South African Revenue Service

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CHAPTER 1: INTERPRETATION, APPLICATION & ADMINISTRATION OF THE ACT AND THESE RULES

- **INTERPRETATIONAL MATTERS**
- **DEFINITIONS (RULE 1.1)**
  - Two comments were made that deferment is only applicable to duty and not VAT
    - The exclusion of VAT in the definition is not an oversight; the deferment of VAT is dealt with in the Value-Added Tax Act. The Customs Duty Rules can only deal with deferment of duty because the CDA's scope is limited to duty
  - A question was raised whether "Customs Control Rules, 2016" relates to the rules of the Customs Control Act, 2014
    - In this regard see rule 41.42 of the Customs Control Rules. The definition in the Customs Duty Rules refers to the name given to those Rules in rule 41.42. Also note that rules made under an Act will refer to the year in which the rules are proclaimed, it does not have to reflect the same year as the empowering Act

CHAPTER 1: INTERPRETATION, APPLICATION & ADMINISTRATION OF THE ACT AND THESE RULES

- **CRITERIA FOR APPLICATION OF MATERIALITY PRINCIPLE (RULES 1.2 – 1.6)**
  - Rule 1.2 – 1.6: A comment was made that these rules do not align to Chapter 1 of the CDA but refer to Chapter 13
    - It is a technical decision to include these provisions in Chapter 1. It makes sense to include these rules in Chapter 1 even though the empowering provisions are in Chapter 13, as the rules deal with interpretational matters
  - Rule 1.2: A comment was received that rule 1.2(1) refers to a "reciprocal" system of preference for goods of South African origin whereas section 184 of the CDA refers to a "non-reciprocal" generalised system of preferences
    - This is an error and will be corrected

CHAPTER 1: INTERPRETATION, APPLICATION & ADMINISTRATION OF THE ACT AND THESE RULES

- **CRITERIA FOR APPLICATION OF MATERIALITY PRINCIPLE (RULES 1.2 – 1.6)**
  - Rule 1.2(2)(a): A recommendation was made to remove the "and" between subrules (2)(a) and (b) and to replace with "or"
    - This is not accepted as the two paragraphs are not stated in the alternative - both are interpreted for purposes of subrule (1)(d)
  - Rule 1.3(a), 1.4(b) & 1.4(d): A comment was made that the amount of R5 000 is not material in relation to companies like OEMS that deal with billions. It would not be fair to, for example, suspend or withdraw a deferment account for such a small amount
    - The amount will be increased to R10 000 in line with the amount in the Control Rules
    - It is to be noted that even though a breach is considered material the customs authority may still exercise its discretion

CHAPTER 1: INTERPRETATION, APPLICATION & ADMINISTRATION OF THE ACT AND THESE RULES

- **CRITERIA FOR APPLICATION OF MATERIALITY PRINCIPLE (RULES 1.2 – 1.6)**
  - Rule 1.4(b): A comment was made that the term "offence" needs to be defined
    - Where a word or term is not defined, the ordinary dictionary meaning will apply
  - Rule 1.5(c): A question was raised whether the degree of compliance with customs legislation will be considered or whether an application will totally be disregarded if there has been a minor incidence of non-compliance
    - There is no "degree of compliance" - an act or omission will either amount to compliance or non-compliance. What will however be taken into account in terms of paragraph (c) is the record of compliance, i.e. the recurrence of non-compliant behaviour and the severity of the breach

CHAPTER 1: INTERPRETATION, APPLICATION & ADMINISTRATION OF THE ACT AND THESE RULES

- **CRITERIA FOR APPLICATION OF MATERIALITY PRINCIPLE (RULES 1.2 – 1.6)**
  - Rule 1.5(e): Clarity was sought as to what makes something of "decisive significance" for purposes for paragraph (e)
    - If the fact or information was important enough to cause or influence the customs authority to grant an application. For example the location of a specific type of premises if there are specific requirements as to where it should be situated (in relation to a licensing application)
  - Rule 1.6: The question was asked "what is a material fact?"
    - Rule 1.6 determines when non-disclosure of a fact is to be regarded as non-disclosure of a material fact

CHAPTER 1: INTERPRETATION, APPLICATION & ADMINISTRATION OF THE ACT AND THESE RULES

- **CRITERIA FOR APPLICATION OF MATERIALITY PRINCIPLE (RULES 1.2 – 1.6)**
  - Rule 1.6(b): Comments were received questioning the amount of R100 in Rule 1.6(b) for purposes of materiality of a non-disclosure of facts
  - Rule 1.6 is an interpretational rule which determines the meaning of "material" when used in the CDA in particular provisions referring to a non-disclosure of facts. If a non-payment or underpayment of duty occurred due to a non-disclosure of facts, Customs will regard the facts to have been a non-disclosure of **material facts** if it resulted in an assessment of duty in an amount of R100 less than the duty amount would have been, had full disclosure been made. In terms of section 41(1) of the CDA there is a duty on the Commissioner to **correct any underpayment of duty** by recovering the amount of the underpayment, but subsection (2) states that underpayments of less than R100 need not be recovered

CHAPTER 3: PAYMENT OF DUTY, PENALTY AND INTEREST

- **CONDITIONS AND REQUIREMENTS FOR PAYMENTS BY ELECTRONIC FUNDS TRANSFER (RULE 3.4)**
  - It was proposed that SARS publish the names of banks that list SARS as a preconfigured beneficiary ID as contemplated in rule 3.4(a)
    - External Guide on SARS Payment Rules (GEN-PAYM-01-G01)currently contains a list of such banks
  - Clarity was sought on the process to be followed by banks to add SARS as a preconfigured beneficiary as contemplated in rule 3.4(a)
    - A bank must be approved by National Treasury to participate in the payment system between SARS and the National Revenue Fund. Once National Treasury approval has been obtained, the bank can contact SARS to initiate the process to implement the agreed payment channel/s

CHAPTER 3: PAYMENT OF DUTY, PENALTY AND INTEREST

- **CONDITIONS AND REQUIREMENTS FOR DEBIT OR CREDIT CARD PAYMENTS (RULE 3.6)**
  - A concern was raised whether a payment reference number could be issued immediately by the customs authority at the place where the traveller or crew member enters the Republic, for purposes of payment by debit or credit card as contemplated in rule 3.6(e)
    - We will insert a footnote in rule 3.6(e) at "payment reference number" to indicate that the payment reference number in the case of a payment by a traveller contemplated in this rule is constituted by the traveller declaration number issued by the customs authority in respect of a Traveller Declaration submitted by a traveller

CHAPTER 3: PAYMENT OF DUTY, PENALTY AND INTEREST

- **APPLICATION FOR INSTALMENT PAYMENT AGREEMENTS (RULE 3.8)**
  - There was confusion regarding the interpretation of footnote 11 at rule 3.8(2)(b)
    - The commentator was of the opinion that footnote 11 contradicts rule 3.8(2)(b), but the footnote merely states that if an application is submitted by an ordinary representative, section 920 of the CCA (stating the general requirements for a submission by an ordinary representative), becomes applicable by virtue of section 228 of CDA. Section 228 of the CDA provides that certain sections of the CCA (including section 920) must be applied for purposes of implementation of the CDA
  - Clarity was sought on who may apply for the instalment payment agreement
    - Note the difference between **"applying"** and **"submitting"** an application. A registered person or licensee liable for payment of the outstanding amount who cannot pay the amount in a single payment may apply, and the application may be submitted either by that person (who is the applicant), or an ordinary representative, a customs broker or registered agent on behalf of that applicant

CHAPTER 3: PAYMENT OF DUTY, PENALTY AND INTEREST

- **APPLICATION FOR INSTALMENT PAYMENT AGREEMENTS (RULE 3.8)**
  - The application is required to reflect the name and contact details of the applicant's auditor or financial adviser (rule 3.8(2)(h)), and a commentator pointed out that not all applicants may have an auditor or financial adviser
    - Accepted
    - Rule 3.8(2)(h)will be amended to require such details only if the applicant has an auditor or financial adviser
  - A concern was raised regarding an applicant's ability to provide the documentary evidence of the applicant's income and expenditure as required in rule 3.8(3)(b)
    - Rule 41.28 of the Customs Control Rules provides for the submission of alternative documents capable of being used for the purpose of confirming, substantiating or evidencing the same information for which the relevant supporting document is required

CHAPTER 3: PAYMENT OF DUTY, PENALTY AND INTEREST

- **APPLICATION FOR INSTALMENT PAYMENT AGREEMENTS (RULE 3.8)**
  - A concern was raised that the list of contracts and tenders awarded to the applicant to be reflected on the application as required in terms of rule 3.8(2)(f) is a duplication of the supporting documents requested in terms of rule 3.8(3)(iv)
    - Accepted
    - Rule 3.8(2)(f) will be deleted
- **QUALIFICATION CRITERIA FOR PAYMENT OF OUTSTANDING AMOUNTS IN INSTALMENTS (RULE 3.9)**
  - A concern was raised regarding an applicant's potential inability to provide security required in terms of rule 3.9(2) upon approval of an application for an instalment payment agreement
    - Accepted
    - Rule 3.9(2) will be deleted and the provision of security will be added as one of the alternate qualification criteria specified in rule 3.9(1)

CHAPTER 3: PAYMENT OF DUTY, PENALTY AND INTEREST

- **INSTALMENT PAYMENT AGREEMENTS (RULE 3.11)**
  - Clarification was sought as to which Office is responsible for the final approval of, and communication on, instalment payment agreement applications
    - Debt management is the only division within SARS with this functionality and is currently present in the following Offices dealing with all values if debt is due and payable

      - Durban>Albany House

      - Western Cape> P166

      - Doringkloof Office

      - Alberton> ROR Office
  - Clarification was sought as to what document authorises the authorised person contemplated in rule 3.11(4)(b) to sign the agreement on behalf of an entity
    - This authorised person will be the "authorised officer" as defined
    - In the case of the "authorised officer" being a public officer, the appointment in terms section 246 of the TAA
    - In the case of the "authorised officer" not being a public officer, a resolution of the governing body of the entity authorising the director or employee or other official of the entity to act on its behalf

CHAPTER 3: PAYMENT OF DUTY, PENALTY AND INTEREST

- **APPLICATION FOR PERMISSION TO USE, OR TO PERFORM RESTRICTED ACTIONS IN RELATION TO ATTACHED GOODS (RULE 3.17)**
  - It was questioned whether the Customs Office serving the area where the attached goods are located as contemplated in rule 3.17(1)(b) is the most appropriate Office to submit a manual application of this kind
    - Accepted
    - Rule 3.17(1)(b) will be amended to require submission of a manual application (where permissible in terms of the CCA) to the Customs Office that issued the notice of attachment
- **DEBTORS COMPULSORY DISCLOSURE WHEN ATTACHED GOODS ARE SUJECT TO CO-OWNERSHIP (RULE 3.18)**
  - A proposal was received to define "debtor"
    - It is not necessary to define as it is a person who owes a debt as contemplated in the CDA to the Commissioner (sections 26 and 44 of the CDA deal with what constitutes a "debt" in terms of that Act)

CHAPTER 3: PAYMENT OF DUTY, PENALTY AND INTEREST

- **DEBTORS COMPULSORY DISCLOSURE WHEN ATTACHED GOODS ARE SUJECT TO CO-OWNERSHIP (RULE 3.18)**

  - A proposal was received to also make provision for a situation where the debtor making the disclosure does not have a customs code as required in terms of rule 3.18(2)(a)

    - Accepted
    - Rule 3.18(2)(a) will be amended to provide for alternative information in the case where a debtor does not have a customs code

- **TIMEFRAME FOR PAYMENT OF DEBT IN RESPECT OF LIEN GOODS BEFORE SALE (RULE 3.23)**

  - Clarification was sought whether the timeframe contemplated in rule 3.23 could be extended terms of section 908 of the CCA

    - Yes, see section 57(1) of the CDA which provides that the section be "read with section 908 of the Customs Control Act". Section 908 deals with the extension of timeframes

CHAPTER 3: PAYMENT OF DUTY, PENALTY AND INTEREST

- **TIMEFRAME FOR PAYMENT OF DEBT IN RESPECT OF LIEN GOODS BEFORE SALE (RULE 3.23)**

  - Clarification was sought whether or not the debt contemplated in rule 3.23 relates only to "uncontested" debt

    - The "pay now argue later" principle applies as contemplated in section 830 of the CCA, unless the customs authority on application agrees to the suspension of payment pending the conclusion of any proceedings contemplated in sections 826 and 827 of the CCA or if a court suspends payment

- **NOTIFICATIONS BY CUSTOMS BROKERS OF FAILURES BY PERSONS CLEARING GOODS TO PAY DUTY (RULE 3.25)**

  - Clarification was sought as to whether an amended clearance declaration could be used as the notification contemplated in rule 3.25

    - No, only when particulars on a clearance declaration are being amended can the amended declaration be used as the notification and in this instance no amendment is required

CHAPTER 4: REFUND AND DRAWBACK

- **APPLICATIONS FOR REFUNDS AND DRAWBACKS (RULE 4.3)**

  - An observation was made that although section 68 of the CDA refers to a "form" it is not mentioned in the rules. Can it be accepted that there will not be a form for purposes of applying for a refund or a drawback?

    - No, the phrase "form and format" in section 68 does not literally mean "a form". It should be noted that application must be submitted via eFiling
    - Manual submission of an application will however be allowed in limited circumstances as provided for in section 913 of the CCA
    - Rule 4.3 prescribes the information that the application must contain (whether submitted electronically or manually). Because submission in manual format will be allowed in certain circumstances, the relevant forms will, once developed according to the requirements of rule 4.3, be available on the SARS website

CHAPTER 4: REFUND AND DRAWBACK

- A further question was raised on whether the aforementioned form will replace forms DA66 and CR1 that are currently being used
  - New forms complying with the new requirements will replace the current forms as indicated above
  - Application in the form and format as prescribed in terms of section 68 read with rule 4.3 will be applicable to all refunds and drawbacks. However, rule 4.4 does provide for circumstances when submission of an amended clearance declaration may be regarded to be an application for a refund

- A proposal was made that rule 4.3(2)(h) be deleted. Subrule(2)(h) requires that an application for a refund or drawback must reflect a statement by the applicant indemnifying the Commissioner against any claim, loss or damage, cost and expenses arising as a result of payment of the refund or drawback to the applicant
  - Not accepted
  - The inclusion of the indemnity is a current requirement in terms of the 1964 Act
  - Section 923 of the CCA excludes SARS's liability for any damage or loss resulting from actions performed in good faith in the exercise of a power or performance of a duty
  - The remedial action to be relied on in this scenario will be a civil claim

CHAPTER 4: REFUND AND DRAWBACK

- Comments were received regarding the account into which a refund or drawback will be paid and the account against which set-off of refunds or drawbacks will take place

  - Refunds or drawbacks will be paid into the account designated in the registration or licensing application of the person to whom it is due (i.e. the person entitled to claim a refund or drawback in terms of proposed section 65A of the CDA). The person "entitled" is free to choose his/her own account or another account. Customs will be bound by this designation until amended by the registered person or licensee
  - Approved refunds or drawbacks will be set off against debt that has become due by the applicant (the person entitled to claim in terms of section 65A) and any balance will be paid into the account designated as mentioned before

CHAPTER 4: REFUND AND DRAWBACK

- **SUBMISSION OF AMENDED CLEARANCE DECLARATIONS AS APPLICATIONS FOR REFUNDS (RULE 4.4)**

- Clarification was requested regarding the grounds on which Customs can reject the amended clearance declaration serving as an application for refund
  - Section 171 of the CCA provides the requirements for acceptance of a clearance declaration by Customs. Rule 4.4(3) provides the requirements for an amended clearance declaration in order for it to serve as an application for a refund
  - Non-compliance with either or both the aforementioned provisions will result in Customs rejecting the amended clearance declaration as an application for a refund

- A concern was expressed that the five working days for re-submission in terms of rule 4.7(1) is insufficient and should be extended to 30 days
  - Not accepted
  - Similar comment was raised concerning rule 32.16 of the second draft of the rules under the CCA to which the response during the Control Rules Workshop was: "Not accepted. A technical rectification and resubmission of the application should, due to the technical nature of the correction, not take longer than five working days"

CHAPTER 4: REFUND AND DRAWBACK

- **TIMEFRAME FOR RE-SUBMISSION OF REJECTED APPLICATIONS (RULE 4.7)**

- A question was raised on whether an extension of the five days may be applied for under section 908 of the CCA as the view is held that a period of five days for re-submission may be insufficient in certain circumstances

  - An extension may be applied for in terms of section 908 provided that granting of such extension is not in conflict with section 228(3)(b) of the Customs Duty Act

CHAPTER 5: ASSESSMENT OF DUTY

- **WORKSHEET FOR PURPOSES OF SELF-ASSESSMENT OF DUTY (RULE 5.1)**
  - Clarification was sought as to the meaning of "relief" as contemplated in the footnote to rule 5.1(1)(e)
    - "Relief" in this context is akin to the rebates provided for in the current Schedules to the 1964 Act
- **NOTIFICATIONS TO CUSTOMS AUTHORITY OF INACCURACIES IN SELF-ASSESSMENTS (RULE 5.2)**
  - Clarification was sought as to when an amended clearance declaration will not be accepted by the customs authority
    - An amended clearance declaration will not be accepted if the declaration fails to meet the formal requirements of section 171 of the CCA e.g. if all information for a specific type of clearance declaration is not furnished - see s171(2)
    - After acceptance, the amended clearance declaration will be validated by the customs authority for accuracy and if correct will replace the existing version of the declaration upon release

CHAPTER 5: ASSESSMENT OF DUTY

- **NOTIFICATIONS TO CUSTOMS AUTHORITY OF INACCURACIES IN SELF-ASSESSMENTS (RULE 5.2)**
  - Clarification was sought as to whether after notification to the customs authority in terms of rule 5.2, a penalty will be levied
    - A penalty will be levied, however representations can made on the basis of the self notification to the customs authority for mitigation of the quantum of penalty as part of the administrative appeal process. It should be noted that in certain circumstances the customs authority will be obliged to prosecute for example in circumstances contemplated in section 205 of the CDA
  - Clarification was sought as to whether rules for sections 82(1)(b)(ii) and 82(4)(c)(i) of the CDA have erroneously been left out
    - No, rules are not contemplated at this stage

CHAPTER 6: TARIFF CLASSIFICATION OF GOODS

- **NOTICE BY CUSTOMS AUTHORITY OF CORRECTION OF ERROR IN TARIFF DETERMINATION OR RE-DETERMINATION (RULE 6.2)**
  - A recommendation was made that rule 6.2(c) should not require the name and contact details of the customs officer
    - Not accepted
    - The details prescribed are those of a contact officer to whom enquiries can be directed about the notice of correction
    - This officer may not necessarily be the customs officer who made the decision
  - Clarification was sought with regards to the phrase "error….that does not affect the tariff classification ascribed to the goods in the determination"
    - If a change effected by the customs authority affects the tariff classification of goods it will amount to a tariff re-determination, and not a "correction" as referred to in section 102 of the CDA
    - A mere correction in the tariff determination document (not affecting the classification) will for e.g. relate to a correction in respect of a name, customs code or address

CHAPTER 6: TARIFF CLASSIFICATION OF GOODS

- **PUBLICATION OF INFORMATION RELATING TO TARIFF DETERMINATIONS OR RE-DETERMINATIONS (RULE 6.3)**
  - A recommendation was made that all tariff determinations must be available for public viewing
    - Not accepted
    - Subrule (1)(b) was inserted because of the confidentiality provisions in the CCA (s 21)
  - Clarification was sought with regards to how rule 6.3(1)(b) practically applies
    - Prior written permission is required for publication of information contained in a tariff determination or re-determination unless subrule (2) applies
    - This means that if the publication does not disclose the information listed in (2), no permission for publication is required
  - A recommendation was made to delete the requirement in rule 6.3.1(b) relating to the disclosure of the information in subrule (2)
    - The provision seems to have been misunderstood
    - There is no requirement to disclose the information in subrule (2), in fact, the information in subrule (2) may not be disclosed in the absence of written permission

CHAPTER 6: TARIFF CLASSIFICATION OF GOODS

- **APPLICATION FOR TARIFF DETERMINATION (RULE 6.4)**
  - Clarification was sought as to the format in which the application referred to in rule 6.4 must be submitted, whether it should be in written or electronic format
    - It must be submitted electronically through eFiling
    - Submission in paper format will also be allowed in accordance with rule 41.13 of the Control Rules in limited circumstances described in section 913 of the CCA
    - Information that must be reflected in the application is listed in rule 6.4(2)
  - A recommendation was received to impose a licensing requirement on ordinary representatives and to place an obligation on them to pass the customs sufficient knowledge test
    - Not accepted
    - Ordinary representatives only submit documents on behalf of the principal in the name of the principal. The person "acting" is regarded to be the principal
    - The liability for any breach committed by an ordinary representative lies with the principal as if committed by the principal
    - This negates the need for licensing/registration of the ordinary representative

CHAPTER 6: TARIFF CLASSIFICATION OF GOODS

- **APPLICATION FOR TARIFF DETERMINATION (RULE 6.4)**

  - A recommendation was received to amend rule 6.4(4)(b) in relation to the pro forma invoice required as a supporting document for an application for a tariff determination

    - Accepted
    - We will consider amending the rule to require an invoice, or if an invoice has not yet been issued, a pro forma invoice

CHAPTER 7: VALUATION OF GOODS

- **VALUE DETERMINATIONS**

- Clarity was sought if a VDN could be applied for between unrelated companies
  - Yes

- **PARTICULARS TO BE INCLUDED IN VALUATION WORKSHEETS FOR PURPOSES OF VALUE SELF DETERMINATION (RULE 7.1(1))**

- Clarity was sought if the worksheet must reflect how all the factors referred to in Part 3 of Chapter 7 of the CDA were taken into account in a case where the primary valuation method is used
  - The worksheet must only reflect how the factors "applicable to the valuation method" used, were taken into account. See rule 7.1(1)(b)(i)(bb)

- **NOTIFICATION TO CUSTOMS OF INACCURACIES IN VALUE SELF-DETERMINATION (RULE 7.2)**

- A proposal was made to include an amended clearance instruction from the importer / exporter as a supporting document referred to in rule 7.2(2)
  - Not accepted
  - This will be a duplication of a requirement in rule 7.6(2) of the Control Rules

CHAPTER 7: VALUATION OF GOODS

- **REQUESTS FOR DETERMINING CONVERSION RATES IN RESPECT OF CURRENCIES NOT PUBLISHED (RULE 7.4)**

- A proposal was made for the customs authority to commit to a timeframe for responding to a request determining conversion rates for currencies not published, or to provide for the use of an alternative rate of exchange if the customs authority does not respond timeously

  - Accepted. Rule 7.4 will be amended as follows-

    SARS will require the person requesting a rate of exchange for a currency not published, to obtain documentary evidence from at least two major banks operating in the Republic, of the average selling rates in respect of imports or buying rates in respect of exports prevailing for that currency on the day before the date of clearance of those goods

  - If SARS does not respond within 2 hours from the time of submission of the request, that rate if equal, or the higher of those rates must be used as the applicable rate of exchange

- Due to the urgency of this kind of request, a proposal was made to delete submission of the request by post

  - Accepted. Rule 7.4 will be amended

CHAPTER 7: VALUATION OF GOODS

- **PUBLICATION OF INFORMATION RELATING TO VALUE DETERMINATIONS (RULE 7.5)**

- A request was received to delete rule 7.5(2) as the commentator was of the opinion that publication of the information may prejudice the relationship between the seller and the buyer
    - Not accepted
    - Not all publications of determinations require written consent. Written consent is only required where the publication will lead to disclosure of the information referred to in subrule (2)

- **VDN OF GOODS APPLIES ONLY TO THE GOODS I.R.O. WHICH IT IS MADE**

- A request was received to amend section 123 of the CDA because VDN is determined by relationship between importer and supplier
    - Not accepted
    - VDN's are not only issued for related party transactions but also for buying commissions, royalties, licence fees and other mark ups

CHAPTER 7: VALUATION OF GOODS

- **FREE ON BOARD (FOB)**

- Clarity was sought whether FOB is aligned with the Incoterms 2010 and how costs are treated

  - See definition of "free on board," in section 1 of the CDA for clarity
  - This definition should not be confused with the FOB Incoterm
  - The FOB value is based on the invoice price and adjusted:

  UP to include any costs incurred to take the goods on board the ship or aircraft for export, if they have not been included in the invoice price

  DOWN to exclude any costs relating to activity after the goods have been taken on board the ship or aircraft for export, if they have been included in the invoice price

CHAPTER 8: ORIGIN

- **REGISTRATION CLIENT TYPE REQUIREMENT**

  - Clarification was sought whether provision was made for the SADC EPA

    - Yes. SADC EPA is included under ITA
    - Please see definition of "ITA":

    "ITA" means an international trade agreement as defined in section 1 of the Customs Duty Act

- **ORIGIN SELF-DETERMINATION OF GOODS WHEN GOODS ARE CLEARED**

  - Section 152(5)(c) of the CDA states that rules may be made which prescribe any goods, other than the categories mentioned in paragraph (a) and (b) of that subsection, which are excluded from origin self-assessment. Clarification was sought if such rules have been specifically excluded

    - No rules at this stage

CHAPTER 8: ORIGIN

- **NOTICE OF CORRECTION BY CUSTOMS AUTHORITY OF ERROR IN ORIGIN DETERMINATION OR RE-DETERMINATION (RULE 8.3)**
  - Clarification was sought whether all previous declarations have to be amended as per the new determinations
    - Corrections won't impact duty – if duty is impacted, it has to be an origin re-determination and in such circumstances Customs will instruct the client to submit an amended clearance declaration

CHAPTER 8: ORIGIN

- **PARTICULARS TO BE REFLECTED BY CERTIFICATES OF ORIGIN FOR IMPORTED GOODS (RULE 8.10)**

  - A recommendation was received to remove the requirement of the customs code of the exporter exporting the goods to the Republic in rule 8.10(a)(iii)

    - The rule provides for an option of either the name of the exporter or his customs code

  - A recommendation was received to amend rule 8.10(b)(i) based on the fact that origin is not determined on where goods are exported from

    - Accepted
    - The rule will be amended to also cover an instance where the goods did not originate in the country from where it is exported
    - A similar amendment will be done in rule 8.11(2)(b) and 8.12(1)(c)(i) as the context requires

CHAPTER 8: ORIGIN

- **PARTICULARS TO BE REFLECTED BY DECLARATIONS OF ORIGIN ON COMMERCIAL INVOICES FOR IMPORTED GOODS (RULE 8.11)**

  - A recommendation was received to delete rule 8.11(2)(c) requiring the issuer of the invoice to – "reference or specify the rules of origin on which the declaration referred to in paragraph (b) is based"

    - Not accepted
    - This is common practise in respect of most non-preference certificates of origin

- **PARTICULARS TO BE REFLECTED BY DECLARATIONS OF ORIGIN OTHERWISE THAN ON INVOICES (RULE 8.12)**

  - Clarification was sought on the application of the information requirements listed in rule 8.12

    - The information listed in this rule is the same information currently reflected/required in non-preference certificates of origin

CHAPTER 8: ORIGIN

- **APPLICATION FOR CERTIFICATION OF GOODS AS GOODS OF SOUTH AFRICAN ORIGIN (RULE 8.17)**

  - A recommendation was made that subrule (1)(d) requiring details of the producer be deleted

    - Accepted
    - Paragraph (d) will be deleted

  - Clarification was sought in respect of the difference in application between rule 8.16 and rule 8.17

    - Rule 8.16 is an application for blank certificates
    - The application for certification of particular goods as goods of SA origin (as contemplated in rule 8.17) is done when the goods are cleared for export and the blank certificate is filled in by the exporter and presented as a document supporting the export clearance declaration. The export clearance declaration serves as the application for certification

CHAPTER 8: ORIGIN

- **APPLICATION FOR CERTIFICATION OF GOODS AS GOODS OF SOUTH AFRICAN ORIGIN (RULE 8.17)**

  - Clarification was sought whether the documents listed in rule 8.17(4) can be submitted electronically

    - Will be considered in future

  - Clarification was sought whether a customs broker may apply for the certification of goods as goods of SA origin on behalf of the exporter

    - Yes, see rule 8.17(2)
    - The same question was posed in relation to rule 8.18(5) in respect of an application for retrospective certification, to which the answer is yes as well

CHAPTER 8: ORIGIN

- **APPLICATION FOR CERTIFICATION OF GOODS AS GOODS OF SOUTH AFRICAN ORIGIN (RULE 8.17)**

  - Clarification was sought whether the trade practice by certain customs jurisdictions of requesting certificates of origin long after importation can be considered a "special circumstance" for purposes of rule 8.18(3)(a)(iii)

    - It depends on whether Customs would accept the circumstances as a sufficient excuse contemplated in rule 8.18(3)(a)(iii). If the omission to obtain certification was not due to the fault of the applicant and occurred inadvertently, Customs will accept the application for retrospective certification
    - However if the client knows beforehand that it is "trade practice" for a certain country to request certification after importation, there is no excuse not to get it beforehand

  - A recommendation was made to simplify the certification process by eliminating the application for blank certificates

    - Will be considered

CHAPTER 8: ORIGIN

- **APPLICATION FOR ORIGIN DETERMINATION BEFORE CLEARANCE OF GOODS (RULE 8.23)**
  - A recommendation was received to remove the need for a tariff determination as referred to in subrule (2)(f)(ii) when applying for an origin determination in relation to unassembled or disassembled goods
    - Not accepted
    - Origin is affected by the tariff classification
    - The rules of origin are applicable to a specific Tariff code and description aligned to those contained in the Harmonised System

CHAPTER 9: PREFERENTIAL TARIFF TREATMENT OF GOODS

- **DEFINITIONS**
  - A recommendation was made to use either "USA" or the "United States of America" throughout the text
    - Accepted

- **REGISTRATION OF EXPORTERS OF GOODS OF SOUTH AFRICAN ORIGIN FOR EXPORT UNDER ITA's (RULE 9.6)**
  - A recommendation was made to amend the reference to the TDCA in subrule (2) to the "SADC Economic Partnership Agreement"
    - Accepted

CHAPTER 9: PREFERENTIAL TARIFF TREATMENT OF GOODS

- **REGISTRATION OF PRODUCERS OF GOODS OF SOUTH AFRICAN ORIGIN FOR EXPORT UNDER ITA's (RULE 9.7)**
  - A recommendation was made to delete the need for the producer to be registered as they can be audited if needed
    - Not accepted
    - Producers for purposes of trade agreements are required to be registered in terms of Chapter 28 of the CCA read with its rules

- **APPLICATION FOR CERTIFICATION OF GOODS AS GOODS OF SOUTH AFRICAN ORIGIN (RULE 9.10)**
  - A recommendation was made to delete the information that was already submitted to Customs during the registration process
    - In terms of rule 41.27 of the Control Rules documents already in possession of the customs authority need not be resubmitted

CHAPTER 9: PREFERENTIAL TARIFF TREATMENT OF GOODS

- **APPLICATION FOR CERTIFICATION OF GOODS AS GOODS OF SOUTH AFRICAN ORIGIN (RULE 9.10)**
  - Clarification was sought as to whether an authorised customs broker may present documents to the Customs Office on behalf of the exporter for purposes of certification
    - Yes
    - We will consider adding a footnote in subrule (2) to clarify
- **APPLICATION FOR CERTIFICATION OF GOODS AS GOODS OF SA ORIGIN (RULE 9.20)**
  - A recommendation was made to delete the requirement that the export clearance declaration must reflect the name and customs code of the producer in rule 9.20(1)(e)
    - Accepted
    - We will consider deleting this requirement

CHAPTER 11: ADMINISTRATIVE PENALTIES

- **GENERAL COMMENT**

  - A comment was made that the percentage penalties for various breaches of CDA must be published

    - Only fixed amount penalties are published as required by section 201 of the CDA

CHAPTER 13: MISCELLANEOUS MATTERS

- **APPLICATION FOR APPROVAL OF DEPARTURES FROM, OR FOR CONDONATION OF NON-COMPLIANCE WITH, RULES, CONDITIONS OR REQUIREMENTS (RULE 13.1)**
  - Rule 13.1(2): A comment was made that the numbering in subrule (2)(b) is repeated
    - The numbering will be corrected
- **APPLICATION FOR EXTENSION OF TIMEFRAMES OR PERIODS OR POSTPONEMENT OF DATES (RULE 13.2)**
  - Rule 13.2(5): A comment was made that timeframes need to be defined in the rules and standard operating procedures
    - The rule provides that the application be submitted before expiry of the timeframe, period or date to which the extension or postponement relates - these timeframes, periods or dates are specified in the relevant section of the CDA or rule thereunder with which the applicant had to comply. It is therefore not unclear what the timeframes are

CHAPTER 13: MISCELLANEOUS MATTERS

- **APPLICATION FOR EXTENSION OF TIMEFRAMES OR PERIODS OR POSTPONEMENT OF DATES (RULE 13.2)**
  - Rule 13.2(5): Clarity was sought as to what will be considered "sufficient time" for Customs to make a decision on an application for extension of a timeframe as referred to in footnote 89. If the timeframes are short e.g. 24 hours or a few hours, there is a chance that a response will only be received from Customs after lapsing of the timeframe
    - This depends on the circumstances. These applications should be submitted as soon as the applicant realises he will not be able to comply, so that the customs authority can consider the application prior to expiry of the timeframe

OTHER COMMENTS

COMMENT	RESPONSE
Rule 8.17(3)(a), rule 8.23(4)(a)and rule 9.13(2)(f)– Recommendation was made that the provisions be more explicit in respect of the documentary evidence requirement, in particular which documentary evidence will suffice	Not accepted. This rule is flexible and facilitative in that it allows for any documents capable of evidencing the information required to be sufficient. Furthermore "documentary evidence of origin" is defined
Rule 8.17(d), rule 8.23(4)(e), rule 9.9(4)(j), rule 9.10(4) and rule 9.20(4)– Recommendation was made to remove the need to resubmit the duplicated documents	Not accepted. Please note the provisions of rule 41.27 of the Control Rules in relation to documents already in Customs possession. Furthermore there is a distinction between "supported" and "submitted". These rules do not create an obligation to submit
Rule 8.18(5)(a) - Clarification was requested as to the wording in rule 8.18(5)(a): "the exporter or the exporter"	This is an error. Should read "exporter" only
Rule 8.21 - Recommendation was made to amend the reference to section 172(3) of the CDA to "section 171(3)" in alignment with the CDA amendment published on 27 Oct 2016, especially given that section 172 was repealed on this date	Accepted. We will align with the TALAA 2016 amendment
Rule 9.10(4)(a) and (d), rule 9.19 and rule 9.20(4)(a) and (d) – Clarification was sought whether the DA 59 will suffice as proof of origin for purposes of the mentioned rules	No. The DA59 is used for non-preference claims and in this case the ITA must be complied with. Please note the difference between Chapter 8 and Chapter 9
Rule 9.11 – Attention was drawn to a numbering problem in respect of subrules (4) and (5)	Noted. The numbering error will be corrected

OUTSTANDING MATTERS

CHAPTER 2 OF THE CCA

- The dispensation around places of entry and exit together with the areas of jurisdiction (previously known as Controllers Area) is in the process of being finalised
- The Rules to Chapter 2 will be finalised and published for comment once this internal process has been finalised

CHAPTER 37 OF CCA

- There are various options under consideration on how this process must be designed e.g.
  - Aligning it to TAA; or
  - Aligning it to the High Court Rules
- Once the process of design is finalised, the Rules to Chapter 37 will be published for comment

OUTSTANDING MATTERS

DEFERMENT RULES

- Deferment rules will be published for comment

FROZEN RULES

- The third draft of the Customs Duty Rules will be frozen upon publication
- The outstanding rules mentioned, will be frozen as soon as possible after consideration of public comment received

PENALTY TABLES

- Penalty tables for both CCA and CDA will be updated/amended in line with the amendments to the legislation and the Rules
- Both penalty tables will be published for comment

OUTSTANDING MATTERS

SCHEDULES (CUSTOMS TARIFF)

- We are aligning the terminology used in the Schedules with the terminology used in the legislation
- The changes are therefore more form than substance
- No tax rate changes are envisaged in aligning of the Schedules
- Once the process of updating the Schedules is complete, we will publish it for comment

THANK YOU

Questions?