

CUSTOMS

EXTERNAL POLICY

REMOVAL OF GOODS

TABLE OF CONTENTS

1	SUMMARY OF MAIN POINTS	3
2	POLICY	3
2.1	Remover in bond	3
2.2	Subcontracting	4
2.3	Carriage of unsealed goods	5
2.4	Removal of imported second hand vehicles in bond/transit	5
2.5	Accident, damaging of seal, breakdown, stolen/hi-jacked goods	6
2.6	Action which may be taken in instances of non-compliance	6
3	RECORD KEEPING	6
4	PENALTIES	7
5	PROMOTION OF ADMINISTRATIVE JUSTICE ACT	7
6	APPEALS AGAINST DECISIONS	8
7	REFERENCES	8
7.1	Legislation	8
7.2	Cross References	8
8	DEFINITIONS AND ACRONYMS	8
9	DOCUMENT MANAGEMENT	9

1 SUMMARY OF MAIN POINTS

- a) This policy prescribes the removal of goods in bond or in transit **by road** with specific focus to the provisions of Section 64D and the rules thereto.
- b) A road carrier crossing any South African land border-post with commercial cargo must submit a road manifest in respect of all such cargo carried on the truck.

2 POLICY

2.1 Remover in bond

- a) In terms of Rules 18, 18A, 19A, 64D, 120A.01 and 120B goods which are removed in bond in South Africa or the BLNS countries or transit through South Africa may only do so if a Customs clearance declaration (CCD) is processed in the office of the Controller / Branch Manager before such removal may be undertaken and must be acquitted as prescribed. (SC-TR-01-02)
- b) Under certain circumstance goods may be moved in bond or in transit with the temporary suspension of duties and value-added tax (VAT) payable, and in these cases it is necessary to acquit the liability of the bond holder once it is established that the goods have reached their intended destination. (Refer to SC-SE-05)
- c) According to Rule 64D.05(4) goods in bond refers to:
 - i) Goods imported and landed in South Africa and entered for removal in bond, transit inclusive;
 - ii) Goods in a Customs and Excise warehouse entered for:
 - A) Removal in bond to another such warehouse within the Southern African Customs Union (SACU);
 - B) Export to any destination outside the SACU;
 - I) Goods entered for delivery to a rebate user with the exception of goods provided for in Rules 64D.04(i)(f) and (h) under schedule no. 6;
 - II) Excise goods contemplated in the Rules for Section 19A; and
 - III) Goods imported under Rule 64D.04(1)(f)(i) which are removed by road to a licensed premises unless moved by a licensee using own transport.
- d) Bonded cargo must be removed by a licensed remover of goods unless exempted by Rule 64D.04(1)
- e) Removals of bonded and free circulation goods by foreign carriers are:
 - i) Allowed:
 - A) If the vehicle is registered in any country outside South Africa the carrier is allowed on his/her return journey to remove goods from South Africa to such country outside South Africa or via any BLNS country to such country (loading of goods).
 - B) If the goods are removed between the:
 - I) Loading of goods in South Africa to a BLNS country; or
 - II) Loading in the BLNS country for removal to South Africa (foreign carrier - vehicle registered in a country outside South Africa); or
 - C) A licensed remover in South Africa on return journey to South Africa (vehicle registered in South Africa).
 - ii) Not allowed:
 - A) For removal between warehouse to warehouse in South Africa; or
 - B) Removal between a warehouse to place of exit by road for export by other means; and
 - C) Cabotaging.
 - iii) Cabotage is prohibited according to Section 31(1) of the Cross Border Road Transport Act No 4 of 1998 (CBRTA):
 - A) The Regulatory Committee must give effect to the prohibition on cabotage, but may consider lifting the prohibition on cabotage and issue an appropriate permit in a case where:
 - I) The state of a foreign applicant accords a South African carrier equal treatment in this regard; or

- II) It is satisfied that there is no South African carrier who can provide a similar service and where lifting the prohibition is in the best interest of South Africa.
- B) Where cabotage is permitted, any truck-tractor and trailer and semi-trailer used in combination for the purposes of such transport, must be registered in the same country.
- C) All existing cabotage permits held by foreign carriers will lapse within six (6) months after the entry into force of this Section of this Act, provided that the holder of such cabotage permits may reapply in accordance with the provisions of subsection (2) of the CBRTA.
- f) Forms SAD 502/SAD 505 and DA 187
- i) Forms SAD 502/SAD 505 completion requirements:
- A) The carrier/declarant must complete the SAD 502, in triplicate, at the office of commencement and submit it to be processed at the Customs Branch Office before loading;
- B) The SAD 505 must be completed by the declarant at the office of commencement and be completed by every responsible party as required on the form; and
- C) The DA 187, in triplicate, must be completed by the carrier and must be kept in the truck during the journey and be retained afterwards for record keeping purposes.
- ii) The table below indicates the documents per movement type that must be completed together with the CCD:

MOVEMENT PARTICULARS	SAD 502	SAD 505	DA 187
Imported and intended for direct removal in bond to a destination within South Africa		X	X
Imported and intended for direct removal in bond to a destination within the SACU	X		X
Imported and intended for direct removal in transit to a destination outside the SACU	X		X
Imported and removed from a place where landed in South Africa from a ship, aircraft or other vehicle to a Customs and Excise warehouse		X	X
Imported and removed from a Customs and Excise warehouse to another warehouse in South Africa		X	X
Removed from a Customs and Excise warehouse in South Africa to another warehouse within the SACU	X	X	X
Exported from a Customs and Excise warehouse in South Africa to a destination outside the SACU	X	X	X
If excisable, and removed from a Customs and Excise warehouse to another such warehouse within South Africa		X	X

- g) The following documents must accompany the carrier, in the case of part-shipments each truck must contain a set, and must be delivered to Customs at the land border-post of exit:
- i) Copy of the SAD 500;
- ii) Original SAD 502/SAD 505, as applicable, to be retained by the carrier;
- iii) At least two (2) copies of the SAD 502/SAD 505, as applicable, to be delivered to the land border-post crossed for retention purposes;
- iv) Original DA 187; and
- v) Original and at least two (2) copies of the SAD 189, if applicable.
- h) Road manifest DA 187 - Where the procedures of Rule 64D.08(4) are not complied with the provisions of Rule 64D.19(b) shall apply *mutatis mutandis* – see paragraph 2.2c)

2.2 Subcontracting

- a) A licensed remover of goods in bond may under certain conditions subcontract the carriage of such goods to another such licensed remover. In this case the liability is shared jointly and severally by both.
- b) The following conditions are imposed for the use of a subcontractor:
- i) Adequate security is furnished for the carriage of the goods;

- ii) The consignor authorises in writing that the security bond may be utilised as security for the consignment in accordance with the provisions of Rule 64D.11(5)(c);
 - iii) The Customs clearance declaration (CCD) must contain the full details and client number of the original licensed remover in bond;
 - iv) The road manifest (DA 187) must contain details and signatures of both the remover in bond and the subcontractor; and
 - v) Separate road manifests and CCDs must be processed by the licensed remover of goods in bond for each subcontractor involved with a consignment or portions thereof.
- c) In terms of Rule 64D.19(b) where the procedures prescribed in Rule 64D.19(a)(iii)-(v) are not complied with, the subcontractor may only be allowed to proceed to the destination at the place of exit after:
- i) A satisfactory explanation is furnished by the subcontractor;
 - ii) Submission of certified copies of any documents required if not produced by the driver to the Controller/Branch Manager at the place of exit, through the office of the Controller at the place of commencement; and
 - iii) The Controller/Branch Manager on finding that the goods agree with the particulars of the CCD authorise release.

2.3 Carriage of unsealed goods

- a) Where it is not possible to remove or carry goods which may include heavy or bulky goods under sealed conditions the Controller/Branch Manager may authorise the removal of such goods in unsealed means of transport.
- b) The Controller/Branch Manager may request conditions and procedures deemed reasonable for the purpose of ensuring compliance with requirements for bonded goods. This may include the following:
- i) Additional security bonds (Refer to SC-SE-04);
 - ii) Full examinations of the goods and recording of the results at the time of examination on the Customs road freight manifest (DA 187) as prepared by the licensed remover of goods in bond;
 - iii) Means and method of sealing, fastening and securing;
 - iv) A precise description of the goods by reference to samples, plans, sketches, photographic or similar means to be attached to the original and one copy of the DA 187;
 - v) Prescribed entry and exit points, routes and time limits; and
 - vi) Prescribed proof that the goods concerned were duly entered for Customs purposes at the place of destination.

2.4 Removal of imported second hand vehicles in bond/transit

- a) The importation of second hand vehicles into South Africa is prohibited and/or restricted for removal in bond/transit on their own wheels.
- b) Such vehicles are presently imported into bonded warehouses in South Africa from where it is removed in bond, or transit to BLNS countries or countries outside SACU, for example through Beitbridge or Lebombo.
- c) Any imported second hand road vehicle which are:
- i) In transit to an importer outside South Africa as contemplated in Section 18(1A); or
 - ii) Destined for storage in a Customs and Excise warehouse pending export; or
 - iii) Sold or otherwise disposed of by a licensee of a Customs and excise warehouse to a purchaser in any other county within SACU must after due entry, if removed by road, be removed to its destination as contemplated in Rule 18.15(a).
- d) If such a vehicle is removed by road to any destination, including from its place of landing to a Customs and Excise storage warehouse for export, it may not be removed under own power or towed and it must be carried:
- i) By a licensed remover of goods in bond as contemplated in Section 64D and the Rules thereto; or

- ii) When removed to or from such storage warehouse, by the licensee thereof using own transport and movement is to a SACU country.
- e) Where such imported second hand vehicle is removed in bond to any other country within SACU such a vehicle may only be removed to a Customs and Excise warehouse in that country.
- f) Rule 18.15 shall apply mutatis mutandis to second hand road vehicles which are sold or otherwise disposed of by a licensee of a Customs and excise warehouse to a purchaser in a country outside SACU.

2.5 Accident, damaging of seal, breakdown, stolen/hi-jacked goods

- a) The carrier must:
 - i) Immediately report such at the nearest Customs Branch Office or South African Police Service office (if not near a Customs Branch Office) of any accident, damaging of seal, breakdown or other act or omission affecting the security of the goods. (Refer to Rule 64D.14(9)(a)).
 - ii) Advise the Controller/Branch Manager on the Customs inspection report (DA 189) at the office of commencement in the event of the following:
 - A) An accident involving the bonded goods resulting in the destruction or damage or diminution of such goods;
 - B) Any Customs seal affixed to the means of transport of such goods being broken or damaged in any manner whatsoever;
 - C) A breakdown of the means of transport or other unforeseen circumstances necessitating the re-loading of such goods on to another means of transport; and
 - D) Any other act or omission of whatever nature affecting in any manner the security of such goods.
- b) The DA 189 must be completed by a Customs officer or an officer of the South African Police Service.
- c) Where goods are stolen/hijacked this does not exempt the licensed remover from their obligations and will still result in bringing duties and taxes to account.
- d) Stolen/hijacked goods must be reported to the South African Police Service by the licensed remover.
- e) Robbery by armed or dangerous attackers can be regarded as vis major, but theft in the ordinary cause will seldom be regarded as vis major.
- f) In all instances of theft/high jacking or armed robbery of goods removed in bond/transit a copy of the South African Police Service report must be produced to the Branch Office of commencement.
- g) Application can be made for the rebate of the duty in terms of rebate Item 412.09 of Schedule No. 4 to the Customs and Excise Act.

2.6 Action which may be taken in instances of non-compliance

- a) Non-compliance may lead to loss of revenue to the fiscus as duties and VAT which are due have not been paid as well as the contravention of various laws in South Africa.
- b) In terms of Section 18(7) the Commissioner is empowered by the said Section to refuse to accept CCDs for the removal of goods in bond by road from a person, all clients reflected on the CCD must match the clearer, remover and bondholder who persistently fails to comply with such rules or conditions, or who has committed an offence referred to in Section 80.

3 RECORD KEEPING

- a) Every client must keep for record purposes for a period of five (5) years:
 - i) Books, accounts and documents in respect of all transactions relating to the Rules for the purpose of any acquittal procedure; and
 - ii) Any data related to such documents created by means of a computer.

- b) 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)
- c) Every client must produce such books, accounts and documents on demand.
- d) The following additional records must be kept:
 - i) A record of instructions received from and a copy of the contract of carriage with the consignor;
 - ii) A logbook containing the particulars of the means of transport;
 - iii) A full account of the journey from the time of commencement until delivery of the bonded goods at the destination;
 - iv) Copies of the manifest, Customs clearance declaration; and
 - v) Any other document issued by the Customs Branch office or other authority during the transportation of the goods to their destination.

4 PENALTIES

- a) Failure to adhere to the provisions of the Act, as set out in this document, is considered an offence. See SC-CO-01-02 for more details.
- b) Offences may render the client liable to, as provided for in the Act:
 - i) Monetary penalties;
 - ii) Criminal prosecution; and/or
 - iii) Suspension/cancellation of registration / license / accreditation.

5 PROMOTION OF ADMINISTRATIVE JUSTICE ACT

- a) The Promotion of Administrative Justice Act (PAJA) No. 3 of 2000 gives effect to everyone's 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:
 - i) Provides for the review of administrative action by a court or where appropriate, an independent and impartial tribunal;
 - ii) Imposes a duty on the State to give effect to those rights;
 - iii) Promotes an efficient administration as well as good governance; and
 - iv) 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.
- b) 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.
- c) A person must be given:
 - i) Written reasons of the nature and purpose of the proposed administrative action;
 - ii) A reasonable opportunity to make representations;
 - iii) A clear statement of the administrative action; and
 - iv) Adequate notice of any right of review or internal appeal, where applicable.
- d) Just administrative action requires the Customs Officer to consider all the facts presented and obtained in addition to affording the **client** the opportunity to be heard, prior to instituting any administrative action.
- e) Before administrative action can be taken by Customs the cargo reporter must be allowed the opportunity to:
 - i) Obtain assistance and, in serious or complex cases, legal representation;
 - ii) Present and dispute information and arguments; and

- iii) Appear in person.
- f) Cargo reporters 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 cargo reporter became aware of the action, request Customs to furnish written reasons for the action.
- g) Customs must within ninety (90) days after receiving the request, give the cargo reporter 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.

6 APPEALS AGAINST DECISIONS

- a) In cases where 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.
- b) Should clients 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.

7 REFERENCES

7.1 Legislation

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	Customs and Excise Act No. 91 of 1964: Sections 18, 18A, 38, 19A, 64D, 98, 99, 101, 101A, 120A.01, 120B and 119A Customs and Excise Rules: Rules 18, 18(15);18A, 19A, 38, 64D, 101, 101A.01, 120A.01, 120B and 119A.00 Value-Added Tax Act No. 89 of 1991: Section 13, Schedule 1
Other Legislation:	Promotion of Access to Information Act No. 2 of 2000: All Promotion of Administrative Justice Act No. 3 of 2000: Sections 3 and 5 National Road Traffic Act No. 93 of 1996:All Cross Border Road Transport Act No.4 of 1998:All
International Instruments	Kyoto Convention: Specific Annex E, Chapter 1 – Customs Transit Standard: 1-4; 8, 10, 12, 13, 15, 16, 23, and 24 Recommended Practice: 9, 11, 17, 18, 21, 22 and 25 WCO Framework of Standards: Annex1: Standard 1.2.1 – 1.2.3; 2.4 and 10

7.2 Cross References

DOCUMENT #	DOCUMENT TITLE
SC-CC-24	Internal Administrative Appeal - External Policy
SC-CC-26	Alternative Dispute Resolution - External Policy
SC-CC-38	Reporting of Conveyances and Goods – External Policy
SC-CF-04	Completion Of Declarations – External Manual
SC-CF-19	Licensing, Registration and Designation – External Policy
SC-CF-55	Clearance Declarations – External Policy
SC-CO-01-02	Offences and Penalties – External Policy
SC-SE-05	Bonds - External Policy
SC-TR-01-02	Acquittal of Bills Of Entry - External Policy
SC-TR-01-05	Removal of Goods - External Policy

8 DEFINITIONS AND ACRONYMS

Act	The Customs and Excise Act No. 91 of 1964
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BLNS	The Republic of Botswana; The Kingdom of Lesotho; The Republic of Namibia; and The Kingdom of Swaziland.
Cabotage	Domestic transport by means of transport registered in another country.
CBRTA	Cross border Road Transport Agency
CCA	Customs Controlled Area
CCD	Customs Clearance Declaration
CPC	Customs Procedure Code
Customs Office of destination	Any Customs Office within or outside South Africa where the operations to which Rule 64D relate, end e.g. Cape Town, Lesotho etc.
Customs Office of entry	Any Customs Office where operations to which Rule 64D relate, begin, e.g. Durban.
Customs Office of exit	Any Customs Office which even if not situated within the border of South Africa, and any other country is the last point of Customs control before crossing the border e.g. Beit Bridge, Oshikango etc..
Customs Transit	Means the Customs procedure under which goods are transported under Customs control from one Customs offices to another which includes both RIB/RIT.
Declaration	Any declaration made to declare goods imported, exported, moved in bond/transit or moved across the borders between the SACU countries.
Diversion	If goods have not reached the place of exit/final destination within time and are still in South Africa
Mutatis Mutandis	Applies to applicable legislation, policy or procedures that are to be read with the mentioned provisions in this document
Road Bond	Road bond is a security held by an approved financial institution for a specific amount on behalf of any licensed remover
ROG	Licensed Remover of Goods in Bond by road
SACU	Southern African Customs Union, consisting of: a) The Republic of South Africa; b) The Republic of Botswana; c) The Kingdom of Lesotho; d) The Republic of Namibia; and e) The Kingdom of Swaziland.
SAD	Single Administrative Document
VAT	Value-Added Tax

9 DOCUMENT MANAGEMENT

Policy Owner	Group Executive: Customs Branch
Detail of change from previous revision	Deleting the VAT penalties under the Tax Administrations Act, referred to in the appeals against decisions paragraph. All appeals are dealt with under the Customs and Excise Act.
Template number and revision	GC-TM-03 - Rev 9