

MEMORANDUM OF OBJECTS OF CUSTOMS DUTY BILL, 2013

1. PURPOSE OF BILL

- 1.1 The Customs Duty Bill is intended to replace the provisions of the Customs and Excise Act, 1964, relating to the imposition and collection of import and export duties. Provisions of the current Act covering, respectively, customs control and excise duties will be contained in separate Bills, viz. a Customs Control Bill and an Excise Duty Bill.

2. OBJECTS OF BILL

- 2.1 The primary object of the Customs Duty Bill is to provide for the levying, payment and recovery of import and export duties on goods imported or exported from the Republic. The Bill is structured around the imposition, assessment, payment and collection of such duties.

3. SUMMARY OF BILL

- 3.1 A Customs Tariff which substantially re-enacts Schedules 1, 2, 3, 4 and 5 of the Customs and Excise Act, 1964, in relation to import duties will eventually be attached to this proposed Act. See in this regard section 944(2)(a) of the Customs Control Bill.
- 3.2 The Customs Tariff imposes, subject to requirements, conditions or exclusions as set out in the Tariff, import duties currently levied on imported goods. The Customs Tariff distinguishes between ordinary import duties and other duties such as anti-dumping duties, countervailing duties and safeguard duties. It contains no duties on the export of goods in line with the current position.
- 3.3 Provision is made for the Customs Tariff to be amended by the Minister by notice in the Government *Gazette*. Such amendments must be submitted to Parliament for ratification. If an amendment is not ratified it lapses as from the last calendar day following the calendar year in which it was made.
- 3.4 As a general rule imported dutiable goods attract liability for import duty in terms of the Bill when the goods enter the Republic or, if the goods are cleared before arrival in the Republic, when the clearance declaration is submitted to Customs. If an export duty is imposed in future (which is not foreseen at this stage) dutiable goods destined for export will attract liability for export duty when the goods are cleared or regarded to be cleared for outright export. Duty only becomes payable when the goods acquire a tax due status in terms of the proposed Customs Control Act, which is usually the case when the goods are cleared for home use. Provision is made for deferring payment of duty by Customs to a future date on certain conditions including the giving of security. The Bill specifies the persons who are responsible for paying the duty on dutiable goods as well as from whom the duty may be recovered in the event of the duty not being paid.
- 3.5 The Bill makes provision for refunds and drawbacks by the Commissioner in accordance with procedures set out in the Bill. As a general rule claimants are required to apply for such refunds and drawbacks.
- 3.6 Refunds of duties, administrative penalties and interest may be made only if refundable in terms of a provision of the Customs Tariff or in circumstances set out in the Bill, for example when the duty, penalty or interest was overpaid or paid in error.
- 3.7 Drawbacks may be given if imported goods on which the duty was paid or products obtained from the goods are exported from the Republic without being put into home use.

- 3.8 The Bill emphasises the self-assessment system of duty. Persons clearing goods are in terms of the Bill required, as part of the clearance process, to self-assess the dutiability of the goods and, if dutiable, the amount of duty payable. Persons clearing goods are for this purpose required to make their own tariff classification, value determination and origin determination of the goods.
- 3.9 Before releasing goods, Customs must check the self-assessment and, if incorrect, make its own assessment of dutiability and the amount of duty payable.
- 3.10 Provision is also made for Customs to re-assess the amount of duty payable even if the duty has already been paid or the goods are no longer subject to customs control. Re-assessments may, however, only be made within a period of three years from the date of acceptance of the clearance declaration by Customs, but in certain circumstances Customs may make a re-assessment after the three year period, e.g. in cases of fraud or the submission of false assessment information.
- 3.11 In terms of the Bill persons submitting clearance declarations to clear goods for home use or a customs procedure must make self-determinations of the tariff classification, the customs value and origin of the goods irrespective of whether or not duty is payable on the goods. These self-determinations must be stated on the clearance declaration.
- 3.12 A self-determination does not affect Customs' right to override the self-determination and make its own determination in relation to tariff, value or origin. Customs may at any time make a tariff, value or origin re-determination of goods, but no such re-determination may affect the assessment of duty on the goods if made after the expiry of the three year period referred to in paragraph 3.10 unless one of the exceptions apply.
- 3.13 Aggrieved persons have recourse to administrative appeals or judicial review of decisions made by Customs in connection with duty assessments or re-assessments or tariff, value or origin determinations or re-determinations, but no such action suspends a person's obligation to pay the duty on the relevant goods.
- 3.14 The Bill prescribes in detail the manner in which duty assessments and tariff, value and origin determinations must be made. For duty assessments it sets out the key assessment factors that determine duty assessments. For tariff classifications it contains criteria for correctly classifying goods of different kinds. For customs valuations it provides for the different valuation methods that must be followed in the different circumstances and for origin determinations it prescribes the rules of origin that must be applied.
- 3.15 The Bill also makes provision for systems and procedures in relation to goods imported into or exported from the Republic under preferential tariff treatment in terms of the Republic's international trade agreements. It also ensures that legislative and administrative measures regulating a non-reciprocal generalised system of preferences of a country implementing such a system for goods of South African origin are complied with when South African goods are exported to such a country.
- 3.16 Customs may in terms of the Bill issue advance rulings on the tariff, value and origin determination of goods of a specific class or kind when cleared during a future period for home use or a customs procedure by or on behalf of the person to whom the ruling is issued. Any person who is a licensee or registered person in terms of the proposed Customs Control Act may apply to Customs for an advance ruling. An advance ruling binds Customs as well as the recipient of the ruling.

- 3.17 Judicial matters covered by the Bill include offences in terms of the Bill, additional punitive powers of courts in criminal proceedings and jurisdictional matters. The Bill distinguishes between two categories of offences namely more serious Category 1 offences, which include duty evasion 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 an act 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.
- 3.18 The Bill also provides for a system of administrative penalties that may be imposed by Customs for breaches of the Act. Here a distinction is made between prosecutable and non-prosecutable breaches. In the case of non-prosecutable breaches, fixed amount or fixed percentage 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.
- 3.19 A fast track court procedure also ensures the speedy collection by the Commissioner of outstanding duties and interest.
- 3.20 Miscellaneous matters dealt with in the Bill include rule making powers of the Commissioner; condonation for non-compliance with rules, conditions or requirements; and the application to this Bill of certain cross-cutting provisions of the proposed Customs Control Act. Transitional provisions affecting this Bill are contained in the Customs Control Bill.

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 etcetera, will be covered from funds in 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 77 of the Constitution of the Republic of South Africa, 1996, since it contains money bill provisions.
- 6.2 The State Law Advisers are 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 contains no provision pertaining to customary law or customs of traditional communities.

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