



## Customs @ Wylie

*This e-mail flyer is created by the International Transport, Trade & Energy Division of Shepstone & Wylie. We have offices in, amongst other places, [Durban, Cape Town, Richards Bay and Johannesburg.](#)*

### Introduction

Shepstone & Wylie has advised the shipping and logistics industry on legal and commercial issues for over 115 years. During this period, we have assembled a formidable team specialising in customs & logistics related matters and you can contact us at [customs@wylie.co.za](mailto:customs@wylie.co.za).

The Customs & Excise Act, Regulations and ancillary legislation has developed piecemeal with cumulative obligations referred to in different parts of this legislation. The result is that industry is often unaware of its obligations under the law or is faced with situations where the legal position itself is not clear.

Our objective with this flyer is to create a source of information which briefly touches on problematic issues or reminds industry of possible pitfalls.

If you have no interest in this flyer, please e-mail us at [customs@wylie.co.za](mailto:customs@wylie.co.za) and we will gladly remove you from our list. Equally, we encourage participation on topics discussed in this flyer, so please also e-mail us at [customs@wylie.co.za](mailto:customs@wylie.co.za) if you have any comments or suggestions.



## **Damning Definitions**

Our courts have cast the net for liability very wide under the Customs & Excise Act by relying on the definitions of an "exporter" and an "importer" in section 1 of the Act.

Both definitions are wider than the literal meaning of an importer or exporter, and include the person who at the time of the importation or exportation owns the goods, carries the risk of any goods, represents or acts as though he is the importer or exporter or (a catch-all) is beneficially interested in any way whatsoever in the goods.

This is illustrated by the case of *EBN Trading (Pty) Ltd v Commissioner of Customs & Excise*, where the court held that the financier of a transaction was considered to be the "importer", simply because the financier was beneficially involved in the import of the goods.

Another example is the case of *Standard General Insurance Company Limited v Commissioner of Customs & Excise*, where the court held that a clearing and forwarding agent also fell within the definition of "exporter".

Since the net has been cast so wide, your business too may be at risk of being held liable as either an "importer" or an "exporter".

## **The Principal Rule in Classification**

The principal rule is that the classification of goods must be determined according to the terms of the heading in the relative section or chapter notes (Rule 1) and only failing that, in accordance with the sequential order of the remaining rules.

In the case of *International Business Machines SA (Pty) Ltd v Commissioner of Customs & Excise*, the court held that the classification as between headings is a three stage process.

Firstly, the meaning of the words used in the headings and relative section and chapter notes, which may be relevant to the classification of the goods must be interpreted.



Secondly, consideration must be given to the nature and characteristics of the goods to be classified.

And then thirdly, the heading which is most appropriate to the goods must be selected.

## **Second-hand Motor Vehicle Industry Shaken Up**

Our Supreme Court of Appeal, in the case of *Clearing Agents v MEC Transport*, recently had to decide whether the authorities were obliged to grant temporary permits for second-hand motor vehicles (imported from abroad for sale elsewhere in Africa) to be driven to the border under their own steam for re-export. The court decided that there is no such obligation on the authorities. This means that these vehicles will now have to be transported to the border by car carriers, which will effectively increase their cost of removal in bond.

## **Did You Know?**

- Rumour has it that customs duty and excise duty will be dealt with separately in two different Acts under the re-write of the existing Customs & Excise Act.
- Section 77J to section 77P provides for a settlement of disputes and even empowers the Commissioner to write-off duties that would otherwise be payable.
- Under the latest Revenue Law Amendment Act, all depots, terminals, combined terminals, wharf leaseholders, container operators and transit sheds will need to be licensed under the amendments to the Customs & Excise Act. It seems that even SAPO will have to license its operations!



## The Lighter Side:

- Light travels faster than sound. This is why some people appear bright until you hear them speak.
- He who laughs last thinks slowest.
- Those who live by the sword get shot by those who don't.

## Contact Us:

We welcome any comments to our articles or any suggestions you may have and we will gladly send you a copy of any of the court decisions mentioned herein.

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