

**CUSTOMS
EXTERNAL
GUIDE
ACCREDITATION**

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1 SCOPE

- a) This guide provides clients with information on the SARS Customs accreditation programme and facilitates the process of application for accreditation applying to existing clients and clients interested in joining the accredited client program.
- b) **The guide provides details on the application process, de-accreditation, cancellation or suspension of accredited client status.**
- c) **The guide also provides aspects of regulating the accredited client program by ensuring that:**
 - i) **Only an importer or exporter registered in terms of the Act including any importer or exporter deemed to be a level one (1) accredited client in terms of Rule 64E10(a) may apply for level two (2) status.**
 - ii) **The person employed by the applicant who will be responsible for the accredited client requirements, must pass a test administered by the Commissioner.**
 - iii) **A Customs Accreditation Review Committee (CARC) manages a final review of decisions relating to the approval or refusal of an application for accreditation, de-accreditation or cancellation thereof.**
 - iv) **The relationship between the client and Customs in respect of the Preferred Trader [level two (2)] client status application, engagement and management is facilitated.**
 - v) **The applicant must provide proof of compliance with Customs legislation, policies and procedures and should not have been convicted of an offence involving fraud or dishonesty.**
- d) **The compliance improvement program is also covered.**

2 REFERENCES

2.1 Legislation

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	Customs and Excise Act No. 91 of 1964: Sections 59A, 60, 61, 64B, 64D, 64E Customs and Excise Rules: Rules 59A, 60, 61, 64B, 64D, 64E
Other Legislation:	Promotion of Administrative Justice Act No. 3 of 2000: Section 3
International Instruments:	Kyoto Convention General Annex: Chapter 3, Part 5 - Special Procedures for Authorised Persons - All WCO SAFE Framework of Standards: – Customs to Business pillar of Framework and tangible benefits for Accredited Traders, articles 4 and 5

2.2 Cross References

DOCUMENT #	DOCUMENT TITLE	APPLICABILITY
SC-CC-24	Internal Administrative Appeal Process - External Policy	All
SC-CC-26	Alternative Dispute Resolution - External Policy	All
SC-CF-19	Licensing, Registration and Designation - External Policy	All
SC-CF-22	Special and Extra Attendance - External Policy	All
SC-CR-A-03	Valuation of Imports - External Policy	All
SC-CR-A-07	Valuation of Exports - External Policy	All
SC-EX-01-03	Exports – External Policy	All
SC-RO-01-02	Guide to understanding preferential Rules of origin – External	All
SC-RO-01-06	Invoice Declarations – External Policy	All
SC-SE-05	Bonds – External Policy	All
SC-TA-01-04	ATA Carnet – External Policy	All

3 DEFINITIONS AND ACRONYMS

Accredited Client	A person registered under the provisions of the Act who has been granted accreditation Status in terms of the provisions of Section 64 E and the Rules thereto
Levels	Accreditation status offered to clients who fulfil the criteria set by Rule and provides for specific benefits associated with the specific level granted
Preferred Trader	A person registered under the provisions of the Act who has been granted accreditation status in terms of the provisions of Section 64E and the Rules thereto on the second level of accreditation
Clearing agent	A person who carries on the business of arranging for the Customs clearance of goods and who deals directly with Customs for and on behalf of another person
Commissioner	The Commissioner for the South African Revenue Service
Compliance Improvement Programme	A programme for those clients who do not qualify in terms of the accreditation criteria, continue to fail to meet the accreditation criteria or where measures are required to improve compliance status.
CRM	Customs Relationship Manager
SA	Self-Assessment Evaluation
SQ	Systems Questionnaire
The Act	The Customs and Excise Act No. 91 of 1964
Verification	Verification is a planned and systematic process of validation
SARS Customs Office	The Branch Office, port of entry / exit or hub that handles and processes the application forms

4 BACKGROUND

- a) SARS Customs is responsible for facilitating legitimate trade whilst ensuring compliance with the relevant laws. In order to achieve this goal SARS has introduced the accredited client program. This program **also** seeks to accomplish a partnership approach between SARS and those clients who inter alia maintain high quality internal operational processes and computer systems and have an appropriate record of compliance. **Has sufficient financial resources and who employs a person with sufficient knowledge to be held responsible for Customs matters.** In return, SARS Customs will offer certain benefits to the client.
- b) **The previous SARS accreditation program, initiated in 2001, closed on 1 August 2011 with the legal amendment as per Government Notice R.617 dated 29 July 2011. Clients who were accredited under this program are now deemed to be on a level one (1) accreditation status. This program has now been closed to any new applications and implies that existing clients on level one (1) maintain the status and benefits awarded until the implementation of the new Customs Bills, which then terminates all level one (1) clients.**
- c) **The introductions of level two (2) accreditation known as “Preferred Trader” is the first phase of the journey towards the internationally accepted Authorised Economic Operator (AEO) program which is in response to the need to improve trade facilitation, whilst securing international supply chains and improving compliance. This initiative is aligned to the SAFE Framework of Standards.**
- d) **The level two (2) program is appropriate to clients who inter alia maintain a high quality internal operational processes and computer systems with an appropriate record of compliance. This level has its own unique set of benefits.**
- e) **Currently level two (2) applications are only open to importers and exporters.**
- f) **SARS has reviewed the current accreditation program to ensure that it maintains the appropriate level of compliance and co-operation with clients. With the introduction of the new Rules on accreditation, the requirement for sufficient knowledge was introduced. The Customs Accreditation Review Committee, Relationship Manager and compliance measurement program were also introduced to the program.**

5 GOVERNING LEGISLATION

- a) Section 59A states that the Commissioner requires that all persons or any class of persons participating in any activities regulated by this Act register in terms of this Section and its Rules.
- b) Section 60 states that no person may perform any act or be in possession of or use anything in respect of which a licence is prescribed in Schedule 8 unless such person has obtained the appropriate licence which will not be issued unless the prescribed licence fee has been paid.
- c) Section 64B states that no person may, for the purpose of this Act, for reward make entry or deliver a declaration relating to, any goods on behalf of any principle contemplated in Section 99(2), unless licensed as a clearing agent in terms of Subsection (2).
- d) Section 64D states that no person, except if exempted by Rule, may remove any goods in bond in terms of Section 18(1)(a) or for export in terms of Section 18A, or any other goods that may be specified by Rule unless licensed as a remover of goods in bond in terms of Subsection (3).
- e) Section 64E makes provision for the Commissioner to confer the appropriate level of legislated accredited client status on any qualifying applicant licensed or registered under the provisions of this Act and who meets the criteria for that level, as prescribed in the Rules.
- f) Rule 64E.10 states that from 1 August 2011 accredited client status conferred by the Commissioner on any applicant prior to that date will be deemed to be level one (1) accredited client status as contemplated in Section 64E(4).
- g) Rule 64E.13 sets criteria for level two (2) accreditation based on appropriate record of compliance, computer, accounting and logistical systems, sufficient knowledge and sufficient financial resources to be eligible for level two (2) accreditation.

6 APPLICATION FOR ACCREDITED CLIENT STATUS

6.1 Who may apply for Accredited Client Status

- a) A person registered or licensed under the provisions of either Section 59A or 60 may apply for accredited client status.
- b) Rule 64E.12 states that only a registered importer and or exporter may apply to partake in level two (2) of the accreditation program.
- c) Importers and exporters already accredited at level one (1) in terms of Rule 64E.10(a) will not be automatically considered for accreditation level two (2). Such clients must apply for the level two (2) accreditation.
- d) Clients wanting to partake in the accreditation program must ensure that they have an appropriate record of compliance, record keeping, computer, accounting or logistical system, sufficient knowledge and sufficient financial resources.

6.2 Cost to the client on application

- a) No fee will be levied on the client on application or for the competency assessments of the appointed individuals.
- b) Clients are responsible for all costs incurred while attending the competency assessments.

6.3 Assessing suitability to the program requirements

- a) The first step in joining the accredited client program is for the client to determine whether they are able to comply with the criteria and obligations contained in Rule 64E by completing the SC-CF-06-A01.

- b) An application must be submitted for each individual legal entity, i.e. for each Customs client number the applicant has registered with Customs together with a Request for Information and Self-Assessment (SC-CF-06-A01).
- c) The client must be able to communicate electronically with SARS and have registered as an electronic user as provided for in Section 101A or alternatively make use of a licensed clearing agent.
- d) Once the client is satisfied that they qualify to participate in the accreditation scheme they submit the completed application DA 186, supporting documents and SC-CF-06-A01 to the nearest SARS Customs Office or directly to PT Head Office who will inform the client of the outcome in writing.
- e) If the client is unsure whether they qualify for participation the Regional PT team or the Customs Relationship Manager (CRM) where they conduct business can be contacted for advice.
- f) The information submitted on the DA 186 and SC-CF-06-A01 will first be verified by Customs to determine if the client has met the criteria to be considered for accreditation.
- g) The Regional PT team will arrange an engagement meeting with the prospective client's senior management at the client's premises. The engagement meeting is an introduction to the accreditation requirements, criteria and associated benefits, including background information on the alignment with the World Customs Organisation (WCO) and International supply chain initiatives. The SC-CF-06-A01, the assessment process, compliance improvement initiatives and appeal processes will also be discussed.
- h) In addition to SC-CF-06-A01 the client will at this point be requested to complete a systems questionnaire (SC-CC-03-A20) which will provide the Customs auditors with the necessary information for a preliminary review of the company's compliance details, operating procedures and business systems. The CRM will ensure that auditors are made available to assist the client in answering questions and to assist them to complete the SC-CC-03-A20 accurately. All information submitted is a formal declaration to SARS and will be subject to verification and audit.

7 COMPETENCY ASSESSMENT OF SUFFICIENT KNOWLEDGE OF CUSTOMS PROCEDURES

7.1 Requirements

- a) The accreditation Rules require that the person employed by the applicant who will be responsible for the accredited client requirements, must, before being employed in that capacity, pass a test administered by the Commissioner.
- b) This test is to provide proof that the person responsible for the accreditation program has sufficient knowledge of Customs and Excise laws and procedures and to implement and maintain an efficient and effective accredited client compliance system, in accordance with the procedures as contemplated in the Rules for Section 59A, 60 and 64E.
- c) The successful completion of the test does not incur automatic accreditation status; the applicant must still complete the formal application forms and fulfil all of the required conditions required from the process prescribed in Section 64E.

7.2 Administration and Frequency of the Test

- a) The test is intended for all qualifying individuals that will be responsible for the administration and management of the client's accreditation program and status.
- b) The test will be available for all applicants at Alberton, Cape Town, Doringkloof, Durban and Port Elizabeth Customs offices and will be administered by SARS Academy. If an applicant has special needs, SARS may consider alternative arrangements.

- c) Clients will be notified of the test date and venue arrangements fourteen (14) day(s) prior to the commencement of the test.
- d) The qualifying individual must comply with the requirements of Section 59A, and 60 which states that a person applying must be:
 - i) A natural person who is:
 - A) A citizen or a permanent resident of South Africa or has an established place of business at a specific physical address in South Africa;
 - B) At least eighteen (18) years old;
 - ii) A juristic person that has an established place of business at a specific physical address in South Africa;
 - iii) The person having the effective management of an association of persons whether or not formed in South Africa that has, an established place of business at a specific physical address in South Africa;
 - iv) If a partnership or a trust composed of individuals each of whom meets the qualifications required in Rule 59A.03(1)(a)(i)(aa);
 - v) In the case of:
 - A) A deceased estate, the executor of the estate;
 - B) An insolvent estate, the trustee;
 - C) An organ of State, the official to whom the function in respect of the activity for which registration is required, is delegated; or
 - D) Any institution, the person having the effective management of such an institution.
- e) The candidate(s) must provide a certified copy of their identity document together with the required application forms (SC-CF-07-FR01) to the SARS Customs Office where business is conducted at least thirty (30) days prior to the date of the test. Late applications will stand over to the next available date.
- f) The local SARS Academy will schedule the test for the applicant.
- g) Any change in the client's designated responsible employee will require the newly identified responsible person to undergo the required test within ninety (90) days after the appointment in such position. Any such change made must be communicated to SARS immediately when it occurs.
- h) The assessment will be conducted online and consists of a two (2) hour multiple-choice questionnaire.
- i) Paragraph 7.3 covers the majority of the material covered in the test however clients are encouraged to do further self-study of the Act and recommended procedures, including:
 - i) SC-CC-24 - Internal Administrative Appeal
 - ii) SC-CC-26 - Alternative Dispute Resolution
 - iii) SC-CF-02 - Overview of SA Customs Procedures
 - iv) SC-CF-04 - Manual for the Completion of Declarations
 - v) SC-CF-19 - Licensing, Registration and Designation Policy
 - vi) SC-CF-21 - Clearance of Goods Qualifying for Rebate
 - vii) SC-CF-22 - Special and Extra Attendance
 - viii) SC-CF-23 - Completion of the DA 185
 - ix) SC-EX-01-03 - Exports
 - x) SC-SE-05 - Bonds

7.3 Test Guidelines

7.3.1 General discussion topics

- a) The Commissioner for SARS, under the control of the Minister, is responsible for the administration of the Act, the Rules thereto and the interpretation of the Schedules thereto.
- b) Section 4(3) prohibits Customs Officers from disclosing any information relating to any person, firm or business in the performance of duties, except for the purposes of such Act or by order of a competent

court and decisions taken or actions performed will be scrutinised and / or tested to remain in compliance with the provisions of the Administrative Justice Act.

- c) Generally, sea freight containers are seen as transport equipment for goods and are referred to as TEUs - "Twenty-foot equivalent units" therefore a forty-foot container is equivalent to two (2) twenty-foot units. There are three (3) different types of container loads:
- i) Full Container Load (FCL) container – means a full container load, containing goods from one (1) or more exporters to one (1) importer;
 - ii) Less than full Container Load (LCL) container – means any container containing goods consigned from one (1) or more exporters to more than one (1) importer; and
 - iii) FCL (Groupage) – is a bit more complicated as although it has one (1) or more exporters and more than one (1) importer, the goods are collected at a groupage agents premises overseas where they are packed into the container and then sent to the groupage agents associate in our country for distribution to the respective importers.
- d) Section 43(1) requires that if imported goods have not been cleared in terms of Section 38 within 28 days by the master, pilot, container operator, depot operator etc. who has control of the goods, they must be removed to the State Warehouse. If the goods remain un-entered after sixty (60) days, they may be disposed of as provided for in Section 43(3).
- e) The Act allows for the acceptance of any form or label (CN 22/23, whichever is applicable) attached to goods imported [Section 13(1)] into or exported [Section 13(4)] from South Africa by post to be deemed as due entry of the item(s) in terms of Section 38, provided that all the information required to assess the duty is contained on the form or label.
- f) The proviso to Section 38(1) makes inter alia provision for the release of goods on a DA 306 without a formal Customs declaration, should the Commissioner be of the opinion that they are of no commercial value.
- g) Goods may be entered in terms of Section 38(1)(b)(i) before arrival in the country provided they have been loaded on board the means of transport on which they are to be imported.
- h) The provisions of Sections 98 and 99(1) determine the responsibilities of the principle for the acts of an agent acting on his behalf and the liability of an agent in respect of any such act.
- i) The liability for duty on goods removed in bond ceases when it is proved by the person concerned that the goods destined for a place in the Common Customs Area have been duly entered as provided for in Section 18(3)(a).
- j) The diversion of goods entered under rebate, exported from a warehouse, moved from or to a warehouse or removed in bond, must first receive the required permission of the Commissioner as provided for in Sections 18(3), 18A(9) 20(4)(bis) and 75(19).
- k) A Customs officer may detain goods for inspection purposes wherever the goods are found when reasonable suspicion exists that a contravention of any Law relating to the importation or exportation of such goods has occurred as provided for in Section 4(8A)(a) contemplated in Sections 88(1)(a) and 107(2)(a).
- l) Although every effort will be made to have the importer / exporter or a representative present during cargo examinations it is legally acceptable that Customs may proceed with such examination as provided for in Section 4(8)(B)(cc).
- m) The States Warehouse is not intended to be used as a storage facility for importers and / or exporters. The States Warehouse may only be used:
- i) For the correct and safe depositing / disposal of goods, whether or not entered.
 - ii) The securing of any duties and taxes due on goods stored therein.
 - iii) The detention of goods pending compliance with the provisions of the Act.
 - iv) For the compliance of any other laws governing prohibited and restricted goods.

- v) The storage of seized goods.

7.3.2 Accreditation Legislation and Audit

- a) The accreditation provisions are contained in Sections, 59A, 60, 61, 64B, 64D and 64E, and the appropriate Rules thereto. The accreditation program is also aligned to the SAFE Framework of Standards.
- b) Preferred Trader level 2 program is open to those clients who inter alia maintain high quality internal operational processes and computer systems with an appropriate record of compliance. In return, SARS Customs will offer certain benefits to the client. Accreditation is an important process in creating a partnership between SARS and Business.
- c) Rule 64E.14 lists the benefits conferred by the Commissioner on level two (2) accredited clients. Amongst the benefits listed are:
 - i) The appointment of a Customs Relationship Manager.
 - ii) Possible reduction in security.
 - iii) Fewer documentary and physical inspections.
 - iv) Priority in processing tariff and value determinations.
 - v) The use of non-intrusive inspection techniques for cargo examination.
- d) Rule 64E.10 requires that an application for accreditation must be made by completing the DA 186. A further self-assessment template for supporting information SC-CF-06-A01 is also required.
- e) Rule 64E.13(c) requires that the person employed by the applicant and who is responsible for the applicants accredited client responsibilities must successfully complete a competency test administered by the Commissioner.
- f) When the client discovers, after completing the self-assessment they do not qualify in terms of the accreditation criteria they can approach SARS to enquire whether they can participate in the compliance improvement programme.
- g) The most important criteria used for accreditation purposes are listed in Rule 64E.13 and requires that an applicant display an appropriate record of compliance, computer systems and operational procedures and processes together with sufficient financial resources.
- h) Where a client after evaluation is successful for further interaction and engagement by SARS a meeting will be scheduled and a final report will be provided in writing to the client of the outcomes. No charge will be levied for the assessment.
- i) The Commissioner is empowered to refuse any application for accredited client status, cancel, or suspend such status. These provisions are contained in Section 64E(3)(a) read with Rule 64E.20 and the provisions of Section 60(2).
- j) Section 64E.13(b) requires that level two (2) clients must be able to communicate electronically and register as a user in accordance with the provisions of Section 101A and respective Rule thereto. This provision does not exclude the use of a clearing agent.
- k) Rule 64E.19 confirms that accredited client status takes effect from the date the Commissioner confers the status and remains in force for a period of three (3) years, unless cancelled.

7.3.3 Tariff Classification

- a) Classification of goods under the Harmonised Commodity Description and Coding System is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be determined according to the terms of the headings and any relative Section or chapter notes. If the goods cannot be classified solely based on GRI 1 and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied, in order. There are six (6) Rules that can be applied.

- b) Rule 5(a) allows in most cases for packing materials and packing containers presented with the goods therein to be classified with the goods concerned, provided they are normally used for packing such goods and are clearly not intended / suitable for repetitive use.
- c) The Harmonised Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonised System (HS) at the international level (for the four (4) digit headings and the six (6) digit sub-headings) and facilitate classification under the HS by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HS and are generally indicative of the proper interpretation of the headings.
- d) Interpretation of Schedule 1 Part 1 (Customs Tariff) is subject to the Explanatory Notes to the Brussels Nomenclature, in terms of Section 47(8)(a).
- e) The international Harmonised Commodity Description and Coding System (Tariff) consists of 97 Chapters and is grouped into chapters according to constituent material and specialised industry criteria.
- f) Tariff classifications (tariff headings, tariff sub-headings, tariff items or other items of any schedule) are made by the Commissioner in writing, including those under dispute or as an intended importation. The application for a request for tariff determination is to be submitted on a DA 314.
- g) The acceptance or release of goods as entered by any Officers not deemed to be a tariff determination.

7.3.4 Valuation

- a) International Commercial terms (INCOTERMS) are internationally recognised standard trade definitions used in international sales contracts as indispensable evidence of the importer's and supplier's responsibilities for delivery under a sales contract and to make it easier for traders in different countries to understand each other.
- b) Confirmation of a sale for export to the country of import should be supported by specific documentary evidence such as the purchase order, transport document and the original invoice.
- c) All internationally imported goods will be subject to payment of Value-Added Tax (VAT) unless exempted from such payment. VAT is calculated on the Added Tax Value (ATV), which is:
 - i) The sum of the value for duty purposes as calculated in terms of Section 66; plus
 - ii) An increasing factor of 10% of such value; plus
 - iii) All non-rebated duties payable in terms of the Act.
- d) The value for duty purposes on any goods imported into South Africa are specified in Schedule 1 Part 2B (the Tariff) is calculated by using the following formula:
 - i) The Transaction value for duty purposes as calculated in terms of Section 66; plus
 - ii) An increasing factor of 15% of such value; plus
 - iii) All non-rebated duties in terms of Schedule 1 Part 1 and Schedule 1 Part 2A.
- e) Section 65(1) stipulates that the value for Customs duty purposes of any imported goods must, at the time of entry for home consumption, be the transaction value thereof, within the meaning of Section 66. The free on board (FOB) contract has been retained by South Africa as the basis for valuation and the valuation agreement prescribes the value for Customs purposes in Section 66(1) as the price paid or payable for goods.
- f) The price actually paid or payable as determined in terms of Section 66, is to be adjusted where necessary in terms of Section 67, to take account of certain specific elements e.g. various charges, costs, and expenses incurred by the buyer in the importing process but not already included in the price actually paid or payable for the imported goods.

- g) A buying agent acts for the account of the buyer rendering him/her services in connection with finding suppliers, informing sellers of his/her principles requirements, inspecting goods etc. The buying agent's fee is usually termed a buying commission and is paid apart from the settlement for the goods. As it does not form part of the payment to the seller it does not normally form part of the transaction value, however, this deduction is not merely a formality and could depend strongly on the exact services rendered by the so-called buying agent.
- h) If the goods are supplied "free of charge", there will naturally not be any question of a price relevant to establish the transaction value in the confines of the Transaction value method (Method 1); or even when supplied at a reduced cost, these values will have to be examined and where necessary determined by using the other valuation methods in sequential order.
- i) Section 73 states that when the value of the price paid or payable for any imported goods is expressed in a foreign currency it must be converted to South African Rand by using the selling rate at the date of shipment of the goods as determined by the Commissioner. This should be done in consultation with the South African Reserve Bank; or by using, the latest rate determined before that date if no such rate is determined for such date.
- j) Section 66(2)(c) places the onus on the importer of the goods, to declare whether or not the client is related to the supplier of the goods within the meaning of Section 66(2)(a). Rule 66.03 and 66.04 prescribes that any importer must for the purpose of Section 66(2)(c) declare the following, if the importer is:
 - i) Related to the supplier of the goods indicate in the field "Valuation Code" on the declaration, by inserting the letter "R";
 - ii) Not related to the supplier of the goods indicate in the field "Valuation Code" on the declaration, by inserting the letter "N"; or
 - iii) Exempted in terms of Rule 66.01 indicate such exemption by inserting the letter "E" in the field "Valuation Code" on the declaration.
- k) Every importer must indicate which Valuation Method is applicable to his / her goods by inserting in the field "Valuation Code" on the declaration, after the letter "R" or "N" as required by Rule 66.03 the appropriate method number. The following table sets out which Sections refer to which Article or Method of the Agreement:

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

- l) Although it is not a requirement that the fields "Valuation Method", "Additional Information, and "Suppliers Customs Client numbers" be filled in by importers themselves or members of their staff, they are responsible for the accuracy of the numbers and so incumbent on them to instruct their clearing agents correctly. The procedure must be continued until a value determination is issued.
- m) Failure to declare value codes, determination numbers as well as supplier code numbers on the Customs declaration once they have been issued is viewed in a serious light and failure to comply with this requirement renders the importer liable to the penalties prescribed by the Act.
- n) The onus to declare the correct Customs value of goods and to ensure the correct payment of duties where due, always rests with the importer or exporter of goods.
- o) Where the truth or accuracy of the particulars or of documents produced in support of the declaration is in doubt, Customs may ask the importer to provide further explanation, including documents or other evidence.

7.3.5 Rules of Origin

- a) It is generally accepted that preferential Rules of Origin have largely replaced Customs duty as a protective measure on imports in trade between party countries to trade agreements. Origin criteria determines the extent of preferential treatment a product may enjoy under Free Trade Agreements, i.e. whether it qualifies for preferential treatment or not. Rules of Origin are the criteria that are used to define whether a product has been sufficiently manufactured or processed to be eligible for preferential treatment.
- b) Non-preferential Rules of Origin determine where a product was made and are an essential part of international trade Rules and or trade statistics. They also determine whether the goods are subject to any anti-dumping or countervailing duty payable on goods originating from a specific country.
- c) The basic principles applicable to preferential Rules of origin in free trade agreements as well as those applicable to Generalised Systems of Preference (GSP) and bilateral agreements are:
 - i) The free trade agreements concluded between South African and the European Community (EC); The Free Trade agreement concluded between the Southern African Development Community (SADC) member states and the Southern African Customs Union (SACU) – European Free Trade Association (EFTA) Free Trade Agreement;
 - ii) The GSP provided by the European Community, Norway and Turkey, as well as the African Growth and Opportunity Act (AGOA) arrangement with the United States of America (USA) for clothing and textiles; and
 - iii) The bilateral agreements with Malawi, Zimbabwe and Mozambique, which are contained in the Rules to Section 46.
- d) Section 46 provides for the determination of the origin of goods.
- e) Free Trade Agreements are normally reciprocal in nature and are provided for in Section 49 and the Rules thereto. Rule 49 provides for binding origin determinations and Rule 49C is reserved and pertains to the Southern African Customs Union Agreement.
- f) There are three (3) basic rules that determine the origin of products:
 - i) Wholly produced goods - products are regarded as originating in a specific territory if all the materials used in producing the product are from that territory.
 - ii) Value added in the manufacturing of a product - the product is normally considered to have originated in a specific country if a specified percentage of the product value has been added there.
 - iii) Change in tariff classification - the origin of a product is determined in the country where, as a result of processing, its tariff classification changes.
- g) In order to apply rules of origin effectively a person must have fair knowledge of the requirements of Free Trade Agreements and GSPs and in addition also to have knowledge of the following areas:
 - i) Tariff classification;
 - ii) Valuation; and
 - iii) Customs procedures, especially pertaining to the movement of goods.
- h) The strategy applied for the implementation of preferential rules of origin is to provide for enabling provisions in either Sections 46 or 49 for GSPs and Free Trade Agreements respectively. These provisions again provide the basis for making Rules, which in turn provide the working instructions and requirements to importers, exporters, agents and Customs officers.
- i) The importer or exporter has the legal obligation to comply with the requirements of preferential arrangements and this exposes the client to any penal provisions in terms of the Act in the case of offences for non-compliance.

- j) Section 48(1A) provides for the incorporation of the origin provisions in trade agreements in the General Notes to Schedule 1.
- k) The provisions of Rule 49B provides for the origin requirements in respect of Annex I of the Protocol on Trade to the Treaty of the Southern African Development Community concerning the Rules of Origin for products to be traded between the member states of the Southern African Development Community.
- l) Non-preferential rules of origin are covered under the World Trading Organisation (WTO) General Agreement on Tariffs and Trade (GATT) agreement and have been enacted in Section 46 and the Rules thereto.
- m) Section 49 provides for the enactment of international agreements in respect of agreements concerning rates of duty lower than general rates of duty and other agreements related to Customs administration.

7.3.6 Prohibited and Restricted Goods and Import Control

- a) Import and Export Control regulations in South Africa are inter alia intended to protect the health, security and safety of our citizens also to prevent the spreading of agricultural pests (some livestock has been prohibited entry into South Africa) and for local industry and technical standards that arise from domestic laws and or international agreements.
- b) Certain goods may be allowed to be imported or exported permit free i.e. not all goods or products are subject to import control measures. A list of goods subject to import control and export control measures is available on the International Trade Administration Commission (ITAC) website and can be obtained on submission of the respective contact details i.e. such can be mailed, faxed, or e-mailed on request.
- c) As a general rule, all used or second-hand goods require an import permit.
- d) Export permits are in place to control the export of strategic goods, to ensure that goods exported comply with the provisions of local and international agreements and to combat the exportation of smuggled or stolen goods.
- e) Application forms for import and export permits must be completed and submitted to ITAC and is available on the ITAC website. Permits are usually issued free of charge. Details of the particular goods to be imported can be provided to ITAC to enable ITAC to provide the respective policy information pertaining to the importation thereof.
- f) In terms of the International Trade Administration Act, the following criteria can also determine when goods may either be prohibited and / or restricted when importer or exporter:
 - i) The source of origin of goods;
 - ii) Purpose to which the goods are to be used; and
 - iii) The use of non-renewable natural resources in production and their life cycle impact on the natural environment.
- g) Importations of any arms into South Africa without the manufacturer's serial number or other number by which the arms may be identified, stamped or engraved on the metal of the arm, is completely prohibited.
- h) Normal trade importations of revolvers and pistols into South Africa are liable to an import permit issued by ITAC in terms of the Arms and Ammunition Act.
- i) Apart from the requirements of the Import Control Regulations and taking into account the goods listed under Section 113(1) or other Laws, the importation or exportation of a wide variety of goods is either totally prohibited, or is subject to inspection by other Departments or controlling bodies, or may be imported by certain authorities only. These goods may also be detained where found by Customs for

inspection or for compliance with a condition on behalf of these bodies e.g. when subject to production of special permits or licences or for other specific conditions.

- j) There are various rebate provisions available for the importation of goods solely for manufacturing / finishing and re-export of goods including for the drawback of duty. ITAC can be contacted regarding these rebate provisions and for approval / issuing of any required permits.
- k) Prohibited and restricted goods are listed in the Consolidated List of Prohibited and Restricted Imports /Exports and can be found on the SARS website. The reference lists have been compiled using the tariff headings of the Harmonized Commodity Description and Coding System, as a guide only. The Customs and Excise Tariff is in no way affected by the classifications appearing in this list.
- l) Any goods detained or removed for inspection by Customs or on behalf of another Department or other controlling authority, may not be taken or delivered without first obtaining a prescribed release authorisation from Customs and or the other Department or other controlling body concerned. That means goods may be detained for inspection and release by Customs only or for both Customs and another controlling body or merely be detained by Customs for inspection and release by the other Department or controlling body concerned. Examples of other bodies are SAPS: Endangered Species Unit, State Veterinarian, Health and the Department of Agriculture: Plant and Quality Control, etc.
- m) Articles of food in unlabelled containers are prohibited from importation into South Africa in terms of the Department of National Health and Population Development Act.

7.3.7 Penalty Provisions and Risk

- a) The aim of the Administrative Justice Act No. 3 of 2000 is to give effect to the right to administrative action that is lawful, reasonable, and procedurally fair and includes the right to written reasons for administrative actions that are taken.
- b) The compliance criteria for level two (2) accreditation requires inter alia a clear record of any administrative penalties imposed in terms of Sections 80 to 84 and 86, taken over a period of three (3) years. These penalties are categorised as serious and the client does not have the right to request reasons unlike those of a lesser nature. The irregularities mentioned in sub-paragraphs (v - viii) will be treated on merit and may not necessarily lead to disqualification. Serious offences could include:
 - i) Dealing in illicit goods;
 - ii) Failure to make due entry of goods;
 - iii) Use of false or misleading documentation;
 - iv) Understatement or overstatement of the quantity or value of goods;
 - v) Omission of an invoice(s);
 - vi) Incorrect description of goods;
 - vii) Incorrect classification of goods;
 - viii) Incorrect declaration of the origin of goods;
 - ix) Diversion of goods without Customs permission;
 - x) Claiming a Customs or tax refund fraudulently;
 - xi) Acquittal of goods with the intent to defraud; and
 - xii) Includes infringements where gross negligence is involved.
- c) If any person has contravened or failed to comply with any provision of the Act and they agree to abide by the Commissioner's decision in the matter, the Commissioner may offer to deal with the matter summarily in terms of the provisions of Section 91 and if so, that person is then assured that no criminal prosecution will thereafter be considered by Customs.
- d) Clients are encouraged to bring errors to the attention of Customs and then to request consideration regarding any penalty and interest to be paid in terms of the SARS Voluntary Compliance Program.
- e) The Promotion of Administrative Justice Act No. 3 of 2000 will apply to any administrative action taken in terms of the Customs and Excise Act and the person concerned has the right to request the reasons for such action. Adequate notice will be given of the intention to impose a penalty or in the event of any other administrative action to be taken by Customs. A reasonable opportunity will also be

given to make representations, to review of the circumstances and / or to lodge an internal appeal in terms of SC-CC-24.

- f) Penalties are imposed for the contravention or failure to comply with any provision of the Customs and Excise Act, the VAT Act and to irregularities involving Customs Rules.
- g) Where a client's supplier of goods and services has an impact on the international supply chain, the client will be expected to have formulated specific security measures with them, with regard to their dealings and be able to provide details of these arrangements and the controls in place to check for continued compliance.
- h) A manufacturing company should have a specific area dedicated to production, with controlled access, appropriate supervision, monitoring of the process, inspection and control of the goods.
- i) Clients are required to provide all relevant details of goods movement between premises and across ports of entry/exit.
- j) A client must have detailed documented procedures for the classification of goods, including who does it, how they do it, how they review and maintain classifications, together with lists of all products and the respective commodity codes.

7.3.8 Appeals

- a) In the normal operational course of events, a person aggrieved by a decision of an officer has recourse to consultation with that officer's immediate supervisors for purposes of clarifying the decision in question. Should the matter not be resolved by such approach the aggrieved person may institute a formal Internal Administrative Appeal (IAA) in terms of SC-CC-24. The process will be administered in accordance with the provisions of Sections 77A to H and must be lodged at the Office where such decision was made.
- b) The affected persons or their duly authorised representatives may request the officer who made the decision to provide a full explanation and reasons for the decision. The request must be in writing, it must be delivered to the relevant officer within thirty (30) days of the decision in question. The person(s) concerned, are however not obliged to ask for the reasons before lodging an appeal against a decision.
- c) On request from the person concerned, which must be received before expiry of the initial thirty (30) day period, the thirty (30) day period may be extended by an additional period of not more than sixty (60) days, provided reasonable grounds exist for the delay in complying with the thirty (30) day period. No further extension of the periods will be allowed.
- d) Adequate reasons must be provided by the officer, in writing, within sixty (60) days of receipt of the request for reasons. However, where matters that are more complex arise, a further 45 days for an answer is deemed reasonable.
- e) On request from the person concerned, which must be received before expiry of the initial thirty (30) day period, the thirty (30) day period may be extended by an additional period of not more than sixty (60) days, provided reasonable grounds exist for the delay in complying with the thirty (30) day period. This extension may be granted by the officer concerned or, where appropriate, his / her supervisor. No further extension of the periods may be allowed.
- f) Due to the technical nature, the Tariff / Valuation Divisions in Head Office must consider appeals against a SARS Customs Office's tariff or valuation determination.
- g) Appeals must be submitted under cover of a signed DA 51 – Notice of Internal Administrative Appeal and full details of the case must be clearly stated in writing, giving the specific grounds on which the appeal is based and be supported by all the relevant documentation in chronological order. A deposit may have to be lodged and other conditions met – the local SARS Customs Office will be able to advise in this regard, as the provisions of Section 77G demands that, unless the Commissioner so

directs, that any amounts demanded in terms of the Act are not suspended by an appeal in terms of Section 77 or pending a decision by a court.

- h) All decisions in respect of appeals must be given in writing, must be signed by the Chairperson of the relevant Appeal Committee and will be final. In cases where the decision in respect of an appeal is not exactly as desired by the appellant, the right still exists to apply for ADR (Alternative Dispute Resolution) in terms of SC-CC-26 or to initiate litigation. An ADR appeal must be properly completed on DA 52 - Application for Alternative Dispute Resolution, together with any supporting documents and must be submitted to the writer (i.e. the Chairperson of the Appeal Committee), within thirty (30) days from the decision in respect of the appeal.
- i) Customs National Appeal Committees will deal with most decisions taken by Customs, including those related to Head Office tariff and value determinations, VAT payments on imported goods and on interest called for on underpayments.

7.3.9 Internal Controls

- a) A business is required in terms of Section 101 and the Rules thereto to keep available for Customs inspection all records, e.g. books, accounts, documents. Electronic data etc., for a period of at least five (5) years from the date of importation, exportation, manufacturing, purchase, sale or use of any goods.
- b) Records are an important source of knowledge that can be used repeatedly within the knowledge management cycle, because they are unique to an organisation, and relate directly to the business context.
- c) Information Security means the preservation of the confidentiality, integrity and availability of information.
- d) The granting of accreditation status requires an applicant to be able to communicate electronically with SARS. Registration as a user, unless exempted by Rule, is provided within the provisions of Section 101A of and the Rules thereto. These provisions do not exclude the use of an intermediary or duly authorised agents to conduct Customs business related matters on behalf of a trader, provided it is performed within the terms or conditions required by the Commissioner and the provisions of the Act and the Rules.
- e) Accredited clients applicants must produce records as contemplated in Rule 59A.09(2) or Rule 60.08(2), within the preceding two (2) years immediately prior to any application.
- f) Internal accounting, recordkeeping and operational systems, procedures and processes must be properly maintained, documented and reviewed, for all Customs activities and contain verifiable procedures for backup, recovery, fall-back archiving, retrieval and be consistent with generally accepted accounting principles (GAAP).

7.3.10 Integrity

- a) The Management Committee of SARS has issued a general ban on the acceptance of gifts. Any employee who does not observe this ban may be charged with misconduct and could face dismissal.
- b) The accreditation of traders based on specific compliance standards is designed to afford traders the opportunity to demonstrate higher levels of compliance and attention to internal controls needed to meet their obligations under the Act. This will also place traders in a position to participate later in benefits designed to reward these initiatives by traders who are committed to partner SARS to realise improved compliance and trade security.
- c) Voluntary disclosures / compliance initiatives and self-assessment by traders are essential to build on trust and to forge partnerships between SARS and Trade. Endeavours in these areas by trade are recognised, supported, rewarded and open opportunities to regularise duty / other tax affairs including rectification of past errors.

- d) Being part of the Preferred Trade program necessitates that a client maintain compliance with SARS record keeping requirements, computer, accounting and logistical systems, sufficient knowledge and financial resources.
- e) The client must inform SARS of any representative of their company being found guilty of a criminal offence.

7.4 Assessment Results

- a) Results will be made available immediately on completion of the test. A formal certificate will be emailed or mailed within thirty (30) days after the completion of the test.
- b) The successful completion of this assessment requires a minimum pass mark of 60%. This demonstrates sufficient evidence to meet the requirement of the Sections and Rules to 59A, 60 and 64E respectively and confers no other status or title on the individual.
- c) A result achieved by the successful candidate is valid for a period of three (3) years, where after the test will need to be retaken.
- d) In the situation where an individual fails the test, the person will be able to re-sit the test. After two (2) failed attempts, SARS will set up a meeting to provide guidance on the way forward.

8 COMPLIANCE IMPROVEMENT PROGRAM

- a) The compliance improvement programme is a programme for those clients who do not qualify in terms of the accreditation criteria or fail to continue to meet the accreditation criteria.
- b) When a review of an existing accredited client reveals non-conformance with the accreditation criteria, the client's accreditation status may be suspended.
- c) The PT team will in consultation with the client draw up a tailor made compliance improvement plan with a view to enable the client to qualify as an accredited client.
- d) Should the client meet all obligations of the agreed Compliance Improvement Plan within the six (6) month period the client must inform the Branch / Regional PT team in writing of their readiness for the review to be concluded. Once SARS is satisfied that all issues have been resolved as per the compliance improvement plan SARS will re-instate the client to accredited status.
- e) Should the client fail to meet all obligations of the Compliance Improvement Plan within a maximum period of six (6) months:
 - i) Submitted applications will be formally rejected and the client will have to reapply, but not within a twelve month period after initial rejection.
 - ii) Accredited client status already conferred will be cancelled.

9 REVIEW OF AN EXISTING ACCREDITED CLIENT

- a) Reviews of existing accredited clients will be conducted from time to time by Regional PT teams and the CRM to ensure on-going compliance to the accreditation criteria.
- b) Accreditation will be valid for a period of three (3) years, unless cancelled, where after the client will have to apply for continued accreditation on a DA 186.
- c) Any changes to registration and / or legal entity, accreditation criteria, including alterations to computer systems and processes will result in a review of the client's status and such must be reported immediately to SARS.

10 CUSTOMS ACCREDITATION REVIEW COMMITTEE

- a) The Customs Accreditation Review Committee (CARC) is based in Head Office.
- b) The CARC will provide a professional and independent review function of the activities related to accreditation and on the decision-making aspects of the accreditation program. This covers the awarding of accreditation client level status and the management of benefits to qualifying applicants.
- c) The CARC will also perform a quality management function for submissions made to the committee by the CRM, PT Team and Customs Research and Analysis (CRA). This will include areas such as:
 - i) The audit and maintenance reports;
 - ii) Compliance improvement initiatives;
 - iii) Reports on appeals from clients;
 - iv) Joint responsibilities regarding transparency and completeness of information; and
 - v) Decisions related to refusal, cancellation or suspension of accreditation status.
- d) The detailed Terms of Reference for the review committee is contained in SC-TOR-06.

11 PROVISIONS OF THE CUSTOMS RELATIONSHIP MANAGER (CRM)

- a) A CRM will be allocated to all successful applicants who have been awarded level two (2) accreditation status.
- b) CRM functions:
 - i) Facilitate the relationship between the client and Customs;
 - ii) Deliver core activities in managing accreditation applications and engagement with clients;
 - iii) Co-ordinate in conjunction with the PT team and CRA the compliance monitoring activities;
 - iv) Assist in identifying applicable benefits;
 - v) Co-ordinate and assist with client queries and requests; and
 - vi) Resolve all issues for compliance improvement.
- c) The CRM will also assist new applicants on accreditation applications and engagement with the client.

12 RESULT OF ASSESSMENT

- a) If the application for accreditation is successful, the client will be contacted by Customs to sign an accreditation agreement.
- b) The provisions of Section 64E(3)(a) read with Rule 64E.20 and the provisions of Section 60(2) empowers the Commissioner to refuse any application for accredited client status, cancel or suspend such status.
- c) The accreditation status may be suspended if the following instances occur:
 - i) Failure to pay any amount demanded under the Act by due date;
 - ii) If the applicant or an employee has (except where it can be proven that the applicant was not a party or could not prevent any such act or omission by the employee):
 - A) Contravened or failed to comply with the provisions of the Act;
 - B) Been convicted of an offence under the Act;
 - C) Been convicted of an offence involving dishonesty; or
 - D) Failed to comply with any condition or obligation imposed by the Commissioner in respect of accreditation.
- d) The accreditation status may be cancelled under the following instances:
 - i) If sequestered or liquidated;
 - ii) If the holder of the status is deceased or sold the company;
 - iii) No longer carries on the business for which the status was issued;

- iv) Is no longer qualified according to the qualifications prescribed in the Rules;
 - v) Failed to pay any amount demanded under the Act by due date;
 - vi) If the applicant or an employee has (except where it can be proven that the applicant was not a party or could not prevent any such act or omission by the employee):
 - A) Contravened or failed to comply with the provisions of the Act;
 - B) Been convicted of an offence under the Act;
 - C) Been convicted of an offence involving dishonesty; or
 - D) Failed to comply with any condition or obligation imposed by the Commissioner in respect of accreditation.
- e) If it is found on review that the client does not conform to the accreditation criteria, their accreditation status may be **refused or** suspended, however, they may qualify to participate in the compliance improvement program to resolve all outstanding compliance issues.

13 CHANGE OF DETAILS

- a) Clients must inform SARS immediately if any of the details as registered with SARS change.
- b) Prior permission from the Commissioner is required including where any information with regards to computers systems of the client changes which will result in:
 - i) A client utilising a different computer system;
 - ii) A client changing from using its own computer system to using that of another third party;
 - iii) A client changing from using another third party computer system to using its own computer system; or
 - iv) A client contracting the services of an intermediary or a duly authorised agent to conduct Customs related business.

14 QUALITY RECORDS

NUMBER	TITLE
DA 185	Application for Registration and Licensing
DA 186	Application for Customs and Excise Accredited Client Status
SC-CC-03-A20	Systems Questionnaire
SC-CF-06-A01	Request for Information and Self-Assessment

15 DOCUMENT MANAGEMENT

Business Owner	Group Executive: Customs Operations
Document Owner	Executive: Process Solutions Customs & Support Services
Author	P Jones
Detail of change from previous revision	Reviewed to bring in legislative changes related to level 2 and also to bring in the competency assessment for clients
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