

CUSTOMS

EXTERNAL POLICY

METHOD 1 VALUATION OF IMPORTS

TABLE OF CONTENTS

1	SUMMARY OF MAIN POINTS	3
2	POLICY	3
2.1	Methods of Customs valuation on imported goods	3
2.2	Value to be declared	4
2.2.1	Actual value	4
2.2.2	Price actually paid or payable	4
2.2.3	Port or place of export	4
2.2.4	Inclusions in the price as part of the total price	5
2.3	Circumstances for Method 1 – Sales Transactions	5
2.4	Conditions and restrictions	6
2.5	Proceeds	7
2.6	Relationship	8
2.7	Determination under Method 1	8
2.7.1	Elements to Method 1	8
2.7.2	Verify if Method 1 can be utilised	9
2.7.3	Evidence	11
2.8	Adjustments in accordance with the provisions of Section 67	12
2.8.1	Additions and deductions	12
2.8.2	Confirmation of any dutiable or non-dutiable elements under Section 66(1) read with Section 67(13)	16
2.9	Cost, Charges and Expenses	16
2.9.1	Analysis-, inspection- and selection fees	16
2.9.2	Associated costs, incidental to delivery	16
2.9.3	Assists	17
2.9.4	Bank charges	19
2.9.5	Brokerage	19
2.9.6	Buying commission	19
2.9.7	Confirming commission	22
2.9.8	Containers being one (1) with the goods	22
2.9.9	Demurrage	23
2.9.10	Drayage	23
2.9.11	Freight charges	24
2.9.12	Fumigation or gas charges	26
2.9.13	Insurance	27
2.9.14	Loading, unloading and handling charges	27
2.9.15	Packing or Export packing	28
2.9.16	Proceeds	28
2.9.17	Research and development	28
2.9.18	Royalties and license fees	30
2.9.19	Selling commission	34
2.9.20	Storage charges	34
2.9.21	Cost of activities taking place in South Africa or Post importation costs	35
2.9.22	Interest	36
2.9.23	Maintenance	36
2.9.24	Warranty charges	36
2.10	Test Values	38
2.10.1	Transfer pricing and Customs value	38
2.10.2	Establishing whether a price has been influenced by the relationship	38
2.10.3	Relationship confirmation using the provided test values	40
2.10.4	Three (3) provided test values	41
2.11	Confidentiality	42
2.12	Record keeping	42
2.13	Penalties	42
2.14	Promotion of Administrative Justice Act	43
2.15	Appeals against decisions	43
3	RELATED INFORMATION	44
3.1	Legislation	44
3.2	Cross references	44
3.3	Quality Records	44
4	DEFINITIONS AND ACRONYMS	44
5	DOCUMENT MANAGEMENT	47

1 SUMMARY OF MAIN POINTS

- a) Determining of Customs values are set by the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the Agreement), which involves six (6) valuation methods.
- b) The primary basis for the Customs value under the Agreement is the transaction value method (Method 1) which is the price actually paid or payable and is discussed in this document.
- c) Where the Customs value cannot be determined under Method 1 the following methods, discussed in SC-CR-A-03, are applied in sequential order:
 - i) Identical goods method;
 - ii) Similar goods method;
 - iii) Deductive method;
 - iv) Computed method; or
 - v) Fall-back method.
- d) When calculating a Customs value the client must ensure that:
 - i) The conditions for the use of Method 1 are fulfilled;
 - ii) The declared value includes the total payment made or to be made by the buyer of the imported goods;
 - iii) The declared value includes all additions necessary under Section 67(1);
 - iv) The required supporting documents are available if requested;
 - v) The details of the declaration of facts about the value correspond with the supporting documents;
 - vi) The Customs declaration is consistent with any Customs rulings applicable; and
 - vii) The declared value is realistic in the light of the commercial practices of the industry and identical or similar goods.

2 POLICY

2.1 Methods of Customs valuation on imported goods

- a) The Act defines six (6) methods of valuation which must be applied in sequential order. The following table sets out which Sections of the Act refers to which Article or Method of the WTO Valuation Agreement:

ACT REFERENCE	AGREEMENT REFERENCE	VALUE METHOD
Section 66(1) read with Section 67	Article 1 read with Article 8	1 – Transaction value method
Section 66(4)	Article 2	2 – Identical goods value method
Section 66(5)	Article 3	3 – Similar goods value method
Section 66(7)	Article 4	4 – Deductive value method
Section 66(8)	Article 5	5 – Computed value method
Section 66(9)	Article 6	6 – Fall-back value method

- b) The only exception is that the sequence of the Deductive value method and the Computed value method may be reversed at the request of the importer in terms of Section 66(6).
- c) The nature of the documentation to be produced to substantiate the declared value must follow a chronological order from start to finish with regard to the transaction under review and must enable Customs to establish:
 - i) The actual amounts paid for the service or goods;
 - ii) The role and function of the parties involved (importer, middleman, manufacturer and supplier); and
 - iii) The actual services performed or paid for.

- d) Once a transaction has been moved out of the confines of Section 66(1) by Customs the client is informed that the value will be determined using one (1) of the other value methods. Customs can then not revert back to Method 1, even if the value determined under the provisions of the next method is lower than the value declared by the client under Method 1.

2.2 Value to be declared

2.2.1 Actual value

- a) The value for Customs purposes of imported goods must be based on the actual value of the goods on which duty is assessed and should not be based on the value of goods of national origin or on arbitrary or factitious values.
- b) The actual value must be the price at which such or like goods are sold or offered for sale in the ordinary course of trade under fully competitive conditions.
- c) When the actual value is not ascertainable the value for Customs purposes must be based on the nearest ascertainable equivalent of such value.

2.2.2 Price actually paid or payable

- a) The primary basis for Customs value under the WTO Valuation Agreement is the transaction value as defined in Section 66(1) read with Section 67.
- b) The transaction value of imported goods shall be the total price actually paid or payable for the imported goods, at the port or place of export, in the ordinary course of trade, under fully competitive conditions. This is a real price which is actually made and not a normal price for imported goods.

2.2.3 Port or place of export

- a) The FOB contract has been retained by South Africa as the basis for valuation. Consequently, all costs, charges and expenses up to the point where the goods are loaded onto a ship or other vehicle, are dutiable.
- b) Sections 66(11) and 67(4), defines the port or place of export in the country of exportation for the purposes of Sections 66(7)(a)(ii); 66(8)(d); 67(1)(e) and 67(2)(a).
- c) Section 67(1)(e) provides for **additions** to the price charged for goods, to the extent that it is not already included in the price:
- i) Transportation expenses; and
 - ii) Insurance, loading, unloading, handling and associated charges incidental to delivery of the goods to the port or place of export in the country of exportation and placing those goods on board a ship or any other vehicle at that port or place.
- d) This means that all costs, charges and expenses up to the point where the goods are loaded onto a ship or other vehicle, for export to South Africa are dutiable.
- e) For the purpose of Sections 66 and 67 the port or place of export referred to therein shall be the place in the country of exportation where the goods in question:
- i) Are placed on board ship or on any vehicle which conveys them from or across the border of that country; or
 - ii) If they are ships or vehicles moving under their own power, where they finally leave that country for South Africa [Section 66(11) and Section 67(4)].
- f) Section 66(10) provides that goods which are exported to South Africa from any country, but passes in transit through another country, subject to any conditions which may be prescribed by Rule, are deemed to have been exported directly from the first mentioned country.
- g) Refer to SC-CR-A-02-A01 – Port or Place of Export – External Annex.

2.2.4 Inclusions in the price as part of the total price

- a) The interpretative note to Article 7 of the WTO Valuation Agreement confirms that the price actually paid or payable in relation to the imported goods means:
 - i) The total payment made by the importer to or for the benefit of the supplier;
 - ii) The payment may be made directly or indirectly; and
 - iii) The price includes all payments actually made or to be made by the importer to the supplier or by the importer to a third party.
- b) Even though some costs, charges and expenses are not mentioned in Section 67 as compulsory adjustments to the price, it still forms part of the total payment made for the transaction.

2.3 Circumstances for Method 1 – Sales Transactions

- a) Section 66(1) adjusted according to Section 67 only relates to **imported goods**. This means any goods brought into South Africa from a place outside South Africa as described in Section 10.
- b) In order to apply Method 1 there must be a sale of the imported goods for **export to South Africa** [Section 66(1)]. This means that only transactions involving an actual international transfer of goods may be used in valuing goods under Method 1. The **sale**, giving rise to the exportation of the goods to South Africa, is the sale that must be taken into account when determining a Customs value.
 - i) The price negotiated by the parties to the particular sale of goods is the most important term of a sales agreement.
 - ii) If the transaction is not a sale but a gift, a loan, a lease or a transfer of property from one (1) place to another by the same owner, there will naturally not be any question of a price relevant for establishing the Transaction value.
 - iii) In a multiparty sale transaction, the last sale concluded in the ordinary course of trade under fully competitive conditions must be taken as the sale for export to South Africa.
- c) The transaction value will be accepted, provided that the conditions laid down in Section 66(1) read with Section 67 are met. No account is taken of the time period between the conclusion of the contract of sale and the time of Customs valuation. Nor should account be taken of fluctuations in the market which may have occurred after the date on which the contract was concluded.
- d) In cases which would not be deemed to constitute sales, meeting the requirements and conditions of Section 66 and Section 67 the valuation method to be used must be determined in accordance with the order of priority laid down by the WTO Valuation Agreement. No sale situations where Method 1 cannot apply includes:
 - i) Free consignments - Where transactions do not involve the payment of a price, the transactions cannot be regarded as sales under the WTO Valuation Agreement, for example gifts, samples, promotional items, etc.
 - ii) Goods imported on consignment - Under this practice, the goods are dispatched to South Africa not as a result of a sale, but with the intention that they would be sold for the account of the supplier, at the best price obtainable. At the time of importation no sale has taken place:
 - A) Importations on consignment must not be confused with profit-sharing transactions.
 - B) In profit-sharing cases the goods are imported following a sale and provisionally invoiced at a certain price, to which must be added part of the profit made when the goods are sold on the market in South Africa.
 - C) Transactions of this kind must be regarded as sales with a clause reserving determination of the final price. The nature of the transaction does not preclude valuation under the Method 1, but particular attention has to be paid to the conditions in Section 66(1)(c).
 - iii) Goods imported by agents who do not purchase the goods and who sell them after importation.
 - A) This covers a whole range of situations encountered in commercial practice where goods are delivered to agents without being the subject of a sale, for example replenishment of agency stocks.
 - B) A distinction must be made between such importations and importations of goods on consignment, (point ii above) which constitutes a separate and specific trading practice.

- iv) Goods imported by branches which are not separate legal entities - In cases where a branch cannot be regarded as a separate legal entity under the legislation concerned, there can be no sale, bearing in mind that a sale necessarily involves a transaction between two (2) separate persons or entities.
- v) Goods imported under a hire or leasing contract - Hire or leasing transactions by their very nature do not constitute a sale, even if the contract includes an option to purchase the goods.
- vi) Goods supplied on loan, which remain the property of the supplier or sender - Goods, for example machinery, are sometimes loaned by the owner to a customer. These transactions do not involve sales.
- vii) Goods, for example waste or scrap, **imported for destruction** in South Africa, with the supplier or sender paying the importer for his/her services.
 - A) As costs are incurred in connection with this destruction, the exporter pays the importer an amount for his/her services.
 - B) As the importer does not pay for the imported goods, but is paid for accepting and destroying the goods, no sale can be considered to have taken place.
 - C) If the scrap was bought by the importer or a third party.

2.4 Conditions and restrictions

- a) There must be no restrictions on the disposition or use of the goods by the importer, other than restrictions which:
 - i) Are imposed or required by law or by the public authorities in South Africa, for example licence, end-use, etc.;
 - ii) Limit the geographical area in which the goods may be resold; or
 - iii) Do not substantially affect the value of the goods, for example:
 - A) Restriction on selling or exhibiting motor vehicles prior to a fixed date which represents the beginning of a model year; or
 - B) A cosmetics manufacturer stipulating that a particular distribution chain of house to house suppliers is used.
- b) A restriction that would substantially affect the value of the goods is not a trade norm. For example where a machine is sold at a nominal price on the condition it is only used for charitable purposes.
- c) The sale or price of the goods must not be subjected to any condition or consideration for which a value cannot be determined with respect to the goods being valued, for example:
 - i) The supplier establishes the price of the imported goods on the condition that the importer will also buy other goods in specified quantities;
 - ii) The price of the imported goods is dependent upon the price or prices at which the importer sells other goods to the supplier; and/or
 - iii) The price is established on the basis of a manner of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the supplier on the condition that the supplier will receive a specified quantity of the finished goods.
- d) When the value of a condition or consideration can be determined with respect to the goods being valued such value must be regarded as an indirect payment to the supplier and therefore added to the price actually paid or payable.
- e) The following situations can also be regarded as high risk situations where a possible price influence or price adjustment could be required as the sale is subjected to certain conditions:
 - i) Barter trade;
 - ii) Compensation deals;
 - iii) Package deals;
 - iv) Replacement goods;
 - v) Part shipments; and
 - vi) Tie-in sales.

2.5 Proceeds

- a) No part of the proceeds of any subsequent resale, disposal or use by the importer will accrue directly or indirectly to the supplier, unless an appropriate adjustment can be made in accordance with the provisions of Section 67. Sufficient information must be available to permit an accurate adjustment for any amount incurred as proceeds.
- b) Profit sharing is a form of proceeds. The importer pays the supplier a further sum resulting from or to take account of profit realised on the imported goods. Proceeds must not be confused with the flow of dividends or other payments from the importer to the supplier that do not relate to the imported goods.
- c) The value of any part of the proceeds of any subsequent sale, disposal or use of the imported goods that accrues directly or indirectly to the supplier must be added to the Customs value.
- d) The WTO Valuation Agreement sets out the principles for the addition of any payment amount in the form of a 'proceed'. Such a payment does not have to be a condition of sale - the mere existence of such proceeds requires an adjustment under Section 67.
- e) Where an adjustment for proceeds is required and the relevant information is not available at the time of importation, it will be necessary to delay the final determination for a reasonable time. Goods may be released provided a provisional payment is lodged to cover possible outstanding duties and VAT.
- f) **Confirmation of profit sharing**
 - i) Profit Sharing is where goods are imported following a sale and provisionally invoiced at a certain price to which must be added, part of the profit made when the goods are sold on the market in South Africa. Transactions of this kind must be regarded as sales with a clause reserving determination of the final price.
 - ii) The nature of profit sharing transactions does not rule out the application of Method 1 to determine the Customs value, however, particular attention has to be paid to the conditions laid down in Section 66(1)(c) regarding proceeds.
 - iii) The client verifies if there is any profit or proceed amount of any subsequent resale, disposal, or use of the imported goods are paid, directly or indirectly, to the supplier of the goods.
 - A) If part of the profit or proceeds is paid, directly or indirectly, to the supplier of the goods, the amount must be added to the Customs value - refer to paragraph 2.9.16 of this document; or
 - B) If no amount is paid to the supplier of the goods then nothing can be added to the declared value.
 - iv) The client keeps copies of any documentary evidence relating to the value of the payments, for example a copy of the latest audited financial statement, any agreements, invoices of payments by the importer, etc. as part of the audit pack as documentary evidence. Refer to paragraph 2.12 of this document.
 - v) The client checks whether the payments were made once only, yearly or quarterly invoices, or on a continuing basis.
 - vi) The client verifies if the payments were made because the importer paid the supplier a further sum of money resulting from the sale of the imported goods, or because of dividends due to the seller on an annual basis.
 - vii) The client verifies if a value for the profit sharing amount was declared.
 - A) If the answer is "yes", keep details of how the declared value was calculated; or
 - B) If the answer is "no", calculate an amount to be include this in the Customs value and keep the calculation details of how the amount was calculated.
 - viii) The client determines the Customs value and ensures that all the provisions set in the Act, was adhere to before submitting the Customs declaration to Customs. Records must be kept of all the substantiating documentation in an audit pack if Customs want to verify the declared value. Refer to paragraph 2.12 of this document.

2.6 Relationship

- a) The WTO Valuation Agreement and the Act provides for the acceptance of the transaction value as the Customs value if the importer or buyer and supplier or seller are not related as described in Section 66(2)(a). However, it provides that where they are related the transaction value may be acceptable, if it can be demonstrated that:
 - i) Such relationship did not influence the price paid or payable; or
 - ii) The importer proves that the transaction value closely approximates one (1) of the following test values as set out in Section 66(3)(b):
 - A) The transaction value of identical or similar goods sold at comparable trade and quantity levels to unrelated importers in South Africa at or about the same time as the goods to be valued;
 - B) The value, ascertained in terms of Section 66(7), of identical or similar goods imported into South Africa at or about the same time as the goods to be valued; or
 - C) The value, ascertained in terms of Section 66(8), of identical or similar goods imported into South Africa at or about the same time as the goods to be valued.
- b) Persons who are associated in business with one (1) another in that one (1) is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related, only if they fall within the criteria as set out in (a) above.
- c) In declaring a value, it is the responsibility of the importer to ensure, to the greatest extent possible, that any relationship with the supplier has not influenced the price paid or payable for the goods. Whichever way an importer chooses to claim the acceptability of the price, the claim must be supported by factual evidence.
- d) The relationship of the parties involved in the transaction is to be evaluated with an overall view of the entire situation, together with the result in each case governed by the facts, and circumstances of the individual case and not by the labels that the parties may attach to the relationship.

2.7 Determination under Method 1

2.7.1 Elements to Method 1

- a) The client applies Method 1, provided that there are no limitations as set out in Section 66(1)(a-d).
- b) This method is defined in Section 66(1) of the Act as the price actually paid or payable for the imported goods when sold for export to South Africa, adjusted in terms of Section 67 and has the following elements:
 - i) It relates to imported goods;
 - ii) There has to be a sale;
 - iii) The price relates to the goods when sold;
 - iv) The sale has to be for export to South Africa;
 - v) It is the price actually paid or payable;
 - vi) The sale is not subjected to any terms or conditions, for which a value cannot be determined;
 - vii) The payment of the goods does not include proceeds of any disposal, use or subsequent resale of the goods;
 - viii) The price is not influenced by the relationship;
 - ix) There are no restrictions as to the disposal or use of the goods; and
 - x) It has to be adjusted in accordance with the provisions of Section 67.

2.7.2 Verify if Method 1 can be utilised

- a) The client verifies if there is a relationship between the buyer (importer) and the seller (supplier) and if so, if the relationship has influenced the price. Refer to paragraphs 2.6 and 2.10 of this document.
- b) The client determines whether there was a sale for export to South Africa. If the goods being valued is obtained under one (1) of the following circumstances, there is no sale, and valuation under this method is not possible. Refer to SC-CR-A-03:
 - i) The purported importer and supplier are the same legal entity;
 - ii) The goods are imported by intermediaries, without purchase, for sale on behalf of the supplier;
 - iii) The goods are imported on consignment;
 - iv) The goods are imported under a hire or leasing contract;
 - v) The goods are imported free of charge;
 - vi) The sale involves compensation, counter trade or trade-in arrangements; or
 - vii) Other situations in which the goods remain the property of the supplier.
- c) The client determines whether there have been further sales of the goods following exportation, prior to importation, for example sale in transit.
 - i) According to the Agreement if the importer can demonstrate that the sale under consideration took place with the view of exporting the goods to South Africa, then Method 1 can apply;
 - ii) The sale giving rise to the exportation of the goods to South Africa is the sale that has to be taken into account when determining a value; and
 - iii) In a multiparty sale transaction, the last sale must be taken as the sale for export to South Africa.
- d) The client identifies the parties to the sale, the supplier, importer and the agent, and determines the relevant sale for export to South Africa.
 - i) Where a third party is involved in a sale, for example a selling or buying agent that involvement must be examined. The third party may be a principal in the transaction. Rather than bringing the parties together into a legal relationship with regard to the sale of goods, the agent may have purchase from the alleged supplier and resell to the importer. In such circumstances, the third party would be considered as the supplier; and/or
 - ii) The importer may not be the owner of the goods being valued. If an entry is made by a person other than the importer of the goods, the contract of sale identified might not be the relevant sale for valuation purposes.
- e) The client checks that either the supplier's invoice(s) is/are showing the price of each article or any other evidence of value is attached. Evidence to substantiate the following:
 - i) The sale is in the ordinary course of trade under fully competitive conditions;
 - ii) The sale does not involve any abnormal discount or reduction from the ordinary competitive price;
 - iii) The sale does not involve special discounts limited to exclusive agents;
 - iv) Objective and quantifiable data exist with regards to the adjustments required to be made, under the provisions of Section 67, to the transaction value;
 - v) There are no restrictions as to the disposition or use of the goods by the importer other than restrictions which:
 - A) Are imposed or required by law or by the public authorities in South Africa;
 - B) Limit the geographical area in which the goods may be resold; or
 - C) Do not substantially affect the value of the goods.
 - vi) The sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;
 - vii) No part of the proceeds of any subsequent resale, disposal or use of the goods by the importer will accrue directly or indirectly to the supplier, unless an appropriate adjustment can be made in accordance with the provisions of Section 67; and
 - viii) The importer and supplier are not related, or where the importer and supplier are related, that the transaction value is acceptable for Customs purposes under the provisions of Section 66(3)(b), (test values).

- f) The client establishes whether there are other formal or informal contracts, agreements or arrangements in addition to the main contract of sale. These other arrangements might occur as a result of the supply of services relating to the imported goods, and may be included in the Customs value. Examples of separate elements and/or payments relating to the imported goods passing from the importer under other contracts, agreements and arrangements could include:
- i) Supplying materials, components, parts and similar items incorporated in the imported goods;
 - ii) Tooling, moulding and testing;
 - iii) engineering, artwork design work and plants and sketches;
 - iv) Inter-company transfers for management fees, advertising and assessments for research and development;
 - v) Finishing operations, processing and/or testing;
 - vi) Royalties and license fees; and
 - vii) Commissions, brokerage fees, and so forth.
- g) The client verifies the amounts utilised when the declared value was calculated.
- i) Trace the settlement of sale through the client's books from order to final settlement;
 - ii) Check details of payment: amount paid, date paid, method of payment and to whom the payment was made;
 - iii) Confirm that all invoices relating to the goods have been taken into account in the Customs value;
 - iv) Check documents and accounts relating to the goods for any further payments made to, or for the benefit of the supplier;
 - v) Check that the delivery terms declared on the entry are consistent with those stated on the invoices; for example CIF or FOB;
 - vi) Confirm that the correct costs of transport and insurance have been included in the Customs value if they are not included in the invoice;
 - vii) Check that the amounts invoiced in foreign currency has been correctly converted to the currency of importation;
 - viii) Verify that any deduction claimed is allowable and correctly calculated;
 - ix) Review relevant correspondence files; and
 - x) Deposits or earlier payments by instalments, cash cheques, etc., may not be reflected in the invoices provided. Invoice notations such as the following may indicate the existence of such situations:
 - A) First or part payment only;
 - B) Deposit only; as per contract terms; and/or
 - C) Final payment.
- h) The client determines the amount of further payments made to the supplier or to a third party identified in step (e) above.
- i) Obtain full details of the amounts paid and the reason for the payments; and
 - ii) Obtain copies of any documents giving details of the reasons for the payments, for example invoices from the service providers.
- i) The client obtains all the supporting documents from the importer, and determines the Customs value.
- i) Convert foreign currency amount into South African Rand, or if the invoiced amount is expressed in South African Rand, ensure that all the provisions set in, was adhere to. Refer to document number SC-CR-A-03 in this regard.
 - ii) If a value can be determine for the transaction under review; inform the client, in writing about the outcome of the investigation, the unique VDN and supplier code number issued to that specific client. Refer to document number SC-CR-A-03 in this regard.
 - iii) Submit copy of the VDN letter to the Branch Office who submitted the case to Head Office.
 - iv) If a value cannot be determined, this method cannot be used, proceed to the Identical goods value method. Refer to document number SC-CR-A-03 in this regard.

2.7.3 Evidence

- a) The documentary evidence and language included therein must reveal the substance of the transaction, including the obligations and roles of each of the parties. While formal sales contracts and other types of formal agreements, such as distribution or production agreements, generally are most revealing in this regard, other documentation, such as purchase orders, invoices, and proof of payment, establishing the structure of the transaction are crucial, especially in the absence of any written agreements. The terminology used in such agreements and documentation, importer, supplier, principal, or agent, although indicative, is not decisive of the role played by each of the parties in the transactions under consideration.
- b) Customs primarily will consider as controlling the terms of sale provided on the invoices and written contracts or agreements regarding the sale of the goods. The meaning of all such shipping or trade terms will be construed consistent with the Uniform Commercial Code and INCOTERM 2010, unless the transacting parties demonstrate through contracts, other legally enforceable agreements, or course of dealing, that they have afforded different meanings to the terms. Refer to SC-CR-A-02-A03 – Terms of Sale – External Annex.
- c) It is not possible to cover all eventualities but generally the following will be required, **but will not be limited to**:
 - i) Contracts, distribution and other similar agreements, invoices, purchase orders, bills of lading, proof of payment, correspondence between the parties, and company reports or brochures all may serve as evidence that a party possesses title in and assumed the risk of loss for the imported goods and functions as an importer or a supplier, thus indicating that a sale has occurred with respect to the transaction under consideration.
 - ii) Such documentation must be consistent in its entirety and with the transaction in general, for example consistent prices, dates, parties and goods.
 - iii) Documentation or information must follow a chronological order from start to finish with regard to the transaction under review.
- d) In order to determine whether a particular transaction may be the basis for transaction value, the importer is requested to submit sufficient information with respect to the amounts, if any, of the statutory adjustments set forth in Section 67, for example packing costs, commissions, assists, royalty or license fees and proceeds of any subsequent sale, freight, etc.
- e) In situations where no other pertinent evidence has been made available, Customs may reach its determination concerning whether a sale occurred based on the terms of sale, for example FOB or CIF, indicating when title and risk of loss were transferred. Otherwise, the terms of sale will be considered as part of the overall view of the entire situation in conjunction with all other relevant evidence.
- f) The WTO Valuation Agreement, while requiring that there be a price paid or payable does not specify how that price may be derived. It could be derived through negotiations, through valid price lists, from commodity market quotations, discounts, etc. The payment for the goods need not necessarily take the form of a transfer of cash. It could also take the form of a draft on a letter of credit, transfer of negotiable instruments such as stocks and bonds, or in some cases, transfer of negotiable bills of lading. In the case of related parties, the client could have transfer pricing which may only be a debit or credit in accounting records with no actual monies changing hands, which constitute an indirect payment.
- g) **Destined for export to South Africa**
 - i) In order to establish in a multiparty transaction, which sale is in fact the **sale for export** and that the imported goods are **clearly destined for export to South Africa**, there must be a complete paper trail that shows the structure of the transaction, such as:
 - A) A detailed description of the roles of each of the parties involved in the multiparty transaction;
 - B) A complete paper trail relating to the imported goods that shows the structure of the entire multiparty transaction;

- C) Documentary evidence that establishes:
 - I) That the alleged sale of the imported goods were the sale for export to South Africa; and
 - II) That the goods were clearly destined for exportation to South Africa.
- D) That the alleged sale between the middleman or agent and foreign manufacturer was conducted in the ordinary course of trade under fully competitive conditions; and
- E) Relevant documents include, purchase orders, invoices, proof of payment, contracts and any additional documents, for example correspondence which demonstrate how the parties dealt with one (1) another and which support the claim that the goods was clearly destined to South Africa. This will include:
 - I) Invoices, sales contracts, purchase agreements; purchase orders, proof of payment, shipping contracts or other documentation for each individual transaction involved in the multiparty transaction with consistent prices, dates, parties and goods; and
 - II) Other evidence would include manufacture, design, and other unique specifications or characteristics of the goods (often manifest in samples) made in conformity with the South African importer's or importer's standards; labels, logos, stock numbers, bar codes and other unique marks; and markings, visas, warranties or other types of certification or characteristics required for the entry into and sale or operation of the imported goods in South Africa.
- ii) If any of the mentioned information or documentation do not exist, or exist but are not available, Customs will take the last sale as the sale for export to South Africa, as all the evidence must show that the only possible destination for the imported goods, throughout the entire transaction, was South Africa at the time the middleman purchased or contracted to purchase the goods from the foreign manufacturer.

2.8 Adjustments in accordance with the provisions of Section 67

2.8.1 Additions and deductions

- a) According to the WTO Valuation Agreement, the price paid or payable can only be adjusted by the specific elements as mentioned in Section 67. Therefore, no matter what a charge is called, the reason why the amount has become payable has to be verified when calculating the Customs value to verify whether a charge must be:
 - i) Deducted from the price paid or payable, or
 - ii) Added to the price actually paid or payable.
- b) A distinction must be made between additions or adjustments to the price actually paid or payable in terms of Section 67 and those costs, charges and expenses, which form part of the total payment made or to be made by the importer to the supplier, for example indirect payments.
- c) It may appear to be a very fine distinction but there is clearly a difference between:
 - i) Those elements which form part of the total price actually paid or payable; and
 - ii) Those additional elements to be included under Section 67(1).
- d) The nature of the documentation to be produced must follow a chronological order from start to finish with regard to the transaction under review and must enable Customs to establish:
 - i) The actual amounts paid for the service or goods;
 - ii) The role and function of the parties involved (importer, middleman, manufacturer and supplier); and
 - iii) The actual services performed or paid for.
- e) The term price actually paid or payable is defined as the total payment made, for imported goods by the importer to or for the benefit of the supplier and includes all payments made or to be made as a condition of sale of the imported goods by the importer to the supplier or by the importer to a third party to satisfy an obligation of the supplier.

- f) The following **additions** are to be made to the price actually paid or payable under Section 67(1) to the extent that they are incurred by the imported, but not included in the price:
- i) Assists, as provided for in Section 67(1)(b);
 - ii) Commissions, except buying commission, provided for in Section 67(1)(a)(i);
 - iii) Brokerage as provided for in Section 67(1)(a)(ii);
 - iv) Cost of packing, including that of the labour and materials concerned, provided for in Section 67(1)(a)(iii);
 - v) Cost of containers which are dealt with as being for Customs purposes one (1) with the goods as provided for in Section 67(1)(a)(iv);
 - vi) Royalties and license fees as provided for in Section 67(1)(c);
 - vii) Proceeds of any subsequent resale, disposal or use of imported goods that accrues directly or indirectly to the supplier, as provided in Section 67(1)(d); and
 - viii) Cost of transport, insurance and related charges up to the place where the goods are placed on board a ship or other vehicle for export to South Africa, provided for in Section 67(1)(e).
- g) Additions to the price actually paid or payable shall be made only on the basis of objective and quantifiable data.
- h) When **deducting** any amount from the declared value it is not sufficient to merely show a separate amount on the invoice. Evidence to support the amount deducted must be made available.
- i) The following **deductions** may be made to the price actually paid or payable under Section 67(2); if included in the price actually paid or payable and identified separately:
- i) The cost of international transport, loading, unloading, handling, insurance and associated costs incidental to the transportation of the goods from the port or place of export to South Africa;
 - ii) Any expenditure incurred for the construction, erection, assembly or maintenance of or technical assistance provided in respect of the imported goods after importation;
 - iii) The cost of transport and insurance within South Africa;
 - iv) Any duties and taxes paid or payable by reason of the importation of the goods or sale of the goods in South Africa;
 - v) Any duty or tax applicable in the country of exportation from which the goods have been or will be relieved by way of a refund, drawback, rebate, or remission;
 - vi) Interest charged in respect of the price payable for the goods; and
 - vii) Any charge for the right to reproduce the imported goods in South Africa.
- j) If the importer cannot submit the supporting documentation the amount will be included in the Customs value.

2.8.2 Confirmation of any dutiable or non-dutiable elements under Section 66(1) read with Section 67

- a) The client verifies the terms of sale under which the sale has been concluded between the importer and supplier. Refer to SC-CR-A-02-A03 – Terms of Sale – External Annex.
- i) The FOB contract has been retained by South Africa as the basis for valuation. This means that all costs charges and expenses up to the point where the goods are loaded onto a ship or other vehicle, are dutiable. Refer to Section 67(4) in this regard.
 - ii) The terms of sale will indicate which possible charges could be included in the invoiced price.
- b) When determining a value within the confines of Method 1, price actually paid or payable, Section 67 makes provision for certain specified elements to be added, [Section 67(1)] or deducted [Section 67(2)] from the price actually paid or payable to the extent that they are included in the total price and if identified separately from the balance of the price actually paid or payable.
- c) The client establishes what, if any, charges have been included by the supplier in the invoiced price and obtains a breakdown of charges from the supplier of the goods, up to the point where the goods were placed on board the ship, aircraft, or other vehicle which transported the goods to South Africa.
- i) On a CIF invoice, the importer has agreed to pay the supplier certain costs, insurance and freight. The supplier has agreed to supply certain services, insurance and arrange the freight and will therefore include the expenses of these services in the invoiced price.

- ii) Negotiated ex-works contract, between the importer and supplier, indicates that the supplier will only supply the goods at the factory or premises and the importer must arrange insurance and freight with another service provider. It is for this reason that no freight or other charges can be deducted from an ex-works invoice as no additional charges has been included in the supplier's price.
 - iii) Where the price actually paid or payable for the imported goods includes a non-dutiable charge, adjustments must be made on the basis of the actual costs. The actual costs would be those amounts ultimately paid to, for example the international carrier or the freight forwarder for the movement of those goods subjected to the transaction, or the service provider who delivered the service to the supplier for which he/she is charging the importer to recover his/her costs.
 - iv) The nature of the documentation to be produced should enable the client or Customs to establish the actual amounts paid to the service provider, the extent of the service performed, the role and function of the agents, places where containers are sealed for the final time for export, etc.
- d) The client checks whether any charges was deducted from the declared value, i.e. Customs worksheet.
- i) The client ensures that the amount deducted from the invoiced price have been identified separately on the invoice. According to the Act, only charges identified separately from the balance of the price actually paid or payable, could be deducted from the Customs value.
 - ii) The client confirms the true nature of the services rendered or provided.
 - A) According to the Agreement, the price paid or payable can only be adjusted by the specific elements as mentioned in Section 67.
 - B) It doesn't matter what a charge is called, when deciding on the dutiability of a certain charge, the circumstances surrounding the sale and the reason why the amount has become payable by the importer will be the deciding factor.
 - iii) The client verifies:
 - A) If the amounts reflected on the invoice is in fact that of the allowed deductions mentioned in Section 67(2). Non-dutiable charges, to the extent that they are included in the price and if identified separately from the balance of the price actually paid or payable for the goods:
 - I) Cost of transportation, loading, unloading, handling insurance and associated costs incidental to the transportation of the goods from the port or place of export in the country of exportation to the port or place of importation in South Africa;
 - II) Any expenditure incurred for the construction, erection, assembly or maintenance of, or technical assistance provided in respect of, the goods after they are imported;
 - III) Cost of transport and insurance of the goods within South Africa;
 - IV) Any duties or taxes paid or payable by reason of the importation of the goods or sale of the goods in South Africa;
 - V) Any duty or tax applicable in the country of exportation from which the goods have been or will be received by way of refund, drawback, rebate or remission;
 - VI) Interest charged in respect of the price payable for the goods;
 - VII) Any charge for the right to reproduce the imported goods in South Africa.
 - B) The amount paid or payable as reflected on the commercial invoice and keeps copies, for record purposes, of the bank proof of payment clearly showing the amounts paid, the beneficiaries and the applicant. Refer to paragraph 2.12 of this document.
 - C) Whether the amounts deducted from the invoiced price is the actually costs charged for the service rendered or provided.
 - I) The actual cost would be those amounts ultimately paid to the service provider.
 - II) Request the third party invoices, transport document or obtain a specific freight statement from the international freight carrier or freight forwarder.
 - III) If any other charges, that are included in the invoiced amount has been deducted it must be included in the Customs value as it is part of the price actually paid or payable and for the benefit of the supplier.

- D) If the amount reflected on the invoice is the total amount paid or payable, if any other charges are paid to the supplier or a third party on behalf of the supplier, the charge must be included in the Customs value.
- I) Are there any other third party invoices, for example agency invoices, service providers, material costs, and so forth that pertain to the transaction under review?
 - II) The client must keep copies of the invoices, sales agreement or contract where the parties to the sale have agreed to the terms and conditions or any other factual evidence in lieu of a sales agreement or contract and any other agreement or contract pertaining to the sale under review, for example license agreement, research and development agreement, agency agreement, etc. Refer to paragraph 2.12 of this document.
- E) If all the charges that must be added in the declared value is included. Some of the allowed adjustments to the Customs value are not charges that are normally reflected on the invoice and it is for this reason that the client has to keep copies of the importer's audited financial statements and other accounting books to verify the circumstances surrounding the sale, if Customs requests supporting documents.
- I) If all the charges have been included, obtain documentary evidence and verify the amounts and include the amount in the Customs value or calculate an amount or percentage mark-up per consignment; or
 - II) If not all the charges is included, amend the customs value accordingly and obtain documentary evidence and verify the amounts and include the amount in the Customs value or calculate an amount or percentage mark-up per consignment.
- F) If there is any discount granted to the importer by the supplier. If the amount charged by the supplier was discounted, the client must verify if the deduction of the discount can be supported by establishing whether:
- I) The discount granted is reflected on the invoice as stipulated in Section 41;
 - II) The percentage discount is in line with the industry norm;
 - III) The discount was a factor in the fixing of the price (negotiated before the goods were shipped to South Africa);
 - IV) The conditions of the discount were met by the importer before delivery of the goods (did the client earn the discount); and
 - V) Another buyer in South Africa can also qualify for the same percentage or more.
 - VI) If the discount cannot be supported by evidence it must be included in the Customs value.

e) **Confirmation of discounts**

- i) Before a discounted price can be considered as the Customs value under Method 1 price actually paid or payable, the discount percentage and reason for the discount must be declared on the invoice as provided for in Section 41(4)(a), for example 10% Trade Discount.
- ii) The client confirms that a discount was deducted from the invoiced price.
 - A) The client verifies if the discount was **granted at the time of purchase**, and therefore, a factor in fixing the price.
 - I) Quantity discount earned by purchasing a predetermined quantity, either in a single transaction or over a given period, are normally acceptable.
 - II) Turnover discounts granted retrospectively at the end of a predetermined period, for example a year are not acceptable for purposes of determining the Customs value.
 - B) The client verifies what **triggered** the discount, for example a 10% discount is granted if the importer pays within fifteen (15) days.
 - C) The client verifies if the discount was **earned** by the importer, for example if a 10% discount is granted to the importer on the provision that payment must be made within fifteen (15) days and the importer can prove that he/she paid the discounted amount within the given period, the discount can be accepted for Customs value purposes.
- iii) The client confirms if the importer undertook any **activities** for, or on behalf of the supplier as part of the payment under the contract of sale.
- iv) The client verifies if the importer **provided** other goods or services to a third party for or on behalf of the supplier as a condition of sale of the imported goods.
- v) The client verifies if the discount in question was received as credit in respect of earlier sales transactions.
- vi) The client confirms if the discount was granted because of the **existing relationship** between the importer and the supplier. Refer to Section 66(2)(a).

- vii) The client verifies if the discount granted comparable to the **industry norm**. Is the same percentage discount given to all other importers, same industry, in South Africa?
 - viii) The client **determines** the Customs value and ensures that all the provisions set in the Act, was adhere to before submitting the Customs declaration to Customs. Records must be kept of all the substantiating documentation, including a copy of the sales agreement or contract of sale, or any other factual evidence to confirm the discount structure and percentage granted in an audit pack if Customs want to verify the declared value. Refer to paragraph 2.12 of this document.
- f) The client checks if there is any other amount paid by the importer for the benefit of the supplier, including all payments made or to be made as a condition of sale of the imported goods by the importer to the supplier or by the importer to a third party to satisfy an obligation of the supplier. The term price actually paid or payable is defined as the total payment made, for imported goods by the importer to, or for the benefit of, the supplier and includes all payments made or to be made as a condition of sale of the imported goods by the importer to the supplier or by the importer to a third party to satisfy an obligation of the supplier. Therefore, when deducting any amount from the declared value it is not sufficient to merely show a separate amount on the invoice. Evidence to support the amount deducted must be made available.
- g) The client determines the value and ensures that all the provisions set in the Act are adhered to before submitting the Customs declaration to SARS.

2.9 Cost, Charges and Expenses

2.9.1 Analysis-, inspection- and selection fees

- a) Fees for services of the above nature, provided by the supplier or on his/her behalf and invoiced to the South African importer must be **included** in the Customs value.
- b) The conditions under which these services are rendered relate to the imported goods and therefore form part of the price actually paid or payable.

2.9.2 Associated costs, incidental to delivery

- a) Associated costs in terms of Section 67(1)(e) refer to:
 - i) The costs, charges and expenses related to the physical transport of the goods from the manufacturer's or supplier's factory to a warehouse pending export; and
 - ii) The costs, charges and expenses related to the physical transport and placing such goods on the truck, train, aircraft or ship **up to** the port or place of shipment, for export to South Africa.
 - A) All incidentals, other than cost of transport, loading and unloading costs, handling and insurance, incurred in the country of export in connection with the transportation of the goods from the supplier's premises and placing it on board at the port or place of export, would fall within the scope of associated costs.
 - B) Examples of such costs would be the cost of waybills, bills of lading, Customs clearance, dock dues, postages, telephone calls, courier's fees, packing charges, delivery costs, demurrage and so forth.
- b) Cartages in the dock area are part of handling, depending on when the handling takes place, for example before or after the FOB point of valuation.

2.9.3 Assists

- a) **Assistance by importer – free of charge or reduced costs**
- i) Section 67(1)(b) provides for an addition to the price actually paid or payable, namely the value of any goods and/or services which have been supplied:
 - A) Directly or indirectly by the importer;
 - B) Free of charge; or
 - C) At a reduced cost to the overseas supplier.
 - ii) The list of dutiable assists comprises four (4) categories of goods and services:
 - A) Materials, components, parts and similar items incorporated in the imported goods:
 - I) This provision covers tangible items which physically exist in the imported product.
 - II) The value to be added to the price paid or payable in determining the Customs value is the cost to the importer of manufacturing or otherwise acquiring it.
 - III) If a certain amount of waste occurs in the manufacturing of the product to be exported to South Africa, no allowance can be made in respect of that waste.
 - B) Tools, dies, moulds and similar items used in the production of the imported goods;
 - I) These items are used in production and their value enters into the imported goods only to the extent that they are used up or worn out in the process of production of the goods in question.
 - II) Apportionment is obviously necessary when dealing with this kind of assist, in addition to the establishment of a value for the assist as a whole.
 - III) The Customs value will be the cost of the tools, dies, moulds or similar items. However, the cost must be allocated over the number or quantity of the goods produced or anticipated to be produced during the foreseeable lifetime of the production equipment supplied by the importer.
 - C) Materials consumed in the production of the imported goods; and
 - I) This category includes catalysts, lubricants, abrasives and similar materials which do not become a part of the imported goods, for example a chemical intermediate which is transformed in the manufacture of the final product.
 - II) The value to be added to the price paid or payable in determining the Customs value is the cost of acquiring it.
 - III) If a certain amount of waste occurs in the manufacturing of the product to be exported to South Africa, no allowance can be made in respect of that waste.
 - D) Engineering, development, artwork, design work and plan and sketches undertaken elsewhere than in South Africa and **necessary for the production** of the imported goods.
 - I) This category deals with intangibles.
 - II) Only the listed intangibles require additions to the price to arrive at the transaction value. It could happen that these charges are already included in the value of tools, dies or moulds.
 - III) The Customs value should be the cost to the importer.
 - IV) See paragraph 2.9.17 of this document for more information on research and development as an assist.
 - iii) Such free of charged supplied goods or reduced cost goods will result in a lower price for the imported goods than the price that the supplier would have charged if such goods or services (assists) were to be paid for in full.
 - iv) The items dealt with in this provision of the Act are in addition to charges commonly shown on an invoice. In many cases the additional costs will be included in the Customs value of the imported goods.
 - v) The following issues must be considered in order to establish whether the value of the assist must be added to the transaction value as provided for in the Act:
 - A) The goods or services must have been supplied directly or indirectly by the importer free of charge or at a reduced cost. Several points must be noted:
 - I) The goods or services need not originate in the country of importation. What matters is that they are supplied by the importer, regardless of where they come from.
 - II) The importer need not own or make the assist. The importer may supply it indirectly by paying a third party who supplies it to the supplier or producer. The payment to a third party may take the form of a royalty or licence fee.
 - III) The reference to reduce costs implies that the measure of the amount of the assist is the cost to the importer – not some other complicated manner of valuation.

- B) The assist must be used in connection with the production or sale for export of the imported goods.
- C) The value of the assist must not already be included in the price.
- D) The value of the assist must be apportioned as appropriate to determine the amount properly attributable to the particular goods being valued for Customs purposes.

b) Value of the assist

- i) The value of the assist is either:
 - A) The total cost of their acquisition; or
 - B) The total cost of producing the assist as reflected in the records of the producer of the assist, in accordance with Generally Accepted Accounting Principles or International Financial Reporting Standards GAAP/IFRS.
- ii) No allowance must be made in respect of any waste that occurs in the manufacturing process of the product to be exported to South Africa.

c) Apportioning the value of the assist

- i) Once a value has been determined for the dutiable assist, it is necessary to apportion that value to the imported goods.
- ii) The method of apportionment used will depend upon the documentation provided by the importer and can be done as follows:
 - A) The value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one (1) time;
 - B) The importer may request that the value be apportioned over the number of units produced up to the time of the first shipment; or
 - C) The importer may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for production.

d) Determine whether any dutiable assists must be added to the Customs value

- i) The client determines if the importer supplied any materials or services to the supplier or manufacturer. Full details of what was supplied and when must be kept for record purposes. Refer to paragraph 2.12.
- ii) If assist has been provided the client verifies if the supply was made once only or on a continuous basis.
 - A) If only supplied once, the Customs value of only this consignment must be uplifted with the amount of the assist; or
 - B) If supplied on a continuous basis, obtain details of what has been supplied, what has been imported and what still needs to be imported.
 - C) Apportion value of assist to the importations.
- iii) The client checks if the importer did incur the cost of transport, foreign duties, taxes or other charges.
 - A) If the answer is "yes", the total or partial cost of the charges could be dutiable and must be included in the Customs value, if not already included; or
 - B) If the answer is no establish who paid for these charges and determine the dutiability and if the cost is already included in the Customs value.
- iv) The client ensures that copies of all the documentary evidence relating to the value of assists are kept for record purposes, for example an agreement, invoices if the materials were purchased, details of what was supplied, payments by the importer, costs of production, etc. Refer to paragraph 2.12 of this document.
- v) The client keeps details of the imported goods to which the supplied goods relate.
- vi) The client verifies whether all the goods contracted for have been imported. If there are still goods outstanding the client must obtain the detail of what has been imported and what still needs to be imported. Apportion the value of assist to the importations determining a factor using the information on hand.
- vii) The client determines the Customs value and ensures that all the provisions set in the Act, was adhered to before submitting the Customs declaration to Customs.

2.9.4 Bank charges

- a) **Foreign** bank charges, normally reflected on the supplier invoice, must form part of the Customs value as it is not specifically mentioned in Section 67(2) as a deductible element.
- b) If the importer has paid a **local** bank a fee, this amount cannot be added to the Customs value as it is not specifically mentioned in Section 67(1) as a dutiable element.

2.9.5 Brokerage

- a) Section 67(1)(a)(i) provides for adjustments to the price actually paid or payable in ascertaining the Customs value. The cost of **brokerage** shall be added to the price actually paid or payable to the extent that they are incurred by the importer but are not included in the price.
- b) When determining the transaction value of imported goods it will be necessary to include the value of brokerage incurred by the importer. It is clear from the provisions of Section 67(1) that brokerage payable by the supplier, but which are not charged to the importer, could not be added to the price actually paid or payable.
- c) The term broker generally refers to a middleman or agent who does not act for his/her own account. He/she acts for both importer and supplier and usually has no role other than to put the parties of the transaction in touch with each other.
- d) Where the supplier of the goods pays the broker the total brokerage will normally be included in the invoice price and no action is needed for valuation. Where brokerage is not included but paid separately by the importer to the supplier it must be added to the price paid or payable.
- e) The broker may be paid directly by the importer or each of the parties to the transaction may pay part of the brokerage. In these cases the **importer's share** of the brokerage fee must be **added** to the price actually paid or payable in so far as it has not already been included in the invoice price.
- f) Payment made in respect of brokerage paid by the supplier but which are not charged to the importer must not be added to the price paid or payable.

2.9.6 Buying commission

- a) Section 67(1)(a)(i) provides for an adjustment to the price actually paid or payable, in ascertaining the Customs value. The cost of **any commission other than a buying commission** shall be added to the price actually paid or payable to the extent that they are incurred by the importer but are not included in the price.
- b) In an agency relationship one (1) party is called the agent and the other party the principal. An agent is a person who performs actions on behalf of the principal. The fees the agent receives for his/her services are called commissions. Typically, the commission is equal to an agreed upon percentage of the price of the goods. In a buying agency the principal is the importer and in a selling agency the principal is the supplier.
- c) The question of whether or not payments made to the middleman or agent by the importer and not included in the price actually paid or payable should be added to that price will depend on the role played by the middleman and not on the term agent or broker by which he/she is known.
 - i) The treatment of commissions depends upon the exact nature of the services rendered by the third party. If the so called agent is acting on his/her own account and/or if he/she has a proprietary interest in the goods, he/she cannot be considered as a buying agent.
 - ii) Before an importer declares the commissions as non-dutiable buying commissions, the importer must be satisfied that the totality of the evidence demonstrates that the purported agent is a legitimate buying agent and not a selling agent nor an independent agent. The importer must be prepared to submit evidence which proves its claim.
 - iii) If the importer himself/herself goes abroad to negotiate the purchase, or if he/she sends a salaried employee, their travel expenses and salaries are costs of the importer and are not to be added to the price as an indirect payment for the goods. There is no more reason to include the cost of hiring an outside agent to perform the same function; hence the exclusion from the Customs value of a bona fide buying commission. The limitation to representation abroad must

be freely interpreted, so as to cover in full the commission of a buying agent who conducts negotiations partly in the exporter's country and partly in South Africa.

- d) The mere reflection of buying commission on an invoice will not entitle an importer to an automatic reduction in the Customs value of the imported goods.
- e) In deciding whether a buying agency relationship exists, all relevant factors must be examined and each case is ruled by its own particular facts. The fact that:
- i) A person or company is called a buying agent does not mean that he/she is in fact an actual buying agent.
 - ii) A company enters into a buying agency agreement with the importer does not mean that such a person is an actual buying agent. Having authority to act as a buying agent is not the same as actually performing as one (1).
- f) What needs to be considered is whether the services actually performed by the agent are what the parties agreed to and whether such actions are consistent with the services rendered by a **bona fide** buying agency.
- g) Before an amount for commission can be deducted from the invoiced amount, the importer must be able to substantiate the answers to the following questions with supporting documentation. The middleman or agent:
- i) Produce (in whole or in part) or control the production (in whole or in part) of:
 - A) The imported goods or any other goods whose value would be taken into account in determining, or attempting to determine, the transaction value of the imported goods; or
 - B) Any other goods of the same class as goods referred to in the previous subparagraph.
 - ii) Supply, or control the supply of, any services:
 - A) Whose value would be taken into account in determining, or attempting to determine, the price of the imported goods; or
 - B) Any other services of the same class as the services referred to in the previous paragraph;
 - iii) Transport the imported goods, or any other goods referred to in the first subparagraph, within any foreign country, between a foreign country and South Africa, or within South Africa, for any purpose associated with the manufacturing or importation of those imported goods;
 - iv) Purchase, exchange, sell or otherwise trade any of the goods, directly or indirectly, referred to in (i) or supply any of the services referred to in (ii) other than in the capacity of an agent or middleman of the importer;
 - v) In relation to any of the goods referred to in (i) or any of the services referred to in (ii):
 - A) Act as an agent or middleman for or in any other way represent the producer, supplier or vendor of the goods or services; or
 - B) Otherwise be associated with any such person except as the agent or middleman of the importer; or
 - vi) Claim or receive, directly or indirectly, the benefit of any:
 - A) Commission,
 - B) Fee; or
 - C) Other payment (other than the commission received from the importer for the services rendered by that person in the transaction), in the form of:
 - I) Money,
 - II) Letter of credit;
 - III) Negotiable instruments, or
 - IV) Any goods or services, from any person as a consequence of the import sales transaction.
- h) Payments for services rendered on behalf of the importer, for example packing or inland freight, and arranged by the buying agent must be reflected separately on the invoice and cannot form part of the buying commission amount. If the amounts charged for the services performed by the buying agent as agreed in the buying agent's agreement is not identified separately on the invoice and the agent cannot submit proof of the amounts charged by the service provider, the buying commission amount will be included in the transaction value as the agent will be considered a selling agent or an independent agent.

- i) Where an agent is involved in the import transaction and the importer cannot establish the agent's role as an actual buying agent, depending on the facts presented, the agent will be considered either a selling agent or an independent agent. An importer who declares commissions as non-dutiable buying commissions without the evidence to back up its claim would not be exercising reasonable care and may be subject to penalties or other enforcement compliance action.
- j) Buying commissions are included in the transaction value of the imported goods when they are part of the total payment made by the importer to the supplier. If any commission is reflected on the supplier's invoice the commission will form part of the transaction value.
- k) It must be evident throughout the entire transaction that the goods under review are clearly destined for South Africa. It is not sufficient, for example to show after the imported goods was ordered and manufactured, at the time of shipment that it will be or was going to South Africa.
- l) **Determining whether the commission is Buying Commission**
 - i) The client checks if a separate charge was levied by the agent or the buying service.
 - A) Verify if there are any other third party invoices, for example agency invoices that pertain to the transaction under review.
 - B) Obtain copies of:
 - I) The invoices;
 - II) The sales agreement or contract where the parties to the sale have agreed to the terms and conditions or any other factual evidence in lieu of a sales agreement or contract; and
 - III) Any other agreement or contract pertaining to the sale under review, for example license agreement, research and development agreement, agency agreement, and so forth.
 - ii) If the commission is shown separately on the agent's invoice, the client verifies whether the agent is a selling agent, buying agent or independent agent.
 - A) Sometimes the contracts or agreements or documents do not clearly represent or reflect the nature of the activities of the so-called agent. In such circumstances, it is essential that **the actual facts of the case be determined**.
 - B) If the agent is related to the seller or to a person related to the seller, despite the existence of an agency contract, Customs is entitled to examine all the circumstances to determine whether the agent is, in fact, acting on behalf of the buyer and not on the account of the seller, or even on his/her own account.
 - C) Export houses or so-called independent agents who carry out similar activities but, unlike buying agents, have a proprietary interest in the goods and exercise control over the transaction or over the price paid by the importer, cannot be considered as buying agents.
 - D) The compatibility of fees charged in relation to services rendered should be examined. A buying agent may sometimes perform other services which are outside the scope of the usual functions of a buying agent. These additional services would affect the fees charged to the buyer.
 - iii) The client obtains full details of the functions carried out by the agent. Copies of the following documents must be requested:
 - A) Purchase agreement;
 - B) General correspondence between the parties to the transaction, for example telexes, e-mails, letters, etc.;
 - C) Agency contract clearly setting out the responsibilities of the agent;
 - D) If the buying agent re-invoices the importer, the supplier's invoice must be submitted to Customs to determine the price actually paid or payable to the seller of the goods as well as the amount of the buying commission.
 - E) Purchase orders;
 - F) Letter of credit or proof of payment; and
 - G) Any other documentation to substantiate the agency relationship. Sometimes the contracts or documentation do not clearly represent or reflect the nature of the activities of the so-called agent. In such circumstances, it is essential that the actual facts of the case be determined.

- iv) The client obtains full details of the amount of the commission and the method by which the agent derived or calculated it.
 - A) The compatibility of fees charged in relation to services rendered must be explained.
 - B) If the amount of the commission appears to be inconsistent with the commercial practice the circumstances of the sale must be examined. For example if freight was paid by the agent and the amount is included in the commission fee, it must be clearly stated.
- v) The client establishes who the party in control of the transaction is.
 - A) The following questions must be answered and documents must be kept for verification, Some of the questions that may be asked by Customs, but are not limited to:
 - I) Which party bears the risk of loss for lost or damaged imported goods?
 - II) Who absorbs the cost of shipping and handling?
 - III) Which party controls the manner of payment for the goods?
 - IV) Could the importer purchase from the manufacturers without using the services of the agent?
 - V) Was the middleman operating an independent business primarily for its own benefit?
 - VI) Is the middleman financially detached from the manufacturer or supplier?
 - VII) What do the commercial documents show? (e.g. how are the parties referred to in the commercial documents; is there a buying agency agreement; is there a purchase agreement and if so, who are the parties thereto).
 - B) The treatment of commission for Customs valuation purposes depends upon the exact nature of the services rendered by the parties to the transaction.
- vi) The client establishes whether the commission reflected on the invoice can be proven to be buying commission. If not, the amount must be included in the Customs value.
- vii) The client determines the Customs value and ensures that all the provisions set in the Act, was adhere to before submitting the Customs declaration to SARS.

2.9.7 Confirming commission

- a) Confirming commission is not considered to be a commission in the same way as buying and selling commissions, because it is more in the nature of a premium for insurance against the risk of non-payment for the goods.
- b) If the importer pays the commission to the supplier or to a third party as a condition of sale of the imported goods then it is **dutiable**. Where the importer initiates the arrangement and pays the charge on his/her own behalf, the commission is **not dutiable** because it is not a condition of sale and the payment is not of benefit to the supplier.
- c) The confirmation or the guarantee of the payment for the goods by the importer can be undertaken through normal banking channels, government agencies and insurance companies or specialised commercial companies dealing with such matters called confirming houses, which act either for importers or for suppliers. Confirming commission may be represented by other names in other countries.

2.9.8 Containers being one (1) with the goods

- a) Section 67(1)(iv) provides for the cost of containers which are treated as being one (1) for Customs purposes with the imported goods to be added as an adjustment to the Customs value, provided:
 - i) The cost are incurred by the importer; and
 - ii) It is not included in the price paid or payable of the goods being valued.
- b) The following containers can be considered as being one (1) with the goods:
 - i) Containers specially shaped or fitted to contain a specific article or set of articles - they are designed specifically to accommodate the article for which they are intended. Some containers are even shaped in the form of the article they contain.
 - ii) Containers suitable for long-term use, for example they are designed to have durability comparable to that of the articles for which they are intended. These containers also serve to protect the articles when not in use, during transport or storage. These criteria enable them to be distinguished from normal protective packing material.
 - iii) Containers presented with the article for which they are intended, whether or not the article is packed separately for convenience of transport.

- iv) Containers of a kind normally sold with the specific article.
 - v) Containers that do not give the whole its essential character.
- c) Containers being one (1) with the goods will include, for example camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers specially shaped or fitted containers, however, do not apply to containers which give the goods its essential character, for example jewellery boxes.
- d) The containers covered in this provision are distinguished from the freight containers, the hire cost of which forms part of transport costs and delivery costs and therefore are covered in Section 67(2)(a).

2.9.9 Demurrage

- a) Demurrage is a general term used to indicate an extra fee for delays in delivering a product and it must be considered as extended transport costs, incidental to delivery of the goods on board a ship, to the point of shipment.
- b) In certain situations, particularly in respect of oil tankers, the ships may have to wait for days together before they can moor at the dock and unload the goods. This results in a ship detention charge or ship demurrages, which is ultimately paid by the importer.
- c) The application of this provision is limited to costs incurred before the arrival of the goods at the place of introduction into the Customs territory of South Africa. Demurrage costs incurred after the goods have arrived in South Africa are not to be included in the Customs value as they come under the heading of post landing charges.

2.9.10 Drayage

- a) Drayage describes a logistical service in the shipping industry paid to:
- i) Move the goods from the loading dock to the location;
 - ii) Remove, store and return the empty crates, if any; and
 - iii) Move the repacked goods back to the loading dock.
- b) Drayage service is most often used for:
- i) Large, heavy imported goods, where space can become a problem; or
 - ii) Trade shows where a large number of vendors gather in a large exhibition area with a large number of products. The exhibit sponsor would assign and recommend a drayage service for the entering and exiting of freight and products. Due to the sheer volume of goods, it would create mass confusion if the individual vendor transported their own goods or equipment or had to arrange manpower to manage the receiving and storing of all the exhibit freight.
- c) When deciding whether drayage must be included in the value, Customs will have to establish where and when the cost became payable as it pertains specifically to transportation charges. The charge of drayage would be dutiable if:
- i) The charge is not included in the price actually paid or payable for the goods imported; and
 - ii) Drayage is incidental to the delivery of the goods at the port or place of export, in the country of export and placing those goods on board ship or any vehicle for export to South Africa.
- d) Section 67(4) refers specifically to the port or place of export and is cross referenced to Section 67(1)(e) (transportation costs to place of shipment - dutiable charges) and Section 67(2)(a) (transportation costs from place of shipment - non-dutiable charges).
- e) This means that all charges or costs that occur prior to the goods being loaded on the ship must be added to the price actually paid or payable for the goods when sold for export to South Africa.

2.9.11 Freight charges

- a) When ascertaining the Customs value of any imported goods in terms of Section 66(1) freight charges, distinguishable from the invoiced price and directly associated with the movement of the goods, either to the place or from the place of export, must be dealt with as provided for in Section 67, namely:
- i) Sections 67(1)(e) has rendered inland freight to the port or place of export dutiable for any cargo;
 - ii) Section 67(2)(a) has rendered the actual cost of international freight not dutiable, in all instances; and
 - iii) Section 67(2)(b)(ii) has rendered the actual cost of freight charges in South Africa not dutiable.
- b) If the charge for freight has been incurred for the transportation of the goods:
- i) **To** the port or place of export, then the charge must be **included** in the Customs value; and
 - ii) If it is for the transportation of the goods **from** the port or place of export, then the charge may be **deducted** from the price paid or payable, but only if it is included in the price of the imported goods.
- c) Goods which are exported to South Africa from any country but pass in transit through the territory of another country shall subject to conditions as may be prescribed by Rule, be deemed for valuation purposes to have been exported directly from the country from which the goods were consigned.
- d) The costs associated with freight and insurance are not the estimated costs, but the actual costs paid to the freight forwarder, transport company or so forth. However, if the actual costs paid are not available or cannot be verified, costs for international freight and insurance will not be excluded from the transaction value:
- i) If the importer does not know the actual costs for these charges at the time of clearance, the entire value without a deduction for freight, insurance and other costs must be declared.
 - ii) Customs must be advised that the entered or declared Customs value includes an unknown amount for freight, insurance and/or other costs, at the time of importation.
 - iii) **If deemed necessary, Customs will verify the freight charges paid to the carrier or shipping line in terms of Commentary 21.1 read with Article 8.3 and Article 17 of the Agreement.**
 - iv) If the actual amount becomes available the importer of record must inform Customs and apply for a refund in the prescribed time period.
- e) Not all charges which might initially appear to be transportation costs are, after close scrutiny, found to be transportation costs. For instance, the costs incurred to gas or fumigate goods are not transportation costs. They represent a supplier's overhead to make the goods more marketable, to enhance their value or to adhere to legislation of the country to which the supplier is exporting his/her goods and are therefore part of the price actually paid or payable.
- f) **Inland freight**
- i) In determining the transaction value of any imported goods, by using Method 1, there shall be:
 - A) **Added** to the price actually paid or payable for the goods to the extent that they are not included in the invoiced price:
 - I) The cost of transportation;
 - II) Loading;
 - III) Unloading;
 - IV) Handling;
 - V) Insurance; and
 - VI) Associated costs incidental to delivery of the goods at the port or place of export in the country of exportation and placing those goods on a truck, ship, aircraft, ship or other transportation at that port or place.
 - B) With regard to rail transport where goods are sold Free on Truck:
 - I) The transport cost to the border or other place must be included where the goods are switched or reloaded at such a border or other place onto another train engine or truck for final transportation to South Africa.
 - II) If the cargo on the train arrives from the last place of loading uninterrupted at the station in the country of destination, such transport costs would not be dutiable.

- ii) Expenses arising out of incidental storage of goods during transport must be regarded as charges associated with the transport of goods. They are, therefore, to be treated in accordance with Section 67(1)(e).

g) **International or overseas freight**

- i) Using Method 1 the following shall be **deducted** from the price actually paid or payable in terms of Section 67(2)(a), provided that it is included in the price actually paid or payable for the imported goods:
 - A) The cost of transportation;
 - B) Loading;
 - C) Unloading;
 - D) Handling;
 - E) Insurance; and
 - F) Associated cost incidental to the transportation of the goods from the port or place of export in the country of exportation (overseas) to the agreed port or place of importation in South Africa.
- ii) Suppliers often use estimated overseas freight amounts when framing an invoice. However, only the actual transport costs can be deducted, in other words those amounts ultimately paid to, for example the international carrier for the movement of those goods. For example:
 - A) The estimated freight charge is 10% of the FOB value.
 - B) When payment is made by the supplier to the international carrier or freight forwarder only 7% of the FOB value is paid to the service provider.
 - C) Only the 7% is deductible as the other 3% will then be regarded as part of the price as a benefit to the supplier.

h) **Freight charges occurred for transport in South Africa**

- i) Section 67(2)(b)(ii) provides that the cost of transport after importation shall not be included in the Customs value, provided it is distinguished from the price actually paid or payable for the imported goods.
- ii) The contract between the freight forwarder and the importer must clearly and separately stipulate the amount for freight in South Africa (if any). If the amount is not reflected or indicated separately, the total amount inclusive of local transportation fee will be added to the Customs value.

i) **Treatment of freight or transport costs**

- i) For the purpose of Sections 67(1)(e) and 67(2)(a), goods which are exported to South Africa from any country but pass in **transit** through the territory of another country shall, subject to conditions as may be prescribed by rule, be deemed for valuation purposes to have been exported directly from the country from which the goods were consigned.
- ii) The client confirms where the port or place of shipment or export is.
 - A) For the purpose of Sections 66 and 67 the port or place of export referred to therein shall be the place in the country of exportation where the goods in question:
 - I) Are packed in a container as defined in Section 1(2) or, if not so packed in a container, placed on board ship or on any vehicle which conveys them from, or across the border of that country; or
 - II) If they are ships or vehicles moving under their own power, where they finally leave that country for South Africa.
 - III) Refer to Section 66(11) and Section 67(4).
 - B) If the charge for freight has been incurred for the transportation of the goods **to** the port or place of export, then the charge must be **included** in the Customs value and if it is for the transportation of the goods **from** the port or place of export, then the charge may be **deducted** from the price paid or payable, but only if it is included in the price of the imported goods.
- iii) The client verifies the terms of sale under which the sale has been concluded between the importer and supplier. Refer to SC-CR-A-02-A03 – Terms of Sale – External Annex.
 - A) The terms of sale will indicate which possible transport or freight charges could be included in the invoiced price, for example inland transport or international freight.
 - B) Keep a copy of the sales agreement or contract where the parties to the sale have agreed on the terms and conditions in the audit pack. Refer to paragraph 2.12 of this document.

- iv) The client confirms if any transport or freight charges were included in the invoiced price.
 - A) If included, confirm the following, and continue with (v) of this Section:
 - I) If the term of sale is ex-works, request a breakdown of charges up to the point of FOB.
 - II) Any transport costs deducted from an ex-works invoice must be added to the Customs value as no transport costs were included in this price.
 - B) If not included the client must establish whom the party is that transported the goods to the place of shipment or export, and obtain the transport documents and service provider invoice, for example specific freight statement, to establish the amount for inland freight, if any, that needs to be added to the Customs value.
- v) The client establishes the true nature of the service rendered or provided under the umbrella of the freight charges. Not all charges which might initially appear to be transportation costs are, after close scrutiny, found to be transportation costs. For instance, the costs incurred to gas or fumigate goods, are not transportation costs. They represent a supplier's overhead to make the goods more marketable to enhance their value or to adhere to legislation of the country to which he/she is exporting his/his goods and are therefore, part of the price actually paid or payable.
- vi) The client verifies when in the movement of the goods were the cost for transport / freight incurred. When dealing with transport cost, it is very important to determine if the cost were incurred in the movement of the goods:
 - A) To the place of export or shipment; or
 - B) From the place of export or shipment.
- vii) The client confirms if the amounts deducted for the movement of the goods to the place of export or shipment, are distinguishable from the invoiced price (inland freight and associated charges). If the answer is "no", and the amounts are not distinguishable from the invoiced price, include the amount in the Customs value.
- viii) The client verifies if the cost for transport or freight were incurred **from** the place of export or shipment.
 - A) The actual amounts incurred may be deducted from the price paid or payable, but only if they are included in the price of the imported goods.
 - B) In terms of Section 67(2)(a), International freight is not dutiable.
- ix) The client obtains documentary evidence to verify the actual amount paid or payable for transport or freight to the freight forwarder or international carrier.
 - A) Where the actual amount paid or payable for the goods includes a charge for transportation beyond the point of export, for example CIF and CIF and C prices, the deductions must be made on actual costs.
 - B) The actual costs would be those amounts ultimately paid to the international carrier or freight forwarder for the movements of those goods subject to the transaction.
- x) The client verifies if any amount for inland transport was paid. Any inland freight amount must be added to the Customs value, provided that the charges are incurred by the importer:
 - A) In terms of Sections 67(1)(e), inland freight to the place of shipment or export is dutiable for any cargo; and
 - B) In terms of Section 67(2)(b)(ii), freight charges in South Africa are not dutiable.
- xi) The client determines the Customs value and ensures that all the provisions set in the Act, was adhere to before submitting the Customs declaration to Customs. Records must be kept of all the substantiating documentation in an audit pack if Customs want to verify the declared value. Refer to paragraph 2.12 of this document.

2.9.12 Fumigation or gas charges

- a) Not all charges which might initially appear to be transportation costs are, after close scrutiny, found to be transportation costs. For instance:
 - i) The costs incurred to gas or fumigate goods to protect them against an infestation by insects are not transportation costs.
 - ii) It represents a supplier's overhead to:
 - A) Make the goods more marketable;
 - B) Enhance their value; or
 - C) Adhere to legislation of the country of importation and is therefore, part of the price actually paid or payable.
- b) Under Method 1 these gassing and fumigation charges for aesthetic reasons would be considered to be a payment made by the importer to or for the benefit of the supplier and therefore form part of the price paid or payable.

2.9.13 Insurance

- a) The WTO Valuation Agreement limits the **inclusion** of insurance in the Customs value to those items listed in Section 67(1)(e), for example insurance.
- b) If the goods are insured by both the supplier and the importer both insurance premiums are to be considered for inclusion in the value for Customs duty purposes.
- c) When insurance covers transport after introduction into South Africa, **apportionment of the premium** is allowed if the actual costs can be distinguished. In many cases this is not possible and therefore a deduction from the full premium is not acceptable.

TYPE OF POLICY	ACTUAL COST OR APPORTIONMENT
General policy under which insurance costs are separately distinguished for each importation	The actual amounts can normally be determined at the time of importation
Global, blanket or block policy under which the premium is determined by applying an agreed percentage to the insured value	The actual amounts can normally be determined at the time of importation
Global, blanket or block policy under which the premium is set annually	Apportionment to individual consignments will be necessary

2.9.14 Loading, unloading and handling charges

- a) These charges and expenses are related to the movement of the goods onto the truck, aircraft, ship or other modes of transportation. It includes the filling and emptying of reusable commercial freight containers and the costs of transfer of goods directly from one (1) ship to another.
- b) In all export or import transactions certain expenses are incurred within the dock area in placing the goods on board a ship or other vehicle:
 - i) These charges are called the FOB charges, could be included in the invoiced price or charged separately and are sometimes attributed to:
 - A) Handling;
 - B) Cartage in the dock area; and
 - C) Dock duties.
 - ii) Whether these charges were incurred by the supplier or a middleman such as a shipper, they are required to be shown either on the invoice or on a covering statement and are **additions** to the Customs value, in order to make the Customs value comparable with the FOB price.
- c) **These charges are dealt with as follows:**
 - i) **In terms of Section 67(1)(e) to the extent that they are not included in the price actually paid or payable for the goods:**
 - A) The cost of transportation;
 - B) Loading;
 - C) Unloading;
 - D) Handling;
 - E) Insurance; and
 - F) Associated cost incidental to delivery of the goods **to the port or place of exportation** and placing those goods on board a ship or other vehicle, is to be treated as follows:
 - ii) **In terms of Section 67(2)(a) the following elements can be deducted from the price to the extent that they are included therein:**
 - A) Loading;
 - B) Unloading; and
 - C) Handling charges associated with the transport of the goods from the port or place of export **to the place of importation in South Africa.** (SC-CR-A-02-A01)

2.9.15 Packing or Export packing

- a) In determining the Customs value the cost of packing, whether for labour or materials, must be added as an adjustment element in terms of Section 67(1)(iii). Such inclusion must be made only if:
 - i) The costs are incurred by the importer; and
 - ii) It is not included in the price paid or payable of the goods being valued.
- b) The cost of packing the goods is normally included in the selling price. However, the cost of export packing is sometimes not included in the selling price. Export packing is used specifically to protect goods during long-distance transportation and is specifically provided for in the WTO Valuation Agreement as an addition to the Customs value.

2.9.16 Proceeds

- a) Section 67(1)(d), provides that, in determining the Customs value under the provisions of Section 66(1), there shall be added to the price actually paid or payable for the imported goods the value of any part of the proceeds of any subsequent sale, disposal or use of the imported goods that accrues directly or indirectly to the supplier.
- b) This provision is directly connected with Section 66(1)(c) which permits the use of the transaction value in the valuation of imported goods provided that no part of the proceeds of any subsequent resale, disposal or use of the goods by the importer will accrue directly or indirectly to the supplier unless an appropriate adjustment can be made in accordance with the provisions of Section 67.
- c) Accordingly, the condition in Section 66(1)(c) may become irrelevant through an adjustment made under Section 67:
 - i) Where an adjustment for proceeds is required and the relevant information is not available at the time of importation, it will be necessary to delay for a reasonable period of time the final determination of the Customs value under Article 13 of the WTO Valuation Agreement.
 - ii) Article 13 of the WTO Valuation Agreement states that the importer of the goods shall nevertheless be able to withdraw the imported goods from Customs if, where so required, the importer provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of Customs duties for which the goods may be liable.
- d) The proceeds of any subsequent resale, disposal or use of the imported goods should not be confused with the flow of dividends or other payments from the importer to the supplier that do not relate to the imported goods.
- e) A distinction between dividends and proceeds must be made:
 - i) The flow of dividends or other payments from the importer to the supplier that do not relate to the imported goods are excluded from the Customs value.
 - ii) Dividends, while also considered a profit is paid out to stockholders or shareholders.
 - iii) They relate to the firm's overall business and not just to the sale of the imported goods and therefore do not relate to the imported goods.

2.9.17 Research and development

- a) **Research and development as an assist**
 - i) Research and development is a complex technical subject. In each case it is crucial to examine the contractual arrangements and establish the reason for any payments that are being made and whether or not they relate to the imported goods.
 - ii) Where the cost of research is separately distinguished and does not relate to the production, sale or supply of the imported goods, the cost is excludible from the Customs value.
 - iii) In determining the Customs value under Section 66(1) there shall be added to the price actually paid or payable for the imported goods the value of the following goods and services:
 - A) Engineering;
 - B) Development;
 - C) Artwork;

- D) Design work;
- E) Plans and sketches undertaken elsewhere than in South Africa; and
- F) Necessary for the production of the imported goods.
- iv) The value to be added must be apportioned as appropriate.
- v) These costs can only be added:
 - A) Where supplied directly or indirectly by the importer;
 - B) Free of charge or at a reduced cost;
 - C) For use in connection with the production and sale of the export of the imported goods; and
 - D) To the extent that such value has not been included in the price actually paid or payable.
- vi) For the purpose of Section 67(1)(b)(iv), the WTO Valuation Agreement has determined that development excludes the cost of research. It may be necessary to separate the value of the research from the value of the development. If separation cannot be done by applying GAAP/IFRS the total price inclusive of research and development will be added to the Customs value.
- vii) Where research and development work is carried out within South Africa and is provided, directly or indirectly, by the importer of the goods free of charge or at a reduce cost, the value of such work is not dutiable.
- viii) Where the work is carried out elsewhere than within South Africa, the value of the development work necessary for the production of the imported goods is dutiable.
- ix) This provision relates to circumstances where research and development are provided by the importer as an assist. Where research and development costs are charged by the supplier of the imported goods, it is necessary to consider other provisions of the law.

b) Research and development supplied by the supplier or a third party

- i) Where the supplier of the imported goods includes the cost of research and development in the invoiced price, there is no provision within the Act for excluding the cost of pure research.
- ii) In such circumstances the importer receives nothing from the payment made other than the goods.
- iii) Therefore, the total payment made is regarded as the contract price for the goods and dutiable in full.
- iv) It does not matter if the supplier raised a separate invoice for the cost of research or identifies the research cost as a separate line item on the invoice or expressed the research cost as a percentage of the invoiced price for the goods.
- v) In all these instances the cost of research is a condition of sale and regarded as part of the transaction value for the goods.

c) Research and development under Computed value method

- i) It may be necessary to consider research and development costs under the provisions of Section 66(8) when determining the Customs value by using the Computed value method. This Section states that the computed value consists of the sum of:
 - A) The cost or value of materials and fabrication or other processing employed in producing the imported goods;
 - B) An amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to South Africa; and
 - C) The cost or value of items referred to in Section 66(8):
 - I) Cost of containers which are treated as being one (1) with the goods;
 - II) Packing costs and charges;
 - III) Assists (apportioned in a reasonable manner in accordance with GAAP/IFRS);
 - IV) Inland freight and charges; and
 - V) Engineering development work, artwork, etc., undertaken in South Africa and charged to the producer.
- ii) When in doubt the importer may consult with Customs.

- d) **Research and development as further payments (proceeds)**
- i) Where the importer is part of a group of companies or a multinational corporation it is not unusual for the parent company to seek to recover the costs of research and development for the group as a whole by means of a separate periodic charge, for example quarterly or annually.
 - A) This charge may be the subject of a research and development agreement, a technical assistance agreement or a royalty agreement.
 - B) The charge may be calculated by reference to the importer's sales proceeds or turnover. In this situation it is necessary to consider what benefit the importer of the imported goods receives in return for the payment made.
 - C) Where the only benefit is goods, then the payment must be regarded as related to the goods and therefore dutiable.
 - D) Where the benefit is irrelevant to the imported goods, the charge may be not dutiable, as a whole or in part.
 - ii) Such a situation may arise where the charge raised is to cover technical assistance, also referred to as know-how utilised in the manufacture of goods in South Africa.

2.9.18 Royalties and license fees

- a) Section 67(1)(c) provides for royalty and license fees payable by the importer to the supplier directly or indirectly to be added to the value.
- b) However, for the additions to be made, two (2) main conditions must **both** be satisfied, namely:
 - i) The payments must relate to the goods being valued; and
 - ii) The importer must pay them, either directly or indirectly, as a condition of the sale of the goods being valued.
- c) Any query raised when dealing with royalty and license fee cases will be two (2) folded: meaning that a client will have to verify and investigate the circumstances surrounding the:
 - i) Sale; and
 - ii) Royalties and license fees.
- d) The WTO Valuation Agreement does not attempt to define the terms royalty or license fees. It does however refer to payments, amounts paid, or credited, however described or computed. The payment or credit can be periodical or not, in respect to patents, trademarks and copyrights. Examples of royalties and license fees includes:
 - i) The making, use, exercise or vending of an invention or the right to make, use, exercise or vend an invention;
 - ii) The use of, or the right to use:
 - A) A design or trade mark;
 - B) Confidential information; or
 - C) Machinery, implements, apparatus or other equipment.
 - iii) The supply of scientific, technical, industrial, commercial or other knowledge or information; and
 - iv) The supply of any assistance that is ancillary and subsidiary to and is furnished as a means of enabling the application or enjoyment of any matter falling within any of the foregoing paragraphs.
- e) The fact that a royalty is paid by the importer to the supplier is not in itself sufficient reason for assuming that the whole or indeed any part of it is necessarily related to the imported goods and therefore includible in the Customs value.
- f) Any proposals for an addition to the price actually paid or payable must be fully supported by relevant facts and based on objective and quantifiable data.
- g) Licence fees and royalty payments, including those for patents, trademarks and copyrights, are generally dutiable and when determining the transaction value of goods under Method 1, such payments must, if not already included therein, be added to the price paid or payable. However, the question of the dutiability or otherwise for royalty payments and licence fees is complex and will generally have to be dealt with on a case-by-case basis, by examining the circumstances of each case with special reference to any agreements between the parties to a transaction.

- h) When royalties and licence fees are payable this is usually under the terms of a formal written agreement which details the responsibilities and liabilities of both licensor and licensee and sets out the requirement as to payments, etc.
- i) **Relate to the goods being valued**
- i) In many situations there will be a clear relationship between the payment of royalties or license fees and the imported goods, since the royalty or license agreement will contain a clear description of the goods or a list of goods covered by the royalty or license fee payment.
 - ii) Where the imported goods undergo, subsequent to their importation, minor processing which does not alter their essential characteristics, the royalty or license fee would still be related to the imported goods. For example a royalty paid for the use of a trademark on a machine which, for ease of transportation, is imported unassembled and assembled subsequent to importation, would also be related to the imported goods.
 - iii) Where the imported goods undergo a significant processing or where they are used as components in the manufacture of other goods, it would be advisable to closely examine why the royalty or license fee is paid.
 - iv) In determining whether a particular royalty or license fee relates to the imported goods for the purpose of Section 67(1)(c) what is most important to be examined is why royalty or license fees are paid.
 - v) An answer to the question 'why it is paid' will lead to the conclusion whether the royalty or license fee is related to the imported goods. In order to find this answer, the type, scope and value of the rights, information or services covered by the royalty or license fee must be determined.
- j) **Payable as condition of the sale of the goods being valued**
- i) The second requirement under which royalty or licence fee payments are to be added to Customs value is that these payments must be paid by the importer as a condition of sale of the goods being valued.
 - ii) It is the trade practice that traders often have to pay for the right to manufacture, use or sell the licensor's goods or for technical knowledge and assistance. As a result the rights relate to areas of manufacturing, marketing and use of the imported goods:
 - A) The manufacturing rights may include patents, know-how, rights of reproduction, rights of construction and so forth.
 - B) The marketing rights may include the use of trademarks, brand names, registered designs, customer lists, market surveys, payment for exclusive rights in particular markets and so forth.
 - C) The right of use would include use of the imported goods as an ingredient in a patented product or process and the use of any imported machine to make a patented product or practice a patented process. Therefore the subject matter of a royalty payment may be put in three (3) categories:
 - I) Rights;
 - II) Information; and
 - III) Services.
 - iii) If the payment is made to the supplier in the fulfilment of the contract of a sale, it is clearly a condition of the sale of goods.
 - iv) The entire financial circumstances surrounding the transaction must be examined to see the material aspects of the commercial arrangement between importer and supplier regarding the imported goods. For example:
 - A) If the supplier would not sell the goods without the royalty or license fee being paid or the importer could not buy the goods without paying the royalty or license fee, such an obligation must constitute a condition of sale.
 - B) The position would be similar even where the royalty or license fee is paid to a third person. This payment may be as a result of an obligation arising out of the sale contract between the supplier and importer or it may be in terms of a separate agreement between the importer and supplier.

- v) Royalties or license fees that an importer is required to pay to a licensor are:
 - A) Fees related to the exclusive use and sale of goods embodying the intellectual property. These are payments related to the intellectual property rights associated with the purchase and sale of the goods in question.
 - B) The commercial reality is that if the royalty payment is not made, the license giving access to the goods comes to an end and the importer no longer has the legal right to use the goods.
- vi) If a royalty is paid for a right, information or service which is necessary for the manufacture of the goods in the country of exportation or for their sale for export, it would naturally represent costs of the exporter-supplier which he/she must cover in the price of the goods being sold for export and any such royalty will be a condition of sale of the goods and a part of their Customs value.
- vii) A payment of royalty could be provided by way of:
 - A) Explicit agreement between importer and supplier;
 - B) Agreement between the manufacturer (supplier) and the licensor or holder of a patent; and/or
 - C) An agreement by which the licensee's customer pays the royalty to the licensor.

k) **Third party royalties**

- i) When an importer pays a royalty to an unrelated third party such a payment position must be resolved:
 - A) In each individual case; and
 - B) On the basis of the best information obtainable.
- ii) Cases will vary considerably in complexity.

l) **Rights for which royalty or license fees are paid**

- i) Trademarks
 - A) Royalties or licence fees paid for the right to use a trademark is to be included in the Customs value, under Method 1, when:
 - I) The royalty or licence fee refers to goods which are re-sold in the same state or which are subject only to minor processing after importation;
 - II) The goods are marketed under the trademark for which the royalty or licence fee is paid; and
 - III) The importer is not free to obtain such goods from other unrelated suppliers.
 - B) Where the imported goods are only an ingredient or component of goods manufactured in South Africa an adjustment in respect of the right to use a trademark in connection with the goods manufactured in South Africa will normally be inappropriate.
- ii) Royalties for know-how
 - A) The importer is often required to pay a royalty or part of a royalty in respect of technical information or know-how provided by the supplier.
 - B) Claims that the royalty or part royalty does not relate to the imported goods may be accepted where it can be established that the particular information has to do with something clearly unrelated to the imported goods and that the amount paid is reasonable having regard to what is supplied.
 - C) Where the payments relate to the provision by the supplier to the importer of information necessary to assemble and/or use the goods for the purpose for which they were designed will not be excluded from the Customs value.
- iii) Right to reproduce
 - A) The charges **for the right to reproduce** the imported goods in South Africa must not be added to the price actually paid or payable for the imported goods in determining the Customs value.
 - B) The term right to reproduce refers not only to the physical reproduction of the imported goods but also to the right to reproduce an invention, creation, thought or idea incorporated in the imported goods.
 - C) An analysis of the following elements may provide some direction when determining whether the importer's claim that the royalty fee is paid for the right of reproduction is valid, namely whether:
 - I) An idea or original work is incorporated in the imported goods;
 - II) The reproduction of the idea or work is the subject of a reserved right;
 - III) The right of reproduction has been assigned to the importer in the contract of sale or through a separate agreement; and/or

- IV) The holder of the reserved right has required remuneration for the assignment of the right to reproduction.
- D) The acquisition of goods covered by a reserved right usually does not, of itself, confer the right to reproduce those goods. In many cases, that right is obtained through a special agreement and each situation involving the right of reproduction must be considered on a case by case basis.
- iv) Right to distribute
 - A) Payment made by an importer for the right to distribute or resell the imported goods are not to be added to the price actually paid or payable for the imported goods if such payments are not a condition of sale for export to South Africa.
 - B) In the majority of cases these payments are made as a condition of sale between the supplier and the importer and must therefore be included in the Customs value under Method 1.
- v) Patents
 - A) It must be established what goods are being imported, for example completes including kits for assembly, sub-assemblies, components, small parts, ingredients, etc. Whether imported goods are complete or in parts, it must be established wherein rests the right or speciality for which the royalty is paid.
 - B) The position must be resolved in each individual case on the basis of the best information obtainable.
- vi) Research and development
 - A) Sometimes the royalty or licence fee is paid to finance research and development costs incurred by the supplier as licensor or for the supply of technical information about the use of the imported goods.
 - B) These costs are usually incurred before any product containing special features is produced commercially. Most if not all the research and development royalty payments are to be included in the value for Customs duty provided payment can be related wholly to the imported goods.
- vii) Assists
 - A) A common situation arises where the licensor provides the licensee, either directly or indirectly, with drawings, designs or instruction for manufacture of the goods or computer programs for incorporation outside South Africa in memory chips. The drawings, etc. are passed to the manufacturer so that the manufacturer can produce the specified items.
 - B) These items are assists under the terms of Section 67(b) and their cost or value is includible in the Customs value of the imported goods. Refer to paragraph 2.9.3 of this document.
- m) **Determining whether the royalty or licence fee is a dutiable charge**
 - i) The client verifies if any royalty or license fee payments are made to the supplier or a third party.
 - ii) The client confirms whether the royalties or license fee charged is related to the goods being valued.
 - A) Is the importer obligated to pay the royalties or license fees, either directly or indirectly, as a condition of sale of the goods being valued? If the royalty or license fee amount is not an obligation then the amount is not dutiable, and cannot be added to the Customs value.
 - B) Is the payment made for the right to reproduce the imported goods in South Africa? The amount is not to be included in the price actually paid or payable if the charge was levied for the right to reproduce in South Africa.
 - C) Is the payment for the right to distribute or resell the imported goods is a condition of sale for the export to South Africa of the imported goods? If the answer is "yes", the payment is to be included in the price actually paid or payable.
 - iii) The client determines the amount or mark-up that must apply to the transaction and keeps a copy of the sales contract and/or a copy of the royalty or license agreement as well as full details of the amount of the royalty and the method by which it is calculated as dutiable or not dutiable. Refer to paragraph 2.12 of this document.
 - iv) The client determines the Customs value and ensures that all the provisions set in the Act, was adhere to before submitting the Customs declaration to SARS.

2.9.19 Selling commission

- a) Selling commissions incurred by the importer with respect to the imported goods are one (1) of the specified additions to the price actually paid or payable.
- b) An addition is to be made for selling commissions, unless they are already included in the price. For example if the supplier pays its agent a commission and includes this amount in the price it charges the importer for the imported goods: no addition is made for the selling commission since it is already included in the price.

2.9.20 Storage charges

- a) When dealing with storage charges no distinction is made between ordinary storage warehouses and Customs warehouses where goods are stored under Customs control in a designated place without payment of import duties and taxes. The valuation treatment of storage charges and expenses would be the same in either case.
- b) The actual price paid or payable is the total payment (to be) made by the importer to, or for the benefit of, the supplier of the imported goods. The costs of activities undertaken by the importer on his/her own account, other than those for which an adjustment is provided for in Section 67, shall not be added to the price actually paid or payable.
- c) The treatment of storage expenses for Customs valuation purposes requires the determination of the exact nature of the expenses as well as where and by whom they are incurred:
 - i) Expenses incurred by the importer after purchase cannot be considered as a payment made, directly or indirectly, to the supplier or for his/her benefit. Therefore they must not form part of the price actually paid or payable and cannot be included in the Customs value.
 - ii) If these expenses represent activities undertaken by the importer on his/her own account, the costs of these activities are to be added to the price actually paid or payable for the imported goods only if Section 67 provides for adjustment in respect of them.
- d) There are situations where valuation questions or risk may arise. While this list of situations is not exhaustive, the examples serve to illustrate the general principles involved in the treatment of storage and related expenses. Each case must be considered individually having regards to the relevant circumstances. Examples include the following:
 - i) The goods are in storage abroad at the time of the sale for export to South Africa;
 - ii) The goods are put into storage abroad subsequent to their purchase but prior to their export to South Africa;
 - iii) The goods are put into storage in South Africa prior to their clearance for home consumption or use; or
 - iv) The goods are temporarily stored incidental to their transport.
- e) Generally the warehousing expenses incurred by the supplier will be recovered by the supplier as part of the invoiced price. If not, these expenses must be included in the Customs value if they constitute a payment made directly or indirectly to the supplier or for his/her benefit.
- f) Expenses arising out of incidental storage of goods during transport must be regarded as charges associated with the transportation of the goods. They are, therefore, to be treated in accordance with:
 - i) Section 67(1)(e); or
 - ii) If the expenses are incurred after importation, the charges must be treated in accordance with Section 67(2)(b)(ii) which provides that the cost of transport after importation shall not be included in the Customs value provided it is distinguished from the price actually paid or payable for the imported goods.

2.9.21 Cost of activities taking place in South Africa or Post importation costs

- a) In determining the Customs value under Method 1 the cost of:
- i) Activities occurring after importation which **are not included** in the price actually paid or payable for the imported goods are not to be included in the Customs value unless it is specifically provided for in Section 67(1) for example.
 - ii) This includes those charges which might be regarded as a benefit to the supplier but which are undertaken by the importer on his/her own account, such as:
 - A) Market studies and market research;
 - B) Advertising the brand or trademark under which the goods are going to be sold;
 - C) Preparation of showrooms; and
 - D) Participation in trade fairs and exhibitions.
- b) The cost of activities covered in Section 67(2)(b)(i) would be excluded from the Customs value even if:
- i) They take place prior to importation; and
 - ii) They are carried out as part of the installation of the imported goods, for example the charge for laying of a concrete foundation undertaken prior to the importation of large machinery and on which the machinery is subsequently erected on the foundation.
- c) When cost of activities which occurred after importation **are included** in the price actually paid or payable for the imported goods, they are not to be deducted from that price unless there is compliance with Section 67(2).
- d) **Confirmation of post importation work**
- i) The client verifies if there are any charges separately distinguishable on the invoice from the price of the imported goods. According to the Act, only charges identified separately from the balance of the price actually paid or payable, could be deducted from the Customs value.
 - ii) The client establishes whether the charges involved are in fact charges for construction, erection, assembly (see paragraph 2.9.21) as it could maybe involve assists. Refer to paragraph 2.9.3 of this document.
 - iii) The client keeps copies of any documentary evidence relating to the value of the charges, for example an agreement, invoices if the materials or equipment were purchased, details of what was supplied, payments by the importer, cost of production or work, etc. and copies of any technical assistance agreement. Refer to paragraph 2.12 of this document.
 - A) In determining the Customs value under Method 1, Section 66(1), when the cost of activities incurred by the buyer, but **not included** in the price actually paid or payable for the imported goods, they are not to be included in the Customs value unless it is specifically provided for in Section 67(1). This includes those charges which might be regarded as benefits to the supplier but which are undertaken by the importer on his/her own account, such as:
 - I) Market studies and market research;
 - II) Advertising the brand or trademark under which the goods are going to be sold;
 - III) Preparation of showrooms; and
 - IV) Participation in trade fairs and exhibitions.
 - B) When cost of activities which occurred after importation **are included** in the price actually paid or payable for the imported goods, they are not to be deducted from that price unless there is compliance with Section 67(2).
 - iv) The client checks if the equipment or work provided by the importer was used to facilitate the manufacture of the imported goods.
 - A) If the answer is “yes”, the cost of the equipment or work must be included in the value for Customs duty purposes as it is then an assist; or
 - B) If the answer is “no”, the cost of the equipment or work cannot be included in the value for Customs duty purposes as an assist.
 - v) The client determines the Customs value and ensures that all the provisions set in the Act, was adhere to before submitting the Customs declaration to Customs. Records must be kept of all the substantiating documentation in an audit pack if Customs want to verify the declared value. Refer to paragraph 2.12 of this document.

2.9.22 Interest

- a) In terms of Section 67(2)(vi) an adjustment can be made for interest charges. Interest charges can only be excluded from the Customs value where they are separately distinguished from the price actually paid or payable for the goods.
- b) Charges for interest under a financial arrangement entered into by the importer and relating to the purchase of imported goods shall not be regarded as part of the Customs value provided that:
 - i) The charges are distinguished from the price actually paid or payable for the goods;
 - ii) The financing arrangement was made in writing; and
 - iii) Where required, the importer can demonstrate that:
 - A) Such goods are actually sold at the price declared as the price actually paid or payable; and
 - B) The claimed rate of interest does not exceed the level for such transactions prevailing in the country where and at the time when the finance was provided.
- c) Any claim for the exclusion of the amount for interest charges from Customs value must be supported by documentary evidence, for example:
 - i) A copy of the finance agreement;
 - ii) A copy of the contract of sale of the goods if it contains the financing clause; and/or
 - iii) A copy of the accounting books clearly showing that the charge is noted as interest.
- d) Where the importer and supplier are related this may include consideration as to whether the price has been influenced by the relationship.
- e) For Customs purposes, **bona fide** interest charges will be those payments that are carried on the importer's books as interest expenses in conformance with GAAP/IFRS and do not include interest arising out of delayed or extended payments. This shall apply regardless of whether the finance is provided by the supplier, a bank or another natural or legal person.

2.9.23 Maintenance

- a) For the purpose of Section 67(2)(b)(i) when determining the transaction value of any imported goods in terms of Section 66(1) the Customs value shall not include the charges for maintenance undertaken after importation on imported goods such as industrial plant, machinery or equipment, provided that:
 - i) They are distinguished from the price actually paid or payable for the imported goods; and
 - ii) That the amount deducted can be proven as the actual amount or cost of the service provided.
- b) The terms maintenance and warranty is sometimes confused as the same charge. Maintenance does not include warranty charges. There is a fundamental difference between the two (2) concepts:
 - i) Maintenance is a form of preventative care on goods such as industrial facilities and equipment to ensure the upkeep of those facilities and equipment to a standard which enables them to perform the function for which they were acquired.
 - ii) Warranty charges. Refer to paragraph 2.9.24 of this document.
 - iii) Maintenance must always be performed, whereas warranty is only a contingency measure which might be invoked in the case of failure or under-performance of goods.

2.9.24 Warranty charges

- a) Warranty is defined as:
 - i) A form of guarantee on goods, such as motor vehicles and electrical appliances which covers costs of correcting defects (parts and labour) or replacement subject to certain conditions being met by the warranty holder.
 - ii) Warranty covers hidden defects in the goods, i.e. defects which should not exist and which prevent the use of the goods or reduce their usefulness.

- b) The supplier directly or indirectly bears the cost and undertakes the risk of warranty, the provision of which is reflected in the price for the goods. Alternatively the importer directly or indirectly bears the cost and undertakes the risk of warranty and the price for the goods takes this into account.
- c) Where warranty payments are included as part of the invoice value of the goods paid by the importer to the supplier or a third party to satisfy and obligation of the supplier they are:
- i) Considered to be dutiable as, at the time of importation, they are made to the benefit of the supplier as a condition of sale.
 - ii) The warranty cost forms part of the price paid or payable under Section 66(1).
- d) Where the **supplier** of the goods imposes the warranty on the importer, the total warranty charge will normally be **included** in the invoice price. In such cases there is no problem with regard to valuation. In cases where the warranty is not so included but paid separately by **the importer to the supplier**, it must be **added** to the price paid or payable.
- e) There may be cases where the importer decides to bear the cost of warranty on his/her own:
- i) In these circumstances any payments or other costs incurred by the importer for warranty are not part of the price actually paid or payable by application of the Note to Article 1 of the WTO Valuation Agreement. Under these circumstances the warranty undertaken by the importer is an activity undertaken by the importer on his/her own account.
 - ii) If the supplier gives an importer the opportunity to subscribe to an **extended warranty** arrangement this charge is dutiable. For instance, when purchasing an exclusive motor vehicle, the importer has opted to make use of the supplier's extended warranty option, even though the decision was that of the importer and not the supplier:
 - A) The extended warranty charge has now become a condition of sale; and
 - B) Must be included in the Customs value.
- f) Replacement goods under Warranty Agreement:
- i) When parts are delivered free of charge to the buyer in accordance with the initial contract some days or months after the goods were imported, in fulfilment of a warranty contract, they must be valued using the valuation methods provided for in Section 66.
 - ii) Importers may claim that the duties were already paid at the time of importation, since the price of the imported goods covered any potential warranty charges and therefore should not be assessed again on free replacement goods. However, the importer must be advised to return the faulty goods to the supplier and claim back the previous duties paid via a Customs refund.
 - A) Evidence account;
 - B) Compensation or buy-pack;
 - C) Clearing agreement;
 - D) Switch or triangular trade;
 - E) Swap; and/or
 - F) Offset agreement.
- g) With respect to Customs valuation, the first consideration would necessarily be one (1) of whether the conditions of Section 66(1) read with Section 67 would or would not preclude the application thereof to any transaction involving countertrade. In view of the number of different forms of countertrade it will be necessary to take a decision on the basis of the facts of each transaction.
- h) **Confirmation of warranty charges**
- i) Warranty covers hidden defects in the goods, i.e. defects which should not exist and which prevent the use of the goods or reduce their usefulness. This means:
 - A) The supplier directly or indirectly bears the cost and undertakes the risk of warranty, the provision of which is reflected in the price for the goods; and
 - B) The importer directly or indirectly bears the cost and undertakes the risk of warranty and the price for the goods takes this into account.
 - ii) The existence and the nature of services rendered by the parties involved, in connection with the sale are often not apparent from the commercial documents presented with the Customs declaration. In view of the importance of the interests at stake, the client will need to take whatever reasonable measures they consider necessary to ascertain the existence and precise nature of the services in question.

- iii) The client verifies if any warranty charges was paid by the importer to satisfy an obligation of the supplier. If the answer is “yes”, the warranty charge is considered to be dutiable.
- iv) If warranty charges are paid to the supplier, manufacture or third party, the client keeps a copy of the signed warranty agreement in the audit pack of this the Customs declaration.
- v) The client confirms if any ‘marketing activities’ (including warranties) was undertaken on the importer’s account. If the answer is “yes”, the costs of these charges are not to be included in the Customs value.
- vi) The client confirms if the importer is acting as a principal or an agent.
 - A) If acting as an agent, the costs of these charges are to be included in the Customs value; or
 - B) If acting as a principal, the costs of these charges may in part, or in whole not be dutiable. Refer to paragraphs 2.9.21 of this document.
- vii) The client determines the Customs value and ensures that all the provisions set in the Act, was adhere to before submitting the Customs declaration to Customs. Records must be kept of all the substantiating documentation in an audit pack if Customs want to verify the declared value.

2.10 Test Values

2.10.1 Transfer pricing and Customs value

- a) Transfer pricing is a term:
 - i) Used to describe a cross border transaction between two (2) related companies which leads to varying opinions as to what constitute price influence and Customs applies an interpretation of the test value provision, which is based on provision in the WTO Valuation Agreement.
 - ii) The WTO Valuation Agreement states that with regard to the application of the test value method, the importer must demonstrate that the transaction value closely approximates to a ‘test’ value previously accepted by the Customs administration.
- b) The Customs Officer will apply the WTO Valuation Agreement that has outlawed the use of arbitrary or fictitious values, when applying the identical or similar value methods, and more than one (1) transaction value of identical or similar goods is found, the lowest such value shall be used to determine the Customs value.
- c) Transfer Pricing documents can only be used for verification purposes and cannot be considered as sufficient evidence that the relationship between the importer and supplier did not influence the price actually paid or payable. Refer to SC-CR-A-02-A04 for more information.

2.10.2 Establishing whether a price has been influenced by the relationship

- a) The client verifies whether there is a relationship between the importer and the supplier in terms of Section 66(2)(a).
 - i) A declaration from the importer stating that there is a relationship with the supplier, but that relationship does not influence the price, will normally be accepted at the time of entry. It is when the importer is selected for a post clearance intervention that the declaration is tested. It does, however, not preclude the Customs Officer to stop or detain the goods if he/she so wishes in suspect cases. Refer to annex SC-CR-A-02-A04.
 - A) The relationship of the parties involved in the transaction is to be evaluated by an overall view of the entire situation, with the result in each case governed by the facts and circumstances of the individual case, and not by the labels that the parties may attach to the relationship.
 - B) The WTO Valuation Agreement or Act does not detail the information to be used in establishing that a relationship has not influenced the price in a sale of goods for export. The WTO Valuation Agreement takes into account that the valuation process need to operate in an effective and efficient manner while, at the same time, recognising the flexibility necessary under current international trade realities, there can be no real hard and fast rules laid down when it comes to deciding whether or not a relationship between the supplier and importer influenced the price for the imported goods.
 - C) Persons who are associated in business with one (1) another in that one (1) is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related only if they fall within the criteria as set out above.

- D) In declaring a value, it is the responsibility of the importer to ensure, to the greatest extent possible, that any relationship with the supplier has not influenced the price paid or payable for the goods. Whichever way an importer chooses to claim the acceptability of the price, the claim must be supported by factual evidence.
- ii) If there is a relationship and said relationship has been confirmed refer to paragraph 2.10.
- b) The client verifies whether the import company is a branch office of the supplier or the supplier's own employee. The parties may be regarded as being part of the same legal entity and a company cannot sell to itself and therefore the transaction would normally not be regarded as a sale. The transaction value cannot be applied in this case. Refer to SC-CR-A-03.
- c) The client supplies full details of the nature of the relationship, in order for Customs to establish what relationship the importer has with the supplier.
- i) The relationship can be verified through authoritative publications, statements by the importer, company office records, company file in the State Corporate Affairs, information file on member companies of the Chamber of Commerce, annual review of company, including balance sheet, list of shareholders etc.
- ii) The companies are related if:
- A) They are officers or directors of one (1) another's business;
- B) They are legally recognised partners in business;
- C) The one (1) is employed by the other;
- D) Any person directly or indirectly owns, controls or holds 5% or more of the equity share capital of both of them;
- E) One (1) of them directly or indirectly controls the other;
- F) Both of them are directly or indirectly controlled by a third person;
- G) Together they directly or indirectly control a third person; or
- H) They are members of the same family.
- d) The client verifies if the same goods that were sold to their related company are sold to unrelated importers within South Africa.
- i) If there is such a sale, proceed to the next paragraph of this section; or
- ii) If there is no sale to an unrelated importer within South Africa, proceed to paragraph (f) of this section.
- e) The client must ensure where the related importer obtains a lower price than the unrelated importer, that he/she obtains supporting information from the supplier on the following questions. Where the:
- i) Goods have been bought by the supplier and subsequently resold to the related importer; establish how the invoice price to the related importer reconciles with the buying-in price of the supplier; or
- ii) Goods are manufactured by the supplier; obtain details as to how the invoice price is calculated. It may be necessary for the supplier to provide such details. Ask the importer to confirm that the following elements are included in the invoice price and request a statement of the costs, including:
- A) Costs of materials;
- B) Labour costs;
- C) Overheads (direct and indirect);
- D) Selling expenses; and
- E) Profits.
- iii) In both cases, if the price is sufficient to recover all costs plus a profit which is representative of the firm's overall profit, Method 1 may be applied.
- f) If there are no sales of identical or similar goods to unrelated importers within South Africa, the client must confirm whether the related importer is able to purchase the goods at a comparable price to that charged either to an unrelated importer in the country of exportation or in a third country, or to other related importers in South Africa.
- i) The intention here is that this information would add to the weight of circumstantial data available to judge whether the price actually paid or payable has been influenced or not.
- ii) This comparison is not to be used as a test value within the meaning of Section 66(3)(b)(i).

- iii) The use of a price in the country of exportation or a third country for purposes of comparison must be exercised with great care. This basis of comparison would only be valid where the level of market development of the country of exportation or of the third country are comparable with that of South Africa, or the global marketing strategy of the supplier allows such a comparison to be made.
- g) If the price has been influenced by the relationship, the price must not be accepted for the purpose of Method 1. An alternative valuation method has to be used. Refer to SC-CR-A-03.

2.10.3 Relationship confirmation using the provided test values

- a) When a buyer or importer and seller or supplier is related it is possible that the price has been influenced by that relationship. The WTO Valuation Agreement states that the relationship alone shall not be grounds for rejecting the transaction value, if the importer can prove that:
 - i) Such relationship did not influence the price paid or payable; or
 - ii) The importer proves that the transaction value closely approximates to one (1) of the test values as provided for in Section 66(3)(b), which reflect transactions made between unrelated parties.
- b) The objective with a test value is that the importer must satisfy Customs that the relationship between the related manufacturer or supplier and the importer, had no effect on the selling price of the imported goods. The importer must forward that evidence to Customs to support his or her decision to use Method 1.
- c) In order to use one (1) of the test values referred to in Section 66(3)(b) as a test, that value must meet two (2) criteria, namely:
 - i) The goods to which the test value relates must be exported at the same or substantially the same time as the goods being appraised; and
 - ii) The test value used must be the Customs value of the goods to which it relates.
- d) When Customs is made aware of a transaction which may be used to establish a test value provided for in Section 66(3)(b), the following must be established before the transaction value can be considered as a test value:
 - i) Whether the transaction was made at the same commercial level and in substantially the same quantities as that of the goods being valued.
 - A) If the commercial level and quantities are comparable in terms of the transaction no adjustment for these factors is necessary; and
 - B) If there are differences in commercial level and quantity it will then be necessary to determine whether the price or value is affected by those differences.
 - ii) It is important to remember that the mere existence of a difference in commercial level or quantity would not of itself require that an adjustment be made.
 - A) Adjustment will be necessary only if a difference in the price or value results from a difference in commercial level, or quantity; and
 - B) The adjustment must be made on the basis of demonstrated evidence which clearly establishes its reasonableness and accuracy. If this requirement cannot be met, the adjustment cannot be made.
- e) This test must be applied on a case-by-case basis.
 - i) When the importer claims that transaction value is acceptable because the transfer price was settled in a manner consistent with the normal pricing practices of the industry in question, the importer must have objective evidence of the normal pricing practices of the industry in question, and present evidence that the transfer price was settled in accordance with these industry pricing practices.
 - ii) The pricing practices must relate to the industry in question which generally includes the industry that produces goods of the same class or kind as the imported. Same class or kind determinations necessarily take into account factors relating to the specific type of goods under investigation, and comparison to other function equivalent companies will not be allowed if they do not sell goods of the same class or kind as the imported goods under review.

2.10.4 Three (3) provided test values

- a) The alternative method that can be used by a client to establish the acceptability of transaction value is to demonstrate that it closely approximates certain test values pertaining to identical or similar goods exported at or about the same time as the imported merchandise under review.
- b) Under the test value method the transaction value between a related importer and supplier is acceptable if the transaction value of the imported goods closely approximates one (1) of the following at or about the same time as the goods to be valued:
 - i) The transaction value of identical or similar goods sold at comparable trade and quantity levels to unrelated importers in South Africa;
 - ii) The value, ascertained in terms of Section 66(7) or Deductive test method, of identical or similar goods imported into South Africa; and
 - iii) The value, ascertained in terms of Section 66(8), or Computed test method, of identical or similar goods imported into South Africa.
- c) The comparable test values must be values previously determined by Customs in accordance to an actual assessment of imported goods. For example a computed value calculation can only serve as a test value, if it represents a previous actual appraisal of goods. If the importer has information regarding possible test values pertaining to the related party transaction, this information must be brought to Customs attention.
- d) Importers often mistakenly believe that transaction value is acceptable for the imported goods when it is the same as the value calculated by the importer under the deductive value or the computed value method for those same imported goods. This is not the case. If there are no previous importations of identical or similar goods that were appraised under the transaction, deductive or computed value methods, there are no test values that can be applied.
- e) The same time referred to in the Act has not been legally defined, but it is to be taken as being within three (3) months or ninety (90) days of the date of acceptance of the entry in question.
- f) **Test value method of identical or similar goods**
 - i) Section 66(3)(b)(i) provides for the first test value method, the transaction value of identical or similar goods sold at comparable trade and quantity levels to unrelated importers in South Africa at or about the same time as the goods to be valued. This can include:
 - A) The transaction value in sales, between importer and suppliers who are not related in any particular case, of identical or similar goods for export to South Africa; or
 - B) The Customs value of identical or similar goods, as determined under Sections 66(4) and 66(5).
 - ii) A number of factors must be taken into consideration in determining whether one (1) value closely approximates to another value. Factors will vary from case to case and each must be treated on its own merits. These factors include:
 - A) The nature of the imported goods;
 - B) The nature of the industry itself;
 - C) The season in which the goods are imported; and
 - D) Whether the difference in values is commercially significant.
- g) **The Deductive or Computed test value method**
 - i) Another test for the acceptability of Method 1 is to theoretically value an importation by reference to the Deductive method - Method 4.
 - ii) If the deductive or computed test value referred to in Section 66(3)(b)(ii-iii), represents the Customs value in a sale of identical or similar goods between related parties, additional care must be taken before using that value as a test value.

- iii) It must be ensured that the percentage for profit and general expenses used to compute the deductive or computed value was formally approved by Customs:
 - A) The percentage for profit and general expenses used for the deductive value calculation must have been the percentage that was generally reflected in connection with sales in South Africa of goods of the same class or kind as those being appraised;
 - B) For the computed value, the percentage for profit and general expenses used must have been the percentage generally reflected in connection with export sales to South Africa of goods of the same class or kind as those being appraised;
 - C) The decision as to whether the transaction value closely approximates a test value must take into account any relevant factors and differences, including trade levels and quantity; and
 - D) The decision as to whether a difference between the transaction value of the imported goods being appraised and the test value is commercially significant will be made after all other relevant factors have been taken into account.
- iv) An assessment of the commercial significance of a difference in values will take into account that market conditions and pricing practices may vary from industry to industry.

2.11 Confidentiality

- a) All the information which is by nature confidential or which is provided on a confidential basis for the purpose of Customs valuation shall be treated as strictly confidential in terms of Article 10 of the WTO Agreement on the implementation of Article VII of the General Agreement on Tariff and Trade (GATT) 1994 (the Agreement) and Section 4(3).
- b) The confidential information shall not be disclosed without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

2.12 Record keeping

- a) The recipient or importer of the goods imported or exported by post 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.
- d) **Clients using electronic record keeping systems must ensure that:**
 - i) **The format that will be used has been approved by Customs;**
 - ii) **Backups are done at the end of each business day; and**
 - iii) **Any information contained in such electronic system can be printed upon request by a Customs Officer.**

2.13 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 or cancelation of **their deferment account**, registration, license, accreditation and/or **designation**.

2.14 Promotion of Administrative Justice Act

- a) Any action on behalf of the State, which may be detrimental to any person, organisation or company, must be made in a fair manner with good reason(s). All penalties are therefore carefully deliberated, uniformly implemented and reasons and/or evidence for such actions maintained.
- b) 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.
- c) 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.
- d) 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.
- e) 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.
- f) 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.
- g) 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.
- h) 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.

2.15 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 clients are unhappy 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:	Customs and Excise Act No. 91 of 1964: Sections 39A, 41, 65, 66, 67, 71, 72, 74 and 74A Customs and Excise Rules: Rule 39.04, 41.01, 41.02, 41.03, 41.04, 41.05, 65.01, 65.02, 65.03, 66.01, 66.02, 66.03, 66.04 and 66.05 Harmonised Tariff System: Schedule 1 part 2B
Other Legislation:	Promotion of Administrative Justice Act No. 3 of 2000: Section 3 and 5 Promotion Of Access To Information Act No. 2 of 2000: All
International Instruments:	WTO Agreement on Implementation of Article VII of the GATT 1994: All Kyoto Convention General Annex Chapter 9 – Information, Decisions and Rulings supplied by Customs: Standards 9.1 to 9.9 WTO Trade Facilitation Agreement Section I - Article 3: Advance Rulings 9 (b) (ii)

3.2 Cross references

DOCUMENT #	DOCUMENT TITLE
SC-CA-02	Internal Administrative Appeal - External Policy
SC-CC-26	Alternative Dispute Resolution - External Policy
SC-CR-A-02-A01	Port or Place of Export – External Annex
SC-CR-A-02-A02	Articles to the WTO Valuation Agreement – External Annex
SC-CR-A-02-A03	Terms of Sale – External Annex
SC-CR-A-02-A04	Transfer Pricing and Customs Value – External Annex
SC-CR-A-02-A05	Completion of DA 55 – External Manual
SC-CR-A-03	Valuation of Imports - External Policy
SC-CR-A-07	Valuation of Exports - External Policy

3.3 Quality Records

NUMBER	TITLE
DA 55	Customs and Excise Valuation Questionnaire

4 DEFINITIONS AND ACRONYMS

Actual Value	<ul style="list-style-type: none"> a) The price at which such or like goods are: <ul style="list-style-type: none"> i) Sold for export to South Africa; or ii) Offered for sale in the ordinary course of trade under fully competitive conditions. b) To the extent to which the price of such or like goods is governed by quantity in a particular transaction, the price to be considered should uniformly be related to either: <ul style="list-style-type: none"> i) Comparable quantities; or ii) Quantities not less favourable to importers than those in which the greater volume of the imported goods is sold in the trade between the countries of exportation and importation. c) May be represented by the invoiced price, plus any non-included charges for legitimate costs which are proper elements (Section 67) of actual value and plus any abnormal discount or other reduction from the ordinary competitive price.
Agreement	WTO Valuation Trade Agreement
Appeal	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
Associated costs	In terms of Section 67 (2)(a), refer to, the costs, charges and expenses related to the physical transport from the port or place of shipment, for export to South Africa; for example delivery costs, demurrage
Bona fide	In good faith

Brokerage	Brokerage is a payment to a middleman, who does not act on his/her own account, for his/her participation in the conclusion of a contract of sale
Buying Agent	A middleman who acts for the account of an importer, rendering him/her services in connection with finding suppliers, informing the supplier or manufacturer of the desires of the importer, collecting samples, inspecting goods and, in some cases, arranging the insurance, transport, storage and delivery of the goods
Buying Commission	Fees paid by an importer to a buying agent for the service of representing the importer abroad in the purchase of the goods being valued
Commercial Level	The commercial stage at which a sale is concluded, for example: a) Between a manufacturer and a wholesaler; or b) Between a wholesaler and a retailer; or c) Between a retailer and an end user or customer
Commission	Payment made to an intermediary who acts on behalf of either the supplier of the goods (selling commission) or the importer (buying commission)
Condition or Consideration	Activities to be undertaken by the importer or supplier necessary for the settlement of the contract of sale, or for the determination of price
Confirming Commission	Fee paid by exporters to protect themselves against the financial risk of non-payment or insolvency on the part of the importer; can be undertaken through normal banking channels, government agencies, insurance companies or specialised commercial companies dealing with such matters
Demurrage	Compensation payable for keeping vessels in port
Dispute	A disagreement on the interpretation of either the relevant facts involved or the law applicable thereto, or both the facts and the law
Document	Any medium designed to carry and actually carrying a record or data entries; it includes magnetic tapes and disks, microfilms and so forth
FOB	INCOTERM: Free on Board Point of valuation: FOB contract of sale - All costs, charges and expenses up to the point where the goods are loaded into a container or, in the case of break bulk cargo, onto a ship or other vehicle, are dutiable
GAAP/IFRS	Generally Accepted Accounting Principles or International Financial Reporting Standards a) GAAP/IFRS refers to the recognised consensus or substantial authoritative support within a country at a particular time as to: i) Which economic resources and obligations should be recorded as assets and liabilities; ii) Which changes in assets and liabilities should be recorded; iii) How the assets and liabilities and changes in them should be measured; iv) What information should be disclosed and how it should be disclosed; and v) which financial statements should be prepared b) The specific areas of use of GAAP/IFRS are: i) Determination of adjustments under transaction value, for example the apportionment of assists; ii) Determination of usual profit and general expenses under the Deductive value method; and iii) Under the Computed value method, determine: A) The costs of materials, and fabrication; and B) The costs of profit and general expenses under Computed value method
GATT	General Agreement on Tariff and Trade, the basic agreement governing international trade in many areas since 1947. Also, the organisation in Geneva created to administer the Agreement.

Identical Goods	Goods which are: a) Produced in the same country; b) Produced by the same producer; c) The same in all respects including: i) Physical characteristic; ii) Quality; and iii) Reputation; d) But which excludes minor differences in appearance; e) But does not include goods incorporating or reflecting: i) Engineering; ii) Development work; iii) Art work; iv) Design work; v) Plans; or vi) Sketches, under taken in South Africa
INCOTERMS	International Commercial Terms - International Rules for: a) The interpretation of trade terms; and b) Aiming at defining the liabilities of parties as clearly and precisely as possible.
Independent Agent	A middleman who acts on his/her own account
Indirect Payment	Payment for the imported goods by the importer to a person other than the supplier, including the buyer, to satisfy any obligation of the supplier; e.g. the settlement by the importer, whether in whole or in part of a debt owed by the supplier
Ordinary course of trade, under fully competitive conditions	Excludes any transaction wherein: a) The importer and supplier or manufacturer are not independent of each other; and b) The price is not the sole consideration and excludes from consideration prices involving special discounts limited to exclusive agents.
Package Deal	An agreement to pay a lump sum for a correlated group of goods or a group of goods sold together, the price paid or payable being the only consideration
Port or Place of Export	The place in the exporting country where the goods to be exported to South Africa is loaded into a container or, in the case of break bulk cargo, onto the ship or other vehicle, in which they are to be removed from that country en route to South Africa
Price Actually Paid or Payable	The total payment made for imported goods by the importer to, or for the benefit of, the supplier, including all payments made or to be made as a condition of sale of the imported goods by the importer to the supplier or by the importer to a third party to satisfy an obligation of the supplier
Profit Sharing	The importer pays the supplier a further sum resulting from, or to take account of, profit realised on the imported goods
Related (Relationships)	Persons shall only be deemed to be related in terms of Section 66(2)(a), if: a) They are officers or directors of each other's business; b) They are legally recognised partners in business; c) The one (1) is employed by the other; d) Any person directly or indirectly owns, controls or holds 5% or more of the equity share capital of both of them; e) One (1) of them directly or indirectly controls the other; f) Both of them are directly or indirectly controlled by a third person; g) Together they directly or indirectly control a third person; or h) They are members of the same family.
Restriction	Conditions which restrict the importer's freedom to use or resell the goods as he/she wishes
Royalties And License Fees	Payments to a person for, inter alia, the use of that person's patent or design rights, processes, recipes, trademarks, copyrights or for know-how
Sale	The transfer of property from one (1) party to another party for consideration
Sales transaction	Consideration means payment from one (1) party to another for the goods imported
Same class or kind	Goods produced by a particular industry or industry sector in the country from which the imported goods were exported, and falling within the same group or range of goods as the imported goods
Selling Agent	A middleman who acts for the account of a supplier, he/she seeks customers and collects orders, and in some cases he/she may arrange for storage and delivery of the goods. Selling commission is a dutiable charge and must be included in the Customs value.

Selling Commission	Fees paid by a supplier to a selling agent for the service of representing the supplier abroad or locally in the purchase of the goods being valued
Similar Goods	Goods which are: <ul style="list-style-type: none"> a) Produced in the same country as the goods being valued; b) Created by the same or different producer; and c) Which although not alike in all respects, have due regard to: <ul style="list-style-type: none"> i) Their quality and reputation; and ii) The existence of trademarks; and d) Closely resemble the goods being valued in terms of: <ul style="list-style-type: none"> i) Component materials; and ii) Characteristics which enable them to: <ul style="list-style-type: none"> A) Perform the same functions; and B) Are commercially interchangeable with the goods being valued; e) But does not include goods incorporating or reflecting: <ul style="list-style-type: none"> i) Engineering; ii) Development work; iii) Art work; iv) Design work; v) Plans; or vi) Sketches, under taken in South Africa.
Sufficient Documents/ Documentation	The nature of the documentation to be produced must enable Customs to establish: <ul style="list-style-type: none"> a) The actual amounts paid for the service or goods; b) The role and function of the parties involved (importer, middleman and supplier); c) The actual services performed or paid for; and d) Must follow a chronological order from start to finish with regard to the transaction under review.
Transaction Value	Price actually paid or payable for the goods when sold for export to South Africa, adjusted in terms of Section 67
Undertaken	In the context of this document is to be understood as meaning carried out.
Valuation Fraud	Valuation fraud, which can be seen as any offence committed in order to (Attempt to): <ul style="list-style-type: none"> a) Evade payment of duties, levies or taxes on movements of commercial goods; b) Receive any repayments or other disbursements to which there is no proper entitlement; and/or c) Obtain illicit commercial advantage damaging to other legitimate business competition which leads to non-competitive local industries.
VAT	Value-Added Tax
VDN	Value Determination Number
VPB	Value in terms of Schedule 1 Part 2B
WTO	World Trade Organisation

5 DOCUMENT MANAGEMENT

Policy Owner	Senior Manager: Leveraged Legal Products (Tax, Customs and Excise)
Detail of change from previous revision	<ul style="list-style-type: none"> a) Inserted a sentence stating <ul style="list-style-type: none"> i) that Customs will verify the freight charges paid to the carrier/shipping line in terms of Commentary 21.1 read with Article 8.3 and Article 17 of the Agreement if deemed necessary ii) How loading, unloading and handling charges are dealt with b) Updated: <ul style="list-style-type: none"> i) Records keeping ii) PAJA iii) Penalties iv) Related information v) Appeals against decisions
Template number and revision	GC-TM-03 - Rev 9