



New Customs Acts Programme



CHANGING FOR THE FUTURE

New Customs Legislation

An Overview

Version 1, April 2016

OVERVIEW OF THE NEW CUSTOMS LEGISLATION

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1. INTRODUCTION

1.1 GENERAL

The Customs and Excise Act, 1964, was intended to cater for the needs of the time when the focus of Customs was mainly on control. Today there is still a need for an effective customs control system (as a mechanism for revenue collection, protection of society and combating of crime). However, in order to cope with the demands of growing global trade and the challenges of organised crime, the international trend is to modernise customs systems to minimise their disruptive effect on legitimate trade and tourism as much as possible.

This has to a large extent been achieved through the amendment of international instruments which provide a model for simple, predictable and efficient customs systems by using technology that would neither compromise the traditional objectives of customs control nor disrupt the flow of goods and people between countries. South Africa, as a signatory to most of these international instruments, therefore had to amend its current legislation to be aligned and to comply with international legislation.

The objective of rewriting the customs legislation was:

- to modernise the customs system in order to minimise disruptive effects on legitimate trade and tourism (trade facilitation element)
- to give effect to the Revised Kyoto Convention (RKC) and other binding international instruments
- to establish a sound, clear and logical legislative framework that would enhance and “speak to” the many other legislative instruments that rely for their implementation on customs control
- to draw a difference between Customs and Excise
- to ensure transparency, efficiency and predictability of customs procedures for traders and
- to support regional economic integration.

South Africa's current legislation is unique in that it provides for customs and excise legislation in one instrument.

The dissection of the Customs and Excise Act, 1964, and rewrite of the current customs and excise legislation was a huge task that took several years to complete. Research that preceded the rewrite of the customs legislation began in 2003. The first drafts of the Customs Control Bill and the Customs Duty Bill were only published in September 2007.

It was decided that the customs and excise aspects of the task must be split and the project be completed in various phases, the first phase being the finalisation of the **Customs Control Act** and the **Customs Duty Act**, and the second being the drafting of a new **Excise Duty Bill** which will eventually replace the existing Excise legislation.

The intention has always been to proceed only with the two Customs Acts and to retain the current Customs and Excise Act, 1964, in an amended form (to be called the "Excise Duty Act, 1964"), for the continued administration of excise duties until the proposed Excise Duty Act (to still be drafted) comes into effect.

The Customs legislation will come into effect on a date to be determined by the President.

When the new Customs legislation becomes effective, the current legislative framework will be split into three separate pieces of legislation that will replace the current Customs and Excise Act, 1964, as follows:

- **Customs Control Act, 2014**, that establishes a customs control system for all goods imported into or exported from the Republic and that prescribes the operational aspects of the system;
- **Customs Duty Act, 2014**, that provides for the imposition, assessment and collection of customs duties; and
- **Excise Duty Act, 1964** (i.e. the Customs and Excise Act, 1964, as amended by the Customs and Excise Amendment Act, 2014) that provides for the imposition, assessment and collection of excise duties and related levies. This Act will be rewritten in the second phase of the project.

1.2 BEST APPROACH TO READING THE NEW LEGISLATION

The new legislation follows a much more systematic and logical pattern than the 1964 Act. The Acts are divided into topic-specific Chapters which follow a logical order. Provisions dealing with the same topic have been grouped together and therefore the arrangement of sections (Index) is a very useful tool for locating provisions relevant to a specific topic. Footnotes have also been used to provide links with other provisions that are relevant to a specific section. Another essential tool for understanding the legislation is to make use of the definitions provided in section 1 of the Customs Control Act and Customs Duty Act, and also in the Rules. In order to properly interpret a specific provision it is necessary to ascertain which technical meaning has been assigned to words and phrases used in such a provision. In this regard, it should be noted that a word or phrase which has been defined in the Customs Control Act has the same meaning for purposes of the Customs Duty Act, unless another definition is provided for such a word or phrase in the Customs Duty Act.

PART 1

CUSTOMS CONTROL ACT

1. STRUCTURE OF THE CUSTOMS CONTROL ACT

The Customs Control Act (“CCA”) is primarily concerned with the control of goods imported into or intended for export from the Republic. The rationale for this control is to ensure that any taxes imposed by various laws on such goods are collected and that other laws regulating the import or export of specific goods are complied with. As such, the Act can best be described as a law that will serve as a “platform” for the implementation of these other laws.

Laws that will rely for their implementation on the Customs Control Act include, firstly, laws imposing taxes on goods when imported or exported, such as the Customs Duty Act, 2014, the Excise Duty Act, 1964, the VAT Act, 1991, and the Diamond Export Levy Act, 2007, and, secondly, laws prohibiting or regulating the

import or export of certain goods such as arms and ammunition, protected species, goods that are subject to permit control, counterfeit goods, etc.

The primary aims of the CCA are set out in section 3 as follows:

- To provide systems and procedures for customs control of all goods and persons entering or leaving the Republic
- to enable the effective collection of tax on such goods imposed in terms of the tax levying Acts and
- to facilitate the implementation of other legislation applicable to such goods and persons.

The CCA determines the procedural requirements that must be complied with when goods are “imported” or “exported”. The basic requirement is that goods may only be imported through specific places designated as “places of entry” where the goods must be “cleared” by the importer either for “home use” or a “customs procedure” before they may be “released” by the customs authority for their intended purpose. Similarly, goods intended for export may only be exported through specific places designated as “places of exit” after properly cleared by the exporter and released by the customs authority for export.

Chapter 1: Interpretation, Application and Administration of this Act	Chapter 2: Customs Control, Places of Entry and Exit and Customs Controlled Areas	Chapter 3: Reporting requirements for inbound and outbound vessels, aircraft, trains, buses, trucks, persons and cargo	Chapter 4: General principles governing clearance and release of goods and customs procedures
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Chapter 5: General principles governing transport, sealing and loading of goods	Chapter 6: Tax status of goods	Chapter 7: Standard Processes and requirements for clearance and release of goods	Chapter 8: Home use of goods
Chapter 9: National and International Transit	Chapter 10: Excise warehouse transit procedure	Chapter 11: Transshipment procedure	Chapter 12: Temporary admission procedure
Chapter 13: Warehousing procedure	Chapter 14: Tax free shop procedure	Chapter 15: Stores procedure	Chapter 16: Export procedure
Chapter 17: Temporary Export Procedure	Chapter 18: Inward processing procedure	Chapter 19: Home use processing procedure	Chapter 20: Outward processing procedure
Chapter 21: Customs processing of persons entering or leaving Republic	Chapter 22: International Postal articles handled by South African Post Office	Chapter 23: Access to and Sampling of goods	Chapter 24: Expedited clearance and release of goods
Chapter 25: Damaged, Destroyed, Lost and Unaccounted goods	Chapter 26: Abandonment of goods to Commissioner and destruction of goods under customs supervision	Chapter 27: State Warehouses	Chapter 28: Registration
Chapter 29: Licensing	Chapter 30: Accreditation	Chapter 31: Security for payment of tax and other money owed to Commissioner	Chapter 32: Recovery of Debt under Act

Chapter 33: General Enforcement functions	Chapter 34: Detention, Seizure and Confiscation of goods	Chapter 35: Prohibited, Restricted and Sectorally controlled goods	Chapter 36: Counterfeit goods
Chapter 37: Reconsideration of decisions and Dispute Resolution	Chapter 38: Voluntary Disclosure Relief	Chapter 39: Administrative Penalties	Chapter 40: Judicial Matters
Chapter 41: Miscellaneous Matters			

An overview of each Chapter and the introduction of new processes and concepts are provided below.

2. CHAPTER 1: INTERPRETATION APPLICATION AND ADMINISTRATION OF THIS ACT

2.1 General

Words and phrases used in the Act are defined in Chapter 1. Because of the technical nature of the Act, terminology is of critical importance for a proper understanding of the Act. Some of the key concepts explained by way of definitions include the following:

- “Customs control” means control exercised by the customs authority in terms of the Act in relation to goods and persons to whom the Act applies
- “Import” and “export” are defined in their widest sense, viz. when goods or persons cross the border into the Republic or cross the border out of the Republic

- “Confiscate” means to divest a person of ownership of goods and to vest ownership of the goods in the state. This is equivalent to the concept of forfeiture as was administered by the 1964 Act
- “Clear” is the new term to describe the action of entering goods for home use or a customs procedure, in other words the action of officially notifying the customs authority of goods that are subject to the CCA. Notification is effected by way of a “clearance declaration”
- “Release” describes the action taken by Customs to authorise the goods to be put into “home use” or to be dealt with in accordance with a “customs procedure”
- If goods are released for home use, the goods go into “free circulation” in the Republic which indicates that the goods may be dealt with free of any further customs control
- “Import tax” means an ordinary import, anti-dumping, countervailing or safeguard duty imposed in terms of the Customs Duty Act on goods imported into the Republic. Value-added tax imposed in terms of the Value-added Tax Act on goods imported into the Republic and all excise duties and levies imposed in terms of the Excise Duty Act on goods imported into the Republic, are also examples of import taxes
- “On-board operator” denotes the person who is in on-board command of a vessel, aircraft, train or vehicle (usually the captain of a vessel, pilot of an aircraft, conductor of a train or driver of a vehicle), whilst “carrier” denotes the shipping line or airline or the rail or road hauler conducting business by transporting goods or persons for reward
- Goods can in terms of the CCA be cleared for “home use” or any of the thirteen “customs procedures” provided for in the Act. Each of these customs procedures has a precise technical meaning which is defined in the Chapter dealing with the particular procedure. If non-cleared imported goods or goods under a customs procedure are “diverted for home use” it

means that the goods are dealt with illegally as if the goods are in free circulation

- When goods are cleared for home use or a customs procedure, or in circumstances when the goods are regarded as having been cleared for home use or outright export, a specific “tax status” is conferred on the goods in terms of the CCA. A “tax due status” indicates that a tax applicable to the goods is payable, and a “tax free status” indicates that whilst the goods have a tax free status no tax applicable to the goods will be payable.

The chapter also provides for a new system of delegations by the Commissioner which ensures flexibility and maximises managerial, administrative and operational efficiency and includes authorising any SARS official who is not a customs officer to exercise a power assigned to a customs officer.

2.2 New Processes and Concepts

The CCA introduces new terms such as “breach”, “clear”, “clearance declaration”, “customs broker”, “customs authority”, “declaration”, “home use”, “permissible”, and many more.

No distinction is drawn between goods imported or exported from other members of the Southern African Customs Union (SACU) and imports and exports from other territories. Rules may be prescribed to expand on this.

Provision is also made for customs officers to be issued with identity cards to enhance the legitimacy of enforcement functions and promote institutional respectability.

3. CHAPTER TWO: CUSTOMS CONTROL, PLACES OF ENTRY AND EXIT AND CUSTOMS CONTROLLED AREAS

3.1 General

This chapter provides for the designation of places of entry and exit for the Republic and regulates the entry into and the exit from the Republic of vessels,

aircraft, trains, railway carriages, vehicles, goods and persons only through such places of entry or exit.

Various measures are contained in the chapter to ensure that all goods and persons entering or leaving the Republic are properly processed for customs purposes at the designated places of entry and exit. It also ensures that foreign-going vessels and aircraft call or land and take on board or discharge travellers and goods only at places of entry and exit and that vehicles and cross-border trains only enter or leave the Republic through places of entry and exit.

The consequences of contravention of entry or exit requirements are also addressed. The chapter establishes certain places and facilities as customs control areas for purposes of the Act and the tax levying Acts. The concept of a customs controlled area is of importance especially in relation to the performance of enforcement functions by customs officers. Goods and persons subject to customs control are also identified to ensure effective controls for the facilitation of legitimate trade and national security.

3.2 New Processes and Concepts

The chapter deals comprehensively with the goods and persons that are subject to customs control.

Furthermore all places of entry and exit must be designated by the Commissioner consistent with any applicable Acts of Parliament and decisions of the national executive. The chapter contains an extensive list of customs controlled areas which include all premises that are required to be licensed in terms of Chapter 29 of the CCA.

4. CHAPTER THREE: REPORTING REQUIREMENTS FOR INBOUND AND OUTBOUND VESSELS, AIRCRAFT, TRAINS, BUSES, TRUCKS, PERSONS AND CARGO

4.1 General

Chapter 3 establishes reporting requirements for all foreign-going vessels, aircraft, trains, buses and trucks arriving in or leaving the Republic. It also establishes reporting requirements for all persons and cargo on board those foreign going vessels, aircraft, trains, buses and trucks arriving in or leaving the Republic. This information is used for advance risk assessment and planning.

In order to ensure that goods are accounted for, the Chapter furthermore provides for outturn reports to be submitted to Customs by licensees of cargo terminals and depots when cargo is off loaded from or loaded on board foreign-going vessels, aircraft or cross border railway carriages. These licensees must also submit outturn reports for imported goods when they are removed from cargo terminals or depots or when goods destined for export are received at cargo terminals or depots.

4.2 New Processes and Concepts

A new advance cargo loading notice for containerised cargo (24 hour rule) has been introduced in line with the SAFE Framework. The purpose is to prevent the loading of prohibited or restricted goods on board vessels destined for the Republic.

Information submitted in advance will no longer be required upon arrival or on departure provided that the information is amended if it changes.

Pre-departure requirements in respect of all foreign-going vessels and aircraft, cross-border trains, vehicles and persons leaving and for all goods exported from the Republic.

5. CHAPTER FOUR: GENERAL PRINCIPLES GOVERNING CLEARANCE AND RELEASE OF GOODS AND CUSTOMS PROCEDURES

5.1 General

Chapter 4 provides for the general principles governing the clearance and release of goods for home use or a customs procedure, and requires all imported goods to be cleared either for home use or a customs procedure within a specific timeframe, and

all goods destined for export to be cleared for a customs procedure that allows goods to be exported under that procedure within a specific timeframe. The consequences of failure to comply with these requirements are also dealt with. Goods must in certain circumstances be regarded to be cleared for home use in terms of Chapter 8, which means that the goods acquire a tax due status.

The chapter furthermore contains general principles governing the release of goods by Customs. In order to prevent abuse of customs procedures, Customs is not obliged to release goods for any purpose when they are cleared. The Chapter contains provisions circumscribing the release of goods by Customs. It states the circumstances when Customs must or may refuse the release of goods, when the release of goods must or may be temporarily withheld and when the release of goods may be withdrawn.

The chapter determines when a customs procedure commences and ends and also the consequences of non-compliance with customs procedures. Provision is also made for conditions relating to the transfer of ownership of goods under a customs procedure.

5.2 New Processes and Concepts

The time period within which imported goods must be cleared is reduced from 7 days to 3 days of arrival as information is more readily available in today's electronic environment.

Clearance at first place of entry - Containerised goods consigned for delivery to an inland container terminal or depot must be cleared before arrival of the goods and a provisional release may be given before the arrival of the goods.

Release of imported goods will only be granted after arrival of the goods.

Certain categories of goods e.g. human remains are excluded from clearance requirements, but control over these goods is maintained.

Imported goods under a customs procedure are in the event of non-compliance with legislation regarded to be cleared for home use to enable SARS to collect the tax due.

Timeframes are prescribed for when export clearance declarations must be submitted, and provision is made, like in the case of imported goods, for the exclusion of certain categories of goods from clearance requirements.

In the event of non-compliance with export requirements, goods are regarded to be cleared for outright export.

6. CHAPTER FIVE: GENERAL PRINCIPLES GOVERNING TRANSPORT, SEALING AND LOADING OF GOODS

6.1 General

This chapter determines general principles governing the transport of goods not in free circulation, the sealing of containers, vehicles and packages, the loading and off-loading of goods destined for export and the transfer of goods between vessels, between vehicles and between containers.

Goods not in free circulation may be transported in or through the Republic only under a customs procedure that provides for or allows the transport of goods under that procedure. Furthermore, goods not in free circulation may only be transported by a licensed carrier, a carrier represented in the Republic by a registered agent, if the carrier is not located in the Republic, or any other person specifically permitted in terms of the customs procedure under which the goods are transported, to transport goods under that procedure. Because this is a general Chapter, the provisions must be read subject to the specific provisions applicable to the transport of goods under a specific customs procedure. This means that in the event of an inconsistency, the specific provision will apply.

This chapter also describes the instances where the general principles governing transport of goods not in free circulation do not find application, for e.g. when goods are transported between terminals and depots served by the same Customs Office.

6.2 New Processes and Concepts

To combat smuggling, the transfer of goods from a foreign-going vessel to another foreign-going vessel or to a domestic vessel is prohibited, except when the

transfer takes place under a customs procedure that allows the transfer (i.e. transshipment) or with the permission of the customs authority.

7. CHAPTER SIX: TAX STATUS OF GOODS

7.1 General

This chapter facilitates the link between the tax levying Acts and the CCA and provides the trader with information on the potential tax liability when goods are cleared for home use or a customs procedure (while the goods are under a customs procedure) or if the goods are regarded to be cleared for home use or outright export. Tax includes customs duty, excise duty, VAT and any other tax payable on the import or export of goods.

The tax status of goods is either tax due or tax free. A tax due status indicates that tax is payable on goods if tax has been imposed in terms of a tax levying Act on goods of that kind. A tax free status indicates that no tax is payable on such goods as no tax has been imposed by any of the tax levying Acts.

7.2 New Processes and concepts

In the Customs and Excise Act, 1964, the provisions relating to tax status are not specifically streamlined but scattered all over the Act. In the CCA, they have been grouped together for the sake of clarity.

8. CHAPTER SEVEN: STANDARD PROCESSES AND REQUIREMENTS FOR CLEARANCE AND RELEASE OF GOODS

8.1 General

This chapter sets out standard processes and requirements that apply generally to the clearance and release of all goods imported into or destined for export from the Republic. The purpose of the chapter is mainly to avoid repeating the same requirements for the different customs procedures in the chapters dealing with the specific procedures. The standard procedures provide the default position and apply unless the Chapters dealing with the specific procedures provide otherwise.

Goods must be cleared by the submission to Customs of clearance declarations stating the purpose of the clearance and the other information required by the CCA. The chapter determines the persons who must complete and submit clearance declarations, the contents of clearance declarations, how and where and the time when clearance declarations must be submitted. Furthermore, it deals with the acceptance of clearance declarations by Customs, the amendment of clearance declarations and the documents that are required in support of a clearance declaration.

Standard release procedures are also prescribed. No goods may be delivered by a release agent to any person otherwise than on authority of release document or notification. The release agent in control of released goods must notify Customs of delivery of the goods to the person entitled to collect or receive the goods and of any failure by such person to take delivery of the goods within the required period.

8.2 New Processes and Concepts

This is a new chapter that sets out the standard processes and requirements that apply generally to the clearance and release of all goods imported into or destined for export from the Republic. The current position of releasing goods before they arrive is no longer applicable since the circumstances relating to the goods while they are being transported could change e.g. the goods may be off-loaded at a wrong port. The customs authority may now only release goods when the goods physically arrive.

9. CHAPTER EIGHT: HOME USE OF GOODS

9.1 General

This chapter regulates the clearance and release of imported goods for home use. It contains specific provisions relating to the person entitled to submit clearance declarations and what information a home use clearance declaration must contain. “Home use” means the consumption, utilisation, processing or disposal of imported goods in the Republic as goods that are no longer subject to customs

control. Imported goods must be cleared and released for home use before they are utilised “in free circulation”. Failure to do this amounts to diversion or smuggling of the goods which is a criminal offence and renders the goods subject to confiscation by the state.

Goods cleared in terms of this Chapter acquire a tax due status which means that any import tax (e.g. customs duty, excise duty and VAT) applicable to the goods must be paid when the goods are cleared for home use.

9.2 New Processes and Concepts

This chapter replaces the current regime of entry for home consumption. The following parties are entitled to submit home use clearance declarations:

- Importer located in the Republic
- Agent in the Republic of the importer, if importer is not located in the Republic
- Owner of the goods, where ownership has been transferred, if the owner is located in the Republic
- Agent of the owner in the Republic if the owner is not located in the Republic
- A customs broker.

10. CHAPTER NINE: NATIONAL AND INTERNATIONAL TRANSIT

10.1 General

This chapter regulates the national and international transit procedures. The general principle is that imported goods may only be transported within the Republic when cleared and released for the transit procedure. The national and international transit procedure replaces the current removal in bond and removal in transit processes respectively.

National transit is described in this chapter as the customs procedure that allows goods that are not in free circulation, to be transported in the Republic from one customs controlled area to another customs controlled area not served by the same Customs Office.

International transit is described as the customs procedure that allows imported goods to be transported through the Republic from the place of entry where the goods were off-loaded or where it entered the Republic, to a place of exit from where the goods are to be exported. International transit procedure allows goods to be exported under that procedure without complying with any export clearing formalities under the export procedure.

The Chapter makes provision for the commencement and completion of national and international transit procedures as well as for the commencement and completion periods of national and international transit operations. Other provisions include the persons entitled to submit transit clearance declarations, the contents of transit clearance declarations, the redirection of goods under transit, the persons allowed to carry out transit operations and the transfer of goods in transit to other vehicles or containers.

Both the national and international transit procedures confer a tax free status on the relevant goods and no tax is payable on the goods whilst the goods are under that procedure.

10.2 New Processes and Concepts

A national transit clearance declaration must be submitted at the first place of entry, replacing the manifest currently used to declare goods removed from a place of entry to an inland terminal or depot.

A national transit clearance declaration must include all of the information required to be reflected on a clearance declaration, including tariff, value and origin information.

This will improve SARS's ability to perform risk assessment and intervene in cases of potentially high revenue risk, as well as in circumstance where there are prohibited and restricted consignments at the port.

11. CHAPTER TEN: EXCISE WAREHOUSE TRANSIT PROCEDURE

11.1 General

Chapter 10 regulates the excise warehouse transit procedure which allows imported goods to be transported from a customs controlled area to an excise warehouse for excise manufacturing. It provides for clearance and release of imported goods for excise warehouse transit, the conduct with goods cleared and released for excise warehouse transit and the commencement, carrying out and completion of excise warehouse transit operations.

After completion of the excise warehouse transit procedure the goods no longer fall within the ambit of the CCA and must be further dealt with in terms of the Excise Duty Act, 1964.

What distinguishes this procedure from national transit is the tax status of the goods. Goods under the excise warehouse transit procedure acquire a tax due status in relation to import tax and a tax free status in relation to excise duty (or another levy in terms of the Excise Duty Act). Excise warehouse transit is an entirely new concept.

12. CHAPTER ELEVEN: TRANSHIPMENT PROCEDURE

12.1 General

Chapter 11 deals with the clearance of imported goods for the transshipment procedure and contains specific conditions for the clearance and release of goods for transshipment, the treatment of goods cleared and released for transshipment, the carrying out and completion of transshipment operations and the export of goods under the transshipment procedure. The transshipment procedure allows goods imported by sea or by air to be transferred at a customs seaport or airport from the vessel or aircraft on which the goods were imported, to another vessel or aircraft on which those goods are to be exported at the same customs seaport or airport or at another customs seaport served by the same Customs Office.

Goods under the transshipment procedure may be exported under that procedure without formal clearance in terms of the export procedure.

This Chapter provides for a deviation from the standard clearance process in that it allows advance cargo arrival notices submitted in respect of the goods to be transhipped to serve as transshipment clearance declarations.

The transshipment procedure confers a tax free status on the relevant goods and no tax is payable on goods under the transshipment procedure.

12.2 New Processes and Concepts

The chapter contains extensive provisions to ensure the integrity of transshipment operations and to guard against smuggling of goods while under the transshipment procedure. Such provisions include the obligation to commence and complete transshipment procedures within a prescribed time and the securing of transshipment goods on licensed premises.

13. CHAPTER TWELVE: TEMPORARY ADMISSION PROCEDURE

13.1 General

Chapter 12 regulates the temporary admission procedure under which goods may be imported and used for a specific period in the Republic and then, at the end of this period, be re-exported from the Republic. The goods must be exported without having undergone any change except for maintenance and normal wear and tear.

The chapter provides for the placing of goods under the temporary admission procedure either in terms of the standard clearance and release procedures set out in Chapter 7 as modified by this chapter, or on authority of temporary admission papers (CPD or ATA carnets) issued in accordance with the Istanbul Convention on Temporary Admission to which the Republic is a signatory. The chapter also allows for the application of this procedure to the temporary admission of goods in terms of bi-lateral agreements between the Republic and other countries.

Provision is furthermore made for certain goods to automatically come under the temporary admission procedure, such as vessels, aircraft, locomotives and railway carriages entering the Republic as a means of transport for purposes of

international trade or for the transport of travellers for reward between countries. Similarly, reusable transport equipment, such as containers, entering the Republic automatically comes under this procedure.

Commercial trucks, buses and taxis used as a means of transport for purposes of international trade or the transport of travellers do not come under the temporary admission procedure automatically, but may be cleared for temporary admission in accordance with simplified clearance procedures. Provision is also made for small vessels and light aircraft used as private means of transport to be cleared and released for temporary admission in accordance with simplified clearance and release procedures.

The temporary admission procedure confers a tax free status on goods under this procedure. Accordingly there are no tax consequences for goods imported under this procedure except when the goods are diverted or not dealt with in accordance with the provisions applicable to the procedure.

13.2 New Processes and Concepts

This chapter creates a comprehensive legal framework for the temporary admission of goods.

- As mentioned, certain goods such as means of transport and reusable transport equipment come under the procedure either automatically or in terms of simplified clearance procedures to benefit from the tax free status of goods under the procedure.
- The release notification must state the period of temporary admission. The period mentioned in such a release notification may be extended only once, except if good cause is shown for an additional extension.

14. CHAPTER THIRTEEN: WAREHOUSING PROCEDURE

14.1 General

This chapter regulates the warehousing procedure, and provides for the clearance and release of goods for warehousing, the commencement and completion of the

procedure, the purposes for which goods may be cleared for warehousing, the persons entitled to submit warehousing clearance declarations, the contents of warehousing clearance declarations, the redirection of goods cleared for warehousing, the maximum warehousing period and the removal of goods from storage warehouses. It also deals with reporting in connection with warehoused goods.

Provision is made in Chapter 13 for public and private warehouses. A public warehouse is used for the storing of goods belonging to clients of the licensee of the warehouse and a private warehouse is used for the warehousing of goods owned by the licensee of the warehouse or in which the licensee has a material interest. Goods cleared for warehousing may be transported to the warehouse without clearing the goods for transit.

The procedure allows for the delay of payment of import duties and taxes until the goods are cleared for home use, exported or meet the conditions relating to restrictions or prohibitions.

14.2 New Processes and Concepts

Imported goods free of duty but subject to VAT may be stored in a customs storage warehouse. The storage of these goods is currently only available to accredited importers and storage of these goods is restricted for the purpose of export.

In order to provide for greater facilitation, superficial controls such as physical separation of imported warehoused goods from free circulation goods were removed. Free circulation goods may now be stored with imported warehoused goods, which will allow exportation from single premises.

Warehousing storage premises now include only Public Storage Warehouses and Private Storage warehouses (reduced from 4 types to 2).

The current maximum warehousing period for goods other than restricted goods is retained at two years, and provision is made for a maximum further extension of 180 calendar days. Provision is also made for other maximum periods to be prescribed in relation to specific classes, kind or categories of goods which may be

determined by rule. New controls introduced include notification to Customs by the carrier of the delivery of the goods at the warehouse and notification by the licensee of the warehouse of receipt of the goods as well as the submission of reports to Customs containing information on warehoused goods.

15. CHAPTER FOURTEEN: TAX FREE SHOP PROCEDURE

15.1 General

Chapter 14 regulates the tax free shop procedure which allows goods to be sold tax free in retail quantities on premises licensed as tax free shops, to people entering or leaving the Republic. Those goods must be treated as accompanied baggage of travellers.

The chapter provides for the clearance and release of goods not in free circulation for supply to tax free shops, the commencement and completion of the procedure, the receipt of goods (whether or not in free circulation), in tax free shops and the sale and removal of goods from tax free shops.

Goods not in free circulation may not be supplied to a tax free shop unless cleared for the tax free shop procedure. Clearance must be in accordance with the standard procedures set out in Chapter 7 as modified by this Chapter. Goods in free circulation can be supplied to a tax free shop without clearance but once supplied come under the tax free shop procedure. Provision is also made for inventory control in relation to goods in tax free shops and regular reporting.

The chapter also provides for Commissioner to prescribe by rule the establishment of special shops for diplomats and the conditions and procedures for the sale of goods in such shops.

15.2 New Processes and Concepts

Tax free shops previously licensed as special customs warehouses will now be regulated by the tax free shop procedure.

Provision has been made for off-site outlets for tax free shops in other locations outside the sea, air or rail travellers terminal or land border post in which the shop is situated for the purposes of promoting sales.

The maximum period in which goods can remain in a tax free shop is 2 years.

Provision is made for regular reporting by the licensee to ensure integrity of inventory control.

Rules have been prescribed to provide for conditions and procedures for the sale of goods tax free to diplomats.

16. CHAPTER FIFTEEN: STORES PROCEDURE

16.1 General

Chapter 15 regulates the stores procedure, including the reporting of stores on board foreign-going vessels, foreign-going aircraft and cross-border trains when those vessels, aircraft or trains enter the Republic, the commencement and completion of the procedure, the clearance and release for the stores procedure, the use of goods under the stores procedure, replacement of stores and the removal of stores from vessels, aircraft or trains.

Provision is also made for a procedure to be followed in respect of unused stores and aborted voyages. Reports are prescribed for the arrival and departure of stores.

The stores procedure allows goods to be used on board foreign-going vessels, aircraft or cross-border trains as stores for those vessels, aircraft or trains without any home use or export clearing formalities. This procedure is available only in the case of foreign-going vessels, aircraft and cross-border trains engaged in the transport of goods or travellers coming into or going out of the Republic.

Any stores taken on board foreign-going vessels, foreign-going aircraft and cross-border trains in the Republic must be cleared for the stores procedure. Clearance must be in accordance with the standard procedures set out in Chapter 7 as modified by this Chapter for purposes of the stores procedure.

The chapter provides that Customs may determine the quantity of goods reasonably needed for a voyage when considering release for the stores procedure.

The stores procedure confers a tax free status on goods under the procedure which means that no import tax is payable on goods reported as stores, and that any tax paid on goods in free circulation cleared for the stores procedure is refundable.

16.2 New Processes and Concepts

Currently stores may be supplied to foreign-going vessels and aircraft. The CCA extends the stores procedure to cross-border trains.

When considering release of goods for the stores procedure, Customs may determine the quantity of goods reasonably needed to be taken on board such vessels, aircraft or trains as stores for any intended voyage. A new provision lists the factors that may be taken into account by the customs authority when determining the quantities of stores actually needed for a voyage in order to control the abuse of the stores procedure.

Replacement of stores on vessels or aircraft with equivalent goods is provided for. The position with regard to unused stores is made clear in circumstances when voyages are aborted and provision is made for the treatment of unused stores on board foreign-going vessels or aircraft no longer bound for foreign destinations. Provision is made for required reports to be submitted electronically by the carrier operating the vessel, aircraft or train.

17. CHAPTER SIXTEEN: EXPORT PROCEDURE

17.1 General

Chapter 16 provides for the export of goods under the export procedure. The export procedure covers the export of goods for outright export and various other customs procedures.

The following customs procedures provide for the export of goods under that procedure subject to clearance for export in terms of the export procedure:

- The temporary admission procedure in terms of Chapter 12, in relation to goods cleared and released for that procedure in terms of Part 2 of that Chapter

- the temporary export procedure in terms of Chapter 17, in relation to goods cleared and released for that procedure in terms of Part 2 of that Chapter
- goods exported as compensating products under the inward processing procedure in terms of Chapter 18 and
- goods exported under the outward processing procedure in terms of Chapter 20.

Customs procedures that have an inbuilt “export leg”, such as the international transit procedure, the transshipment procedure, the temporary admission procedure, the tax free shop procedure and the stores procedure, do not rely on this chapter for the export of goods. In other words, no additional export clearance declaration under the export procedure is necessary in those instances.

The chapter provides for the commencement and completion of the export procedure, the persons entitled to submit export clearance declarations, the content of such declarations, the timeframes within which goods must be delivered to depots and export terminals, when Customs may release goods for export and the consequences of failure to export goods released for export. The export procedure confers a tax due status on goods in free circulation cleared for outright export and any export duty or other export tax (such as the diamond levy) must be paid upon clearance of the goods for outright export. In relation to tax other than export tax, for instance VAT and excise duty, the export procedure confers a tax free status and any such tax paid on the goods may be recovered from the Commissioner upon clearance of the goods for outright export in accordance with the tax levying Act regulating the relevant tax.

17.2 New Processes and Concepts

This chapter contains several features to counter abuse of the tax status conferred by the export procedure on exported goods and also to ensure that the provisions relating to the export procedure are complied with. This includes

granting release on export clearances when goods reach a customs control area i.e. the depot, terminal or land border post.

It provides for a timeframe after the release of the goods for export of those goods and sets out the mechanisms that must be followed by the person clearing the goods and the customs authority when it is determined that goods are not exported.

Provision is also made for a timeframe for delivery of export goods to terminals or depots to ensure that Customs has sufficient time to inspect the goods. The export of goods without clearance for export amounts to smuggling which is not only a criminal offence but also exposes the goods to confiscation by the state.

18. CHAPTER SEVENTEEN: TEMPORARY EXPORT PROCEDURE

18.1 General

This chapter regulates the temporary export procedure which allows goods to be either temporarily exported and returned to the Republic as re-imported unaltered goods for home use, or goods exported outright to be returned to the Republic as re-imported unaltered goods for home use. In other words, the procedure is not only available for goods before they are exported but also after the goods have been outright exported.

The chapter provides that goods must be cleared for temporary export in accordance with the standard clearance and release procedures set out in Chapter 7 as modified by this chapter or on authority of CPD or ATA carnets if the goods are goods under international clearance arrangements. Provision is however made for certain goods to automatically come under the temporary export procedure, such as vessels, aircraft, locomotives and railway carriages leaving the Republic on a regular basis as a means of transport for purposes of international trade or for the transport of travellers for reward between countries. Similarly reusable transport equipment also comes under the procedure automatically.

Commercial trucks leaving the Republic as a means of transport for goods in the course of international trade, buses and taxis used as a means of transport for travellers do not come under the temporary export procedure automatically and must be cleared for the procedure. Provision is made for the clearance and release of such means of transport in accordance with simplified clearance and release procedures provided for in Chapter 24. Provision is furthermore made for vehicles, small vessels and light aircraft temporarily leaving the Republic as a private means of transport for a traveller to be cleared and released for temporary export in accordance with simplified clearance and release processes and requirements provided for in Chapter 24.

Goods under the temporary export procedure have a tax free status in relation to export tax when the goods are exported and also in relation to import tax when the goods are re-imported into the Republic.

18.2 New processes and Concepts

The release notification for goods cleared and released for temporary export will state the time within which the goods must be returned to the Republic. The chapter provides for rules prescribing the measures to be taken to ensure accurate identification of goods under temporary export upon their return to the Republic.

19. CHAPTER EIGHTEEN: INWARD PROCESSING PROCEDURE

19.1 General

Chapter 18 regulates the inward processing procedure and makes provision for the clearance and release of imported goods for inward processing and the clearance and release of inward processed compensating products for export. “Inward processed compensating products” are products obtained from the processing of imported goods cleared for inward processing.

Inward processing allows imported goods identified for purposes of this procedure in the Customs Tariff to be processed in the Republic with partial or total relief from taxes on condition that the compensating products obtained

from the processing of those goods are cleared for export and exported under this procedure as inward processed compensating products.

The main purpose of the inward processing procedure is to make it possible for companies in the Republic to offer their products or services on foreign markets at competitive prices, thereby promoting economic growth and helping to provide more employment opportunities for national labour.

The inward processing procedure involves two clearance processes, firstly when goods are imported for inward processing and secondly when the compensating products obtained from the imported goods are exported. In both instances the standard clearance and release procedures contained in Chapter 7 as modified by this chapter are applicable.

The clearance of goods for export as inward processed compensating products is subject to strict requirements, including conditions that the goods must be cleared for export within specific timeframes, that proof must be provided that the goods are compensating products obtained from the processing of imported goods under the inward processing procedure, and that those compensating products are of a kind indicated when the goods from which they were obtained were cleared for inward processing.

The licensed premises where imported goods are processed may be used for the storage of the goods and compensating products derived from the goods. No separate warehousing clearance is necessary for such storage. Furthermore, goods under the procedure may be transported without clearing the goods for national transit.

The licensee processing the goods must keep the prescribed records in respect of the goods and the compensating products, by-products and commercially valuable waste obtained from the goods.

The tax consequences in the event of non-compliance with the provisions regulating the inward processing procedure, or if goods under the procedure are diverted for home use, are also spelled out.

19.2 New Processes and Concepts

To promote industrialisation and participation in the economy, provision is made for a person other than the importer of the goods to export the goods, provided the exporter is licensed. New controls introduced include notification to the customs authority by the carrier of the delivery of the goods to the licensed home use processing premises and notification by the licensee of such premises of receipt of the goods.

Provision is made for:

- Time frames to which licensee of premises must adhere
- Sub-contracting for inward processing procedure is allowed only with the approval of the customs authority, unless the premises of the subcontractor are licensed inward processing premises.

The CCA excludes premises where subcontracted processing is done from licensing if the annual business turnover of those premises does not exceed a prescribed amount.

20. CHAPTER NINETEEN: HOME USE PROCESSING PROCEDURE

20.1 General

Chapter 19 regulates the home use procedure, including the clearance and release of imported goods for home use processing. Imported goods must be cleared for home use processing in accordance with the standard clearance and release procedures contained in Chapter 7 as modified by this Chapter. Home use processing allows imported goods identified for the purposes of this procedure in the Customs Tariff to be processed in the Republic with partial or total relief from duties. The products obtained from the processing of those goods (“home use compensating products”) become goods in free circulation without clearing those products for home use.

This chapter deviates from the Revised Kyoto Convention (RKC) in this respect as the provisions of the RKC provide that the products obtained from processing must be cleared for home use at the applicable rate of tax. The current legal

framework was adopted for the new Act, to provide a procedure that supports South Africa's industrial policy.

The chapter provides for conditions for the clearance of imported goods for home use processing as well as for conditions for the release of such goods. Time limits are imposed for the completion of the processing. Provision is made for the approval of conversion rates and for recordkeeping in relation to the goods under home use processing and the compensating products, by-products and commercially valuable waste obtained from the goods, as well as for subcontracting of home use processing operations.

The home use processing procedure also allows goods under the procedure to be transported without clearing the goods for national transit and to be stored on the licensed premises without clearing the goods for warehousing.

20.2 New Processes and Concepts

The CCA excludes premises where subcontracted processing is done from licensing if the annual business turnover of those premises does not exceed a prescribed amount.

Persons entitled to submit home use processing clearance declarations have been extended to include an importer licensed to import goods for home use processing without the requirement of having a licensed premise for home use processing. This benefit recognises the use of subcontractors in an ever-evolving manufacturing environment.

21. CHAPTER TWENTY: OUTWARD PROCESSING PROCEDURE

21.1 General

This chapter regulates the outward processing procedure, including the clearance and release for outward processing of goods exported from the Republic and the clearance and release of goods for home use as outward processed products.

This procedure allows goods identified in the Customs Tariff to be exported from the Republic for processing abroad and for products obtained from the processing of those goods to be imported into SA and cleared for home use as outward

processed compensating products. Compensating products are imported with total or partial relief from taxes. The outward processing procedure involves two clearance processes, firstly when goods are exported for outward processing and secondly when the compensating products obtained from the exported goods are imported into the Republic. In both instances the standard clearance and release procedures contained in Chapter 7 as modified by this chapter are applicable.

The clearance of goods for home use as outward processed compensating products is strictly regulated. The chapter requires that the products must be cleared within specific timeframes after the export of the goods from which they were obtained, that security to cover any tax risk must be given, that proof must be provided that the goods are compensating products obtained from the processing of imported goods under the outward processing procedure and that those compensating products are of a kind stated in the export clearance declaration of the goods from which they were obtained.

21.2 New Processes and Concepts

In order to ensure that the outward processing procedure is not detrimental to the Government's priority of industrialisation and job creation, the procedure in the CCA will now be limited to goods in free circulation and no change in ownership of goods under the procedure will be allowed.

22. CHAPTER TWENTY-ONE: CUSTOMS PROCESSING OF PERSONS ENTERING OR LEAVING REPUBLIC

22.1 General

In terms of this chapter, persons entering or leaving the Republic (including crew members) are required to be processed and to declare their accompanied and unaccompanied baggage by submitting to Customs at the place of entry or exit a declaration containing such personal and travel information and information concerning their accompanied baggage, as may be prescribed by rule. The submission of a declaration is, however, not required at places of entry or exit where a channel system is in place. Persons entering or leaving the Republic who

choose the green channel indicating that they have nothing to declare may proceed without customs formalities, unless a customs officer intervenes.

Not all accompanied baggage needs to be cleared and personal effects are excluded. Accompanied baggage that must be declared includes commercial goods, goods brought in or exported under a customs procedure, items to be remodelled, processed, repaired or altered in the Republic, prohibited, restricted or sectorally controlled goods, specific goods such as tobacco and alcohol products in excess of a prescribed tax free quantity, and specific goods of which the combined customs value exceeds the prescribed tax free allowance.

Items declared must, as may be appropriate, be cleared for home use or any applicable customs procedure. Provision is made for simplified and less formal clearance and release procedures to be prescribed by rule for declared items that must be cleared.

22.2 New Processes and Concepts

The focus of the current Act lies with the goods in the traveller's possession for the purpose of tax assessment. Many modern customs administrations have now shifted their attention to the traveller and the risk the traveller poses due to the threat of terrorism and smuggling of illicit goods. The CCA equips customs officers with the necessary enforcement powers to prevent the smuggling of illicit goods.

Provision is made for a channel or other system to facilitate the processing of travellers entering or leaving the Republic. Rules may be made prescribing expedited procedures for the processing of pre-approved trusted or frequent travellers.

It should be noted that the word "declare" in this chapter means to disclose the goods to a Customs Officer and to provide the required information concerning the goods as well. A reference to "clear" in relation to goods indicates that the goods need to be formally cleared for home use or a customs procedure.

23. CHAPTER TWENTY-TWO: INTERNATIONAL POSTAL ARTICLES HANDLED BY THE SOUTH AFRICAN POST OFFICE

23.1 General

This chapter establishes a special dispensation for the customs clearance and release of international postal articles and the handling, inspection and tax assessment of international postal articles imported or exported through the SA Post Office. The chapter does not apply to international postal articles imported or exported through private couriers and those postal articles must be treated as ordinary imported or exported goods.

In terms of this chapter, the ordinary provisions regulating the clearance and release of imported and exported goods must be followed.

Provision is, however, made for simplified clearance and release procedures to expedite the customs processing of postal articles that have a customs value below a prescribed limit.

In terms of the simplified procedure postal declarations attached to postal articles by the consignor of postal articles must be regarded to be clearance declarations, thus obviating the submission of standard clearance declarations.

23.2 New Processes and Concepts

Currently, postal officials perform the functions of customs officers in relation to goods imported by post through the Post Office. This chapter proposes the reclaiming of this function by SARS because of the specialist technical knowledge needed such as tariff, valuation and origin and the risk assessment principles employed by SARS to prevent prohibited goods from entering the Republic through the Post Office.

24. CHAPTER TWENTY-THREE: ACCESS TO AND SAMPLING OF GOODS

24.1 General

Chapter 23 regulates the right of importers, exporters and other persons who have a material interest in goods which are subject to customs control, to access and take samples of the goods after notice is given to the customs authority.

The purposes for which sampling may be done include to establish the nature, quality, content, tariff classification, customs value or origin of the goods, or for use as evidence or trade samples.

Access to, sampling and inspection of goods by customs officers is dealt with in Chapter 33 and not in this chapter. Access to goods by interested persons during customs inspection is also dealt with in Chapter 33.

24.2 New Processes and Concepts

The legal framework for access to and sampling of goods by trade is improved and is distinguished from access and sampling of goods by customs officers in the course of their duties.

25. CHAPTER TWENTY-FOUR: EXPEDITED CLEARANCE AND RELEASE OF GOODS

25.1 General

Chapter 24 provides for the fast-tracking of clearance and release of goods for home use or a permissible customs procedure in accordance with processes less cumbersome than the standard processes. Provision is made for the clearance and release of goods on submission of incomplete or provisional clearance information, the release of goods subject to subsequent clearance, and the clearance and release of goods in accordance with simplified clearance requirements.

Customs may, on application by a person who does not have all the information at hand to submit a regular clearance declaration, allow clearance and release of goods on submission of an incomplete or provisional clearance declaration. Submission of an incomplete or provisional clearance declaration without first obtaining the customs authority's permission may in certain circumstances be regarded to be an application for incomplete or provisional clearance. A supplementary clearance declaration must within a certain timeframe be submitted to the customs authority, providing the information that was not

initially included or confirming or correcting the information that was included provisionally.

Provision is also made for a person who is unable to immediately comply with the clearance requirements to apply for release of the goods before the goods are cleared (for example in a situation where a human organ is required for emergency organ transplant). Such an application may only be granted if specific requirements are met, including if the person requiring release undertakes to submit a regular clearance declaration within a specific period.

The customs authority may furthermore, on application by a person entitled to clear goods for home use or a specific customs procedure, allow the clearance and release of goods by means of prescribed simplified clearance and release procedures.

25.2 New Processes and Concepts

The chapter provides firstly for persons entitled to clear and obtain release of goods on incomplete or provisional clearance information where the required clearance information is not immediately at hand e.g. the container number is not known at time of clearance when goods are consolidated for export; secondly for the expedited release of goods subject to subsequent compliance with clearance requirements in an emergency situation e.g. human organ for emergency organ transplant; and thirdly for simplified clearance and release processes e.g. where commercial documents containing all required information will be accepted as clearance. Simplified clearance may facilitate the express parcel industry.

26. CHAPTER TWENTY-FIVE: DAMAGED, DESTROYED, LOST OR UNACCOUNTED GOODS

26.1 General

This chapter determines the procedures to be followed as well as the tax consequences when goods that are not in free circulation are damaged, destroyed, lost or unaccounted for. A notification in relation to damaged, destroyed or lost goods is required and must be accompanied by documentary

proof if the damage, destruction or loss was due to a natural occurrence, an accident, a hostile act of a third party or the inherent characteristics of the goods. In the case of unaccounted for goods the notification must be accompanied by documentary proof if the shortfall of the goods was due to a short shipment of goods or an administrative error.

If Customs accepts the documentary proof, any existing clearance and release of the goods must be withdrawn, tax payable on the goods falls away and tax already paid must be refunded.

Damaged goods and any parts or materials that can be salvaged from destroyed goods remain taxable goods and must be cleared for home use or a permissible customs procedure or abandoned to the Commissioner.

If Customs refuses to accept the documentary proof or if no such proof is submitted to explain the damage, destruction, loss or shortfall, tax remains payable on the goods as if they were not damaged, destroyed, lost or unaccounted for and tax already paid is not refundable.

The chapter also regulates procedures in relation to the treatment of “wreck”. The removal of wreck from where it is found or the alteration of wreck in quantity or quality without the permission of Customs is prohibited unless necessary for its preservation. Any person in possession of wreck must notify the nearest Customs Office.

26.2 New Processes and Concepts

When goods are damaged, destroyed, lost or unaccounted for the customs authority must promptly be notified. Failure to notify the customs authority results in consequences which include tax remaining payable on the goods as if they were not damaged, destroyed, lost or unaccounted for and tax already paid not being refundable.

27. CHAPTER TWENTY-SIX: ABANDONMENT OF GOODS TO COMMISSIONER

27.1 General

This chapter determines procedures to voluntarily abandon goods not in free circulation to the Commissioner and prescribes how abandoned and unclaimed goods are to be dealt with. Goods may be abandoned to the Commissioner only on application by or on behalf of the owner of the goods to the Commissioner. The Commissioner may approve an application if abandonment is in the best interest of the state. The consequences of abandonment is that the clearance of the goods must be withdrawn or amended to exclude the abandoned goods, ownership of the goods becomes vested in the Commissioner for the credit of the National Revenue Fund, tax payable falls away and the goods must be removed to a state warehouse.

If the application is refused and the goods are not cleared and released for home use or a customs procedure, the goods must be destroyed or exported from the Republic. Provision is also made for the owner of goods to, instead of abandoning the goods to the Commissioner, apply in writing to Customs to destroy the goods under Customs supervision. The owner may also utilise any waste or scrap remaining after the destruction of the goods, but such waste or scrap must be cleared for home use or a permissible customs procedure.

27.2 New Processes and Concepts

Goods that are not in free circulation may be abandoned to the Commissioner only on application by or on behalf of the owner of the goods to the Commissioner. The Commissioner may approve an application if abandonment is in the best interests of the state.

The consequences of abandonment is that the clearance declaration submitted in respect of the goods must be withdrawn or amended, ownership of the goods becomes vested in the Commissioner for the credit of the National Revenue Fund, tax payable falls away and the goods must be removed to a state warehouse or other place of security determined by the customs authority.

28. CHAPTER TWENTY-SEVEN: STATE WAREHOUSES

28.1 General

Chapter 27 makes provision for the removal of goods to and storage of goods in state warehouses if the goods are dealt with contrary to the CCA or a tax levying Act, or if necessary for the enforcement of the CCA or a tax levying Act, and also for the disposal of goods removed to a state warehouse.

The chapter spells out the circumstances in which goods must be removed to a state warehouse, for instance when imported goods are not cleared for home use or a permissible customs procedure within the applicable period, when goods cleared for export are not exported within the applicable period, or when Customs direct that goods be removed to a state warehouse.

Customs may in specific circumstances also direct or authorise a licensee or person who is in physical control of goods which must be removed to a state warehouse, to keep the goods where they are, or to remove the goods to premises which is not a state warehouse, as if those premises were a state warehouse.

The disposal of goods kept or accounted for in state warehouses is also dealt with. Before Customs may sell or otherwise dispose of goods in state warehouses, it must compile and publish a list of all goods kept in or accounted for in each state warehouse. This serves as notification to any person who has a right or interest in the goods that those goods may be sold or otherwise disposed of.

28.2 New Processes and Concepts

Currently the official warehouses include the state warehouses, as well as other premises which have been deemed by the Commissioner to be state warehouses. The CCA now makes provision for premises to be licensed as a state warehouse and to be operated by the licensee in accordance with the CCA and any conditions subject to which the premises were licensed.

29. CHAPTER TWENTY-EIGHT: REGISTRATION

29.1 General

Chapter 28 regulates the registration of certain persons who are active in the customs environment, such as importers and exporters located in the Republic

who import or export goods into or from the Republic, persons who acquire ownership whilst goods are under a procedure, agents representing importers, exporters, carriers or persons who acquire ownership who are not located in the Republic, and persons who are required to communicate electronically with Customs for the purposes of the CCA. The chapter provides for general requirements and procedures for registration applications, general conditions subject to which registrations may be granted, grounds for refusal of registration applications, the period of validity of registration certificates, the process and grounds for suspension or withdrawal of registrations as well as applications for renewal of registrations, amendment of registration certificates, notification in the event of a change in circumstances on which registration was granted, the prohibition on the transfer of registrations and Customs' powers following the expiry, suspension or withdrawal of registration.

29.2 New Provisions and Concepts

New processes include issuing of registration certificates, content, amendment and period of validity of registration certificates.

30. CHAPTER TWENTY-NINE: LICENSING

30.1 General

This chapter retains the current statutory obligation that a licensed person must be located in the Republic, except in the case of a licensed carrier not located in the Republic, who must have a registered agent located in the Republic. It regulates the licensing of cargo or travellers terminals, cargo depots, customs warehouses, tax free shops, processing premises, SEZ enterprise premises, state warehouses and other premises like cross-border pipelines and transmission lines that are customs controlled for the purposes of the Act, as well as the licensing of carriers, customs brokers, stores suppliers, persons importing goods for processing or exporting inward processed compensating products, and certain other role players in the customs environment. The use of unlicensed premises

and the conducting of unlicensed carriers' and customs brokers' businesses are prohibited.

The chapter provides for general requirements and procedures for licensing applications, general and specific conditions subject to which licences may be granted, grounds for the refusal of licensing applications, the period of validity of licences, procedures relating to renewal of licences, the amendment of licences, processes for the suspension or withdrawal of licences, the consequences of lapsing, suspension or withdrawal of licences, the prohibition on the transfer of licences, notification in the event of a change in circumstances in which licences were granted and customs' powers following expiry, lapsing, suspension or withdrawal of licences.

30.2 New Processes and Concepts

The validity period for all licences has been standardised to three years.

Provision is made, in addition to the general grounds on which an application for licensing may refuse, for certain additional grounds for such refusal. The process for application, consideration, amendment and suspension and withdrawal of licences is now set out in a more structured and comprehensive way.

31. CHAPTER THIRTY: ACCREDITATION

31.1 General

Chapter 30 provides for the conferral of accredited client status on licensees and registered persons that have a proven record of tax compliance and that are capable of complying with the accredited client requirements.

Accredited client status must be applied for and the chapter sets out general requirements and procedures for applications, the criteria for accredited client status, the consideration and decision of applications and the issuing of accredited client status certificates.

Aspects like the conditions subject to which accredited clients status is granted, the period of validity of accredited client status certificates, non-compliance with

criteria for accredited clients status, renewals and suspension or withdrawal of accredited client status are also dealt with.

31.2 New Processes and Concepts

The process for application, consideration, amendment and suspension and withdrawal of accredited client status certificates is now set out in a more structured and comprehensive way.

32. CHAPTER THIRTY-ONE: SECURITY FOR PAYMENT OF TAX AND OTHER MONEY OWED TO COMMISSIONER

32.1 General

The purpose of this chapter is to enable the customs authority to require that security be provided to the Commissioner in order to protect the National Revenue Fund from loss of tax on goods that may become payable in terms of any tax levying Act or the CCA. The chapter lists the tax risk circumstances in which security may be required. The list is open-ended in order to enable Customs to require security in respect of any goods that are subject to customs control if there is a risk of non-payment of tax or other money owed to the Commissioner.

Other aspects that are dealt with are the persons from whom security may be required, the time when security may be required, the determination of the amount of security, the forms of security, the details that need to be provided with the security and the utilisation of security.

32.2 New Processes and Concepts

Due to the financial burden that the request for security could have on trade, this chapter provides that the security required should be proportional to the level of risk.

33. CHAPTER THIRTY-TWO: RECOVERY OF DEBT UNDER THIS ACT

33.1 General

This chapter facilitates the recovery by the Commissioner of any money owed in terms of the CCA. This includes for example administrative penalties incurred for

breaches of the CCA, costs incurred by the Commissioner or money owed to the Commissioner in relation to goods sold from a state warehouse. The recovery of tax, administrative penalties imposed in connection with tax and interest on outstanding tax and penalties are dealt with in the respective tax levying Acts.

Debts owed may be recovered from the person liable for the debt or from security provided by that person covering that debt. Provision is made for the Commissioner to recover debt from the agent of a person liable for the debt if the liable person cannot be located in the Republic or fails to pay the debt and has not provided security.

If the person owing the money to the Commissioner is a juristic entity, and that entity fails to pay the debt when required to do so, the debt may in certain circumstances be recovered from the person managing the juristic entity (i.e. when reasonable steps were taken to recover the debt from the entity and if the non-payment was not the direct result of that person's negligence or mismanagement).

Provision is made for the Commissioner to allow debt to be paid in instalments, subject to the payment of interest on outstanding balances. Also, amounts owed by persons having accounts for the payment of tax and other money owed to SARS, may be debited against those accounts.

The chapter also provides for the establishing of liens over goods of which the debtor is the owner or in which the debtor has any right, title or interest in terms of a credit agreement under the National Credit Act, 2005.

33.2 New Processes and Concepts

Debt may be recovered from the agent of a person liable for the debt if the liable person cannot be located in the Republic or fails to pay the debt and has not provided security.

34. CHAPTER THIRTY-THREE: GENERAL ENFORCEMENT FUNCTIONS

34.1 General

This chapter assigns enforcement functions to customs officers for the enforcement of the CCA and the tax levying Acts, and in particular to ensure that tax on goods and other money owed to the Commissioner is paid, to ensure that goods that are subject to customs control are dealt with in accordance with the CCA and to prevent, investigate and take action against breaches of the CCA or a tax levying Act.

This chapter applies to all goods subject to customs control.

Provision is made for access to and inspection and search of premises, vessels, aircraft, trains, railway carriages and vehicles, the stopping and searching of persons, inspection of goods and documents and sampling of goods, investigative powers, powers of arrest of customs officers, carrying and use of arms and ammunitions by customs officers and customs assistance with border patrol.

Each enforcement function assigned is properly circumscribed to prevent infringement of fundamental rights. To summarise:

- Customs has unrestricted access to and in customs controlled areas, and premises, vessels, aircraft, trains, railway carriages and vehicles within customs controlled areas may at any time be entered or boarded and searched
- Access to and searching of premises, vessels, aircraft, trains, railway carriages and vehicles outside customs controlled areas without a warrant is subject to strict preconditions
- Premises which are used for residential purposes may be inspected and searched only on authority of a warrant
- Provision is made for a customs officer to stop a person inside a customs controlled area without a warrant and to request such a person to produce certain documents or goods
- Outside of a customs controlled area a customs officer may stop a person and request that person to produce goods and documents which that person has brought into or intends to take out of the Republic only on authority of a warrant, or in certain circumscribed circumstances, without a warrant

- If a person refuses to comply with a request or if the customs officer suspects that the person is concealing documents or goods in respect of which a breach of the Act or a tax levying Act has been committed, the person may be searched
- A distinction is drawn between searches of any goods the person may have with him or her, frisk searches of the person, external bodily searches and internal bodily searches. All searches are strictly controlled to ensure privacy and decency.

34.2 New Processes and Concepts

Provisions have been drafted to ensure that enforcement functions are exercised in a manner that does not constitute an unjustifiable limitation to the right to privacy as enshrined in section 14 of the Constitution.

35. CHAPTER THIRTY-FOUR: DETENTION, SEIZURE AND CONFISCATION OF GOODS

35.1 General

Chapter 34 provides for the detention, seizure and confiscation of goods in order to enforce the provisions of the CCA, a tax levying Act or any other legislation enforced by Customs. It applies to goods (including documents) that, in whatever way, have become subject to customs control.

This chapter regulates the procedure to be followed when goods are detained, seized and confiscated, as well as the place where detained goods are to be kept, the period for which goods may be detained and when detention must be terminated. It also empowers Customs to seize goods in specific circumstances without first detaining it.

Provision is made for Customs to detain goods by issuing a detention notification to the person who cleared the goods or on whose behalf the goods were cleared, or to the person in whose possession the goods are at the time of detention.

The word “detention” is used to denote a customs restriction on the movement or handling of the goods without permission of Customs pending an investigation or determination concerning the goods. Such an investigation or determination may relate to:

- whether a breach of the proposed Customs Control Act or a tax levying Act has been committed
- whether the goods have been or are being used in the commission of an offence or
- whether the goods are prohibited , sectorally controlled or restricted goods.

If it is established after the detention of the goods that the goods are prohibited, restricted or sectorally controlled goods, this chapter no longer applies and Chapter 35 becomes applicable.

“Seizure” of goods means to take physical possession of the goods without divesting a person of ownership of the goods.

Provision is made that goods may be seized if the goods are liable to confiscation, needed as evidence in criminal proceedings or where a specific provision of the Act permits seizure. When goods are seized a notification must also be issued.

Provision is furthermore made for the termination of seizures in certain circumstances.

Customs may on application by a person affected by a seizure, terminate the seizure subject to the payment of tax or any expenses incurred in connection with the seizure or previous detention, and subject to any conditions Customs may determine.

The effect of “confiscation” is that a person loses ownership of the relevant goods and that the goods become the property of the state. Goods cannot be confiscated unless they have first been seized.

In terms of this chapter, confiscation takes place if, after the expiry of a specified period after notification of seizure, no action was taken by the owner of the goods

to apply for termination of the seizure or if application for termination has been refused.

Provision is made for Customs to withdraw a confiscation on application by the person who was the owner of the goods prior to confiscation, subject to the payment of any tax payable on the goods, payment of expenses incurred by the Commissioner in connection with the confiscation, and any conditions Customs may determine.

The chapter further determines that confiscated goods may be disposed of by way of sale, donation, appropriation or destruction, but confiscated goods that are needed as evidence in criminal proceedings must be handed over to the National Prosecuting Authority or the SAPS.

35.2 New Processes and Concepts

The Control Act introduces the concept of confiscation, termed forfeiture in the previous Act.

36. CHAPTER THIRTY-FIVE: PROHIBITED, RESTRICTED AND SECTORALLY CONTROLLED GOODS

36.1 General

This Chapter provides for customs participation in the implementation of legislation prohibiting or restricting the import into, export from or possession in the Republic of certain goods. It assigns direct powers to Customs to detain and deal with goods that are prohibited or restricted goods.

“Prohibited goods” are goods of which the import, possession or export is prohibited by legislation.

“Restricted goods” are goods of which the import, possession or export is restricted otherwise than on authority of a permit or other authorisation issued in terms of legislation.

It also regulates compliance of certain goods, so-called “sectorally controlled goods”, imported into or exported from the Republic with health, agricultural,

environmental, safety or other sectoral standards or requirements applicable in terms of such legislation.

36.2 New Processes and Concepts

A new concept introduced is that of sectorally controlled goods. Sectorally controlled goods are goods that are subject to sectoral legislation upon import into or export from the Republic.

Sectoral legislation may require certain standards or requirements to be complied with, prior approval or permits, and inspection or vetting by the relevant sectoral departments to determine whether standards or requirements are complied with. Failure to meet any of the requirements will result in the goods being rejected or condemned in terms of the sectoral legislation.

37. CHAPTER THIRTY-SIX: COUNTERFEIT GOODS

37.1 General

Infringement of Intellectual Property rights is a global problem and Customs is afforded a role in combating the import or export of counterfeit goods when it enters the customs environment. The extent of our involvement is, however, limited as we view the infringement of intellectual property rights as a private law matter and also as the trade of counterfeit goods is dealt with in the Counterfeit Goods Act.

This chapter requires a person claiming to be a right-holder in relation to protected goods to apply to Customs for assistance in stopping and detaining goods suspected of infringing intellectual property rights in relation to protected goods when such goods enter the customs environment.

The requirements for these applications are prescribed and an application may be granted only if the goods in respect of which customs assistance is sought are protected goods, an intellectual property right exists in respect of those goods, the applicant is the right-holder in respect of the goods and the right-holder's fear of infringement appears to be reasonable in the circumstances.

If an application is granted, Customs must detain any suspected counterfeit goods to which the application applies wherever found during customs operations.

Provision is also made for the detention of suspected counterfeit goods in the absence of a prior approved detention application.

If a customs officer has reasonable cause to suspect that certain goods found in the ordinary course of exercising his or her customs duties are counterfeit goods, the customs officer must notify the right-holder of the fact that the goods are suspected counterfeit goods, provided the right-holder is known and contact details are available.

The person notified may then apply to Customs for the detention of the suspected counterfeit goods and, if the application is granted, the goods must be detained and dealt with in terms of the Chapter.

37.2 New Processes and Concepts

The position in the 1964 Act remains unaltered.

38. CHAPTER THIRTY-SEVEN: RECONSIDERATION OF DECISIONS AND DISPUTE RESOLUTION

38.1 General

Mechanisms for the internal reconsideration of decisions taken in terms of the new Customs Acts are provided for. Included here are procedures for administrative appeals and alternative dispute resolution. The Ombud, appointed in terms of the Tax Administration Act, 2011, can also review and address complaints relating to customs matters.

38.2 New provisions

A reference to “days” in the 1964 Act means working days, whereas the CCA refers to calendar days. The Control Act also introduces the concept of reconsideration, affording the customs authority the discretion, on own initiative, of reconsidering decisions taken by it.

39. CHAPTER THIRTY-EIGHT: VOLUNTARY DISCLOSURE RELIEF

39.1 General

This chapter enables persons benefiting from faulty duty determinations to voluntarily disclose such faulty duty determinations in exchange for an undertaking by the Commissioner not to institute criminal proceedings or to impose administrative penalties. This Chapter has been aligned with the Tax Administration Act.

40. CHAPTER THIRTY-NINE: ADMINISTRATIVE PENALTIES

40.1 General

This chapter enables Customs to impose certain administrative penalties for breaches of the CCA. A “breach” includes both contraventions that are offences in terms of the Act and those that are technical contraventions.

The chapter distinguishes between the following types of administrative penalties that may be imposed:

- Fixed amount penalties for technical breaches
- prosecution avoidance penalties to allow offenders who committed offences in terms of the CCA the option to pay a penalty instead of facing criminal proceedings
- termination of seizure penalties to allow for the seizure of goods to be terminated upon payment of a penalty
- withdrawal of confiscation penalties to allow for the confiscation of goods to be withdrawn upon payment of a penalty and
- missing goods penalties for goods liable to confiscation that cannot be found.

The amounts that may be imposed and the procedure to be followed for the imposition of the different kinds of administrative penalties are set out in the Chapter.

The Minister must by Notice in the *Gazette* list non-prosecutable breaches of the CCA for which fixed amount penalties may be imposed.

To deter non-compliance and repeat offences, the chapter provides that if a person has been penalised for committing a non-prosecutable breach and within a period of three years after the penalty has been imposed, again commits the same non-prosecutable breach, the amount of the fixed amount penalty that may be imposed may be doubled, and if the same breach is committed for a third time, the penalty may be tripled.

In the case of prosecutable breaches, prosecution avoidance penalties may be offered as an option to the offender in lieu of prosecution.

40.2 New provisions

The Control Act significantly changes the manner in which penalties are now imposed in that the imposition of fixed amount penalties is entirely transparent and is not based on the discretion of the customs officer. Clients now know what to expect when provisions of the Act are breached. The new regime also provides for the escalation of the fixed amount penalties and with this the reliance on an automated system to track the compliance history of clients.

41. CHAPTER FORTY: JUDICIAL MATTERS

41.1 General

This chapter regulates general judicial matters including offences in terms of the CCA, penalties for offences, vicarious liability of persons on behalf of offending juristic entities as well as criminal and civil jurisdiction of the magistrate's court.

The CCA distinguishes between two categories of offences:

- The more serious Category 1 offences, which includes fraud, misrepresentation, diversion of goods, buying, acquiring or receiving diverted goods, improper use of a licence, registration certificate, accreditation certificate or any other document issued in terms of the CCA; and
- Category 2 offences, which include hindering or interfering with a customs officer in the execution of his duties, pretending to be a customs officer

and contravening or failing to comply with a condition imposed in terms of the CCA.

A Category 1 offence carries a fine not exceeding R1 million or a period of imprisonment not exceeding five (5) years or both such fine and imprisonment.

A Category 2 offence carries a fine not exceeding R500 000 or a period of imprisonment not exceeding three (3) years or both such fine and imprisonment.

Provision is also made for the naming and shaming of offenders.

Provision is furthermore made for the vicarious liability of registered agents and persons managing juristic entities and of ordinary employees of juristic entities in certain circumstances.

In terms of this chapter, the Magistrates court has jurisdiction to hear criminal and civil matters instituted by the Commissioner. The Tax Administration Act will provide for the establishment of a tax court which will hear customs matters.

42. CHAPTER FORTY-ONE: MISCELLANEOUS MATTERS

42.1 General

Miscellaneous matters dealt with in the Act include regulation and rule making powers of the Minister and the Commissioner respectively, condonation for non-compliance with rules, conditions or requirements, methods of submission of documents to Customs, the electronic submission of documents, consultative processes before promulgation of rules, legal status of footnotes, record-keeping, extension or shortening of time periods specified in the CCA, the granting of exemptions, authorisations, permissions etc. as well as the factors to be taken into account when considering the granting of such exemptions, authorisations or permissions, record keeping systems and the submission of documents through representatives. The CCA also limits the liability of the State, the Commissioner and customs officers for decisions or actions in terms of the CCA.

This chapter furthermore contains transitional provisions dealing with the application of the CCA, the CDA and the Excise Duty Act as from the effective

date, and further providing for the continuation of existing customs registrations and licences, existing excise registrations and licences, accredited status granted before the effective date and security given before the effective date. It also contains a rule making provision to facilitate the transition and to address unforeseen or unintended consequences.

PART 2

CUSTOMS DUTY ACT

The scope of the Customs Duty Act is confined to providing for the imposition, assessment, payment and recovery of customs duties on goods imported or exported from the Republic. As such it is one of the so-called tax-levying Acts which relies for its implementation on the “platform” provided by the Customs Control Act.

The Act is written to give maximum effect to the notion of self-assessment. In terms of this notion, persons liable for duties are required, as part of the clearance process, to make their own tariff classification, value determination and origin determination of the goods, to assess the amount of any tax applicable to the goods and to pay tax according to their own assessment. The role of Customs is focused on verification of the self-assessment rather than on assessing the amount of tax itself.

1. STRUCTURE OF THE CUSTOMS DUTY ACT

The Customs Duty Act (“CDA”) is structured around three broad topics, namely the imposition of duties, the assessment of duties, and the payment and collection of duties. The mechanisms and procedures prescribed for each of these three topics are contained in appropriately titled chapters each divided into parts and sections as is done in the CCA.

Wide use is made of footnotes to link provisions of the Act with cross-cutting provisions of the CCA. The CDA consists of the following chapters:

New Customs Acts Programme

CHANGING FOR THE FUTURE

Chapter 1:
Interpretation,
Application and
Administration of this
Act

Chapter 2: Customs
Tariff

Chapter 3: Payment of
Duty, Penalty and
Interest

Chapter 4: Refund and
Drawback

Chapter 5: Assessment
of Duty

Chapter 6: Tariff
Classification of Goods

Chapter 7: Valuation of
Goods

Chapter 8: Origin

Chapter 9: Preferential
Tariff Treatment

Chapter 10: Advance
rulings

Chapter 11:
Administrative penalties

Chapter 12: Judicial
Matters

Chapter 13:
Miscellaneous Matters

An overview of each chapter and the introduction of new processes and concepts are provided below:

2. CHAPTER ONE: INTERPRETATION, APPLICATION AND ADMINISTRATION OF THIS ACT

Words and phrases used in the CDA are defined in section 1. Definitions of words and phrases already defined in the CCA are not repeated in the Duty Act. The following terminology should be noted when reading the Duty Act:

- “Assessment” describes the action performed by Customs to calculate the amount of duty payable on goods. The assessment of duty is based on certain key assessment factors which include a determination of the tariff classification

applicable to the goods in terms of the Harmonised System, a determination of the customs value of the goods and a determination of the country of origin of the goods. The prefix “self-” as contained in “self-assessment”, “tariff self-determination”, “value self-determination” and “origin self-determination” indicates duty assessments and tariff, value and origin determinations by persons submitting clearance declarations to clear goods in accordance with the self-assessment system. The “Customs Tariff” is the instrument listing all goods on which customs duty is imposed. The “Customs Tariff” will replace Schedules 1, 2, 3, 4 and 5 of the Customs and Excise Act, 1964, which currently contain the lists of goods attracting duty

- “Import duty” means a duty imposed in the Customs Tariff on imported goods, and includes ordinary import duty, anti-dumping, countervailing and safeguard duty
- “Export duty” means a duty imposed in the Customs Tariff on goods exported from the Republic
- “Dutiable goods” denotes goods on which a duty has been imposed in the Customs Tariff
- “Re-assessment” means a redetermination by the customs authority of the dutiability of goods or the amount of duty payable on the goods as previously assessed by customs authority or re-assessed by the customs authority
- “Similar goods” in relation to goods being valued, means
 - (a) goods produced in the same country as the country in which the goods being valued were produced whether by the same or a different producer; and
 - (b) which although not alike in all respects in terms of quality and reputation, have like characteristics and component materials which enable them to be employed for the same purposes and are commercially interchangeable.

The CDA applies to all goods imported to or exported from the Republic. The Act also applies to all goods imported and exported to and from a SACU member state. No import duty will be payable on goods in free circulation in a SACU member state when those goods are imported into the Republic and cleared for home use in the Republic in terms of the CCA.

The administration and enforcement of the CDA is assigned to the Commissioner of the South African Revenue Service assisted by SARS staff and customs officers.

3. CHAPTER TWO: CUSTOMS TARIFF

This chapter provides for a Customs Tariff, issued by the Minister, in terms of which duties are levied on goods, and for the amendment of the Customs Tariff. The Customs Tariff replaces Schedules 1, 2, 3, 4 and 5 to the Customs and Excise Act, 1964. The Chapter also includes provisions for:

- Provisional and definitive anti-dumping, countervailing or safeguard duty
- The extent of the Minister's power to amend the Act subject to *ex post facto* ratification by Parliament. This arrangement is in line with the current provisions of the 1964 Act. The Minister's power to amend the Tariff is now more strictly defined because the Chapter sets out the circumstances in which the Minister "must" amend and those where the Minister "may" amend
- Duty that is Customs Duty for purposes of SACU.

4. CHAPTER THREE: PAYMENT OF DUTIES, PENALTIES AND INTEREST

This chapter makes provisions for the time or instances where liability for both import and export duty commences. It further provides for the time where the liability for duty ceases.

Imported dutiable goods attract duty when the goods enter the Republic. That liability remains attached to the goods until the duty is paid in full or falls away on certain grounds. Dutiable goods destined for export attract duty when the goods are cleared or regarded as having been cleared for outright export. Liability for

export duty ceases when the duty is paid in full or falls away on certain grounds specified in the Act.

Provision is made for the deferment by customs authority, of payment of duty to a future date on conditions such as provision of security determined by the customs authority. If payment of duty has been deferred, the duty becomes payable at the end of the period for which payment is deferred.

The Chapter furthermore contains provisions relating to the persons from whom duty may be recovered, as well as matters such as collection of under-payment of duty, payment and recovery of interest and administrative penalties, and statutory liens in favour of the Commissioner.

5. CHAPTER FOUR: REFUNDS AND DRAWBACKS

5.1 General

This chapter provides for the refund of any duty (or part thereof), administrative penalty or interest paid, as well as the drawback of any import duty paid to the Commissioner in terms of this Act. The circumstances in which refunds or drawbacks may be given are set out, the procedure for applications for refunds and drawbacks is dealt with, the timeframes within which applications for refunds and drawbacks must be submitted, as well as the circumstances in which interest will be payable on refunds and drawbacks.

Provision is also made for the set-off of refunds or drawbacks against monies owed to the Commissioner.

It is to be noted that in terms of section 228(3) of the CDA the timeframe within which a refund application must be submitted, may not be extended in terms section 908 of the CCA.

This chapter does not apply to drawbacks of any duties, administrative penalties or interest paid to the Commissioner in respect of goods exported from the Republic to a SACU member state.

5.2 New Processes and Concepts

A new feature in this chapter is that the customs authority must consider a validated application for a refund or drawback, and approve (if it has merit) and pay the claim within 21 working days from the date of validation. If the customs authority fails to pay within that time period, interest will start to accumulate for the taxpayer. Provision has also been made for automatic refunds in instances when the Customs Tariff has been amended retrospectively.

The period within which an application for a refund or a drawback must be submitted has been extended from 2 years to 3 years.

6. CHAPTER FIVE: ASSESSMENT OF DUTIES

6.1 General

This chapter provides for the assessment or calculation of the amount of duty payable on dutiable goods. It further entrenches the self-assessment of duty by persons clearing goods. When a person makes a self-assessment of the amount of duty payable on the goods such self-assessment must be determined with reference to the following key assessment factors which must be considered:

- The tariff classification of the goods
- the customs value or the quantity, weight, volume or measurement of the goods
- the origin of the goods
- the rate of duty applicable to the goods and
- any other specific factors regulating the duty or calculation of the amount of duty that may be payable on those goods.

The chapter also provides for Customs to assess duty payable on goods, by either adopting a self-assessment of duty by the person clearing or by making its own assessment. Provision is made for Customs to make a re-assessment of any duty assessed or re-assessed. When assessing or re-assessing duty, Customs must make use of the key assessment factors referred to above. Time limitations are also prescribed for duty re-assessments, a General Anti-Avoidance Rule (GAAR) is

introduced and a statutory presumption that duty assessments and re-assessments are correct, is created.

Persons submitting clearance declarations must make self-determinations of the tariff-classification, the customs value and origin of the goods irrespective of whether or not duty is payable on the goods.

6.2 New Processes and Concepts

The Customs Authority may base a duty assessment or re-assessment on the best information available if particulars of the goods in respect of which the assessment or re-assessment is made or the underlying transaction which caused the goods to be imported or exported are not disclosed or sufficiently disclosed.

A re-assessment of duty by the customs authority must be made within a period of 3 years from the date the goods acquire tax due status in terms of Chapter 6 of the CCA.

7. CHAPTER SIX: TARIFF CLASSIFICATION OF GOODS

7.1 General

This chapter provides for the tariff classification of goods for customs purposes under a tariff heading, subheading or item specified in the Customs Tariff. This chapter applies to all goods that are imported into the Republic or exported from the Republic whether dutiable or not. In terms of this chapter, a person submitting a clearance declaration must make self-determination of the tariff classification of the goods and state the tariff classification on the clearance declaration. The tariff classification of goods must be determined in accordance with this chapter and the International Convention on the Harmonized Commodity Description and Coding System. Customs may accept a tariff self-determination, or may refuse to accept it and make its own tariff determination. Provision is also made for Customs to re-determine the tariff classification of goods as previously determined or re-determined by it.

Provision is made for Customs to request any additional information or documents required for considering or making a tariff determination or re-

determination. If such information or documents are not provided it may base its determination or re-determination on the best information available.

A statutory presumption that tariff assessments and re-assessments are correct, except when replaced, amended, set aside or corrected, is created.

7.2 New Processes and Concepts

- Entrenches self-determination of tariff classification by persons clearing goods.
- Empowers determination and re-determination of tariff classification of goods by customs authority.
- Prescribes new time limits and limitations in respect of tariff determinations or re-determinations.
- Creates a statutory presumption that determinations and re-determinations are correct.

8. CHAPTER SEVEN: VALUATION

8.1 General

This chapter contains provisions regulating the valuation of goods for customs purposes and prescribes methods internationally accepted for such valuation. It applies to all goods imported into or destined for export from the Republic, whether dutiable or not.

A person who submits a clearance declaration is required to make self-determination of the customs value of the goods and to state the value so determined on the declaration. The value self-determination must be done on a worksheet which must be submitted to Customs on request. In the case of imported goods, the valuation method used must be indicated.

Customs may accept the value self-determination as stated on the clearance declaration or refuse to accept it and make its own determination. Customs may re-determine the customs value of goods as previously determined or re-determined by it.

Provision is made for the customs authority to request any information or documents necessary for considering or making a value determination or re-determination from an affected person. If such information or documents are not provided, Customs may base its value determination or re-determination on the best information available.

The chapter furthermore provides that the customs value of goods must be expressed in South African Rand. If payments to be made in connection with goods are expressed in foreign currency, the amounts must for customs valuation purposes be converted to South African Rand in accordance with conversion rates determined by the Commissioner.

8.2 New Processes and Concepts

In an effort to counter valuation fraud the customs authority may base a value determination or re-determination on the best information available to it in cases where information, after being requested is not disclosed or not sufficiently disclosed.

9. CHAPTER EIGHT: ORIGIN

9.1 General

This chapter provides for the determination of the origin of goods imported into or exported from the Republic and for the establishment, recognition and application of rules of origin for determining the origin of goods.

In terms of this chapter, a person submitting a clearance declaration must make self-determination of the origin of the goods and state the origin of the goods on the clearance declaration. This must be done irrespective of whether duty is payable on the goods or not.

The customs authority may accept an origin self-determination as stated on the clearance declaration, or may refuse to accept it and make its own origin determination.

Provision is also made for Customs to re-determine the origin of goods as previously determined or re-determined by it.

Customs may request any additional information or documents required for considering or making an origin determination or re-determination.

If such information or documents are not provided it may base its determination or re-determination on the best information available.

The chapter furthermore prescribes the rules of origin to be applied for purposes of origin determinations and re-determinations.

9.2 New Processes and Concepts

The chapter entrenches the principle of self-determination of origin by persons clearing goods. It also empowers the customs authority to issue determinations and re-determinations for purposes of the origin of goods. Furthermore, it prescribes new time limits and limitations in respect of determinations and re-determinations and creates a statutory presumption that origin determinations and re-determinations are correct.

10. CHAPTER NINE: PREFERENTIAL TARIFF TREATMENT

10.1 General

This chapter provides for matters relating to the administration of international trade agreements in relation to goods imported into or exported from the Republic under the agreement, as well as for non-reciprocal generalised systems of preferences implemented by a country in relation to goods exported from the Republic to that country.

Provision is made for the Commissioner to take all reasonable steps to make international trade agreements effective in relation to goods imported into or exported from the Republic under preferential tariff treatment and to enable South African Customs to perform any customs duties required from it by any agreement.

In relation to the export from the Republic of goods to countries implementing a non-reciprocal general system of preferences for South African goods, provision is made for the Commissioner to take all reasonable steps to ensure that the



legislative and administrative measures regulating the particular system are complied with insofar as those measures require the performance of acts in the Republic as a precondition for the exported goods to benefit from that system.

10.2 New Processes and Concepts

The requirement to state the certificate of origin number on the customs clearance declaration is new. The application for certification of certificate of origin process is now expressly prescribed.

11. CHAPTER TEN: ADVANCE RULINGS

11.1 General

This chapter provides for the issuing of binding rulings on application by any person who is a licensee or registered person in terms of the CCA, to settle in advance:

- The Tariff classification of goods
- Determination of the valuation of goods or
- Determination of the origin of goods.

The circumstances in which applications for advance rulings may be granted are set out and provision is made for an advance ruling to bind both Customs and the recipient of the ruling. The circumstances when an advance ruling ceases to be effective are also dealt with.

The concept of using the best information available also finds application in this chapter.

11.2 New Processes and Concepts

“Advance rulings” is a new concept.

12. CHAPTER ELEVEN: ADMINISTRATIVE PENALTIES

This chapter provides for Customs to impose certain administrative penalties for breaches of the CDA. A “breach” includes both contraventions that are offences

in terms of the Act and those that are not, such as technical breaches. The Chapter distinguishes between the following types of administrative penalties that may be imposed:

- Fixed amount penalties for technical breaches
- Fixed percentage penalties for breaches consisting of non- or late payment of duty or interest on duty and
- Prosecution avoidance penalties to allow offenders who committed offences in terms of the CDA the option to pay a penalty instead of facing criminal proceedings.

The amounts that may be imposed and the procedure to be followed for the imposition of the different kinds of administrative penalties are set out in the chapter. Provision is made for the Minister to list by notice in the Gazette the non-prosecutable breaches of the CDA for which fixed amount penalties may be imposed. To deter non-compliance and repeat offences, the chapter provides that if a person that has been penalised for committing a non-prosecutable breach within a period of three years after the penalty has been imposed, again commits the same non-prosecutable breach, the amount of the fixed amount penalty that may be imposed may be doubled, and if the same breach is committed for a third time, the penalty may be tripled.

In the case of prosecutable breaches (i.e. offences), prosecution avoidance penalties may be offered as an option to the offender in lieu of prosecution, the amount imposed must be determined in accordance with any limits set by the Commissioner and may not exceed the maximum fine a court may impose upon conviction of a person for the relevant breach.

13. CHAPTER TWELVE: JUDICIAL MATTERS

This chapter provides for general offences for contraventions of the CDA, the penalties that may be imposed in respect of those offences, other punitive powers of courts, as well as the jurisdiction of the magistrate's court.

The chapter distinguishes between two categories of offences.

The more serious Category 1 offences include fraud, misrepresentation, evasion of duty, buying, acquiring or receiving goods on which duty has been evaded, possession of imported goods on which duty has been evaded, selling, offering or advertising for sale imported goods on which duty has been evaded. A Category 1 offence carries a fine not exceeding R1 million or a higher amount prescribed in terms of the Adjustment of Fines Act, 1991, or a period of imprisonment not exceeding five (5) years or both such fine and imprisonment.

The less serious Category 2 offences include performing an act without the authorisation, permission, approval of the customs authority, contravening or failing to comply with a condition imposed in terms of the CDA and assisting in the commission of a Category 2 offence. A Category 2 offence carries a fine not exceeding R500 000 or a higher amount prescribed in terms of the Adjustment of Fines Act, 1991 or a period of imprisonment not exceeding three (3) years or both such fine and imprisonment.

Provision is made for the vicarious liability of registered agents and persons managing juristic entities and the liability of ordinary employees of juristic entities in certain circumstances.

The chapter furthermore affords the magistrate's court jurisdiction to hear criminal and civil matters instituted by the Commissioner, and provides for a fast-track procedure for the collection of outstanding duties and interest by the Commissioner by filing with the clerk or registrar of a court a certified statement stating the amount of the debt, the due date and the name of the person by whom the debt is payable.

14. CHAPTER 13: MISCELLANEOUS MATTERS

This chapter contains provisions on various matters, such as enabling provisions dealing with the making of rules by the Commissioner, consultative processes before promulgation of rules, condonation for non-compliance with rules,

conditions or requirements, methods of submission of documents to Customs, legal status of footnotes and the application of certain provisions of the Customs Control Act.

15. MORE INFORMATION

For updates and Frequently Asked Questions on the new Customs Acts, go to the SARS website (www.sars.gov.za), click on Customs>Legislative Framework>New Customs Legislation update

DISCLAIMER

The information contained in this guide is intended as guidance only and is not considered to be a legal reference, nor is it a binding ruling. The information does not take the place of legislation and readers who are in doubt regarding any aspect of the information displayed in the guide should refer to the relevant legislation, or seek a formal opinion from a suitably qualified individual.

For more information about the contents of this publication you may:

- Visit the SARS website at www.sars.gov.za
- Visit your nearest Customs branch
- Contact the SARS National Contact Centre –
 - If calling from within South Africa, contact the SARS Contact Centre on 0800 00 7277
 - If calling from outside South Africa, contact the SARS Contact Centre on +27 11 602 2093 (only between 8am and 4pm South African time).