|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | | |  | | --- | | **cid:image001.jpg@01CF7B4B.CEEB1430** **Customs News Bulletin** | | |  |  |  | | --- | --- | --- | | **cid:image007.jpg@01CF7F35.F8965630cid:image008.jpg@01CF7F35.F8965630cid:image009.jpg@01CF7F35.F8965630** |  | **cid:image010.jpg@01CF7F35.F8965630cid:image011.jpg@01CF7F35.F8965630**  **cid:image012.jpg@01CF7F35.F8965630cid:image013.jpg@01CF7F35.F8965630** | | **cid:image014.jpg@01CF7F35.F8965630** |  | |  | | --- | | 10 June 2014 | | | | |  |  |  |  | | --- | --- | --- | --- | |  | | |  | | Latest Amendments and news | | |  | | **AMENDMENTS TO THE AGRICULTURAL PESTS ACT**  The Control measures under the Agricultural Pest Act, 1983 (Act No. 36 of 1983) have been amended under Notice R.442 which was published in *Government Gazette* 37702 of 6 June 2014.  Download the Notice at <http://www.gov.za/documents/download.php?f=213584> .  **NATIONAL REGULATOR FOR COMPULSORY SPECIFICATIONS ACT: DRAFT AMENDMENT**  The Department of Trade and Industry has published a draft notice to indicate their intention to amend the compulsory specification for protective helmets and their visors for motorcylces and mopeds.  The draft notice was published under Notice R.441 in *Government Gazette* 37701 of 6 June 2014. Download the notice at <http://www.gov.za/documents/download.php?f=213569> for more information and should you wish to comment.  *Comments are due by 6 August 2014.*  **TARIFF CLASSIFICATION DISPUTES**  The Harmonized System entered into force on 1 January 1988.  It comprises 96 International Chapters –  (numbered 1 to 97) (Chapter 77 has been reserved for possible future use).  The titles of the International Chapters of the HS have been provided for ease of reference only. For legal purposes the HS comprises a series of 4-digit headings (that is groupings in the Chapters), most of which have been further subdivided into 5- and 6- digit subheadings.  The headings accommodate groupings of related products which are then further subdivided into more specific groupings.  The legal framework of the Harmonized System further comprises legal notes (Chapter, section and subheading notes) and six interpretative rules, called the General Rules of Interpretation (GRI). The Harmonized System is an international classification system and the interpretative rules have been provided to ensure uniform tariff classification across the World.  The Harmonized System is used by more than 200 countries for various purposes which includes, but is not limited to; import duty collection, rules of origin provisions, collection of trade statistics, import and export control and other trade policy related matters.  Article 3 of the International Convention on the Harmonized Commodity Description and Coding System deals with the obligations of Contracting Parties, which are all Customs Administrations.  It is stated that, subject to the exceptions enumerated in Article 4 dealing with partial application by developing countries, the Customs tariff and statistical nomenclature of each contracting party “shall be” in conformity with the Harmonized System.  Thus Contracting parties must:   * use all the headings and subheadings and the HS codes without additions or modifications; and * use the General Rules for the interpretation of the Harmonized System and all the Chapter, Section and Subheadings Notes (legal notes) and the Contracting Parties may not modify the scope of these legal notes.   Most trading nations publish combined tariff statistical nomenclatures based on the HS, and in conformity with the provisions of Article 3 of the HS.  Article 3 also provides that contracting parties may make certain textual adaptions “as may be necessary to give effect to the Harmonized System in its domestic law” and that they may further subdivide the HS subheadings provided such subdivisions are added and coded beyond the six-digit numerical codes of the HS.  In the case of South Africa, and for that matter the Southern African Customs Union (SACU), the further subdivisions are at eight-digit level.  Article 9 of the HS Convention states that Contracting Parties do not assume any obligation in relation to rates of Customs Duty under the HS. The customs duty rates must be in conformity with the WTO bound rates.  National Customs administrations use their tariffs as a trade policy instrument, and as a Customs control and trade facilitation tool.  In addition to their obligations under the HS Convention, SARS Customs, as a WTO and WCO Member, has other obligations under the various international conventions of which they are parties.  SARS must make sure that the tariff classification of goods is uniform.  Customs administrations must, when requested to do so, issue advance rulings in respect the tariff classification, customs valuation and rules of origin determinations in terms of the World Trade Organisation Agreement on Trade Facilitation (ATF) read with Standard 9.9 in Chapter 9 of the General Annex to the Revised Kyoto Convention.  If traders are not satisfied with rulings issued by Customs, they have a right to appeal or review under the WTO ATF Article 4 read with Chapter 10 of the General Annex to the Revised Kyoto Convention.  Tariff disputes often arise when Customs suspect that there may have been an underpayment in the Customs Duty. Below we will deal with a tariff classification issue that ended in court.  ***SUPREME COURT OF APPEAL JUDGMENT CASE NO 375/2013: THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE (SARS) (APPELANT) VERSUS TERRAPLUS SOUTH AFRICA (PTY) LTD***  Concerning the tariff classification of plastic interlocking tiles for protection of turf surfaces in stadia.  This is an appeal directed at a decision of the North Gauteng High Court (Makgoka J), which upheld an appeal by Terraplas (Pty) Ltd (Terraplas) against a tariff determination made by the appellant, the Commissioner for the South African Revenue Service (the Commissioner), in terms of the provisions of s 47(9)(a)(i)(aa) of the Customs and Excise Act 91 of 1964 (the Act). The tariff determination in question was that certain plastic tiles imported by Terraplas were classifiable under tariff heading 3926.90.90. The High Court upheld the contention by Terraplas that the tiles were inappropriately classified by the Commissioner and concluded that they ought rightly to have been classified under tariff heading 3918.90.40. The crux of the matter is whether or not the goods are tiles of heading no 39.18.  If not, then heading 39.26 applies, and then the goods must be classified in the subheading by application of GRI 6.  Heading 39.18 covers FLOOR COVERINGS OF PLASTICS, WHETHER OR NOT SELF-ADHESIVE, IN ROLLS OR IN THE FORM OF TILES; WALL OR CEILING COVERINGS OF PLASTICS, AS DEFINED IN NOTE 9 TO CHAPTER 39.  Heading 39.26 covers OTHER ARTICLES OF PLASTICS AND ARTICLES OF OTHER MATERIALS OF HEADINGS 39.01 TO 39.14.  It can thus only apply if 39.18 cannot apply by virtue of being excluded from the heading.  The rate of duty under 3926.90.90 is 10%, while they will only pay 1,3% under 3918.90.40.  Terraplas is an importer and distributor of products described as ‘terratile (terraflor) pitch protection tiles’ and ‘terratrak plus temporary driveable roadway tiles’. The tiles are imported from Terraplas PLC, Derby, United Kingdom.  BACKGROUND  During November 2010, the importer instructed its clearing agent to enter two consignments of tiles for home consumption[[1]](#footnote-1)[1] in terms of the provisions of the Customs and Excise Act, 91 of 1964. In terms of the customs clearance declaration, the tiles were entered under Tariff Heading 3918.90.20 providing for tiles of silicones. The Controller of Customs, Cape Town, instructed the clearing agent to pass vouchers of correction to ‘read 3918.90.40’ which covers other plastic tiles of condensation, polycondensation or polyaddition products.  Under 3918.90.20 the goods are free of import duty, while the rate under 3918.90.40 is 1,3%.  Terraplas lodged an internal administrative appeal against the tariff determination. In March 2011 the Controller of Customs in Cape Town informed Terraplas that the Commissioner determined the tiles to be classifiable under tariff heading 3926.90.90 which is subject to a rate of duty of 10%. In response Terraplas made use of the alternative dispute resolution procedure provided for in section 77I of the Customs and Excise Act, 91 of 1964.  On 19 August 2011 Terraplas was informed that the National Appeal Committee of the South African Revenue Services had, on 18 August 2011, confirmed the tariff classification of the tiles under tariff heading 3926.90.90. Before resorting to the litigation in the court below, Terraplas gave notice as required in terms of s 96(1)(a) of the Act of the intended litigation.  Terraplas, as it was entitled to in terms of s 47(9)(e) of the Customs and Excise Act, appealed the decision referred to in paragraph 5 to the High Court. The High Court considered the nature of the tiles, and it is appropriately described.  The photographs that appear below are the best depiction of the product in question. The descriptions by the manufacturers that appear alongside the photographs are also helpful.  cid:image015.jpg@01CF7F35.F8965630  cid:image016.jpg@01CF7F35.F8965630  Further literature also indicated that the goods are tiles, and that the company is a tile manufacturer/importer.  The terms of the headings and subheadings were considered.  The High Court was of the view that the issue for determination was whether the tiles were ‘floor coverings’ as contemplated by tariff heading 39.18.  The Commissioner for SARS argued that the turf surface of a stadium is not a floor, and that the tiles can thus not be regarded as floor tiles.  The Commissioner further argued that the same surface, when covered by the tiles, is a floor.  The High Court then agreed with the submission on behalf of Terraplas that the interpretation contended for by the Commissioner was too restrictive. It went on to conclude that the appropriate tariff heading was that proposed by Terraplas, namely 3918.90.40. The appellants appeal with costs.  The court considered various court cases involving tariff classification, namely:   * *Secretary for Customs and Excise v Thomas Barlow & Sons Ltd* 1970 (2) SA 660 (A) at 675D; and * *International Business Machines SA (Pty) Ltd v Commissioner for Customs and Excise* 1985 (4) SA 852 (A);   The court was of the opinion that the Explanatory Notes to the Harmonized System, may be used for guidance, especially in difficult and doubtful cases, but in using them one must bear in mind that they are merely intended to explain or perhaps supplement those headings and notes and not to override or contradict them. That despite section 48 of the Customs and Excise Act referring to them.  It was argued that the interpretation of Schedule 1 Part 1 (the HS-based Customs Tariff of SACU) for the purposes of classification, is effected by reference to the headings, and chapter or section notes.  (General Interpretative Rule 1). Once the correct heading has been established in terms of GRI 1 to 5, whichever may apply, the correct subheading must be applied by using the same principles in accordance with GRI 6.  It was argued that once a meaning has been given to the potentially relevant words, the nature and characteristics of the goods must be considered and the heading most appropriate to such goods be selected. [[2]](#footnote-2)[2]  It was eventually the Commissioner’s determination of ‘other’ under tariff heading 3926.90.90 is to be preferred as these are cannot be regarded as tiles.  [1] Section 47 of the Act provides for import duties to be paid on all imported goods ‘at the time of entry for home consumption of such goods’.  [2]  See *Thomas Barlow* at 675H-676A; *International Business Machines* at 863F-G; *Capital Meats CC* at 573A-D; and *Distell*  at 455J-457E.  **PROPOSED AMENDMENTS TO THE REGULATIONS REGARDING THE CONTROL OF EXPORT OF FRESH CUT FLOWERS AND FRESH ORNAMENTAL FOLIAGE *(Comments due by 9 June 2014)***  The Directorate: Agricultural Products Standards of the Department of Agriculture, Forestry and Fisheries has published two notices relating to the regulations regarding the control of export of fresh cut flowers and fresh ornamental foilage to invite comments regarding the proposed repeal of regulations R.2014 to R.2017 that were published on 23 August 1991.  Government Notice Nos. R.340 and R.341 of 9 May 2014 published in *Government Gazette* 37606 refers.  Download notices at <http://www.gov.za/documents/download.php?f=213365> and <http://www.gov.za/documents/download.php?f=213366>. | | |  | |  | | |  | | Customs Tariff Applications and Outstanding Tariff Amendments | | |  | | Notice 375 of 2014 (List 05/2014) ***(Comments due on 23 June  2014)*** | | |  | | *The International Trade Administration Commission (*[*ITAC*](http://www.itac.org.za/)*) is responsible for tariff investigations, amendments, and trade remedies in South Africa and on behalf of SACU.*  ***Tariff investigations include:*** *Increases in the customs duty rates in Schedule No. 1 Part 1 of Jacobsens. These applications apply to all the SACU Countries, and, if amended, thus have the potential to affect the import duty rates in Botswana, Lesotho, Namibia, Swaziland and South Africa.*  *Reductions in the customs duty rates in Schedule No. 1 Part 1. These applications apply to all the SACU Countries, and, if amended, thus have the potential to affect the import duty rates in Botswana, Lesotho, Namibia, Swaziland and South Africa.*  *Rebates of duty on products, available in the Southern African Customs Union (SACU), for use in the manufacture of goods, as published in Schedule No. 3 Part 1, and in Schedule No. 4 of Jacobsens. Schedule No. 3 Part 1 and Schedule No. 4 are identical in all the SACU Countries.*  *Rebates of duty on inputs used in the manufacture of goods for export, as published in Schedule No. 3 Part 2 and in item 470.00. These provisions apply to all the SACU Countries.*  *Refunds of duties and drawbacks of duties as provided for in Schedule No 5. These provisions are identical in the all the SACU Countries.*  ***Trade remedies include:*** *Anti-dumping duties (in Schedule No. 2 Part 1 of Jacobsens), countervailing duties to counteract subsidisation in foreign countries (in Schedule No. 2 Part 2), and safeguard duties (Schedule No. 2 Part 3), which are imposed as measures when a surge of imports is threatening to overwhelm a domestic producer, in accordance with domestic law and regulations and consistent with WTO rules.*  ***Dumping****is defined as a situation where imported goods are being sold at prices lower than in the country of origin, and also causing financial injury to domestic producers of such goods. In other words* | *there should be a demonstrated causal link between the dumping and the injury experienced. To remedy such unfair pricing, ITAC may, at times, recommend the imposition of substantial duties on imports or duties that are equivalent to the dumping margin (or to the margin of injury, if this margin is lower).*  ***Countervailing investigations****are conducted to determine whether to impose countervailing duties to protect a domestic industry against the unfair trade practice of proven subsidised imports from foreign competitors that cause material injury to a domestic producer.*  ***Safeguard measures****, can be introduced to protect a domestic industry against unforeseen and overwhelming foreign competition and not necessarily against unfair trade, like the previous two instruments. In the WTO system, a member may take a safeguard action, which is, restricting imports temporarily in the face of a sustained increase in imports that is causing serious injury to the domestic producer of like products. Safeguard measures are universally applied to all countries, unlike anti-dumping and countervailing duties that are aimed at a specific firm or country.*  *Schedule No. 2 is identical in all the SACU Countries.*  ITAC has published the following document relating to the SACU tariff and tariff amendment applications:  Increase in the rate of customs duty on paper and paperboard, coated, covered, impregnated or covered with plastic classifiable under tariff subheading 4811.59.90; and other paper, paperboard, cellulose fibres, classifiable under tariff subheading 4811.90.90 from free to 5% *ad valorem* by the creation of 8-digit subheadings.  Download the document  at  <http://www.gov.za/documents/download.php?f=213475>. | |  | |  |  | |  | | Customs Tariff Amendments | | |  | | *With the exception of certain parts of Schedule No. 1, such as Schedule No. 1 Part 2 (excise duties), Schedule No. 1 Part 3 (environmental levies) Schedule No. 1 Part 5 (fuel and road accident fund levies), the other parts of the tariff is amended by SARS based on recommendations made by ITAC resulting from the investigations relating to Customs Tariff Applications received by them. The ITAC then investigates and makes recommendations to the Minister of Trade and Industry, who requests the Minister of Finance to amend the Tariff in line with the ITAC’s recommendations. SARS is responsible for drafting the notices to amend the tariff, as well as for arranging for the publication of the notices in Government Gazettes.*  *During the annual budget speech by the Minister of Finance in February, it was determined that parts of the tariff that are not amended resulting from ITAC recommendations, must be amended through proposals that are tabled by the Minister of Finance.*  *Once a year big tariff amendments are published by SARS, which is in line with the commitments of South Africa and SACU under international trade agreements.*  *Under these amendments, which are either published in November or early in December, the import duties on goods are reduced under South Africa’s international trade commitments under existing trade agreements.*  The following amendments have been published recently: | | There were no amendments at time of publication. The last amendment to the Customs tariff was published on 30 May 2014.  A new rebate provision has been created by the insertion of item 312.01/6001.92/01.06 to provide for a rebate of full duty on other pile fabrics, knitted or crocheted, of man-made fibres, classifiable in tariff subheading 6001.92, for the manufacture of footwear with uppers of textile materials classifiable in Chapter 64 as recommended in  ITAC Report 470. (Government Notice No. R. 377, published in Government Gazette 37654 dated 23 May 2014 – Jacobsens reference: A3/1/703).  New Note 8 to Schedule No 3 has been inserted to allow manufacturers in a Customs Controlled Area (CCA) to use the rebates in Schedule No. 3 as recommended in ITAC Report No 471.  (Government Notice R. 428 dated 30 May 2014 and published in  *Government Gazette* 37694 – Jacobsens reference A3/704).  The amendments will be sent to subscribers under cover of supplement 1034.  **Subscribers will soon be able to view a PDF version of the tariff book supplements at**[**www.jacobsens.co.za**](http://www.jacobsens.co.za)**.**    [Download](http://new.jacobsens.co.za/News/CustomsWatch.aspx) the latest Customs Watch to have access to the latest tariff and rule amendments | | |  | | |  | | Customs Rule Amendments | | |  | | *The Customs and Excise Act is amended by the Minister of Finance. Certain provisions of the Act are supported by Customs and Excise Rules, which are prescribed by the Commission of SARS. These provisions are numbered in accordance with the sections of the Act. The rules are more user-friendly than the Act, and help to define provisions which would otherwise be unclear and difficult to interpret.*  *Forms are also prescribed by rule, and are published in the Schedule to the Rules.* | There were no amendments at time of publication. The last Customs Rule amendment was published on 16 May 2014.  Form CR 1 titled General Application for Customs Refund: Voucher of Correction have been amended and a new form has substituted the existed form in the schedule to the Rules.  The notice was published in Government Notice R.361 published in *Government Gazette* 37631 of 16 May 2014 (DAR/138).  Download [the amendments](http://www.sars.gov.za/AllDocs/LegalDoclib/SecLegis/LAPD-LSec-CE-RA-2014-01%20-%20Notice%20R174%20GG%2037422%2014%20March%202014.pdf) to view the notices. | |  | |  |  |  |  | | | |
| |  |  |  | | --- | --- | --- | | **Contact Information:** |  | **Contact the Author:** | | Mayuri Govender  Jacobsens Editor  Tel: 031-268 3273 e-mail:  [jacobsen@lexisnexis.co.za](mailto:jacobsen@lexisnexis.co.za) |  | Leon Marais  Independent Customs Specialist Tel: 053-203 0727  e-mail: [leon.marais@intekom.co.za](mailto:leon.marais@intekom.co.za) | |

1. [1] Section 47 of the Act provides for import duties to be paid on all imported goods ‘at the time of entry for home consumption of such goods’. [↑](#footnote-ref-1)
2. [2] See *Thomas Barlow* at 675H-676A; *International Business Machines* at 863F-G; *Capital Meats CC* at 573A-D; and *Distell*  at 455J-457E. [↑](#footnote-ref-2)