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VALUATION OF IMPORTS

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1 PURPOSE

- a) The primary basis for the Customs value under the Agreement is transaction value, which is the price actually paid or payable. This method is discussed in SC-CR-A-05.
- b) Where the Customs value cannot be determined under the transaction value method (Method 1) the following methods, discussed in this document, are applied:
 - i) Identical goods method;
 - ii) Similar goods method;
 - iii) Deductive method;
 - iv) Computed method; or
 - v) Fall-back method.

2 POLICY STATEMENT

2.1 Invoice for Customs valuation purposes

- a) In order to ensure that the invoice may be accepted as a basis for value determination, the Rand amount reflected on the invoice must be correct. Refer to SC-CF-29 for invoice requirements.
 - i) The amount reflected on the invoice must be the total price paid or to be paid. The invoice must have no special price review clauses which have a bearing on the value for the imported goods such as proceeds, royalties and license fees, transfer price adjustments, profit sharing transactions which were excluded from the supplier's invoice price.
 - ii) The invoice must be an exact representation of the transaction value. Full details and particulars of all the factors relating to the sale which have a direct or indirect influence on the transaction value must be reflected on the invoice as legislated in Section 41(4)(a) and Rule 41.
- b) Use of Rand currency on invoices for Customs valuation purposes:
 - i) In cases where the price paid or payable is invoiced in South African Rand, the amount must be accepted as basis for Customs valuation, provided it can be proved beyond doubt that it was arrived at by converting foreign currency at a rate:
 - A) Concluded in a forward exchange contract; or
 - B) Negotiated between unrelated parties, provided such Rand amount was in fact paid or is payable to the supplier.
 - ii) In cases where the aforementioned proof cannot be furnished, the Rand amount as reflected on the invoice must be converted back to the foreign currency amount, using the fixed contract rate of exchange negotiated between the related parties. This calculated Foreign amount must then be converted to South African Rand at the appropriate official rate for Customs purposes.
 - iii) Invoiced Rand prices resulting from the following will not be accepted:
 - A) The conversion of foreign currency at fixed contract rates of exchange; or
 - B) Negotiated between related suppliers and importers unless the circumstances surrounding the sale has been examined by Customs and a Value Determination Number (VDN) has been issued verifying the acceptability, or not, of the Rand denominated invoices between related party transactions declared to Customs.
 - iv) If there is a possibility that the relationship influenced the price:
 - A) SARS will send a letter to the client informing him/her of such a possibility.
 - B) The client will be requested to:
 - I) Convert the Rand to foreign currency using the fixed rate.
 - II) Convert the foreign currency to Rands using the SARS official rate.
 - C) If the value of imported goods of a single denomination is in excess of R1, the client must round off the Customs value to the nearest rand, an amount of fifty (50) cents being regarded as less than one (1) half of R1. If the Customs value is less than R1, such value must be calculated as R1. If a master and house transport documents are issued, the particulars of the master transport document must be utilised.
 - D) The client must submit an amended CCD in terms of SC-CF-55.

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- v) Imported goods
 - A) Section 73 states that when the value of the price paid or payable for any imported goods is expressed in a foreign currency it must be converted to South African Rand by:
 - I) Using the selling rate at the date of shipment of the goods as determined by the Commissioner, in consultation with the South African Reserve Bank (SARB); or
 - II) If no such rate is determined for such date by the SARB, Customs must consider the average selling rate of such currency for conversion into South African Rands as quoted that day by at least two (2) major banks operating in South Africa.
 - B) For the purpose of Section 73 the date of shipment will be for:
 - I) Non-containerised goods, the date of the bill of lading, air waybill, consignment note or such other document as the Commissioner may require; and
 - II) Containerised goods, the date on which the container is taken on board the ship as endorsed on the bill of lading or arrival notification, or if imported otherwise than by sea, the date of the air waybill, consignment note or such other document as the Commissioner may require.
 - C) In cases where a third party's statement reflects only, for example disbursements and/or commission and separately includes a copy of the primary supplier's invoice, the two (2) different currency amounts on the two (2) invoices must be converted separately to Rand.
 - D) If a master and house transport documents are issued, the particulars of the master transport document must be utilised.
 - vi) Travellers
 - A) The date to be used by travellers when converting foreign currency into South African Rand is the date of boarding the airplane to South Africa - as indicated on the passenger's ticket or boarding pass.
 - B) Refer to SC-PA-01-11 for assistance with the processing of travellers.
 - vii) Transit goods - the date of shipment for goods which are exported to South Africa but pass in transit through another country shall be deemed to be for imported goods which have been shipped through another country:
 - A) In the same condition as exported from the original country, the date of the first bill of lading.
 - B) And received further processing in the second country, the date on the second bill of lading (if available) or the invoice date of the second country.
 - viii) Transhipped consignments - in situations where there is no direct sailing available from the port of export to South Africa; and the goods are shipped via a transshipment port, where it is loaded on board a second vessel to the port of final destination in South Africa, the date that must be used for currency conversion purposes is, in the case of :
 - A) Containerised goods, the date such container is taken on board the first vessel on which it is loaded on route to South Africa, as endorsed on the bill of lading; and
 - B) Non-containerised goods, the date on the bill of lading issued in respect of the first vessel on which they are loaded on route to South Africa.
- c) Terms of sale
- i) International Commercial Terms or in short INCOTERMS 2020 are standard trade definitions most commonly used in international sales contracts and published by the International Chamber of Commerce:
 - A) When an importer and supplier use these standard trade definitions on their invoices it confirms that the minimum requirements for the use of these terms have been met.
 - B) The terms can be added to or modified so as to incorporate the importer and seller's specific needs, provided that such modifications do not contradict the basic INCOTERM itself.
 - C) INCOTERMS are internationally recognised as indispensable evidence of the importer's and supplier's responsibilities for delivery under a sales contract and are used to make international trade easier by helping traders in different countries understand each other.
 - ii) INCOTERMS 2020 will not apply unless incorporated into the contract of sale by specifying that the contract is governed by INCOTERMS 2020.

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2.2 Methods of Customs valuation on imported goods

2.2.1 Application of the valuation methods

- a) General Agreement on Tariff and Trade (GATT)
- i) GATT is part of South African law. In terms of Section 74A(1) the interpretation of Sections 65, 66 and 67 is subject to the Agreement. Refer to SC-CR-A-02-A02 for the Articles to the Agreement.
 - ii) The instruments of the Agreement must receive due consideration except where a manifest deviation from or an irreconcilable conflict with the provisions of Section 65, 66 and 67 is identified, in which case the provisions of the Act must prevail.
 - iii) Section 65(1) stipulates that the value for Customs duty purposes of any imported goods shall, at the time of entry for home consumption, be the transaction value thereof, within the meaning of Section 66. Refer to SC-CC-03.
 - iv) In terms of Section 107(2)(a) of the Act, the final determination of the Customs value of imported goods may, if necessary, be delayed provided a sufficient guarantee covering the ultimate payment of Customs duties for which the goods may be liable, is lodged.
- b) General Accepted Accounting Principles or International Financial Reporting Standards (GAAP/IFRS)
- i) For the purpose of the Agreement, Customs will utilise information prepared in a manner consistent with GAAP/IFRS in the country which is appropriate for the article in question.
 - ii) These standards may be broad guidelines of general application as well as detailed practices and procedures.
- c) The Act defines six (6) methods of valuation which must be applied in sequential order, namely the:
- i) Transaction value method (Method 1), which is the primary method which must be applied whenever the conditions as prescribed in Section 66(1) are fulfilled;
 - ii) Identical goods value method (Method 2) - Section 66(4);
 - iii) Similar goods value method (Method 3) - Section 66(5);
 - iv) Deductive value method (Method 4) - Section 66(7);
 - v) Computed value method (Method 5) - Section 66(8); and
 - vi) Fall-back value method (Method 6) - Section 66(9) which can only be applied if all the previous methods cannot be used.
- d) The only exception is that the sequence of the deductive value method and the computed value method may be reversed at the request of the importer in terms of Section 66(6). Subject to the provisions of paragraph 3 of Annex III of the Agreement, Customs officers cannot decide to reverse the order of the methods.
- e) The following table sets out which Sections of the Act refers to which Article or Method of the Agreement:
- | ACT REFERENCE | AGREEMENT REFERENCE | VALUE METHOD |
|------------------------------------|-------------------------------|----------------------------------|
| Section 66(1) read with Section 67 | Article 1 read with Article 8 | 1 – Transaction value method |
| Section 66(4) | Article 2 | 2 – Identical goods value method |
| Section 66(5) | Article 3 | 3 – Similar goods value method |
| Section 66(7) | Article 4 | 4 – Deductive value method |
| Section 66(8) | Article 5 | 5 – Computed value method |
| Section 66(9) | Article 6 | 6 – Fall-back value method |
- f) Once a transaction has been moved out of the confines of Section 66(1) by Customs the client is informed that the value will be determined using one (1) of the other value methods. Customs can then not revert to Method 1, even if the value determined under the provisions of the next method is lower than the value declared by the client under Method 1.

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- g) Refer to SC-CR-A-02-A02 for information on the articles to the Agreement.

2.2.2 The transaction value method – Method 1

- a) The transaction value [Section 66(1)] definition clearly states that the transaction value of imported goods shall be the price actually paid or payable for the imported goods. This is a real price which is actually made and not a normal price for imported goods. Actual value is the price at which, such or like goods are sold or offered for sale in the ordinary course of trade under fully competitive conditions.
- b) The price will be the **total** amount paid or payable. This means if:
- i) The payment has been effected prior to valuation the amount paid will be used; and
 - ii) The payment has not been made Customs must use the price that will be paid for the imported goods.
- c) The price actually paid or payable must be the price agreed between the parties:
- i) The agreed price need not necessary be endorsed in a written contract, but can also be evidenced by letters, telexes, fax messages or actual performances of transaction and payments;
 - ii) The agreed price may also change before the goods reach South Africa; and
 - iii) If the parties agree on a revised price before the goods reach South Africa, it would mean that a new agreement has superseded the old and the transaction value has to be based on the new price, whether higher or lower than the old agreed price.
- d) The flow of dividends or other payments from the importer to the supplier that do not relate to the imported goods are not to be included in the Customs value.
- e) The price actually paid or payable may be the result of a reduction in the form of a discount which may be admissible when the Customs value is determined unless such a discount is abnormal. However, Customs has the right to request factual evidence to prove that the discount has been earned by the importer. Refer to SC-CR-A-04 for more information on Method 1.
- f) Apportionment of costs, charges and expenses
- i) Where it is necessary to apportion dutiable costs, charges and expenses between various lines on an import CCD, such apportionment must be made on the basis of the invoice price of each line, irrespective of the type of duty applicable. For example should the invoice price of the first item amount to 20% of the total invoice price of all the goods, 20% of the dutiable costs, charges and expenses must be allocated to that item.
 - ii) Any cost, charges or expenses deducted from the Customs value must be identified separately from the balance of the price actually paid or payable for the goods.
 - iii) Uniformity of interpretation and application can be achieved by taking the term “sale” in the widest sense, to be determined only under the provisions of Section 66(1) and Section 67 together. Under no circumstances can Method 1 and adjustments under Method 1 be separated when the truth and accuracy of the declared Customs value is investigated.
 - iv) Refer to Section 67 and SC-CR-A-05 for a list of the allowed adjustments that must be made to the price actually paid or payable, to the extent that they are incurred by the importer.

2.2.3 The identical goods value method – Method 2

- a) If the Customs value of any imported goods cannot be ascertained by using Method 1, the **identical goods value method** (Method 2) must be used. This method is defined in Section 66(4) with specific adjustments as provided for in the Act and has the following elements:
- i) It relates to identical goods;
 - ii) The price relates to an already Customs accepted transaction value of imported goods at the same commercial level and in substantially the same quantity;

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

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

2.2.4 The similar goods value method – Method 3

- a) If the value of any imported goods cannot be ascertained by using Method 2, the **similar goods value method** (Method 3) must be used. This method is defined in Section 66(5) with specific adjustments as provided for in the Act and has the following elements:
 - i) It relates to similar goods;
 - ii) The price relates to a transaction value of imported goods at the same commercial level and in substantially the same quantities as the goods being valued, previously accepted by Customs;
 - iii) The transaction used to determine the value has to be exported to South Africa at or about the same time; and
 - iv) It has to be adjusted in accordance with the provisions of Section 66(5).
- b) When using the **similar goods value method** (Method 3) by referring to an earlier or simultaneous Method 1 entry; the comparable importation must have been exported at or about the same time as the goods being valued.
- c) Where there is more than one (1) transaction value of similar goods which meet all requirements, the lowest of these values are to be used.
- d) Similar goods, in the context of Method 3 are goods that, although not alike in all respects:
 - i) Closely resemble the goods being valued in terms of:
 - A) Component materials; and
 - B) Characteristics.
 - ii) Which enable them to:
 - A) Perform the same functions; and
 - B) Are commercially interchangeable with the goods being valued.
 - iii) Are produced in the same country as the goods being valued; and
 - iv) Are created by the producer of the goods being valued.
- e) In applying Method 3 Customs shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of similar goods that takes place under any one (1) of the following three (3) conditions may be used:
 - i) A sale at the same commercial level but in different quantities;
 - ii) A sale at a different commercial level but in substantially the same quantities; or
 - iii) A sale at a different level and in different quantities.
- f) When determining whether goods are similar; due regard must be taken of the quality of the goods, their reputation and the existence of trademarks.
- g) Where there are no similar goods created by the same person in the country of production of the goods being valued, similar goods created by a different person in the same country may be used.
- h) Adjustments
 - i) The value of similar goods can be adjusted upwards or downwards, provided that such adjustments:
 - A) Can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment; and

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- B) Can account for demonstrated differences between the goods being valued and the identical goods to take account of:
 - I) Trade level differences;
 - II) Quantity differences;
 - III) Commercial significance; and
 - IV) Differences for transportation costs due to variances in the mode and/or distance of transport.
 - ii) Reference can be made to Section 66(5).
 - iii) The definition of similar goods excludes imported goods for which engineering, development, artwork and so forth is undertaken in South Africa and is provided by the importer to the producer of the goods free of charge or at a reduced cost.
- i) Time element
- i) At or about the same time should be taken to cover a period of time, as close to the date of exportation as possible, within which commercial practises and market conditions remains the same.
 - ii) The allowed period is flexible but should not exceed ninety (90) days.
 - iii) It would not be practical to accept a ninety (90) days old Method 1 comparison for a commodity which is subject to violent price fluctuations.

2.2.5 The deductive value method – Method 4

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

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e) Same conditions

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

f) Unit price

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

g) Greatest aggregate quantity

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

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

i) Relationship

- i) The sales price in South Africa of the imported, identical or similar goods must be a price in the ordinary course of trade under fully competitive conditions, wherein the importer and supplier are not related to each other and price is the sole consideration.
- ii) A relationship as defined in Section 66(2)(a) could influence the transaction value of the goods under review (SC-CR-A-02-A05).

j) Deductions

- i) A deductive value is determined by making a deduction from the established price per unit for the entire sum of the following elements:
 - A) Commissions generally earned on a unit basis in connection with sales in South Africa for goods of the same class or kind:
 - I) Where the commission is usually paid or agreed to be paid or the additions usually made for profit and general expenses (including the direct and indirect costs of marketing the goods under review) in connection with the sales in South Africa of the imported goods of the same class or kind. Sales in South Africa of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the information can be provided, should be examined;
 - II) Where commissions are paid by an exporter to their selling agent in South Africa, the commission payment includes reimbursement for all the expenses and costs which are allowable under the deductive method, for example storage costs, and the allowable deduction is the full amount of the commission paid;
 - III) Where the exporter pays commission separately from the reimbursement of costs and expenses, both are deductible. Effectively, the commission can be equated to a profit element; and
 - IV) The commission and mark-ups to be deducted must be those which are usually paid in connection with sales in South Africa of imported goods of the same class or kind.
 - OR**
 - B) Profit and general expenses generally reflected on a unit basis in sales in South Africa for goods of the same class or kind:
 - I) Profit and general expenses must be taken as a whole;
 - II) The importer must provide the figure for this, unless the figure is inconsistent with sales of goods of the same class or kind in South Africa; and
 - III) In cases of such inconsistency, the profit and general expenses figure can be based on relevant information other than that provided by the importer.
 - AND**
 - C) The usual transport, insurance and associated costs incurred in South Africa, that is consistent with the normal range of margins for profit and general expenses of unrelated importers trading in imported goods of the same class or kind as those to be valued and at the same commercial level as that at which the importer is operating;
 - D) The import duties and taxes levied in South Africa;
 - E) Value added by assembly or other further processing, when applicable; and
 - F) The cost of transport, insurance and related charges from the place of exportation to the place of importation in South Africa.

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- ii) Whilst deductions must be made where appropriate, no deductions can be made for items not included in the value.
 - iii) Depending on the volume and the manner of trade, it may be of benefit to agree an overall deduction to cover all expenses, except the included duties. Such overall deduction must be evidenced by working figures or trading accounts. The deductions must relate to the specific unit prices, for example if the importer sells at various levels, only the costs incurred at that unit price level must be used.
- k) Situations where further processing is done
- i) If imported goods are subjected to processing in South Africa before the sale, it is still possible that the deductive method can be used if the importer so requires.
 - ii) Deductions for processing can only be allowed on the basis of objective and quantifiable data, so the importer must provide suitable evidence.
 - iii) The use of the deductive method would normally be applicable when, as a result of further processing, the importer must provide suitable evidence.
 - iv) The use of the deductive method would not normally be applicable when, as a result of further processing, the imported goods:
 - A) Lost their identity; or
 - B) Maintain their identity but form only a minor element of the final article sold.
- l) Goods of the same class or kind is defined as:
- i) Goods which fall within a group or range of goods produced by a particular industry or industry sector; and
 - ii) Includes goods imported from the same country as the goods being valued as well as the goods imported from other countries.
- m) Objective and quantifiable data
- i) Where the deductive method is used on goods where further processing has been done after importation, deductions made for the value added by the processing shall be based on objective and quantifiable data relating to the cost of such work.
 - ii) Accepted industry formulas, recipes, methods of construction and other industry practices would form the basis of the calculations.

2.2.6 The computed value method – Method 5

a) The cost or value of production

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

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

b) Profit and general expenses

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

c) Goods of the same class or kind

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

2.2.7 The fall-back value method – Method 6

a) Provisions or Limitations

- i) Customs values determined under the provisions of Section 66(9) must, to the greatest extent possible, be based on previously determined Customs values.

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

b) Restrictions

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

2.3 Special valuation scenarios

2.3.1 Barter and compensation deals

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

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- i) The price of the goods is fixed by reference to the price of other goods which the importer may sell to his/her supplier; or
- ii) The price of the imported goods depends on the purchaser's willingness to obtain from the same supplier other goods in a specified quantity or at a specified price.

2.3.2 Branch Office importation

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

2.3.3 Consignment goods or stock

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

2.3.4 Valuation of carrier media bearing software for data processing equipment

- a) With regard to carrier media bearing the software i.e. data or instruction:
 - i) Only the cost or value of the carrier medium on which the software i.e. data or instruction are recorded must be taken into account. The Customs value shall not, therefore, include the cost or value of the data or instructions, the so-called intellectual value, provided that this is separately distinguished from the cost or the value of the carrier medium on the invoice.
 - ii) This means that the Customs value must therefore include royalties, licence fees, the software price as well as the price of the carrier medium if the software price is not separately distinguished from that of the carrier medium on the invoice.
- b) In the case of carrier media such as integrated circuits, semiconductors and similar devices or articles incorporating such circuits or devices, the Customs value must include:
 - i) Royalties, licence fees, the software price as well as the price of the carrier media if software is loaded before importation.
 - ii) Only the price of the carrier media if the software is loaded after importation.
- c) In the case of carrier media bearing sound, cinematic or video recordings, the Customs value must include royalties, licence fees, the software price as well as the price of the carrier media.

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2.3.5 Credits and debits

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

2.3.6 Cut, make and trim basis (CMT)

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

2.3.7 Damaged goods

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

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

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

2.3.8 Treatment of duty inclusive prices

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

2.3.9 Goods in transit, transit sale or high sea sale

- a) Section 39A, requires the importer of any goods purchased from any South African consignee, after shipment but before entry thereof into South Africa to produce the invoice relating to the purchase to the Controller/Branch Manager. The price actually paid or payable for those goods by virtue of such purchase shall for the purpose of Section 65(1) be the transaction value thereof.
- b) For the purpose of Sections 66(10) and 67(3) goods which are exported to South Africa from any country but pass in transit through another country, shall be deemed to have been export--ed direct from the first-mentioned country. This is subject to any conditions which may be prescribed by Rule. Refer to Sections 66(10) and 67(3).
- c) A sale in transit is treated in the same way as any other transaction for valuation purposes. The last resale price before entry of the goods forms the basis of valuation and the same rules apply.

2.3.10 Goods not in accordance with specification

- a) If the goods are re-exported, abandoned or destroyed under the provisions as prescribed by the Act and relevant rules, there is no liability of duty.
- b) If the goods are retained, they can be:

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

2.3.11 Goods sold at dumping prices

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

2.3.12 Goods temporarily exported for outward processing (manufacture)

- a) Products which lose their identity and do not qualify for re-importation under Item 409.04 are dealt with under Item 409.07. Duty would normally be payable on the full value (South African and foreign content) but provision has been made in Item 409.07 for duty to be paid on the full value of the foreign content, labour and materials only. The duty on the value of the South African content is rebated.
- b) Strict control is necessary and goods will only be admitted under Item 409.07 if the importer is in possession of a valid specified permit issued by the Director-General: Trade and Industry on the recommendation of ITAC and provided that:
 - i) The permit is obtained before the temporary export of the product; and
 - ii) Any additional conditions which may be stipulated in the said permit are complied with.

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- c) Where the importer qualifies for the rebate of duty, the CCD would be endorsed as indicated in paragraph 2.3.20 referring to re-importation of goods after repair or processing abroad. Where the imported goods do not meet the conditions as prescribed in Item 409.07, duty must be brought to account on the full value.
- d) The value of the South African content exported, whether for the purpose of claiming the rebate or payment of the duty shall be taken to be the cost to the importer of acquiring it or where the importer is the manufacturer thereof, the cost to the importer of producing the exported goods.
- e) Only the value of the foreign content must be reflected in the Box "Additional Info" (Box 44). The same wording as stated in paragraph 2.3.20 dealing with re-importation of goods after repair or processing abroad must be used.

2.3.13 Hire, lease and rental goods

- a) When goods are temporarily imported on a hire, lease or rental basis, Customs duties must be brought to account thereon. These transactions by their very nature do not constitute sales, even if the contract includes an option to purchase the goods. Therefore they cannot be appraised under the transaction value method in Section 66(1). Similarly, the methods of appraisal in Section 66(4)(5)(7) and (8) (identical, similar or deductive and computed methods) are normally inapplicable in the present circumstances. Accordingly, the imported goods would be appraised under the fall-back method provided for in Section 66(9). Refer to paragraph **Error! Reference source not found.** of this document.
- b) Should the rental include a charge for any function, such as charges for erection or maintenance, to be undertaken by the supplier after importation of the goods, the Customs value must **not** include such charges, provided that the portion of the payment for such charges must be separately distinguished in the hire or lease agreement. If not, the full amount will be regarded as the Customs value.
- c) When determining the Customs value of imported hire or lease goods, the Customs value will be the rental or hire charges. For example:
 - i) If the charge for a 36 month contract is R1 000 per month, the Customs value will be R36 000.
 - ii) Once the total rental charges have been determined, certain adjustments may be necessary to establish the Customs value. Depending upon the terms of the contract and the principles underlying the Agreement, there may be additions or deductions.
 - iii) Where probable adjustments are concerned, dutiable elements not already included in the rental charges must be taken into account:
 - A) Additions: the factors listed in Section 67(1) could provide some guidance; and
 - B) Deductions: any elements which are not part of the Customs value must be deducted.
- d) In some cases, rental contracts include an option to buy. This option may be given at the beginning, during or at the end of the basic contract period. In the first case valuation must be based on the option price. In the last two (2) cases, rental payments provided for in the rental contract plus the residual sum required may provide a basis for the determination of the Customs value.
- e) Some hire, lease or rental agreements may stipulate that the goods will be rented out for the duration of the goods' economic life. While the past experience of the life of identical and similar goods might be useful, in most cases a solution is likely to be found by consulting with specialised firms in co-operation with the importer. A distinction has to be made with regard to economic life of new and used goods, such as using the whole economic life for used goods.
- f) When there is any additional duty due to a change in circumstances such as an extension of the contract is paid, a provisional payment (deposit) must be lodged, as provided for in the SC-CF-25 document, pending proof of export).

2.3.14 Motor vehicles or motorcycles imported by private individuals for personal use

- a) The value must be determined by using one (1) of the six (6) valuation methods:

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- i) If the vehicle is for sale; and
 - ii) In the case of a motor vehicle imported by a natural person without intervening use, given the fact that the importation follows upon a sale.
- b) Methods 1 to 6 cannot be used in the case of a motor vehicle:
 - i) Not imported for sale including a vehicle:
 - A) Acquired by the importer as a gift or prize; or
 - B) Constructed overseas by the importer; or
 - ii) Purchased overseas at an unrealistically low or token price.
- c) Where Methods 1 to 6 cannot be used, alternative valuation in terms of Section 71(2) allows a determination of the market price nearest to the actual value using:
 - i) The commercial invoice, bill of sale, registration papers, service records, etc. if available;
 - ii) Any evidence required to ascertain any alteration to the motor vehicle, for example major restoration, modification or improvement; and
 - iii) A depreciated value which may be allowed at the discretion of the Controller/Branch Manager or Manager: Customs, as long as depreciation does not result in an unrealistically low Customs value. However, depreciation allowance is not applicable in the case of:
 - A) Special purpose,
 - B) Classic,
 - C) Vintage,
 - D) Sports cars; and
 - E) Special or limited-edition motor vehicles as these cars do not depreciate but appreciate.
- d) Alternative valuation in terms of Section 71(2) also allows for submission of quotations by the client if he/she cannot produce evidence as to the price paid for the vehicle as required in paragraph c) above:
 - i) The client must submit at least three (3) quotations:
 - A) From accredited motor vehicle or motorcycle dealers in the country of exportation. For valuation purposes, the following must be deducted to ensure that the accepted quotation is the Free on Board (FOB) value:
 - I) Overseas freight and insurance;
 - II) Duty (where applicable);
 - III) VAT; and
 - IV) Normal mark-ups if they are included in the price.
 - B) Locally from three (3) reputable dealers if the client has not obtained quotations in the country of export.
 - ii) The quotation with the lowest value must always be considered.
 - iii) If there is reason to believe that the lowest value is not representative, the Customs Officer handling the case may accompany the client to obtain quotations from reputable dealers at the request and cost of the importer.
 - iv) Where there are similar vehicles (for identical makes, models, age and condition) offered for sale in current and/or verifiable online vehicle dealer advertisements, such may be considered if both the Customs Officer and the importer agree that such a value is equivalent of the nearest actual value for such a vehicle.
 - v) The client can refer to the tariff for the extent of Rebate and its requirements if he/she wants to establish if they qualify for Rebate Item 407.04 or not.

2.3.15 Heads of state, diplomatic and other foreign representatives

- a) When Heads of state, diplomats or any other foreign representatives import motor vehicles, they can do **so** under Rebate Item 406.02. The rebate item clearly states that a motor vehicle cleared under Rebate Item 406.02 may not be offered, advertised, lent, hired, leased, pledged, given away, exchanged, sold **or otherwise disposed of** within a period of two (2) years from the date of entry under this item.

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- b) It may happen that the Head of state, diplomat or foreign representative has a car accident, high-jacking or any other unforeseen circumstances which involves the motor vehicle within the two (2) year period from the date of entry under rebate. If the vehicle is of no further use to the owner it renders such a motor vehicle liable to payment of duty.
- c) The Customs value shall be based on the value of the motor vehicle at the time of importation and not on the value of the insurance claim.
- d) If the insurance claim is paid out on a higher value than what the motor vehicle was originally declared to Customs, Customs has the right to investigate and verify the original declared value.
- e) **Temporary Imports**
 - i) Where an importer wishes to bring duty to account on a vehicle which had previously entered South Africa under cover of a temporary import permit, the Customs value is the value declared on the TC-01 as well as the TRD1. Refer to SC-PA-01-11 for traveller processing.
 - ii) In instances where motor vehicles are imported under cover of triptyques and carnets, the values declared on these documents must be market related.
 - iii) Where an importer, at a later stage, wishes to bring duty to account on a vehicle which has entered South Africa under cover of a triptyque or carnet, the Customs value shall be the value accepted at the time of entry, i.e. that value appearing on the triptyque or carnet.
 - iv) No allowance or deduction of value must be allowed for the period of use in South Africa.

2.3.16 Package deals

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

2.3.17 Price review or escalation clause

- a) In commercial practice some contracts may include a price review or escalation clause, whereby the price is only provisionally fixed.
 - i) Price escalation clause is a provision for price adjustments over the life of a contract or agreement;
 - ii) A price escalation clause is a normal part of a contract involving the importation of capital equipment or large project goods with long lead times during which the cost of production may change; and

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- iii) The final determination of the price payable is subject to certain factors which are set forth in the provisions of the contract itself.
- b) The transaction value of imported goods, defined in Section 66(1) adjusted in terms of Section 67, is based on the price actually paid or payable for the goods. In contracts containing a review clause, the transaction value of the imported goods must be based on the total final price paid or payable in accordance with the contractual stipulations.
- c) Where goods are delivered a considerable time after the placing of the original order price reviews or escalations are common, for example where:
 - i) Plant and capital equipment is made specially to order the contract may specify that the final price will be determined on the basis of an agreed formula which recognises increases (or decreases) of elements such as cost of labour, raw materials, overhead costs and other inputs incurred in the production of the goods.
 - ii) Goods are imported over a period of time in which the value may fluctuate from the original price.
 - iii) Goods, for example metal ore, are imported with the final value depending on analysis of the content.
- d) Where the price review clauses have already produced their full effect by the time of valuation, no problems should arise since the price actually paid or payable is known. The situation differs where price review clauses are linked to variables which come into play some time after the goods have been imported.
- e) If, at the time of valuation, the total price paid or payable is not yet known, release of the goods will generally not be delayed on that account but will be granted against lodgement of a suitable surety in the form of a cash deposit (provisional payment) or guarantee. Refer to SC-CF-25.

2.3.18 Printed advertising

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

2.3.19 Profit sharing transactions

- a) Profit sharing transactions should not be confused with importations on consignment:
 - i) Profit sharing is where goods are imported following a sale and provisionally invoiced at a certain price to which must be added part of the profit made when the goods are sold on the market in South Africa; and
 - ii) Transactions of this kind must be regarded as sales with a clause reserving determination of the final price
- b) Profit sharing must not be confused with dividends paid to the supplier on an annual basis. Dividends are not includible in the Customs value, whereas any part of profits realised from the sale of particular imported goods remitted to the supplier is includible in the Customs value.
- c) The nature of profit sharing transactions does not rule out the application of Method 1 to determine the Customs value. However, particular attention has to be paid to the conditions laid down in Section 66(1)(c) regarding proceeds.

2.3.20 Re-importation of goods after repair or processing abroad

- a) When goods which were sent abroad for repair or processing are returned, duty would normally be payable on the full value thereof, namely the value of the product when exported plus the cost or value

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of the repair or processing. Provision has however been made in Item 409.04 of Schedule 4 for duty to be paid on the cost or value of the repair or processing only, provided the goods:

- i) Were exported (Customs to verify);
 - ii) Have retained their essential characteristics;
 - iii) Are returned to the exporter, no change of ownership having taken place in the interim; and
 - iv) Are identifiable on re-importation.
- b) Only the cost or value of the repair or processing must be reflected in the field "additional info" (Box 44) next to the code COR on the CCD since that is the amount for import control purposes where applicable.
- c) In cases where the conditions prescribed in Item 409.04 cannot be met, duty must be brought to account on the full value.

2.3.21 Part shipments or part consignments

- a) Part shipments are those consignments which form one (1) transaction between a buyer or importer and a seller or supplier, but are imported in partial or successive shipments either through the same or different Customs Offices, for example the goods constitute a complete industrial installation or plant and are split up because:
- i) They come from different sources;
 - ii) It would be physically impossible to ship together because of the size;
 - iii) It is necessary of convenience of staggering the shipments to conform to the plant assembling schedule;
 - iv) It would be impossible or inconvenient to ship as a whole; or
 - v) The shipments are split for geographical reasons.
- b) Importations of industrial installations are often classified under one (1) duty free tariff heading in which case there is only the statistical value. Where there is a duty liability, it is likely that the basis of value will be the price paid or payable plus appropriate adjustments.
- c) The Customs value of each shipment must be based on the price actually paid or payable. That is an appropriate proportion of the total payment made or to be made by the importer to or for the benefit of the supplier for the goods, as reflected in the transaction concluded by the parties.
- d) If the partial shipments have been invoiced separately for each consignment, it will be necessary to add to the amount of the invoice the adjustments determined under Section 67, where appropriate making an apportionment for the total transaction, and to treat deductions similarly.
- e) If the partial shipments have not been invoiced separately, in determining its Customs value, an apportionment of the total value of the transaction could be made in a reasonable manner appropriate to the circumstances and in accordance with GAAP/IFRS.
- f) The Customs value of each consignment may not be finally determined at the time of importation, since such importations often involve elements such as engineering costs or price review clauses:
- i) If it becomes necessary to delay the final determination of the Customs value, the importer will nevertheless be able to obtain release of his/her goods from Customs by lodging a provisional payment on a provisional duty assessment by Customs; and
 - ii) The provisional value assessment may of course be amended and the provisional payment liquidated when the Customs value is finally determined. Refer to SC-CF-25.
- g) Shipments split for reasons of quantity or for geographical reasons:
- i) The logistical category covers situations where the goods are identical or sets sold at an agreed unit price. If the shipment is over a period of time, it may be necessary to verify that no adjustment to the price have been made.

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- ii) The geographical category covers situations where goods are consigned to two (2) or more ports or Customs Offices each part shipment must be valued by reference to the price paid or payable for the fraction of the whole shipment. This applies even where goods are consigned to different countries.
- h) For the apportionment of the value stage consignments must be treated in the same manner as part consignments.

2.3.22 Sole distributors, concessionaires and agents

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

2.3.23 Tie-in sales

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

2.3.24 Time element

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

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

2.3.25 Transfer pricing and Customs value

- a) Transfer pricing describes a cross border transaction between two (2) related companies which leads to varying opinions as to what constitutes price influence. Customs applies an interpretation of the test value provision, which is based on provisions in the Agreement. The Agreement states that the importer must demonstrate that the transaction value closely approximates to a 'test' value previously accepted by the Customs administration.
- b) The Agreement has outlawed the use of arbitrary or fictitious values when applying the identical or similar value methods. If more than one (1) transaction value of identical or similar goods is found, the lowest such value shall be used to determine the Customs value.
- c) Transfer pricing documents are an integral part of verifying and determining whether:
 - i) The transactions and the circumstances of sale for the related parties are acceptable.
 - ii) The declared values have been negatively influenced.

2.3.26 Travellers

- a) If invoices or price tags are available the price actually paid or payable (Method 1) applies.
- b) If the invoices or price tags are not available valuation Methods 1 to 5 must be eliminated sequentially. If none of them can be applied, a value must be assessed in terms of Method 6 on prices of identical or similar imported goods, previously accepted by Customs.
- c) For the date to be used by travellers when converting foreign currency into South African Rand refer to paragraph 2.1 b)vi).
- d) For processing of Travellers refer to SC-PA-01-11.

2.3.27 Waste or scrap

- a) Waste or scrap are imported to be:
 - i) Used for the benefit of the importer; or
 - ii) Destroyed by the importer for the benefit of the supplier.
- b) Some importers specialise in the refining, treatment or the disposal of certain waste products and the only payment involved is made by the supplier to the importer for his/her services in destroying the waste. For example:
 - i) Catalysts;
 - ii) Motor vehicle parts;
 - iii) Scrap metal;
 - iv) Oil waste; and/or
 - v) Toxic waste.
- c) Sometimes the importer gains side-benefits from processing of the waste products after importation, for example using the waste as a fuel for heat or power. These side benefits must be taken into account when arriving at an acceptable value for duty purposes, for example using the estimated savings in fuel costs or establishing monetary compensation to be added to the invoice price.

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- d) Imported waste that was not the subject of a sale cannot be appraised under Method 1. Similarly, the methods of appraisal set forth in Methods 2 to 5 may be inapplicable. The value will have to be appraised under Method 6, using, for example, the cost of the service to remove the waste plus any side benefits gained.

2.3.28 Weight

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

2.3.29 Sample or free or no charge goods

a) Replacements for breakage

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

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

- i) Goods may be imported free of charge for a variety of reasons, for example gifts, samples, replacement goods or promotional items. Most free of charge goods are consigned between related parties, although this is not always the case, for example warranty replacement goods can also be imported free of charge.
- ii) If the goods are supplied free of charge as free samples, there will naturally not be any question of a price relevant to establish the transaction value in the confines of Method 1 and will have to be determined by using the other valuation methods in sequential order.
- iii) Samples of no commercial value are defined in Section 38(1)(a)(iii) and more fully explained in SC-IM-01-01.
- iv) If the samples do not conform to the provisions of Section 38(1)(a)(iii) the goods must be entered on a CCD and the Customs value must be determined using valuation Methods 2 – 6 in sequential order. Refer to SC-CF-49.

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c) Gifts or promotional items

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

2.4 Obligation to declare

a) In terms of Section 38 read with Section 39 an importer shall:

- i) Make due entry on a Customs declaration. Refer to SC-CF-55-A01 for completion of CCDs;
- ii) Provide such information as required in terms of Section 39(1)(c); and
- iii) Answer all questions relating to the goods imported.

b) This would include sufficient information to enable the Customs Officers to determine, in a multiparty transaction, which of the various sales is the sale of the goods, for exportation to South Africa, upon which the transaction value should be based. Refer to SC-CF-30.

c) Before a middleman or agent declares a transaction value, based on a transaction to which he/she is not the importer, the importer must be sure that such a transaction satisfies the criteria discussed above and be prepared to submit supporting evidence as described, upon request by a Customs Official.

d) Any importer who declares a value to Customs without the necessary supporting documentation may be subject to a penalty or other enforcement compliance action.

e) Section 40(1)(c) read with Section 41(4)(a) states that an entry shall not be valid unless the true value of the goods on which duty is leviable, or which is required to be declared under the provisions of the Act have been declared. The declared value must include, all particulars in respect of the transaction value, or of any:

- i) Commissions;
- ii) Discounts;
- iii) Costs;
- iv) Charges;
- v) Expense;
- vi) Royalty;
- vii) Freight;
- viii) Duty Tax;
- ix) Drawback;
- x) Refund;
- xi) Rebate;
- xii) Remission; or
- xiii) Other information, which relates to and has a bearing on the value shall be declared by the exporter on his/her Commercial Invoice, and such particulars shall, except where the Commissioner otherwise determines, relate to the final amount pertaining to that transaction.

f) The number and nature of the documents which are required for establishing the Customs value varies according to the method of valuation used. It is not possible to cover all eventualities but generally the following documentary evidence is required:

- i) A Customs declaration;
- ii) The supplier's commercial invoice detailing the price, quantity and description of each item or type of item imported as requested by Section 41. Refer to SC-CF-30.
- iii) Proof of payment from the relevant financial institution clearly showing the beneficiary and the applicant.

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- iv) Copies of agreements, price lists, clearing documents and other documents to verify how the import transaction has been concluded.
 - v) Evidence of transport and insurance expenses.
 - vi) Evidence to make adjustments for quantity and trade-level differences.
 - vii) Evidence that a sale took place and that there was a sale for export.
 - viii) Transfer of title from the seller/owner to the buyer.
 - ix) Evidence that the price is the actual value for the goods in sales which were concluded in the normal course of trade under fully competitive conditions.
 - x) Evidence that all terms, conditions of trading and special arrangements and agreements which relates to the transaction have been declared to Customs.
 - xi) The actual amounts paid for the goods or services rendered on goods being exported to South Africa.
 - xii) The roles and functions of the parties involved (importer, middleman and supplier).
 - xiii) Evidence relating to other additions or deductions.
 - xiv) In the case of accredited clients, the Acceptance to the Accreditation Client Programme letter SC-CF-06-A05 issued by SARS in terms of S64E.
- g) Value of goods not liable to ad valorem duty:
- i) Section 74(1) states that the Customs value of any imported goods must be declared by the importer on entry of such goods.
 - ii) The effect of this subsection is that the Customs value must be declared in respect of all goods, irrespective of whether they attract ad valorem (percentage of the value) or a specific (e.g. 100c per kg) rate of duty or are "Free" by tariff.
 - iii) Where, for example it has been determined that a relationship between the importer and supplier has influenced the price and it has been necessary to apply an uplift, such uplift must be applied to the commodities mentioned in the determination, irrespective of whether the goods are liable to duty or not.
- h) Burden of proof
- i) Importer's responsibility
 - A) Where Customs has reason to doubt the truth or accuracy of the particulars or of documents produced in support of the CCD, they may ask the importer to provide further explanation, including documents or other evidence.
 - B) If after receiving the information or in the absence of a response, Customs still has reasonable doubts about the truth or accuracy of the declared value, it may be deemed that the Customs value of the imported goods cannot be determined under the provisions of Section 66(1).
 - C) When a final decision is made, Customs shall communicate to the importer in writing its decision and the grounds therefore.
 - ii) Prices below prevailing market prices
 - A) The mere fact that a price is below the prevailing market price for identical goods does not mean that Method 1 must be rejected.
 - B) The importer must provide Customs with information and documentary evidence in order for Customs to satisfy themselves to the truth and accuracy of any statement, document or CCD presented by the importer for Customs valuation purposes.
 - iii) Insufficient or unreliable information
 - A) Customs cannot be required to depend on documentation which is incomplete in respect of relevant information or which contain (inadvertent) errors which have the effect of distorting the relevant information.
 - B) Situations may arise when it becomes necessary to use the information contained in an incomplete document and to make further enquiries so as to obtain information or facts missing from such a document. In addition, only a part of a document might contain inadvertent error and reliance might be placed on other parts of the document which do not have any such errors.
 - C) Documents which are incomplete or which contain (inadvertent) errors should each be treated on its own merits and can differ from one (1) case to another.
 - D) Customs may determine, in writing, that there isn't sufficient information to determine a

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value when not satisfied that there is sufficient reliable information available to enable a determination of:

- I) The Customs value for the imported goods under review, in accordance with the provisions of Section 66(1), read with Section 67; or
- II) The quantity and correctness of any amount that is required to be taken into account in determining a Customs value of those goods in accordance with the provisions of Section 66, where that amount would usually form part of the Customs value under the particular valuation method set out in that provision or
- III) Where that amount would ordinarily be deducted from the amount that would otherwise be the Customs value under the particular valuation method set out in that provision. If Customs determines in writing, that the information is not sufficient and that Customs desires to use the method, Customs may use the method but no deduction shall be allowed on account of that amount.

iv) Errors

- A) Imported goods **must** be valued under the Agreement on the basis of actual facts. Therefore, any documentation which contains incomplete or false information would be contrary to the intention of the Agreement.
- B) **When determining the accurate value of goods in relation to Article 17** Further enquires must then be made to obtain (correct) information or facts missing from such a document. The entry can be processed and the goods released by taking a provisional payment pending the furnishing of the complete information. Refer to SC-CF-24. Example **may be when the:**
 - I) **Trader is not certain regarding the value of goods; or**
 - II) **Value of goods might change after import or**
 - III) Documents containing errors.
- C) The treatment of documents which are incomplete or which contain errors can differ from one (1) case to another.

i) Valuation codes

- i) Section 66(2)(c), places the onus on the importer of the goods, to declare whether or not the client is related to the supplier of the goods within the meaning of Section 66(2)(a). Rule 66.03 and 66.05 prescribes that any importer shall, in the "Valuation Code" field, declare if the importer is:
 - A) Related to the supplier of the goods - insert the letter "R";
 - B) Not related to the supplier of the goods - insert the letter "N"; or
 - C) Exempted in terms of Rule 66.01 - insert the letter "E".
- ii) The valuation code is only inserted in this box of the first item, which would then be regarded as applicable to the whole consignment.
- iii) Every importer shall indicate which Valuation Method is applicable to his/her goods by inserting in the field "Valuation Code" on the CCD, after the letter "R" or "N" as required by Rule 66.03 the appropriate method number.
- iv) Importers of the classes or kinds of goods specified in Rule 66.01 are exempted from this requirement.
- v) The "Valuation Method" field must be left blank if:
 - A) A value determination number is reflected in the additional information box;
 - B) The goods are removed in bond to a destination within the Common Customs Area;
 - C) The goods are removed in transit to a destination outside the Common Customs Area; or
 - D) When goods are cleared with any purpose code starting with an "X" or "Z".
- vi) Where a value determination has been issued to an importer in respect of goods imported from a specific supplier:
 - A) The determination number must be inserted in the field "Additional Information" in Box 50; and
 - B) The supplier code in the "TIN" field in Box 2 of the Customs declaration. In such cases, the "Valuation Method" field must be left blank.
- vii) Although it is not a requirement that the fields "Valuation Method", "Additional Information, and "Suppliers Customs Client Number" be filled in by importers themselves or members of their staff, they are responsible for the accuracy of the codes. It is, therefore, incumbent on them to instruct their clearing agents correctly. The procedure must be continued until such time as a value determination is issued.

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- viii) Failure to declare value codes, determination numbers as well as supplier code on the CCD, once they have been issued, is viewed in a serious light as it is an infringement which invalidates the CCD concerned, and constitutes an offence in terms of the Act. Failure to comply with this requirement renders the importer liable to the penalties prescribed by the Act.
- ix) Article 13 of the Agreement is not intended to cover cases that involve violations of Customs laws or fraud. In such situations, release of the goods or the provision of guarantee in relation to possible penalties will fall in the discretion of the Controllers/Branch Managers in line with SC-CO-01-02.
- x) Rule 66.01 exempts the following goods from a CCD; whether or not the importer is related to the supplier of the goods as required in terms of Section 66(2)(c):
 - I) Goods imported by an importer from a single supplier and which do not exceed R 10 000 in value per consignment;
 - II) Goods which are not liable to an ad valorem duty or to an ad valorem duty in addition to or as an alternative to any other duty;
 - III) Goods cleared under the provisions of paragraphs (i) to (iv) of the proviso to Section 38(1)(a), namely:
 - IV) Containers temporarily imported;
 - V) Human remains;
 - VI) Goods of no commercial value; and
 - VII) Goods imported under an international carnet; and
 - VIII) Goods entered under rebate of duty provided for in items 403.01, 405.01, 405.04, 405.09, 406.00 to 408.01, 408.03, 410.03/27.10 to 411.00/85.01, 412.02 to 412.04, 412.06, 412.08 to 412.16, 412.21, 460.06/38.24 to 460.16/85.00 and all items of Schedule 4 Part 3.
- j) Confidentiality
 - i) All the information which is by nature confidential or which is provided on a confidential basis for the purpose of Customs valuation must be treated as strictly confidential in terms of Article 10 of the WTO Agreement and Section 4(3).
 - ii) The confidential information must not be disclosed without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

2.5 Determinations

- a) In terms of Section 65(4)(a)(i) the Commissioner may determine the Customs value, in writing of any imported goods, which needs to be ascertained or determined, by using the provisions as provided for in Section 66.
- b) Both Customs and the client may initiate the application for a value determination:
 - i) Clients may apply for a value determination number (VDN):
 - A) Voluntarily by emailing the application to a Branch Office. The client can phone the Branch to obtain the email address.
 - B) Where he/she does not agree with the outcome of the declaration process.
 - C) Upon request by Head Office Leveraged Legal Products in terms of Section 65(4)(a)(i). In terms of Section 107(2)(a) of the Act as well as Article 13 of the Agreement the client can:
 - I) Obtain a conditional release according to SC-CF-55 if the Customs value of the imported goods cannot be determined at the time of importation; and
 - II) Lodge a sufficient guarantee in the form of a provisional payment according to SC-CF-25 to cover the ultimate payment of Customs duties and VAT for which the goods may be liable.
 - ii) The client must be informed that a value determination will be made, based on the information provided if such a client:
 - A) Was requested to submit information to substantiate a deduction from the declared Customs value; and

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- B) Is not coming back with the outstanding information within (30) days as prescribed by Rule 65. Refer to SC-CF-55 for more details on follow-ups with regard to any request made to the client to submit additional information.
 - iii) The South African Revenue Service (SARS) can initiate applications for determinations including those emanating from audits.
 - iv) Not all of the documentation will be applicable to every case as documentation to be provided depends on the circumstances surrounding each case. The documents to be submitted are, but not limited to:
 - A) A DA 55;
 - B) Clearance documents;
 - C) In the case of accredited clients, the Acceptance to the Accreditation Client Programme letter SC-CF-06-A05 issued by SARS in terms of S64E; and
 - D) Any other relevant document.
 - v) The nature of the documentation produced must enable Customs to establish and/or determine:
 - A) The role and function of the parties involved (importer, middleman and supplier).
 - B) The actual services rendered on the goods before being exported to South Africa or paid for.
 - C) The actual amounts paid for the goods or services rendered on the goods before being exported to South Africa.
 - D) Substance of the documentation as it relates to the actual business and commercial reality of the transaction under consideration.
 - E) Whether the evidence allows Customs to verify the truth and accuracy of any statement, declaration or document presented for valuation.
 - F) Whether the evidence is sufficient to determine a value in terms of the transaction value method.
 - vi) Accredited clients:
 - A) Must be prioritised as stipulated in Rule 64E.14(d), provided that the client has submitted the Acceptance to the Accreditation Client Programme letter SC-CF-06-A05 issued by SARS as mentioned in iv)C) above.
 - B) Encountering delays can request the Customs Relationship Managers (CRM) to follow up on their behalf.
 - vii) Once a VDN has been issued, it is legally binding and must always be inserted on all future import CCDs. Such CCDs must be based on the same:
 - A) Pricing methodology;
 - B) Terms and conditions of trade; and
 - C) Relationship.
- c) In terms of Section 65(4)(b), the acceptance by any officer of a CCD or the release of any goods as entered shall not be deemed to be a determination.
- d) Any determination made in terms of Section 65(4)(a) or Section 65(5) shall operate:
 - i) Only in respect of the goods mentioned in the determination (specific determinations) and the person in whose name it is issued and the goods mentioned therein; entered by that person before or after the date when the determination is issued; and
 - ii) Subject to the provisions of Section 44(11)(c) and 76(B) and 65(7) and 65(7A).
- e) Section 65(4)(c)(i) provides that whenever any determination is made, amended or withdrawn and a new determination is made under Section 65(5), any amount due in terms thereof shall, remain payable as long as such determination or amended or new determination remains in force.
- f) Identifying the port or place of export to determine the Free on Board (FOB) point for valuation purposes
 - i) South Africa uses the FOB price as the basis for valuation.
 - ii) The FOB price must be determined at the correct point which is the port or place of export in the country of exportation.

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- iii) Where the contract of sale is ex works, the Officer handling the valuation case must request the importer/supplier to submit a breakdown of charges incurred up to the port or place of export if it was not included in order to determine the correct FOB point of valuation. Such a breakdown must include costs incidental to:
 - A) Transportation;
 - B) Loading;
 - C) Unloading;
 - D) Handling;
 - E) Insurance; and
 - F) Associated costs incidental to the delivery of the goods to the port or place of export in the country of exportation and placing those goods on board ship or on any vehicle at that port or place of export to South Africa.
- iv) If transportation charges from the port or place of export are included in the price of the imported goods, then such charges must be deducted from the price paid or payable.
- v) Refer to SC-CR-A-02-A01 and SC-CR-A-02-A03.

g) Valuation mark-ups

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

h) Duty Schedule 1 Part 2B - Section 65(8)(a) stipulates that the value specified in Schedule 1 Part 2B shall, in respect of imported goods, be the sum of:

- i) The Customs value as calculated in terms of Section 66; plus
- ii) An increasing factor of 15%; plus
- iii) All non-rebated duties in terms of Schedule 1 and Schedule 1 Part 2A on such goods.

i) Value-Added Tax (VAT) payable at the time of clearance:

- i) According to the Value-Added Tax Act No. 89 of 1991 Section 13(2) VAT is calculated by multiplying the Added Tax Value (ATV) by the applicable VAT rate.
- ii) ATV is the sum of:
 - A) The Customs value as calculated in terms of Section 66; plus
 - B) An increasing factor of 10% of the value applicable to all countries except the BELN countries as per Rule 120A.02. Therefore, when goods originate in a BELN country, there is no increasing factor applicable **to give effect to section 13(2)(b) of the VAT Act, 1991;** plus
 - C) All non-rebated duties.

3 REFERENCES

3.1 Legislation

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	Customs and Excise Act No. 91 of 1964: Sections 39A, 41, 65, 66, 67, 71, 72, 74 and 74A Customs and Excise Rules: Rule 39.04, 41.01, 41.02, 41.03, 41.04, 41.05, 65.01, 65.02, 65.03, 66.01, 66.02, 66.03, 66.04 and 66.05 Harmonised Tariff System: Schedule 1 part 2B
Other Legislation:	Promotion Of Access To Information Act No. 2 of 2000: All Promotion of Administrative Justice Act No. 3 of 2000: Section 3 and 5
International Instruments:	WTO Agreement on Implementation of Article VII of the GATT 1994: All

Effective Date: 15 August 2024

TYPE OF REFERENCE	REFERENCE
	Kyoto Convention General Annex Chapter 9 – Information, Decisions and Rulings supplied by Customs: Standards 9.1 to 9.9 WTO Trade Facilitation Agreement Section I - Article 3: Advance Rulings 9 (b) (ii)

3.2 Cross References

DOCUMENT NUMBER	DOCUMENT TITLE
SC-CA-02	Internal Administrative Appeal - External Policy
SC-CC-26	Alternative Dispute Resolution - External Policy
SC-CF-25	Provisional Payments - External Policy
SC-CF-30	Invoice Requirement for Customs – External Policy
SC-CF-49	Samples – External Policy
SC-CF-55	Clearance Declaration – External Policy
SC-CF-55-A01	Completion of declarations – External Manual
SC-CO-01-02	Offences and Penalties – External Policy
SC-CR-A-02-A01	Place of Export
SC-CR-A-02-A02	Articles to the WTO Valuation Agreement
SC-CR-A-02-A03	Terms of Sale
SC-CR-A-02-A04	Transfer Pricing and Customs Value – External Annex
SC-CR-A-05	Method 1 Valuation of Imports – External Directive
SC-CR-A-07	Valuation of Exports – External Directive
SC-CR-A-13	Completion of the DA 55 – External Manual
SC-DT-C-13	Refunds and Drawbacks – External Policy
SC-IM-01-01	Samples of No Commercial Value – External Policy
SC-PA-01-11	Traveller Processing – External Policy
SC-SE-04	Securities – Internal Policy
SC-SE-05	Security - External Policy

3.3 Reference to Role, Functional Area, or Division

Where an Organisational Structural change occurs with or without modifications, any reference in this document to a role, functional area or division under the former organisational structure, unless the contrary intention appears, shall be construed to be a reference to that role, functional area or division under the new Organisational Structure.

4 DEFINITIONS AND ACRONYMS

DA 55	Customs and Excise Valuation Questionnaire
SC-CR-A-02-A05	Completion of DA 55 – External Manual

5 DOCUMENT MANAGEMENT

BUSINESS OWNER	Senior Manager: Leveraged Legal Products: Tax, Customs and Excise
AUTHOR	O Moeti
DETAIL OF CHANGE	Under the obligation to declare paragraph the following has been removed: The example of a provisional CCD when referring to errors and incomplete documents replaced with business scenarios The subheading errors and incomplete documents has been changed to errors as the declaration system will not allow an incomplete declaration Reference to item 412.18 of schedule 4 as the item has been deleted