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SHIPPING

IMPORTANT TO CORRECTLY CLASSIFY IMPORTED GOODS

GOODS imported into South Africa are subject to customs duty. While some goods may be exempt from this tax, most attract customs duty.

The purpose of customs duty is to protect each country's economy by controlling the flow of goods, especially undesirable products.

For example, the customs duty raised on imported textiles and textile articles, which is a threat to the local textile industry, attracts a generally high customs duty.

The other purpose is, of course, to raise revenue. Customs duty is usually calculated as a percentage of the value of the imported goods. The rates in South Africa usually vary between 0% and 45%.

The rate at which customs duty is levied is made in accordance with a schedule to the Customs and Excise Act. The schedule classifies goods into various categories. It is a vast document aimed at categorising and specifying every commodity which could conceivably be imported to Africa and is divided into 22 sections, 99 chapters and sub-chapters which, in turn, are divided into headings and sub-headings.

This schedule has its origin in the International Convention in Harmonised Commodity Description and Coding System established under the auspices of the World Customs Organisation. The aim is to ensure member states' uniform interpretation of the convention.

The sub-heading under which an item is classified determines the percentage of customs duty that is payable. Each sub-heading is given a six-digit number, two digits for the chapter, two for the heading and two for the sub-heading.

For example, Section XI includes all textiles and textile articles. Imports of a jacket might fall under chapter 62 of this section which includes "articles of apparel and clothing accessories". The relevant heading may be heading number 3, "Men's or boys' suits, ensembles, jackets, blazers, trousers". The relevant sub-heading might then be sub-heading 33, "of synthetic fibres". The jacket would be imported under subheading 6003.33 and attract a duty of 45%.

Before goods are to be brought in, the importer needs to declare on the customs declaration form under which sub-heading or tariff code – in other words the six-digit code – the goods are being imported.

It is important for an importer to be confident that the tariff code entered on the customs declaration is the correct tariff heading and sub-heading since the South African Revenue Service might make a determination that another tariff code is applicable to the goods.

Sars usually determines that a specific product falls under a tariff code that attracts a higher customs duty than the one entered by the importer. Such a determination can be set aside by the importer only through a high court application for a ruling on the correct tariff code for a specific product.

Our courts have dealt with many such tariff classification disputes – for example, whether a certain crane was a mobile crane or a crane lorry. A mobile crane would have attracted 7% customs duty and a crane lorry 20%.

Another example was the importation of sheep carcasses. To ship these economically, they were cut into six pieces. But lower rates applied to whole carcasses than cut-up pieces. The importer and Sars went to court to resolve their dispute. The court ruled that the carcasses were no longer carcasses and classified them as "other cuts with bone in".

To resolve the differences in interpretation, our courts laid down the correct approach to tariff classification: "Classification as between headings is a three-stage approach: first, interpretation – the ascertainment of the meaning of the words used in the headings (and relevant section and chapter notes); second, consideration of the nature and characteristics of those goods; and third, the selection of the heading which is most appropriate to such goods."

Determining the correct tariff code can be complicated. It is important that importers are certain that they classify goods correctly and obtain assistance when in doubt.

A different classification by Sars can result in imports being uneconomical, especially for products constantly improved to include more functions.

What was a watch a year ago might soon be a computer, or a phone might become a television set. In other words, the nature and characteristics of the goods might change due to the improvements. It would be advisable to reassess the characteristics of the product after each improvement.

A word of caution to online shoppers buying products from overseas: ensure you are aware of any customs duty that might be charged on your purchase if this is not specifically mentioned on the online website.

Online retailers usually do not include any charge for customs duty to be levied by the country of destination or accept liability for such charges. Customs policies vary among countries and the online retailer might not be able to calculate this beforehand.

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