

**CUSTOMS**

**EXTERNAL POLICY**

**PROHIBITED AND RESTRICTED GOODS**

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## 1 SUMMARY OF MAIN POINTS

- a) The importation and exportation of certain goods are subject to controls required by Other Government Agencies (OGAs).
- b) The South African Revenue Service (SARS) is mandated to control prohibited and restricted goods on behalf of OGA(s).
- c) The controls are exercised through the following:
  - i) The status of goods **must** be declared **either as** new, used or second hand;
  - ii) Quota requirements;
  - iii) Permits;
  - iv) Authority; or
  - v) Certificates.
- d) The details of the prohibitions or restrictions are contained within the Prohibited and Restricted List (SC-CC-06-A03), which is published on the SARS website.
- e) The document is applicable to commercial goods.

## 2 POLICY

- a) The OGA(s) **entrusts** SARS **with the responsibility of enforcing** controls listed in SC-CC-06-A03 through a request from the OGA to SARS Stakeholder Management.
- b) The control takes the form of:
  - i) An absolute prohibition which means that the cargo is not allowed to be imported or exported in any circumstances;
  - ii) A restriction where the client must obtain an authority before the importation or exportation of goods; or
  - iii) Declaring the status of the goods:
    - A) N for new goods;
    - B) U for used goods; and
    - C) S must be used for second hand goods.
- c) Prior to import or export of cargo:
  - i) The client must apply for an authority at the relevant OGA when required in terms of SC-CC-06-A03.
  - ii) The authority required in terms of SC-CC-06-A03 does not fall away where the import or export is of a temporary nature.
  - iii) The OGA issues the client with an authority, when all the requirements are complied with as contained within the conditions, for the relevant authority.
  - iv) The authority is submitted to SARS:
    - A) Electronically on the License and Certificate Module (LCM) interface;
    - B) By the OGA; or
    - C) By the client.
  - v) Where the authority is submitted manually:
    - A) Verification by the OGA(s) is required directly to SARS.
    - B) The authority is captured on the system.
    - C) The client must produce the authority when requested.
  - vi) Valid authorities are stored on LCM for the declaration process.
- d) The Completion of Declarations – External Manual (SC-CF-04) contains requirements relating to New and Used Indicators (NUI) and Import Permit Control (IPC).
- e) Clearance of cargo through SARS:
  - i) The client submits a clearance declaration - refer to SC-CF-55 for the procedures in this regard.

- ii) Where supporting documents for the clearance **are** requested, the authority must also be submitted – see SC-CF-55 for submission of supporting documents.
  - iii) The client receives a CUSRES message informing him / her of the outcome:
    - A) The cargo is detained for OGA(s).
    - B) A physical inspection is requested by Customs and the client must book for the examination with the port of entry / exit.
  - iv) Goods for which Customs declarations are rejected will remain un-cleared and must be removed to the State Warehouse and disposed of in accordance with SC-CW-01-04.
- f) The valid authority is written-off electronically by LCM for the declared quantities and values as per the Customs declaration.
- g) The manual submitted authority is written-off by the OGA(s) or the Customs authority at the port.
- h) Goods in transit through South Africa do not require an authority.
- i) Clients can request information regarding the balance of their authorities from Customs Regulatory Control.
- j) Record keeping
- i) Every client must keep records for a period of five (5) years:
    - A) Books, accounts and documents in respect of all transactions relating to the Rules for the purpose of any acquittal procedure; and
    - B) Any data related to such documents created by means of a computer.
  - ii) The five (5) year period is calculated from the end of the calendar year in which the document was created, lodged or required. (Sections 101 and 101A).
  - iii) Every client must produce such books, accounts and documents on demand.
- k) Penalties
- i) Failure to adhere to the provisions of the Act, as set out in the document, is considered an offence.
  - ii) Offences may render the client liable to, as provided for in the Act:
    - A) Monetary penalties - see SC-CO-01-02; or
    - B) Criminal prosecution; or
    - C) Suspension / cancellation of registration / licence / accreditation.
- l) Promotion of Administrative Justice Act
- i) The Promotion of Administrative Justice Act (PAJA) No. 3 of 2000 **entitles** everyone **with the** right to administrative action that is lawful, reasonable and procedurally fair. Any person whose rights have been adversely affected by administrative action has the right to be given written reasons, as contemplated in Section 33 of the Constitution of the Republic of South Africa, 1996. PAJA:
    - A) Provides for the review of administrative action by a court or where appropriate, an independent and impartial tribunal;
    - B) Imposes a duty on the State to give effect to those rights;
    - C) Promotes an efficient administration as well as good governance; and
    - D) Creates a culture of accountability, openness and transparency in the Public Administration or in the exercise of a public power or the performance of a public function, by giving effect to the right to just administrative action.
  - ii) Administrative action which significantly and unfavourably affects the rights or valid expectations of any person must be procedurally fair. A fair administrative procedure depends on the circumstances of each case.
  - iii) A person must be given:
    - A) Written reasons of the nature and purpose of the proposed administrative action;
    - B) A reasonable opportunity to make representations;
    - C) A clear statement of the administrative action; and
    - D) Adequate notice of any right of review or internal appeal, where applicable.

- iv) Before administrative action can be taken by Customs the client must be allowed the opportunity to:
- A) Obtain assistance and, in serious or complex cases, legal representation;
  - B) Present and dispute information and arguments; and
  - C) Appear in person.
- v) Clients whose rights have been significantly and unfavourably affected by administrative action and who have not been given reasons for the action may, within ninety (90) days after the date on which the client became aware of the action, request Customs to furnish written reasons for the action.
- vi) Customs must within ninety (90) days after receiving the request, give the client adequate reasons in writing for the administrative action. If Customs fails to furnish adequate reasons for the administrative action, it is presumed in any proceedings for judicial review that the administrative action was taken without good reason.
- m) Appeals Against Decisions
- i) In cases where the clients are not satisfied with any decision taken in terms of the Customs and Excise Act they have a right of appeal to the relevant appeal committee. The policy in this regard, as well as the process to be followed, is contained in document SC-CC-24.
  - ii) Should the client be unhappy with a decision of any appeal committee their recourse will be to lodge an application for ADR (Alternative Dispute Resolution) with the relevant appeal committee. The committee will add its comments thereto and forward the application to the ADR Unit for attention. The policy in this regard, as well as the process to be followed is contained in document SC-CC-26.
  - iii) Should clients wish to appeal any decisions in terms of the VAT penalties, they are directed to the provisions of Sections 215 to 220 of the Tax Administration Act No.28 of 2011 for the percentage-based penalty and Section 224 of the Tax Administration Act No.28 of 2011 for the understatement based penalty. In this regard, please consult the SARS website or nearest SARS Branch Office.

### 3 RELATED INFORMATION

#### 3.1 Legislation

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	<b>Customs and Excise Act No. 91 of 1964:</b> Sections 38(1), 39(1)(a), 39(1)(c), 40(3), 43(1), 43(7), 107(2)(a)(i) and 113(1)(b) and (h); (2); (4); (7); (8)(a) - (d) and (9) <b>Customs and Excise Rules:</b> None <b>Value-Added Tax Act No.89 of 1991:</b> Section 13(1) <b>Tax Administration Act No.28 of 2011:</b> Sections 215 to 220 and 224
Other Legislation:	<b>Promotion of Administrative Justice Act No. 3 of 2000:</b> Section 3
International Instruments:	<b>Kyoto Convention Specific:</b> General Annex Chapter 3 – Clearance and other Customs formalities, Chapter 6 – Customs control, and Chapter 8 – Relationship between the Customs and third parties <b>WCO SAFE Framework of Standards:</b> Annex 1 Standard 1.2, 1.3, 2.1, 2.2, and 2.3

#### 3.2 Cross References

DOCUMENT #	DOCUMENT TITLE
SC-CC-24	Internal Administrative Appeal – External Policy
SC-CC-26	Alternative Dispute Resolution – External Policy
SC-CF-04	Completion of declarations - External Manual
SC-CF-55	Clearance Declarations – External Standard
SC-CO-01-02	Offences and Penalties – External Standard
SC-CW-01-04	State Warehouse - External Policy

#### 3.3 Quality Records

Number	Title
SAD 500	Customs Declaration
-	All authorities

#### 4 DEFINITIONS AND ACRONYMS

ADR	Alternative Dispute Resolution
Authority	In the context of the document, refers to permit, certificate, license, quota, letter of authority or New Used Indicator
IPC	Import Permit Control
LCM	License Certificate Module
N	The abbreviation to indicate new goods applies to all goods which are not indicated used or second hand
Materiel	The equipment, apparatus and supplies of a military force. It can apply to weapons, aircraft, parts, support equipment, ships, and almost any other type of equipment used by the military.
NUI	New Used Indicator
OGA	Other Government Agency
Prohibited Goods	Goods that are forbidden by law from entering the country
Restricted Goods	Goods which require permits, certificates or authorisations before a Customs declaration can be processed
S	The abbreviation to indicate second hand goods that were or is assumed to have been used for: <ul style="list-style-type: none"> <li>a) The purpose it was designed for, excluding use by the manufacturer for testing and evaluation purposes; or;</li> <li>b) Any other purpose whatsoever, resulting in that such goods reflect signs of use, ageing, deterioration, modification or alterations that include but are not limited to: <ul style="list-style-type: none"> <li>i) Damage;</li> <li>ii) Shop soiled; and</li> <li>iii) Outdated products</li> </ul> </li> </ul>
SSM	SARS Service Manager
U	The abbreviation for any goods or parts thereof that was or assumed to have been previously owned, possessed, held and / or registered by or in the name(s) of any person or entity, excluding the manufacturer, wholesaler or retailer of the goods concerned.

#### 5 DOCUMENT MANAGEMENT

Policy Owner	Executive: Governance
Detail of change from previous revision	<p>Removed the following legislation from the Reference paragraph as they are already listed in the P&amp;R List:</p> <ul style="list-style-type: none"> <li>i) Counterfeit Goods Act No. 37 of 1997;</li> <li>ii) International Trade Administration Act No. 71 of 2002;</li> <li>iii) Import Control Regulations – Notice No. R. 206 dated 27 February 2009; and</li> <li>iv) National Conventional Arms Control Act No. 41 of 2002</li> </ul>
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