

**CUSTOMS**

**EXTERNAL DIRECTIVE**

**TARIFF CLASSIFICATION**

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## 1 SUMMARY OF MAIN POINTS

- a) All import and export transactions require declarations according to an appropriate tariff heading.
- b) Tariff classification is the process whereby any imported or exported commodity is **categorised** by virtue of:
  - i) what it is;
  - ii) how it is made; or
  - iii) what it is used for.
- c) The tariff classification code is directly linked to the rate of duty payable on that commodity. Items are classified in terms of the International Harmonised Commodity and Coding System (Harmonised System), under the World Customs Organisation (WCO) Harmonised System Convention **to which** South Africa is a contracting party.
- d) All member countries of the WCO must use a uniform tariff up to the first six (6) digits of the tariff code. In addition South Africa has in Schedule 1 expanded the international tariffs with two further sub digits which must also be declared.
- e) The verification and classification of imported or exported goods are specifically mentioned in the provisions of:
  - i) Section 47(9); and
  - ii) The rules of classification.

## 2 DIRECTIVE

### 2.1 The Explanatory Notes to the Harmonised System (HSEN)

- a) The interpretation of Schedule 1 Part 1 is in terms of Section 47(8)(a) subject to the Explanatory Notes (HSEN) issued by the WCO. The HSEN sets out in a systematic form the goods handled in international trade. It groups these goods in sections, chapters and sub-chapters, which have been given titles indicating as concisely as possible the categories or types of goods they cover. In many cases, the variety and number of goods classified in a section or chapter are such that it is impossible to cover them all or to mention them specifically in the titles. The HSEN are the most important classification tool, as it constitutes the official interpretation of the Nomenclature at international level. The HSEN follows the systematic order of the Harmonised System, provides commentary on the scope of headings and where appropriate also subheadings.
- b) The HSEN must be used in difficult and doubtful cases to explain or supplement the heading and Notes, not override or contradict them.
- c) The HSEN must be used to ascertain the correct interpretation of the Harmonised System itself, however, is not an exhaustive, unchangeable commentary on the overall scope of the headings and subheadings of the Harmonised System. The HSEN must always be read in strict conformity with the texts of the Harmonised System itself from which they cannot be disassociated and in particular with the Interpretive Rules and the section and chapter notes.
- d) Tariff classification is specifically governed by Section 47(9) and is therefore required knowledge for any prospective classifier.

### 2.2 Determining a Tariff heading

- a) Customs may in writing determine the tariff-heading on imported or exported goods as a result of an application for a tariff determination on a DA 314 or on a report made by a delegated Branch Officer.

- b) In terms of Section 47(9)(a)(ii) a declaration released as entered is not deemed to be a determination.
- c) An opinion given verbally is not regarded as a tariff determination.
- d) The Commissioner may publish the tariff determinations in the Government Gazette [Section 47(9)(c)].
- e) The Commissioner may amend or withdraw a determination and make a new determination [Section 47(9)(d)]. The new determination will be in effect from:
- i) The date of first entry of the goods in question;
  - ii) The date of the notice in the Government Gazette;
  - iii) The date of the first determination;
  - iv) The date of the new determination; or
  - v) The date of the amendment from the old to the new determination.
- f) Any determination that has been made is deemed to be correct but subject to appeal to the Court. Therefore, any amount due as a result of such a determination remains payable for as long as such a determination remains in force [Section 47(9)(b)].
- g) To determine the classification of goods between Harmonised System headings clients must apply a three (3) stage process:
- i) Firstly, **ascertain the meaning of the words** used in the headings and relative section as well as the chapter notes, which may be relevant to the classification of the goods concerned. Schedule 1 Part 1:
    - A) Has general application, meaning that it was not intended to deal with a particular trade.
    - B) Is subject to the ordinary recognised principles of statutory interpretation:
      - I) The most important rule in this regard is to give words their ordinary grammatical meaning, unless the context or the subject clearly shows that they were used in a different sense.
      - II) Definitions assigning specific meanings to words and expressions in legislation, or as a result of case law, must be adhered to unless the context otherwise indicated.
  - ii) Secondly, **considers the nature** and characteristics of the goods.
  - iii) Thirdly, **select the heading** which is most appropriate to the goods, taking the relevant headings, as well as the section and chapter notes into consideration, which must be interpreted in conformity with the Explanatory Notes.
    - A) Rules of classification are used to determine the correct tariff heading. There are six (6) general rules for the interpretation of the Harmonised System, which must be applied in a strict hierarchical order. The rules are an integral part of the Explanatory Notes providing for a uniform application of the Harmonised System. The six (6) rules are:
 

#	APPLICATION
1	General Rule
2(a)	Incomplete or unfinished, unassembled or disassembled goods
2(b)	Mixtures or combinations
3(a)	Two (2) or more combinations - Most specific
3(b)	Two (2) or more combinations - Essential character
3(c)	Two (2) or more combinations - Last in numerical order
4	Most akin (alike)
5(a)	Special containers
5(b)	Packing materials and containers
6	Subheading texts, notes and rules 1 to 5 above
    - B) The first five (5) rules relate to the 4-digit headings and the last rule relates to classification in the 5- or 6-digit subheadings of the Harmonised System.

## 2.3 Staged Consignments

- a) Tariff classification of staged consignments differs from the norm. From a legal point of view, goods are normally classified as presented at the time of importation by a specific importer.
- b) With staged consignments, in most instances, only one (1) tariff heading is utilised and is determined according to the essential character of the whole consignment (SC-CF-48).

## 2.4 Analysis Fees

- a) In terms of Section 107(2)(b), Customs may direct that goods be analysed by a person designated by Customs and that the analysis be done in accordance with a method determined by Customs.
- b) The party requesting the analysis is liable for the analysis fees. This is normally the importer or exporter requesting a tariff determination, except:
  - i) Where Customs considers analysis necessary and this analysis:
    - A) Confirms the correctness of a declaration made or presented by a client then Customs is liable for the cost; or
    - B) Shows that the goods in question were incorrectly or insufficiently described on the invoice, the importer or exporter (whichever is applicable) is liable for the cost; and
  - ii) In the case of a refund or substitution of a declaration the costs of the analysis is never borne by Customs.
- c) When application is made to Customs for a refund of analysis fees paid, the letter must be forwarded to Head Office.

## 2.5 Record keeping

- a) The recipient or importer of the goods imported or exported by post must keep for record purposes for a period of five (5) years:
  - i) Books, accounts and documents in respect of all transactions relating to the Rules for the purpose of any acquittal procedure; and
  - ii) Any data related to such documents created by means of a computer.
- b) The five (5) year period is calculated from the end of the calendar year in which the document was created, lodged or required. (Sections 101 and 101A)
- c) Every client must produce such books, accounts and documents on demand.

## 2.6 Penalties

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

## 2.7 Appeals against decisions

- a) In cases where clients are not satisfied with any decision taken in terms of the Customs and Excise Act they have a right of appeal to the relevant appeal committee. The policy in this regard, as well as the process to be followed, is contained in document SC-CC-24.
- b) Should clients be unhappy with a decision of any appeal committee their recourse will be to lodge an application for ADR (Alternative Dispute Resolution) with the relevant appeal committee. The committee will add its comments thereto and forward the application to the ADR Unit for attention. The policy in this regard, as well as the process to be followed is contained in document SC-CC-26.
- c) If clients wish to appeal any decision in terms of VAT penalties, they are directed to the provisions of Section 215 to 220 of the Tax Administration Act No. 28 of 2011 for the percentage based penalty and Section 224 of the Tax Administration Act No. 28 of 2011 for the understatement penalty. In this regard, please consult the SARS website or nearest SARS Branch Office.

## 3 PRACTICE

### 3.1 General Rules for the interpretation of the Harmonised System

#### 3.1.1 Rule 1

- a) The client must apply the General Rules of Interpretation, in a sequential order; therefore, Rule 1 takes precedence over the remaining rules. The client must verify if Rule 1 can be used to classify the goods concerned.
  - i) The Explanatory Notes to the Harmonised System (HSEN) groups the international trade goods into sections, chapters and sub-chapters which have been given titles indicating as concisely as possible the categories or types of goods they cover. The titles are only to be used for ease of reference and have no legal bearing on classification.
  - ii) It requires that classification be determined according to the terms of the headings of the Harmonised System and any relative section or chapter notes and if the goods cannot be classified under this rule the classification must be done according to the provisions of Rules 2 to 6.
- b) The client must ask the following questions when determining the classification of goods:
  - i) What am I busy classifying – what is it that needs a tariff heading?
  - ii) What material and/or substance is the commodity under review made of?
  - iii) What is the function or use of the commodity under review?
  - iv) In what form is the commodity imported or exported?
  - v) Is this the only possible classification for the commodity under review?
- c) Under Rule 1, if a provision specifically and completely describes a product, then the product would be classified in that provision. For example fresh grapes are classified under heading 0806 which provides for “grapes, fresh or dried”. In this situation, the product is classified by the terms of a heading.
- d) Note 3 to tariff section XVI to the Harmonised System directs classification of composite machines described therein on the basis of the “principal function” of the machines.
- e) Rule 1 further states that if the text of the headings and of the notes cannot, by themselves, determine the appropriate heading for classification of merchandise, then classification is to be determined by the appropriate Rule that follows Rule 1 (i.e. Rules 2 to 6).
- f) The bulk of classifications take place by the utilisation of Rule 1.

### 3.1.2 Rule 2

- a) After ruling out the use of Rule 1 the client must determine if Rule 2 could be applicable to determine the tariff classification.
- b) Rule 2 extends the scope of classification to include goods imported in a condition not specifically recognised in the Harmonised Tariff. It is for this reason that Rule 2 contains two (2) sections that deal with the classification of goods that is imported as:
  - i) Incomplete or unfinished;
  - ii) Unassembled or disassembled; or
  - iii) Composed of mixtures or combinations of materials or substances.
- c) Rule 2(a) has two (2) parts:
  - i) Part one (1) deals with **incomplete or unfinished** goods:
    - A) The first part of Rule 2(a) extends the scope of any heading that refers to a particular article to cover not only the complete article but also that article incomplete or unfinished, provided that, as presented, it has the “essential character” of the complete or finished article.
    - B) Example: A ceramic statuette of the Hokie Bird that will be painted after importation would still generally have the essential character of a ceramic statuette of heading 6913; i.e., one (1) would still recognise and identify the product as a ceramic statuette) and would therefore be classified pursuant to Rule 2(a) as the finished product in heading 6913.
    - C) Goods classified by virtue of this rule are by nature manufactured articles and as such the first part would not normally cover such goods.
    - D) Care should however be exercised when using this rule, as the essential character criterion is not always easy to detect due to the complexity thereof and can lead to disputes owing to the fact that there may be interpretation differences.
  - ii) Part two (2) deals with **unassembled or disassembled** goods:
    - A) The second part of Rule 2(a) provides that complete or finished articles presented unassembled or disassembled (which may occur for reasons related to the packing, handling or transportation of the articles) are to be classified in the same heading as the assembled article. It also provides that incomplete or unfinished articles presented unassembled or disassembled are to be classified in the same heading as the complete or finished article provided that as presented they have the essential character of the complete or finished article [as provided for in the first part of Rule 2(a)].
    - B) The main reason for articles to be shipped unassembled or disassembled is due to shipping logistics but care must be taken that it is not an attempt by the importer to avoid payment of duty.
    - C) The extent of work that will have to be done in order to assemble these goods again is important, either by means of fixing devices (screws, nuts, bolts, etc.) or by riveting or welding. As long as it is only assembly, it is allowed.
    - D) If further work for completion into the finished state still has to take place this rule would not normally be used.
    - E) Unassembled components of an article that are imported in excess of “equal quantities” are to be classified separately.
- d) A shipment of an unassembled bicycle (containing all parts and components necessary to build a bicycle) would be classified in heading 8712 as an assembled, finished bicycle as if it were entered (or imported) as the assembled, finished bicycle.
- e) This rule applies to goods “as presented”, in which case the heading should be determined for the goods presented in a particular shipment for importation and not as consisting of all the goods which may be presented at different times or in different shipments.

- f) Rule 2(b) lays the groundwork for dealing with products, not classifiable through the use of Rule 1 or Rule 2(a), which is composed of a mixture of materials or substances. It basically states that a heading referring to a given material or substance includes mixtures of that substance with others.
- g) Rule 2(b) governs the classification of:
- i) Mixtures and combinations of materials or substances; and
  - ii) Goods consisting of two (2) or more materials or substances.
- h) The rule includes **headings** referring to:
- i) A material or substance to include mixtures or combinations of that material or substance with other materials or substances; and
  - ii) Goods of a given material or substance to include goods consisting wholly or partly of that material or substance (but only as long as another heading does not refer to the goods in their mixed or composite state).
- i) The rule applies only if the headings or the HS tariff section or chapter notes do not specifically exclude mixtures, for example heading 15.03 deals with lard oil, not mixed. Mixtures being preparations specifically described as such in the HS tariff section or chapter notes or in a heading text are to be classified under the provisions of Rule 1.
- j) If the addition of another material or substance deprives the imported good of the character of the kind mentioned in the heading under consideration, then the client must resort to Rule 3 for classification of the merchandise. In other words, mixtures and combinations of materials or substances, and goods consisting of more than one (1) material or substance, if upon initial consideration are potentially classifiable under two (2) or more headings, they must be classified according to the principles of Rule 3.
- k) Under Rule 2(b) a stainless steel travel mug with a plastic handle would be classifiable in heading 7323 as a table, kitchen or other household article of steel despite the plastic handle (as it retains the character of a table, kitchen or other household article of steel as mentioned in heading 7323). If a travel mug, however, contained relatively equal amounts of stainless steel and plastic (e.g., the outside or outer surface of the mug is made of plastic and the inside or inner surface (lining) of the mug is made of stainless steel), then the travel mug would be potentially classifiable under two (2) headings: heading 3924 as tableware, kitchenware or other household article of plastic and heading 7323 as a table, kitchen or other household article of steel. (Or, contrasting this product with the initial one (1) considered in this example, a travel mug consisting of relatively equal amounts of stainless steel and plastic does not have the character of a table, kitchen or other household article of steel as mentioned in heading 7323.) In this situation, pursuant to Rule 2(b), resort would need to be made to Rule 3 for classification of the product.
- l) When by application of Rule 2(b) or for any other reason, goods are obviously classifiable under two (2) or more headings classification must be effected by utilising Rule 3.

### 3.1.3 Rule 3

- a) Rule 3 comes into force when goods potentially fall within two (2) or more headings, in descending order the considerations are:
- i) Most specific description of the goods;
  - ii) Essential character; and
  - iii) The heading appearing last in the Explanatory Notes among those that equally merit consideration.
- b) Rule 3 contains three (3) methods: 3(a) to 3(c). These methods operate in the order in which they are set out in the rule. Rule 3(b) operates only if Rule 3(a) fails in classification and if both Rule 3(a) and



Rule 3(b) fail Rule 3(c) will apply. The order of priority is therefore (a) specific description; (b) essential character and (c) heading which occurs last in numerical order.

- c) Rule 3 only applies if the terms of the headings or notes do not specifically exclude the goods, that is:
- i) Note 4(b) to Chapter 97 mandates that goods described in both headings 97.01 to 97.05 and heading 97.06 must be classified in headings 97.01 to 97.05;
  - ii) Note 1(a) to tariff section VI of the Harmonised System mandates that goods described in heading 28.44 to 28.45 are to be classified in those headings and in no other heading of the HSEN;
  - iii) Note 3 to tariff section VI of the Harmonised System provides for the classification of certain sets; and
  - iv) Heading 30.06 and note 4(g) to Chapter 30 provides for the classification of "First Aid Kits".
- d) Rule 3(a): Specific description preferred over general description. The application of this Rule would appear to be simpler than it actually is in practice. This is so because of contextual differences between people as to what is more specific than something else. There are no specific guidelines laid down by the authors of the Nomenclature, as to what criterion must be utilised when it comes down to describing specificity. The following principles may however be followed:
- i) A description by name is more specific than a description by class. An example of this would be tableware of plastic, classifiable within heading 3924.10, which is more descriptive than other articles of plastic of heading 39.26, even though the latter heading could also conceivably cover the subject merchandise.
  - ii) A clear description is preferable to a lesser identification. An example is a plastic pipe that although it will form part of an irrigation system of heading 84.24, if imported separately, is more clearly described in the heading text to 39.17 which covers tubes and pipes of plastic.
  - iii) An example of a description by name in one (1) heading that is more specific than a description by class in another heading is as follows: "shavers and hair clippers with self-contained electric motor" of heading 8510 is more specific than "electro-mechanical tools for working in the hand with self-contained electric motor" of heading 8467 or "electro-mechanical domestic appliances with self-contained electric motor" of heading 8509.
- e) If two (2) or more headings refer to part only of the subject merchandise, the heading are deemed to be equally specific, this rule may not be used and Rule 3(b) or Rule 3(c) will have to be used.
- f) Rule 3(b) relates only to:
- i) Mixtures;
  - ii) Composite goods consisting of different materials;
  - iii) Composite goods consisting of different components; or
  - iv) Goods put up in sets for retail sale.
- g) There are various criteria to be applied when considering Rule 3(b), with no particular order. Each instance has to be treated on its own merits.
- i) Essential character is a deciding criterion when utilising this rule. There are a variety of factors that must be remembered when dealing with essential character, namely:
    - A) Nature of the material or component:
      - I) Bulk;
      - II) Quantity;
      - III) Weight;
      - IV) Value; or
    - B) The role of the constituent material in relation to the use of the goods.
  - ii) Specifically when dealing with composite goods with separable components, they must be mutually complimentary to each other, in the sense that they form a whole which would normally be sold together. Example of what would be acceptable for purposes of classification is:

- A) A household spice rack consisting of a special frame and an appropriate number of empty spice jars; and
  - B) Two (2) pens and a pencil, put up in a set, they are complimentary and the fact that there are two (2) pens in the set gives it its essential character.
- h) This rule does not cover selections of products put up or presented together, such as various meats or bottles of various types of liquor.
- i) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, if this criterion is applicable.
- j) The factor which determines the essential character of the goods will vary depending of the different kinds of goods. It may be determined by the nature of the material or component, its bulk, quantity, weight or by the role of a constituent material in relation to the use of the goods.
- k) Composite goods made up of different components must be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, provided these components are adapted one (1) to the other and are mutually complementary and that together they are forming a whole which would not normally be offered for sale in separate parts: For example:
- i) Ashtrays consisting of a stand incorporating a removable ash bowl; and
  - ii) Household spice racks consisting of a specially designed frame (usually of wood) with an appropriate number of empty spice jars of suitable shape and size.
- l) As a general rule the components of these composite goods are put up in common packing material.
- m) For the purposes of this rule, the term “goods put up in sets for retail sale” must be taken to mean goods which:
- i) Consist of at least two (2) different articles, which are prima facie classifiable in different headings. Therefore, for example six (6) fondue forks cannot be regarded as a set within the meaning of this rule;
  - ii) Consist of products or articles put up together to form a particular need or carry out a specific activity; and
  - iii) Are put up in a manner suitable for sale directly to users without repacking, for example boxes, case or on boards.
- n) If these requirements are met, all articles in the set are classified in the provision for the article among them that gives the set its essential character. Because requirements (i) and (iii) are more easily determined and success in finding a valid set under Rule 3(b) hinges to a large extent on application of requirement (ii), we will limit our discussion to issues involving the language contained therein and not discuss requirements (i) and (iii) in this publication.
- o) The rule covers sets consisting of for instance different foodstuffs intended to be used together in the preparation of a ready-to-eat dish or meal.
- p) This rule furthermore does not apply to goods consisting of separately packed constituents put up together, whether or not in a common packing, in fixed proportions for the industrial manufacture of, for example beverages.
- q) Rule 3(c) is only considered when goods cannot be classified by reference to Rule 3(a) or Rule 3(b). Goods are then classified in the heading which occurs last in numerical order among those which equally merit consideration in determining their classification.
- r) Goods which cannot be classified in accordance with the previous rules must be classified under the heading appropriate to the goods to which they are most akin or alike.

- s) An example of the mixed good consisting of barley (50%) and oats (50%) in equal amounts, if neither the barley nor the oats is found to impart the essential character to the product, then by application of Rule 3 (c) the product would be classified in heading 10.04 as if consisting solely of the oats. This is because the heading number for the oats found in the mixture occurs last in numerical order as between it and the barley (i.e., 1003 for the barley and 1004 for the oats).
- t) A set consisting of:
- i) 3 x **ball point pen** (heading 96.08);
  - ii) 3 x **lead pencils** (heading 96.09);
  - iii) 1 x **pencil sharpener** (heading 82.14);
  - iv) 1 x **eraser** (heading 40.16).
- u) Unable to determine essential character, as three (3) pens and three (3) pencils. The set thus is classifiable under heading which occurs last in numerical order. Classification of the set thus in heading 96.09.

#### 3.1.4 Rule 4

- a) The client must determine if Rule 4 could be used to determine the tariff heading of the goods under review.
- b) This rule must be applied very infrequently as Rules 1 to 3 will cover the classification of almost all goods. When attempting to apply this rule, however, any determination regarding “kinship” will depend on such factors as description, character, purpose or intended use, designation, production process and the nature of the goods.
- c) In utilising this rule it is necessary to compare the presented goods with similar goods in order to establish a kinship which can depend on many factors such as description, character, purpose, etc.
- d) This rule is used as a “last resort” method, should all else fail as it is nebulous (unformulated) in the extreme. Rules 1 to 3 will cover the classification of almost all goods. When attempting to apply this rule, however, any determination regarding “kinship” should depend on such factors as description, character, purpose or intended use, designation, production process and the nature of the goods.
- e) Rule 4 is used as a “last resort” method, should all else fail as it is nebulous (unformulated) to the extreme.
- f) If this rule cannot be considered for classification purposes the client must revert back to Rules 1 to 3 for similar or most akin goods.

#### 3.1.5 Rule 5

- a) Rule 5 governs the classification of certain long-term use containers and certain packing materials and packing containers.
- b) The client must verify if Rule 5 can be used to determine the tariff heading of the container(s) under review.
- c) In addition to the foregoing provisions, Rule 5(a) will apply in respect of the goods referred to therein. Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith.
- i) Rule 5(a) covers the type of containers that are normally sold with the articles with which they are used and which are normally specially shaped or fitted to accommodate such articles, for example saxophone cases, guitar cases, binocular cases,.

- ii) They are manufactured in such a way as to produce longevity similar to that of their contents.
  - iii) These containers also serve to protect the article when not in use.
- d) **Proviso:** In order for this rule to apply, the containers must always be presented with their content, if not they must be cleared in their own respective headings, normally heading 42.02.
  - e) Rule 5(a) does not apply to containers giving the whole its essential character, for example silver caddies containing tea or an ornamental ceramic bowl containing sweets.
  - f) Rule 5(b) governs the classification of packing materials and packing containers of a kind normally used for packing the goods to which they relate.
  - g) The package material referred to when dealing with Rule 5(a) is for short-term packaging and must clearly not be suitable for repetitive use, for example cellophane packaging found when clothing are imported.
  - h) This rule does not apply to packing material or containers clearly suitable for repetitive use would be such as metal drums for compressed gas, etc.
  - i) Rule 5(b) is subject to Rule 5(a) and therefore the classification of cases, boxes and similar containers of the kind mentioned in Rule 5(a) must be determined by the application of that rule.
  - j) To determine the sub-heading of the goods under review proceed to Rule 6. If the goods under review do not fall under the provisions of Rule 5(b) the client must revert to Rules 1 to 4.

### 3.1.6 Rule 6

- a) The client must use Rule 6 to classify the goods at a sub-heading level.
- b) Rule 6 is the last of the Rules. It prescribes that, for legal purposes, Rules 1 to 5 govern, *mutatis mutandis* (with the necessary changes), classification at subheading levels within the same heading. Rules 1 to 5 is to be reapplied to determine the classification of goods at the subheading level. Goods are to be classified at equal subheading levels (that is, at the same digit level) within the same heading under the subheading that most specifically describes or identifies them (or as otherwise required or directed under Rules 1 to 5). Only subheadings at the same level within the same heading are comparable (i.e., no consideration should be given to the terms of any subheading within another subheading when considering the proper classification of merchandise at the higher level subheading).
- c) This rule has bearing on subheadings, that is one-dash subheadings (level 1) and two-dash subheadings (level 2). Rule 6 is to subheadings what Rule 1 is to headings.
- d) When the pertinent one-dash subheadings has been decided upon and there is further subdivisions, then the merits of the two-dash subheading will be assessed.
- e) The client must comply with paragraph 2.2 of this document, if an official determination is required.

## 3.2 Preparing a Tariff Application (DA 314)

- a) As part of the tariff application, the client must:
  - i) Motivate his/her interpretation of the meaning of the words used in the tariff headings and relative HS tariff section and chapter notes which the client is of the opinion may be relevant to the classification of the goods concerned;
  - ii) Consider the nature and characteristics of the goods under review; and

- iii) Select the tariff heading which is most appropriate to the goods, taking the relevant tariff headings, as well as the HS tariff section and chapter notes into consideration, which must be interpreted in conformity with the Explanatory Notes.
- b) The client must ensure that the following information is available for the completion of a DA 314:
- i) District office;
  - ii) Importer;
  - iii) Agent;
  - iv) Submission, re-submission with regards to additional information;
  - v) Consignment;
  - vi) Declaration number;
  - vii) Declaration date;
  - viii) EX (name);
  - ix) Trade name of article;
  - x) Manufacturer or Supplier;
  - xi) Description of article;
  - xii) Use of article; and
  - xiii) Motivation for application.
- c) The client must ensure that a short reason for submitting the matter for a tariff classification is supplied. The reason must be clear and adequately set out in the application.
- i) The reasons for submitting an application must be fully motivated in terms of the Nomenclature. Reference must be made to the HS tariff section and chapter notes as well as the Explanatory notes;
  - ii) If samples and/or literature are submitted with the application it must be clearly stated:
    - A) Where and when the sample (SC-CF-49) or literature is being forwarded, if not delivered to the Hub, the sample must be forwarded by registered mail; and
    - B) To whom the parcel has been addressed.
- d) The client must verify that copies of all the correspondence are forwarded to Customs, through the Hub, to support the application. This include any correspondence from:
- i) The agent to the importer;
  - ii) The importer to the supplier or manufacturer;
  - iii) The importer to Customs; and
  - iv) Customs to the importer.
- e) If an analysis is required, the client must lodge a provisional payment to cover the analysis fee. A copy of the DA 70 must be included in the documentation submitted to Customs when applying for a Tariff Classification.
- i) The current analysis fees that have to be lodged by importers or agents in the form of a provisional payments depends on the quote received from the contracted party;
  - ii) The Council for Scientific and Industrial Research (CSIR) is operating on business principals and have increased the fees dramatically; and
  - iii) These amounts are subject to amendment at any stage, but the client must be timorously advised, if and when necessary.
- f) The client must submit the supporting documents and sample or literature to Customs, through the Hub (SC-CF-49).
- g) The Customs Officer at the Hub submits an electronic DA 314 through the Tariff Determination System. An e-mail notification of the submission is automatically received by Head Office Trade Administration Tariff Support.

- h) The Customs Officer in Head Office informs the Hub Officer of the outcome of the tariff determination.
- i) The Hub Officer must inform the client in an official letter of the outcome of the application; and
- ii) The Branch Officer or Physical Inspector must inform the client within seven (7) days after receipt of the tariff determination of any duties due to Customs in a letter of intent.
- i) The client submits the amended declaration(s) and pays the under entry, if any. If the client wants a determination (DA 314) or to appeal (SC-CC-25) the tariff determination after paying the under entry, the case must be forwarded to Head Office Trade Administration Tariff Support.

## 4 RELATED INFORMATION

### 4.1 Legislation

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	<b>Customs and Excise Act No. 91 of 1964:</b> Sections 47(8)(a); 47(9) and 107(2)(b) <b>Harmonised Tariff System:</b> Schedule 1 Part 1 <b>Tax Administration Act No. 28 of 2011:</b> Sections 215 to 220 and 224
Other Legislation:	<b>Promotion of Administrative Justice Act No. 3 of 2000:</b> Section 3 and 5 <b>Promotion Of Access To Information Act No. 2 of 2000:</b> All
International Instruments:	<b>World Customs Organisation Harmonised System Convention:</b> All <b>Kyoto Convention General Annex Chapter 9</b> – Information, Decisions and Rulings supplied by Customs: Standards 9.1 to 9.9

### 4.2 Cross References

DOCUMENT #	DOCUMENT TITLE
SC-CC-24	Internal Administrative Appeal - External Policy
SC-CC-26	Alternative Dispute Resolution - External Policy
SC-CF-48	Staged Consignments - External Directive
SC-CF-49	Customs Samples - External Policy

### 4.3 Quality Records

NUMBER	TITLE
DA 314	Application for Tariff Determination

## 5 DEFINITIONS AND ACRONYMS

<b>Comparable at the same level</b>	One-dash subheadings (level 1) and two-dash subheadings (level 2). When the relative merit of two (2) subheadings within one (1) heading are compared with one (1) another, their specificity may only be assessed on the basis of the texts of the competing subheadings on the same level.
<b>Disassembled</b>	The article has been taken apart before shipping and is to be put back together after importation
<b>HS</b>	Harmonised Commodity and Coding System
<b>HSEN</b>	Harmonised System Explanatory Notes
<b>Literature</b>	Literature, pamphlets or catalogues
<b>Nomenclature</b>	HS Tariff and Explanatory Notes to the Tariff
<b>Samples</b>	Articles which are representative of a particular category of goods already produced or are examples of goods the production of which is contemplated; the term does not include identical articles brought in by the same individual or sent to a single consignee, in such quantity that, taken as a whole, they no longer constitute samples under ordinary usage

<b>Unassembled</b>	The article is manufactured and shipped in component form without first being assembled and needs to be assembled after importation
<b>WCO</b>	World Customs Organisation

## 6 DOCUMENT MANAGEMENT

<b>Directive Owner</b>	Executive: Process Solutions Customs & Support Services
<b>Detail of change from previous revision</b>	<ul style="list-style-type: none"> <li>a) Inserting additional paragraph with regards to appeals against VAT penalties.</li> <li>b) Combine the external policy and SOP into one (1) directive as per new template requirements.</li> </ul>
<b>Template number and revision</b>	ECS-TM-03 - Rev 7