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Committee on Customs Valuation

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**NOTIFICATION UNDER ARTICLE 22 OF THE AGREEMENT ON
IMPLEMENTATION OF ARTICLE VII OF THE
GENERAL AGREEMENT ON TARIFFS AND TRADE 1994**

SOUTH AFRICA

The following submission, dated 31 October 2014, is being circulated at the request of the delegation of South Africa.

South Africa has the honour to notify the Committee on Customs Valuation in terms of Article 22.2 of the Agreement on the Implementation of Article VII of GATT 1994 of new Customs Valuation legislation that has been adopted.

For notification purposes, I am pleased to submit the following attached documents:

1. Chapter 7 (Valuation of Goods) of the Customs Duty Act No. 30 of 2014; and
 2. A complete copy of the Customs Duty Act, Act No. 30 of 2014, and the Customs Control Act, Act No. 31 of 2014.*
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* In English only. An electronic version of these two documents can be obtained from the Secretariat, (Irena.Giraud@wto.org or Roy.Santana@wto.org).

CHAPTER 7

VALUATION OF GOODS

Part 1

Introductory provisions

Purpose and application of this Chapter

112. (1) The purpose of this Chapter is:

- (a) To provide for the valuation of goods for customs purposes;
- (b) To enforce the use of valuation methods internationally accepted for the valuation of goods for customs purposes²; and
- (c) To provide for currency conversions in the valuation of goods for customs purposes.

(2) This Chapter applies to all goods imported into or destined for export from the Republic, whether dutiable or not.

Relevant international instruments

113. (1) When valuing imported goods in terms of this Chapter, the following international instruments are binding for the purpose of such valuation:

- (a) Article VII of the General Agreement on Tariffs and Trade, 1994, and the Note to Article VII of that Agreement;
- (b) The WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, 1994, and the Interpretative Notes to the Agreement;
- (c) Decisions taken by the Committee on Customs Valuation of the WTO; and
- (d) Instruments issued by the Technical Committee on Customs Valuation of the WTO, including:
 - (i) Advisory Opinions;
 - (ii) Commentaries;
 - (iii) Explanatory Notes;
 - (iv) Case Studies; and
 - (v) Studies.

(2) In the event of an inconsistency between an international instrument referred to in subsection (1) and a provision of this Act, the provision of this Act prevails.

Keeping of updated version of international instruments

114. (1) The Commissioner must:

- (a) Keep at SARS head office copies of the international instruments referred to in Section 113;
- (b) Update from time to time these instruments with any amendments or additions notified by the World Trade Organisation; and
- (c) Record the date the amendment or addition took effect.

(2) Whenever in any judicial or other proceedings a question arises as to:

- (a) The contents of any international instrument referred to in section 113, a copy of that instrument kept in terms of subsection (1)(a), or of an extract from such instrument, certified by the customs authority, may be used as evidence of the contents of such instrument or extract; or

² Valuation methods agreed to under the WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, 1994.

- (b) The effective date of an amendment or addition to such an international instrument, a certificate by the customs authority stating the date recorded in terms of subsection (1)(c) as the effective date of that amendment or addition, may be used as evidence of the effective date of that amendment or addition.

Part 2

Value self-determination, determination and re-determination

Provisions to be applied for establishing customs value

115. The customs value of:

- (a) Goods imported into the Republic must be established in accordance with Part 3 of this Chapter, except specific imported goods mentioned in Part 4 which must be established in accordance with that Part; and
- (b) Goods destined for export from the Republic must be established in accordance with Part 5 of this Chapter.

Value self-determination of goods when goods are cleared

116. (1) A person clearing goods for home use or a customs procedure must:

- (a) Make a value self-determination of the customs value of the goods on a worksheet as may be prescribed by rule irrespective of whether duty is payable on the goods; and
- (b) State the customs value of the goods determined in terms of paragraph (a) on the clearance declaration.

(2) In the case of imported goods the clearance declaration must also indicate;

- (a) The valuation method used to determine the customs value of the goods; and
- (b) Whether the person who sold the goods for export to the Republic and the purchaser have a family, personal, employment or business relationship within the meaning of Section 130.

(3) A valuation criterion used in making a value self-determination of any goods must be consistent with:

- (a) A valuation criterion that may be applicable to those goods in terms of Section 123(2); or
- (b) Any advance valuation ruling that may be applicable to those goods.

(4) A value self-determination must be applied for purposes of the clearance unless replaced by a value determination in terms of Section 117.

(5) A person clearing goods must on discovery of any inaccuracy in a value self-determination made in respect of the goods, promptly notify the customs authority of the inaccuracy.

(6) Section 179 of the Customs Control Act applies to a worksheet referred to in subsection (1).

(7) This section does not apply to:

- (a) Accompanied or unaccompanied baggage other than commercial goods;
- (b) International postal articles cleared in accordance with the simplified clearance process contemplated in Section 493(2) of the Customs Control Act; or
- (c) Any other category of goods:
 - (i) Excluded by rule from value self-determination; or
 - (ii) Exempted by the customs authority in a specific case from value self-determination.

Value determination by customs authority

117. (1) The customs authority may at any time, subject to Section 120, make a determination of the customs value of goods.³

(2) A valuation criterion used in making a value determination of goods must be consistent with:

- (a) A valuation criterion that may be applicable to those goods in terms of Section 123(2); or
- (b) Any advance valuation ruling that may be applicable to those goods.

(3) A value determination in terms of subsection (1) may be made in respect of goods irrespective of whether or not:

(a) The goods:

- (i) Have been cleared;
- (ii) Have been released;
- (iii) Are dutiable; or
- (iv) Are still subject to customs control;

(b) A value self-determination has been made in respect of the goods; or

(c) An amount of duty has been paid on the goods.

(4) The customs authority must give notice of any value determination in terms of subsection (1) to the person clearing the goods.

(5) A value determination of goods in terms of subsection (1) replaces any value self-determination applicable to the goods in terms of Section 116.

Re-determination of previous value determination or re-determination

118. (1) The customs authority may at any time, subject to Section 120:

- (a) Re-determine the customs valuation of goods as determined by it in terms of Section 117; or
- (b) Re-determine the customs valuation of goods as previously re-determined by it in terms of paragraph (a).

(2) More than one value re-determination may, as necessary, be made in terms of subsection (1)(b).

(3) A valuation criterion used in making a value re-determination of any goods must be consistent with:

- (a) A valuation criterion that may be applicable to those goods in terms of Section 123(2); or
- (b) Any advance valuation ruling that may be applicable to those goods.

(4) A value re-determination in terms of subsection (1) may be made in respect of goods irrespective of whether or not;

(a) The goods:

- (i) Have been cleared;
- (ii) Have been released;
- (iii) Are dutiable; or
- (iv) Are still subject to customs control;

³ Clearance or a value self-determination is not a precondition for a value determination in terms of Section 117. A value determination may sometimes be made in the absence of a clearance or value self-determination, e.g. where non-cleared goods are in terms of the Customs Control Act for tax purposes regarded to be cleared for home use.

- (b) A value self-determination has been made in respect of the goods; or
- (c) An amount of duty has been paid on the goods.

(5) The customs authority must give notice of any value re-determination in terms of subsection (1) to the person clearing the goods.

(6) A value re-determination replaces the previous value determination or value re-determination applicable to the goods.

Correction of error in value determination or re-determination

119. (1) On discovery of an error in a value determination or re-determination in respect of any goods which does not affect the value ascribed to the goods in the determination or re-determination, the customs authority may correct⁴ the error by notice to the person clearing the goods.

(2) There are no time limits as to when a correction may be made in terms of subsection (1).

Time limit on value determination and re-determination

120. (1) There are no time limits as to when a value determination or re-determination of goods may be made, but no value determination or re-determination may be applied for purposes of assessing or re-assessing duty on goods otherwise than in accordance with subsection (2).

(2) A value determination or re-determination that affects the dutiability of goods or the amount of duty paid or payable on goods must be applied for purposes of assessing or re-assessing duty on those goods:

- (a) If the value determination or re-determination was made within a period of three years from the date the goods acquired a tax due status in terms of Chapter 6 of the Customs Control Act;⁵ or
- (b) If the value determination or re-determination was made, whether within or after the expiry of the three years' period referred to in paragraph (a):
 - (i) To give effect to:
 - (aa) a decision in any administrative appeal or dispute resolution proceedings;
 - (bb) a dispute settlement;
 - (cc) a retrospective amendment to the Customs Tariff; or
 - (dd) a court order given or confirmed in a final judgement;
 - (ii) To rectify an underpayment or non-payment of duty that occurred as a result of fraud, misrepresentation, a false declaration or non-disclosure of material facts; or
 - (iii) Following an agreement referred to in Section 86(2)(b).

(3) This section may not be read as permitting a re-assessment of duty on goods in conflict with Section 87.

Request for information and documents

121. The customs authority may request any of the following persons to furnish it within a specified period with any information or documents required by the customs authority for

⁴ An error in the value of goods in a value determination or re-determination cannot be corrected by a correction notice but only by a superseding value re-determination. See also definition of "correction" in Section 1.

⁵ Goods that have been cleared acquire a tax due status in terms of Chapter 6 of the Customs Control Act as from the date of clearance of the goods for home use or a customs procedure that confers a tax due status, which in terms of section 173 of that Act is the date of acceptance by Customs of the clearance declaration submitted in respect of the goods.

considering or making a value determination or re-determination of goods or a correction of a value determination or re-determination:

- (a) The person clearing the goods or who submitted the clearance declaration in respect of the goods;
- (b) Any person who is an importer or exporter in relation to the goods;
- (c) Any person who:
 - (i) Is or may be held liable for duty that may be or has become payable on the goods; or
 - (ii) Has paid duty on the goods; or
- (d) The owner of the goods.

Value determination or re-determination in absence of sufficient information

122. The customs authority may base a value determination or re-determination on the best information available to it:

- (a) If particulars of the goods in respect of which the value determination or re-determination is made or the underlying transaction which caused the goods to be imported into or exported from the Republic, as the case may be, are not disclosed or not sufficiently disclosed in the clearance declaration or any supporting documents and those particulars are still not disclosed or still not sufficiently disclosed following:
 - (i) A request in terms of Section 121; or
 - (ii) An amendment of the clearance declaration or any supporting documents;
- (b) In any other case, if information or documents necessary for considering or making the value determination or re-determination were not furnished following a request in terms of Section 121; or
- (c) If no clearance declaration was submitted and the goods are in terms of the Customs Control Act for tax purposes regarded to be cleared for home use or outright export.

Goods to which value determination, re-determination and valuation criterion

Apply

123. (1) A value determination or re-determination of goods applies only to the goods in respect of which it was made.

(2) A valuation criterion applied in a value determination or re-determination of goods referred to in subsection (1) must, until the customs authority decides otherwise, be applied also to goods of the same class or kind cleared for home use or a customs procedure by the same person or by a registered agent on behalf of the same person:

- (a) If and when a value determination or re-determination in respect of such goods is made in terms of Section 117 or 118, whether the goods were cleared before or after the date of the value determination or re-determination referred to in subsection (1); or
- (b) If and when a value self-determination in respect of such goods cleared on or after that date is made in terms of section 116.

(3) Subsection (2) may not be read as permitting a re-assessment of duty on goods in conflict with Section 87.

Rounding off of customs value

124. When determining the customs value of any goods, the amount determined must be rounded off to the nearest Rand.

Remedies available to person aggrieved by value determination or re-determination⁶

125. (1) Parts 3, 4 and 5 of Chapter 37 of the Customs Control Act as may be appropriate in terms of the provisions of those Parts, are available to a person aggrieved by a value determination or re-determination.

(2) If a person aggrieved by the application of a specific valuation criterion in a value determination or re-determination, or by a decision in terms of Section 123(2), lodges an administrative appeal in terms of Part 3 of that Chapter against the determination or re-determination on account of the application of such valuation criterion,⁷ or against that decision, the appeal may only be heard by a specialist appeal committee referred to in Section 843(2)(a) of the Customs Control Act.

(3) A person aggrieved by a value determination or re-determination or, if an administrative appeal has been lodged against the determination or re-determination, including an appeal referred to in subsection (2), by a decision taken in such appeal proceedings, may:

- (a) Lodge an appeal with a court against the determination, re-determination or decision; or
- (b) Institute proceedings for a review by a court of the determination, redetermination or decision.

Value determination or re-determination presumed to be correct except when replaced, amended, set aside or corrected

126. A value determination or re-determination applicable to any goods must be presumed to be correct and must be applied except when replaced, amended, set aside, corrected or otherwise affected, as may be appropriate, by:

- (a) A value re-determination in terms of Section 118;
- (b) A decision in terms of Section 123(2);
- (c) A correction in terms of Section 119;
- (d) An advance valuation ruling in terms of Chapter 10;
- (e) A decision in any administrative appeal or alternative dispute resolution proceedings;
- (f) A dispute settlement;
- (g) A retrospective amendment to the Customs Tariff; or
- (h) A court order given or confirmed in a final judgement.

Part 3

Valuation of imported goods

Primary valuation method

127. (1) The primary valuation method must for purposes of this Act be used for determining the customs value of goods imported into the Republic unless that method cannot or may not in terms of section 129 be used for determining the customs value of those goods.

(2) In terms of the primary valuation method, the transaction value of the goods, determined in accordance with section 131, must be taken as the customs value of the goods.

Alternative valuation method

128. (1) If the primary valuation method cannot or may not in terms of Section 129 be goods must be determined in accordance with the first of the following alternative valuation methods, in the order below, that can be used to determine the customs value of the goods:

⁶ It should be noted that as a general rule an administrative appeal and in fact none of the proceedings referred to in Chapter 37 of the Customs Control Act affects or suspends the obligation to pay a duty.

⁷ A specialist appeal committee is compulsory only if an appeal is lodged against the application of a disputed valuation criterion. If an appeal is against some other disputed matter, such as the use of an alleged incorrect exchange rate or miscalculation of quantity, etc., the appeal must be heard in the ordinary way.

- (a) The identical goods method as set out in Section 132;
- (b) The similar goods method as set out in Section 133;
- (c) The deductive method as set out in Section 134;
- (d) The computed method as set out in Section 135; and
- (e) The fall-back method as set out in Section 136.

(2) The person who clears imported goods for home use or a customs procedure may choose that the order of applying subsections (1)(c) and (d) be reversed.

- used for determining the customs value of any imported goods, the customs value of the goods must be determined in accordance with the first of the following alternative valuation methods, in the order below, that can be used to determine the customs value of the goods:

- (a) The identical goods method as set out in Section 132;
- (b) The similar goods method as set out in Section 133;
- (c) The deductive method as set out in Section 134;
- (d) The computed method as set out in Section 135; and
- (e) The fall-back method as set out in Section 136.

(2) The person who clears imported goods for home use or a customs procedure may choose that the order of applying subsections (1)(c) and (d) be reversed.

Circumstances in which primary valuation method cannot or may not be used

129. (1) The circumstances in which the primary valuation method cannot or may not be used for determining the customs value of any specific imported goods are the following:

- (a) The transaction in terms of which the goods are exported to the Republic is not a contract of purchase and sale;
- (b) The transaction in terms of which the goods were sold for export to the Republic is a contract of purchase and sale but was concluded otherwise than in the ordinary course of trade under fully competitive conditions, unless subsection (2) applies;
- (c) There is for any reason no price actually paid or payable for the goods to use as basis for determining a transaction value for the goods;
- (d) The price actually paid or payable for the goods is not substantiated by supporting documents;
- (e) The transaction in terms of which the goods were sold for export to the Republic is subject to a term or condition which materially affected the price actually paid or payable for the goods for which a value cannot be determined;
- (f) There is a restriction as to the resale, disposal or use of the goods which materially affected the price actually paid or payable for the goods, whether the restriction was imposed in terms of legislation or the transaction in terms of which the goods were sold for export to the Republic;
- (g) A special, arbitrary or abnormal discount, rebate or other reduction from the ordinary competitive price of the goods was or is to be given in connection with the transaction in terms of which the goods were sold for export to the Republic, unless subsection (3) is applied;
- (h) A part of the proceeds of any resale, disposal or use of the goods accrued or will accrue to the seller, unless subsection (4) is applied;
- (i) The seller and the buyer have a family, personal, employment or business relationship within the meaning of Section 130, unless Section 130(3) applies;
- (j) There is insufficient information to use the primary valuation method for determining the transaction value of the imported goods; or
- (k) There is reason to suspect that the information available for determining the transaction value of the imported goods is incorrect or defective in any respect.

(2) The primary valuation method may despite subsection (1)(b) be used for determining the customs value of the goods if the customs authority determines that the transaction value is acceptable.

(3) If a special, arbitrary or abnormal discount, rebate or other reduction contemplated in subsection (1)(g) was or is to be given in connection with a transaction, the primary valuation method may despite that subsection be used for determining the customs value of the goods, provided that the amount of the discount, rebate or reduction is, in addition to the other amounts mentioned in Section 131(3), added to the price actually paid or payable for the goods.

(4) If a part of the proceeds of any resale, disposal or use of the goods accrued or will accrue to the seller as contemplated in subsection (1)(h), the primary valuation method may despite that subsection be used for determining the customs value of the goods, provided that the amount of the proceeds that accrued or will accrue to the seller is, in addition to the other amounts mentioned in Section 131(3), added to the price actually paid or payable for the goods.

Relationship between contracting parties as disqualifying factor for primary valuation method

130. (1) For the purposes of Section 129(1)(i):

(a) A family or personal relationship includes a relationship between a seller and a buyer as members of the same family, whether the relationship was established by:

- (i) Birth;
- (ii) Adoption;
- (iii) Marriage or other union;
- (iv) Engagement; or
- (v) Cohabitation;

(b) An employment relationship includes a relationship between a seller and a buyer as:

- (i) Employer and employee;
- (ii) Employees in the same firm;
- (iii) Director in the other's firm;
- (iv) Directors in the same firm; or
- (v) Employee and director in the same firm; and

(c) A business relationship includes a relationship between a seller and a buyer as:

- (i) Partners in the same firm;
- (ii) A person and a firm in which that person is a partner;
- (iii) Members of the same close corporation;
- (iv) A person and a close corporation of which that person is a member;
- (v) A company and its controlling shareholder;
- (vi) A controlling company and its subsidiary;
- (vii) Companies in the same group of companies;
- (viii) Companies which are directly or indirectly controlled by the same person; or
- (ix) Companies in which a third person holds or controls more than a five per cent stake in each of them.

(2) A business relationship between a seller and a buyer whereby the one acts as the sole agent, distributor or concessionary of the other is not a business relationship for purposes of Section 129(1)(i), provided that they are not otherwise related within the meaning of subsection (1)(a), (b) or (c) of this section.

(3)(a) The customs authority may despite Section 129(1)(i) accept or use the transaction value of any imported goods as the customs value of the goods if the person clearing the goods proves, in accordance with paragraph (b) or in any other way, that the relationship between the seller and the buyer did not influence the price paid or payable for the goods.

(b) It must for purposes of paragraph (a) be accepted as sufficient proof that the relationship between the seller and the buyer did not influence the price paid or payable for the goods if the transaction value of the goods closely approximates any one of the following test values:

- (i) The transaction value of identical or similar goods purchased at comparable trade and quantity levels by unrelated buyers in the Republic at or about the same time as the goods being valued;
- (ii) The value, determined in terms of Section 134, of identical or similar goods imported into the Republic at or about the same time as the goods being valued; or
- (iii) The value, determined in terms of Section 135, of identical or similar goods imported into the Republic at or about the same time as the goods being valued.

Determination of transaction value

131. (1) The transaction value of goods sold for export to the Republic is the price actually paid or payable for the goods when sold for export to the Republic, adjusted by:

- (a) Adding the amounts mentioned in subsection (3); and
 - (b) Deducting the amounts mentioned in subsection (4).
- (2) If the goods are sold for export to the Republic⁸ in two or more successive transactions, the last sale before the goods arrive at the place of entry in the Republic must be used for determining the transaction value of the goods.
- (3) The following amounts must be added to the price actually paid or payable for the goods by the buyer, but only to the extent that those amounts do not already form part of the price actually paid or payable by the buyer:
- (a) Any commission other than buying commission;
 - (b) Brokerage;
 - (c) The cost of:
 - (i) Packing, including the cost of labour and materials; and
 - (ii) The cost of containers, which must be dealt with as being one with the goods;
 - (d) The value, appropriately apportioned to the goods in accordance with any rules that may be prescribed, of any of the following items which were supplied directly or indirectly by the buyer free of charge or at reduced cost for use in the production, manufacture or sale for export to the Republic of the goods, namely:
 - (i) Materials, components, parts and articles forming part of the goods;
 - (ii) Tools, dies, moulds and articles used in the production or manufacture of the goods;
 - (iii) Materials consumed in the production or manufacture of the goods; and
 - (iv) Engineering work, development work, art work, design work, plans and sketches undertaken elsewhere than in the Republic and necessary for the production or manufacture of the goods;
 - (e) Royalties and licence fees in respect of the goods, including payments for patents, trademarks and copyright and for the right to distribute or resell the goods, payable directly or indirectly by the buyer as a condition of the sale of the goods for export to the Republic, but excluding charges for the right or licence to reproduce the goods in the Republic;
 - (f) The value of any part of the proceeds of any subsequent resale, disposal or use of the goods that accrues directly or indirectly to the seller; and
 - (g) Transportation, loading, unloading, handling, insurance and 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 board a vessel, aircraft, railway carriage or vehicle at that port or place.
- (4) The following amounts must be deducted from the price actually paid or payable for the goods by the buyer, but only to the extent that those amounts are actual amounts that form part of the

⁸ It does not matter whether the goods were sold in the country from where the goods were exported to the Republic or on the "high seas". See definition of "export to the Republic" in section 1 of the Customs Control Act which is wide enough to cover so-called sales on the high seas or in fact any sale after the goods left the port or place of export in the country of exportation.

price actually paid or payable by the buyer and are distinguishable components of the price actually paid or payable:

- (a) The cost of transport of the imported goods from the port or place of export in the country of exportation to the place of entry in the Republic;
- (b) The cost of insurance of the goods from the port or place of export in the country of exportation to the place of entry in the Republic;
- (c) The loading, unloading and handling charges associated with the delivery of the goods at the place of entry in the Republic;
- (d) Any expenditure incurred in the construction, erection, assembly or maintenance of, or technical assistance provided in respect of, the goods after their importation into the Republic;
- (e) The cost of transport and insurance of the goods in the Republic;
- (f) Any duties and taxes paid or payable in the Republic on the importation into or the sale of the goods in the Republic;
- (g) Any duties and taxes on the goods in the country of exportation from which the goods have been or will be relieved by way of refund, drawback or rebate;
- (h) Interest charged in respect of the price actually paid or payable for the goods, but this deduction is permitted only if:
 - (i) The financing arrangement in terms of which the interest is paid is in writing;
 - (ii) The buyer can prove, if requested by the customs authority, that the goods were actually sold at the price declared as the price actually paid or payable, and that the claimed rate of interest does not exceed the level for transactions of that nature prevailing in the country where, and at the time when, the financing was provided; and
 - (iii) Interest payments made by the buyer to the seller are not included in the price actually paid or payable where the payments are part of a separate, overall financing arrangement between the parties that bears no relationship to a particular sale; and
 - (iv) Any charges for the right or licence to reproduce the goods in the Republic.

(5) Interest that must in terms of subsection (4)(h) be deducted from the price actually paid or payable for the goods excludes any:

- (a) Interest paid by the buyer to the seller for default on payments; and
- (b) Payments for interest made by the buyer to the seller arranged as part of the total payment made to the seller.

(6) If any of the amounts that must in terms of subsection (4) be deducted from the price actually paid or payable for the goods, is not distinguishable as per the invoice or other supporting document as a component of the price actually paid or payable for the goods, the customs authority may accept any other documentary evidence at the time when the value self-determination is made, as proof that that amount is in fact a separate component of the price actually paid or payable for the goods.

(7) The customs authority may direct that any addition contemplated in subsection (3) or any deduction contemplated in subsection (4) or any matter determining whether such addition or deduction must or may be made, be substantiated by documentary evidence submitted to the customs authority.

(8) Any calculation in terms of this section must be made in accordance with generally accepted accounting practice.

Determination of customs value according to identical goods method

132. (1) If the identical goods method is used for determining the customs value of any specific imported goods:

- (a) The transaction value per unit of identical goods, as previously determined by the customs authority in terms of Section 117 or 118(1)(a) or (b), which were sold for export to the Republic at the same commercial level and in substantially the same quantity and exported

to the Republic at or about the same time as the goods being valued, must be taken as the customs value per unit of the goods being valued, subject to any adjustments that must be made in terms of subsection (2); or

- (b) If no determination contemplated in paragraph (a) was made that can be used for purposes of that paragraph, the transaction value per unit of identical goods, as previously determined by the customs authority in terms of Section 117 or 118(1)(a) or (b), which were sold for export to the Republic at either a different commercial level or quantity level, or at a different commercial level and quantity level, and exported to the Republic at or about the same time as the goods being valued, must be taken as the customs value per unit of the goods being valued, subject to any adjustments that must be made in terms of subsection (3).⁹

(2) The transaction value of the identical goods used for a valuation in terms of subsection(1)(a) must be adjusted to compensate for any differences in the costs and charges contemplated in Section 131(3) and (4) resulting from differences in distances and modes of transport to the port or place of export, between the identical goods and the goods being valued.

(3) The transaction value of the identical goods used for a valuation in terms of subsection (1)(b) must be adjusted to compensate for any differences in:

- (a) The sale for export to the Republic of the identical goods and of the goods being valued, at the different commercial levels or quantity levels; and
- (b) The costs and charges for different distances and modes of transport to the port or place of export, between the identical goods and the goods being valued.

(4) If in applying this section more than one identical goods transaction is used for determining the value of the goods being valued, the transaction yielding the lowest value must be taken as the customs value of the goods.

Determination of customs value according to similar goods method

133. (1) If the similar goods method is used for determining the customs value of any specific imported goods:

- (a) The transaction value per unit of similar goods, as previously determined by the customs authority in terms of Section 117 or 118(1)(a) or (b), which were sold for export to the Republic at the same commercial level and in substantially the same quantity and exported to the Republic at or about the same time as the goods being valued, must be taken as the customs value per unit of the goods being valued, subject to any adjustments that must be made in terms of subsection (2); or
- (b) If no determination contemplated in paragraph (a) was made that can be used for purposes of that paragraph, the transaction value per unit of similar goods, as previously determined by the customs authority in terms of Section 117 or 118(1)(a) or (b), which were sold for export to the Republic at either a different commercial level or quantity level, or at a different commercial level and quantity level, and exported to the Republic at or about the same time as the goods being valued, must be taken as the customs value per unit of the goods being valued, subject to any adjustments that must be made in terms of subsection (3).¹⁰

(2) The transaction value of the similar goods used for a valuation in terms of Subsection (1)(a) must be adjusted to compensate for any differences in costs and charges contemplated in Section 131(3) and (4) resulting from differences in distances and modes of transport to the port or place of export, between the similar goods and the goods being valued.

(3) The transaction value of the similar goods used for a valuation in terms of subsection (1)(b) must be adjusted to compensate for any differences in:

⁹ Transaction value of goods are determined in accordance with Section 131. See definition of "transaction value" in Section 1.

¹⁰ Transaction value of goods are determined in accordance with Section 131. See definition of "transaction value" in Section 1.

- (a) The sale for export to the Republic of the similar goods and of the goods being valued at the different commercial levels or quantity levels; and
- (b) Costs and charges for different distances and modes of transport to the port or place of export, between the similar goods and the goods being valued.

(4) If in applying this section more than one similar goods transaction is used for determining the value of the goods being valued, the transaction yielding the lowest value must be taken as the customs value of the goods.

Determination of customs value according to deductive method

134. (1) If the deductive method is used for determining the customs value any specific imported goods, the customs value of the goods must, subject to any adjustments in terms of subsections (2) and (3), be taken as equal to:

- (a) The price per unit at which imported identical goods are sold in the Republic, in the greatest number of units:
 - (i) In the same condition as that in which they were when imported;
 - (ii) By importers of such goods to persons not related to them within the meaning of Section 130; and
 - (iii) At or about the same time the goods being valued were imported; or
- (b) If no price per unit contemplated in paragraph (a) for imported identical goods can be determined, the price per unit at which imported similar goods are sold in the Republic, in the greatest number of units:
 - (i) In the same condition as that in which they were when imported;
 - (ii) By importers to persons not related to them within the meaning of Section 130; and
 - (iii) At or about the same time the goods being valued were imported.

(2) A price per unit of imported identical or similar goods determined in terms of subsection (1)(a) or (b) must be adjusted by deducting proportionately per unit of the goods:

- (a) Usual commissions or profit on the sale of goods falling within the same group or range of goods as the goods being valued, irrespective of the country of exportation;
- (b) General expenses usually incurred in connection with the sale of goods falling within the same group or range of goods as the goods being valued, irrespective of the country of exportation, including the usual direct and indirect costs of marketing goods falling within the same group or range of goods as the goods being valued;
- (c) The cost of transportation, loading, unloading, handling and insurance and associated costs incidental to the transportation of those identical or similar goods from the port or place of export in the country of exportation to the importer's premises in the Republic; and
- (d) Any duties and taxes paid or payable in the Republic on the importation into or the sale of those identical or similar goods in the Republic.

(3) If imported identical or similar goods are sold in the Republic only after further processing of the goods in the Republic, subsection (1)(a)(i) or (b)(i) may be disregarded when determining the price per unit at which those imported identical or similar goods are sold in the Republic, provided that such price is adjusted by deducting the value added by such processing.

(4) If the deductive method is used for determining or re-determining the customs value of any imported goods in terms of Section 117 or 118 after any of those goods have already been sold in the Republic, the customs authority or person applying this section may, instead of determining the price per unit at which imported identical or similar goods were sold in the Republic:

- (a) Determine the price per unit at which the goods being valued were sold; and
- (b) Use that price as the basis for applying subsection (1) of this section.

(5) If neither the goods being valued nor imported identical or similar goods were sold at or about the same time the goods being valued were imported, the transaction value of the goods being

valued must, subject to subsection (1), be based on the unit price at which the goods being valued or imported identical or similar goods are sold in the Republic in the same condition as that in which they were when imported, at the earliest date after the goods being valued were imported, but not later than 90 calendar days after such importation.

Determination of customs value according to computed method

135. If the computed method is used to determine the customs value of any imported goods, the customs value of the goods must be computed on information supplied by the producer of the goods and must consist of the sum of:

- (a) The cost of producing the goods being valued, which must include:
 - (i) The cost or value of materials and of manufacture or other processing in producing the goods being valued; and
 - (ii) The cost of:
 - (aa) Packing, including the cost of labour, services and materials; and
 - (bb) Containers, which must be dealt with as being one with the goods being valued;
- (b) The value, appropriately apportioned to any of the following goods and services if such goods and services were supplied, directly or indirectly, by the buyer free of charge or at reduced cost for use in connection with the production or sale for export to the Republic of the goods being valued, in so far as the value of those goods and services has not been included in the price actually paid or payable for the goods being valued, namely:
 - (i) Materials, components, parts and similar articles forming part of the goods being valued;
 - (ii) Tools, dies, moulds and similar articles used in the production of the goods being valued;
 - (iii) Materials consumed in the production of the goods being valued; and
 - (iv) engineering, development work, artwork, design work, plans and sketches, undertaken elsewhere than in the Republic that were used for the production of the goods being valued;
- (c) The cost of transportation, loading, unloading, handling and insurance and associated costs incidental to the delivery of the goods being valued at the port or place of export, and of placing those goods on board a vessel, aircraft, railway carriage or vehicle at that port or place, appropriately apportioned to the goods; and
- (d) An amount for profit and general expenses equal to that generally applicable in respect of sales of goods of the same class or kind as the goods being valued, which are made and incurred by producers in the country of exportation, appropriately apportioned to the goods being valued.

Determination of customs value according to fall-back method

136. (1) If the fall-back method is used to determine the customs value of any imported goods:

- (a) The customs value of the goods must be determined by using a previous value determination or re-determination of the same class or kind of goods; or
- (b) If there is no such previous value determination or re-determination, the value of the goods must be determined in accordance with any other method that may render a reasonable valuation of the goods, subject to subsection (2).

(2) No determination of the customs value of imported goods in terms of subsection

(1)(b), may be based on:

- (a) The selling price in the Republic of goods produced in the Republic;
- (b) A system which provides for the acceptance for customs purposes of the higher of two alternative values;

- (c) The selling price of goods on the domestic market of the country of origin or exportation of the goods being valued;
- (d) The cost of production, other than computed values which have been determined in accordance with Section 135;
- (e) The price of the goods for export to a country other than the Republic;
- (f) A system of minimum customs values; or
- (g) Arbitrary or fictitious values.

(3) Subsection (2)(a) to (f) does not apply if the person required to clear the goods for home use or a customs procedure:

- (a) Fails to clear the goods or to provide sufficient information in the clearance declaration for valuing the goods; and
- (b) Fails to comply with a request in terms of Section 121 to provide information or documents necessary for valuing the goods.

Part 4

Valuation of specific imported goods

Valuation of re-imported unaltered goods under temporary export procedure

137. When goods are imported into the Republic under the temporary export procedure as re-imported unaltered goods, the customs value assigned to the goods when exported from the Republic must be taken as the customs value of those goods when reimported into the Republic.

Valuation of used goods imported by individual for own use

138. (1) Goods, including a motor vehicle, used by an individual outside the Republic and imported into the Republic for use by that individual in the Republic, must be valued for customs purposes according to the fall-back method referred to in Section 128(1)(e).

- (2)(a) Subsection (1) does not apply to imported goods cleared in terms of Part 4 of Chapter 12 of the Customs Control Act under the temporary admission procedure on authority of a CPD or ATA carnet which indicates the value of the goods.
- (b) In the case of such goods the value indicated on the CPD or ATA carnet must be taken as the customs value of the goods, unless the customs authority directs that the goods be valued in accordance with the fall-back method.

Part 5

Valuation of goods exported or to be exported

Valuation method

139. (1) When goods are to be exported from the Republic under the export procedure,¹¹ the price of the goods free on board the vessel, aircraft, railway carriage or vehicle at the place of exit from where the goods are to be exported must for purposes of this Act be taken as the customs value of the goods.

¹¹ The export procedure applies to:

- (a) The outright export of goods;
- (b) The export of goods under:
 - (i) The outbound leg of the temporary export procedure;
 - (ii) The outbound leg of the temporary admission procedure; or
 - (iii) The outward processing procedure; and
- (c) The export of goods as inward processed compensating products under the inward processing procedure.

(2) If there is no such free on board price, the customs value of the goods must be the value as if the goods would have been sold at a free on board price.

(3) If a person clearing goods for export under the export procedure becomes liable for any further charges relating to placing the goods free on board a vessel, aircraft, railway carriage or vehicle, that person must promptly amend the clearance declaration in accordance with Section 174 of the Customs Control Act.

(4) When goods cleared under the stores procedure are to be exported from the Republic under that procedure, the price of the goods free on board the vessel, aircraft or railway carriage at the place of exit from where the goods are to be exported must for purposes of this Act be taken as the customs value of the goods.

(5) The railway terminal where goods referred to in subsection (1) or (4) were loaded on board a railway carriage must for purposes of those subsections be regarded to be the place of exit from where the goods are to be exported.

Valuation of accompanied and unaccompanied baggage of person leaving Republic

140. (1) To the extent that section 139 cannot be applied to dutiable items in the accompanied or unaccompanied baggage of a person leaving the Republic, the customs value of those items must be determined in accordance with any method that may render a reasonable valuation of those items, subject to subsection (2).

(2) No value determination in terms of subsection (1) may be based on arbitrary or fictitious values.

(3) Subsection (2) does not apply if the person concerned fails:

- (a) To provide sufficient information for valuing the goods; or
- (b) To comply with a request in terms of Section 121 to provide information or documents necessary for valuing the goods.

Part 6

Currency conversion

Customs value to be expressed in South African Rand

141. (1) The customs value of goods must for purposes of this Act be expressed in South African Rand.

(2) If any payment made or to be made in connection with goods or any other amount taken or to be taken into account in determining the customs value of goods is expressed in a foreign currency, that payment or other amount must be converted into South African Rand in accordance with this Part.

Publication of currency conversion rate for major currencies

142. (1) The Commissioner must for purposes of this Act publish on the SARS website in respect of each Wednesday the selling and buying rates of each of the major currencies for conversion into South African Rand, as provided to the Commissioner by the Reserve Bank for that Wednesday.

(2) Subsection (1) does not apply if a Wednesday falls on a public holiday.

Conversion rate for published currencies

143. (1) If any payment made or to be made in connection with any specific goods cleared for home use or a customs procedure, or if any other amount taken or to be taken into account in determining the customs value of those goods, is expressed in a foreign currency published in

terms of Section 142, the customs authority must, for the purpose of valuing those goods in South African Rand, use the conversion rate applicable for that currency in terms of subsection (2).

(2) The conversion rate for a foreign currency as published in respect of that currency for a Wednesday in terms of Section 142 must be used as the rate for converting the relevant currency into South African Rand if the date of clearance of those goods falls within any of the following periods:

- (a) The week commencing the following Wednesday;
- (b) If that following Wednesday is a public holiday, the two week period commencing that Wednesday; or
- (c) If that following Wednesday is a public holiday and also the last Wednesday of a calendar year, the three week period commencing that Wednesday.

Conversion rate for currency not published

144. (1) If any payment made or to be made in connection with any specific goods cleared for home use or a customs procedure, or any other amount taken or to be taken into account in determining the customs value of those goods, is expressed in a foreign currency not published in terms of Section 142, the customs authority must for the purpose of valuing those goods in South African Rand, and on request by the person submitting the clearance declaration in respect of the goods, determine and use the rate which applied on the day before the date of clearance of those goods for converting that foreign currency into South African Rand.

(2) When determining a conversion rate in terms of subsection (1), the customs authority must take into account the average selling and buying rates of that foreign currency for conversion into South African Rand as quoted for that day by at least two major banks operating in the Republic.

Use of forward exchange contract

145. Where an importer has negotiated a fixed conversion rate with a financial institution and a forward exchange contract has been concluded, this rate will apply to all transactions which fall within the negotiated time period, provided that the invoice reflects the number and the date of the contract as well as the rate used.

Fixed rate of exchange between related parties not acceptable

146. The conversion of foreign currency into South African Rand, at fixed contract rates of exchange, negotiated between sellers and buyers related within the meaning of Section 130 may not be accepted unless it is proved that the relationship did not affect the rate fixed in terms of the contract.

Part 7

Other matters

Goods exported to Republic through other country

147. For the purpose of this Chapter goods which are exported to the Republic from any country but pass in transit through another country must, subject to any conditions and requirements as may be prescribed by rule, be regarded to be exported directly to the Republic from the first-mentioned country.

Publication of value determination and re-determination

148. The Commissioner may make public particulars of any value determination or re-determination in such a manner and containing such information as the Commissioner may determine.

Rules to facilitate application of this Chapter

149. The Commissioner may in terms of Section 224 make rules to facilitate the implementation of this Chapter.

Offences in terms of this Chapter

150. (1) A person clearing goods is guilty of an offence if that person:

- (a) Fails to comply with Section 116(1) or (5) or 139(3);
- (b) Makes a value self-determination which that person knows is not true or could not reasonably have believed to be true; or
- (c) In making a value self-determination:
 - (i) Uses false or misleading information with the intention to mislead; or
 - (ii) Omits to use accurate information with the intention to mislead.

(2) A person is guilty of an offence if that person fails to comply with a request issued by the customs authority to that person in terms of Section 121.

(3) An offence referred to in subsection (1)(b) or (c)(i) or (ii) is a Category 1 offence.
