Dear Brenda,

CONSISTENCY OF TARIFF APPLICATIONS

The following is a submission of the SAICA Customs and Excise sub-committee (a sub-committee of the SAICA National Tax Committee).

The ITAC is governed by the International Trade Administration Act 71 of 2002 (“ITAC Act”) and the Tariff Investigations Regulations (“ITAC regulations”) in the case of tariff applications. The existence of the ITAC regulations are important for ensuring that the ITAC treats all applications consistently and fairly and this allows the ITAC to maintain its position of authority and independence.

We understand that each case should be considered on its merits and circumstances may dictate the amount of time and resources dedicated to addressing an application but fundamentally each application should be subjected to the same degree of care at the simplest level which is codified in the ITAC regulations.

Our members strive to meet and exceed the provisions of the ITAC regulations when assisting clients with tariff applications. In so doing providing the professional service required to ensure the success that clients enjoy when their applications are prepared correctly from the perspective of procedure and substance.

However, our members have expressed concern regarding the manner and consistency in which a number of applications have been dealt with. We look forward to engaging in further dialogue with you on this topic rather than identifying specific cases in this correspondence in order to address this fundamental point, however for the moment perhaps we can provide a simple example which we have noted.

Example
Customs Tariff Application List 08/2011 published by the ITAC in Government Gazette 34612, dated 23 September 2011. More specifically we refer to ITAC reference number 14/2011, the application made with regard to the proposed reduction in on items of tariff sub-heading 8409.99.30. We have attached the application as forwarded to us by the ITAC for your information.

On reviewing the application a number of omissions have been noted with regard to supporting documentation and information. For example in the responses to Sections 19, 20, 21, 23, 24, 25 and 26 of the tariff application we do not understand how some basic documentation requirements, which should be easily available are put aside by the applicant. Further that other important supporting information with regard to the goods in question is omitted.

Regulation 6.1 of the ITAC regulations specifies that “Applications must be submitted in writing and in the manner and form determined by the Commission.” Furthermore, this is reiterated in Regulation 11. This is an important provision because it ensures that the requirements with regard to applications made to the ITAC are contained in a standardised form and so every applicant is subjected to the same standard at the initiation of an application. From that point forward the ITAC can determine if any additional information is required depending on the specific nature of the application.

We do not understand and we would appreciate input from the ITAC as to how an application as incomplete as the example cited can be expected to be transparent. This application has been allowed by the ITAC to pass and be published for comment in the Government Gazette. In our experience, the investigating officer should address any deficiencies with the applicant as per Regulation 13 “Deficient Applications”. Failing which the application should have been rejected.

**Conclusion**

We do not understand how the ITAC can impose such strict control on some applications and yet in the example provided, the application fails to meet with the most fundamental requirements in terms of the ITAC Regulations, i.e. fails to comply with the procedure.

We look forward to discussing this further with you in future and we hope that inconsistencies as extreme as the example cited are attended to appropriately.

Yours sincerely

Muneer Hassan CA(SA)
**PROJECT DIRECTOR: TAX**
*The South African Institute of Chartered Accountants*
CC: Rika Theart rtheart@itac.org.za
CC: Nomonde Somdaka nsomdaka@itac.org.za