

GENERAL AGREEMENT ON TARIFFS AND TRADE

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Committee on Customs Valuation

INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Addendum

Legislation of South Africa

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* English only/anglais seulement/inglés solamente

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	ADMINISTRATION. GENERAL DUTIES AND POWERS OF COMMISSIONER AND OFFICERS, AND APPLICATION OF ACT.
	<u>General duties and powers of officers.</u>
A.2/110/79.	4. (3) No officer shall disclose any information relating to any person, firm or business acquired in the performance of his duties, except - (a) for the purposes of this Act; or (b) when required to do so as a witness in a court of law; or
A.3/98/80.	(c) to the Commissioner for Inland Revenue or any officer in the Office of the Commissioner for Inland Revenue designated by that Commissioner, for the purposes of the Sales Tax Act, 1978 (Act No. 103 of 1978).

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107. (2) (a) Subject to the provisions of this Act, the Commissioner shall not, except on such conditions as may be determined by him, allow goods to pass from his control until he has satisfied himself that the provisions of this Act or any law relating to the importation or exportation or transit carriage through the Republic of goods, have been complied with in respect of such goods, and the State or the Commissioner or any officer shall in no case be liable in respect of any claim arising out of the detention of goods pending the decision of the Commissioner or for the costs of such detention.

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CHAPTER IX.

VALUE.

Value for customs duty purposes.

A.5/85/68.
A.21/105/69.
A.20/112/77.
A.5/93/78.
A.7/110/79.
A.13/86/82.

65. (1) Subject to the provisions of this Act, the value for customs duty purposes of any imported goods shall, at the time of entry for home consumption, be the transaction value thereof, within the meaning of section 66.

(2) If such value of any imported goods of a single denomination is -

(a) in excess of one rand, such value shall for the purpose of assessing the amount of duty payable, be calculated to the nearest rand, an amount of 50 cents being regarded as less than one half of one rand;

(b) less than one rand, such value shall be calculated as one rand.

(3) Unless the context otherwise indicates, any reference in this Act to customs value or to value for duty purposes, in relation to imported goods, shall be deemed to be a reference to value for customs duty purposes.

(4)(a) If in the opinion of the Commissioner the transaction value of any imported goods cannot be ascertained in terms of section 66 or has been incorrectly ascertained by the importer, the Commissioner may determine a value, which shall, subject to a right of appeal to the court, be deemed to be the value for customs duty purposes of the goods.

(b) The acceptance by any officer of a bill of entry or the release of any goods as entered shall not be deemed to be any such determination.

¹The annotations contained in Chapter IX of the Customs and Excise Act (Act 91 of 1964) reflect the number and year of the various amendment acts passed, e.g. Annotation "A.13/86/82" indicates Amendment No. 13 contained in the Customs and Excise Amendment Act No. 86 of 1982.

The annotation with the prefix "R" relates to the corresponding regulation in the Customs and Excise Regulations.

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- (c) Any determination so made shall be deemed to be correct for the purposes of this Act, and any amount due in terms of any such determination shall remain payable as long as such determination remains in force.

(5) The Commissioner may whenever he deems it expedient amend or withdraw any such determination and make a new determination with effect from -

- (a) the date of first entry of the goods in question;
 - (b) the date of the determination made under subsection (4);
 - (c) the date of such new determination; or
 - (d) the date of such amendment.
- (6)(a) An appeal against any such determination shall lie to the division of the Supreme Court of South Africa having jurisdiction to hear appeals in the area wherein the determination was made, or the goods in question were entered for home consumption.
- (b) Such appeal shall be prosecuted within a period of 90 days from the date of the determination.
- (7) Save where -
- (a) a determination has been made under subsection (4)(a) or (5); or
 - (b) any false declaration is made for the purposes of subsection (4) or (5),

there shall be no liability for any underpayment of customs duty on any goods, where such underpay-

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ment is due to the acceptance of a bill of entry bearing an incorrect customs value, after a period of two years from the date of entry of such goods.

(8)(a) Notwithstanding the provisions of subsections (1) and (4), the value for customs duty purposes of any imported goods specified in Section B of Part 2 of Schedule No. 1 (other than pearls, precious and semi-precious stones, precious metals, rolled precious metals or articles containing or manufactured of such pearls, precious and semi-precious stones, precious metals or rolled precious metals entered under Schedule No. 4) shall be the transaction value thereof plus 15 per cent of such value, plus any non-rebated customs duty payable in terms of Part 1 of Schedule No. 1 on such goods, but excluding the customs duty specified in the said Section B of Part 2 of Schedule No. 1 on such goods.

(b) The provisions of subsection (3) or (4) of section 70 shall mutatis mutandis apply to the ascertainment or determination of the value for customs duty purposes of any such imported pearls, precious and semi-precious stones, precious metals, rolled precious metals or articles containing or manufactured of such pearls, precious and semi-precious stones, precious metals or rolled precious metals.

(9) For the purposes of sections 66 and 67, unless the context otherwise indicates -

(i) "buying commission", in relation to imported goods, means any fee paid by an importer to his agent for representing him abroad in the purchase of and the payment for the goods; (iii)

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- (ii) "goods of the same class or kind", in relation to imported goods, means goods produced by a particular industry or industry sector in the country from which the imported goods were exported, and falling within the same group or range of goods as the imported goods; (i)
- (iii) "identical goods", in relation to imported goods, means goods produced in the same country and by the same or a different producer as the imported goods and which are the same in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance, as the imported goods, but does not include goods incorporating or reflecting engineering, development work, art work, design work, plans or sketches undertaken in the Republic; (ii)
- (iv) "price actually paid or payable", in relation to imported goods, means the total payment made or to be made, either directly or indirectly, by the buyer to or for the benefit of the seller for the goods, but does not include dividends or other payments passing from the buyer to the seller which do not directly relate to the goods; (iv)
- (v) "similar goods", in relation to imported goods, means goods produced in the same country and by the same or a different producer as the imported goods and which although not alike in all respects to the imported goods have, with due regard to their quality and reputation and the existence of a trade mark, like characteristics and like component materials which enable them to be employed for the same purposes and to be commercially interchangeable, but does not include goods incorporating or reflecting engineering, development work, art work, design work, plans or sketches undertaken in the Republic. (v)

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Transaction value.

A.21/112/77.
A.8/110/79.
A.14/86/82.

66. (1) Subject to the provisions of this Act, the transaction value of any imported goods shall be the price actually paid or payable for the goods when sold for export to the Republic, adjusted in terms of section 67, provided -

(a) there are no restrictions as to the disposal or use of the goods by the buyer other than restrictions which -

(i) are imposed or required by law;

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) the sale or such price of the goods is not subject to any term or condition for which a value cannot be determined;

(c) no part of the proceeds of any disposal, use or subsequent resale of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in terms of section 67;

(d) subject to subsection (3), the seller and the buyer are not related within the meaning of subsection (2)(a).

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- (2)(a) For the purposes of subsection (1)(d), two persons shall be deemed to be related only if -
- (i) they are officers or directors of one another's businesses;
 - (ii) they are legally recognized partners in business;
 - (iii) the one is employed by the other;
 - (iv) any person directly or indirectly owns, controls or holds five per cent or more of the equity share capital of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) Both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or
 - (viii) they are members of the same family.
- (b) Persons who are associated in business with one another in that the one is the sole agent, sole distributor or sole concessionary, however described, of the other shall be deemed to be related only if they are so deemed in terms of paragraph (a).
- (c) Every importer of goods which are not exempted by regulation shall, when making entry of the goods, declare, in the manner prescribed
- 141.(a)

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by regulation, whether or not he is related to the supplier of the goods within the meaning of this section.

(3) Notwithstanding the provisions of subsection (1)(d), the fact that a buyer and a seller are related within the meaning of subsection (2)(a) shall not in itself be a ground for not accepting the transaction value, where -

- (a) in the opinion of the Commissioner such relationship did not influence the price paid or payable; or
 - (b) the importer proves to the satisfaction of the Commissioner that the transaction value closely approximates to one of the following values, namely -
 - (i) the transaction value of identical or similar goods sold at comparable trade and quantity levels to unrelated buyers in the Republic at or about the same time as the goods to be valued;
 - (ii) the value, ascertained in terms of subsection (7), of identical or similar goods imported into the Republic at or about the same time as the goods to be valued;
 - (iii) the value, ascertained in terms of subsection (8), of identical or similar goods imported into the Republic at or about the same time as the goods to be valued.
- (4)(a) If the transaction value of any imported goods cannot be ascertained in terms of subsection (1), it shall be the price actually paid or payable for identical goods in a sale for

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export to the Republic at the same commercial level and in substantially the same quantity and exported at or about the same time as the goods to be valued, adjusted, with reference to differences in any costs and charges referred to in section 67, on account of differences in distances and modes of transport to the port or place of export.

- (b) Where no such sale is found, a sale of identical imported goods at either a different commercial or quantity level, or at a different commercial level and quantity level, adjusted to compensate for such differences, shall be used to ascertain the transaction value.
- (c) If in the application of this subsection more than one transaction value is ascertained, the lowest such value shall be the transaction value of the goods to be valued.
- (5)(a) If the transaction value of any imported goods cannot be ascertained in terms of subsection (4), it shall be the price actually paid or payable for similar goods in a sale for export to the Republic at the same commercial level and in substantially the same quantity and exported at or about the same time as the goods to be valued, adjusted, with reference to differences in any costs and charges referred to in section 67, on account of differences in distances and modes of transport to the port or place of export.
- (b) Where no such sale is found, the provisions of paragraphs (b) and

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(c) of subsection (4) shall
mutatis mutandis apply.

(6) If the transaction value of any imported goods cannot be ascertained in terms of subsection (5), it shall be ascertained in terms of subsection (7) or, when it cannot be ascertained in terms of subsection (7), it shall be ascertained in terms of subsection (8): Provided that at the request, in writing, of the importer concerned the order of application of subsections (7) and (8) shall be reversed.

(7)(a) If the imported goods or identical or similar imported goods are sold in the Republic in the same condition as that in which they were when imported, the transaction value of the imported goods in terms of this subsection shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the Republic in the greatest aggregate quantity, at or about the time of importation of the goods to be valued, by the importers thereof to persons not related to them, subject to deductions for -

(i) commissions usually paid or agreed to be paid or additions usually made for profit and general expenses, including the direct and indirect costs of marketing the goods relative to sales in the Republic of imported goods of the same kind or class as the goods to be valued, irrespective of the country of exportation;

(ii) the cost of transportation and the cost of loading, unloading, handling, insurance and associated costs incidental to the transportation of the goods

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from the port or place of export in the country of exportation to the importer's premises in the Republic; and

- (iii) any duties or taxes paid or payable in the Republic by reason of the importation of the goods or sale of the goods within the Republic.
- (b) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods to be valued, the transaction value of the imported goods in terms of this subsection shall, subject to the provisions of paragraph (a), be based on the unit price at which the imported goods or identical or similar imported goods are sold in the Republic in the same condition as that in which they were when imported, at the earliest date after the importation of the goods to be valued, but not later than 90 days after such importation.
- (c) If neither the imported goods nor identical nor similar imported goods are sold in the Republic in the same condition as that in which they were imported, then, if the importer so requests in writing, the transaction value of the imported goods in terms of this subsection shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the Republic not related to the sellers of such goods, due allowance being made for the value added by such processing and the deductions referred to in paragraph (a).

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(8) The transaction value of any imported goods in terms of this subsection shall be based on a computed value, computed by means of information supplied by the producer and consisting of the sum of -

- (a) the cost or value of materials and manufacture or other process=ing in producing the goods;
- (b) the cost of -
 - (i) packing, including that of the labour or materials concerned; and
 - (ii) containers which are dealt with as being for customs purposes one with the goods in question;
- (c) the value, apportioned to the imported goods as deemed appropriate by the Commissioner, with due regard to any relevant request by the importer, of any of the following goods and services if supplied directly or indirectly by the importer free of charge or at reduced cost, for use in connection with the production and sale for export of the imported goods, in so far as such value has not been included in the price actually paid or payable, namely -
 - (i) materials, components, parts and similar articles forming part of the imported goods;
 - (ii) tools, dies, moulds and similar articles used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods;

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- (iv) engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in the Republic and necessary for the production of the imported goods;
- (d) the cost of transportation and the cost of loading, unloading, handling, transport and insurance and associated costs incidental to delivery of the imported goods at the port or place of export in the country of exportation, ready for export to the Republic;
- (e) an amount for profit and general expenses equal to that generally applicable in sales of goods of the same class or kind as the imported goods, which are made by producers in the country of exportation.

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(9) Where the transaction value of any imported goods cannot be ascertained in terms of the provisions of subsection (8), the Commissioner may determine such value on the basis of a previous determination or, where there is no previous determination, by such application as he may deem reasonable of any manner of ascertaining the transaction value in terms of subsection (1), (4), (5), (7) or (8), but no such determination shall 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 of exportation of the imported goods;
- (d) the cost of production, other than computed values which have been determined for identical or similar goods in accordance with subsection (8);
- (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.

(10) For the purposes of subsection (7)(a)(ii) or (8)(d), goods which are exported to the Republic from any country but pass in transit through another country shall, subject to any conditions which may be prescribed by regulation, be deemed to have been exported direct from the first-mentioned country.

(11) For the purposes of subsection (7)(a)(ii) or (8)(d), the port or place of export referred to therein shall be the place where the goods in question are -

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- (a) packed in a container as defined in section 1(2) in the country of export or, if not so packed in a container, placed on board ship or on any vehicle in the country of exportation ready for export to the Republic; or
- (b) placed on the vehicle which conveys them across the border of the country from which they are exported to the Republic.

Adjustments to price actually paid or payable.

A.6/85/68.
A.22/112/77.
A.15/86/82.

67. (1) In ascertaining the transaction value of any imported goods in terms of section 66(1), there shall be added to the price actually paid or payable for the goods -

- (a) to the extent that they are incurred by the buyer but are not included in the price actually paid or payable -
 - (i) any commission other than a buying commission;
 - (ii) brokerage;
 - (iii) the cost of packing, including that of the labour and materials concerned;
 - (iv) the cost of containers which are dealt with as being for customs purposes one with the goods;
- (b) the value, apportioned to the imported goods as deemed appropriate by the Commissioner, of any of the following goods and services if supplied directly or indirectly by the importer free of charge or at reduced cost, for use in connection with the production and sale for export of the imported goods, to the extent that

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such value has not been included in the price actually paid or payable, namely -

- (i) materials, components, parts and similar articles forming part of the goods;
- (ii) tools, dies, moulds and similar articles used in the production of the goods;
- (iii) materials consumed in the production of the goods;
- (iv) engineering, development work, art work, design work, plans and sketches undertaken elsewhere than in the Republic and necessary for the production of the goods;
- (c) royalties and licence fees in respect of the imported goods, including payments for patents, trade marks and copyright and for the right to distribute or resell the goods, due by the buyer, directly or indirectly, as a condition of sale of the goods for export to the Republic, to the extent that such royalties and fees are not included in the price actually paid or payable, but excluding charges for the right to reproduce the imported goods in the Republic;
- (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller; and
- (e) to the extent that it is not included in the price actually paid or payable for the goods, the cost of transportation and the cost of loading, unloading, handling, insurance and associated

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costs incidental to delivery of the goods at the port or place of export in the country of exportation, ready for export to the Republic.

(2) In ascertaining the transaction value of any imported goods in terms of section 66(1), there shall be deducted from the price actually paid or payable for the goods, to the extent that they are included therein, amounts equal to -

- (a) the cost of transportation and the cost of loading, unloading, handling, insurance and associated costs incidental to the transportation of the goods from the port or place of export in the country of exportation to the port or place of importation in the Republic;
- (b) any of the following costs, charges or expenses if identified separately from the balance of the price actually paid or payable for the goods, namely -
 - (i) any expenditure incurred for the construction, erection, assembly or maintenance of, or technical assistance provided in respect of, the goods after they are imported;
 - (ii) the cost of transport and insurance of the goods within the Republic;
 - (iii) any duties or taxes paid or payable by reason of the importation of the goods or sale of the goods in the Republic;
 - (iv) any duty or tax applicable in the country of exportation from which the goods have been or will be

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relieved by way of refund,
drawback, rebate or
remission;

(v) buying commission;

(vi) interest charged in respect
of the price payable for the
goods;

(vii) any charge for the right to
reproduce the imported goods
in the Republic.

(3) For the purposes of subsection (1)(e)
or 2(a), goods which are exported to the Republic
from any country but pass in transit through
another country shall, subject to such conditions
as may be prescribed by regulation, be deemed to
have been exported direct from the first-mentioned
country.

(4) For the purposes of subsection (1)(e)
or (2)(a), the port or place of export referred
to therein shall be the place where the goods in
question are -

(a) packed in a container as defined
in section 1(2) in the country of
export or, if not so packed in a
container, placed on board ship or
on any vehicle in the country of
exportation ready for export to
the Republic; or

(b) placed on the vehicle which
conveys them across the border of
the country from which they are
exported to the Republic.

A.22/112/77

68.

Value for excise duty purposes.

A.22/105/69

69. (1) Whenever it is necessary, for the
purpose of assessing the excise duty on any goods
manufactured in the Republic, to determine the
value of such goods, the value thereof shall,
subject to the provisions of this section, be
taken to be the full and final market price
(before deduction of any discounts other than cash
discounts) at which, at the time of sale, such or

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similar goods are freely offered for sale, for consumption in the Republic, for purposes of trade in the principal markets of the Republic in the ordinary course of trade, in the usual wholesale quantities and in the condition and the usual packing ready for sale in the retail trade, to any independent merchant wholesaler in the Republic under fully competitive conditions, plus the cost of packing and packages and all other expenses incidental to placing the goods on rail for delivery to the purchaser, but excluding the excise duty on such goods: Provided that the Commissioner may, where such goods are not sold to such merchant wholesalers in the Republic or are so sold in quantities which he considers to be insignificant in relation to the total quantities of such goods sold in the Republic, regard any other class of purchaser of such goods as such a merchant wholesaler and may make such adjustment to the price charged by the manufacturer to such class of purchaser as he considers reasonable, having regard to the wholesale functions taken over by such manufacturer and such class of purchaser and to such other factors relating to such price as he may deem relevant.

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(2) Whenever any such goods are sold or otherwise disposed of in the Republic under such conditions that the value thereof cannot be calculated in terms of subsection (1), the Commissioner may determine a value which shall, subject to the right of appeal to the Minister, be regarded as the value of such goods determined in terms of subsection (1).

(3) The Commissioner may, in respect of any such goods or any class or kind of such goods -

- (a) specify, for the purposes of subsection (1), the quantity which shall be deemed to be the usual wholesale quantity;
- (b) specify, for the purposes of subsection (1), the packing which shall be deemed to be the usual packing ready for sale in the retail trade;
- (c) determine, for the purposes of subsection (1), the cost of packing or packages or any other expenses incidental to placing the goods on rail,

and his decision shall, subject to the right of appeal to the Minister, be final.

A.6/93/78.

- (4)(a) Notwithstanding the provisions of subsections (1) and (2), the value for excise duty purposes of any goods manufactured in the Republic and specified in Section 3 of Part 2 of Schedule No. 1 (other than pearls, precious and semi-precious stones, precious metals, rolled precious metals or articles containing or manufactured of such pearls, precious and semi-precious stones, precious metals or rolled precious metals), shall be the value for excise duty purposes of such goods calculated or determined in terms of subsection (1) or (2), plus any non-rebated excise

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duty payable in terms of Section A of Part 2 of Schedule No. 1 on such goods.

- (b) The provisions of subsection (3) or (4) of section 70 shall mutatis mutandis apply to the calculation or determination of the value for excise duty purposes of any such pearls, precious and semi-precious stones, precious metals, rolled precious metals or articles containing or manufactured of such pearls, precious and semi-precious stones, precious metals or rolled precious metals.

Value for sales duty purposes.

A.7/85/68.
A.23/105/69.
A.9/105/76
A.23/112/77.
A.16/86/82.

70. (1)(a) The value for sales duty purposes of any imported goods, other than goods entered in terms of item 709.01 of Schedule No. 7, shall be the customs value thereof, plus fifteen per cent of such value, plus any non-rebated customs duty payable in terms of Part 1 and Part 2 of Schedule No. 1 on such goods, but excluding the sales duty on such goods.

A.23/112/77.
A.16/86/82.

- (b) The provisions of sections 65, 66, 67 and 71 shall mutatis mutandis apply to the calculation or determination of the value for sales duty purposes of any imported goods.

A.9/105/76.
A.23/112/77.
A.7/93/78.

- (2) The value for sales duty purposes of any goods manufactured in the Republic, other than goods entered in terms of sales duty item 144.00, except under tariff heading 71.16 thereof, of Schedule No. 1, shall be the value for excise duty purposes of such goods, calculated or determined in terms of section 69 as if they were excisable goods, plus any non-rebated excise duty on such goods not included in the price of such goods, but excluding the sales duty on such goods.

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A.23/112/77.
A.7/93/78.

(3) The value for sales duty purposes of any imported goods entered in terms of item 709.01 of Schedule No. 7 and any goods manufactured in the Republic and entered in terms of sales duty item 144.00, except under tariff heading 71.16 thereof, of Schedule No. 1, shall be -

(a) In a sale between a manufacturer as seller and an independent wholesale dealer or an independent bulk buyer or a buyer purchasing at a preferential price or other reseller as purchaser, the highest price (excluding sales duty) at which the manufacturer sells such goods at factory to an independent retail dealer, without any deduction except a cash discount not exceeding two and a half per cent, if any, plus the cost of packing and packages and all other expenses incidental to placing the goods on rail for delivery to the purchaser;

(b) In a sale between a manufacturer and end consumer or between a wholesale dealer or retail dealer or other reseller as seller and an independent retail dealer or end consumer as purchaser, the highest price (excluding sales duty) at which such goods are sold by any such seller to an end consumer without any deduction except thirty-three and a third per cent, plus the cost of packing and packages and all other expenses incidental to placing the goods on rail for delivery to the purchaser.

A.23/112/77.
A.7/93/78.

(4)(a) Whenever any imported goods entered in terms of item 709.01 of Schedule No. 7 or any goods manufactured in the Republic and entered in terms of sales duty item 144.00, except under tariff heading 71.16 thereof, of Schedule No. 1, are sold in such circum=

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stances that the value thereof for sales duty purposes cannot be calculated in terms of subsection (3), the Commissioner may determine a value which shall, subject to a right of appeal to the Minister be deemed to be the value for sales duty purposes of such goods.

- (b) Any such appeal shall be lodged with the Minister in the manner prescribed by regulation within a period of three months after the date on which a value has been so determined.

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A.10/105/76.

Value of certain specified goods.

71. (1) The value for duty purposes of any goods imported into the Republic ex customs warehouses or ex bonded warehouses within the district of Maputo shall be calculated or determined in accordance with this Chapter as if such goods were imported directly into the Republic from the territory whence they were exported to Maputo.

(2) Where any used motor vehicle is imported or where any new motor vehicle is imported by a natural person for his own use and not for sale, the Commissioner may determine the value for duty purposes of such vehicle and his determination shall be final: Provided that where any natural person who was the owner of and has used such motor vehicle in any territory outside the Republic, imports such vehicle into the Republic, from a territory other than the territory in which it was produced or manufactured, for his own use, and not for sale, the Commissioner may determine the value for duty purposes of such vehicle as if it were imported into the Republic from the territory in which it was produced or manufactured: Provided further that no period of use of any such motor vehicle, outside the Republic, while in the possession of any person normally resident in the Republic, which is less than six months shall be taken into consideration in determining such value.

Value of goods exported.

72. (a) For the purposes of this Act, the value of any goods exported from the Republic shall be the price of those goods free on board at the place of despatch from the Republic, which value shall be declared on the bill of entry export.

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ANNOTATIONS	<p>(b) If there is no such free on board price, the value determined by the Commissioner shall be regarded as the value for the said purposes.</p> <p>(c) If the value of any exported goods of a single denomination is, according to the provisions of this section -</p> <p>(i) in excess of one rand and includes a fraction of a rand, such value shall be calculated to the nearest rand, an amount in excess of fifty cents being regarded as one rand;</p> <p>(ii) less than one rand, such value shall be calculated as one rand.</p>
A.11/105/76. A.11/98/80.	<p><u>Conversion of prices.</u></p> <p>73. The Minister may by regulation determine the rate and time at which the price paid or payable in respect of imported goods shall, if expressed in a foreign currency, be converted into the currency of the Republic.</p>
A.9/110/79 A.24/112/77. A.9/110/79. R.9.01.01- R.9.01.02.	<p><u>Value of goods not liable to ad valorem duty.</u></p> <p>74. (1) Subject to the provisions of subsection (2), the customs value of any imported goods shall be declared by the importer on entry of such goods.</p> <p>(2) The Minister may by regulation exempt, to the extent specified in the regulations, any class or kind of such goods or any such goods to which circumstances so specified apply, from the provisions of subsection (1).</p>
A.25/112/77. R.9.02.01. A.17/86/82.	<p><u>Interpretation of sections 65, 66 and 67.</u></p> <p>74A. (1) The interpretation of sections 65, 66 and 67 shall be subject to the agreement concluded at Geneva on 12 April 1979 and known as the Agreement on Implementation of Article VII of</p>
A.26/112/77. A.18/86/82.	

Section 74A.

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	the General Agreement on Tariffs and Trade, the Interpretative Notes thereto and the Advisory Opinions, Commentaries and Explanatory Notes issued under the said Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.
A.18/86/82.	(2) The Commissioner shall obtain and keep in his office two copies of such Agreement, Interpretative Notes, Advisory Opinions, Commentaries and Explanatory Notes and shall effect thereto any amendment thereof of which he is notified by the Secretariat of the General Agreement on Tariffs and Trade.
A.18/86/82.	(3) The provisions of subsection (1) shall not derogate from the interpretation which would but for that subsection be given to section 65, 66 or 67.

GUIDE TO CUSTOMS VALUATION IN THE
REPUBLIC OF SOUTH AFRICA

Office of the Commissioner for Customs and Excise,
Pretoria, February 1983

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Value declaration	Section 66(2)(c)
Value determinations	Reg. 9.06.01
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INTRODUCTION

- 1.00 The agreements which emerged from the round of GATT Multilateral Trade Negotiations (MTN), known as the "Tokyo Round", concluded in 1979, included a new international agreement on customs valuation officially known as the "Agreement on the Implementation of Article VII of GATT". Article VII of GATT lists a set of general principles of customs valuation which contracting parties undertake to give effect to. The new agreement, which has become known as the "GATT Agreement on customs valuation" or the "GATT Valuation Code", is already being applied by many of the major trading countries, including the U.S.A. and the European Community. South Africa intends to implement the Agreement on 1 July 1983.
- 2.00 The main difference in concept between the Brussels Definition of Value (BDV), which has been the basis of customs valuation in South Africa since 1 January 1973, and the GATT Valuation Code, is that the former is based on the notional "normal price" system which is, in brief, the price the goods would fetch on a sale in open-market conditions, whilst the latter is a positive concept based on the transaction value, i.e. the price actually paid or payable for the goods.
- 3.00 The Code prescribes six methods of valuation which must be applied in strict hierarchical order. Thus, if the transaction value cannot be ascertained in terms of Article 1, Article 2 must be tried, and so on. The methods, in order of precedence, are (a) the transaction value of the goods, i.e. the price actually paid or payable therefore; (b) the transaction value of identical goods; (c) the transaction value of similar goods; (d) the "deductive" method (where the customs value is derived from the selling price of the imported goods in the Republic); (e) the "computed" method (where the value is derived from the built-up cost of the imported goods); and (f) the so-called "fall back" method.
- 4.00 For the convenience of interested parties the Code¹, Article VII¹ of the GATT and the enabling legislation have been reproduced as Part I of this booklet and importers, who are responsible for the correct valuation and entry of their goods, are advised to familiarise themselves therewith. Certain parts of the Code, viz. Articles 13 to 31 and Annexes II and III have been excluded because they do not relate to valuation but to matters such as accession to the Agreement, the administration thereof, consultation procedures, dispute settlements, etc. Part II deals, in the main, with technical and administrative questions.

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- 5.00 The "Act" in this Guide, means the South African Customs and Excise Act, 1964, as amended.
- 6.00 For ease of reference, it has been decided to refer to Articles 1, 2, 3, 5, 6 and 7 of the Code and the corresponding sections of the Act, as methods, thus -

<u>Act Reference</u>	<u>Code Reference</u>	<u>Method</u>
Section 66(1) (taken with Sec. 67(1))	Article 1 (taken with Art. 8)	1
Section 66(4)	Article 2	2
Section 66(5)	Article 3	3
Section 66(7)	Article 5	4
Section 66(8)	Article 6	5
Section 66(9)	Article 7	6

- 7.00 Should any further advice regarding the valuation of goods for customs purposes be required, please consult your local Controller of Customs and Excise or the Valuation Section of the Office of the Commissioner for Customs and Excise, Pretoria.
- 8.00 Copies of this Guide, which is in loose-leaf form to facilitate the insertion and withdrawal of pages in the event of amendments and/or additions, may be obtained from your local Controller of Customs and Excise or from the Office of the Commissioner for Customs and Excise, Section Administration, Frans du Toit Building, c/r Paul Kruger and Schoeman Streets, Pretoria, Postal address: Private Bag X47, Pretoria, 0001.

REGULATIONS

VALUE

Currency Conversion

- 9.01.01 When the value of or the price paid or payable for any imported goods is expressed in a foreign currency, it shall, for the purpose of calculating the customs value thereof, be converted into the currency of the Republic at the selling rate quoted by an authorised dealer in exchange in the Republic and acceptable to the Commissioner for this purpose, at the date of shipment of the goods or if no such rate is quoted for the date of shipment, the latest rate quoted before that date shall be used.
- 9.01.02 If no selling rate for a particular currency is quoted in the Republic, the Commissioner may, after consultation with the South African Reserve Bank determine such rate.
- 9.01.03.01 For the purpose of regulations 9.01.01 and 9.01.02, the date of shipment of non-containerised goods shall be the date of the bill of lading, air waybill, or consignment note or such other document as the Commissioner may require.
- 9.01.03.02 The date of shipment of containerised goods shall be the date on which the container is taken on board ship as endorsed on the bill of lading or arrival notification or if imported otherwise than by sea the date of the air waybill, consignment note or such other document as the Commissioner may require.

Exemptions

- 9.02.01 The following classes or kinds of goods are exempted from the requirements of section 66(2)(c):-
- (a) Goods not exceeding R1 000 in value;
 - (b) goods which are not liable to an ad valorem duty, or to an ad valorem duty in addition to, or as an alternative to any other duty;

- (c) goods cleared under the provisions of paragraphs (i) to (iv) of the proviso to section 38(1)(a);
- (d) goods entered under rebate of duty provided for in items 401.00 to 404.02, 404.03/30.02, 405.01, 405.02, 405.03/37.05 to 405.03/90.10, 405.04, 405.05/92.00, 405.05/92.12, 405.05(II), 405.06 to 408.03, 410.01 to 410.02/12.01, 410.03/03.01 to 410.03/23.07, 410.03/27.10, 410.03/29.00 to 411.00/85.01(3), 411.00/89.01, 411.00/89.02, 412.02 to 412.04, 412.06, 412.07, 412.08, 412.09 to 412.17, 412.20 to 460.06/29.02(2), 460.06/29.04 to 460.06/29.16(1), 460.06/29.31, 460.06/29.35, 460.06/30.03(2) to 460.16, 460.17/87.01(2), 460.24 and all items of Part 3 of Schedule No. 4; and
- (e) goods which the Commissioner may from time to time exempt from the obligation to make the prescribed declaration.

Related persons

- 9.03.01 The tests provided for in section 66(3)(b) shall be used on request of the importer and for comparative purposes only.

Valuation Code on Bill of Entry

- 9.04.01 For the purpose of section 66(2)(c) any importer who is -
- (i) related to the supplier of the goods shall so indicate, in the field "Valuation Code" on the bill of entry, by inserting the letter "R".
 - (ii) not related to the supplier of the goods shall so indicate, in the field "Valuation Code" on the bill of entry, by inserting the letter "N".
- 9.04.02 Every importer of goods exempted in terms of regulation 9.02.01 shall indicate such exemption by inserting the letter "E" in the field "Valuation Code" on the bill of entry.

- 9.04.03 The valuation methods prescribed in sections 65(1), 65(4), 65(5), 65(7), 65(8) and 65(9) of the Act, shall be known as Valuation Methods 1 to 6, respectively, and every importer shall indicate which Valuation Method is applicable to his goods by inserting in the field "Valuation Code" on the bill of entry after the letter "R" or "N" as required by regulation 9.04.01 the appropriate method number: Provided that importers of the classes or kinds of goods enumerated in regulation 9.02.01 are exempted from this requirement.

Furnishing of Information

- 9.05.01 The Commissioner shall, whenever he deems it expedient, for purposes of determining a customs value, request the importer to furnish such information as he may require on a form DA55 or in any other manner, and the importer shall furnish the Commissioner with such information not later than thirty days from the date of such request.

Value Determinations

- 9.06.01 The Commissioner shall allocate a number to any determination in respect of a customs value issued by him and shall notify the importer in writing of such determination and its number. The importer shall, in respect of future consignments from the same supplier, insert such value determination number in the field "Additional Information" on the bill of entry.
- 9.06.02 The Commissioner shall on request advise the importer in writing of the method used in determining the customs value of his goods, provided such request is received within thirty days from the date of such determination.

Additions to Price

- 9.07.01 The Commissioner shall in determining the value for duty purposes of any imported goods make no additions, except those specified in section 67(1), to the price actually paid or payable for such goods.

RECONCILIATION

Reconciles Articles of the Agreement with corresponding provisions of the Act and the Regulations thereto.

<u>AGREEMENT</u>	<u>LEGISLATION</u>
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" 1.1(a)	" 66(1)(a)
" 1.1(a)(i)	" 66(1)(a)(i)
" 1.1(a)(ii)	" 66(1)(a)(ii)
" 1.1(a)(iii)	" 66(1)(a)(iii)
" 1.1(b)	" 66(1)(b)
" 1.1(c)	" 66(1)(c)
" 1.1(d)	" 66(1)(d)
" 1.2(a)	" 66(3); 66(3)(a)
" 1.2(b)	" 66(3)(b)
" 1.2(b)(i)	" 66(3)(b)(i)
" 1.2(b)(ii)	" 66(3)(b)(ii)
" 1.2(b)(iii)	" 66(3)(b)(iii)
" 1.2(c)	Regulation 9.02.01
" 2.1(a)	Section 66(4)(a)
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" 2.3	" 66(4)(c)
" 3.1(a)	" 66(5)(a)
" 3.1(b)	" 66(5)(a) & (b)
" 3.2	" 66(5)(a)
" 3.3	" 66(5)(b)
" 4	" 66(6)
" 5.1(a)	" 66(7)(a)
" 5.1(a)(i)	" 66(7)(a)(i)
" 5.1(a)(ii)	" 66(7)(a)(ii)
" 5.1(a)(iii)	" 66(7)(a)(ii)
" 5.1(a)(iv)	" 66(7)(a)(iii)
" 5.1(b)	" 66(7)(b)
" 5.2	" 66(7)(c)
" 6.1	" 66(8)

Article 6.1(a)

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" 8.1(b)(iii)

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" 14

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" 15.2(a)

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" 15.2(c)

" 15.2(d)

Section 66(8)(a)

" 66(8)(e)

" 66(8)(d)

" 66(9)

" 66(9)(a)

" 66(9)(b)

" 66(9)(c)

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" 66(9)(e)

" 66(9)(f)

" 66(9)(g)

Regulation 9.06.02

Section 67(1)

" 67(1)(a)

" 67(1)(a)(i) & (ii)

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" 67(1)(b)(iv)

" 67(1)(c)

" 67(1)(d)

" 67(1)(e)

Regulation 9.07.01

" 9.01.01

" 9.01.01

Section 4(3)

" 65(6)

" 74A(1)

" 65(3)

" 65(9)(iii)

" 65(9)(v)

" 65(9)(iii) & (v)

" 65(9)(iii) & (v)

Article 15.2(e)	Section 65(9)(iii) & (v)
" 15.3	" 65(9)(ii)
" 15.4(a)	" 66(2)(a)(i)
" 15.4(b)	" 66(2)(a)(ii)
" 15.4(c)	" 66(2)(a)(iii)
" 15.4(d)	" 66(2)(a)(iv)
" 15.4(e)	" 66(2)(a)(v)
" 15.4(f)	" 66(2)(a)(vi)
" 15.4(g)	" 66(2)(a)(vii)
" 15.4(h)	" 66(2)(a)(viii)
" 15.5	" 66(2)(b)
" 16	Regulation 9.06.02
Note to Article 1 ("Price actually Paid or Payable")	Section 65(9)(iv); 67(2)(b)(i), (ii) & (iii)
Note to Article 5, paragraph 7	" 66(7)(a)(i)
Note to Article 6, paragraph 3	" 66(8)(c)
Note to Article 7	" 66(9)
Note to Article 8 ("Paragraph 1(c)")	" 67(1)(c)
Note to Article 11, paragraph 1	" 65(4)(a)

PART II

NOTES FOR THE GUIDANCE OF IMPORTERS

The following notes on the valuation of imported goods for customs purposes are designed to assist importers with the correct declaration of the customs value (value for customs duty purposes) of their goods.

1.00 VALUE OF NON-AD VALOREM DUTY GOODS

Section 74(1) of the Act reads:

"Subject to the provisions of subsection (2), the customs value of any imported goods shall be declared by the importer of such goods".

Subsection (2) makes provision for the Minister of Finance to exempt any class or kind of goods from the provisions of subsection (1).

The effect of subsection (1) is that the customs value must be declared in respect of all goods, irrespective of whether they attract ad valorem (percentage of the value) or specific (e.g. 100c per kg) rates of duty or are "Free" by tariff. Where, for example, it has been determined that the relationship between importer and supplier has influenced the price and it has been necessary to apply an uplift, such uplift must, unless otherwise decreed, be applied to all goods from that supplier.

2.00 PREVIOUS VALUE DETERMINATIONS

Many value determinations were issued under the previous valuation system. Numbered determinations issued prior to 1 July 1983 will not automatically fall away under the new system but will, with the exceptions mentioned in Item 3.00, remain valid until reviewed by Customs under the provisions of the Code.

3.00 SOLE DISTRIBUTORS, CONCESSIONAIRES AND AGENTS

Under the previous system, sole distributors, concessionaires and sole agents were, for purposes of customs valuation, classified as "related" persons and earmarked for special attention. That situation no longer applies and they are no longer regarded as "related" persons unless they also fall within the criteria of Article 13.4 of the Code (section 56(2)(a) of the Act). If they are not related as defined, value determinations issued to them

prior to 1 July 1983 will automatically fall away on that date except in such cases where value determinations have been issued prescribing "uplifts" in respect of royalties and licence fees payable to suppliers or third parties. In such cases the determinations will remain in force until reviewed by Customs.

4.00 DISCOUNTS

.01 Cash:

Under the previous valuation system which had the Brussels Definition of Value (BDV) as basis, cash discounts were allowed on the basis of availability (Explanatory Notes to BDV, Chapter VII, Part (e) - Discounts and Price Reductions) because the notional price mentioned in the Definition is a cash price. This no longer applies. The new system is based on the positive transaction value concept which is defined in the Code as the "price actually paid or payable" for the goods. The Code does not have a provision similar to that in the BDV and it follows that the nett amount shown on an invoice must form the basis for valuation.

.02 Sample:

Prior to 1 July 1983, sample discounts were disallowed because they fell within the category of "abnormal discounts" and, as such, did not meet the requirements of the notional "normal price" concept. Under the new concept, a sample discount will be allowed provided the purchase satisfies the requirements of Article 1 of the Code.

.03 Trade and Quantity:

Trade and quantity discounts at the time of purchase or invoicing are acceptable but customs reserves the right to examine such discounts should there be any reason to doubt their validity or non-compliance with the requirements of Article 1 of the Code.

Any discount which is granted retrospectively, such as a discount on turnover, granted at the end of a given period in respect of a total quantity purchased and delivered within that period is not allowed and neither is a progressive discount granted retrospectively. The following is an example of the latter type of discount:

A seller grants the following discounts -

First 500 tonnes	- NIL
Over 500 to 1 000 tonnes	- 4% discount
Over 1 000 tonnes	- 8% discount

A quantity of 200 tonnes which is supplementary to a previous importation of 400 tonnes is imported. In terms of the seller's policy of allowing retrospective discounts, the

entire 600 tonnes qualifies for a discount of 4%. In determining the customs value, the discount allowed retrospectively on the first 400 tonnes purchased is not allowed but the 4% on the supplementary purchase of 200 tonnes is allowed.

.04 Loyalty:

So-called loyalty discounts are acceptable provided the requirements of Article 1 can be met.

5.00 INTEREST

Interest, whether charged by the seller or a third party, is not a dutiable charge. It stems from a financial arrangement quite apart from the transaction of buying and selling of the goods and is not considered to be part of the price paid or payable for the goods.

This view is supported by the Note to Article 1, which makes it clear that the reference in the Code to "price actually paid or payable" is a reference to the price of the goods. This is interpreted as meaning the amount the seller is prepared to sell it for, exclusive of any other factors.

6.00 COMMISSIONS AND BROKERAGE

The customs value must include commissions and brokerage, with the exception of buying and confirming commissions.

.01 Buying Commission:

The provisions of Article 3.1(a)(i) of the Code exclude commissions paid to buying agents from the value for duty purposes of imported goods. A buying agent is a person who acts for the account of the buyer, rendering him services in connection with finding suppliers, informing sellers of his principal's requirements, collecting samples and inspecting goods. In some cases he arranges the insurance, transport, storage and delivery of the goods. The buying agent's fee, usually termed a buying commission, is an expense incurred by the buyer and is paid for by him quite apart from the payment made for the goods. As it is not a payment made to or for the benefit of the seller of the goods it does not form part of the transaction value.

.02 Selling commission:

A selling agent, also known as an indent agent, is a person who acts for the account of the seller, usually in the country of importation; he seeks customers and collects orders, and in some cases he may arrange for storage and

delivery of the goods. His fee is termed a "selling commission" and is normally paid by the supplier, who quotes inclusive prices to his customers. In such cases there is no problem and invoice prices do not need to be adjusted to take account of these services. In some cases, however, the terms of the sale require the customer to pay the commission direct to the agent. This commission must be added to the invoice price when determining the value for duty purposes under Article 1 of the Code.

.03 Confirming Commission:

A confirming agent ("confirmer") is a person, usually in the country of export, who acts for the importer in confirming a purchase and the payment therefor. He either pays for the goods on behalf of the client, or arranges or guarantees payment. His charge for the service, usually termed a "confirming commission", is an expense incurred by the importer and paid for by him quite apart from the payment made for the goods. As it is not a payment made to or for the benefit of the seller of the goods, it does not form part of the transaction value.

.04 Brokerage:

A broker is an intermediary whose role is to put buyer and seller in touch with each other. The broker's remuneration is termed "brokerage" and is usually a percentage of the value of the business concluded as a result of his activities. It is usually paid by the seller who includes it in his invoice price to the customer. However, it could happen that where the broker is engaged by the buyer that the latter pays the fee, or that buyer and seller each pays part thereof. In such cases, the amount of brokerage paid by the buyer must be added to the price paid or payable in determining the customs value of the goods. This may appear to conflict with the rule applicable to buying and confirming commissions, but please refer to Article 8.1(a)(i) of the Code.

7.00 VALUE FOR CUSTOMS DUTY PURPOSES

The f.o.b. contract has been retained by South Africa as the basis for valuation. Section 67(1)(e) of the Act provides for the addition to the price charged for the goods, to the extent that it is not included in such price, of transportation expenses (from factory or warehouse) and insurance, loading, unloading and handling charges incidental to delivery of the goods to the place of export in the country of exportation, ready for loading into a container or onto a ship or other vehicle. The expression "ready for loading" means that charges associated with the unloading and handling of the goods on arrival at the container depot/dock area/airport, as the case may be, in the country of export must be included in the dutiable value of the goods.

PLACE OF EXPORT

The port or place of export is that place in the exporting country where the goods to be exported are loaded into a container (as defined in section 1(2) of the Act) in which it will be exported to South Africa, or placed on board a ship or other vehicle in which it is to be exported, whichever occurs first.

9.00 APPORTIONMENT OF COSTS, CHARGES AND EXPENSES

Where it is necessary to apportion dutiable costs, charges and expenses between various lines on a bill of entry, such apportionment must be made on the basis of the invoice price of each line, irrespective of the type of duty applicable. For example, should the invoice price of Item 1 amount to 20% of the total invoice price of all the goods, 20% of the dutiable costs, charges and expenses must be allocated to Item 1.

10.00 SOLD FOR EXPORT TO THE REPUBLIC

Section 66(1) of the Act (Article 1.1 of the Code) stipulates that the goods to be valued must have been sold for export to South Africa. This merely means that goods can only be valued under Article 1 (or Method 1) if the importer has bought them from the supplier. That is to say, there must be a sale. Refer also to paragraph 11.00 (Sales in Transit).

11.00 SALES IN TRANSIT

The condition, "sold for export to the Republic" in section 66(1) of the Act, must be taken to mean that a prerequisite for valuation under the primary method (Article 1 of the Code), is a sale. That is to say, the importer must have acquired the goods by way of a purchase before entry thereof, and the seller need not necessarily be in the country of export. For example, exporter B in country A sells goods to buyer C in country X, for shipment to that country. Whilst in transit to country X, the goods are resold by C to a buyer in South Africa. The resale will be accepted as a "sale for export to South Africa" and the resale price will form the basis for valuation under Article 1.

12.00 IMPORTATION OF GOODS AFTER REPAIR OR FURTHER PROCESSING
ABROAD

- .01 Where locally manufactured or imported goods are sent abroad for repair or further processing, the duty on the cost of the repairs or processing only is payable, subject to the provisions of item 409.04 of Schedule No. 4 to the Act. These provisions are that the goods must -
- (a) have been exported under customs supervision;
 - (b) retain their essential character;
 - (c) not have undergone a change of ownership; and
 - (d) be identifiable on re-importation.
- .02 It can be argued that any such transaction cannot, strictly speaking, be considered to be a sale of goods. On the other hand, the price for the job will include amounts for the supply of material, labour and service and will be accepted as basis for valuation under Article 1. In this regard, it must be noted that costs, charges and expenses associated with the delivery of the goods to the repairer or processor must be included in the value for customs duty purposes.
- .03 Examples of goods sent out for repair or further processing would be, respectively, a damaged or worn out machine part sent to the supplier for repair/reconditioning and a piece of machinery which has been manufactured locally and is sent abroad for specialised machining.
- .04 Where the processing or manufacture abroad is to the extent where the exported product loses its essential character, e.g. aluminium ingots sent abroad for conversion into sheets, the normal price must be based on the full value of the goods and would normally include the following elements:
- (a) the purchase price (or value) of the goods sent from the Republic, or bought overseas, to be further processed;
 - (b) packing, freight and insurance outwards, and all other charges involved in delivering the goods to the processor including any customs duties and taxes from which the goods are not subsequently relieved;
 - (c) the purchase price (or value) of any additional material used in the process;
 - (d) the processor's profit;
 - (e) agents' commission, if any;

- (f). delivery charges to the place of exportation;
- (g) the cost of packages and packing material used to bring the goods to South Africa and labour in packing.

13.00 CURRENCY CONVERSION

- .01 Where the price paid or payable is invoiced in a foreign currency, it must be converted to South African currency at the selling rate current on the exchange market of the Republic at the date of shipment of the goods. In the case of breakbulk cargo, the Bill of Lading/Air Waybill/Consignment Note date must be taken as the date of shipment whilst in the case of containerised cargo, the "SHIPPED ON BOARD" date as endorsed on the Bill of Lading, etc., must be used.
- .02 Where shipment takes place on a weekend, public holiday or any other day on which exchange rates are not quoted, the last published rate prior to date of shipment must be used.
- .03 It is not uncommon for the price paid or payable to be invoiced in South African currency. In such cases, there is no need for conversion and the rand amount must be taken as the basis for valuation.
- .04 The amount invoiced by the actual supplier of the goods is not necessarily the figure which must be converted. For example, a local importer buys goods from a supplier in Germany and instructs an intermediary in London to make payment on his behalf and to arrange for shipment thereof. The importer subsequently receives, from the intermediary, the German supplier's invoice in Deutsch marks and the intermediary's own invoice (also termed a "covering statement") showing the price paid for the goods, plus disbursements, etc., in sterling. The total amount in sterling on the intermediary's invoice is the amount actually paid or payable and for customs purposes is the amount which, subject to deduction of any non-dutiable elements, must be converted to South African currency.
- .05 Cases where an intermediary's statement reflects only, say, disbursements and/or his fee, are also commonplace. In such cases, there is no alternative but to convert separately the amounts on the two invoices.

14.00 INSPECTION AND ANALYSIS FEES

In determining the customs value of imported goods no additions, except as provided for in section 57(1) of the Act (Article 8.4 of the Code), may be made to the price actually paid or payable. Inspection and analysis fees are not provided for and, consequently, cannot be included in the customs value. However, the rule only applies if such fees are clearly identifiable on invoices.

15.00 DEBITS AND CREDITS

Debits and credits relating to past shipments may not be adjusted against the invoice price of a current consignment. They must be adjusted against the consignments to which they relate.

16.00 GOODS IMPORTED ON HIRE OR LEASE

Because there is no sale involved when goods are imported on hire or lease, the goods cannot be valued under Article 1 of the Code (Method 1). In such cases, the customs value of the goods must be determined by moving sequentially through Articles 2 to 7 (Methods 2 to 6).

17.00 AGENCY IMPORTATIONS (CONSIGNMENT GOODS)

- .01 Goods consigned by a foreign exporter to his agent in South Africa for replenishment of the agency stocks and subsequent sale for the account and risk of the foreign supplier, will not have been imported as the result of a sale and cannot be valued under Method 1. Valuation must proceed sequentially through Articles 2 to 7 (Methods 2 to 6).
- .02 In most such cases the prices at which the goods are to be sold are known at the time of importation and the customs value can readily be established on the basis of these prices by deducting therefrom all non-dutiable elements such as ocean/airfreight, insurance and post-importation expenses such as duties and taxes, clearance, storage, selling expenses, commission, etc. The local selling prices may be obtained from price lists or by reference to recent sales of identical or similar goods.
- .03 In exceptional cases where goods are consigned to the agent for sale at the best price obtainable, clearance may be made on an estimated customs value based on a previous recent sale of identical or similar goods or, if there were no such sales, on some other acceptable basis, such as "expected realisation", and release obtained against a provisional payment (cash deposit) or other surety, pending adjustment of the entry after the goods have been sold.

18.00 ADVERTISING AND WARRANTY EXPENSES

Prior to 1 July 1983, any expenses incurred by the importer in advertising the supplier's brand or mark in South Africa and/or rendering free service under the manufacturer's warranty, were regarded as having been incurred in the interest of the supplier and formed part

of the customs value of the imported goods. This is no longer the case. Under the new system, the cost of any activities undertaken by the importer on his own account, other than those listed in section 67(1) of the Act (Article 3 of the Code), is not to be included in the customs value of the imported goods (See Note to Article 1, under "Price actually paid or payable"). It follows that if the importer undertakes on his own account, even though by agreement with the supplier, activities relating to the marketing of the goods and the manufacturer's warranty, the value of these activities is not part of the customs value.

19.00 ROYALTIES AND LICENCE FEES

The question of the dutiability or otherwise of royalty payments and licence fees is complex and will generally have to be dealt with on a case-by-case basis. That is to say, the circumstances of each case must be examined, with special reference to any agreements between the parties to a transaction. Broadly, the position is that licence fees and royalty payments, including those for patents, trademarks and copyrights, are dutiable and when determining the transaction value of goods under Method 1, such payments must, if not already included therein, be added to the price paid or payable. However, for the additions to be made, two main conditions must be satisfied, viz. -

- (a) the payments must relate only to the imported goods and not to local content or a mixture of local and imported content in cases where the imported goods are involved in further processing after importation; and
- (b) the payments must be a condition of the sale of the imported goods to the importer.

Two further aspects must be borne in mind, however, and these are -

- (i) payments for the right to reproduce the imported goods in South Africa are not dutiable; and
- (ii) where there is insufficient information to establish accurately the additions required to be made, the transaction value cannot be determined under the provisions of Method 1 and must be determined under the provisions of one of the other Methods.

The following examples should serve to illustrate the principles involved.

Example 1

When a machine manufactured under a patent is sold to an importer in South Africa at a price exclusive of the patent fee, which the seller has required the buyer to pay to a third party who owns the patent, should the royalty be added to the price paid or payable under the provisions of Method 1?

The royalty should be added to the price paid or payable in accordance with these provisions since the payment of the royalty by the buyer is a condition of the sale and relates to the goods being valued.

Example 2

Phonograph records of a musical performance are purchased by an importer from a manufacturer and the importer resells the records in South Africa paying a royalty of 3% of the selling price to a third party, the author of the composition, who holds a copyright. Payment of the royalty is not a condition of the sale of the records to the importer but by separate agreement. No part thereof accrues to the manufacturer. Should the royalty be added to the price paid or payable?

In determining the customs value, the royalty should not be added to the price paid or payable. Payment of the royalty arises from a separate legal obligation and not as a result of a condition of the sale for export of the records to South Africa.

Example 3

A machine is purchased from exporter E by importer I and a royalty is paid by I to an unrelated third party, who holds the patent on the process which the machine is designed to perform; that process is the only function of the machine. The royalty is paid on the basis of the number of articles produced, using the machine.

Although the payment of the royalty is for a process inseparably embodied in the machine and one which constitutes the sole use of the machine, the royalty on the use of that machine is not part of the customs value since its payment is not a condition of the sale of the machine for export to South Africa.

Example 4

Foreign manufacturer M owns a trademark protected in South Africa. Importer I makes and sells under M's trademark six types of cosmetics. I is required to pay M a royalty of 5% of annual gross sales of all cosmetics sold under M's trademark. All the cosmetics are manufactured to M's formula from ingredients obtained in South Africa, with the exception of one for which the essential ingredients are normally obtained from M. How is the royalty to be treated with respect to the imported ingredients?

The royalty is payable to M irrespective of whether I uses ingredients obtained from local sources or from M; the royalty is, therefore, not paid to M as a condition of the sale of ingredients purchased from him and must not be added to the price paid or payable.

Example 5

A patented concentrate is purchased by importer A from foreign manufacturer B, who is also the patent holder. The imported concentrate is mixed with ingredients obtained from sources other than A and bottled before it is sold locally. The concentrate is sold to importer A on condition that he pays to manufacturer B in addition to the price of the concentrate, a royalty thereon of 5% of the net selling price of the finished product. The royalty is paid quarterly in arrears. How must it be treated?

Because the royalty payment relates to the concentrate and is a condition of the sale thereof, the conditions of section 67(1)(c) of the Act have been satisfied and it must accordingly be added to the price of the concentrate in determining the customs value. In the example quoted, the royalty payment is a percentage of the selling price of the finished product and is payable quarterly. If the payment is an amount agreed in advance and based on estimated sales, it will be possible to readily determine the amount to be added. However, if the royalty is to be determined on actual sales, it may not be possible to readily determine the amount to be added at the time of entry in which event the transaction value of the concentrate will be determined under Methods 1 through to 7.

20.00 RESEARCH, PATTERNS, MOULDS, TOOLS, ETC., CHARGES FOR

The production of manufactured goods involves outlays for patterns, moulds, etc. and such expenses are usually taken into account by the manufacturer either in his overheads or directly in the price charged for the goods. Where, however, such expenses are charged for separately, they must be included in the customs value of the goods to which they relate. Where they cover a series of importations, the expenses may be apportioned to the various shipments.

21.00 ASSISTS (GOODS AND SERVICES SUPPLIED TO MANUFACTURER BY THE IMPORTER)

- .01 It is not uncommon for a buyer to furnish his supplier with assistance in one form or another. For example, shirts are purchased which have been manufactured from fabric supplied directly or indirectly by the buyer; machines are purchased which are fitted with electric motors supplied by the buyer. If the finished goods are manufactured by a foreign manufacturer and exported to

South Africa, the value of certain "assists", as listed in section 67(1)(b) of the Act must, if not already included therein, be added to the price paid or payable in determining the customs value of the imported goods. Although the term "assists" does not appear in the Code, it is used here to describe any of the goods and services listed in Article 8.1(b) of the Code (section 67(1)(b) of the Act). The subject is dealt with in the said Article, which covers certain goods and services supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the goods to be valued. The list of "assists" covers four categories of goods and services, namely -

- (a) "Materials, components, parts and similar items incorporated in the imported goods".

These are tangible items which physically exist in the imported product and the value to be added to the price paid or payable in determining the customs value is the cost to the buyer of manufacturing or otherwise acquiring it. It follows that where, for example, a certain amount of waste occurs in the manufacture of the product to be exported to South Africa, no allowance can be made in respect to that waste;

- (b) "tools, dies, moulds and similar items used in the production of the imported goods".

These items are production equipment and determination of the amount to be added to the price paid or payable may prove to be difficult because it will depend on factors which will be difficult to quantify accurately, such as the extent to which they have become worn in the manufacture of the goods to be valued, period of use prior to being supplied to the foreign manufacturer as an "assist", etc. More detailed information regarding the valuation of this category will be found in the Note to Article 8 on page 28 of Part I of this booklet, under the heading "Paragraph 1(b)(ii)".

- (c) "materials consumed in the production of the imported goods".

This will include catalysts, lubricants, abrasives and similar materials which do not become part of the imported goods but which are necessary in the manufacture thereof. Determination of the value of "assists" in this category again raises the question of waste, a question which is not specifically dealt with in the Code. However, the Note to Article 3 makes it clear that the value of "assists" is the cost to the importer of producing or otherwise acquiring the goods. No allowance can, therefore, be made for waste.

- (d) "engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in South Africa and necessary for the production of the imported goods".

This category of "assists" could be the most complex because it concerns intangibles only. It could, for example, involve designs which have become generally available or known, or plans which have been used for their original purpose and made available to, or drawn upon by, the buyer for adaptation. Since the "assists" must be valued at cost to the importer, i.e. without addition for profit, it would be appropriate in such cases to apply nominal values - either no value or the cost of copying, perhaps.

- .02 The value of an "assist" and the amount to be apportioned to the imported goods must be accurately determined on the basis of readily available information. Where this is not possible, the transaction value of the imported goods cannot be determined under Method 1 and valuation must proceed sequentially through the alternative methods.

22.00 TIME OF VALUATION

Section 65(1) of the Act prescribes that the value for customs purposes of imported goods must be established at the time of entry for home consumption thereof. In practice, however, this will not be the case. Excepting in cases where examination indicates possible adjustment of the price, the values declared at the time of first entry, whether for home consumption or warehousing, will generally be accepted as the values for customs purposes.

23.00 DUTY-INCLUSIVE PRICE, TREATMENT OF

- .01 Where an invoice price includes a South African duty or tax, the included duty or tax must be deducted from such price in determining transaction value. Where there is no other deductible element involved, the amount of duty or tax to be deducted may be determined as follows:

$\frac{X}{100 + X}$, where X represents the rate of duty. Thus,
if the rate of duty is 10%, the deduction will be
 $\frac{10}{110}$ of the price.

- .02 Where the price also includes other deductible elements, for example, freight, such elements must first be deducted. The net price arrived at must then be treated as duty-inclusive and the formula in paragraph .01 applied.

24.00 PROCEDURES

- .01 As from 1 July 1983, importers will no longer be required to tender forms DA 50, DA 51 and DA 52. Instead, the following procedures must be followed:

Where an importer is -

- (i) related to his supplier, as defined in section 66(2)(a) of the Act (see page 38 of this booklet), the code letter "R" must be inserted in the field "Valuation Code" on the bill of entry;
 - (ii) not related to his supplier, the code letter "N" must be inserted in that field.
- .02 Immediately after the code letter indicating relationship, the importer must indicate which of the valuation Methods 1 through to 6 he considers to apply in his case. For example, should he consider the primary Method 1 to apply, he must insert the code figure 1 or should he consider the value of identical goods (Method 2) to apply, he must insert the code figure 2, and so on. In this regard, please refer to regulations 9.04.01 and 9.04.02 on pages 47/48 of this booklet.
- .03 For example; should an importer declare that there is no relationship between his supplier and himself, and considers Method 1 to apply, he must insert the valuation code "N1" in the field "Valuation Code".
- .04 Where a value determination has been issued to an importer in respect of goods imported from a specific supplier, the determination number must be inserted in the field "Additional Information" on the bill of entry. This applies equally to determinations issued under the old and the new valuation systems. In such cases, the "Valuation Code" field must be left blank. As indicated in Note 2.00 on page 52, determinations issued prior to 1 July 1983 have not automatically fallen away but will, subject to what is said in Note 3.00 on page 52, remain valid until reviewed.
- .05 In the above regard it should be noted, firstly, that although it is not a requirement that the fields "Valuation Code" and "Additional Information" be filled in by importers themselves or members of their staff, they are responsible for the accuracy of the codes. It is, therefore, incumbent on them to instruct their clearing agents correctly. Secondly, the procedure must be continued until such time as a value determination is issued.

- .06 Having complied with the procedures outlined in the preceding paragraphs, no further action is required from Importers because from this point on, the initiative will be taken by the Valuation Section of this Office. Should the Valuation Section decide to follow-up any declaration, the importer concerned will be called upon to furnish further information by way of a questionnaire, form DA 55, which will be submitted to him. Form DA 55 must be completed by the importer and returned to this Office not later than fourteen days after receipt thereof. If, after studying the information supplied, the Valuation Section considers that further details are required, the importer will again be approached.

CUSTOMS AND EXCISE VALUATION QUESTIONNAIRE				DA 55
Name		IMPORTER		Address
		Code Number		
Name		SUPPLIER		Address
DESCRIPTION OF GOODS (eg. chemicals, motor spares)				
NOTES				
(i) Wherever a 'yes' or 'no' answer is required, the appropriate block must please be indicated by an "x"				
(ii) Wherever details are required and the space provided is insufficient, annexures may be used reference being made to the annexure on the questionnaire				
1. ARE THE GOODS ACQUIRED THROUGH OUTRIGHT PURCHASE?	YES	NO	1.1 If 'yes' state terms of sale (eg. FOB, C.I.F, ex works etc)	
2. ARE THE TERMS CONSTANT?	YES	NO	1.2 If 'no' state basis of acquisition (eg. lease, hire, consignment etc)	
3. HAS THE SUPPLIER IMPOSED ANY RESTRICTION REGARDING THE DISPOSAL, USE OR SUBSEQUENT RESALE OF THE IMPORTED GOODS WHICH SUBSTANTIALLY INFLUENCE THE PRICE TO YOU?				YES
				NO
If 'yes', give details, including extent of influence on price				
4. IS THE SALE OR PRICE SUBJECT TO SOME OTHER CONDITION OR CONSIDERATION FOR WHICH A VALUE CANNOT BE DETERMINED? (please refer to par. 1(b) of Note to Article 1 of the Valuation Code)				YES
				NO
If 'yes', give details				
5. DOES ANY PART OF THE PROCEEDS OF SUBSEQUENT RESALE, DISPOSAL OR USE OF THE IMPORTED GOODS ACCRUE DIRECTLY OR INDIRECTLY TO THE SUPPLIER? (ROYALTIES, LICENCE FEES AND DIVIDENDS EXCLUDED)				YES
				NO
If 'yes', give details of the arrangements with the supplier and attach a copy of any agreement you may have with him in this regard				

6. ARE YOU RELATED TO THE SUPPLIER WITHIN THE MEANING OF SECTION 66(2)(a) OF THE CUSTOMS AND EXCISE ACT?						YES	NO
<u>If "yes", give details and state to what extent the relationship influences the price</u>							
<u>Note</u> If it is claimed that the relationship has no influence on the price, evidence that the supplier's prices to you are acceptable as open market prices or approximate the price of identical or similar goods sold to unrelated importers in the Republic, must be furnished							
7. ARE YOU CHARGED A SELLING COMMISSION?						YES	NO
<u>If "yes"</u>							
7.1 How much?	%	7.2 Is it included in the supplier's invoice price	YES	NO	7.3 Is it paid by you direct to the supplier's local agent?	YES	NO
8. ARE ROYALTIES AND LICENCE FEES RELATED TO THE IMPORTED GOODS PAYABLE BY YOU AS A CONDITION OF SALE?						YES	NO
<u>If "yes", give details, including a copy of your agreement and where possible, the amount payable expressed as a percentage of the F.O.B. value of the imported goods</u>							
9. DO YOU SUPPLY ANY OF THE FOLLOWING GOODS OR SERVICES FREE OF CHARGE OR AT A REDUCED COST TO YOUR SUPPLIER FOR USE IN THE PRODUCTION AND SALE TO YOU, OF THE IMPORTED GOODS?							
9.1 Materials, components, parts and similar items incorporated in the imported goods						YES	NO
9.2 Tools, dies, moulds and similar items used in the production of the imported goods						YES	NO
9.3 Materials consumed in the production of the imported goods, but not incorporated therein						YES	NO
9.4 Engineering development, artwork, designwork and plans and sketches undertaken outside the Republic and necessary for production of the imported goods.						YES	NO
<u>Give details r.o. all the "yes" answers in question 9</u>							
I HEREBY DECLARE THAT THE DETAILS CONTAINED IN THIS QUESTIONNAIRE ARE TRUE AND CORRECT AND THAT NO INFORMATION HAS BEEN WITHHELD							
----- SIGNATURE		----- DESIGNATION			----- DATE		