

**CUSTOMS**

**EXTERNAL POLICY**

**SAMPLES**

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## 1 SUMMARY OF MAIN POINTS

- a) Section 22 read with Rule 22.01 provides that the owner of goods in a Customs and Excise warehouse may apply to the relevant Controller/Branch Manager to take samples of such goods under Customs supervision.
- b) The Controller may in accordance with Rule 22.01 permit the owner to take samples of the goods in the Customs and Excise warehouse in quantities as the Controller/Branch Manager may permit.
- c) The **owner** is liable for the duty and VAT due on the samples concerned in terms of Section 44(6)(c). The payment of duty on samples may be deferred until the goods from which the samples have been taken are entered for delivery from the warehouse for any purpose as determined in Section 20(4).
- d) The sample document must be read in conjunction with:
  - i) Samples drawn under special and extra attendance (SC-CF-22);
  - ii) Valuation of Imports (SC-CR-A-03);
  - iii) Method 1 Valuation of Imports (SC-CR-A-05)
  - iv) Valuation of Exports (SC-CR-A-07);
  - v) Tariff Classification (SC-CR-A-09); and
  - vi) Refunds and Drawbacks (SC-DT-C-13).
- e) The information included in this document does not cover the following:
  - i) Samples of no commercial value (SC-IM-01-01); or
  - ii) Samples supplied free of charge (SC-CR-A-03).
- f) This policy in its design, development, implementation and review phases is guided and underpinned by SARS's intent, strategic objectives, values, code of conduct and applicable legislation. If any aspect of the content conflict with the applicable legislation the legislation will take precedence.

## 2 POLICY

### 2.1 Samples drawn under Customs supervision

- a) The provisions pertaining to the extracting of samples is contained in:
  - i) Section 22 which provides that the owner of goods in a Customs and Excise warehouse may apply to the Controller/Branch Manager in whose area the goods are situated to take samples of such goods. **The samples may either be for trade purposes or for a Customs procedure that the owner wants to apply for on his/her own initiative.** Where **an owner** requests for a sample to be drawn:
    - A) Prior permission must be obtained in writing, **at least 24 hours before access for the intended purpose is required.**
    - B) The application for permission **must** state the:
      - I) Reason why the sample is required,
      - II) Number and date of the Customs **clearance** declaration (**CCD**) on which the goods were entered for warehousing;
      - III) Marks and numbers of the packages to be examined or from which the samples are to be extracted; and
      - IV) Total number of samples required.
  - ii) Section 106 **which states that** samples may be taken by a Customs **Officer**. **The Customs Officer may take the sample:**
    - A) From any person in possession of the imported goods or any time after such manufactured or partly manufactured excisable goods; and
    - B) On entry of the imported goods or goods for export or at any time after such entry including after passing form Customs control as legislated in Section 107(2)(a).
- b) Customs may take, accept or require a client to produce samples for:
  - i) Conducting an inspection of the goods; **or**

- ii) Establishing:
  - A) The nature or characteristics of the goods;
  - B) The quality or content of the goods;
  - C) The tariff classification, value or origin of the goods;
  - D) The duties payable thereon;
  - E) Whether the goods qualify under a refund procedure;
  - F) Whether the goods are:
    - I) The same goods previously cleared or released for a Customs procedure;
    - II) Compensating products obtained from specific goods; or
    - III) Identical or similar to or of the same class or kind as other goods;
  - G) Whether the goods are prohibited, restricted, sectorally controlled or counterfeit goods; or
  - H) Any other fact in relation to the goods as may be prescribed by Rule.
- c) The samples must be dealt with and accounted for as the Commissioner may direct. Samples may be:
  - i) Examined, analysed or tested in any way;
  - ii) Analysed by a reputable third party in accordance with a method determined by the Commissioner, in which case the cost of the analysis must be borne by the importer, exporter or owner of the goods;
  - iii) Subjected to a chemical, mechanical or technological process;
  - iv) Used for obtaining advice, including expert or technical advice, on the goods or a matter relating to the goods;
  - v) Utilised in any other way necessary for achieving the purposes as mentioned in (b) above; or
  - vi) Used as evidence in a court or any other Customs proceeding.
- d) Samples must be truly representative of the total shipment under review. Liquids must therefore be stirred or shaken and powders or other dry substances taken from the centre of the package as far as possible.
- e) The owner applies for special and extra attendance on a DA 73 for samples to be taken under Customs supervision as documented in SC-CF-22. The Customs Officers attending the examination or extraction must supervise the complete operation and on completion thereof must ensure that the packages remaining in bond are sealed.
- f) The Customs Officer taking the samples must issue a receipt therefor to the owner reflecting the full particulars of the sample, signed and dated with an official Customs stamp.

## 2.2 Samples submitted to Customs

- a) Samples submitted to Customs must be under cover of a letter containing:
  - i) The owner's company letter head.
  - ii) The purposes of the sample, for example refund, tariff classification or valuation determination.
  - iii) The Branch Office name where the sample is handed in.
  - iv) The case number if one (1) was assigned by Customs.
  - i) The Local- (LRN) and Movement reference number (MRN).
  - ii) The owner's details, name and Customs client number.
  - iii) The details of a contact person who Customs can contact to collect the sample upon return.  
The contact person's:
    - A) Full name;
    - B) Designation;
    - C) E-mail address; and
    - D) Contact numbers.
  - iv) A description of the sample(s).
  - v) A list of the supporting documents that are attached to the case.
  - vi) Any comments that the owner wishes to refer to or bring under the attention of the Customs Officer.
  - vii) The following declaration: "I <insert full names>, hereby certify that the above-mentioned information is correct and that the sample has been attached."

- b) The above-mentioned covering letter must be submitted in duplicate. The Customs Officer receiving the sample from the owner signs the copy as an acknowledgement of receipt.
- c) Where a Material Data Safety Sheet details specific requirement for the safety and handling of a sample, this must also be submitted by the owner.
- d) The following samples must not be forwarded to Customs:
  - i) Hazardous or dangerous samples: A Customs Officer must visit the client's premises and verify that the literature and/or chemical analysis certificates submitted instead of a sample can be tied-up with the goods under the Customs procedure.
  - ii) High risk or high value samples: The owner must arrange with the relevant division in Head Office for the examination of the sample.
- e) Customs may require in terms of Section 107(2)(b) that the sample must be analysed by a reputable third party and in accordance with a method determined by the Commissioner. The cost of the analysis of any goods must be borne by the owner of the goods.

### 2.3 Clearance and duty liability

- a) Except in the case of samples temporarily removed which must for all purposes be regarded to remain part of the imported goods from which they were taken:
  - i) Regardless of the Customs procedure under which the goods are to be cleared, samples taken must always be cleared for home use and any duties and taxes must be paid.
  - ii) Where the sample is taken after clearance, a substitution CCD is therefore required if the original clearance was not for home use.
- b) The owner is liable for the duty and taxes due on the samples concerned in terms of Section 44(6)(c). The payment of duty on samples may be deferred until the goods from which the samples have been taken are entered for delivery from the warehouse or for any purpose as determined in Section 20(4).
- c) If free circulation goods are cleared for exportation from South Africa and samples are taken from the export consignment, the sample will revert to free circulation goods. The owner clearing the goods for export must amend the CCD to exclude the samples from the CCD.

### 2.4 Returning of samples

- a) The owner may request that the samples must be returned after Customs procedure is finalised. However, samples submitted with a refund, tariff or valuation application will be retained by Customs for record purposes for a period of:
  - i) Five (5) years from the date of the conclusion of a court case; or
  - ii) Two (2) years from the completion of any other Customs proceeding.
- b) Samples returned by Customs, after the required time frame, must be collected and signed for as proof of receipt. Customs will notify the owner, in writing, that the sample is available for collection. The owner must collect the sample within five (5) days of the date of the letter.
- f) Samples not returned to or collected by the owner will be removed to the nearest States Warehouse as documented in SC-CW-01-04.

### 2.5 Keeping of records

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

- c) Every client must produce such books, accounts and documents on demand.

## 2.6 Penalties

- a) Failure to adhere to the provisions of the Act is considered an offence.
- b) Offences may render the recipient or importer liable to, as provided for in the Act:
  - i) Monetary penalties (**SC-CO-01-02**);
  - ii) Criminal prosecution; and/or
  - iii) Suspension, cancellation of registration, license or accreditation.

## 2.7 Promotion of Administrative Justice Act

- a) The Promotion of Administrative Justice Act (PAJA) No. 3 of 2000 gives effect to everyone's right to administrative action that is lawful, reasonable and procedurally fair. Any person whose rights have been adversely affected by administrative action has the right to be given written reasons, as contemplated in Section 33 of the Constitution of the Republic of South Africa, 1996. PAJA:
  - i) Provides for the review of administrative action by a court or where appropriate, an independent and impartial tribunal;
  - ii) Imposes a duty on the State to give effect to those rights;
  - iii) Promotes an efficient administration as well as good governance; and
  - iv) Creates a culture of accountability, openness and transparency in the Public Administration or in the exercise of a public power or the performance of a public function, by giving effect to the right to just administrative action.
- b) Administrative action which significantly and unfavourably affects the rights or valid expectations of any person must be procedurally fair. A fair administrative procedure depends on the circumstances of each case.
- c) A person must be given:
  - i) Written reasons of the nature and purpose of the proposed administrative action;
  - ii) A reasonable opportunity to make representations;
  - iii) A clear statement of the administrative action; and
  - iv) Adequate notice of any right of review or internal appeal, where applicable.
- d) Just administrative action requires the Customs Officer to consider all the facts presented and obtained in addition to affording the client the opportunity to be heard, prior to instituting any administrative action.
- e) Before administrative action can be taken by Customs the declarant must be allowed the opportunity to:
  - i) Obtain assistance and, in serious or complex cases, legal representation;
  - ii) Present and dispute information and arguments; and
  - iii) Appear in person.
- f) Declarants whose rights have been significantly and unfavourably affected by administrative action and who have not been given reasons for the action may, within **thirty (30)** days after the date on which the declarant became aware of the action, request Customs to furnish written reasons for the action.
- g) Customs must within **forty five (45)** days after receiving the request, give the declarant adequate reasons in writing for the administrative action. If Customs fails to furnish adequate reasons for the administrative action, it is presumed in any proceedings for judicial review that the administrative action was taken without good reason.

## 2.8 Appeals against decisions

- a) In cases where clients are not satisfied with any decision taken in terms of the Customs and Excise Act they have a right of appeal to the relevant appeal committee. The policy in this regard, as well as the process to be followed, is contained in document [SC-CA-02](#).
- b) If a client disagrees with a decision of any appeal committee their recourse will be to lodge an application for ADR (Alternative Dispute Resolution) with the relevant appeal committee. The committee will add its comments thereto and forward the application to the ADR Unit for attention. The policy in this regard, as well as the process to be followed is contained in document SC-CC-26.

## 3 RELATED INFORMATION

### 3.1 Legislation

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

### 3.2 Cross references

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

### 3.3 Quality records

DOCUMENT #	DOCUMENT TITLE
DA 73	Application of Special and Extra Attendance

## 4 DEFINITIONS AND ACRONYMS

<b>ADR</b>	Alternative Dispute Resolution
<b>Appeal</b>	The act by which a person, natural or legal, who is directly affected by a decision made or omission by Customs and who deems himself/herself to be aggrieved thereby seeks redress before a competent authority
<b>CCD</b>	<a href="#">Custom clearance declaration</a>
<b>Commercial</b>	Viable, saleable, profit marketable, business related industrial trade
<b>Dispute</b>	A disagreement on the interpretation of either the relevant facts involved or the law applicable thereto, or both the facts and the law
<b>Hazardous or Dangerous</b>	Samples of solids, liquids, or gases that can harm people, other living organisms, property, or the environment
<b>High Risk/High Value</b>	Goods which are particularly susceptible to theft or dangerous goods. Examples

<b>Goods</b>	of high risk/high value goods are, but is not limited to: a) Jewellery; b) Precious/semi-precious stones; c) Precious metals; d) Electronic equipment; e) Firearms; f) Sensitive information on trade secrets; g) Chemicals; h) Explosives; i) Alcoholic beverages; j) Cigarettes; k) Money; l) Coins, etc.
<b>Sample</b>	a) Articles which are representative of a particular category of goods already produced or are examples of goods the production of which is contemplated; the term does not include identical articles brought in by the same individual or sent to a single consignee, in such quantity that, taken as a whole, they no longer constitute samples under ordinary usage. b) Product used for trying and/or testing to see what it is like and/or how it works.

## 5 DOCUMENT MANAGEMENT

<b>Policy Owner</b>	<b>Director: Customs: Border Operations, Ports of Entry &amp; Customs Compliance</b>
<b>Detail of change from previous revision</b>	a) Inserted a sentence to verify that Section 22 samples may be used to extract trade samples or samples requested by the owner on his/her own initiative. b) Substituted the word “client” with the word “owner” as the legislation stipulates “owner”. c) Added a sentence to indicate where and in what time frame the application for the permission to extract a sample must be submitted to the Controller/Branch Manager. d) Included the information required on the sample covering note (SC-CF-46-A01) in the document as SC-CF-46-A01 is withdrawn. e) Included high risk/high value goods as part of the exclusions from the normal submission of samples to Customs. f) Inserted references to SC-CO-01-02 - Offences and Penalty – External Policy. g) Amended the time periods in which clients may request Customs to furnish reasons for an action and in which Customs must respond to such a request to align with Internal Administrative Appeals. h) Changed the q-code of SC-CC-24 - Internal Administrative Appeal – Internal Policy to SC-CA-02. i) Updated the Policy Owner from Group Executive: Customs Branch to Director: Customs: Border Operations, Ports of Entry & Customs Compliance to align with the new SARS structure.
<b>Template number and revision</b>	<b>GC-TM-03 - Rev 9</b>