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# TARIFF CLASSIFICATION

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## 1 PURPOSE

- a) This policy **explains the process on how** to classify the goods and apply for a tariff determination for locally manufactured, imported or exported goods.
- b) It specifically focuses on the provisions of:
  - i) Section 47(9).
  - ii) The General Rules for Interpretation of the Harmonised System.
- c) **The policy explains how traders and South African Revenue Service (SARS) alike must interpret the law, the rules and other documentation that relates to** the classification of locally manufactured, imported or exported goods of the same class or kind.

## 2 POLICY STATEMENT

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

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- III) Composed of mixtures or combinations of materials or substances.
- C) Rule 2(a) Part one (1): **incomplete or unfinished** goods:
  - I) The first part of Rule 2(a) extends the scope of any heading that refers to a particular article to cover not only the complete article but also that article incomplete or unfinished, provided that, as presented, it has the “essential character” of the complete or finished article.
  - II) Example: A ceramic statuette of the Hokie Bird that will be painted after importation would still generally have the essential character of a ceramic statuette of heading 6913; i.e., one (1) would still recognise and identify the product as a ceramic statuette) and would therefore be classified pursuant to Rule 2(a) as the finished product in heading 6913.
  - III) Goods classified by virtue of this rule are by nature manufactured articles and as such the first part would not normally cover such goods.
  - IV) Care should however be exercised when using this rule, as the essential character criterion is not always easy to detect due to the complexity thereof and can lead to disputes owing to the fact that there may be interpretation differences.
- D) Rule 2(a) Part two (2): **unassembled or disassembled** goods
  - I) The second part of Rule 2(a) provides that complete or finished articles presented unassembled or disassembled (which may occur for reasons related to the packing, handling or transportation of the articles) are to be classified in the same heading as the assembled article. It also provides that incomplete or unfinished articles presented unassembled or disassembled are to be classified in the same heading as the complete or finished article provided that as presented they have the essential character of the complete or finished article [as provided for in the first part of Rule 2(a)].
  - II) The main reason for articles to be shipped unassembled or disassembled is due to shipping logistics but care must be taken that it is not an attempt by the importer to avoid payment of duty.
  - III) The extent of work that will have to be done in order to assemble these goods again is important, either by means of fixing devices (screws, nuts, bolts, etc.) or by riveting or welding. As long as it is only assembly, it is allowed.
  - IV) If further work for completion into the finished state still has to take place this rule would not normally be used.
  - V) Unassembled components of an article that are imported in excess of “equal quantities” are to be classified separately.
  - VI) A shipment of an unassembled bicycle (containing all parts and components necessary to build a bicycle) would be classified in heading 8712 as an assembled, finished bicycle as if it were entered (or imported) as the assembled, finished bicycle.
  - VII) This rule applies to goods “as presented”, in which case the heading should be determined for the goods presented in a particular shipment for importation and not as consisting of all the goods which may be presented at different times or in different shipments.
- E) Rule 2(b): mixture of materials or substances
  - I) Rule 2(b) lays the groundwork for dealing with products, not classifiable through the use of Rule 1 or Rule 2(a), which is composed of a mixture of materials or substances. It basically states that a heading referring to a given material or substance includes mixtures of that substance with others.
  - II) Rule 2(b) governs the classification of mixtures and combinations of materials or substances as well as goods consisting of two (2) or more materials or substances. Goods of a given material or substance to include goods consisting wholly or partly of that material or substance (but only as long as another heading does not refer to the goods in their mixed or composite state).
  - III) The rule applies only if the headings or the HS Tariff section or chapter notes do not specifically exclude mixtures, for example heading 15.03 deals with lard oil, not mixed. Mixtures being preparations specifically described as such in the HS Tariff section or chapter notes or in a heading text are to be classified under the provisions of Rule 1.

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- IV) If the addition of another material or substance deprives the imported good of the character of the kind mentioned in the heading under consideration, then the client must resort to Rule 3 for classification of the merchandise. In other words, mixtures and combinations of materials or substances, and goods consisting of more than one (1) material or substance, if upon initial consideration are potentially classifiable under two (2) or more headings, they must be classified according to the principles of Rule 3.
- V) Under Rule 2(b) a stainless steel travel mug with a plastic handle would be classifiable in heading 7323 as a table, kitchen or other household article of steel despite the plastic handle (as it retains the character of a table, kitchen or other household article of steel as mentioned in heading 7323).
- VI) If a travel mug, however, contained relatively equal amounts of stainless steel and plastic (e.g., the outside or outer surface of the mug is made of plastic and the inside or inner surface (lining) of the mug is made of stainless steel), then the travel mug would be potentially classifiable under two (2) headings: heading 3924 as tableware, kitchenware or other household article of plastic and heading 7323 as a table, kitchen or other household article of steel. (Or, contrasting this product with the initial one (1) considered in this example, a travel mug consisting of relatively equal amounts of stainless steel and plastic does not have the character of a table, kitchen or other household article of steel as mentioned in heading 7323.) In this situation, pursuant to Rule 2(b), resort would need to be made to Rule 3 for classification of the product.
- VII) When by application of Rule 2(b) or for any other reason, goods are obviously classifiable under two (2) or more headings classification must be effected by utilising Rule 3.

iii) Rule 3

- A) Rule 3 comes into force when goods potentially fall within two (2) or more headings, in descending order the considerations are:
  - I) Most specific description of the goods.
  - II) Essential character; and
  - III) The heading appearing last in the Explanatory Notes among those that equally merit consideration.
- B) Rule 3 contains three (3) methods: 3(a) to 3(c). These methods operate in the order in which they are set out in the rule. Rule 3(b) operates only if Rule 3(a) fails in classification and if both Rule 3(a) and Rule 3(b) fail Rule 3(c) will apply. The order of priority is therefore (a) specific description; (b) essential character and (c) heading which occurs last in numerical order.
- C) Rule 3 only applies if the terms of the headings or notes do not specifically exclude the goods, that is:
  - I) Note 4(b) to Chapter 97 mandates that goods described in both headings 97.01 to 97.05 and heading 97.06 must be classified in headings 97.01 to 97.05;
  - II) Note 1(a) to Tariff section VI of the Harmonised System mandates that goods described in heading 28.44 to 28.45 are to be classified in those headings and in no other heading of the HSEN;
  - III) Note 3 to Tariff section VI of the Harmonised System provides for the classification of certain sets; and
  - IV) Heading 30.06 and note 4(g) to Chapter 30 provides for the classification of "First Aid Kits".
- D) Rule 3(a): Specific description preferred over general description. The application of this Rule would appear to be simpler than it actually is in practice. This is so because of contextual differences between people as to what is more specific than something else. There are no specific guidelines laid down by the authors of the Nomenclature, as to what criterion must be utilised when it comes down to describing specificity. The following principles may however be followed:
  - I) A description by name is more specific than a description by class. An example of this would be tableware of plastic, classifiable within heading 3924.10, which is more descriptive than other articles of plastic of heading 39.26, even though the latter heading could also conceivably cover the subject merchandise.

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- II) A clear description is preferable to a lesser identification. An example is a plastic pipe that although it will form part of an irrigation system of heading 84.24, if imported separately, is more clearly described in the heading text to 39.17 which covers tubes and pipes of plastic.
- III) An example of a description by name in one (1) heading that is more specific than a description by class in another heading is as follows: “shavers and hair clippers with self-contained electric motor” of heading 8510 is more specific than “electro-mechanical tools for working in the hand with self-contained electric motor” of heading 8467 or “electro-mechanical domestic appliances with self-contained electric motor” of heading 8509.
- IV) If two (2) or more headings refer to part only of the subject merchandise, the headings are deemed to be equally specific, this rule may not be used and Rule 3(b) or Rule 3(c) will have to be used.
- E) Rule 3(b) relates only to:
  - I) Mixtures.
  - II) Composite goods consisting of different materials.
  - III) Composite goods consisting of different components; or
  - IV) Goods put up in sets for retail sale.
- F) There are various criteria to be applied when considering Rule 3(b), with no particular order. Each instance has to be treated on its own merits. Essential character is a deciding criterion when utilising this rule. There are a variety of factors that must be remembered when dealing with essential character, namely:
  - I) Nature of the material or component i.e. bulk, quantity, weight, value; or
  - II) The role of the constituent material in relation to the use of the goods.
- G) Specifically when dealing with composite goods with separable components, they must be mutually complimentary to each other, in the sense that they form a whole which would normally be sold together. Example of what would be acceptable for purposes of classification is:
  - I) A household spice rack consisting of a special frame and an appropriate number of empty spice jars; and
  - II) Two (2) pens and a pencil, put up in a set, they are complimentary and the fact that there are two (2) pens in the set gives it its essential character.
- H) This rule does not cover selections of products put up or presented together, such as various meats or bottles of various types of liquor.
- I) In all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, if this criterion is applicable.
- J) The factor which determines the essential character of the goods will vary depending of the different kinds of goods. It may be determined by the nature of the material or component, its bulk, quantity, weight or by the role of a constituent material in relation to the use of the goods.
- K) Composite goods made up of different components must be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, provided these components are adapted one (1) to the other and are mutually complementary and that together they are forming a whole which would not normally be offered for sale in separate parts: For example:
  - I) Ashtrays consisting of a stand incorporating a removable ash bowl; and
  - II) Household spice racks consisting of a specially designed frame (usually of wood) with an appropriate number of empty spice jars of suitable shape and size.
- L) As a general rule the components of these composite goods are put up in common packing material.
- M) For the purposes of this rule, the term “goods put up in sets for retail sale” must be taken to mean goods which:
  - I) Consist of at least two (2) different articles, which are prima facie classifiable in different headings. Therefore, for example six (6) fondue forks cannot be regarded as a set within the meaning of this rule;

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- II) Consist of products or articles put up together to form a particular need or carry out a specific activity; and
- III) Are put up in a manner suitable for sale directly to users without repacking, for example boxes, case or on boards.
- N) If these requirements are met, all articles in the set are classified in the provision for the article among them that gives the set its essential character. Because requirements (i) and (iii) are more easily determined and success in finding a valid set under Rule 3(b) hinges to a large extent on application of requirement (ii), we will limit our discussion to issues involving the language contained therein and not discuss requirements (i) and (iii) in this publication.
- O) The rule covers sets consisting of for instance different foodstuffs intended to be used together in the preparation of a ready-to-eat dish or meal.
- P) This rule furthermore does not apply to goods consisting of separately packed constituents put up together, whether or not in a common packing, in fixed proportions for the industrial manufacture of, for example beverages.
- Q) Rule 3(c) is only considered when goods cannot be classified by reference to Rule 3(a) or Rule 3(b). Goods are then classified in the heading which occurs last in numerical order among those which equally merit consideration in determining their classification.
- R) Goods which cannot be classified in accordance with the previous rules must be classified under the heading appropriate to the goods to which they are most akin or alike.
- S) An example of the mixed good consisting of barley (50%) and oats (50%) in equal amounts, if neither the barley nor the oats is found to impart the essential character to the product, then by application of Rule 3 (c) the product would be classified in heading 10.04 as if consisting solely of the oats. This is because the heading number for the oats found in the mixture occurs last in numerical order as between it and the barley (i.e., 1003 for the barley and 1004 for the oats).
- T) A set consisting of:
  - I) 3 x ball point pen (heading 96.08);
  - II) 3 x lead pencils (heading 96.09);
  - III) 1 x pencil sharpener (heading 82.14); and
  - IV) 1 x eraser (heading 40.16).
- U) Unable to determine essential character, as three (3) pens and three (3) pencils. The set thus is classifiable under heading which occurs last in numerical order. Classification of the set thus in heading 96.09.
- iv) Rule 4
  - A) The client must determine if Rule 4 could be used to determine the Tariff heading of the goods under review.
  - B) This rule must be applied very infrequently as Rules 1 to 3 will cover the classification of almost all goods. When attempting to apply this rule, however, any determination regarding “kinship” will depend on such factors as description, character, purpose or intended use, designation, production process and the nature of the goods.
  - C) In utilising this rule it is necessary to compare the presented goods with similar goods in order to establish a kinship which can depend on many factors such as description, character, purpose, etc.
  - D) This rule is used as a “last resort” method, should all else fail as it is nebulous (unformulated) in the extreme. Rules 1 to 3 will cover the classification of almost all goods. When attempting to apply this rule, however, any determination regarding “kinship” should depend on such factors as description, character, purpose or intended use, designation, production process and the nature of the goods.
  - E) Rule 4 is used as a “last resort” method, should all else fail as it is nebulous (unformulated) to the extreme.
  - F) If this rule cannot be considered for classification purposes the client must revert back to Rules 1 to 3 for similar or most akin goods.
- v) Rule 5
  - A) Rule 5 governs the classification of certain long-term use containers and certain packing materials and packing containers.

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- B) The client must verify if Rule 5 can be used to determine the Tariff heading of the container(s) under review.
- C) In addition to the foregoing provisions, Rule 5(a) will apply in respect of the goods referred to therein. Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith:
  - I) Rule 5(a) covers the type of containers that are normally sold with the articles with which they are used and which are normally specially shaped or fitted to accommodate such articles, for example saxophone cases, guitar cases, binocular cases.
  - II) They are manufactured in such a way as to produce longevity similar to that of their contents.
  - III) These containers also serve to protect the article when not in use.
  - IV) Proviso: In order for this rule to apply, the containers must always be presented with their content, if not they must be cleared in their own respective headings, normally heading 42.02.
  - V) Rule 5(a) does not apply to containers giving the whole its essential character, for example silver caddies containing tea or an ornamental ceramic bowl containing sweets.
  - VI) The package material referred to when dealing with Rule 5(a) is for short-term packaging and must clearly not be suitable for repetitive use, for example cellophane packaging found when clothing is imported.
- D) Rule 5(b) governs the classification of packing materials and packing containers of a kind normally used for packing the goods to which they relate.
- E) This rule does not apply to packing material or containers clearly suitable for repetitive use would be such as metal drums for compressed gas, etc.
- F) Rule 5(b) is subject to Rule 5(a) and therefore the classification of cases, boxes and similar containers of the kind mentioned in Rule 5(a) must be determined by the application of that rule.
- G) To determine the sub-heading of the goods under review proceed to Rule 6. If the goods under review do not fall under the provisions of Rule 5(b) the client must revert to Rules 1 to 4.

vi) Rule 6

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

- b) As of 1 April 2015, any alcoholic beverage, as contemplated in Chapter 22 of Part 1 of Schedule No. 1, that is a first importation or a new manufactured product must be submitted for tariff classification where that beverage is imported or manufactured as prescribed by the Rules. Prior to the submission of a tariff determination through the Branch Office (BO), the client must submit the product(s) to Department of Agriculture, Forest and Fisheries (DAFF). The Department will issue a Certificate to the client to confirm that the product complies with the Liquor Products Act.

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- c) Both **SARS** and the clients have a responsibility to initiate a tariff determination when necessary in order to ensure correct classification of goods and payment of duties:
- i) Clients may apply **to the Branch Office** for the tariff determination on the locally manufactured, imported / exported goods when they need assistance with classification.
  - ii) In the event of a SARS initiated tariff classification and/or determination:
    - A) The client may, during the processing of the **goods declaration** by SARS, be requested **by the Officer dealing with the case** to submit additional documents as well as samples if required.
    - B) If more time is needed to investigate the matter further, the **Branch Office** may do a conditional release and request the client to apply for a tariff determination.
  - iii) Whether initiated by the client or SARS, the client must submit:
    - A) A letter requesting a tariff determination to the nearest **Branch Office with the motivation for the application**.
    - B) Clients accredited in terms of Section 64E must indicate their accreditation status in the letter.
    - C) The following information for the completion and capturing of **form DA 314** by Branch Office **will be required**:
      - I) **Designated Branch Office**;
      - II) **Importer's name**;
      - III) **Agent name**;
      - IV) **Indicate whether this is a first submission, or a re-submission**;
      - V) **Consignment details**;
      - VI) **Customs Clearance Declaration number**;
      - VII) **Customs Clearance Declaration date**;
      - VIII) **Method of transport**;
      - IX) **Trade name of article**;
      - X) **Manufacturer or Supplier**;
      - XI) **Detailed description of article**; and
      - XII) **Use or purpose of article under submission**.
    - D) In the case of a tariff determination on intended **locally manufactured**, imported or exported, an affidavit from the **manufacturer, importer or exporter is required, declaring** that goods of this nature have not previously been **locally manufactured, imported or exported by the applicant** or associated companies.
    - E) Supporting documents including **legible**, identifiable, descriptive literature.
    - F) Samples as and when requested by the Branch Office.
    - G) In the case of accredited clients, the Acceptance to the Accreditation Client Programme letter issued by SARS in terms of Section 64E, so that their applications can be expedited.
  - iv) **Local** manufacturers and importers of alcoholic beverages must apply for a tariff determination as prescribed by the Rules before release, of the alcoholic beverage for home consumption of the first importation or before the removal from the Excise manufacturing warehouse for any purpose, can take place:
    - A) The following information must be enclosed in the submission:
      - I) Detailed information **of the goods under consideration**.
      - II) Brand name **of the beverage**.
      - III) The **step-by-step** process of manufacture.
      - IV) The ingredients used and the **percentage per constituent of each ingredient represented in the beverage**.
      - V) The alcoholic strength **of the beverage**.
    - B) The application must be accompanied by a certificate from the DAFF signed by the Administering Officer, confirming that the alcoholic beverage complies with Section iv(cc)(B) of the Liquor Products Act.
    - C) Any other **information that may be** requested by the Branch Office from the client.
- d) The Officer will capture and submit **the Tariff Determination application** on the DA 314 through the Tariff Determination System.

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- e) **If the client** encounters delays, accredited clients can request the **Client** Relationship Manager (CRM) to follow up on their behalf.
- f) **Once the application is approved the Officer at the** Branch Office receives a notification on the outcome of the tariff determination:
  - i) The **Officer** must inform the client in **writing** of the outcome of the application.
  - ii) **In the event of an audit**, the **applicable Officer** must inform the client within seven (7) days after receipt of the TDN of any duties or levies due to **SARS** in a letter of intent.
  - iii) Once **the** Tariff Determination (TDN) is issued, the client must declare his/her TDN on **the applicable goods declarations**.
  - iv) The Commissioner **must** publish the tariff determinations in the Government Gazette [Section 47(9)(c)] **and on the SARS website in terms of Section 4(3D)**.
  - v) **The publication of the tariff determination information is anonymised as stipulated in the Rules of Section 4(3D)**.
  - vi) The Commissioner may amend or withdraw a determination and make a new determination [Section 47(9)(d)]. The new determination is effective from:
    - A) The date of first entry of the goods in question.
    - B) The date of the notice.
    - C) The date of the first determination.
    - D) The date of the new determination; or
    - E) The date of the amendment from the old to the new determination.
  - vii) Any determination that has been made is deemed to be correct but subject to appeal to the Court. Therefore, any amount due as a result of such a determination remains payable for as long as such a determination remains in force [Section 47(9)(b)].
  - viii) Tariff classification of staged consignments differs from the norm. From a legal point of view, goods are normally classified as presented at time of importation by a specific importer.
  - ix) With staged consignments, in most instances, only one (1) tariff **subheading** is utilised and is determined according to the essential character of the whole consignment (SC-CF-47).
  - x) In terms of Section 107(2)(b), **SARS** may direct that **the** goods be analysed by a person designated by **SARS** and that the analysis be done in accordance with a method determined by **SARS**.
  - xi) The party requesting the analysis is liable for the analysis fees.
  - xii) This is normally the importer or exporter requesting a tariff determination, except where **SARS** considers analysis necessary and this analysis confirms the correctness of the **goods declaration** made or presented by a client **SARS may then be** liable for the **analysis** cost.
  - xiii) If the goods in question were incorrectly or insufficiently described on the invoice, the **local** manufacturer, the importer or exporter (whichever is applicable) is liable for the **analysis** cost.
  - xiv) In the case of a refund or substitution of a declaration, the cost of the analysis is never borne by **SARS**.

### 3 REFERENCES

#### 3.1 Legislation

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	<b>Customs and Excise Act No. 91 of 1964:</b> Sections <b>4(3D)</b> ; 47(8)(a); 47(9) and 107(2)(b) <b>Harmonised Tariff System:</b> Schedule 1 Part 1 <b>Customs and Excise Rules:</b> Rule 4; 47 and 64E.14(a)
Other Legislation:	<b>Promotion of Administrative Justice Act No. 3 of 2000:</b> Section 3 and 5 <b>Promotion Of Access To Information Act No. 2 of 2000:</b> All
International Instruments:	<b>World Customs Organisation Harmonised System Convention:</b> All <b>Kyoto Convention General Annex Chapter 9 – Information, Decisions and Rulings</b> supplied by Customs: Standards 9.1 to 9.9

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## 3.2 Cross References

DOCUMENT NUMBER	DOCUMENT TITLE
SC-CF-48	Staged Consignments - External Policy
SC-CF-49	Customs Samples - External Policy
SC-CF-55	Completion of Declarations – External Policy
SE-GEN-06	Samples – External Policy

## 4 DEFINITIONS AND ACRONYMS

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