine.

Rules to facilitate application of this Chapter

149. The Commissioner may in terms of section 224 make rules to facilitate the implementation of this Chapter. 40

- (b) indien daardie daaropvolgende Woensdag 'n openbare vakansiedag is, die tydperk van twee weke wat op daardie Woensdag begin; of
- (c) indien daardie daaropvolgende Woensdag 'n openbare vakansiedag en ook die laaste Woensdag van 'n kalenderjaar is, die tydperk van drie weke wat op daardie Woensdag begin. 5

Omskakelingskoerse vir geldeenhede nie gepubliseer nie

144. (1) Indien enige betaling wat in verband met enige spesifieke goedere geklaar vir binnelandse gebruik of 'n doeaneprosedure gemaak is of moet word, of enige bedrag wat by die bepaling van die doeanewaarde van daardie goedere in ag geneem is of moet word, in 'n buitelandse geldeenheid uitgedruk is wat nie ingevolge artikel 142 gepubliseer is nie, moet die doeanegesag ten einde daardie goedere in Suid-Afrikaanse Rand te waardeer, en op versoek van die persoon wat die klaringsbrief ten opsigte van die goedere ingedien het, die koers bepaal en gebruik wat op die dag voor die datum van klaring van daardie goedere gegeld het vir die omskakeling van daardie buitelandse geldeenheid tot Suid-Afrikaanse Rand. 15

(2) By die bepaling van 'n omskakelingskoers ingevolge subartikel (1), moet die doeanegesag in ag neem die gemiddelde verkoop- en koopkoerse van daardie buitelandse geldeenheid vir omskakeling tot Suid-Afrikaanse Rand, soos vir daardie dag gekwoteer deur ten minste twee van die belangrikste banke wat in die Republiek besigheid bedryf. 20

Gebruik van vooruit-wisselkoerskontrak

145. Waar 'n invoerder met 'n finansiële instelling op 'n vasgestelde omskakelingskoers ooreengekom het en 'n vooruit-wisselkoerskontrak aangegaan het, geld hierdie koers vir alle transaksies wat binne die ooreengekome tydperk val, mits die nommer en datum van die kontrak asook die koers wat gebruik word op die faktuur aangedui word. 25

Vaste wisselkoers tussen verwante partye nie aanvaarbaar nie

146. Die omskakeling van buitelandse geldeenhede tot Suid-Afrikaanse Rand teen vaste gekontrakteerde wisselkoerse wat onderhandel is tussen verkopers en kopers wat ooreenkomstig die bedoeling van artikel 130 verwant is, mag nie aanvaar word nie tensy daar bewys word dat die verwantskap nie die koers geraak het wat ingevolge die kontrak vasgestel is nie. 30

Deel 7

Ander aangeleenthede

Goedere uitgevoer na Republiek deur ander land

147. Vir doeleindes van hierdie Hoofstuk moet goedere wat vanaf enige land na die Republiek uitgevoer word, maar in transito deur 'n ander land beweeg, geag word, behoudens enige voorwaardes en vereistes wat by reël voorgeskryf mag word, regstreeks vanaf eersgenoemde land na die Republiek uitgevoer te gewees het. 35

Publikasie van waardebeplating en -herbepaling

148. Die Kommissaris kan besonderhede van enige waardebeplating of -herbepaling op só 'n wyse en met insluiting van sodanige inligting bekend maak as wat die Kommissaris mag bepaal. 40

Reëls ter fasilitering van hierdie Hoofstuk

149. Die Kommissaris kan ingevolge artikel 224 reëls uitvaardig om die toepassing van hierdie Hoofstuk te fasiliteer. 45

Offences in terms of this Chapter

- 150.** (1) A person clearing goods is guilty of an offence if that person—
- (a) fails to comply with section 116(1) or (5) or 139(3);
 - (b) makes a value self-determination which that person knows is not true or could not reasonably have believed to be true; or 5
 - (c) in making a value self-determination—
 - (i) uses false or misleading information with the intention to mislead; or
 - (ii) omits to use accurate information with the intention to mislead.
- (2) A person is guilty of an offence if that person fails to comply with a request issued by the customs authority to that person in terms of section 121. 10
- (3) An offence referred to in subsection (1)(b) or (c)(i) or (ii) is a Category 1 offence.

CHAPTER 8

ORIGIN

Part 1

Introductory provisions 15

Purpose and application of this Chapter

- 151.** (1) The purpose of this Chapter is—
- (a) to provide for the determination of the origin of all goods imported into or to be exported or exported from the Republic; and
 - (b) to provide for the establishment or recognition, as may be appropriate, and the application, of— 20
 - (i) general rules of origin for determining the origin of all goods imported into or to be exported or exported from the Republic;
 - (ii) rules of origin for determining the origin of goods imported into or to be exported or exported from the Republic when such determination is necessary for purposes of preferential tariff treatment claims under an international trade agreement; and 25
 - (iii) rules of origin for determining the origin of goods to be exported or exported from the Republic to a country implementing a non-reciprocal generalised system of preferences for goods of South African origin when such determination is necessary for purposes of preferential tariff treatment claims under that system of preferences. 30
- (2) This Chapter applies to all goods imported into or destined for export from the Republic, whether dutiable or not.

Part 2 35

Origin self-determination, determination and re-determination

Origin self-determination of goods when goods are cleared

- 152.** (1) A person clearing goods¹⁰⁷ for home use or a customs procedure must—
- (a) make a self-determination— 40
 - (i) of the origin of the goods in accordance with the general rules of origin, irrespective of whether duty is payable on the goods; and
 - (ii) if preferential tariff treatment under an international trade agreement or a non-reciprocal generalised system of preferences is claimed in respect of those goods, also of the origin of those goods in accordance with the rules of origin as may be applicable in terms of section 167(2), (3) or (4); 45
- and

¹⁰⁷. See section 166 of the Customs Control Act.

Misdrywe ingevolge hierdie Hoofstuk

- 150.** (1) Iemand wat goedere klaar, is aan 'n misdryf skuldig indien so iemand—
- (a) versuim om aan artikel 116(1) of (5) of 139(3) te voldoen;
 - (b) 'n waarde self-bepaling doen wat so iemand weet nie waar is nie of nie redelikerwys as waar kon beskou het nie; of 5
 - (c) tydens die doen van 'n waarde self-bepaling—
 - (i) vals of misleidende inligting gebruik met die doel om te mislei; of
 - (ii) versuim om akkurate inligting te gebruik met die doel om te mislei.
- (2) Iemand is aan 'n misdryf skuldig indien so iemand versuim om te voldoen aan 'n versoek ingevolge artikel 121 deur die doeanegesag aan so iemand uitgereik. 10
- (3) 'n Misdryf bedoel in subartikel (1)(b) of (c)(i) of (ii) is 'n Kategorie 1 misdryf.

HOOFSTUK 8

OORSPRONG

Deel 1

Inleidende bepalings 15

Doel en toepassing van hierdie Hoofstuk

- 151.** (1) Die doel van hierdie Hoofstuk is—
- (a) om voorsiening te maak vir die bepaling van die oorsprong van alle goedere wat ingevoer is in, of uitgevoer is of gaan word uit, die Republiek; en
 - (b) om voorsiening te maak vir die daarstelling of erkenning, na gelang van die geval, en die toepassing, van— 20
 - (i) algemene reëls van oorsprong vir die bepaling van die oorsprong van alle goedere wat ingevoer is in, of uitgevoer is of gaan word uit, die Republiek;
 - (ii) reëls van oorsprong vir die bepaling van die oorsprong van goedere wat ingevoer is in, of uitgevoer is of gaan word uit, die Republiek wanneer so 'n bepaling vir doeleindes van aansprake op voorkeur tariefbehandeling kragtens 'n internasionale handelsooreenkoms nodig is; en 25
 - (iii) reëls van oorsprong vir die bepaling van die oorsprong van goedere wat uit die Republiek uitgevoer is of gaan word na 'n land wat 'n nie-wederkerige algemene stelsel van voorkeure ten opsigte van produkte van Suid-Afrikaanse oorsprong toepas, wanneer so 'n bepaling vir doeleindes van aansprake op voorkeur tariefbehandeling kragtens daardie stelsel van voorkeure nodig is. 30
- (2) Hierdie Hoofstuk is van toepassing op alle goedere wat ingevoer is in, of bestem is vir uitvoer uit, die Republiek ongeag of die goedere belasbaar is of nie. 35

Deel 2

Oorsprong self-bepaling, -bepaling en -herbepaling

Oorsprong self-bepaling van goedere tydens klaring

- 152.** (1) Iemand wat goedere klaar¹⁰⁷ vir binnelandse gebruik of 'n doeaneprosedure moet— 40
- (a) 'n self-bepaling doen—
 - (i) van die oorsprong van die goedere ooreenkomstig die algemene reëls van oorsprong, ongeag of reg op die goedere betaalbaar is of nie; en
 - (ii) indien daar ten opsigte van die goedere op voorkeur tariefbehandeling kragtens 'n internasionale handelsooreenkoms of 'n nie-wederkerige algemene stelsel van voorkeure aanspraak gemaak word, ook van die oorsprong van die goedere ooreenkomstig die reëls van oorsprong wat ingevolge artikel 167(2), (3) of (4) van toepassing mag wees; en 45

¹⁰⁷. Kyk artikel 166 van die Wet op Doeanebeheer.

- (b) state on the clearance declaration the origin of the goods determined in terms of paragraph (a)(i) and, if paragraph (a)(ii) applies, also the origin of those goods determined in terms of paragraph (a)(ii).
- (2) (a) If in the case of subsection (1)(a)(ii) the origin of goods is to be determined in accordance with any procedures or other requirements in terms of the applicable international trade agreement or non-reciprocal generalised system of preferences, the clearance declaration of the goods must be accompanied by such documentary evidence of origin as may be required—
 - (i) in terms of that international trade agreement or non-reciprocal generalised system of preferences; or
 - (ii) by the customs authority.
- (b) Paragraph (a) does not apply if the relevant international trade agreement or non-reciprocal generalised system of preferences exempts the goods from the submission of documentary evidence of origin.
- (3) An origin self-determination of goods in terms of subsection (1)(a)(i) or (ii) must be consistent with—
 - (a) any relevant origin determination or re-determination that may be applicable to those goods in terms of section 158(1)(b) or (5)(b) or 159(1)(b) or (5)(b); or
 - (b) any relevant advance origin ruling that may be applicable to those goods.
- (4) (a) An origin self-determination in terms of subsection (1)(a)(i) must be applied in relation to the goods in respect of which it was made unless replaced by an origin determination in terms of section 153 read with section 158 or 159 where applicable.
- (b) An origin self-determination in terms of subsection (1)(a)(ii) must be applied in relation to the goods in respect of which it was made unless—
 - (i) rejected by the customs authority; or
 - (ii) replaced by an origin determination in terms of section 153 read with section 158 or 159 where applicable.
- (5) A person clearing goods must on discovery of any inaccuracy in an origin self-determination made in respect of the goods, promptly notify the customs authority of the inaccuracy.
- (6) This section does not apply to—
 - (a) accompanied or unaccompanied baggage other than commercial goods;
 - (b) international postal articles cleared in accordance with the simplified clearance process contemplated in section 493(2) of the Customs Control Act; or
 - (c) any other goods—
 - (i) excluded by rule from origin self-determination; or
 - (ii) exempted by the customs authority in a specific case from origin self-determination.

Origin determination by customs authority

- 153.** (1) The customs authority may at any time, subject to section 156, make a determination of the origin of goods imported into or to be exported or exported from the Republic in accordance with—
- (a) the general rules of origin;
 - (b) the rules of origin applicable in terms of section 167(2) or (3) to an international trade agreement, if preferential tariff treatment under that international trade agreement is claimed in respect of the goods; or
 - (c) the rules of origin applicable in terms of section 167(4) to a non-reciprocal generalised system of preferences implemented by a country, if preferential tariff treatment under that system of preferences is claimed in respect of goods to be exported or exported to that country.
- (2) (a) An origin determination of goods in terms of subsection (1) must be consistent with any relevant advance origin ruling that may be applicable to those goods.
- (b) An origin determination of goods in terms of subsection (1)(b) or (c) is subject to compliance with any procedures contained in or applicable to the relevant international trade agreement or non-reciprocal generalised system of preferences.

- (b) op die klaringsbrief die oorsprong aandui van die goedere ingevolge paragraaf (a)(i) bepaal, en indien paragraaf (a)(ii) van toepassing is, ook die oorsprong van daardie goedere ingevolge paragraaf (a)(ii) bepaal.
- (2) (a) Indien in die geval van subartikel (1)(a)(ii) die oorsprong van goedere volgens enige prosedures of ander vereistes ingevolge die tersaaklike internasionale handelsooreenkoms of nie-wederkerige algemene stelsel van voorkeure bepaal moet word, moet die klaringsbrief vergesel gaan van dié dokumentêre bewys van oorsprong wat vereis mag word—
- (i) ingevolge daardie internasionale handelsooreenkoms of nie-wederkerige algemene stelsel van voorkeure; of
- (ii) deur die doeanegesag.
- (b) Paragraaf (a) is nie van toepassing nie indien die tersaaklike internasionale handelsooreenkoms of nie-wederkerige algemene stelsel van voorkeure die goedere van die voorlegging van dokumentêre bewys van oorsprong onthef.
- (3) 'n Oorsprong self-bepaling van goedere ingevolge subartikel (1)(a)(i) of (ii) moet bestaanbaar wees met—
- (a) enige tersaaklike oorsprongbepaling of -herbepaling wat ingevolge artikel 158(1)(b) of (5)(b) of 159(1)(b) of (5)(b) vir daardie goedere mag geld; of
- (b) enige tersaaklike vooruit-oorsprongbeslissing wat vir daardie goedere mag geld.
- (4) (a) 'n Oorsprong self-bepaling ingevolge subartikel (1)(a)(i), moet toegepas word met betrekking tot die goedere ten opsigte waarvan dit gedoen is tensy dit vervang word deur 'n oorsprongbepaling ingevolge artikel 153, saamgelees, waar toepaslik, met artikel 158 of 159.
- (b) 'n Oorsprong self-bepaling ingevolge subartikel (1)(a)(ii) moet toegepas word met betrekking tot die goedere ten opsigte waarvan dit gedoen is tensy dit—
- (i) deur die doeanegesag verwerp word; of
- (ii) vervang word deur 'n oorsprongbepaling ingevolge artikel 153, saamgelees, waar toepaslik, met artikel 158 of 159.
- (5) Iemand wat goedere klaar, moet wanneer daardie persoon bewus word van enige onakkuraatheid in 'n self-bepaling ten opsigte van die goedere gedoen, die doeanegesag onverwyld van die onakkuraatheid in kennis stel.
- (6) Hierdie artikel is nie van toepassing nie op—
- (a) vergeselde of onvergeselde bagasie anders as kommersiële goedere;
- (b) internasionale posstukke geklaar ooreenkomstig die verkorte klaringsproses beoog in artikel 493(2) van die Wet op Doeanebeheer; of
- (c) enige ander goedere—
- (i) by reël van oorsprong self-bepaling uitgesluit; of
- (ii) van oorsprong self-bepaling deur die doeanegesag in 'n bepaalde geval onthef.

Oorsprongbepaling deur doeanegesag

- 153.** (1) Die doeanegesag kan te eniger tyd, behoudens artikel 156, 'n bepaling doen van die oorsprong van goedere wat ingevoer is in, of uitgevoer is of gaan word uit, die Republiek ooreenkomstig—
- (a) die algemene reëls van oorsprong;
- (b) die reëls van oorsprong wat ingevolge artikel 167(2) of (3) op 'n internasionale handelsooreenkoms van toepassing is, indien daar ten opsigte van die goedere op voorkeur tariefbehandeling kragtens daardie internasionale handelsooreenkoms aanspraak gemaak word; of
- (c) die reëls van oorsprong wat ingevolge artikel 167(4) van toepassing is op 'n nie-wederkerige algemene stelsel van voorkeure wat deur 'n land toegepas word, indien daar ten opsigte van goedere wat na daardie land uitgevoer is of gaan word op voorkeur tariefbehandeling aanspraak gemaak word.
- (2) (a) 'n Oorsprongbepaling van goedere ingevolge subartikel (1), moet bestaanbaar wees met enige tersaaklike vooruit-oorsprongbeslissing wat vir daardie goedere mag geld.
- (b) 'n Oorsprongbepaling van goedere ingevolge subartikel (1)(b) of (c) is onderworpe aan voldoening aan enige prosedures vervat in of van toepassing op die tersaaklike internasionale handelsooreenkoms of nie-wederkerige algemene stelsel van voorkeure.

- (3) An origin determination in terms of subsection (1) may be made in respect of goods irrespective of whether or not—
- (a) the goods—
 - (i) have been cleared;¹⁰⁸
 - (ii) have been released; 5
 - (iii) are dutiable; or
 - (iv) are still subject to customs control;
 - (b) an origin self-determination has been made in respect of the goods; or
 - (c) an amount of duty has been paid on the goods.
- (4) The customs authority must give notice of any origin determination in terms of subsection (1) to the person clearing the goods. 10
- (5) An origin determination of goods in terms of subsection (1) replaces the corresponding origin self-determination applicable to the goods in terms of section 152.

Re-determination of previous origin determination or re-determination

- 154.** (1) The customs authority may at any time, subject to section 156— 15
- (a) re-determine any origin determination of goods as determined by it in terms of section 153; or
 - (b) re-determine any previous origin re-determination of goods made by it in terms of paragraph (a).
- (2) More than one origin re-determination of goods may, as necessary, be made in terms of subsection (1)(b). 20
- (3) An origin re-determination of goods in terms of subsection (1) must be consistent with any relevant advance origin ruling that may be applicable to those goods.
- (4) An origin re-determination in terms of subsection (1) may be made in respect of goods irrespective of whether or not— 25
- (a) the goods—
 - (i) have been cleared;
 - (ii) have been released;
 - (iii) are dutiable; or
 - (iv) are still subject to customs control; or 30
 - (b) an amount of duty has been paid on the goods.
- (5) The customs authority must give notice of any origin re-determination in terms of subsection (1) to the person clearing the goods.
- (6) An origin re-determination replaces the previous corresponding origin determination or origin re-determination applicable to the goods. 35

Correction of origin determination or re-determination

- 155.** (1) On discovery of an error in an origin determination or re-determination made in respect of any goods which does not affect the origin ascribed to the goods in the determination or re-determination, the customs authority may correct¹⁰⁹ the error by notice to the person clearing the goods. 40
- (2) There are no time limits as to when a correction may be made in terms of subsection (1).

Time limits on origin determination and re-determination

- 156.** (1) There are no time limits as to when an origin determination or re-determination of goods may be made, but no origin determination or re-determination 45

108. Neither clearance nor an origin self-determination is a precondition for an origin determination in terms of section 153. An origin determination may sometimes be made in the absence of a preceding clearance or origin self-determination, e.g. where non-cleared goods are in terms of the Customs Control Act regarded to be cleared for home use.

109. An origin error in an origin determination or re-determination of goods cannot be corrected by a correction notice but only by a superseding origin re-determination. See also definition of “correction” in section 1.

- (3) 'n Oorsprongbepaling ingevolge subartikel (1) kan ten opsigte van goedere gedoen word ongeag of—
- (a) die goedere—
 - (i) geklaar is of nie;¹⁰⁸
 - (ii) vrygestel is of nie; 5
 - (iii) belasbaar is of nie; of
 - (iv) steeds aan doeanebeheer onderworpe is of nie;
 - (b) daar 'n oorsprong self-bepaling ten opsigte van die goedere gedoen is of nie; of
 - (c) daar 'n bedrag van reg op die goedere betaal is of nie. 10
- (4) Die doeanegesag moet aan die persoon wat die goedere klaar, kennis van enige oorsprongbepaling ingevolge subartikel (1) gee.
- (5) 'n Oorsprongbepaling van goedere ingevolge subartikel (1), vervang die ooreenstemmende oorsprong self-bepaling wat ingevolge artikel 152 vir die goedere geld. 15

Herbepaling van vorige oorsprongbepaling of -herbepaling

- 154.** (1) Die doeanegesag kan te eniger tyd, behoudens artikel 156—
- (a) enige oorsprongbepaling van goedere deur die doeanegesag ingevolge artikel 153 bepaal, herbepaal; of
 - (b) enige vorige oorsprongherbepaling van goedere soos ingevolge paragraaf (a) deur die doeanegesag bepaal, herbepaal. 20
- (2) Meer as een oorsprongherbepaling van goedere kan, soos nodig, ingevolge subartikel (1)(b) gedoen word.
- (3) 'n Oorsprongherbepaling van goedere ingevolge subartikel (1) moet bestaanbaar wees met enige tersaaklike vooruit-oorsprongbeslissing wat op daardie goedere van toepassing mag wees. 25
- (4) 'n Oorsprongherbepaling ingevolge subartikel (1) kan ten opsigte van goedere gedoen word ongeag of—
- (a) die goedere—
 - (i) geklaar is of nie; 30
 - (ii) vrygestel is of nie;
 - (iii) belasbaar is of nie; of
 - (iv) steeds aan doeanebeheer onderworpe is of nie; of
 - (b) daar 'n bedrag van reg ten opsigte van die goedere betaal is of nie.
- (5) Die doeanegesag moet aan die persoon wat die goedere klaar, kennis van enige oorsprongherbepaling ingevolge subartikel (1) gee. 35
- (6) 'n Oorsprongherbepaling van goedere ingevolge subartikel (1), vervang die ooreenstemmende oorsprongbepaling of oorsprongherbepaling wat vir die goedere geld.

Regstelling van oorsprongbepalings of -herbepalings 40

- 155.** (1) Wanneer daar in 'n oorsprongbepaling of -herbepaling ten opsigte van goedere gedoen 'n fout ontdek word wat nie die oorsprong raak wat in die bepaling of herbepaling aan die goedere toegeken is nie, kan die doeanegesag die fout by kennisgewing aan die persoon wat die goedere klaar, regstel.¹⁰⁹
- (2) Daar is geen tydsbeperking wat betref wanneer 'n regstelling ingevolge subartikel (1) gedoen kan word nie. 45

Tydsbeperking op oorsprongbepaling en -herbepaling

- 156.** (1) Daar is geen tydsbeperkings wat betref wanneer 'n oorsprongbepaling of -herbepaling van goedere gedoen kan word nie, maar geen oorsprongbepaling of

108. Nòg klaring nòg 'n oorsprong self-bepaling is 'n voorvereiste vir 'n oorsprongbepaling ingevolge artikel 153. 'n Oorsprongbepaling kan soms in die afwesigheid van 'n voorafgaande klaring of oorsprong self-bepaling gedoen word, bv. wanneer ongeklaarde goedere ingevolge die Wet op Doeanebeheer geag word vir binnelandse gebruik geklaar te wees.

109. 'n Fout in 'n oorsprongbepaling of -herbepaling van goedere kan nie deur 'n regstellings-kennisgewing reggestel word nie, maar slegs deur 'n daaropvolgende oorsprongherbepaling. Kyk ook omskrywing van "regstelling" in artikel 1.

may be applied for purposes of assessing or re-assessing duty on goods otherwise than in accordance with subsection (2).

(2) An origin determination or re-determination that affects the dutiability of the goods or the amount of duty paid or payable on the goods must be applied for purposes of assessing or re-assessing duty on those goods— 5

- (a) if the origin determination or re-determination was made within a period of three years from the date the goods acquired a tax due status in terms of Chapter 6 of the Customs Control Act;¹¹⁰ or
- (b) if the origin determination or re-determination was made, whether within or after the expiry of the three years' period referred to in paragraph (a)— 10
 - (i) to give effect to—
 - (aa) a decision in any administrative appeal or dispute resolution proceedings;
 - (bb) a dispute settlement;
 - (cc) a retrospective amendment to the Customs Tariff; or 15
 - (dd) a court order given or confirmed in a final judgement;
 - (ii) to rectify an underpayment or non-payment of duty that occurred as a result of fraud, misrepresentation, a false declaration or non-disclosure of material facts; or
 - (iii) following an agreement referred to in section 86(2)(b). 20

(3) This section may not be read as permitting a re-assessment of duty on goods in conflict with section 87.

Origin determination or re-determination in absence of sufficient information

157. The customs authority may, subject to any procedures or other requirements regulating the determination of the origin of goods in terms of any applicable international trade agreement, base an origin determination or re-determination on the best information available to it— 25

- (a) if particulars of the goods in respect of which the origin determination or re-determination is made are not disclosed or not sufficiently disclosed in the clearance declaration or any supporting documents and those particulars are still not disclosed or still not sufficiently disclosed following— 30
 - (i) a request in terms of section 162; or
 - (ii) an amendment of the clearance declaration or any supporting documents;
- (b) in any other case, if information or documents necessary for considering or making the origin determination or re-determination were not furnished following a request in terms of section 162; or 35
- (c) if no clearance declaration was submitted and the goods are in terms of the Customs Control Act for tax purposes regarded to be cleared for home use or outright export. 40

Goods to which origin determination or re-determination made in accordance with general rules of origin apply 40

158. (1) An origin determination or re-determination of goods made in accordance with the general rules of origin applies—

- (a) to the goods in respect of which it was made; and
- (b) also to all identical goods— 45
 - (i) produced by the same producer;¹¹¹ and
 - (ii) cleared for home use or a customs procedure by the same person who cleared the goods for which that origin determination or re-determination was made, whether those identical goods were cleared before or after the date of that origin determination or re-determination. 50

110. Goods that have been cleared acquire a tax due status in terms of Chapter 6 of the Customs Control Act as from the date of clearance of the goods for home use or a customs procedure that confers a tax due status, which in terms of section 173 of that Act is the date of acceptance by Customs of the clearance declaration submitted in respect of the goods.

111. The definition of "producer" in section 1 of the Customs Control Act includes a manufacturer.

-herbepaling mag anders as ooreenkomstig subartikel (2) vir doeleindes van aanslag of heraanslag van reg ten opsigte van goedere toegepas word nie.

(2) 'n Oorsprongbepaling of -herbepaling wat die belasbaarheid van die goedere of die bedrag van reg betaal of betaalbaar op die goedere raak, moet vir doeleindes van aanslag of heraanslag van reg op daardie goedere toegepas word— 5

(a) indien die oorsprongbepaling of -herbepaling gedoen is binne 'n tydperk van drie jaar vanaf die datum waarop die goedere ingevolge Hoofstuk 6 van die Wet op Doeanereg 'n belasting betaalbare status verkry het;¹¹⁰ of

(b) indien die oorsprongbepaling of -herbepaling gedoen is, hetsy binne of na verstryking van die drie jaar tydperk bedoel in paragraaf (a)— 10

(i) om uitvoering te gee aan—

(aa) 'n beslissing in enige administratiewe appèl of geskilbeslegtingsverrigtinge;

(bb) die skikking van 'n dispuut;

(cc) 'n terugwerkende wysiging van die Doeanetarief; of 15

(dd) 'n hofbevel gegee of bevestig in 'n finale hofbeslissing;

(ii) om 'n onder-betaling of nie-betaling van reg as gevolg van bedrog, wanvoorstelling, 'n vals klaringsbrief of die nie-openbaarmaking van wesenlike feite reg te stel; of

(iii) na aanleiding van 'n ooreenkoms bedoel in artikel 86(2)(b). 20

(3) Hierdie artikel mag nie uitgelê word om 'n heraanslag van reg op goedere in stryd met artikel 87 te veroorloof nie.

Oorsprongbepaling of -herbepaling in afwesigheid van voldoende inligting

157. Die doeanegesag kan, behoudens enige prosedures of ander vereistes ter regulering van die bepaling van die oorsprong van goedere ingevolge enige tersaaklike internasionale handelsooreenkoms, 'n oorsprongbepaling of -herbepaling baseer op die beste inligting tot die doeanegesag se beskikking— 25

(a) indien besonderhede van die goedere ten opsigte waarvan die oorsprongbepaling of -herbepaling gedoen word, nie verstrekkend of voldoende verstrekkend word in die klaringsbrief of enige ondersteunende dokumente nie, en daardie besonderhede steeds nie verstrekkend of voldoende verstrekkend word nie nadat— 30

(i) 'n versoek ingevolge artikel 162 uitgereik is; of

(ii) 'n wysiging van die klaringsbrief of enige ondersteunende dokumente gedoen is;

(b) in enige ander geval, indien inligting of dokumente wat nodig is om die oorsprongbepaling of -herbepaling te oorweeg of te doen, nie na 'n versoek ingevolge 162 verskaf word nie; of 35

(c) indien geen klaringsbrief voorgelê is nie en die goedere ingevolge die Wet op Doeanereg vir belastingdoeleindes geag word vir binnelandse gebruik of regstreekse uitvoer geklaar te wees. 40

Goedere waarop oorsprongbepaling of -herbepaling gedoen ooreenkomstig algemene reëls van oorsprong van toepassing is

158. (1) 'n Oorsprongbepaling of -herbepaling van goedere gedoen ooreenkomstig die algemene reëls van oorsprong geld—

(a) vir die goedere ten opsigte waarvan dit gedoen is; en 45

(b) ook vir alle identiese goedere wat—

(i) deur dieselfde produsent¹¹¹ geproduseer is; en

(ii) vir binnelandse gebruik of 'n doeaneprosedure geklaar word deur dieselfde persoon wat die goedere geklaar het waarvoor daardie oorsprongbepaling of -herbepaling gedoen is, ongeag of daardie identiese goedere voor of na die datum van daardie oorsprongbepaling of -herbepaling geklaar is. 50

110. Goedere wat geklaar word, verkry ingevolge Hoofstuk 6 van die Wet op Doeanereg 'n belasting betaalbare status vanaf die datum van die klaring van die goedere vir binnelandse gebruik of 'n doeaneprosedure wat 'n belasting betaalbare status verleen, wat ingevolge artikel 173 van daardie Wet die datum is waarop doeanereg die klaringsbrief ingedien ten opsigte van die goedere aanvaar.

111. Die woordomskriving van "produsent" in artikel 1 van die Wet op Doeanereg sluit 'n vervaardiger in.

(2) An origin determination or re-determination that applies to identical goods referred to in subsection (1)(b) may not be applied for assessing or re-assessing duty in respect of those identical goods otherwise than in accordance with section 156(2).

(3) An origin self-determination in terms of section 152(1)(a)(i) made in respect of identical goods referred to in subsection (1)(b) which are cleared on or after the date of an origin determination or re-determination that applies in terms of that subsection to those goods must be consistent with that origin determination or re-determination. 5

(4) This section may not be read as permitting a re-assessment of duty on goods in conflict with section 87.

(5) If the customs authority makes an origin re-determination in accordance with the general rules of origin in relation to goods for which a previous origin determination or re-determination is in force in terms of this section, the latest re-determination supersedes the previous one and must be applied— 10

(a) to the goods in respect of which it was made; and

(b) also to all identical goods— 15

(i) produced by the same producer; and

(ii) cleared for home use or a customs procedure by the same person who cleared the goods for which that re-determination was made, whether the goods were cleared before or after the date of that latest re-determination.

(6) Subsections (2), (3) and (4) apply equally to any new origin re-determination referred to in subsection (5). 20

(7) In this section “**identical goods**” means goods that are not only identical in appearance, quality and physical characteristics, but also to the extent that the inputs used in their manufacturing are identical in all respects.

Goods to which origin determination or re-determination made in accordance with rules of origin for preferential tariff treatment apply 25

159. (1) An origin determination or re-determination of goods made in accordance with rules of origin as may be applicable in terms of section 167(2), (3) or (4) to an international trade agreement or non-reciprocal generalised system of preferences for purposes of preferential tariff treatment under that agreement or system, applies— 30

(a) to the goods in respect of which it was made; and

(b) for those purposes also to all identical goods—

(i) for which preferential tariff treatment may be claimed under that agreement or system;

(ii) produced by the same producer; and 35

(iii) cleared for home use or a customs procedure by the same person who cleared the goods for which that origin determination or re-determination was made, whether those identical goods were cleared before or after the date of that origin determination or re-determination.

(2) An origin determination or re-determination that applies to identical goods referred to in subsection (1)(b) may not be applied for assessing or re-assessing duty in respect of those identical goods otherwise than in accordance with section 156(2). 40

(3) An origin self-determination in terms of section 152(1)(a)(ii) made in respect of identical goods referred to in subsection (1)(b) which are cleared on or after the date of an origin determination or re-determination that applies in terms of that subsection to those goods must be consistent with that origin determination or re-determination. 45

(4) This section may not be read as permitting a re-assessment of duty on goods in conflict with section 87.

(5) If the customs authority makes an origin re-determination in accordance with the same rules of origin as those referred to in subsection (1) in relation to goods for which a previous origin determination or re-determination is in force in terms of this section, the latest re-determination supersedes the previous one and must be applied— 50

(a) to the goods in respect of which it was made; and

(b) also to all identical goods—

(i) for which preferential tariff treatment may be claimed under the applicable international trade agreement or non-reciprocal generalised system of preferences; 55

(2) 'n Oorsprongbepaling of -herbepaling wat vir identiese goedere bedoel in subartikel (1)(b) geld, mag nie anders as ooreenkomstig artikel 156(2) vir doeleindes van 'n aanslag of heraanslag van reg ten opsigte van daardie identiese goedere toegepas word nie.

(3) 'n Oorsprong self-bepaling ingevolge artikel 152(1)(a)(i) gedoen ten opsigte van identiese goedere bedoel in subartikel (1)(b) wat geklaar is op of na die datum van 'n oorsprongbepaling of -herbepaling wat ingevolge daardie subartikel vir daardie goedere geld, moet met daardie oorsprongbepaling of -herbepaling bestaanbaar wees. 5

(4) Hierdie artikel mag nie uitgelê word om 'n heraanslag van reg op goedere in stryd met artikel 87 te veroorloof nie. 10

(5) Indien die doeanegesag ooreenkomstig die algemene reëls van oorsprong 'n oorsprongherbepaling doen met betrekking tot goedere ten opsigte waarvan daar 'n vorige oorsprongbepaling of -herbepaling ingevolge hierdie artikel van krag is, vervang die jongste oorsprongherbepaling die vorige een en moet dit toegepas word—

(a) op die goedere ten opsigte waarvan dit gedoen is; en 15

(b) ook op alle identiese goedere wat—

(i) deur dieselfde produsent geproduseer is; en

(ii) vir binnelandse gebruik of 'n doeaneprosedure geklaar word deur dieselfde persoon wat die goedere geklaar het waarvoor daardie herbepaling gedoen is, ongeag of die goedere voor of na die datum van daardie laaste herbepaling geklaar is. 20

(6) Subartikels (2), (3) en (4) is insgelyks op enige oorsprongherbepaling bedoel in subartikel (5) van toepassing.

(7) In hierdie artikel beteken “**identiese goedere**” goedere wat nie net in voorkoms, kwaliteit en fisiese eienskappe identies is nie, maar ook in soverre die insette gebruik in die vervaardiging daarvan in alle opsigte identies is. 25

Goedere waarop oorsprongbepaling of -herbepaling gedoen ooreenkomstig reëls van oorsprong vir voorkeur tariefbehandeling van toepassing is

159. (1) 'n Oorsprongbepaling of -herbepaling van goedere gedoen ooreenkomstig reëls van oorsprong wat ingevolge artikel 167(2), (3) of (4) van toepassing mag wees op 'n internasionale handelsooreenkoms of nie-wederkerige algemene stelsel van voorkeure vir doeleindes van voorkeur tariefbehandeling kragtens daardie ooreenkoms of stelsel, geld— 30

(a) vir die goedere ten opsigte waarvan dit gedoen is; en

(b) vir daardie doeleindes ook vir alle identiese goedere— 35

(i) waarvoor daar op voorkeur tariefbehandeling kragtens daardie ooreenkoms of stelsel aanspraak gemaak kan word;

(ii) wat deur dieselfde produsent geproduseer is; en

(iii) wat vir binnelandse gebruik of 'n doeaneprosedure geklaar word deur dieselfde persoon wat die goedere geklaar het waarvoor daardie oorsprongbepaling of -herbepaling gedoen is, ongeag of daardie identiese goedere voor of na die datum van daardie oorsprongbepaling of -herbepaling geklaar is. 40

(2) 'n Oorsprongbepaling of -herbepaling wat van toepassing is op identiese goedere bedoel in subartikel (1)(b) mag nie vir die aanslag of heraanslag van reg ten opsigte van daardie identiese goedere gebruik word anders as ooreenkomstig artikel 156(2) nie. 45

(3) 'n Oorsprong self-bepaling ingevolge artikel 152(1)(a)(ii) gedoen ten opsigte van identiese goedere bedoel in subartikel (1)(b) wat geklaar is op of na die datum van 'n oorsprongbepaling of -herbepaling wat ingevolge daardie subartikel vir daardie goedere geld, moet bestaanbaar wees met daardie oorsprongbepaling of -herbepaling. 50

(4) Hierdie artikel mag nie uitgelê word om 'n heraanslag van reg op goedere in stryd met artikel 87 te veroorloof nie.

(5) Indien die doeanegesag 'n oorsprongherbepaling ooreenkomstig dieselfde reëls van oorsprong as dié bedoel in subartikel (1) doen met betrekking tot goedere waarvoor daar 'n vorige oorsprongbepaling of -herbepaling ingevolge hierdie artikel van krag is, vervang die jongste herbepaling die vorige een en moet dit toegepas word— 55

(a) op die goedere ten opsigte waarvan dit gedoen is; en

(b) ook op alle identiese goedere—

(i) waarvoor daar op voorkeur tariefbehandeling kragtens die tersaaklike internasionale handelsooreenkoms of nie-wederkerige algemene stelsel van voorkeure aanspraak gemaak kan word; 60

- (ii) produced by the same producer; and
- (iii) cleared for home use or a customs procedure by the same person who cleared the goods for which that re-determination was made, whether the goods were cleared before or after the date of that latest re-determination.

(6) Subsections (2), (3) and (4) apply equally to any new origin re-determination referred to in subsection (5). 5

(7) In this section “**identical goods**” means goods that are not only identical in appearance, quality and physical characteristics, but also to the extent that the inputs used in their manufacturing are identical in all respects.

Remedies available to person aggrieved by origin determination or re-determination¹¹² 10

160. (1) Parts 3, 4 and 5 of Chapter 37 of the Customs Control Act, as may be appropriate in terms of the provisions of those Parts, are available to a person aggrieved by an origin determination or re-determination.

(2) If a person aggrieved by an origin determination or re-determination lodges in terms of Part 3 of that Chapter an administrative appeal against the determination or re-determination, the appeal may only be heard by a specialist appeal committee referred to in section 843(2)(a) of the Customs Control Act. 15

(3) A person aggrieved by an origin determination or re-determination or, if an administrative appeal has been lodged against the determination or re-determination, by a decision taken in such appeal proceedings, may— 20

- (a) lodge an appeal with a court against the determination, re-determination or decision; or
- (b) institute proceedings for a review by a court of the determination, re-determination or decision. 25

Origin determination or re-determination presumed to be correct except when replaced, amended, set aside or corrected

161. An origin determination or re-determination applicable to any goods must be presumed to be correct and must be applied for the purpose it was made except when replaced, amended, set aside, corrected or otherwise affected, as may be appropriate, by— 30

- (a) any relevant origin re-determination in terms of section 154;
- (b) an origin determination or re-determination that becomes applicable to the goods in terms of section 158(1)(b) or (5)(b) or 159(1)(b) or (5)(b);
- (c) a correction of that origin determination or re-determination in terms of section 155; 35
- (d) any relevant advance origin ruling in terms of Chapter 10;
- (e) a decision in any administrative appeal or alternative dispute resolution proceedings;
- (f) a dispute settlement; 40
- (g) a retrospective amendment to the Customs Tariff; or
- (h) a court order given or confirmed in a final judgement.

Part 3

Documentary evidence of origin

When documentary evidence of origin may be requested 45

162. (1) The customs authority may, subject to any applicable international trade agreement or non-reciprocal generalised system of preferences specifying procedures or other requirements for the verification of the origin of goods, at any time when needed for a purpose mentioned in subsection (2) request any of the following persons to furnish

112. It should be noted that as a general rule an administrative appeal and in fact none of the proceedings referred to in Chapter 37 of the Customs Control Act affects or suspends the obligation to pay a duty. See section 830 of the Customs Control Act.

- (ii) wat deur dieselfde produsent geproduseer is; en
- (iii) wat vir binnelandse gebruik of 'n doeaneprosedure geklaar word deur dieselfde persoon wat die goedere geklaar het waarvoor daardie herbepaling gedoen is, ongeag of die goedere voor of na die datum van daardie jongste herbepaling geklaar is. 5

(6) Subartikels (2), (3) en (4) is ingelyks op enige oorsprongherbepaling bedoel in subartikel (5) van toepassing.

(7) In hierdie artikel beteken “**identiese goedere**” goedere wat nie net in voorkoms, kwaliteit en fisiese eienskappe identies is nie, maar ook in soverre die insette gebruik in die vervaardiging daarvan in alle opsigte identies is. 10

Regsmiddele tot beskikking van persone verontreg deur oorsprongbepaling of -herbepaling¹¹²

160. (1) Dele 3, 4 en 5 van Hoofstuk 37 van die Wet op Doeanebeheer, soos toepaslik ingevolge die bepalings van daardie Dele, is tot die beskikking van iemand wat verontreg voel deur 'n oorsprongbepaling of -herbepaling. 15

(2) Indien iemand wat verontreg voel deur 'n oorsprongbepaling of -herbepaling, 'n administratiewe appèl ingevolge Deel 3 van daardie Hoofstuk teen die bepaling of herbepaling aanteken, kan die appèl slegs deur 'n spesialis appèlkomitee bedoel in artikel 843(2)(a) van die Wet op Doeanebeheer aangehoor word.

(3) Iemand wat verontreg voel deur 'n oorsprongbepaling of -herbepaling of, indien 'n administratiewe appèl teen die bepaling of herbepaling aangeteken is, deur 'n besluit geneem in sodanige appèlverrigtinge, kan— 20

- (a) by 'n hof appèl aanteken teen die bepaling, herbepaling of besluit; of
- (b) regstappe doen vir die hersiening van die bepaling, herbepaling of besluit deur 'n hof. 25

Oorsprongbepaling of -herbepaling vermoed korrek te wees behalwe wanneer vervang, gewysig, ter syde gestel of reggestel

161. 'n Oorsprongbepaling of -herbepaling wat vir enige goedere geld, moet vermoed word korrek te wees en moet toegepas word vir die doel waarvoor dit gedoen is tensy dit vervang, gewysig, ter syde gestel, reggestel of andersins geraak word, na gelang van die geval, deur— 30

- (a) enige tersaaklike oorsprongherbepaling ingevolge artikel 154;
- (b) 'n oorsprongbepaling of -herbepaling wat ingevolge artikel 158(1)(b) of (5)(b) of 159(1)(b) of (5)(b) vir die goedere geld;
- (c) 'n regstelling van daardie oorsprongbepaling of -herbepaling ingevolge artikel 155; 35
- (d) enige tersaaklike vooruit-oorspronbeslissing ingevolge Hoofstuk 10;
- (e) 'n besluit in enige administratiewe appèl of alternatiewe geskilbeslegtingsverrigtinge;
- (f) die skikking van 'n dispuut; 40
- (g) 'n terugwerkende wysiging van die Doeanetarief; of
- (h) 'n hofbevel gegee of bevestig in 'n finale hofbeslissing.

Deel 3

Dokumentêre bewys van oorsprong

Wanneer dokumentêre bewys van oorsprong versoek kan word 45

162. (1) Die doeanegesag kan, behoudens enige tersaaklike internasionale handelsooreenkoms of nie-wederkerige algemene stelsel van voorkeure wat prosedures of ander vereistes vir die verifiëring van die oorsprong van goedere spesifiseer, te eniger tyd wanneer nodig vir 'n doel in subartikel (2) vermeld, enige van die volgende persone versoek om binne 'n bepaalde tydperk dokumentêre bewys van oorsprong aan die 50

112. Dit dien daarop gelet te word dat as algemene reël 'n administratiewe appèl nie, en trouens geen van die verrigtinge bedoel in Hoofstuk 37 van die Wet op Doeanebeheer nie, die verpligting om 'n reg te betaal, raak of opskort nie. Kyk artikel 830 van die Wet op Doeanebeheer.

it within a specified period with documentary evidence of origin in respect of any goods imported into or exported or to be exported from the Republic:

- (a) The person clearing the goods or who submitted a clearance declaration in respect of those goods;
 - (b) any person who is an importer or exporter in relation to the goods; 5
 - (c) in the case of goods produced in the Republic, a person who—
 - (i) produced the goods or was in any other way involved in the production of the goods; or
 - (ii) was in any way involved in goods from which the goods were produced, directly or indirectly; or 10
 - (d) a person who may issue documentary evidence of origin in respect of the goods.
- (2) Documentary evidence of origin in respect of goods may be requested in terms of subsection (1) for verifying the origin of the goods when needed for—
- (a) considering or making an origin determination or re-determination in respect of those goods; 15
 - (b) implementing—
 - (i) any provision of this Act, the Customs Control Act or any other applicable legislation;
 - (ii) an international trade agreement; 20
 - (iii) economic or trade measures adopted unilaterally or under an international trade agreement; or
 - (iv) health or public order measures;
 - (c) ensuring compliance with the requirements of a non-reciprocal generalised system of preferences implemented by another country, in the case of goods exported from the Republic to that country; 25
 - (d) combating fraud or duty evasion; or
 - (e) statistical purposes.

Who may issue documentary evidence of origin for goods of South African origin

- 163.** (1) A certificate of origin, certified declaration of origin or certificate certifying a declaration of origin in respect of goods of South African origin— 30
- (a) may be issued by the customs authority, the department responsible for trade and industry or a chamber of commerce authorised by that department; and
 - (b) must contain the particulars as may be—
 - (i) specified in any relevant international trade agreement or non-reciprocal generalised system of preferences that may apply to the goods; or 35
 - (ii) prescribed by rule.
- (2) A certificate of origin in respect of goods of South African origin may also be issued by the producer,¹¹³ supplier or exporter of the goods on the commercial invoice or other document issued in connection with the goods or on a form as may be prescribed by rule. 40

Who may issue documentary evidence of origin for imported goods

- 164.** (1) A certificate of origin, certified declaration of origin or certificate certifying a declaration of origin in respect of goods imported into the Republic may be accepted only if— 45
- (a) issued—
 - (i) in the case of goods exported from a country which qualify for preferential treatment in the Republic under an international trade agreement, by an authority or body empowered either in terms of the agreement or legislation of that country to issue such certificates or to make such certifications; or 50

¹¹³ The definition of “producer” in section 1 of the Customs Control Act includes a manufacturer.

doeanegesag te verskaf ten opsigte van enige goedere wat ingevoer is in, of uitgevoer is of gaan word uit, die Republiek:

- (a) Die persoon wat die goedere klaar of 'n klaringsbrief ten opsigte van daardie goedere ingedien het;
- (b) iemand wat 'n invoerder of uitvoerder met betrekking tot die goedere is; 5
- (c) in die geval van goedere in die Republiek geproduseer, iemand wat—
 - (i) die goedere geproduseer het of op 'n ander wyse by die produksie van die goedere betrokke was; of
 - (ii) op enige wyse betrokke was by goedere waarvan die goedere geproduseer is, hetsy direk of indirek; of 10
- (d) iemand wat dokumentêre bewys van oorsprong ten opsigte van die goedere mag uitreik.

(2) Dokumentêre bewys van oorsprong ten opsigte van goedere kan ingevolge subartikel (1) versoek word ten einde die oorsprong van die goedere te verifieer wanneer dit nodig is— 15

- (a) vir die oorweging of doen van 'n oorsprongbepaling of -herbepaling ten opsigte van daardie goedere;
- (b) vir die implementering van—
 - (i) enige bepaling van hierdie Wet, die Wet op Doeanebeheer of enige ander wetgewing wat van toepassing is; 20
 - (ii) 'n internasionale handelsooreenkoms;
 - (iii) ekonomiese of handelsmaatreëls wat eensydig of kragtens 'n internasionale handelsooreenkoms aanvaar is; of
 - (iv) gesondheids- of openbare orde maatreëls;
- (c) om die nakoming te verseker van die vereistes van 'n nie-wederkerige algemene stelsel van voorkeure wat deur 'n ander land toegepas word, in die geval van goedere wat uit die Republiek na daardie land uitgevoer word; 25
- (d) vir die bekamping van bedrog of ontduiking van reg; of
- (e) vir statistiese doeleindes.

Persone wat dokumentêre bewys van oorsprong vir goedere van Suid-Afrikaanse oorsprong kan uitreik 30

163. (1) 'n Sertifikaat van oorsprong, gesertifiseerde verklaring van oorsprong of sertifikaat wat 'n verklaring van oorsprong sertifiseer ten opsigte van goedere van Suid-Afrikaanse oorsprong—

- (a) kan uitgereik word deur die doeanegesag, die departement verantwoordelik vir handel en nywerheid of 'n sakekamer deur daardie departement gemagtig; en 35
- (b) moet die besonderhede bevat soos—
 - (i) gespesifiseer mag word in enige tersaaklike internasionale handelsooreenkoms of nie-wederkerige algemene stelsel van voorkeure wat op die goedere van toepassing mag wees; of 40
 - (ii) by reël voorgeskryf mag word.

(2) 'n Sertifikaat van oorsprong ten opsigte van goedere van Suid-Afrikaanse oorsprong kan ook deur die produsent,¹¹³ verskaffer of uitvoerder van die goedere uitgereik word op die handelsfaktuur of ander dokument in verband met die goedere uitgereik, of op 'n vorm wat by reël voorgeskryf mag word. 45

Persone wat dokumentêre bewys van oorsprong vir ingevoerde goedere kan uitreik

164. (1) 'n Sertifikaat van oorsprong, gesertifiseerde verklaring van oorsprong of sertifikaat wat 'n verklaring van oorsprong sertifiseer ten opsigte van goedere in die Republiek ingevoer, kan aanvaar word slegs indien— 50

- (a) dit uitgereik is—
 - (i) in die geval van goedere uitgevoer vanaf 'n land wat kragtens 'n internasionale handelsooreenkoms vir voorkeurbehandeling in die Republiek kwalifiseer, deur 'n gesag of liggaam wat òf ingevolge die ooreenkoms òf wetgewing van daardie land gemagtig is om sodanige sertifikate uit te reik of sodanige sertifiserings te doen; of 55

113. Die woordomskriving van “produsent” in artikel 1 van die Wet op Doeanebeheer sluit 'n vervaardiger in.

- (ii) in the case of goods exported from a country which do not qualify for preferential treatment in the Republic under an international trade agreement, by an authority or body empowered in terms of legislation of that country to issue such certificates or to make such certifications; and
- (b) it contains the particulars as may be—
 - (i) specified in the relevant international trade agreement that may be applicable; or
 - (ii) prescribed by rule.

(2) A certificate of origin in respect of imported goods may also be issued by the producer,¹¹⁴ supplier or exporter of the goods on the commercial invoice or other document issued in connection with the goods or on a form as may be prescribed by rule.

Language to be used in documentary evidence of origin

165. (1) Documentary evidence of origin in respect of goods of South African origin must be in the English language.

(2) If documentary evidence of origin in respect of goods imported into the Republic is not in an official language of the Republic, the customs authority may require a translation of any unclear particulars on the document, but may not, as a matter of course, require such translations in all cases.

Part 4

Rules of origin

Main rule for determining origin of goods

166. The country of origin of goods imported into or to be exported or exported from the Republic is the country in which the goods originated, as determined in accordance with rules of origin referred to in section 167.

Determination of applicable rules of origin

167. (1) The country in which goods imported into or to be exported or exported from the Republic originated must be determined in accordance with the general rules of origin, to the extent that the general rules of origin are applicable to such goods in terms of any rules prescribed in terms of section 178(b).

(2) If preferential tariff treatment is claimed under an international trade agreement in respect of goods imported into the Republic, the question whether those goods originated in a country which is a party to the agreement and whether those goods qualify for preferential tariff treatment in the Republic under the agreement, must be resolved in accordance with—

- (a) any rules of origin contained in, or made under, the relevant agreement; and
- (b) the general rules of origin, to the extent that the general rules of origin are applicable to such goods in terms of any rules prescribed in terms of section 178(b).

(3) If preferential tariff treatment is claimed in respect of goods to be exported or exported from the Republic to a country which is a party to an international trade agreement conferring on goods of South African origin preferential tariff treatment in that country, the question whether the goods originated in the Republic must be resolved in accordance with—

- (a) any rules of origin contained in, or made under, the relevant agreement; and
- (b) the general rules of origin, to the extent that the general rules of origin are applicable to such goods in terms of any rules prescribed in terms of section 178(b).

¹¹⁴ The definition of “producer” in section 1 of the Customs Control Act includes a manufacturer.

- (ii) in die geval van goedere uitgevoer vanaf 'n land wat nie kragtens 'n internasionale handelsooreenkoms vir voorkeurbehandeling in die Republiek kwalifiseer nie, deur 'n gesag of liggaam wat ingevolge wetgewing van daardie land gemagtig is om sodanige sertifikate uit te reik of sodanige sertifiserings te doen; en 5
- (b) dit die besonderhede bevat soos—
- (i) gespesifiseer mag word in die tersaaklike internasionale handelsooreenkoms wat van toepassing mag wees; of
- (ii) by reël voorgeskryf mag word.
- (2) 'n Sertifikaat van oorsprong ten opsigte van ingevoerde goedere kan ook deur die produsent,¹¹⁴ verskaffer of uitvoerder van die goedere uitgereik word op die handelsfaktuur of ander dokument in verband met die goedere uitgereik, of op 'n vorm wat by reël voorgeskryf mag word. 10

Taal wat gebruik moet word in dokumentêre bewys van oorsprong

165. (1) Dokumentêre bewys van oorsprong ten opsigte van goedere van Suid-Afrikaanse oorsprong moet in Engels wees. 15

(2) Indien dokumentêre bewys van oorsprong ten opsigte van goedere wat in die Republiek ingevoer is, nie in 'n amptelike landstaal van die Republiek is nie, kan die doeanegesag 'n vertaling versoek van enige onduidelike besonderhede vervat in die dokument, maar mag nie sodanige vertalings oor die algemeen in alle gevalle vereis nie. 20

Deel 4

Reëls van oorsprong

Hoofreël vir bepaling van oorsprong van goedere

166. Die land van oorsprong van goedere wat ingevoer is in, of uitgevoer is of gaan word uit, die Republiek is die land waarin die goedere hul oorsprong soos bepaal ooreenkomstig die reëls van oorsprong bedoel in artikel 167 het. 25

Bepaling van watter reëls van oorsprong van toepassing is

167. (1) Die land waarin goedere wat ingevoer is in, of uitgevoer is of gaan word uit, die Republiek hul oorsprong het, moet ooreenkomstig die algemene reëls van oorsprong bepaal word, in soverre die algemene reëls van oorsprong ingevolge enige reëls ingevolge artikel 178(b) voorgeskryf op sodanige goedere van toepassing is. 30

(2) Indien daar op voorkeur tariefbehandeling kragtens 'n internasionale handelsooreenkoms aanspraak gemaak word ten opsigte van goedere wat in die Republiek ingevoer is, moet die vraag of daardie goedere hul oorsprong in 'n land het wat 'n party tot die ooreenkoms is en of daardie goedere kragtens daardie ooreenkoms vir voorkeur tariefbehandeling in die Republiek kwalifiseer, beslis word volgens— 35

(a) enige reëls van oorsprong vervat in, of uitgevaardig kragtens, die tersaaklike ooreenkoms; en

(b) die algemene reëls van oorsprong, in soverre die algemene reëls van oorsprong op sodanige goedere ingevolge enige reëls ingevolge artikel 178(b) voorgeskryf, van toepassing is. 40

(3) Indien daar op voorkeur tariefbehandeling aanspraak gemaak word ten opsigte van goedere wat uit die Republiek uitgevoer is of gaan word na 'n land wat 'n party tot 'n internasionale handelsooreenkoms is wat voorkeur tariefbehandeling in daardie land verleen aan goedere van Suid-Afrikaanse oorsprong, moet die vraag of daardie goedere hul oorsprong in die Republiek het, beslis word volgens— 45

(a) enige reëls van oorsprong vervat in, of uitgevaardig kragtens, die tersaaklike ooreenkoms; en

(b) die algemene reëls van oorsprong, in soverre die algemene reëls van oorsprong op sodanige goedere ingevolge enige reëls ingevolge artikel 178(b) voorgeskryf, van toepassing is. 50

¹¹⁴ Die woordomskrywing van “produsent” in artikel 1 van die Wet op Doeanebeheer sluit 'n vervaardiger in.

- (4) If preferential tariff treatment is claimed in respect of goods to be exported or exported from the Republic to a country where those goods qualify for preferential tariff treatment under a non-reciprocal generalised system of preferences, the question whether the goods originated in the Republic must be resolved in accordance with—
- (a) rules of origin made for the implementation of the system by the country which implements the system; and 5
 - (b) the general rules of origin, to the extent that the general rules of origin are applicable to such goods in terms of any rules prescribed in terms of section 178(b).
- (5) In the event of any inconsistency between a rule of origin referred to in subsection (2)(a), (3)(a) or (4)(a) and a general rule of origin, the rule of origin referred to in that subsection prevails over the general rule of origin, to the extent of the inconsistency. 10

Publication of certain rules of origin and measures regulating preferences on SARS website

- 168.** The Commissioner may for purposes of section 167 publish on the SARS website— 15
- (a) all rules of origin contained in or made under international trade agreements to which the Republic is a party, including—
 - (i) any amendments to those rules; and
 - (ii) the dates on which those rules or amendments took effect; and 20
 - (b) all legislative and administrative measures regulating a non-reciprocal generalised system of preferences implemented by a country for goods of South African origin imported into that country, submitted to the Commissioner by the customs administration of that country, including—
 - (i) any amendments to those measures submitted by that customs administration; and 25
 - (ii) the dates on which those measures or amendments took effect, as advised by that customs administration.

Part 5

General rules of origin 30

Constituent parts of general rules of origin

- 169.** (1) The general rules of origin consist of—
- (a) the rules contained in this Part;
 - (b) any other rules of origin as may be prescribed by rule in terms of section 178(a); and 35
 - (c) any rules of origin made under the WTO Agreement on Rules of Origin.
- (2) In the event of an inconsistency between rules of origin referred to in subsection (1)(a) or (b) and rules referred to in subsection (1)(c), the rules referred to in subsection (1)(c) prevail.

Goods wholly produced in specific country 40

- 170.** (1) Where goods imported into or to be exported or exported from the Republic have been wholly produced in a specific country, that country must for purposes of this Act and the Customs Control Act be taken as the country in which those goods originated.
- (2) The following goods, to the extent not already covered under subsection (1), must be regarded to be wholly produced in a country: 45
- (a) Mineral products extracted from the soil of that country, from its territorial waters or from the sea-bed underneath its territorial waters;
 - (b) products extracted from marine soil or subsoil outside that country's territorial waters, provided that the country has the sole right to exploit that soil or subsoil for those products; 50

(4) Indien daar op voorkeur tariefbehandeling aanspraak gemaak word ten opsigte van goedere wat uit die Republiek uitgevoer is of gaan word na 'n land waar daardie goedere kragtens 'n nie-wederkerige algemene stelsel van voorkeure vir voorkeur tariefbehandeling kwalifiseer, moet die vraag of die goedere hul oorsprong in die Republiek het, beslis word volgens— 5

- (a) die reëls van oorsprong wat vir die toepassing van die stelsel uitgevaardig is deur die land wat die stelsel toepas; en
- (b) die algemene reëls van oorsprong, in soverre die algemene reëls op sodanige goedere van toepassing is ingevolge enige reëls wat ingevolge artikel 178(b) voorgeskryf word. 10

(5) In die geval van enige teenstrydigheid tussen 'n reël van oorsprong bedoel in subartikel (2)(a), (3)(a) of (4)(a) en 'n algemene reël van oorsprong, geniet die reël van oorsprong bedoel in daardie subartikel in die mate van die teenstrydigheid voorrang bo die algemene reël van oorsprong.

Publikasie op SAID webwerf van sekere reëls van oorsprong en maatreëls wat voorkeure reguleer 15

168. (1) Die Kommissaris kan vir doeleindes van artikel 167 die volgende op die SAID webwerf publiseer:

- (a) Alle reëls van oorsprong vervat in, of uitgevaardig kragtens, internasionale handelsooreenkomste waarby die Republiek 'n party is, met inbegrip van— 20
 - (i) enige wysigings van daardie reëls; en
 - (ii) die datums waarop daardie reëls of wysigings in werking getree het; en
- (b) alle wetgewende en administratiewe maatreëls ter regulering van 'n nie-wederkerige algemene stelsel van voorkeure wat toegepas word deur 'n land vir goedere van Suid-Afrikaanse oorsprong in daardie land ingevoer, wat deur 25 die doeaneadministrasie van daardie land aan die Kommissaris verstrekk word, met inbegrip van—
 - (i) enige wysigings van daardie maatreëls deur daardie doeaneadministrasies verstrekk; en
 - (ii) die datums waarop daardie maatreëls of wysigings van krag geword het, soos deur daardie doeaneadministrasie aangedui. 30

Deel 5

Algemene reëls van oorsprong

Samestellende dele van algemene reëls van oorsprong

169. (1) Die algemene reëls van oorsprong bestaan uit— 35

- (a) die reëls in hierdie Deel vervat;
- (b) enige ander reëls van oorsprong wat ingevolge artikel 178(a) by reël voorgeskryf mag word; en
- (c) enige reëls van oorsprong wat kragtens die WHO se “Agreement on Rules of Origin” uitgevaardig is. 40

(2) In die geval van 'n teenstrydigheid tussen reëls van oorsprong bedoel in subartikel (1)(a) of (b) en reëls bedoel in subartikel (1)(c), geniet die reëls bedoel in subartikel (1)(c) voorrang.

Goedere geheel en al in spesifieke land geproduseer

170. (1) Waar goedere wat ingevoer is in, of uitgevoer is of gaan word uit, die Republiek geheel en al in 'n bepaalde land geproduseer is, moet daardie land by die toepassing van hierdie Wet en die Wet op Doeanebeheer geag word die land te wees waarin daardie goedere hul oorsprong het. 45

(2) Die volgende goedere moet, in soverre nie alreeds deur subartikel (1) gedek nie, geag word geheel en al in 'n land geproduseer te wees: 50

- (a) Minerale produkte uit daardie land se grond of uit daardie land se territoriale waters of uit die seebed onder daardie land se territoriale waters ontgin;
- (b) produkte uit seegrond of -ondergrond buite daardie land se territoriale waters ontgin, mits daardie land oor die alleenreg beskik om daardie seegrond of -ondergrond vir daardie produkte te ontgin; 55

- (c) fish or other products of the sea harvested or gathered from the sea by a vessel of that country;
- (d) products obtained aboard a factory ship of that country solely from products referred to in paragraph (c);
- (e) live animals born and raised in that country; 5
- (f) products obtained from live animals in that country;
- (g) products obtained from hunting or fishing in that country;
- (h) fruit or vegetable products harvested or gathered in that country;
- (i) scrap or waste from production or processing operations in that country, including used articles collected in that country for the recovery of raw materials; or 10
- (j) goods produced in that country solely from products referred to in paragraphs (a) to (i).

Goods produced in two or more countries

171. (1) Where goods imported into or to be exported or exported from the Republic have been produced in two or more countries, the country in which the last substantial process in the production of the goods has been carried out which gave the goods their essential characteristics or properties, must for purposes of this Act and the Customs Control Act be regarded to be the country in which those goods originated. 15

(2) For purposes of subsection (1) the following processes may not be taken as constituting the last substantial process in the production of goods: 20

- (a) A process which does not contribute, or which does contribute but only to a minor degree, to the essential characteristics or properties of the goods;
- (b) a process to preserve the goods during transportation or storage;
- (c) a process to improve the packaging or the marketable quality of the goods or to prepare the goods for transportation, such as breaking bulk, grouping of packages, sorting, grading or repacking; 25
- (d) a simple assembly operation; or
- (e) the mixing of goods of different origin, provided that the characteristics or properties of the resulting product are not essentially different from the characteristics or properties of the goods which have been mixed. 30

Goods partially produced in specific country

172. (1) Goods imported into or to be exported or exported from the Republic that have been partially produced in a specific country must be regarded to have originated in that country if— 35

- (a) at least the applicable percentage referred to in subsection (2) of the production cost of those goods is represented by materials produced and labour utilised in that country;
- (b) the last process in the production of those goods has taken place in that country; and 40
- (c) such other processes in the production of those goods as may be prescribed by rule have taken place in that country.

(2) The applicable percentage of production cost for purposes of subsection (1)(a) is—

- (a) the percentage as may be determined in the Customs Tariff in respect of the goods; or 45
- (b) 25 per cent, if no percentage is prescribed in terms of paragraph (a).

(3) The Commissioner may by rule prescribe the manner in which the production cost of goods must be determined for purposes of subsection (1)(a).

Accessories, spare parts and tools 50

173. (1) When accessories, spare parts or tools for use with a machine, appliance, apparatus or vehicle are imported into or to be exported or exported from the Republic together with the machine, appliance, apparatus or vehicle, the country of origin of the machine, appliance, apparatus or vehicle must for purposes of this Act and the Customs Control Act be regarded to be the country in which those accessories, spare parts or tools originated. 55

- (c) vis of ander seeprodukte deur 'n vaartuig van daardie land uit die see ontgin of verkry;
- (d) produkte wat aan boord van 'n fabrieksvaartuig van daardie land uitsluitlik van produkte bedoel in paragraaf (c) verkry is;
- (e) lewendige diere in daardie land gebore en grootgemaak; 5
- (f) produkte van lewendige diere in daardie land verkry;
- (g) produkte uit jag of visvang in daardie land verkry;
- (h) vrugte of groente produkte in daardie land geoes of verkry;
- (i) uitskot of afval uit produksie- of prosesseringsbedrywighe in daardie land, met inbegrip van gebruikte artikels wat in daardie land met die oog op herwinning van rou materiale versamel is; of 10
- (j) goedere uitsluitlik van produkte bedoel in paragrawe (a) tot (i) in daardie land geproduseer.

Goedere in twee of meer lande geproduseer

171. (1) Waar goedere wat ingevoer is in, of uitgevoer is of gaan word uit, die Republiek in twee of meer lande geproduseer is, moet die land waarin die laaste wesenlike proses in die produksie van die goedere plaasgevind het wat aan die goedere hul essensiële eienskappe of kenmerke verleen het, vir doeleindes van hierdie Wet en die Wet op Doeanebestuur geag word die land te wees waarin die goedere hul oorsprong het. 15

(2) By die toepassing van subartikel (1), mag die volgende prosesse nie as die laaste essensiële proses in die produksie van die goedere beskou word nie: 20

- (a) 'n Proses wat nie bydra tot die essensiële eienskappe of kenmerke van die goedere nie, of wat wel, maar slegs in 'n geringe mate, daartoe bydra;
- (b) 'n proses om die goedere gedurende die vervoer of berging daarvan te bewaar;
- (c) 'n proses om die verpakking of die bemerkbare kwaliteit van die goedere te verbeter of om die goedere vir vervoer gereed te maak, soos om vrag op te breek in kleiner hoeveelhede, verpakings te groepeer, te sorteer, te gradeer of te herverpak; 25
- (d) 'n eenvoudige monteringsaksie; of
- (e) die vermenging van goedere van verskillende oorsprong, mits die eienskappe of kenmerke van die eindproduk nie wesenlik van die eienskappe of kenmerke van die goedere wat gemeng is, verskil nie. 30

Goedere gedeeltelik in spesifieke land geproduseer

172. (1) Goedere wat ingevoer is in, of uitgevoer is of gaan word uit, die Republiek, wat gedeeltelik in 'n spesifieke land geproduseer is, moet geag word hul oorsprong in daardie land te hê indien— 35

- (a) minstens die toepaslike persentasie in subartikel (2) bedoel van die produksiekoste van daardie goedere verteenwoordig word deur materiale geproduseer en arbeid aangewend in daardie land;
- (b) die laaste proses in die produksie van daardie goedere in daardie land plaasgevind het; en 40
- (c) dié ander prosesse in die produksie van daardie goedere soos by reël voorgeskryf mag word, in daardie land plaasgevind het.

(2) Die toepaslike persentasie van produksiekoste vir doeleindes van subartikel (1)(a) is— 45

- (a) die persentasie wat in die Doeanetarief ten opsigte van die goedere bepaal mag word; of
- (b) 25 persent, indien geen persentasie ingevolge paragraaf (a) voorgeskryf is nie.

(3) Die Kommissaris kan by reël die wyse voorskryf waarop die produksiekoste van goedere vir doeleindes van subartikel (1)(a) betaal moet word. 50

Bybehore, onderdele en gereedskap

173. (1) Wanneer bybehore, onderdele of gereedskap vir gebruik met 'n masjien, toestel, apparaat of voertuig saam met die masjien, toestel, apparaat of voertuig ingevoer is in, of uitgevoer is of gaan word uit, die Republiek, moet die land van oorsprong van die masjien, toestel, apparaat of voertuig vir doeleindes van hierdie Wet en die Wet op Doeanebestuur geag word die land te wees waarin daardie bybehore, onderdele of gereedskap hul oorsprong het. 55

(2) Subsection (1) applies to accessories, spare parts and tools only if those accessories, spare parts or tools—

- (a) are normally sold with the machine, appliance, apparatus or vehicle; and
- (b) correspond, in kind and in quantity, to the normal equipment of machines, appliances, apparatuses or vehicles of that kind.

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Unassembled or disassembled articles contained in more than one consignment

174. Unassembled or disassembled articles imported from the same country into, or to be exported or exported from the Republic in more than one consignment when it is not feasible, for transport or production reasons, to import or export it in a single consignment, may, if the person clearing the articles so requests, be treated as one article for the purpose of determining the country in which the articles originated.

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Packaging

175. (1) If packaged goods are imported into or to be exported or exported from the Republic, the packaging in which the goods are contained must be regarded to have been produced in the country of origin of the goods.

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(2) Subsection (1) does not apply to packaging in respect of which a duty is payable separate from the goods contained in the packaging.

(3) If packaging in which goods are contained is regarded to have the same origin as the goods, the value of the packaging may for the purposes of section 172 be taken into account in determining the production cost of the goods, but only if the goods are ordinarily sold by retail in such packaging.

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Energy, plant, machinery and tools used in production of goods

176. When determining the origin of goods, no account may be taken of the origin of any energy, plant, machinery or tools used in the production of the goods.

Part 6

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Other matters

Publication of determination

177. The Commissioner may make public particulars of any determination or re-determination in such a manner and containing such information as the Commissioner may determine, subject to section 21 of the Customs Control Act.

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Rules to facilitate application of this Chapter

178. The Commissioner may in terms of section 224 make rules to facilitate the implementation of this Chapter and any applicable international trade agreement, including rules prescribing—

- (a) rules of origin establishing—
 - (i) norms and standards, and procedures, for determining—
 - (aa) the origin of goods imported into or to be exported or exported from the Republic;
 - (bb) when goods to be exported or exported from the Republic qualify as goods originating in the Republic;
 - (cc) when goods must be regarded to be wholly produced in a single country or produced in more than one country; and
 - (dd) what processes qualify as the last substantial process in the production of goods, in the case of goods produced in more than one country; and

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- (2) Subartikel (1) is van toepassing op bybehore, onderdele en gereedskap slegs indien daardie bybehore, onderdele of gereedskap—
- (a) normaalweg saam met die masjien, toestel, apparaat of voertuig verkoop word; en
 - (b) wat soort en hoeveelheid betref, met die normale toerusting vir masjiene, 5
toestelle, apparate of voertuie van daardie soort ooreenstem.

Ongemonteerde of uitmekaargehaalde artikels in meer as een besending

174. Ongemonteerde of uitmekaargehaalde artikels wat in meer as een besending van dieselfde land af ingevoer is in, of uitgevoer is of gaan word uit, die Republiek wanneer dit om vervoer- of produksieredes nie prakties uitvoerbaar is om dit in 'n enkele besending in of uit te voer nie, kan, indien die persoon wat die artikels klaar dit versoek, vir doeleindes van die bepaling van die land waarin die artikels hulle oorsprong het as 'n enkele artikel beskou word. 10

Verpakkingsmateriaal

175. (1) Indien verpakte goedere ingevoer is in, of uitgevoer is of gaan word uit, die Republiek, moet die verpakkingsmateriaal waarin die goedere verpak is, geag word in die land van oorsprong van die goedere geproduseer te wees. 15

(2) Subartikel (1) is nie van toepassing nie op verpakkingsmateriaal ten opsigte waarvan daar 'n reg betaalbaar is afsonderlik van die goedere wat in die verpakkingsmateriaal verpak is. 20

(3) Indien verpakkingsmateriaal waarin goedere verpak is, geag word dieselfde oorsprong as die goedere te hê, kan die waarde van die verpakkingsmateriaal vir doeleindes van artikel 172 in ag geneem word by die bepaling van die produksiekoste van die goedere, maar slegs indien die goedere gewoonlik in die kleinhandel in sodanige verpakkingsmateriaal verkoop word. 25

Energie, aanleg, masjinerie en gereedskap gebruik in produksie van goedere

176. Wanneer die oorsprong van goedere bepaal word, mag die oorsprong van enige energie, aanleg, masjinerie of gereedskap gebruik in die produksie van die goedere nie in aanmerking geneem word nie.

Deel 6 30

Ander aangeleenthede

Publikasie van bepalings

177. Die Kommissaris kan besonderhede van enige bepaling of herbepaling bekend maak op 'n wyse en met insluiting van sodanige inligting as wat die Kommissaris behoudens artikel 21 van die Wet op Doeanebeheer mag bepaal. 35

Reëls ter fasilitering van hierdie Hoofstuk

178. Die Kommissaris kan ingevolge artikel 224 reëls uitvaardig om die implementering van hierdie Hoofstuk en enige tersaaklike internasionale handelsooreenkoms te fasiliteer, met inbegrip van reëls wat voorskryf—

- (a) reëls van oorsprong— 40
 - (i) wat norme en standaarde, en prosedures, daarstel vir die bepaling van—
 - (aa) die oorsprong van goedere wat ingevoer is in, of uitgevoer is of gaan word uit, die Republiek;
 - (bb) wanneer goedere wat uit die Republiek uitgevoer is of gaan word, kwalifiseer as goedere wat hul oorsprong in die Republiek het; 45
 - (cc) wanneer goedere geag moet word geheel en al in een land, of in meer as een land, geproduseer te wees; en
 - (dd) watter prosesse as die laaste essensiële proses in die produksie van goedere kwalifiseer, in die geval van goedere wat in meer as een land geproduseer is; en 50

- (ii) the form and format and contents of documentary evidence of origin; and
- (b) the circumstances in, and the purposes for, which the general rules of origin must be applied or not be applied to goods imported into or to be exported or exported from the Republic.

Offences in terms of this Chapter 5

- 179.** (1) A person clearing goods is guilty of an offence if that person—
- (a) fails to comply with section 152(1) or (5);
 - (b) makes an origin self-determination which that person knows is not true or could not reasonably have believed to be true; or
 - (c) in making an origin self-determination— 10
 - (i) uses false or misleading information with the intention to mislead; or
 - (ii) omits to use accurate information with the intention to mislead.
- (2) A person is guilty of an offence if that person fails to comply with a request issued by the customs authority to that person in terms of section 162(1).
- (3) A person who issues or who submits to the customs authority documentary evidence of origin in relation to any goods imported or to be exported or exported from the Republic is guilty of an offence if that document— 15
- (a) contains a false statement or incorrect information which that person knows is not true or could not reasonably have believed to be true;
 - (b) states, or omits to state, information which is stated or omitted with the 20 intention to mislead;
 - (c) omits to state information or states incorrect information which that person knows or reasonably ought to have known would, if stated or stated correctly—
 - (i) have caused the goods to which the document relates to be subject to a 25 duty or to a higher amount of duty; or
 - (ii) have disqualified the goods from a rebate, refund, drawback or other entitlement in terms of this Act; or
 - (d) was issued to conceal the true origin of the goods.
- (4) An offence referred to in subsection (1)(b) or (c)(i) or (ii) or (2) is a Category 1 30 offence.

CHAPTER 9

PREFERENTIAL TARIFF TREATMENT

Purpose of this Chapter

- 180.** The purpose of this Chapter is to provide for matters relating to the 35 administration of—
- (a) international trade agreements in relation to goods imported into or exported from the Republic under the agreement; and
 - (b) non-reciprocal generalised systems of preferences implemented by a country 40 in relation to goods exported from the Republic to that country.

Part 1

Import and export under international trade agreement

Steps to enforce international trade agreement in Republic

- 181.** The Commissioner must take all reasonable steps, including the making of any necessary rules, to enforce an international trade agreement that has been enacted into 45 law in the Republic as contemplated in section 921 of the Customs Control Act, or was in force prior to the date this Act took effect, to the extent that the agreement requires the performance of any acts in the Republic for the preferential tariff treatment of goods originating in—

- (ii) wat die vorm en formaat, en inhoud, van dokumentêre bewys van oorsprong bepaal; en
- (b) die omstandighede waarin en die doeleindes waarvoor die algemene reëls van oorsprong op goedere wat ingevoer is in, of uitgevoer is of gaan word uit, die Republiek toegepas moet word of nie toegepas moet word nie. 5

Misdrywe ingevolge hierdie Hoofstuk

- 179.** (1) Iemand wat goedere klaar, is aan 'n misdryf skuldig indien so iemand—
- (a) versuim om aan artikel 152(1) of (5) te voldoen;
 - (b) 'n oorsprong self-bepaling doen wat so iemand weet nie waar is nie of nie redelikerwys as waar kon beskou het nie; of 10
 - (c) tydens die doen van 'n self-bepaling—
 - (i) vals of misleidende inligting gebruik met die doel om te mislei; of
 - (ii) versuim om akkurate inligting te gebruik met die doel om te mislei.
- (2) Iemand is aan 'n misdryf skuldig indien so iemand versuim om te voldoen aan 'n versoek ingevolge artikel 162(1) deur die doeanegesag aan so iemand uitgereik. 15
- (3) Iemand wat dokumentêre bewys van oorsprong met betrekking tot enige goedere wat ingevoer is in, of uitgevoer is of gaan word uit, die Republiek, uitreik of aan die doeanegesag verstrek, is aan 'n misdryf skuldig indien daardie dokument—
- (a) 'n vals verklaring of inligting wat nie korrek is nie bevat wat so iemand weet nie waar is nie of nie redelikerwys as waar kon beskou het nie; 20
 - (b) inligting vermeld of verswyg wat vermeld of verswyg is met die doel om te mislei;
 - (c) inligting verswyg of inligting wat nie korrek is nie vermeld wat so iemand weet of redelikerwys behoort te gewet het dat indien dit vermeld of korrek vermeld was— 25
 - (i) tot gevolg sou gehad het dat die goedere waarop die dokument betrekking het, onderworpe sou wees aan reg of 'n hoër bedrag van reg; of
 - (ii) die goedere sou gediskwalifiseer het van 'n korting, terugbetaling, teruggawe of ander aanspraak ingevolge hierdie Wet; of 30
 - (d) uitgereik is om die ware oorsprong van die goedere te verdoesel.
- (4) 'n Misdryf bedoel in subartikel (1)(b) of (c)(i) of (ii) of (2) is 'n Kategorie 1 misdryf.

HOOFSTUK 9

VOORKEUR TARIEFBEHANDELING 35

Doel van hierdie Hoofstuk

- 180.** Die doel van hierdie Hoofstuk is om voorsiening te maak vir aangeleenthede betreffende die administrasie van—
- (a) internasionale handelsooreenkomste met betrekking tot goedere wat kragtens die ooreenkoms ingevoer word in, of uitgevoer word uit, die Republiek; en 40
 - (b) nie-wederkerige algemene stelsels van voorkeure deur 'n land toegepas met betrekking tot goedere wat uit die Republiek na daardie land uitgevoer word.

Deel 1

Invoere en uitvoere kragtens internasionale handelsooreenkomste

Stappe om internasionale handelsooreenkomste in Republiek toe te pas 45

- 181.** Die Kommissaris moet alle redelike stappe doen, met inbegrip van die uitvaardiging van enige reëls wat nodig mag wees, om 'n internasionale handelsooreenkoms wat in die Republiek as wet soos beoog in artikel 921 van die Wet op Doeanebeheer verorden is, of wat voor die datum van inwerkingtreding van hierdie Wet van krag was, toe te pas, in soverre die ooreenkoms die verrigting in die Republiek vereis van enige handelinge vir die voorkeur tariefbehandeling van goedere wat hul oorsprong in— 50

- (a) a country which is a party to the agreement and imported into the Republic; or
- (b) the Republic and exported to such a country.

Rules to give effect to international trade agreement

- 182.** (1) The Commissioner may in terms of section 224 make rules—
- (a) to enable the customs authority— 5
 - (i) to perform any customs duties required from it by an international trade agreement;
 - (ii) to collect information required by the customs administration of a country which is party to the agreement; and
 - (iii) to furnish reports to the customs administration of that country as and 10 when required;
 - (b) to prevent any circumvention of the agreement by—
 - (i) transshipment or re-routing of the goods;
 - (ii) false declarations concerning quantities, content, description, classifica- 15 tion, value or origin of the goods; or
 - (iii) falsification of documents relating to the goods; and
 - (c) to provide for—
 - (i) the conditional registration for purposes of the agreement of importers, exporters, producers¹¹⁵ and suppliers of goods to which the agreement 20 applies;
 - (ii) any requirements to be complied with in respect of such registration; and
 - (iii) the refusal of applications for registration and the amendment, with- drawal or suspension of registrations, in circumstances as may be prescribed by rule;
 - (d) to exclude goods— 25
 - (i) imported into the Republic from preferential tariff treatment under the agreement—
 - (aa) if imported by a person not registered as an importer for purposes of 30 the agreement; or
 - (bb) if the country of origin of the goods as established in terms of the rules of origin applicable to the agreement is not a party to the agreement; or
 - (ii) to be exported or exported from the Republic from preferential tariff treatment under the agreement—
 - (aa) if exported by a person not registered as an exporter for purposes of 35 the agreement; or
 - (bb) if the goods are not of South African origin as established in terms of the rules of origin applicable to the agreement;
 - (e) to prescribe the keeping of books, accounts and other records by an exporter, importer, producer, supplier or other person concerning the origin of goods 40 imported or exported under preferential tariff treatment in terms of the agreement; or
 - (f) regarding any other requirements which may be necessary for the enforce- ment or implementation of the agreement.
- (2) Rules made in terms of subsection (1) may make applicable provisions of Chapter 45 28 of the Customs Control Act, with any modifications necessary for the enforcement or implementation of an international trade agreement, for regulating the registration of persons referred to in that subsection.

115. Includes manufacturers. See definition of “produce” in section 1 of Customs Control Act.

- (a) 'n land het wat 'n party tot die ooreenkoms is en wat in die Republiek ingevoer word; of
- (b) die Republiek het en wat na so 'n land uitgevoer word.

Reëls om uitvoering te gee aan internasionale handelsooreenkoms

- 182.** (1) Die Kommissaris kan ingevolge artikel 224 reëls uitvaardig— 5
- (a) om die doeanegesag in staat te stel—
 - (i) om enige doeanefunksies te verrig wat deur 'n internasionale handelsooreenkoms van die doeanegesag vereis word;
 - (ii) om inligting in te win wat benodig word deur die doeaneadministrasie van 'n land wat 'n party tot die ooreenkoms is; en 10
 - (iii) om verslae aan die doeaneadministrasie van daardie land te verskaf, soos en wanneer dit benodig word;
 - (b) om enige omseiling van die ooreenkoms te voorkom deur—
 - (i) transverskeping of roeteverandering van die goedere;
 - (ii) vals verklarings rakende hoeveelhede, inhoud, beskrywing, indeling, waarde of oorsprong van die goedere; of 15
 - (iii) die vervalsing van dokumente wat op die goedere betrekking het; en
 - (c) om voorsiening te maak vir—
 - (i) die voorwaardelike registrasie, vir doeleindes van die ooreenkoms, van invoerders, uitvoerders, produsente¹¹⁵ en verskaffers van goedere 20 waarop die ooreenkoms van toepassing is;
 - (ii) enige vereistes waaraan ten opsigte van so 'n registrasie voldoen moet word; en
 - (iii) die afkeuring van aansoeke om registrasie en die wysiging, intrekking of opskorting van registrasies, in omstandighede wat by reël voorgeskryf 25 mag word;
 - (d) om goedere—
 - (i) wat in die Republiek ingevoer is van voorkeur tariefbehandeling kragtens die ooreenkoms uit te sluit—
 - (aa) indien die goedere ingevoer is deur iemand wat nie vir doeleindes 30 van die ooreenkoms as 'n invoerder geregistreer is nie; of
 - (bb) indien die land van oorsprong van die goedere, soos ingevolge die reëls van oorsprong van toepassing op die ooreenkoms vasgestel, nie 'n party tot die ooreenkoms is nie; of
 - (ii) wat uit die Republiek uitgevoer is of gaan word van voorkeur 35 tariefbehandeling kragtens die ooreenkoms uit te sluit—
 - (aa) indien die goedere uitgevoer is deur iemand wat nie vir doeleindes van die ooreenkoms as 'n uitvoerder geregistreer is nie; of
 - (bb) indien die goedere nie van Suid-Afrikaanse oorsprong is nie, soos bepaal ingevolge die reëls van oorsprong wat op die ooreenkoms 40 van toepassing is;
 - (e) om die hou van boeke, rekeninge en ander rekords deur 'n uitvoerder, invoerder, produsent, vervaardiger of ander persoon betreffende die oorsprong van goedere ingevoer of uitgevoer onder voorkeur tariefbehandeling ingevolge die ooreenkoms, voor te skryf; of 45
 - (f) aangaande enige ander vereistes wat nodig mag wees vir die toepassing of uitvoering van die ooreenkoms.
- (2) Reëls ingevolge subartikel (1) uitgevaardig, kan ter regulering van die registrasie van persone in daardie subartikel bedoel bepalinge van Hoofstuk 28 van die Wet op Doeanebeheer, met enige aanpassings wat vir die toepassing of uitvoering van 'n 50 internasionale handelsooreenkoms nodig is, van toepassing maak.

¹¹⁵ Sluit vervaardigers in. Kyk woordomskeping van “produseer” in artikel 1 van die Wet op Doeanebeheer.

Part 2

Export to country implementing non-reciprocal generalised system of preferences

Steps to ensure compliance with non-reciprocal generalised system of preferences

183. The Commissioner must take all reasonable steps, including the making of any necessary rules, to ensure that the legislative and administrative measures regulating a non-reciprocal generalised system of preferences of a country implementing such a system for goods of South African origin are complied with to the extent that those measures require the performance of any acts in the Republic as a precondition for benefiting from that system. 5

Conditions for benefiting from non-reciprocal generalised system of preferences 10

184. A person exporting from the Republic goods to a country implementing a non-reciprocal generalised system of preferences for goods originating in the Republic, and any producer or supplier of those goods or any other person who wants to benefit from that system or has a material interest in the export of the goods to that country, must comply with and give effect to all legislative and administrative measures of that country regulating that system, including— 15

- (a) the keeping of books, accounts and other records in respect of—
 - (i) the production, and of all materials used in the production, of the goods exported to that country;
 - (ii) the purchase of, cost of, value of and payment for the goods exported to that country, and all materials, including indirect materials, used in the production of the goods exported;
 - (iii) proof of the origin of those goods in accordance with the rules of origin applicable to those goods; and
 - (iv) the export of the goods to that country; 25
- (b) permitting and assisting officers of the customs administration of that country to have access to and to investigate those books, accounts and other records; and
- (c) any other requirements as may be prescribed by rule in terms of section 185.

Rules to give effect to non-reciprocal generalised system of preferences 30

- 185.** (1) The Commissioner may in terms of section 224 make rules—
- (a) to make effective in the Republic any legislative and administrative measures regulating a non-reciprocal generalised system of preferences of a country implementing such a system for goods of South African origin;
 - (b) to enable the customs authority— 35
 - (i) to perform any customs duties required from it in terms of those measures;
 - (ii) to collect information required by the customs administration of that country;
 - (iii) to furnish reports to the customs administration of that country as and when required; and 40
 - (iv) to render assistance in respect of the implementation and enforcement of those measures, including assistance with regard to any investigation by the customs administration of that country;
 - (c) to prevent any circumvention of those measures by— 45
 - (i) transshipment or re-routing of the goods;
 - (ii) false declarations concerning quantities, content, description, classification, value or origin of the goods; or
 - (iii) falsification of documents relating to the goods;

Deel 2

Uitvoere na lande wat nie-wederkerige algemene stelsel van voorkeure toepas

Stappe om voldoening aan nie-wederkerige algemene stelsel van voorkeure te verseker

183. Die Kommissaris moet alle redelike stappe doen, met inbegrip van die uitvaardiging van enige reëls wat nodig mag wees, om te verseker dat daar voldoen word aan die wetgewende en administratiewe maatreëls ter regulering van 'n nie-wederkerige algemene stelsel van voorkeure van 'n land wat so 'n stelsel vir goedere van Suid-Afrikaanse oorsprong toepas, in soverre daardie maatreëls die verrigting van enige handeling in die Republiek vereis as 'n voorvereiste om die voordele van daardie stelsel te benut. 5

Voorwaardes vir benutting van voordele van nie-wederkerige algemene stelsel van voorkeure

184. Iemand wat goedere uit die Republiek uitvoer na 'n land wat 'n nie-wederkerige algemene stelsel van voorkeure toepas vir goedere wat hul oorsprong in die Republiek het, en enige produsent of vervaardiger van daardie goedere of iemand anders wat voordeel uit daardie stelsel wil trek of wat 'n wesenlike belang by die uitvoer van die goedere na daardie land het, moet aan alle wetgewende en administratiewe maatreëls van daardie land ter regulering van daardie stelsel voldoen en daaraan uitvoering gee, met inbegrip van— 15

- (a) die hou van boeke, rekeninge en ander rekords ten opsigte van— 20
 - (i) die produksie, en van alle materiale gebruik by die produksie, van die goedere na daardie land uitgevoer;
 - (ii) die koop van, koste van, waarde van en betaling vir die goedere wat na daardie land uitgevoer word, en alle materiale, met inbegrip van indirekte materiale, gebruik by die produksie van die goedere wat uitgevoer word; 25
 - (iii) bewys van die oorsprong van daardie goedere ooreenkomstig die reëls van oorsprong wat op daardie goedere van toepassing is; en
 - (iv) die uitvoer van die goedere na daardie land; 30
- (b) om beamptes van die doeaneadministrasie van daardie land toe te laat en aan hulle bystand te verleen om toegang tot daardie boeke, rekeninge en ander rekords te verkry en dit te ondersoek; en
- (c) enige ander vereistes wat ingevolge artikel 185 by reël voorgeskryf mag word.

Reëls om uitvoering te gee aan nie-wederkerige algemene stelsel van voorkeure 35

- 185.** (1) Die Kommissaris kan ingevolge artikel 224 reëls uitvaardig—
- (a) om enige wetgewende en administratiewe maatreëls ter regulering van 'n nie-wederkerige algemene stelsel van voorkeure van 'n land wat so 'n stelsel vir goedere van Suid-Afrikaanse oorsprong toepas, in die Republiek van krag te maak; 40
 - (b) om die doeanegesag te magtig om—
 - (i) enige doeaneplygte wat ingevolge daardie maatreëls van die doeanegesag vereis word, te verrig;
 - (ii) inligting wat deur die doeaneadministrasie van daardie land benodig word, in te win; 45
 - (iii) verslae aan die doeaneadministrasie van daardie land soos en wanneer benodig, te verskaf; en
 - (iv) bystand te verleen ten opsigte van die uitvoering en toepassing van daardie maatreëls, met inbegrip van bystand met betrekking tot enige ondersoek deur die doeaneadministrasie van daardie land; 50
 - (c) ter voorkoming van enige omseiling van daardie maatreëls deur—
 - (i) transverskeping of roeteverandering van die goedere;
 - (ii) vals verklarings rakende hoeveelhede, inhoud, beskrywing, indeling, waarde of oorsprong van die goedere; of
 - (iii) die vervalsing van dokumente wat op die goedere betrekking het; 55

- (d) to provide for—
 - (i) the conditional registration for purposes of that system of preferences of exporters, producers¹¹⁶ and suppliers of goods to which those measures apply;
 - (ii) any requirements to be complied in respect of such registration; and 5
 - (iii) the refusal of applications for registration and the amendment, withdrawal or suspension of registrations in circumstances as may be prescribed by rule;
 - (e) to exclude goods to be exported or exported from the Republic from preferential tariff treatment under that system of preferences— 10
 - (i) if exported by a person not registered as an exporter for purposes of that system; or
 - (ii) if the goods are not of South African origin as established in terms of the applicable rules of origin;
 - (f) to prescribe the keeping of books, accounts and other records by an exporter, producer, supplier or other person concerning the origin of goods exported under preferential tariff treatment in terms of that system of preferences; or 15
 - (g) regarding any other requirements that may be necessary for the enforcement or implementation of those measures to enable goods of South African origin to benefit from that system of preferences. 20
- (2) Rules made in terms of subsection (1) may make applicable provisions of Chapter 28 of the Customs Control Act, with any modifications necessary for the enforcement or implementation of a non-reciprocal generalised system of preferences, for regulating the registration of persons referred to in that subsection.

Part 3 25

Other matters

Offences in terms of this Chapter

- 186.** (1) A person is guilty of an offence if that person contravenes or fails to comply with section 184.
- (2) A person who issues a document which is used for the preferential tariff treatment of goods as contemplated in this Chapter, or who submits such a document to the customs authority for purposes of this Act, is guilty of an offence if that document— 30
- (a) contains a false statement or incorrect information which that person knows is not true or could not reasonably have believed to be true;
 - (b) states, or omits to state, information which is stated or omitted with the intention to mislead; 35
 - (c) omits to state information or states incorrect information which that person knows or reasonably ought to have known would, if stated or stated correctly, have excluded the goods to which the document relates from such preferential tariff treatment; or 40
 - (d) was issued to conceal the true origin of the goods.
- (3) An offence referred to in subsection (2) is a Category 1 offence.

CHAPTER 10

ADVANCE RULING

Purpose and application of this Chapter 45

187. (1) The purpose of this Chapter is to provide for the issue of rulings to settle in advance the tariff classification and the determination of the valuation and origin of

¹¹⁶ Includes manufacturers. See definition of “produce” in section 1 of Customs Control Act.

- (d) om voorsiening te maak vir—
- (i) die voorwaardelike registrasie, vir doeleindes van daardie stelsel van voorkeure, van uitvoerders, produsente¹¹⁶ en verskaffers van goedere waarop daardie maatreëls van toepassing is;
 - (ii) enige vereistes waaraan ten opsigte van so 'n registrasie voldoen moet word; en 5
 - (iii) die afkeuring van aansoeke om registrasie en die wysiging, intrekking of opskorting van registrasies in omstandighede wat by reël voorgeskryf mag word;
- (e) om goedere wat uit die Republiek uitgevoer is of gaan word van voorkeur tariefbehandeling kragtens daardie stelsel van voorkeure uit te sluit— 10
- (i) indien die goedere uitgevoer word deur iemand wat nie vir doeleindes van daardie stelsel as 'n uitvoerder geregistreer is nie; of
 - (ii) indien die goedere, soos ingevolge die tersaaklike reëls van oorsprong vasgestel, nie van Suid-Afrikaanse oorsprong is nie; 15
- (f) om die hou van boeke, rekeninge en ander rekords deur 'n uitvoerder, produsent, verskaffer of ander persoon rakende die oorsprong van goedere wat onder voorkeur tariefbehandeling ingevolge daardie stelsel van voorkeure uitgevoer word, voor te skryf; of
- (g) aangaande enige ander vereistes wat nodig mag wees vir die toepassing of uitvoering van daardie maatreëls ten einde dit vir goedere van Suid-Afrikaanse oorsprong moontlik te maak om voordeel uit daardie stelsel van voorkeure te trek. 20
- (2) Reëls ingevolge subartikel (1) uitgevaardig, kan ter regulering van die registrasie van persone in daardie subartikel bedoel bepaling van Hoofstuk 28 van die Wet op Doeanereg, met enige veranderings wat vir die toepassing of uitvoering van 'n internasionale handelsooreenkoms nodig is, van toepassing maak. 25

Deel 3

Ander aangeleenthede

Misdrywe ingevolge hierdie Hoofstuk 30

186. (1) Iemand is aan 'n misdryf skuldig indien so iemand artikel 184 oortree of versuim om daaraan te voldoen.

(2) Iemand wat 'n dokument uitreik wat vir die voorkeur tariefbehandeling van goedere soos beoog in hierdie Hoofstuk gebruik word, of wat so 'n dokument vir doeleindes van hierdie Wet aan die doeanegesag verstrek, is aan 'n misdryf skuldig indien daardie dokument— 35

- (a) 'n vals verklaring of inligting wat nie waar is nie bevat wat so iemand weet nie waar is nie of nie redelikerwys as waar kon beskou het nie;
 - (b) inligting vermeld of verswyg wat vermeld of verswyg is met die doel om te mislei; 40
 - (c) inligting verswyg of inligting vermeld wat nie korrek is nie wat so iemand weet of redelikerwys behoort te gewees het dat, indien dit vermeld of korrek vermeld was, die goedere waarop die dokument betrekking het van sodanige voorkeur tariefbehandeling sou uitgesluit het; of
 - (d) uitgereik is om die ware oorsprong van die goedere te verdoesel. 45
- (3) 'n Misdryf in subartikel (2) bedoel, is 'n Kategorie 1 misdryf.

HOOFSTUK 10

VOORUITBESLISSINGS

Doel en toepassing van hierdie Hoofstuk

187. (1) Die doel van hierdie Hoofstuk is om voorsiening te maak vir die uitreik van beslissings om vooruit die tariefindeling en die bepaling van die waardasie en oorsprong 50

¹¹⁶ Sluit vervaardigers in. Kyk woordomskriving van “produseer” in artikel 1 van die Wet op Doeanereg.

goods of a specific class or kind cleared for home use or a customs procedure by or on behalf of a person to whom the ruling is issued.

(2) This Chapter applies to all goods in respect of which the tariff classification, valuation and origin must be determined.

Application for advance ruling 5

188. (1) Any person who is a licensee or registered person in terms of the Customs Control Act may apply to the customs authority for—

- (a) an advance tariff ruling;
- (b) an advance valuation ruling; or
- (c) an advance origin ruling. 10

(2) An application for an advance ruling—

- (a) must relate to only—
 - (i) one class or kind of goods; and
 - (ii) transactions between the same parties; and
- (b) must— 15
 - (i) be made in the form and format and in accordance with any requirements as may be prescribed by rule;
 - (ii) contain the information required on the application form or prescribed by rule;
 - (iii) be signed by the applicant; 20
 - (iv) be accompanied by any relevant supporting documents and information as may be prescribed by rule; and
 - (v) be submitted to the customs authority.

(3) The customs authority may request the applicant to submit any additional information that may be required before considering an application for an advance ruling. 25

(4) A fee prescribed by rule is payable in respect of each application.

Consideration of application

189. (1) The customs authority must consider each application and may—

- (a) grant the application; or 30
- (b) refuse the application.

(2) The customs authority may grant an application only if—

- (a) the advance ruling will promote or facilitate implementation of this Act and the Customs Control Act; and
- (b) there is sufficient certainty as to the application of the advance ruling to the goods to which the ruling will relate. 35

(3) The customs authority must refuse an application if—

- (a) any of the requirements of subsection (2) are not met;
- (b) the applicant—
 - (i) is not a licensee or registered person in terms of the Customs Control Act; 40
 - (ii) has not in respect of the application complied with a requirement of this Act;
 - (iii) has made a false or misleading statement in the application or has omitted to state a fact which is material to the consideration of the application; 45
 - (iv) raises a frivolous or vexatious issue in the application; or
 - (v) refuses or fails to provide the customs authority with additional information in connection with the application, if requested to do so;
- (c) the tax matters of the applicant are not in order as contemplated in section 917 of the Customs Control Act; or 50
- (d) the application raises an issue that is the same as or substantially similar to an issue—
 - (i) that is pending before a court; or
 - (ii) that is the subject of an administrative appeal in terms of Part 3 of Chapter 37 of the Customs Control Act. 55

(4) The applicant must be notified if the application is refused.

van goedere van 'n bepaalde klas of soort te beslis wat vir binnelandse gebruik of 'n doeaneprosedure geklaar word deur of namens iemand aan wie die beslissing uitgereik is.

(2) Hierdie Hoofstuk is van toepassing op alle goedere ten opsigte waarvan die tariefindeling, waardasie en oorsprong bepaal moet word. 5

Aansoek om vooruitbeslissing

188. (1) Iemand wat ingevolge die Wet op Doeanebeheer 'n lisensiehouer of 'n geregistreerde persoon is, kan by die doeanegesag aansoek doen om—

- (a) 'n vooruit-tariefbeslissing;
- (b) 'n vooruit-waardasiebeslissing; of 10
- (c) 'n vooruit-oorsprongbeslissing.

(2) 'n Aansoek om 'n vooruitbeslissing—

- (a) moet betrekking hê op slegs—
 - (i) een klas of soort van goedere; en
 - (ii) transaksies tussen dieselfde partye; en 15
- (b) moet—
 - (i) gedoen word in die vorm en formaat en ooreenkomstig enige vereistes wat by reël voorgeskryf mag word;
 - (ii) die inligting weergee wat op die aansoekvorm vereis word of by reël voorgeskryf mag word; 20
 - (iii) deur die applikant onderteken wees;
 - (iv) vergesel wees van enige tersaaklike ondersteunende dokumente en inligting wat by reël voorgeskryf mag word; en
 - (v) aan die doeanegesag voorgelê word.

(3) Die doeanegesag kan die applikant versoek om enige bykomende inligting wat vereis mag word, te verstrek voordat die doeanegesag 'n aansoek om 'n vooruitbeslissing oorweeg. 25

(4) 'n Fooi soos by reël voorgeskryf, is ten opsigte van elke aansoek betaalbaar.

Oorweging van aansoek

189. (1) Die doeanegesag moet elke aansoek oorweeg en kan— 30

- (a) die aansoek toestaan; of
 - (b) die aansoek afkeur.
- (2) Die doeanegesag kan 'n aansoek goedkeur slegs indien—
- (a) die vooruitbeslissing die toepassing van hierdie Wet en die Wet op Doeanebeheer sal bevorder of fasiliteer; en 35
 - (b) daar voldoende sekerheid is rakende die toepassing van die vooruitbeslissing op die goedere waarop die beslissing betrekking sal hê.

(3) Die doeanegesag moet 'n aansoek afkeur indien—

- (a) daar nie voldoen word aan enige van die voorskrifte van subartikel (2) nie;
- (b) die applikant— 40
 - (i) nie 'n lisensiehouer of 'n geregistreerde persoon ingevolge die Wet op Doeanebeheer is nie;
 - (ii) nie voldoen het aan 'n voorskrif van hierdie Wet ten opsigte van die aansoek nie;
 - (iii) 'n vals of misleidende verklaring in die aansoek gemaak het of versuim 45 het om 'n feit wat wesenlik tot die oorweging van die aansoek is, te verstrek;
 - (iv) 'n beuselagtige of kwelsugtige aangeleentheid in die aansoek opper; of
 - (v) weier of versuim om bykomende inligting in verband met die aansoek aan die doeanegesag te verstrek, indien daartoe versoek word; 50
- (c) die belastingsake van die applikant nie in orde is soos beoog in artikel 917 van die Wet op Doeanebeheer nie; of
- (d) die aansoek 'n aangeleentheid opper wat dieselfde of wesenlik dieselfde is as 'n aangeleentheid wat—
 - (i) voor 'n hof aanhangig is; of 55
 - (ii) die onderwerp van 'n administratiewe appèl ingevolge Deel 3 van Hoofstuk 37 van die Wet op Doeanebeheer is.

(4) Die applikant moet in kennis gestel word indien die aansoek afgekeur word.

Granting of application

- 190.** (1) If the customs authority grants an application, it must issue to the applicant an advance ruling, stating—
- (a) the title, number and date of the ruling;
 - (b) the name of the recipient of the ruling; 5
 - (c) whether it is an advance tariff ruling, an advance valuation ruling or an advance origin ruling, and, if an advance valuation ruling, particulars of the valuation criterion to which it relates;
 - (d) the class or kind of goods to which the ruling relates;
 - (e) particulars of the transactions to which the ruling relates, including the names of the parties to these transactions; 10
 - (f) particulars of the ruling made;
 - (g) any assumptions made or conditions imposed by the customs authority in connection with application of the ruling;
 - (h) the period for which the ruling will remain valid; and 15
 - (i) any other relevant information.
- (2) An advance ruling applies subject to the provisions of the ruling, and only—
- (a) to goods of the class or kind specified in the ruling when cleared by or on behalf of the recipient of the ruling for home use or a customs procedure during the validity period of the ruling; and 20
 - (b) in the case of an advance valuation ruling, to transactions between the parties specified in the ruling.
- (3) An advance ruling must be consistent with the provisions of this Act.

Validity period of advance ruling

- 191.** An advance ruling is valid for a period of three years as from the date of issue unless— 25
- (a) another period for the validity of the advance ruling is specified in the ruling;
 - (b) the advance ruling is withdrawn by the customs authority in terms of section 195;
 - (c) the advance ruling is set aside by a court; 30
 - (d) section 196 becomes applicable to the advance ruling;
 - (e) in the case of an advance tariff ruling, an amendment to an international instrument referred to in section 97 causes the advance ruling to lapse;
 - (f) in the case of an advance ruling on a valuation criterion, an amendment to an international instrument referred to in section 113 causes the advance ruling to lapse; or 35
 - (g) in the case of an advance origin ruling, an amendment to the rules of origin applicable in terms of section 167 causes the advance ruling to lapse.

Binding effect of advance ruling

- 192.** (1) An advance ruling binds both the recipient of the ruling and the customs authority. 40
- (2) An advance ruling must, to the extent applicable, be applied in—
- (a) any tariff self-determination, value self-determination or origin self-determination made in relation to goods of the class or kind specified in the ruling cleared for home use or a customs procedure by or on behalf of the recipient of the ruling; and 45
 - (b) any tariff determination or re-determination, value determination or re-determination or origin determination or re-determination made in relation to goods of the class or kind specified in the ruling cleared for home use or a customs procedure by or on behalf of the recipient of the ruling. 50

Toestaan van aansoek

- 190.** (1) Indien die doeanegesag 'n aansoek toestaan, moet die doeanegesag 'n vooruitbeslissing aan die applikant uitreik wat die volgende inligting vermeld:
- (a) Die titel, nommer en datum van die beslissing;
 - (b) die naam van die ontvanger van die beslissing; 5
 - (c) of dit 'n vooruit-tariefbeslissing, 'n vooruit-waardasiebeslissing of 'n vooruit-oorsprongbeslissing is, en in die geval van 'n vooruit-waardasiebeslissing, besonderhede van die waardasiemaatstaf waarop dit betrekking het;
 - (d) die klas of soort van goedere waarop die beslissing betrekking het; 10
 - (e) besonderhede van die transaksies waarop die beslissing betrekking het, met inbegrip van die name van die partye tot daardie transaksies;
 - (f) besonderhede van die beslissing;
 - (g) enige aannames of voorwaardes deur die doeanegesag gemaak of opgelê in verband met die toepassing van die beslissing; 15
 - (h) die tydperk waarvoor die beslissing geldig sal bly; en
 - (i) enige ander toepaslike inligting.
- (2) 'n Vooruitbeslissing geld behoudens die bepalings van die beslissing en is van toepassing slegs—
- (a) op goedere van die klas of soort in die beslissing gespesifiseer wanneer die goedere vir binnelandse gebruik of 'n doeaneprosedure deur of namens die ontvanger van die beslissing tydens die geldigheidstydperk van die beslissing geklaar word; en 20
 - (b) in die geval van 'n vooruit-waardasiebeslissing, op die transaksies tussen die partye in die beslissing gespesifiseer. 25
- (3) 'n Vooruitbeslissing moet met die bepalings van hierdie Wet bestaanbaar wees.

Geldigheidstydperk van vooruitbeslissing

- 191.** 'n Vooruitbeslissing is geldig vir 'n tydperk van drie jaar vanaf die datum van uitreiking tensy—
- (a) 'n ander tydperk vir die geldigheid van die vooruitbeslissing in die beslissing gespesifiseer word; 30
 - (b) die vooruitbeslissing ingevolge artikel 195 deur die doeanegesag ingetrek word;
 - (c) die vooruitbeslissing deur 'n hof ter syde gestel word;
 - (d) artikel 196 op die vooruitbeslissing van toepassing word; 35
 - (e) in die geval van 'n vooruit-tariefbeslissing, 'n wysiging van 'n internasionale instrument bedoel in artikel 97 tot gevolg het dat die vooruitbeslissing verval;
 - (f) in die geval van 'n vooruitbeslissing oor 'n waardasiemaatstaf, 'n wysiging van 'n internasionale instrument bedoel in artikel 113 tot gevolg het dat die vooruitbeslissing verval; of 40
 - (g) in die geval van 'n vooruit-oorsprongbeslissing, 'n wysiging van die reëls van oorsprong wat ingevolge artikel 167 van toepassing is, tot gevolg het dat die vooruitbeslissing verval.

Bindende werking van vooruitbeslissing

- 192.** (1) 'n Vooruitbeslissing bind beide die ontvanger van die beslissing en die doeanegesag. 45
- (2) 'n Vooruitbeslissing moet, in soverre dit van toepassing is, toegepas word by—
- (a) enige tarief self-bepaling, waarde self-bepaling of oorsprong self-bepaling wat gedoen word met betrekking tot goedere van die klas of soort in die beslissing gespesifiseer wat deur of namens die ontvanger van die beslissing vir binnelandse gebruik of 'n doeaneprosedure geklaar word; en 50
 - (b) enige tariefbepaling of -herbepaling, waardebepaling of -herbepaling of oorsprongbepaling of -herbepaling wat gedoen word met betrekking tot goedere van die klas of soort in die beslissing gespesifiseer wat deur of namens die ontvanger van die beslissing vir binnelandse gebruik of 'n doeaneprosedure geklaar word. 55

Clearance of goods under advance ruling

193. When clearing goods for home use or a customs procedure under an advance ruling, the recipient of the ruling or other person clearing the goods on behalf of the recipient must—

- (a) on request furnish such information concerning the goods as the customs authority may require; and 5
- (b) provide proof to the customs authority that the ruling applies to those goods.

Amendment of advance ruling

194. (1) The customs authority may amend an advance ruling either on application by the recipient of the ruling or on own initiative— 10

- (a) to correct an error in the ruling;
- (b) in the case of an advance tariff ruling, to give effect to an amendment or addition to an international instrument referred to in section 97;
- (c) in the case of an advance valuation ruling, to give effect to an amendment to an international instrument referred to in section 113; or 15
- (d) in the case of an advance origin ruling, to give effect to an amendment to the rules of origin applicable in terms of section 167.

(2) An advance ruling as it read immediately before an amendment effected in terms of subsection (1)(a) remains, despite the amendment, effective in respect of goods for which the recipient of the ruling is contractually bound by an existing contract concluded on the basis of the advance ruling before its amendment. 20

(3) The un-amended version of an advance ruling remains effective in terms of subsection (2) only if the recipient of the ruling so chooses and the customs authority so authorises, and then only—

- (a) for a period of 90 calendar days from the date of the amendment or for the remainder of the validity period of the advance ruling, whichever expires first; and 25
- (b) for determining whether any duty is payable on goods referred to in subsection (2), and if so, for assessing the amount of duty payable on those goods. 30

(4) The holder of an advance ruling who chooses to rely in relation to any specific goods on the un-amended version of an advance ruling, must—

- (a) notify the customs authority; and
- (b) submit to the customs authority any necessary supporting documents to prove the existence of a contract referred to in subsection (2). 35

(5) Subsections (2), (3) and (4) do not apply to an amendment to an advance ruling referred to in subsection (1)(b), (c) or (d).

Withdrawal of advance ruling

195. (1) The customs authority must withdraw an advance ruling if—

- (a) the advance ruling was issued as a result of fraud, misrepresentation or incorrect or incomplete information; or 40
- (b) in the case of an advance origin ruling, the advance ruling is in conflict with an international trade agreement concluded by the Republic, or to which the Republic becomes a party, after the ruling was issued.

(2) The withdrawal of an advance ruling in terms of subsection (1)(a) without replacing the advance ruling with an amended version is effective retrospectively from the date of issue of the advance ruling. 45

Klaring van goedere kragtens vooruitbeslissing

- 193.** Wanneer goedere kragtens 'n vooruitbeslissing vir binnelandse gebruik of 'n doeaneprosedure geklaar word, moet die ontvanger van die beslissing of ander persoon wat die goedere namens die ontvanger klaar—
- (a) die inligting rakende die goedere wat die doeanegesag mag vereis op versoek verstrek; en 5
 - (b) aan die doeanegesag bewys lewer dat die beslissing op daardie goedere van toepassing is.

Wysiging van vooruitbeslissing

- 194.** (1) Die doeanegesag kan 'n vooruitbeslissing òf op aansoek deur die ontvanger òf uit eie beweging wysig—
- (a) om 'n fout in die beslissing reg te stel;
 - (b) in die geval van 'n vooruit-tariefbeslissing, om uitvoering te gee aan 'n wysiging van of byvoeging tot 'n internasionale instrument bedoel in artikel 97; 15
 - (c) in die geval van 'n vooruit-waardasiebeslissing, om uitvoering te gee aan 'n wysiging van 'n internasionale instrument bedoel in artikel 113; of
 - (d) in die geval van 'n vooruit-oorsprongbeslissing, om uitvoering te gee aan 'n wysiging van die reëls van oorsprong wat ingevolge artikel 167 van toepassing is. 20
- (2) 'n Vooruitbeslissing soos dit gelui het onmiddellik voordat 'n wysiging ingevolge subartikel (1) (a) aangebring is, bly ten spyte van die wysiging van krag ten opsigte van goedere waarvoor die ontvanger van die beslissing kontraktueel deur 'n bestaande kontrak gebind is wat aangegaan is op die basis van die vooruitbeslissing voordat dit gewysig is. 25
- (3) Die ongewysigde weergawe van 'n vooruitbeslissing bly ingevolge subartikel (2) van krag slegs indien die ontvanger van die beslissing dit so verkies en die doeanegesag dit so magtig, en dan slegs—
- (a) vir 'n tydperk van 90 kalenderdae vanaf die datum van die wysiging of vir die oorblywende gedeelte van die geldigheids tydperk van die vooruitbeslissing, watter tydperk ook al eerste verstryk; en 30
 - (b) om te bepaal of enige reg op goedere bedoel in subartikel (2) betaalbaar is, en indien wel, om die bedrag van reg te bereken wat op daardie goedere betaalbaar is.
- (4) Die houer van 'n vooruitbeslissing wat verkies om met betrekking tot enige spesifieke goedere op die ongewysigde weergawe van 'n vooruitbeslissing te steun, moet—
- (a) kennis daarvan aan die doeanegesag gee; en
 - (b) aan die doeanegesag enige ondersteunende dokumente voorlê om die bestaan van 'n kontrak bedoel in subartikel (2) te bewys. 40
- (5) Subartikels (2), (3) en (4) is nie op 'n wysiging van 'n vooruitbeslissing bedoel in subartikel (1)(b), (c) of (d) van toepassing nie.

Intrekking van vooruitbeslissing

- 195.** (1) Die doeanegesag moet 'n vooruitbeslissing intrek indien—
- (a) die vooruitbeslissing uitgereik is as gevolg van bedrog, wanvoorstelling of foutiewe of onvolledige inligting; of 45
 - (b) in die geval van 'n vooruit-oorsprongbeslissing, die vooruitbeslissing strydig is met 'n internasionale handelsooreenkoms deur die Republiek aangegaan, of waartoe die Republiek 'n party word, nadat die beslissing uitgereik is.
- (2) Die intrekking van 'n vooruitbeslissing ingevolge subartikel (1)(a) sonder om die vooruitbeslissing met 'n gewysigde weergawe te vervang, is terugwerkend vanaf die datum van uitreiking van die vooruitbeslissing van krag. 50

Effect of subsequent change in law

- 196.** (1) An advance ruling ceases to be effective—
- (a) if a provision of this Act affecting the advance ruling is repealed or amended and that repeal or amendment renders the advance ruling incompatible with this Act; or
 - (b) if a court in a final judgement places an interpretation on a provision of this Act which renders the advance ruling legally incorrect and interpreting that provision was necessary for deciding the case before the court.
- (2) An advance ruling ceases to be effective immediately upon the occurrence of the circumstances described in subsection (1).

Rules to facilitate implementation of this Chapter

197. The Commissioner may in terms of section 224 make rules to facilitate the implementation of this Chapter, including rules determining additional grounds on which an advance ruling may be withdrawn or ceases to be effective.

Offences in terms of this Chapter

198. A person is guilty of an offence if that person fails to comply with a request issued by the customs authority to that person in terms of section 193(a).

CHAPTER 11

ADMINISTRATIVE PENALTIES

Part 1

Administrative penalties for breaches of this Act

Types of administrative penalties

- 199.** There are for purposes of enforcing this Act the following types of administrative penalties:
- (a) A fixed amount penalty referred to in section 201;
 - (b) a fixed percentage penalty referred to in section 203; and
 - (c) a prosecution avoidance penalty referred to in section 205.

Punishment for breaches of this Act

- 200.** If a person commits a breach of this Act, the customs authority may—
- (a) in the case of a non-prosecutable breach other than a breach referred to in paragraph (b), impose a fixed amount penalty for the breach;
 - (b) in the case of a non-prosecutable breach consisting of the non- or late payment of duty or interest on duty, impose a fixed percentage penalty for the breach; or
 - (c) in the case of a prosecutable breach—
 - (i) impose a prosecution avoidance penalty for the breach; or
 - (ii) lay a charge for the institution of criminal proceedings for the breach.

Fixed amount penalty

- 201.** (1) (a) The Minister must by notice in the *Gazette* list non-prosecutable breaches of this Act for which fixed amount penalties may be imposed.
- (b) A notice in terms of paragraph (a) must list non-prosecutable breaches under different categories as set out in subsection (2).
- (2) Fixed amount penalties for the different categories of non-prosecutable breaches of this Act are as follows:

Uitwerking van daaropvolgende verandering in die reg

- 196.** (1) 'n Vooruitbeslissing hou op om van krag te wees—
- (a) indien 'n bepaling van hierdie Wet wat die vooruitbeslissing raak, herroep of gewysig word en daardie herroeping of wysiging tot gevolg het dat die vooruitbeslissing onbestaanbaar met hierdie Wet word; of 5
 - (b) indien 'n hof in 'n finale beslissing 'n uitleg op 'n bepaling van hierdie Wet plaas wat tot gevolg het dat die vooruitbeslissing regtens nie korrek is nie, mits die uitleg van daardie bepaling nodig was om die saak voor die hof te beslis.
- (2) Die werking van 'n vooruitbeslissing kom tot 'n einde onmiddellik wanneer die omstandighede beskryf in subartikel (1) intree. 10

Reëls ter fasilitering van hierdie Hoofstuk

197. Die Kommissaris kan ingevolge artikel 224 reëls uitvaardig om die toepassing van hierdie Hoofstuk te fasiliteer, met inbegrip van reëls wat bykomende gronde bepaal waarop 'n vooruitbepaling ingetrek kan word of waarop die werking daarvan tot 'n 15 einde kom.

Misdrywe ingevolge hierdie Hoofstuk

198. Iemand is aan 'n misdryf skuldig indien so iemand versuim om te voldoen aan 'n versoek deur die doeanegesag aan daardie persoon ingevolge artikel 193(a) gerig.

HOOFSTUK 11

20

ADMINISTRATIEWE BOETES

Deel 1

Administratiewe boetes vir breuke van hierdie Wet

Tipes administratiewe boetes

199. Daar is vir doeleindes van die toepassing van hierdie Wet die volgende tipes 25 administratiewe boetes:

- (a) 'n vastebedragboete in artikel 201 bedoel;
- (b) 'n vastepersentasieboete in artikel 203 bedoel; en
- (c) 'n boete ter vermyding van vervolging in artikel 205 bedoel.

Strawwe vir breuke van hierdie Wet

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- 200.** Indien iemand 'n breuk van hierdie Wet begaan, kan die doeanegesag—
- (a) in die geval van 'n nie-vervolgbare breuk anders as 'n breuk bedoel in paragraaf (b), 'n vastebedragboete vir daardie breuk oplê;
 - (b) in die geval van 'n nie-vervolgbare breuk wat die nie-betaling of laat betaling van reg of rente op reg behels, 'n vastepersentasieboete vir die breuk oplê; of 35
 - (c) in die geval van 'n vervolgbare breuk—
 - (i) 'n boete ter vermyding van vervolging vir die breuk oplê; of
 - (ii) 'n klag lê vir 'n strafregtelike vervolging vir die breuk.

Vastebedragboete

- 201.** (1) (a) Die Minister moet by kennisgewing in die *Staatskoerant* 'n lys opstel van 40 nie-vervolgbare breuke van hierdie Wet waarvoor vastebedragboetes opgelê kan word.
- (b) 'n Kennisgewing ingevolge paragraaf (a), moet die nie-vervolgbare breuke lys onder die verskillende kategorieë soos in subartikel (2) vermeld.
- (2) Vastebedragboetes vir die verskillende kategorieë nie-vervolgbare breuke van hierdie Wet is soos volg: 45

FIXED AMOUNT PENALTIES

Category of breach	Amount of penalty
Category A	Maximum of R5 000 ¹¹⁷
Category B	R10 000
Category C	R15 000
Category D	R20 000

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(3) (a) If a person has been penalised in terms of section 202 for committing a non-prosecutable breach and within a period of three years after the penalty has been imposed, again commits the same non-prosecutable breach, the amount of the fixed amount penalty that may be imposed for that breach is double the applicable amount for that breach in terms of subsection (2). 10

(b) If a person has in accordance with paragraph (a) been penalised for committing a non-prosecutable breach with an amount double the applicable amount for that breach and thereafter, within the remaining part of the same three year period, again commits the same non-prosecutable breach, the amount of the fixed amount penalty that may be imposed for each time that breach was committed during the remaining part of that three year period, is three times the applicable amount for that breach in terms of subsection (2). 15
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Procedure for imposing fixed amount penalty

202. (1) If a person commits a non-prosecutable breach of this Act listed in terms of section 201(1), the customs authority may by notice to that person impose the appropriate fixed amount penalty for the breach in accordance with section 201(2) or (3). 25

(2) A penalty imposed in terms of subsection (1) must be paid to the Commissioner on or before a date specified in the notice or to which that date may have been postponed in terms of section 908 of the Customs Control Act.¹¹⁸

(3) (a) The customs authority may for a Category A breach referred to in the Table in section 201(2) instead of imposing a fixed amount penalty for the breach issue a written warning to the person who committed the breach. 30

(b) A warning issued to a person in terms of paragraph (a) must for purposes of section 201(3) be regarded to be a fixed amount penalty imposed on that person.

Fixed percentage penalty

203. (1) A failure to pay to the Commissioner on or before the due date an amount of duty self-assessed in terms of section 82(1)(a) or assessed in terms of section 83(2)(a) or (b) or 84(1)(a) or an underpayment of duty arising from an assessment in terms of section 83(2)(b) or 85(1)(a) or (b) is a non-prosecutable breach of this Act for which a fixed percentage penalty may be imposed. 35

(2) A fixed percentage penalty that may be imposed in terms of subsection (1) is 10 per cent of the amount of duty payable. 40

Procedure for imposing fixed percentage penalty

204. (1) If a person commits a non-prosecutable breach referred to in section 203(1), the customs authority may by notice to that person impose a fixed percentage penalty for the breach in accordance with that section. 45

(2) A penalty imposed in terms of subsection (1) must be paid to the Commissioner on or before a date specified in the notice or to which that date may have been postponed in terms of section 908 of the Customs Control Act.¹¹⁹

117. See section 202(3) for warning instead of penalty. A warning counts as a penalty for purposes of section 201(3).

118. Section 228 makes section 908 of the Customs Control Act applicable to this Act.

119. Section 228 makes section 908 of the Customs Control Act applicable to this Act.

VASTEBEDRAGBOETES

Kategorie breuk	Bedrag van boete
Kategorie A	Maksimum van R5 000 ¹¹⁷
Kategorie B	R10 000
Kategorie C	R15 000
Kategorie D	R20 000

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(3) (a) Indien iemand ingevolge artikel 202 vir die pleging van 'n nie-vervolgbare breuk beboet is en binne 'n tydperk van drie jaar nadat die boete opgelê is, weer dieselfde nie-vervolgbare breuk begaan, is die bedrag van die vastebedragboete wat vir daardie breuk opgelê kan word dubbel die toepaslike bedrag vir daardie breuk ingevolge subartikel (2).

(b) Indien iemand ooreenkomstig paragraaf (a) vir die pleging van 'n nie-vervolgbare breuk met 'n bedrag van dubbel die toepaslike bedrag vir daardie breuk beboet is en daarna, binne die oorblywende deel van dieselfde drie jaar tydperk, weer dieselfde nie-vervolgbare breuk begaan, is die bedrag van die vastebedragboete wat opgelê kan word vir elke keer wat daardie breuk gedurende die oorblywende deel van daardie drie jaar tydperk begaan word, drie keer die toepaslike bedrag vir daardie breuk ingevolge subartikel (2).

Prosedure vir oplegging van vastebedragboete 20

202. (1) Indien iemand 'n nie-vervolgbare breuk van hierdie Wet begaan wat ingevolge artikel 201(1) gelys is, kan die doeanegesag by kennisgewing aan daardie persoon die toepaslike vastebedragboete vir die breuk ooreenkomstig artikel 201(2) of (3) oplê.

(2) 'n Boete ingevolge subartikel (1) opgelê, moet aan die Kommissaris betaal word op of voor 'n datum in die kennisgewing vermeld of waartoe daardie datum ingevolge artikel 908 van die Wet op Doeanebeheer uitgestel mag word.¹¹⁸

(3) (a) Die doeanegesag kan, in stede daarvan om 'n vastebedragboete vir 'n Kategorie A breuk bedoel in die Tabel in artikel 201(2) op te lê, 'n skriftelike waarskuwing uitreik aan die persoon wat die breuk begaan het.

(b) 'n Waarskuwing ingevolge paragraaf (a) aan 'n persoon uitgereik, moet vir doeleindes van artikel 201(3) geag word 'n vastebedragboete te wees wat daardie persoon opgelê is.

Vastepersentasieboete

203. (1) 'n Versuim om op of voor die sperdatum vir betaling 'n bedrag van reg soos self aangeslaan ingevolge artikel 82(1)(a) of aangeslaan ingevolge artikel 83(2)(a) of (b) of 84(1)(a), of 'n kort-betaling van reg na aanleiding van 'n aanslag ingevolge artikel 83(2)(b) of 85(1)(a) of (b), aan die Kommissaris te betaal, is 'n nie-vervolgbare breuk van hierdie Wet waarvoor 'n vastepersentasieboete opgelê kan word.

(2) 'n Vastepersentasieboete wat ingevolge subartikel (1) opgelê kan word, is 10 persent van die bedrag van reg betaalbaar.

Prosedure vir oplegging van vastepersentasieboete

204. (1) Indien iemand 'n nie-vervolgbare breuk bedoel in artikel 203(1) pleeg, kan die doeanegesag by kennisgewing aan daardie persoon 'n vastepersentasieboete vir die breuk ooreenkomstig daardie artikel oplê.

(2) 'n Boete ingevolge subartikel (1) opgelê, moet aan die Kommissaris betaal word op of voor 'n datum in die kennisgewing vermeld of waartoe daardie datum ingevolge artikel 908 van die Wet op Doeanebeheer uitgestel mag word.¹¹⁹

117. Kyk artikel 202(3) vir 'n waarskuwing in plaas van 'n boete. 'n Waarskuwing geld as 'n boete vir doeleindes van artikel 201(3).

118. Artikel 228 maak artikel 908 van die Wet op Doeanebeheer op hierdie Wet van toepassing.

119. Artikel 228 maak artikel 908 van die Wet op Doeanebeheer op hierdie Wet van toepassing.

Prosecution avoidance penalty

205. (1) A prosecution avoidance penalty may, instead of a criminal prosecution, be imposed on a person who becomes liable to prosecution for any prosecutable breach of this Act.

- (2) Subsection (1) may not be applied to a person who on— 5
- (a) two separate occasions paid a prosecution avoidance penalty for a Category 1 offence and within a period of five years from the date of payment of the penalty on the first occasion again becomes liable to prosecution for a Category 1 offence;
 - (b) three separate occasions paid a prosecution avoidance penalty for a Category 2 offence and within a period of five years from the date of payment of the penalty on the first occasion again becomes liable to prosecution for a Category 2 offence; or 10
 - (c) three separate occasions paid a prosecution avoidance penalty for any offence in terms of this Act and within a period of five years from the date of payment of the penalty on the first occasion again becomes liable to prosecution for an offence in terms of this Act. 15

Procedure for imposing prosecution avoidance penalty

206. (1) If a person is liable to prosecution for a prosecutable breach of this Act, the customs authority may, subject to section 205(2), issue to that person a notice informing that person of the alleged breach and that prosecution can be avoided if that person elects to have the matter summarily settled by the customs authority by paying a prosecution avoidance penalty to the Commissioner on or before a date specified in the notice. 20

- (2) The amount of a prosecution avoidance penalty imposed in terms of section (1)—
- (a) must be determined in accordance with any limits as may be set by the Commissioner; and 25
 - (b) may not exceed the maximum fine a court may impose upon conviction of a person for the relevant breach.
- (3) Payment of a prosecution avoidance penalty in terms of this section—
- (a) does not amount to a conviction of the person paying the penalty in respect of the relevant breach; and 30
 - (b) indemnifies the person from prosecution for that breach.

Part 2

General matters

Effect of detention, seizure or confiscation of goods on application of this Chapter 35

207. The detention, seizure or confiscation of goods in terms of the Customs Control Act does not prevent the application of this Chapter in relation to breaches of this Act committed in respect of those goods.

Applicability of Chapter 37 proceedings¹²⁰

208. (1) The proceedings contemplated in Chapter 37 of the Customs Control Act, as may be appropriate in the circumstances, apply in respect of— 40

- (a) the imposition of an administrative penalty; or
- (b) the amount of an administrative penalty.

¹²⁰ As a general rule, none of the proceedings referred to in Chapter 37 of the Customs Control Act affects or suspends the obligation to pay an administrative penalty. See section 830 of that Act.

Boete ter vermyding van vervolging

205. (1) Iemand wat vervolgbaar raak vir enige vervolgbare breuk van hierdie Wet kan, in stede van 'n strafregtelike vervolging, 'n boete ter vermyding van vervolging opgelê word.

- (2) Subartikel (1) geld nie vir iemand wat by— 5
- (a) twee afsonderlike geleenthede 'n boete ter vermyding van vervolging vir 'n Kategorie 1 misdryf betaal het en binne 'n tydperk van vyf jaar vanaf die datum van betaling van die boete by die eerste geleentheid opgelê, weer vir 'n Kategorie 1 misdryf vervolgbaar word nie;
 - (b) drie afsonderlike geleenthede 'n boete ter vermyding van vervolging vir 'n Kategorie 2 misdryf betaal het en binne 'n tydperk van vyf jaar vanaf die datum van betaling van die boete by die eerste geleentheid opgelê, weer vir 'n Kategorie 2 misdryf vervolgbaar word nie; of 10
 - (c) drie afsonderlike geleenthede 'n boete ter vermyding van vervolging vir enige misdryf ingevolge hierdie Wet betaal het en binne 'n tydperk van vyf jaar vanaf die datum van betaling van die boete by die eerste geleentheid opgelê, weer vir 'n misdryf ingevolge hierdie Wet vervolgbaar word nie. 15

Prosedure vir oplegging van boete ter vermyding van vervolging

206. (1) Indien iemand vervolgbaar word vir 'n vervolgbare breuk van hierdie Wet kan die doeanegesag, behoudens artikel 205(2), 'n kennisgewing aan so iemand uitreik wat daardie persoon in kennis stel van die beweerde breuk en dat vervolging vermy kan word indien daardie persoon verkies om die aangeleentheid summier deur die doeanegesag te laat skik deur 'n boete ter vermyding van vervolging op of voor 'n datum in die kennisgewing vermeld aan die Kommissaris te betaal. 20

- (2) Die bedrag van 'n boete ter vermyding van vervolging ingevolge subartikel (1) opgelê— 25
- (a) moet bepaal word in ooreenstemming met enige perke wat deur die Kommissaris gestel mag word; en
 - (b) mag nie die maksimum boete oorskry wat 'n hof by skuldigbevinding van iemand vir die betrokke breuk mag oplê nie. 30
- (3) Betaling van 'n boete ter vermyding van vervolging ingevolge hierdie artikel—
- (a) word nie gereken as 'n skuldigbevinding van iemand wat die boete ten opsigte van die betrokke breuk betaal nie; en
 - (b) stel die persoon van vervolging vir daardie breuk vry.

Deel 2 35

Algemene aangeleenthede

Effek van detensie, beslaglegging of konfiskering van goedere op toepassing van hierdie Hoofstuk

207. Die detensie, beslaglegging of konfiskering van goedere ingevolge die Wet op Doeanebeheer verhinder nie die toepassing van hierdie Hoofstuk met betrekking tot breuke van hierdie Wet wat ten opsigte van daardie goedere begaan is nie. 40

Toepassing van Hoofstuk 37 verrigtinge¹²⁰

- 208.** (1) Die verrigtinge beoog in Hoofstuk 37 van die Wet op Doeanebeheer is, soos ook al in die omstandighede gepas mag wees, van toepassing ten opsigte van— 45
- (a) die oplegging van 'n administratiewe boete; of
 - (b) die bedrag van 'n administratiewe boete.

¹²⁰ As algemene reël raak geen van die verrigtinge bedoel in Hoofstuk 37 van die Wet op Doeanebeheer die verpligting om 'n boete te betaal nie, en word die verpligting om te betaal nie daardeur opgeskort nie.

(2) Only the amount of a prosecution avoidance penalty and not the imposition of such a penalty is subject to proceedings in terms of Part 3, 4 or 5 of Chapter 37.¹²¹

Rules to facilitate implementation of this Chapter

209. The Commissioner may in terms of section 224 make rules to facilitate the implementation of this Chapter, including rules prescribing the format of a notice referred to in section 202(1), 204(1) or 206(1) and the information which such a notice must contain. 5

Offences in terms of this Chapter

210. A person is guilty of an offence if that person has repeatedly for at least five times within a calendar year been penalised in terms of section 202 or 204 for committing a non-prosecutable breach or breaches of this Act and that person thereafter again commits a non-prosecutable breach of this Act within the same calendar year. 10

CHAPTER 12

JUDICIAL MATTERS

Part 1

Offences¹²² and penalties

Categories of offences in terms of this Act

211. An offence in terms of this Act must be classified as a Category 2 offence unless expressly stated that it is a Category 1 offence.

General Category 1 offences 20

- 212.** (1) A person is guilty of a Category 1 offence if that person—
- (a) makes a false statement or provides false or misleading information or omits to state with the intention to mislead information in any document that must in terms of this Act—
 - (i) be submitted to the Commissioner or the customs authority; or 25
 - (ii) be kept or retained by that person;
 - (b) submits to the Commissioner or the customs authority or produce to a customs officer a document in terms of this Act which—
 - (i) contains a false statement or misleading information which that person knows is not true or could not reasonably have believed to be true; or 30
 - (ii) omits to state information which was omitted with the intention to mislead;
 - (c) makes use of a document for purposes of this Act which—
 - (i) contains a false statement or misleading information which that person knows is not true or could not reasonably have believed to be true; or 35
 - (ii) omits to state information which was omitted with the intention to mislead;
 - (d) with the intention to evade duty on goods or to qualify for a refund or drawback—
 - (i) commits an unlawful act, including a breach of this Act or the Customs 40 Control Act;
 - (ii) assists another in the commission of such an act; or
 - (iii) is a party to the commission of such an act; or
 - (e) attempts to commit or assists in committing an act which is a Category 1 offence in terms of— 45
 - (i) this section; or
 - (ii) any other section of this Act.

121. The imposition of a prosecution avoidance penalty cannot be subject to appeal as the person paying the penalty does so because of own choice.

122. For criminal proceedings against corporate bodies or associations of persons other than corporate bodies, see section 332 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(2) Slegs die bedrag van 'n boete ter vermyding van vervolging, en nie die oplegging van so 'n boete nie, is aan verrigtinge ingevolge Deel 3, 4 of 5 van Hoofstuk 37 onderworpe.¹²¹

Reëls ter fasilitering van implementering van hierdie Hoofstuk

209. Die Kommissaris kan ingevolge artikel 224 reëls ter fasilitering van die implementering van hierdie Hoofstuk uitvaardig, met inbegrip van reëls wat die vorm en formaat van 'n kennisgewing bedoel in artikel 202(1), 204(1) of 206(1) en die inligting wat so 'n kennisgewing moet bevat, voorskryf. 5

Misdrywe ingevolge hierdie Hoofstuk

210. Iemand is aan 'n misdryf skuldig indien so iemand herhaaldelik minstens vyf 10 keer tydens 'n kalenderjaar ingevolge artikel 202 of 204 vir die pleging van 'n nie-vervolgbare breuk of breuke van hierdie Wet beboet is en daardie persoon daarna weer binne dieselfde kalenderjaar 'n nie-vervolgbare breuk van hierdie Wet pleeg.

HOOFSTUK 12

REGSAANGELEENTHEDE 15

Deel 1

Misdrywe¹²² en strawwe

Kategorieë van misdrywe ingevolge hierdie Wet

211. 'n Misdryf ingevolge hierdie Wet moet as 'n Kategorie 2 misdryf geklassifiseer word tensy daar uitdruklik vermeld word dat dit 'n Kategorie 1 misdryf is. 20

Algemene Kategorie 1 misdrywe

212. (1) Iemand is aan 'n Kategorie 1 misdryf skuldig indien so iemand—
- (a) 'n vals verklaring maak of vals of misleidende inligting verstrek, of met die bedoeling om te mislei, versuim om inligting te verstrek in enige dokument wat ingevolge hierdie Wet— 25
 - (i) by die Kommissaris of die doeanegesag ingedien moet word; of
 - (ii) deur so iemand gehou of bewaar moet word;
 - (b) 'n dokument ingevolge hierdie Wet by die Kommissaris of die doeanegesag indien of aan 'n doeanebeampte toon wat—
 - (i) 'n vals verklaring of misleidende inligting bevat wat so iemand weet nie 30 waar is nie of nie redelikerwys as waar kon beskou het nie; of
 - (ii) inligting verswyg wat verswyg word met die bedoeling om te mislei;
 - (c) vir doeleindes van hierdie Wet gebruik maak van 'n dokument wat—
 - (i) 'n vals verklaring of misleidende inligting bevat wat so iemand weet nie 35 waar is nie of nie redelikerwys as waar kon beskou het nie; of
 - (ii) inligting verswyg wat verswyg word met die bedoeling om te mislei;
 - (d) met die bedoeling om reg op goedere te ontduik of om vir 'n terugbetaling of teruggawe te kwalifiseer—
 - (i) 'n onwettige daad, met inbegrip van 'n breuk van hierdie Wet of die Wet 40 op Doeanebeheer, pleeg;
 - (ii) iemand anders met die pleging van so 'n daad help; of
 - (iii) 'n party is tot die pleging van so 'n daad; of
 - (e) pog om 'n daad te pleeg, of hulp te verleen by die pleging van 'n daad, wat 'n Kategorie 1 misdryf is ingevolge—
 - (i) hierdie artikel; of 45
 - (ii) enige ander artikel van hierdie Wet.

121. Die oplegging van 'n boete ter vermyding van vervolging kan nie aan appèl onderhewig wees nie aangesien iemand wat die boete betaal dit uit eie keuse doen.

122. Kyk artikel 332 van die Strafproseswet, 1977 (Wet Nr. 51 of 1977), vir strafregtelike verrigtinge teen regs persone of verenigings van persone wat nie regs persone is nie.

- (2) A person who conducts business by trading in or processing imported goods is guilty of a Category 1 offence if that person without reasonable cause for believing that duty on the goods has been paid—
- (a) buys, acquires or receives imported goods on which duty has been evaded;
 - (b) is in possession of imported goods on which duty has been evaded; 5
 - (c) sells or offers or advertise for sale imported goods on which duty has been evaded; or
 - (d) processes imported goods on which duty has been evaded.
- (3) If in any proceedings against a person charged with the commission of an offence referred to in subsection (2)(a), (b), (c) or (d) the following facts are proved, such proof is in the absence of evidence to the contrary which raises a reasonable doubt, sufficient evidence of the absence of reasonable cause:
- (a) That the accused is a person who conducts business by trading in or processing imported goods;
 - (b) that duty on the imported goods which are the subject of the charge has been evaded; and 15
 - (c) that the accused person has, as the case may be, purchased, acquired, received, been found in possession of, sold, offered or advertised for sale or processed those goods. 20

General Category 2 offences

- 213.** A person is guilty of a Category 2 offence if that person—
- (a) performs an act without the authorisation, permission or approval of the customs authority if such act may in terms of this Act only be performed on authority of such authorisation, permission or approval;
 - (b) contravenes or fails to comply with a condition subject to which any authorisation, permission, approval or exemption was granted by the customs authority in terms of this Act; or 25
 - (c) attempts to commit or assists in committing an act which is a Category 2 offence in terms of this section or any other section of this Act. 30

Offences committed outside Republic

- 214.** (1) A person is guilty of an offence if that person—
- (a) at a place outside the Republic designated in terms of section 34 of the Customs Control Act to be a place of entry or exit for the Republic, commits an act which would have constituted an offence in terms of this Act had that act been committed at a place of entry or exit inside the Republic; or 35
 - (b) in a country which is a party to an international trade agreement referred to in Chapter 9, commits an act in relation to goods which would have constituted an offence in terms of that Chapter had that act in relation to those goods been committed inside the Republic.
- (2) A person charged with an offence in terms of subsection (1) may be prosecuted for that offence in any court having jurisdiction at the place where the accused happens to be in the Republic. 40

Penalty for Category 1 offence

- 215.** (1) A person convicted of a Category 1 offence in terms of this Act is liable to imprisonment for a period not exceeding five years or to a fine not exceeding R1 000 000 or a higher amount as may be prescribed in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or to both that fine and that imprisonment. 45
- (2) If a person convicted for an offence referred to in section 212(1)(a), (b), (c), (d) or (e)(i) or (2) is at any time within five years of the date of conviction again convicted for an offence referred to in that section, the court must consider the imposition of a period of imprisonment not exceeding the period referred to in subsection (1) without the option of a fine or both such imprisonment and a fine referred to in that subsection. 50
- (3) This section does not affect the application of section 216.

(2) Iemand wat besigheid doen deur handel te dryf in ingevoerde goedere of ingevoerde goedere te prossesseer, is aan 'n Kategorie 1 misdryf skuldig indien so iemand sonder redelike gronde om te glo dat reg op die goedere betaal is—

- (a) ingevoerde goedere waarop reg ontduik is, koop, aanskaf of ontvang;
- (b) in besit is van ingevoerde goedere waarop reg ontduik is; 5
- (c) ingevoerde goedere waarop reg ontduik is, verkoop of te koop aanbied of vir verkoop adverteer; of
- (d) ingevoerde goedere waarop reg ontduik is, prosesseeer.

(3) Indien tydens verrigtinge teen iemand wat aangekla word weens die pleging van 'n misdryf bedoel in subartikel (2)(a), (b), (c) of (d), die volgende feite bewys word, is sodanige bewys in die afwesigheid van getuienis tot die teendeel wat redelike twyfel daarstel, afdoende bewys van die afwesigheid van redelike gronde: 10

- (a) Dat die beskuldigde iemand is wat besigheid doen deur in ingevoerde goedere handel te dryf of ingevoerde goedere te prossesseer;
- (b) dat reg op die ingevoerde goedere wat die onderwerp van die aanklag is, 15 ontduik is; en
- (c) dat die beskuldigde daardie goedere, na gelang van die geval, gekoop, aangeskaf, ontvang, in besit gehad, verkoop, vir verkoop aangebied of geadverteer of geprosesseer het.

Algemene Kategorie 2 misdrywe 20

213. Iemand is aan 'n Kategorie 2 misdryf skuldig indien so iemand—

- (a) 'n handeling sonder die magtiging, toestemming of goedkeuring van die doeanegesag verrig indien so 'n handeling ingevolge hierdie Wet slegs op gesag van so 'n magtiging, toestemming of goedkeuring verrig mag word;
- (b) 'n voorwaarde onderworpe waaraan enige magtiging, toestemming, 25 goedkeuring of ontheffing deur die doeanegesag ingevolge hierdie Wet toegestaan is, oortree of versuim om daaraan te voldoen; of
- (c) pogg om 'n daad wat ingevolge hierdie artikel of enige ander artikel van hierdie Wet 'n Kategorie 2 misdryf is, te pleeg of hulp by die pleging van so 'n daad te verleen. 30

Misdrywe buite Republiek gepleeg

214. (1) Iemand is aan 'n misdryf skuldig indien so iemand—

- (a) by 'n plek buite die Republiek wat ingevolge artikel 34 van die Wet op Doeanebeheer as 'n plek van toegang of uitgang vir die Republiek aangewys is, 'n daad pleeg wat ingevolge hierdie Wet 'n misdryf sou wees indien daardie daad by 'n plek van toegang of uitgang binne die Republiek gepleeg was; of 35
- (b) in 'n land wat 'n party is tot 'n internasionale handelsooreenkoms bedoel in Hoofstuk 9 'n daad met betrekking tot goedere pleeg wat ingevolge daardie Hoofstuk 'n misdryf sou wees indien daardie daad met betrekking tot daardie goedere in die Republiek gepleeg was. 40

(2) Iemand wat ingevolge subartikel (1) van 'n misdryf aangekla word, kan vir daardie misdryf vervolgd word in enige hof wat jurisdiksie het by die plek waar die beskuldigde in die Republiek is.

Straf vir Kategorie 1 misdrywe

215. (1) Iemand wat aan 'n Kategorie 1 misdryf ingevolge hierdie Wet skuldig bevind word, is by skuldigbevinding strafbaar met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar of met 'n boete van hoogstens R1 000 000 of 'n hoër bedrag wat ingevolge die Wet op die Aanpassing van Boetes, 1991 (Wet Nr. 101 van 1991), voorgeskryf mag word, of met beide daardie boete en daardie gevangenisstraf. 45

(2) Indien iemand wat aan 'n misdryf bedoel in artikel 212(1)(a), (b), (c), (d) of (e)(i) of (2) skuldig bevind is te eniger tyd binne vyf jaar na die datum van skuldigbevinding weer aan 'n misdryf bedoel in daardie artikel skuldig bevind word, moet die hof die oplegging oorweeg van 'n tydperk van gevangenisstraf van hoogstens die tydperk bedoel in subartikel (1) sonder die opsie van 'n boete, of van beide sodanige gevangenisstraf en 'n boete in daardie subartikel bedoel. 55

(3) Hierdie artikel doen nie afbreuk aan die toepassing van artikel 216 nie.

Additional punitive powers of court in criminal proceedings

- 216.** (1) A court convicting a person for an offence in terms of this Act involving the non-payment or evasion of duty may summarily make an inquiry into the amount of the unpaid duty and make an order regarding the payment to the Commissioner of that amount. 5
- (2) A court convicting a person for an offence referred to in section 212(1) may—
- (a) summarily make an inquiry into the amount of any duty the convicted person may have evaded in committing the offence and, in addition to any other penalty imposed on that person for committing that offence, impose a fine on that person not exceeding three times the amount of duty that was evaded; and 10
 - (b) summarily make an inquiry as to anything that has been used in the commission of that offence, including any vessel, aircraft or vehicle, and declare that thing forfeited to the state.
- (3) A court convicting a person for an offence referred to in section 179(3), 186(2) or 212(2) may— 15
- (a) summarily inquire into any benefit the convicted person may have gained in committing the offence;
 - (b) determine the monetary value of that benefit; and
 - (c) in addition to any other penalty imposed on that person for committing that offence, impose a fine on that person not exceeding three times the amount of the monetary value of that benefit. 20

Penalty for Category 2 offence

- 217.** (1) A person convicted of a Category 2 offence in terms of this Act is liable to imprisonment for a period not exceeding three years or to a fine not exceeding R500 000 or a higher amount as may be prescribed in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or to both that fine and that imprisonment. 25
- (2) A Category 2 offence is despite subsection (1) punishable as if it were a Category 1 offence if it is proved that the offence was committed to evade duty.

Liability of registered agent and person managing juristic entity

- 218.** (1) If an importer, exporter, carrier or other person not located in the Republic commits an act (including an omission to perform an act) which is an offence in terms of this Act, the registered agent in the Republic of that importer, exporter, carrier or other person is guilty of an offence if that agent— 30
- (a) knew or should reasonably have known that the importer, exporter, carrier or other person is to commit that act and failed to take reasonable steps within the powers of the agent to prevent that importer, exporter, carrier or other person from committing that act; or 35
 - (b) when becoming aware of that act, failed to notify the customs authority of the commission of that act.
- (2) If a juristic entity commits an act (including an omission to perform an act) which is an offence in terms of this Act, a person who is a director, administrator or trustee of that entity is guilty of an offence if that person— 40
- (a) knew or should reasonably have known that the entity is to commit that act and failed to take reasonable steps within the powers of that person to prevent the entity from committing that act; or 45
 - (b) when becoming aware of that act, failed to notify the customs authority of the commission of that act.
- (3) An offence in terms of subsection (1) or (2) is—
- (a) a Category 1 offence if the offence committed by the importer, exporter, carrier or other person, or the juristic entity, is a Category 1 offence; or 50

Bykomende strafbevoegdhede van howe in strafregtelike verrigtinge

- 216.** (1) 'n Hof wat iemand aan 'n misdryf ingevolge hierdie Wet skuldig bevind wat die nie-betaling of ontduiking van reg behels, kan op staande voet 'n ondersoek instel na die bedrag van die onbetaalde reg en 'n bevel gee rakende die betaling van daardie bedrag aan die Kommissaris. 5
- (2) 'n Hof wat iemand aan 'n misdryf bedoel in artikel 212(1) skuldig bevind, kan—
- (a) op staande voet ondersoek instel na die bedrag van enige reg wat die veroordeelde persoon deur die pleeg van die misdryf mag ontduik het, en benewens enige ander straf wat daardie persoon vir die pleging van daardie misdryf opgelê is, daardie persoon 'n boete oplê van hoogstens drie keer die bedrag van die reg wat ontduik is; en 10
 - (b) op staande voet ondersoek instel betreffende enigiets wat gebruik is in die pleging van daardie misdryf, met inbegrip van enige vaartuig, vliegtuig of voertuig, en soiets aan die Staat verbeurd verklaar.
- (3) 'n Hof wat iemand aan 'n misdryf bedoel in artikel 179(3), 186(2) of 212(2) skuldig bevind, kan— 15
- (a) op staande voet ondersoek instel na enige voordeel wat die veroordeelde persoon deur die pleging van die misdryf mag verkry het;
 - (b) die geldwaarde van daardie voordeel bepaal; en
 - (c) benewens enige ander straf wat daardie persoon vir die pleging van daardie misdryf opgelê is, daardie persoon 'n boete oplê van hoogstens drie keer die bedrag van die geldwaarde van daardie voordeel. 20

Straf vir Kategorie 2 misdrywe

- 217.** (1) Iemand wat aan 'n Kategorie 2 misdryf ingevolge hierdie Wet skuldig bevind word, is strafbaar met gevangenisstraf vir 'n tydperk van hoogstens drie jaar of met 'n boete van hoogstens R500 000 of 'n hoër bedrag wat ingevolge die Wet op die Aanpassing van Boetes, 1991 (Wet Nr. 101 van 1991), voorgeskryf mag word, of met beide daardie boete en daardie gevangenisstraf. 25
- (2) 'n Kategorie 2 misdryf is ondanks subartikel (1) strafbaar asof dit 'n Kategorie 1 misdryf is indien daar bewys word dat die misdryf gepleeg is met die doel om reg te ontduik. 30

Aanspreeklikheid van geregistreerde agent en persoon wat regsentiteit bestuur

- 218.** (1) Indien 'n invoerder, uitvoerder, vervoerder of ander persoon wat nie in die Republiek gesetel is nie 'n daad pleeg (met inbegrip van 'n versuim om 'n handeling te verrig) wat 'n misdryf ingevolge hierdie Wet is, is die geregistreerde agent in die Republiek van daardie invoerder, uitvoerder, vervoerder of ander persoon aan 'n misdryf skuldig indien daardie agent— 35
- (a) geweet het of redelikerwys moes geweet het dat die invoerder, uitvoerder, vervoerder of ander persoon daardie daad sou pleeg en versuim het om redelike stappe, binne die bestek van die agent se bevoegdheid, te doen om te voorkom dat daardie invoerder, uitvoerder, vervoerder of ander persoon daardie daad pleeg; of 40
 - (b) toe die agent bewus geword het van daardie daad, versuim het om die doeanegesag van die pleging van daardie daad in kennis te stel.
- (2) Indien 'n regsentiteit 'n daad pleeg (met inbegrip van 'n versuim om 'n handeling te verrig) wat 'n misdryf ingevolge hierdie Wet is, is iemand wat 'n direkteur, administrateur of trustee van daardie entiteit is, aan 'n misdryf skuldig indien so iemand— 45
- (a) geweet het of redelikerwys moes geweet het dat die entiteit daardie daad sou pleeg en versuim het om redelike stappe, binne die bestek van daardie persoon se bevoegdheid, te doen om te voorkom dat die entiteit daardie daad pleeg; of 50
 - (b) toe hy of sy bewus geword het van daardie daad, versuim het om die doeanegesag van die pleging van daardie daad in kennis te stel.
- (3) 'n Misdryf ingevolge subartikel (1) of (2) is— 55
- (a) 'n Kategorie 1 misdryf indien die misdryf wat deur die invoerder, uitvoerder, vervoerder of ander persoon, of die regsentiteit, gepleeg is, 'n Kategorie 1 misdryf is; of

(b) a Category 2 offence if the offence committed by the importer, exporter, carrier or other person, or the juristic entity, is a Category 2 offence.

(4) If a juristic entity is liable to prosecution for a breach of this Act which is an offence in terms of this Act, any person who, at the time of the commission of that breach, was a director, administrator or trustee of that juristic entity, or an employee of that entity in a managerial position, or managing on behalf of the entity any premises or business in or in connection with which that breach was committed, is in addition to the entity liable to prosecution for that breach—

- (a) if that person—
 - (i) acting on behalf or in the interests of the entity actually committed the breach; or
 - (ii) participated in the commission of the breach; or
- (b) if that person did not actually commit or participated in the commission of the breach, but failed to take reasonable steps within the powers of that person when becoming aware of the breach, to prevent the entity from continuing with the commission of the breach.

Liability of ordinary employee of juristic entity

219. If a juristic entity is liable to prosecution for a breach of this Act which is an offence in terms of this Act, any person who at the time of the commission of that breach was an employee of that entity other than an employee referred to in section 218(4) is, in addition to the entity, liable to prosecution for that breach if that person—

- (a) acting on behalf of the entity actually committed the breach; or
- (b) participated in the commission of the breach.

Part 2

Other judicial matters¹²³ 25

Civil action arising from this Act

220. (1) The Commissioner may institute any civil actions necessary for enforcing or implementing this Act, including claims for amounts owing in terms of this Act.¹²⁴

(2) The Commissioner must be cited as defendant or respondent in any civil actions against the state, including SARS and the customs authority, which arises from the enforcement or implementation of this Act. 30

Admissibility of certain statements in documents

221. In any criminal or civil proceedings arising from the application of this Act, any statement in any record, letter or other document submitted, kept or received by or on behalf of any person to the effect that goods of a particular price, value (including any commission, discount, cost, charge, expense, royalty, freight, tax, drawback, refund, rebate or other information which relates to such goods and has a bearing on such price or value), quantity, quality, nature, strength or other characteristic have been produced, imported, ordered, supplied, purchased, sold, dealt with, processed, traded in or held in stock by that person, is admissible as evidence that that person has produced, imported, ordered, supplied, purchased, sold, dealt with, processed, traded in or held in stock goods of that price, value, quantity, quality, nature, strength or other characteristic. 40

123. Certain provisions of the Customs Control Act on judicial procedures, such as advance notice of judicial proceedings against SARS and the limitation of the period for instituting legal proceedings against SARS, equally apply to causes of action arising from the enforcement or implementation of the Customs Duty Act. See sections 896 and 897 of the Customs Control Act.

124. The Prescription Act determines the period within which civil actions for amounts owing must be instituted.

(b) 'n Kategorie 2 misdryf indien die misdryf wat deur die invoerder, uitvoerder, vervoerder of ander persoon, of die regsentiteit, gepleeg is 'n Kategorie 2 misdryf is.

(4) Indien 'n regsentiteit vervolg kan word vir 'n breuk van hierdie Wet wat 'n misdryf ingevolge hierdie Wet is, kan iemand wat ten tye van die pleging van daardie breuk 'n 5
direkteur, administrateur of trustee van daardie regsentiteit was, of 'n werknemer van daardie entiteit in 'n bestuurspos was, of namens die entiteit enige perseel of besigheid bestuur het waarop of in verband waarmee daardie breuk gepleeg is, benewens die entiteit vir daardie breuk vervolg word—

(a) indien so iemand— 10

(i) handelende namens of in belang van die entiteit die breuk in werklikheid self gepleeg het; of

(ii) deelgeneem het aan die pleging van die breuk; of

(b) indien so iemand nie die breuk in werklikheid self gepleeg of in die pleging daarvan deelgeneem het nie, maar toe hy of sy bewus geword het van die 15
breuk versuim het om redelike stappe binne die bestek van daardie persoon se bevoegdheid te doen om te voorkom dat die entiteit met die pleging van die breuk voortgaan.

Aanspreeklikheid van gewone werknemer van regsentiteit

219. Indien 'n regsentiteit vervolg kan word vir 'n breuk van hierdie Wet wat 'n 20
misdryf ingevolge hierdie Wet is, kan iemand wat ten tye van die pleging van daardie breuk 'n werknemer, anders as 'n werknemer bedoel in artikel 218(4), van daardie entiteit was, benewens die entiteit vir daardie breuk vervolg word indien so iemand—

(a) handelende namens of in belang van die entiteit die breuk in werklikheid self 25
gepleeg het; of

(b) deelgeneem het aan die pleging van die breuk.

Deel 2

Ander regsangeleenthede¹²³

Siviele aksie wat voortspruit uit hierdie Wet

220. (1) Die Kommissaris kan enige siviele aksies wat nodig is vir die toepassing of 30
implementering van hierdie Wet, met inbegrip van eise vir bedrae wat ingevolge hierdie Wet verskuldig is, instel.¹²⁴

(2) Die Kommissaris moet as verweerder of respondent in enige siviele aksies teen die Staat, met inbegrip van SAID en die doeanegesag, wat uit die toepassing of 35
implementering van hierdie Wet ontstaan, gesitueer word.

Toelaatbaarheid van sekere bewerings in dokumente

221. In enige strafregtelike of siviele verrigtinge wat uit die toepassing van hierdie Wet ontstaan, is enige bewering in enige rekord, brief of ander dokument wat deur of namens iemand ingedien, voorgelê, gehou of ontvang is, met die strekking dat goedere van 'n bepaalde prys, waarde (met inbegrip van enige kommissie, afslag, onkoste, fooi, 40
uitgawe, tantième, vragprys, belasting, teruggawe, terugbetaling, korting of ander inligting betreffende sodanige goedere en op sodanige prys of waarde betrekking het), hoeveelheid, kwaliteit, aard, sterkte of ander eienskap deur so iemand geproduseer, ingevoer, bestel, verskaf, gekoop, verkoop, mee gehandel, geprosesseer, verhandel of in voorraad gehou is, as getuienis toelaatbaar dat daardie persoon goedere van daardie 45
prys, waarde, hoeveelheid, kwaliteit, aard, sterkte of ander eienskap geproduseer, ingevoer, bestel, verskaf, gekoop, verkoop, mee gehandel, geprosesseer, verhandel of in voorraad gehou het.

123. Sekere bepalinge van die Wet op Doeanebeheer rakende regsverrigtinge, soos vooraf kennisgewing van regsgedinge teen SAID en die beperking van die tydperk waarbinne regsgedinge teen SAID ingestel kan word, is insgelyks van toepassing op skuldoorsaak wat uit die toepassing of implementering van die Wet op Doeaneregte voortspruit. Kyk artikels 896 en 897 van die Wet op Doeanebeheer.

124. Die Wet op Verjaring bepaal die tydperk waarbinne siviele aksies vir bedrae wat verskuldig is, ingestel moet word.

Jurisdiction of magistrate's court

222. (1) A magistrate's court may hear and decide any criminal action against a person for an offence in terms of this Act and impose any penalty determined for such offence within its jurisdiction in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).

(2) A magistrate's court may hear and decide any civil action for the payment of any duty, interest, administrative penalty or other money claimed by the Commissioner in terms of this Act within its jurisdiction in terms of the Magistrates' Courts Act, 1944. 5

Procedure for collection of debt if not paid by due date

223. (1) If a debt referred to in section 26 or 44 (other than a prosecution avoidance penalty) is not paid to the Commissioner on or before the due date, the Commissioner may file with the clerk or registrar of any competent court a statement stating— 10

- (a) the amount of the debt;
- (b) the due date on which the payment was payable; and
- (c) the name of the person by whom the debt is payable.

(2) A statement referred to in subsection (1) must be certified by or on behalf of the Commissioner as correct. 15

(3) A statement filed in accordance with subsection (1) has all the effects of, and any proceedings may be taken thereon, as if it were a civil judgement lawfully given in that court in favour of the Commissioner for a liquid debt of the amount specified in the statement. 20

(4) The amount of a debt contained in a statement filed with the clerk of a magistrate's court in accordance subsection (1) may not exceed the civil jurisdiction of the magistrate's court in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).

(5) Pending the conclusion of any proceedings referred to in Chapter 37 of the Customs Control Act regarding a dispute as to the amount of a debt payable, the statement filed in terms of subsection (1) in respect of that debt must for purposes of subsection (3) be regarded to be correct. 25

(6) (a) The Commissioner may by notice in writing addressed to the clerk or registrar of the relevant court, withdraw a statement referred to in subsection (1).

(b) A withdrawn statement ceases to have any effect, but does not prevent the Commissioner from instituting proceedings afresh under subsection (1) in respect of the debt referred to in the withdrawn statement. 30

CHAPTER 13

MISCELLANEOUS MATTERS

Rules 35

224. (1) The Commissioner may make rules to facilitate the implementation of this Act or any Chapter, Part or other provision of this Act, including rules prescribing—

- (a) any matter that may be prescribed by rule in terms of this Act;
- (b) the form and format, and contents, of any report, notice or other document that must be submitted to the Commissioner, the customs authority or a customs officer in terms of a provision of this Act; 40
- (c) the manner in which and the persons by whom such reports, notices or other documents must be submitted, and the persons who must submit any such reports, notices or other documents electronically;
- (d) the combination or simultaneous submission of such reports, notices or other documents; 45
- (e) the circumstances in, and the conditions on, which any such reports, notices or other documents may be amended or corrected, and procedures for the amendment or correction of any such reports, notices or other documents;

Jurisdiksie van landdroshof

222. (1) 'n Landdroshof kan binne sy jurisdiksie ingevolge die Wet op Landdroshowe, 1944 (Wet Nr. 32 van 1944), enige strafregtelike aksie teen iemand vir 'n misdryf ingevolge hierdie Wet aanhoor en beslis, en enige straf wat vir so 'n misdryf bepaal word, oplê. 5

(2) 'n Landdroshof kan binne sy jurisdiksie ingevolge die Wet op Landdroshowe, 1944, enige siviele aksie vir die betaling van enige reg, rente, administratiewe boete of ander gelde ingevolge hierdie Wet deur die Kommissaris geëis, aanhoor en beslis.

Prosedure vir invordering van skuld nie teen sperdatum betaal nie

223. (1) Indien 'n skuld bedoel in artikel 26 of 44 (anders as 'n boete ter vermyding van vervolging) nie op of voor die sperdatum vir betaling aan die Kommissaris betaal word nie, kan die Kommissaris by die klerk of griffier van enige bevoegde hof 'n verklaring met vermelding van die volgende indien: 10

- (a) Die bedrag van die skuld;
- (b) die sperdatum vir betaling van die skuld; en 15
- (c) die naam van die persoon deur wie die skuld betaalbaar is.

(2) 'n Verklaring bedoel in subartikel (1) moet deur of namens die Kommissaris as korrek gesertifiseer word.

(3) 'n Verklaring wat ooreenkomstig subartikel (1) ingedien is, het al die gevolge van 'n siviele hofbeslissing, en enige verrigtinge kan op gesag daarvan ingestel word asof dit 'n siviele hofbeslissing is, wat regtens in daardie hof ten gunste van die Kommissaris gegee is vir 'n likwiede skuld van die bedrag vermeld in die verklaring. 20

(4) Die bedrag van 'n skuld vermeld in 'n verklaring ingevolge subartikel (1) by die klerk van 'n landdroshof ingedien, mag nie die siviele jurisdiksie van 'n landdroshof ingevolge die Wet op Landdroshowe, 1944 (Wet Nr. 32 van 1944), oorskry nie. 25

(5) Hangende die afhandeling van enige verrigtinge bedoel in Hoofstuk 37 van die Wet op Doeanebeheer met betrekking tot 'n geskil oor die bedrag van 'n skuld wat betaalbaar is, moet die verklaring wat ingevolge subartikel (1) ten opsigte van daardie skuld ingedien is vir doeleindes van subartikel (3) geag word korrek te wees.

(6) (a) Die Kommissaris kan by skriftelike kennisgewing aan die klerk of griffier van die betrokke hof 'n verklaring bedoel in subartikel (1) terugtrek. 30

(b) 'n Verklaring wat teruggetrek is, hou op om van krag te wees, maar belet nie die Kommissaris om van nuuts af verrigtinge kragtens subartikel (1) ten opsigte van die skuld bedoel in die teruggetrekte verklaring in te stel nie.

HOOFSTUK 13 35

DIVERSE AANGELEENTHEDE

Reëls

224. (1) Die Kommissaris kan reëls uitvaardig om die implementering van hierdie Wet of enige Hoofstuk, Deel of ander bepaling van hierdie Wet te fasiliteer, met inbegrip van reëls wat die volgende voorskryf: 40

- (a) Enige aangeleentheid wat ingevolge hierdie Wet by reël voorgeskryf kan word;
- (b) die vorm en formaat, en inhoud, van enige verslag, kennisgewing of ander dokument wat ingevolge 'n bepaling van hierdie Wet aan die Kommissaris, die doeanegesag of 'n doeanebeampte voorgelê moet word; 45
- (c) die wyse waarop en die persone deur wie sodanige verslae, kennisgewings of ander dokumente voorgelê moet word, en die persone wat enige sodanige verslae, kennisgewings of ander dokumente elektronies moet voorlê;
- (d) die kombinerings of gelyktydige voorlegging van sodanige verslae, kennisgewings of ander dokumente; 50
- (e) die omstandighede waarin, en die voorwaardes waarop, sodanige verslae, kennisgewings of ander dokumente gewysig of reggestel kan word, en die prosedures vir die wysiging of regstelling van sodanige verslae, kennisgewings of ander dokumente;

- (f) the records that persons to whom this Act applies must keep for the purposes of this Act and the manner in which, the period for which and the place at which those records must be kept;
- (g) the manner and time in which applications may be made for authorisations, permissions, approvals or exemptions that may be granted by the customs authority in terms of a provision of this Act; 5
- (h) the particulars such authorisations, permissions, approvals or exemptions must contain and any conditions subject to which such authorisations, permissions, approvals or exemptions are issued;
- (i) the application of the materiality principle in relation to this Act, including criteria for determining when— 10
 - (i) an interest in goods is to be regarded as a material or beneficial interest;
 - (ii) a benefit received by a person is to be regarded as a material benefit;
 - (iii) a breach of this Act is to be regarded as a material breach;
 - (iv) information required for an application in terms of this Act is to be regarded as material for the consideration of the application; and 15
 - (v) the circumstances in which an application in terms of this Act was granted are to be regarded as material to the granting of the application;
- (j) the form and format of any notices to be given by the customs authority to any person in terms of this Act; and 20
- (k) criminal sanctions for a contravention of or non-compliance with a provision of the rules or an international trade agreement.
- (2) Rules in terms of this section may—
 - (a) differentiate between different— 25
 - (i) categories of persons to which this Act applies;
 - (ii) categories of goods;
 - (iii) categories of vessels, aircraft, trains, railway carriages or vehicles;
 - (iv) modes of transport;
 - (v) places of entry or exit or categories of places of entry or exit;
 - (vi) customs controlled areas or categories of customs controlled areas; 30
 - (vii) customs procedures;
 - (viii) types of duties; or
 - (ix) matters to which this Act applies; or
 - (b) be limited in its application to a particular— 35
 - (i) category of persons to which this Act applies;
 - (ii) category of goods;
 - (iii) category of vessels, aircraft, trains, railway carriages or vehicles;
 - (iv) mode of transport;
 - (v) place of entry and exit or category of places of entry or exit;
 - (vi) customs controlled area or category of customs controlled areas; 40
 - (vii) customs procedure;
 - (viii) type of duty; or
 - (ix) matter to which this Act applies.
- (3) (a) Rules made in terms of this section take effect from a date specified in those rules, or if no date is specified, from the date of publication of those rules. 45
- (b) The commencement date specified in any rules may be a date before, on or after the date of publication of those rules.

Consultative process before promulgation of rules

- 225.** (1) Before rules in terms of section 224 are promulgated, the Commissioner must publish the draft rules in the *Government Gazette* or the SARS website for public comment. 50
- (2) Rules made in terms of section 224 must be submitted to—
- (a) the Minister; and
 - (b) Parliament for parliamentary scrutiny.

- (f) die rekords wat persone op wie hierdie Wet van toepassing is vir doeleindes van hierdie Wet moet hou en die wyse waarop, die tydperk waarvoor en die plek waar daardie rekords gehou moet word;
 - (g) die wyse waarop en tyd waarbinne aansoeke om magtigings, toestemmings, goedkeurings of ontheffings wat ingevolge 'n bepaling van hierdie Wet deur die doeanegesag toegestaan kan word, gedoen kan word; 5
 - (h) die besonderhede wat sodanige magtigings, toestemmings, goedkeurings of ontheffings moet bevat en enige voorwaardes waarop sodanige magtigings, toestemmings, goedkeurings of ontheffings uitgereik word;
 - (i) die toepassing van die wesenlikheidsbeginsel met betrekking tot hierdie Wet, asook kriteria om te bepaal wanneer— 10
 - (i) 'n belang in goedere geag moet word 'n wesenlike of voordelige belang te wees;
 - (ii) 'n voordeel deur 'n persoon ontvang, geag moet word 'n wesenlike voordeel te wees; 15
 - (iii) 'n breuk van hierdie Wet geag moet word 'n wesenlike breuk te wees;
 - (iv) inligting wat vir 'n aansoek ingevolge hierdie Wet vereis word, geag moet word wesenlik vir oorweging van die aansoek te wees; en
 - (v) die omstandighede waarin 'n aansoek ingevolge hierdie Wet toegestaan word, geag moet word as wesenlik vir die toestaan van die aansoek te wees; 20
 - (j) die vorm en formaat van enige kennisgewings wat ingevolge hierdie Wet deur die doeanegesag aan iemand gegee moet word; en
 - (k) strawwe vir 'n oortreding van of nie-voldoening aan 'n bepaling van die reëls of 'n internasionale handelsooreenkoms. 25
- (2) Reëls ingevolge hierdie artikel kan—
- (a) 'n onderskeid tref tussen verskillende—
 - (i) kategorieë persone op wie hierdie Wet van toepassing is;
 - (ii) kategorieë goedere;
 - (iii) kategorieë seevaartuie, vliegtuie, treine, spoorwegwaens of voertuie; 30
 - (iv) wyses van vervoer;
 - (v) plekke van toegang of uitgang of kategorieë van plekke van toegang of uitgang;
 - (vi) doeanebeheergebiede of kategorieë doeanebeheergebiede;
 - (vii) doeaneprosedures; 35
 - (viii) tipes reg; of
 - (ix) aangeleenthede waarop hierdie Wet van toepassing is; of
 - (b) in die toepassing daarvan beperk wees tot 'n bepaalde—
 - (i) kategorie persone waarop hierdie Wet van toepassing is;
 - (ii) kategorie goedere; 40
 - (iii) kategorie vaartuie, vliegtuie, treine, spoorwegwaens of voertuie;
 - (iv) wyse van vervoer;
 - (v) plek van toegang of uitgang of kategorie van plekke van toegang of uitgang;
 - (vi) doeanebeheergebied of kategorie doeanebeheergebiede; of 45
 - (vii) doeaneprocedure;
 - (viii) tipe reg; of
 - (ix) aangeleentheid waarop hierdie Wet van toepassing is.
- (3) (a) Reëls ingevolge hierdie artikel uitgevaardig, tree in werking vanaf 'n datum in daardie reëls vermeld, of indien geen datum vermeld word nie, vanaf die datum van publikasie van daardie reëls. 50
- (b) Die inwerkingtreddingsdatum in enige reëls vermeld, kan 'n datum voor, op of na die datum van publikasie van daardie reëls wees.

Konsultasieproses voor uitvaardiging van reëls

- 225.** (1) Voordat enige reëls ingevolge artikel 224 uitgevaardig word, moet die Kommissaris die konsepreëls in die *Staatskoerant* of op die SAID webwerf vir openbare kommentaar publiseer. 55
- (2) Reëls ingevolge artikel 224 uitgevaardig, moet voorgelê word aan—
- (a) die Minister; en
 - (b) die Parlement vir parlementêre toesig. 60

Manner of promulgation of rules

226. Where this Act states that a matter must or may be prescribed by rule, the Commissioner must prescribe that matter by rule published in the *Government Gazette* unless the Commissioner by rule published in the *Gazette* indicates that that matter is to be prescribed by rule published on the SARS website. 5

Departure from, and condonation of non-compliance with, rules, conditions and requirements

227. (1) The Commissioner may in extraordinary circumstances approve a departure from—

- (a) a rule; 10
- (b) a condition or requirement imposed by the customs authority in terms of this Act; or
- (c) a requirement on any form or other document that must be submitted to the customs authority in terms of this Act.

(2) The Commissioner may in extraordinary circumstances condone any non-compliance with— 15

- (a) a rule;
- (b) a condition or requirement imposed by the customs authority in terms of this Act; or
- (c) a requirement on any form or other document that must be submitted to the customs authority in terms of this Act. 20

(3) Any person seeking approval in terms of subsection (1) for a departure from, or in terms of subsection (2) condonation of non-compliance with, a rule, condition or requirement, may apply for such departure or condonation to the customs authority in a manner as may be prescribed by rule. 25

(4) In this section “extraordinary circumstances” means—

- (a) in relation to a departure from a rule, condition or requirement, circumstances—
 - (i) beyond those that ordinarily apply when that rule, condition or requirement is complied with; and 30
 - (ii) that are beyond the control of the person required to comply with that rule, condition or requirement; and
- (b) in relation to a condonation of any non-compliance with a rule, condition or requirement, circumstances that applied when the failure to comply with that rule, condition or requirement occurred— 35
 - (i) beyond those that ordinarily apply when that rule, condition or requirement is complied with; and
 - (ii) that were beyond the control of the person required to comply with that rule, condition or requirement.

Application of certain provisions of Customs Control Act 40

228. (1) Sections 908 to 925 of the Customs Control Act, modified by any necessary changes as the context may require, apply for purposes of implementing or enforcing this Act except where stated otherwise or where the application of such section is inconsistent with a provision of this Act.

(2) In such application a reference in any of those sections to the Customs Control Act must, unless clearly inappropriate, be read as a reference to this Act as defined in section 1. 45

(3) Section 908 of the Customs Control Act may not be applied to extend a period—

- (a) within which a duty must be paid;¹²⁵
- (b) within which a person may apply for a refund or a drawback; 50

125. Extension of the time within which a duty must be paid can only be granted in terms of section 24.

Wyse van uitvaardiging van reëls

226. Waar hierdie Wet bepaal dat 'n aangeleentheid by reël voorgeskryf moet of kan word, moet die Kommissaris daardie aangeleentheid by reël gepubliseer in die *Staatskoerant* voorskryf tensy die Kommissaris by reël gepubliseer in die *Staatskoerant* aandui dat daardie aangeleentheid by reël gepubliseer op die SAID webwerf voorgeskryf moet word. 5

Afwyking van, en kondonasië van nie-voldoening aan, reëls, voorwaardes en vereistes

227. (1) Die Kommissaris kan in buitengewone omstandighede goedkeur dat daar afgewyk mag word van— 10

- (a) 'n reël;
- (b) 'n voorwaarde of vereiste ingevolge hierdie Wet deur die doeanegesag opgelê; of
- (c) 'n vereiste vermeld op enige vorm of ander dokument wat ingevolge hierdie Wet ingedien moet word by of voorgelê of verstrekk moet word aan die doeanegesag. 15

(2) Die Kommissaris kan in buitengewone omstandighede enige nie-voldoening aan enige van die volgende kondoneer:

- (a) 'n Reël;
- (b) 'n voorwaarde of vereiste ingevolge hierdie Wet deur die doeanegesag opgelê; of 20
- (c) 'n vereiste vermeld op enige vorm of ander dokument wat ingevolge hierdie Wet ingedien moet word by of voorgelê of verstrekk moet word aan die doeanegesag.

(3) Iemand wat ingevolge subartikel (1) goedkeuring verlang om af te wyk van, of wat ingevolge subartikel (2) kondonasië verlang vir 'n nie-voldoening aan, 'n reël, voorwaarde of vereiste, kan op 'n wyse soos by reël voorgeskryf mag word by die doeanegesag om so 'n goedkeuring of kondonasië aansoek doen. 25

(4) In hierdie artikel beteken "buitengewone omstandighede"—

- (a) met betrekking tot 'n afwyking van 'n reël, voorwaarde of vereiste, omstandighede— 30
 - (i) wat anders is as dié wat normaalweg geld wanneer daar aan daardie reël, voorwaarde of vereiste voldoen word; en
 - (ii) wat buite die beheer van die persoon was wat aan daardie reël, voorwaarde of vereiste moet voldoen; en 35
- (b) met betrekking tot 'n kondonasië van enige nie-voldoening aan 'n reël, voorwaarde of vereiste, omstandighede wat gegeld het toe die versuim om aan daardie reël, voorwaarde of vereiste te voldoen, plaasgevind het—
 - (i) wat anders is as dié wat normaalweg geld wanneer daar aan daardie reël, voorwaarde of vereiste voldoen word; en 40
 - (ii) wat buite die beheer van die persoon was wat aan daardie reël, voorwaarde of vereiste moet voldoen.

Toepassing van sekere bepalinge van Wet op Doeanebeheer

228. (1) Artikel 908 tot 925 van die Wet op Doeanebeheer, soos aangepas deur enige nodige veranderings wat die samehang mag vereis, is vir doeleindes van die implementering of toepassing van hierdie Wet van toepassing, behalwe waar daar anders bepaal word of waar die toepassing van so 'n artikel met 'n bepaling van hierdie Wet onbestaanbaar is. 45

(2) By sodanige toepassing moet 'n verwysing in enige van daardie artikels na die Wet op Doeanebeheer uitgelê word as 'n verwysing na hierdie Wet soos in artikel 1 omskryf. 50

(3) Artikel 908 van die Wet op Doeanebeheer mag nie toegepas word nie om 'n tydperk te verleng—

- (a) waarbinne 'n reg betaal moet word;¹²⁵
- (b) waarbinne 'n persoon vir 'n terugbetaling of teruggawe mag aansoek doen;

125. Verlenging van die tyd waarbinne 'n reg betaal moet word, kan slegs ingevolge artikel 24 toegestaan word.

- (c) within which the Commissioner, the customs authority or a customs officer is required or allowed in terms of a provision of this Act to perform a specific act;
- (d) referred to in section 86(1) or 206(1); or
- (e) within which an action prescribes in terms of the Prescription Act, 1969 (Act No. 68 of 1969).

Short title and commencement

229. This Act is called the Customs Duty Act, 2014, and takes effect on the date on which the Customs Control Act takes effect in terms of section 944(1) of that Act.

- (c) waarbinne die Kommissaris, die doeanegesag of 'n doeanebeampte ingevolge 'n bepaling van hierdie Wet 'n bepaalde handeling moet of mag verrig;
- (d) waarna in artikel 86(1) of 206(1) verwys word; of
- (e) waarbinne 'n aksie ingevolge die Wet op Verjaring, 1969 (Wet Nr. 68 van 1969), verjaar.

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Kort titel en inwerkingtreeding

229. Hierdie Wet heet die Wet op Doeanereg, 2014, en tree in werking op die datum waarop die Wet op Doeanebeheer ingevolge artikel 944(1) van daardie Wet in werking tree.