CUSTOMS & EXCISE

External Policy

SAMPLES

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1 PURPOSE

a) The document outlines the extraction and handling of samples, in terms of Section 22 of the Act which must be conducted under Customs and Excise Supervision.

b) The document outlines the extraction, handling of samples for the purpose of examining and testing the samples. This is to determine and verify the nature, composition, quality, value, and tariff classification of the declared goods.

c) It details the responsibilities of owners of goods stored in Customs & Excise warehouses, including the application process for taking samples, liability for duties and VAT, submission requirements, clearance procedures, record-keeping obligations, and penalties for non-compliance.

2 SCOPE

a) The sample document must be read in conjunction with:

   i) Samples drawn under special and extra attendance (SC-CF-22);
   ii) Valuation of Imports (SC-CR-A-03);
   iii) Counterfeit Goods (SC-CC-28);
   iv) Method 1 Valuation of Imports (SC-CR-A-05)
   v) Valuation of Exports (SC-CR-A-07);
   vi) Tariff Classification (SC-CR-A-09); and
   vii) Refunds and Drawbacks (SC-DT-C-13).

b) The information included in this document does not cover the following:

   i) Samples of no commercial value (SC-IM-01-01);
   ii) Samples drawn by the Road Fuel Testing Units (RFTU's);
   iii) Compulsory tariff determinations for alcoholic beverages as these are dealt with in document SC-CR-A-08; or
   iv) Samples supplied free of charge (SC-CR-A-03).

3 POLICY STATEMENT

3.1 Samples drawn under Customs and Excise supervision

a) If Customs or Excise requires a sample from the owner, the owner must apply for special and extra attendance (refer to SC-CF-22).

b) The provisions pertaining to the extracting of samples is contained in:

   i) Section 22 which provides that the owner of goods in a Customs and Excise warehouse may apply to the Controller/Branch Manager in whose area the goods are situated to take samples of such goods. The samples may either be for trade purposes or for a Customs procedure that the owner wants to apply for on his/her own initiative. Where an owner requests for a sample to be drawn:
      A) Prior permission must be obtained in writing, at least 24 hours before access for the intended purpose is required.
      B) The application for permission must state the:
         I) Reason why the sample is required,
         II) Number and date of the goods declaration on which the goods were entered for warehousing;
         III) Marks and numbers of the packages to be examined or from which the samples are to be extracted; and
         IV) Total number of samples required.
   ii) Section 106 which states that samples may be taken by a Customs or Excise Officer. The Customs or Excise Officer may take the sample:

A) From any person in possession of the imported goods or during the manufacture of any excisable goods or any time after such manufacture or partly manufacture excisable goods; or of material intended for manufacture of excisable goods and
B) On entry of the imported goods or goods for export or at any time after such entry including after passing form Customs & Excise control as legislated in Section 107(2)(a).

b) Customs or Excise may take, accept or require a client to produce samples for:

i) Conducting an inspection of the goods; or
ii) Establishing:
A) The nature or characteristics of the goods;
B) The quality or content of the goods;
C) The tariff classification, value or origin of the goods;
D) The duties payable thereon;
E) Whether the goods qualify under a refund procedure;
F) Whether the goods are:
I) The same goods previously cleared or released for a Customs procedure;
II) Compensating products obtained from specific goods; or
III) Identical or similar to or of the same class or kind as other goods;
G) Whether the goods are prohibited, restricted, sectorally controlled or counterfeit goods; or
H) Any other fact in relation to the goods as may be prescribed by Rule.

c) The samples must be dealt with and accounted for as the Commissioner may direct. Samples may be:

i) Examined, analysed or tested in any way;
ii) Analysed by a reputable third party in accordance with a method determined by the Commissioner, in which case the cost of the analysis must be borne by the importer, exporter or owner of the goods;
iii) Subjected to a chemical, mechanical or technological process;
iv) Used for obtaining advice, including expert or technical advice, on the goods or a matter relating to the goods;
v) Utilised in any other way necessary for achieving the purposes as mentioned in (b) above; or
vi) Used as evidence in a court or any other Customs proceeding.

d) Samples must be truly representative of the total shipment under review. Liquids must therefore be stirred or shaken and powders or other dry substances taken from the centre of the package as far as possible.

e) The owner applies for special and extra attendance on a DA 73 for samples to be taken under Customs supervision as documented in SC-CF-22. The Customs Officers attending the examination or extraction must supervise the complete operation and on completion thereof must ensure that the packages remaining in bond are sealed.

f) The Customs Officer taking the samples must issue a receipt therefor to the owner reflecting the full particulars of the sample, signed and dated with an official Customs stamp.

3.2 Samples submitted to Customs or Excise

a) Samples submitted to Customs or Excise must be under cover of a letter containing:

i) The owner's company letter head.
ii) The purposes of the sample, for example refund, tariff classification or valuation determination.
iii) The Branch Office name where the sample is handed in.
iv) The case number if one (1) was assigned by Customs or Excise.
i) The Local- (LRN) and Movement reference number (MRN) where applicable.
ii) The owner's details, name and Customs or Excise client number.
iii) The details of a contact person who Customs can contact to collect the sample upon return. The contact person's:
A) Full name;
B) Designation;

C) E-mail address; and
D) Contact numbers.

iv) A description of the sample(s).
v) A list of the supporting documents that are attached to the case.
vi) Any comments that the owner wishes to refer to or bring under the attention of the Customs or Excise Officer.
vii) The following declaration: "I <insert full names>, hereby certify that the above-mentioned information is correct and that the sample has been attached."

b) The above-mentioned covering letter must be submitted in duplicate. The Customs or Excise Officer receiving the sample from the owner signs the copy as an acknowledgement of receipt.

c) Where a Material Data Safety Sheet details specific requirement for the safety and handling of a sample, this must also be submitted by the owner.

d) The following samples must not be forwarded to Customs & Excise:

i) Hazardous or dangerous samples: A Customs or Excise Officer must visit the client's premises and verify that the literature and/or chemical analysis certificates submitted instead of a sample can be tied-up with the goods under the Customs & Excise procedure.
ii) High risk or high value samples: The owner must arrange with the relevant division in Head Office for the examination of the sample.

e) SARS may require in terms of Section 107(2)(b) that the sample must be analysed by a reputable third party and in accordance with a method determined by the Commissioner. The cost of the analysis of any goods must be borne by the owner of the goods.

f) In the case where SARS considers analysis necessary, and the analysis confirms the correctness of the client's/owner's declaration/representation then SARS is liable for the analysis cost as stated in terms of Section 107(3).

3.3 Clearance and duty liability

a) Except in the case of samples temporarily removed which must for all purposes be regarded to remain part of the imported goods from which they were taken:

i) Regardless of the Customs procedure under which the goods are to be cleared, samples taken must always be cleared for home use and any duties and taxes must be paid.
ii) When the sample is taken from the goods in the warehouse, the voucher of correction (VOC) must be passed to change the quantity of the original declaration in addition to the procedure outlined in paragraph (i) above.
iii) In cases where the sample is taken from the goods in the warehouse, the owner devalues the sample to ensure it has no commercial value:
A) The VOC must be passed to change the quantity of the original declaration.
B) No duties and taxes are payable in such cases as the sample is considered to have no commercial value.
iv) Where the sample is taken after clearance, a substitution goods declaration is therefore required if the original clearance was not for home use.

b) The owner is liable for the duty and taxes due on the samples concerned in terms of Section 44(6)(c). The payment of duty on samples may be deferred until the goods from which the samples have been taken are entered for delivery from a customs and excise warehouse for any purpose as determined in Section 20(4).

c) If free circulation goods are cleared for exportation from South Africa and samples are taken from the export consignment, the sample will revert to free circulation goods. The owner clearing the goods for export must amend the goods declaration to exclude the samples from the goods declaration.

3.4 Returning of samples

a) The owner may request that the samples must be returned after Customs or Excise procedure is finalised. However, samples submitted with a refund, tariff or valuation application will be retained by Customs or Excise for record purposes for a period of:

i) Five (5) years from the date of the conclusion of a court case; or
ii) Two (2) years from the completion of any other Customs or Excise proceeding.

b) Samples returned by Customs or Excise, after the required time frame, must be collected and signed for as proof of receipt. Customs or Excise will notify the owner, in writing, that the sample is available for collection. The owner must collect the sample within five (5) working days of the date of the letter.

c) Hazardous samples must be transported to a more secured area for disposal by a Health and Safety Officer.

d) In the case of destruction, a notice must be sent to the owner.

e) Samples not returned to or collected by the owner will be removed to the nearest States Warehouse as documented in SC-CW-01-04.

4 REFERENCES

4.1 Legislation

TYPE OF REFERENCE	REFERENCE
Legislation, Rules, Regulations and Interpretation Notes administered by SARS	**Customs and Excise Act No. 91 of 1964:** Sections 3(1), 4(4)(aC)(i) to (iv), 22, 44(6)(c), 47(9), 106, 107(2)(b) and 107(3) **Customs and Excise Rules:** Rule 106.01,106.02, 120.03 and 120.04 **WTO Trade Facilitation Agreement**: Section 1 Article 4 – Appeals or review procedure
Other Legislation	**Promotion Of Access To Information Act No. 2 of 2000:** All **Promotion of Administrative Justice Act No. 3 of 2000:** Sections 3 and 5
International Instruments	**Kyoto Convention General Annex Chapter 3:** Clearance and other Customs formalities – Standard 3.9, 3.38 and 3.42 **WCO SAFE Framework of Standards: Annex 1 –** Standard 1.2.1 to 1.2.3

4.2 Cross References

DOCUMENT NUMBER	DOCUMENT TITLE
SC-CA-02	Internal Administrative Appeal – External Policy
SC-CC-26	Alternative Dispute Resolution – External Policy
SC-CC-28	Counterfeit Goods – External Policy
SC-CF-22	Special and Extra Attendance – External Policy
SC-CO-01-02	Offences and Penalties - External Policy
SC-CR-A-03	Valuation of Imports – External Policy
SC-CR-A-05	Method 1 Valuation of Imports – External Policy
SC-CR-A-07	Valuation of Exports – External Policy
SC-CR-A-09	Tariff Classification – External Policy
SC-CW-01-04	State Warehouse – External Policy
SC-DT-C-13	Refunds and Drawbacks – External Policy
SC-IM-01-01	Samples of No Commercial Value – External Policy

5 DEFINITIONS AND ACRONYMS

Link for centralised definitions and acronyms: [Glossary A-M | South African Revenue Service (sars.gov.za)]