

## MEMORANDUM ON OBJECTS OF CUSTOMS CONTROL BILL, 2013

### 1. BACKGROUND AND PURPOSE

The Customs Control Bill (“the Bill”) is intended to replace the provisions of the Customs and Excise Act, 1964 (Act No. 91 of 1964), relating to customs control of all means of transport, goods and persons entering or leaving the Republic. Provisions of the 1964 Act covering customs and excise duties will be contained in separate legislation, namely, a Customs Duty Bill and an Excise Duty Bill.

### 2. OBJECTS OF BILL

The primary object of the Bill is to establish systems and procedures for customs control of all means of transport, goods and persons entering or leaving the Republic, whether by land, sea or air. The rationale for this control is, firstly, to ensure that any taxes imposed by various other laws on imported and exported goods are collected and, secondly, that other laws regulating the import or export of specific goods are complied with. The Bill can therefore be described as a law that will serve as a “platform” for the implementation of laws that will in relation to imported and exported goods rely for their implementation on this Bill, such as the proposed Customs Duty Act, the proposed Excise Act, the VAT Act, 1991, and the Diamond Export Levy Act, 2007, and also a host of other laws prohibiting, restricting or regulating the import or export of certain goods such as arms and ammunition, protected species, goods that are subject to permit control and counterfeit goods.

### 3. SUMMARY OF BILL

- 3.1 The proposed customs control established by the Bill is in accordance with current international treaties, trends and best practice and gives effect to the Republic’s international obligations in this regard. Although all goods and persons that enter or leave the Republic become subject to customs control in terms of the Bill, the focal points of control in terms of the Bill are the seaports, airports and land border-posts where goods and persons, including vessels, aircraft, trains and vehicles, normally enter or leave the Republic. To ensure effective implementation of customs control, the Bill provides for elaborate systems and procedures for the customs processing of all goods and persons at these “places of entry” and “places of exit”, including a notification and reporting system tracking the arrival and departure of vessels, aircraft, trains, vehicles, persons and goods entering or leaving the Republic.
- 3.2 For the customs control of goods the Bill determines the procedural requirements that must be complied with when goods are imported into or exported from the Republic.
  - (a) Goods may only be imported or exported through recognised places of entry or exit respectively. At these places of entry or exit goods are required first to be “cleared” by the importer or exporter and “released” by Customs before the goods are allowed to be proceeded with in, or to be exported from, the Republic. For goods imported or exported by rail, the process is different as such goods are required to be cleared at certain railway stations designated as rail cargo terminals.
  - (b) Imported goods must be cleared by the importer either for home use, i.e. the consumption, utilisation, processing or disposal of the goods in the Republic, or for a customs procedure that may be permissible in the circumstances. Similarly, goods intended for export may only be exported after being cleared by the exporter for export or a customs procedure that allows goods to be exported under that procedure. If goods are not cleared or are proceeded with without release, the goods are regarded to be “diverted” goods and as such become illegal

imports or exports. Such goods are apart from attracting criminal and punitive administrative sanctions regarded for tax purposes to be cleared for home use or a customs procedure that renders the goods taxable.

- 3.3 The Bill provides for goods to be cleared for the following customs procedures: national or international transit, excise warehouse transit, transshipment, temporary admission, warehousing, tax free shop, stores, export, temporary export, inward processing, home use processing and outward processing. Each of these customs procedures allows goods under the procedure to be dealt with in a specific way. These customs procedures are not open options for an importer or exporter but may be utilised only in circumstances permitted in the Bill or the tax levying Acts for the respective procedures. Clearance processes and requirements are extensively dealt with in the Bill, mostly in a standardised way for all clearances. The Bill also makes provision for the fast-tracking of clearance and release of goods in accordance with procedures less cumbersome than the standard procedures.
- 3.4 When imported goods are released for home use, the goods are allowed into free circulation in the Republic without any further customs control. The release of goods for a customs procedure, however, does not free the goods from customs control and such goods remain under customs control until the goods are cleared and released for home use or re-exported.
- 3.5 The Bill confers a specific tax status on goods when the goods are cleared for home use or a customs procedure. The tax status is either tax due or tax free. A tax due status indicates that any tax that may have been imposed on goods of the relevant class or kind must be paid upon clearance of the goods. This is usually the case with goods cleared for home use. A tax free status means that whilst the goods have a tax free status no tax is payable on the goods. Tax includes customs duty, excise duty, VAT and any other tax payable on the import or export of goods. It is to be noted that a tax free status conferred by a customs procedure on goods only continues for as long as the goods remain under that customs procedure. When the goods are cleared for another customs procedure or for home use, the goods acquire the tax status applicable to that other customs procedure or home use. For instance, imported goods cleared for warehousing are tax free until cleared for home use at the end of the warehousing period which renders the goods tax due.
- 3.6 For the customs control of persons, the Bill determines the procedural requirements that must be complied with when persons enter or leave the Republic. Such persons are required to be customs processed and to declare their accompanied and unaccompanied baggage, excluding certain personal effects, by submitting to Customs at the place of entry or exit a declaration containing certain personal, travel and accompanied baggage information.
- 3.7 The Bill requires certain persons active in the customs environment to be registered or licensed for purposes of the Bill. These include importers and exporters, importer or exporters' agents, carriers, carriers' agents and customs brokers. Certain premises such as cargo and passenger terminals, cargo depots, customs warehouses, etc., actively used in the customs environment are also required to be licensed.
- 3.8 The task to administer and enforce the Bill is assigned to the Commissioner of the South African Revenue Services who must for this purpose designate SARS officials as customs officers to exercise the powers and duties assigned to customs officers in terms of the Bill.
  - (a) Amongst these powers are access to and inspection and search of premises, vessels, aircraft, railway carriages, vehicles, stopping and searching of persons, inspection and sampling of goods, investigative powers, powers of arrest, carrying of arms and ammunitions and border control functions.

- (b) Other important powers assigned to Customs include the detention, seizure and confiscation of goods and the removal of goods to state warehouses when goods are dealt with in breach of the Bill. Goods removed to a state warehouse may eventually be sold to cover outstanding taxes and costs

3.9 As mentioned above, the Bill facilitates the implementation of other legislation prohibiting, restricting or regulating the import or export of certain goods and for that reason direct powers are assigned to Customs to detain and deal with goods categorised as prohibited, restricted or sectorally controlled goods. Provision is made for the detention, seizure and forfeiture of such goods as well as for circumstances in which detentions or seizures may or must be terminated. The Bill also provides for the detention of suspected counterfeit goods and the procedures to be followed when such goods are detained.

3.10 The Bill further establishes mechanisms for the internal reconsideration of decisions taken in terms of the Bill, the proposed Customs Duty Act and the Excise Duty Act, and for the resolution of disputes arising from the implementation of these Acts. Included here are procedures for administrative appeals and alternative dispute resolution.

3.11 Judicial matters covered by the Bill include offences in terms of the Bill, additional punitive powers for courts in criminal proceedings, jurisdictional matters and the “name and shame” publication of the names of offenders. The Bill distinguishes between two categories of offences namely more serious Category 1 offences, which include diversions of goods and other fraudulent practices such as making false statements and using documents containing false or misleading information, and less serious Category 2 offences, which include performing acts without the required authorisation, permission or approval of Customs. Persons convicted of offences in terms of the Bill are liable to imprisonment or a fine set out in the Bill.

3.12 The Bill also provides for a system of administrative penalties that may be imposed by Customs for breaches of the Act. In the Bill a distinction is made between prosecutable and non-prosecutable breaches. In the case of non-prosecutable breaches, fixed amount penalties may be imposed and in the case of prosecutable breaches, prosecution avoidance penalties may be paid by offenders who want to avoid criminal prosecution.

3.13 Provision is also made for persons benefiting from faulty duty determinations to voluntarily disclose such faulty duty determinations in exchange for an undertaking by the Commissioner not to institute criminal proceedings or to impose administrative penalties.

3.14 Miscellaneous matters dealt with in the Bill include regulation and rule making powers of the Minister and the Commissioner respectively; condonation for non-compliance with rules, conditions or requirements; methods of submission of documents to Customs; record keeping; extension or shortening of time periods specified in the Bill; the granting of exemptions, authorisations, permissions etc., as well as the factors to be taken into account when considering the granting of such exemptions, authorisations or permissions. The Bill also limits the liability of the state, the Commissioner and customs officers for decisions or actions in terms of the Bill. Finally, provision is made for transitional provisions and the repeal of current customs legislation.

#### **4. DEPARTMENTS/ BODIES/ PERSONS CONSULTED**

The drafting process of the Bill involved an on-going process of consultation since 2007. A version of the Bill was circulated to customs administrations of the other SACU member states. Briefing sessions were held with the International Trade Administration Commission (ITAC), the National Treasury and with various other

stakeholder departments. The Bill was released for public comment on 30 October 2009. Comments were received from a variety of stakeholders including SACU member states, government departments and representative industry. The Bill was also tabled in NEDLAC on 12 November 2009.

## **5. FINANCIAL IMPLICATIONS**

Implementation cost which may arise from changes to systems and prescribed forms, staff training etc., will be covered from funds ins SARS's budget.

## **6. PARLIAMENTARY PROCEDURE**

- 6.1 The State Law Advisers and SARS are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 6.2 The State Law Advisers are further of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.





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