Standing Committee on Finance (SCoF)

Customs Control Bill, 2013 (CCB) and

Customs Duty Bill, 2013 (CDB)

Response Document[1]

1. BACKGROUND

1.1. PROCESS

The draft Customs Control Bill (CCB) and Customs Duty Bill (CDB) were publicly released for the first time on 30 October 2009. Revised drafts of the bills were publicly released on 18 April 2010 (CCB) and 20 May 2011(CDB) respectively.

The draft Bills were tabled in NEDLAC in 2009 and finalised in 2012. Cabinet approved the Bills on 26 June 2013. The pre-certified versions of the Bills were released to the public for information purposes during August 2013. Final certification from the State Law Advisor was received on 8 October 2013. SARS presented an informal briefing on the Bills to the Standing Committee on Finance on 18 September 2013.

The Minister of Finance introduced the Bills on 24 October 2013 and the Committee heard comments from the public at hearings that were held on 30 October 2013. SARS presented its response on 5 November 2013. Because of the short timeframe given for public comment, the Committee granted an extension for comment on the Bills until13 December 2013. Public hearings were subsequently held on 28 January 2014. The second report back to the Committee by SARS was on 4 February 2014.

1.2. PUBLIC COMMENTS

A list of the commentators who provided written comments to SARS prior to the introduction of the Bills is set out in **Annexure A** and a list of consultations is set out in **Annexure B**. Following introduction comments were received from:

- Bowman Gilfillan
- Business Unity South Africa (BUSA)
- Chamber of Commerce and Industry – Johannesburg (JCCI)
- Federation of Unions of South Africa (FEDUSA)
- South African Clothing and Textile Workers Union (SACTWU)
- Global Maritime Legal Solutions (GMLS)
- South African Oil and Gas Alliance (SAOGA)
- South African Association of Freight Forwarders (SAAFF)
- South African Institute of Chartered Accountants (SAICA)

[1] Revised for consistency of wording and to correct minor errors – 17 February 2014.

SARS held workshops with the following stakeholders to discuss and review the comments that were received:

- South African Association of Ship Operators and Agents (SAASOA) - 14 November 2013
- SIP 2 Durban-Free State-Gauteng Logistic Corridor: Planning and Infrastructure Work-stream – 14 November 2014
- SACU – 29 November 2013
- SAAFF – 5, 11, 13 December 2013 and 22, 24 January 2014
- Gauteng Province – 6 December 2013
- BUSA – 9 December 2013
- USA Customs attaché – 15 December 2013
- Transnet – 30 January 2014

SARS appreciates the useful and constructive comments that have been received.

1.3 POLICY ISSUES AND RESPONSES

Provided below are the responses to the policy issues raised by the public comments received. Both policy and technical issues have been fully reviewed and included within the revised Bills as appropriate. Comments that fall wholly outside the scope of the Bills have not been taken into account for purposes of this response document. The references to the Bills provided below only link to the main references (i.e. the references are not exhaustive).

2. DRAFT CUSTOMS CONTROL BILL

CLEARANCE AT THE FIRST PORT OF ENTRY

2.1. "Inland Ports" (Main reference: Clauses 1, 31, 32, 90)

Comment

The obligation to submit a customs clearance declaration at the first place of entry will have the following effects:

- Traders will have to change their contracts of sale
- Sellers will be reluctant to sell goods under new terms
- Importers will be affected
- Carriers will no longer issue a through bill of lading to inland terminals
- Delays and congestion will arise at the ports

Amendments should be made to the listed sections to define inland ports and designate them as places of entry and exit where goods may be entered. (In other words, "inland ports" should be considered to be on the border of South Africa.)

It is proposed that the provisions of section 18 of the current Customs and Excise Act, 1964, allowing for carriers to deliver containers to inland terminals should be retained. Bearing in mind the WCO Revised Kyoto Convention (RKC) Specific Annex A, relating to pre-arrival manifests, risk management for SARS is included. Apart from retaining the clause at it

stands in the current legislation (section 18) it is proposed that a provision that the Commissioner may prescribe the information the manifest must contain by Rule be included.

Response

It is recommended that the proposals not be accepted but that other amendments be made to alleviate concerns.

The current Customs and Excise Act, 1964, does not designate any place inland as an "inland port" or as a place of entry. In line with the current position, provision is made in the CCB for container terminals to be established inland.

The CCB provides for the designation of places of entry and exit where goods, people and means of transport may physically enter and leave South Africa. In order for the customs authority to effectively control the movement of means of transport, goods and people it is imperative that the national executive limit the designation of places of entry and exit to places where means of transport, goods and people may physically enter and leave South Africa.

Designating an "inland port" as a place of entry and exit would mean that goods can move from the physical place of entry without proper customs control (effective risk assessment and intervention) to move hundreds of kilometres inland on a manifest.

Inland terminals will continue to have a customs presence with customs examination capability. It is therefore not the intention of SARS to:

- Close inland terminals
- Stop every container
- Congest the ports
- Discourage the use of rail
- Disrupt the seamless movement of **legitimate** trade

Currently, the Customs and Excise Act, 1964, allows container operators to move containers in bond from a port of entry for e.g. the Port of Durban to an inland container terminal e.g. City Deep without submitting a customs clearance declaration. The containers are moved to the inland terminal on the authority of a manifest which is deemed to be a customs declaration.

A manifest is a summary of cargo on board a vessel and it only provides a general description of the goods which could include descriptions such as "said to contain," "freight of all kinds," "electrical goods," and "foodstuffs".

No security is required and liability for the removal rests with the container operator. After the arrival of the goods at the inland terminal the importer will clear the goods on a customs clearance declaration for another permissible customs procedure or for home use and pay the duties.

Manifest information is insufficient for effective risk assessment

The policy rationale for changing the existing policy is based on the fact that SARS can only effectively control the movement of goods across our borders and the risk it poses if it has the necessary information.

Allowing goods to move from the port of entry to an inland terminal on a manifest can expose our people to safety and security risk and our economy to fiscal risk. This is because the risk indicators to determine tariff, valuation and origin risk are not declared on a manifest. The information on a manifest is, furthermore, based on information supplied to the carrier by a person in a foreign jurisdiction, who cannot be held accountable for the information supplied.

Technological advances - access to information electronically

The current policy originated in the late 1970s when communication was manual. Today, information is available electronically in seconds. Because of the access to information electronically importers can clear goods in advance before they have landed, preventing any unnecessary delays in the ports or increased logistical costs.

Benchmarking

Benchmarking was conducted against the USA, Canada, Russia and the UK. From the benchmarking conducted the USA and Canada recognise that manifest information is insufficient for effective customs risk assessment. The USA and Canada require that advance information be submitted by the importer. This information is used together with the manifest information submitted by the carrier for risk assessment.

Russia requires that a transit declaration be submitted for the transit of goods not in free circulation. The transit declaration must include the data prescribed which includes tariff, value and origin. Customs may accept as a customs transit declaration any commercial, shipment documents, waybills, and/or customs documents provided they contain the information prescribed which includes tariff, value and origin.

In the UK when goods are moved outside the approved area of a port or airport in transit to a temporary storage facility such as an inland container depot, the goods must be entered under the Community transit procedure. A transit declaration must be submitted. The transit declaration must include the data prescribed which includes tariff, value and origin. Security may be requested to secure the duties and taxes while the goods are in transit.

Proposed policy in the CCB

The CCB will make it an obligation for an importer to pass a customs clearance declaration at the first port of entry. Clearance at first port of entry will require a value, the duties and taxes to be paid as well as the Harmonised Commodity and Coding System (HS Code) for the goods which would indicate whether the goods are prohibited or restricted. The inclusion of the HS code on the declaration would thus facilitate electronic data processing.

Legal opinions

In view of the strongly expressed views of the commentators concerned and in order to ensure that SARS has not overlooked issues relating to the change in approach, SARS has obtained three legal opinions on the issues raised. The opinions by Professor Eiselen, international trade law expert, Advocate Pammenter SC, maritime law expert and Advocate Joubert SC, customs law expert, are unanimous in their support of SARS's position. These opinions have been made available to SCoF.

The concerns raised appear to result from a fundamental misunderstanding of the terms of a CIF (cost, insurance and freight) contract, which is the most commonly used INCOTERM. INCOTERMS are a set of standard contractual clauses used in international transactions. In terms of a CIF contract, risk passes from the seller to the buyer when the goods are loaded onto the ship in a foreign port, insurance and freight paid. The seller's obligations therefore end when the goods are loaded onto the ship in a foreign port, insurance and freight paid.

Clearance at first place of entry, which is after loading, can, therefore, not change the obligations of the seller. Equally, the importer's obligations remain the same. The opinions disagree that carriers will, as a result of the policy change, no longer issue a through bill of lading that will allow the goods to move from Durban to e.g. City Deep.

SARS Recommendation

After several meetings with affected parties in the supply chain SARS recommends the following to alleviate any remaining concerns:

- A customs clearance declaration for a permissible customs procedure must be submitted for containerised goods consigned for delivery to a licensed inland container terminal or depot. This declaration will *inter alia* provide full details regarding tariff, value, origin and the importer or the importers agent.
- This declaration must be submitted by at least three calendar days before arrival at the first place of entry. Containers will then be provisionally released before arrival of the goods at the first place of entry to allow trade to plan the supply chain.
- Penalties will only be levied if the clearance is not submitted within three working days after arrival of the goods.
- The provisional release as contemplated in clause 90(4) will be interpreted by SARS as an electronic message and will include information regarding the relevant terminal or depot to which the goods may be removed.
- The provisional release notification will be followed up with a final release notification.
- The implementation of clause 90(4) may be delayed by 12 months to allow trade sufficient time to prepare for the change.
- As a fall back SARS also recommends a clause to address any unforeseen or unintended consequence, or any anomaly or incongruity, that may arise from the implementation or enforcement of a provision of this Act, the Customs Duty Act or the Excise Duty Act.

These recommendations are intended to provide further certainty and predictability to role players in the supply chain regarding the movement of the goods. They, therefore, provide a solution for the seamless movement of cargo consigned to inland terminals.

2.2. CCB is not aligned to the Revised Kyoto Convention

Comment

The change in the treatment of goods consigned to an inland terminal is not aligned with the RKC.

Response

It is suggested that this comment is misconceived. The RKC is considered a blueprint for a modern customs administration. South Africa has acceded to the General Annex of the RKC on 20 April 2004. South Africa has not acceded to any of the specific annexes of the RKC and is therefore not bound by these annexes. However, in the spirit of facilitating trade, the CCB has incorporated many of the provisions of the specific annexes of the RKC. Specific Annex E, Chapter 1 of the RKC covers customs transit. The RKC requires that a national transit declaration be passed when goods are required to move from one customs office to another for control purposes within one customs territory.

Recommended practice 7 further prescribes that the customs should accept as the goods declaration for customs transit any commercial or transport document for the consignment concerned which meets all customs requirements.

The CCB is aligned to the RKC. A national transit declaration is required since the manifest does not meet all customs requirements for risk assessment.

2.3. CCB is not aligned to the WCO's SAFE Framework of Standards

Comment

The change in the treatment of goods consigned to an inland terminal is not aligned with the WCO's SAFE Framework of Standards.

Response

It is suggested that this comment is misconceived. The SAFE Framework was developed to enhance the security and facilitation of international trade. South Africa and the current Minister of Finance, in his then capacity as the Chairperson of the WCO, were instrumental in the development of the SAFE Framework and South Africa has signalled its intention to meet the standards of the SAFE Framework. The SAFE Framework advocates submission of not only an advance cargo declaration but also an advance customs clearance declaration prior to loading of the goods on board a vessel at the foreign port for the purposes of risk assessment. The CCB provides for the submission of an advance cargo declaration for containerised cargo. Provision is also made for the submission of advance customs clearance declarations. Currently almost 66% of declarations are submitted in advance. Requiring a mandatory advance customs clearance declaration for goods consigned to inland terminals is a move in the direction of the SAFE Framework.

2.4. CCB is not aligned to Article 9 of the WTO Agreement on Trade Facilitation

Comment

Article 9 is limited to the submission of a manifest as is the current procedure.

Response

It is suggested that this comment is misconceived. SARS was involved in the negotiation of Article 9 of the Agreement. The final text of Article 9 makes it "subject to the national regulations." The USA and the EU, parties instrumental in the negotiation of Article 9, have confirmed to SARS that the article empowers a customs authority to prescribe the regulatory requirements which includes submission of customs goods declaration (national transit) at first point of entry into national customs jurisdiction.

South Africa is therefore fully aligned to Article 9 of the Agreement.

2.5. Inadequate consultation with SACU

Comment

There has been inadequate consultation with SACU regarding the Bills and the change in the treatment of goods consigned to an inland terminal.

Response

It is suggested that this comment is misconceived. Meetings were held with SACU on the Customs Bills on the following dates:

- 17 September 2003
- 26 February 2008
- 12 February 2010
- 23-24 November 2011
- 3-6 December 2012
- 10 October 2013
- 29 November 2013 (specifically aimed at discussing the terminal issue)

The options presented to SCoF on 5 November 2013 were also shared with SACU at the 29 November meeting. No objections were received from SACU members.

2.6. Groupage containers

Comment

Groupage containers manifested to inland ports will not be allowed to proceed inland if one of the consignments in the container is not cleared.

Response

It is recommended that the comment not be accepted. A groupage container means a container containing goods consigned from more than one consignor to more than one

consignee, so it is possible that a groupage container may be loaded with compliant and non-compliant cargo. Groupage containers manifested to inland terminals cannot be allowed to proceed inland if one of the consignments in the container is not cleared. The uncleared consignment must be removed to determine what it is and what risk it poses.

Groupage containers comprise of less than 1% of all containers imported. About 4 million containers are imported annually into South Africa. If 50% of groupage cargo is destined for an inland terminals and all such groupage cargo is non-compliant it is possible that fewer than 20 000 containers will be affected. If 1% of the 50% is non-compliant fewer than 200 containers will be affected. Groupage operators should take an active role in ensuring that their customers/importers know about the consequences of not making clearance

GENERAL PRINCIPLES GOVERNING CLEARANCE AND RELEASE OF GOODS AND CUSTOMS PROCEDURES

2.7. When clearance declarations for goods imported through places of entry must be submitted (Main reference: Clause 90)

Comment

The manual process of application for clearance under a rebate item and lodgement of security should be reconsidered.

Response

It is suggested that this comment is misconceived. It was never the policy intention of the Bills to perpetuate a manual or separate application and approval process. This is evidenced by the fact that the CCB provides that where an application and approval is required prior to the submission of an incomplete or provisional clearance declaration, the submission of the electronic clearance declaration will be regarded as the application – see clause 522(2)(b)(i). Further clause 168 of the CCB provides for the mandatory electronic submission of clearance declarations and thus no manual processes are envisaged except in exceptional circumstances

The requirement for the application referred to by SAOGA is currently contained in the Customs Tariff that will form part of the CDB. The CDB in clause 224(1)(g) provides that the Commissioner may prescribe by rule the manner and time in which applications for authorisations (such as envisaged by SAOGA) may be made. Rules will thus prescribe that a declaration will be regarded as the application where an application is required for temporary admission as per the Customs Tariff (e.g. current tariff items 480.25; 480.30 and 490.90).

2.8. When clearance declarations for goods imported through places of entry must be submitted
(Main reference: Clause 90(1)(b))

Comment

Approximately 40% of the total volume imported through an express operator is delayed pending the production of the importer's identity or income tax number before the clearance can be processed. The express industry deals largely with lay-persons, even companies unfamiliar with the legislative requirements of importing and exporting and delays in obtaining this information and offering guidance on how this is accomplished has the potential of placing the operator at an undue risk of contravention.

The current *status quo* of not requiring registration should be maintained.

Response

It is recommended that the comment not be accepted. Clause 626(c) makes provision for a simplified registration process to accommodate casual importers or exporters.

GENERAL PRINCIPLES GOVERNING CLEARANCE OF GOODS FOR HOME USE OR CUSTOMS PROCEDURE

2.9. Consequences in event of failure to clear goods imported through places of entry
(Main reference: Clause 92(1))

Comment

As per this section goods must be cleared within three days of estimated time of arrival or else it may only be cleared for home use. What about late documentation? This could prevent the importers from the benefits of processing for home use clearances, which in turn will have a negative impact on industry. Importers receives documents late from suppliers, agents receive documents late from shipping lines.

Response

It is suggested that the comment is misconceived. Chapter 24 of the CCB provides for the submission of incomplete and provisional entries when a person does not have all the information or documents at hand to submit a regular clearance declaration for the clearance of the goods. Clause 908 can furthermore be used to obtain an extension of the period.

2.10. When export clearance declarations for goods exported through places of exit must be submitted
(Main reference: Clause 94(1)(b))

Comment

In the express business, shipments are collected by service centres in all parts of the country then delivered to a central facility (the air cargo depot) where the clearance

declarations are processed. Upon arrival into this facility, the goods are sorted (by type, value and destination), paperwork drawn from the outside of the packages then forwarded to the export clearance team for further processing – a physical handling process that can take hours. Review timeframe to a more practical, achievable period. Sixteen working hours is proposed.

Response

It is suggested that the comment is misconceived. Clause 94(3) already allows for different time frames for different categories as may be determined by rule. A time frame can therefore be prescribed by rule that is appropriate for express parcels, livestock, perishable cargo, etc.

2.11. When export clearance declarations for goods exported through places of exit must be submitted
(Main reference: Clause 94(2)(a))

Comment

A bill of entry (BOE) must be processed to uplift a container for export from the shipping line. This prevents us from clearing the container number on the bill of entry. We are not able to do a correction on a BOE until Customs released the BOE or issues a code 26 in order to insert the container number as required. Vouchers of correction cost money and have a direct impact on our accreditation status with customs. Shipping line does not provide a container unless a BOE has been processed.

Response

It is suggested that the comment ismisconceived. Clause 94(2)(a) provides for the submission of an incomplete declaration without a container number. It should be noted, furthermore, that this clause was an area of agreement in the NEDLAC process.

2.12. Certain categories of goods destined for export excluded from export clearance requirements
(Main reference: Clause 95(2)(a))

Comment

Export clearance is currently not required for exports of under R500 per annum per addressee. Clearing agents will be unable to track addresses and the *de minimis* should be increased to R50 000 per shipment.

Response

It is recommended that this comment be partially accepted. It is recommended that the reference to addressee be replaced by a reference to an exporter. The *de minimis* is intended to cater for individuals. A simplified registration and declaration process will be available for SMMEs and will be prescribed by rule.

GENERAL PRINCIPLES GOVERNING RELEASE OF GOODS FOR HOME USE OR CUSTOMS PROCEDURE

2.13. Clearance and release substitutions for goods released for home use (Main reference: Clause 107(2))

Comment

Currently we have 6 months to apply for a substitution, now we only have 3 months. The *status quo* should be retained. Customs must authorize substitution, which also takes time to respond to agents.

Response

It is recommended that this comment not be accepted. The RKC in its guidelines for Transitional Standard 4.20 states "Transitional Standard 4.20 indicates that repayment should also be allowed in cases where goods are originally declared under one Customs procedure and are then placed under another that either reduces or eliminates the amount of duties and taxes chargeable. Normally, such permission would be sought **within a short time of the original declaration**, for example because an error was made in indicating the Customs procedure to be applied to the goods…" With due cognisance of the "just in time" principles employed by Trade, there appears to be no sound reason why goods cleared for home use would still be available after 6 months.

STANDARD CLEARANCE PROCESSES AND REQUIREMENTS

2.14. Contents of clearance declarations (Main reference: Clause 167(1)(i))

Comment

Declarations processed currently make use of alternate identifiers such as the customer's identity number or income tax number in lieu of a customs code number. Include the use of alternate identifiers for regular declarations on imports and exports.

Response

It is recommended that this comment not be accepted. There are three scenarios relating to clearance requirements which may be applicable to goods imported or exported, depending on the value of the goods:

1. If the value of the goods is R500 or less, submission of a clearance declaration is not required in terms of clauses 91(1)(g) and 95(1)(h). The requirement of a customs code in terms of clause 167(1)(i) is therefore not relevant in this instance.
2. If the value of the goods, in the case of goods of a category to which simplified clearance procedures will apply in terms of clause 533(1)(c), is more that R500 but less than the value determined in terms of clause 533(2)(a), the goods must be cleared in terms of the simplified clearance procedure as may be prescribed which can either be a simplified clearance declaration or another document.
3. If the value of the goods is –

- more than R500 in the case of goods which do not fall in a category which may be cleared in terms of simplified procedures; or
- more than the value determined in terms of clause 533(2)(a) in the case of goods which do fall in a category which may be cleared in terms of simplified procedures

a clearance declaration in accordance with clause 167 must be submitted.

In the case of scenario 2 and 3 a customs code will be required, just as a tax number is required to identify a taxpayer, unless the importer or exporter is exempted from registration in terms of clause 603(3)(b). If the importer or exporter is required to register, clause 626(c) however provides that rules may be prescribed for simplified registration of casual importers and exporters importing or exporting goods below a prescribed value.

2.15. Submission of clearance declarations before arrival of goods at place of entry (Main reference: Clause 170(1))

Comment

In the express environment, pre-clearance is essential to ensure the operator meets their transit time commitments. The operator begins the pre-clearance process when the goods are received into the service centre that collected the shipment which may be several hours before it is booked and loaded on board an aircraft that will transport the goods to the country. Restricting pre-clearance capability to the time that goods are loaded on board the aircraft has the effect of reducing the window of opportunity that the express operator has in pre-clearing, updating systems appropriately and meeting their transit time commitments to their customers.

Permit the pre-clearance to be submitted for processing and validation and hold back the release until goods are loaded or departed or upon receipt of the advance notice or manifest. Then release the shipment so that systems can be updated accordingly in advance of the arrival of the consignment.

Response

It is recommended that this comment not be accepted. The basis of valuation in terms of the Customs Control Bill is free on board (FOB) so clearance cannot be accepted prior to the loading of the goods. In an electronic environment the submission of a clearance declaration, the processing thereof and the granting of release could happen within minutes. It is therefore possible to submit a clearance declaration after loading of the goods and obtain release upon arrival in South Africa.

2.16. Amendment of clearance declarations (Main reference: Clause 174(1)(b))

Comment

The customs authority should not be permitted to refuse an amended clearance submitted to it, unless it finds that the amended clearance declaration contains errors or is invalid.

Response

It is recommended that this comment not be accepted. South Africa is a contracting party to the General Annex of the RKC. Standard 3.27 of Chapter 3 of the General Annex states that; "The Customs shall permit the declarant to amend the goods declaration that has already been lodged, provided that when the request is received they have **not** begun to check the goods declaration or to examine the goods."

Customs needs a discretion to refuse an amended clearance declaration submitted after verification has commenced because in this instance there can be doubt as to the *bona fides* of the person amending the declaration.

NATIONAL AND INTERNATIONAL TRANSIT - INTRODUCTORY PROVISIONS

2.17. National and international transit
(Main reference: Clause 194(3))

Comment

The International transit procedure is not available for imported goods of a class or kind or falling within a category as may be prescribed by rule. What is stated in the rule? The rules needs to prescribe the "class or kind or falling within a category".

Response

It is recommended that this comment be accepted. The rules will prescribe the categories.

NATIONAL AND INTERNATIONAL TRANSIT - OPERATIONS

2.18. Limitations on route for transit
(Main reference: Clause 207(2))

Comment

No person may redirect goods from the starting point or to the delivery point of a transit operation as indicated in the transit clearance declaration without prior written permission of the customs authority. What about groupage shipments, i.e. truck starts in DBN and has to pick goods up in JHB before proceeding to exit border? What if a route is closed?

Response

It is suggested that this comment ismisconceived. This is a discretionary provision in line with the RKC. The customs authority **may** limit routes for transit operations in relation to specific goods where risk warrants it. It does not follow that routes for all transit operations will be limited. A need may arise to prescribe routes for high risk goods that pose, for example, a health risk should those goods be diverted into South Africa. If an approved route is closed permission may be obtained to vary the route to be used.

2.19. Multi-modal transit of goods (Main reference: Clause 212)

Comment

OR Tambo International plays a vital role in acting as a hub for movements to remote, infrequent destinations within the African continent from other African countries and the rest of the world. It is imperative for international transit movements processed within an air cargo depot for on-forwarding to its final destination declared on the transport document (house air waybill), be removed for on-forwarding by means of a multimodal transport without any formal clearance declaration. Review transhipment and international transit movements with a view to consolidating based on empirical evidence

Response

It is suggested that the comment is misconceived. There is no prohibition or restriction in the transhipment chapter regarding the deconsolidation and consolidation of goods for transhipment. No amendment is thus required. The rules in terms of clause 260 will suffice to provide the regulatory framework.

2.20. Responsibility for ensuring compliance with transit requirements (Main reference: Clause 217)

Comment

The person clearing the goods, particularly in international transit, is held responsible to ensure that the transit is carried out. What if the person clearing the goods does not control the transport and has only been instructed to clear the goods? How can they be held liable? Brokers act on behalf of the person instructing them to clear, if non compliance, the brokers' accreditation will be affected.

Response

It is suggested that this comment is misconceived. Clause 166(2) provides that if a clearance declaration is submitted by a customs broker on behalf of a person entitled to submit a clearance declaration, that person and not the customs broker must be regarded as the person clearing the goods.

CLEARANCE AND RELEASE OF GOODS FOR WAREHOUSING

2.21. Warehousing of goods (Main reference: Clause 299(2))

Comment

Goods not in free circulation, to which this Chapter applies, may be stored in a storage warehouse only if the goods are cleared and released for warehousing in that specific warehouse. Goods in free circulation may, without clearance for warehousing, be stored in a storage warehouse subject to any limitations and in accordance with any rules as may be prescribed for such goods. This is contradictory.

Response

It is suggested that the comment is misconceived as there is no contradiction. Goods not in free circulation must be cleared for warehousing, while goods in free circulation have either already been cleared or never needed to be cleared and can be stored in a storage warehouse without further clearance, subject to limitations and rules as may be prescribed to maintain control.

WAREHOUSING OF GOODS IN STORAGE WAREHOUSES

2.22. Records to be kept of warehoused goods (Main reference: Clause 307)

Comment

The clause requires that records be kept "in a manner and format and containing the information as may be prescribed by rule". Does this format mean that you must keep electronic records? Not all agents store their documentation electronically.

Response

See clause 919 in this regard. Both electronic and paper based record keeping are provided for and paper based record keeping will be permitted on its merits.

CLEARANCE AND RELEASE OF GOODS FOR EXPORT FROM SOUTH AFRICA

2.23. Contents of export clearance declarations (Main reference: Clause 367(1)(a))

Comment

If tax paid will be reclaimed, this clause should also require the customs procedure code and the drawback item under which the tax will be claimed, in addition to the information required in terms of section 167.

Response

It is recommended that this comment be partially accepted. The proposal will be accommodated in terms of a requirement under clause 167(1)(k), which provides for additional information required.

TEMPORARY EXPORT OF GOODS UNDER REGULAR CLEARANCE AND RELEASE PROCEDURES

2.24. Release of goods for temporary export (Main reference: Clause 380(1))

Comment

Previously the SARS release notification did not reflect the return date. The person clearing the goods will not always know what the return date will be.

Response

It is suggested that the comment is misconceived. Standard 8 of Specific Annex J of the RKC provides for time limits to be imposed by the customs administration for re-importation in the same state. Clause 380(1) provides for a period (not a specific date) within which temporarily exported goods must be returned to South Africa. The person clearing the goods need **not** know the precise date when the goods are to be returned but needs only ensure that they are returned within the specified period.

PROCEDURES FOR REGISTRATION APPLICATIONS

2.25. Period of validity of registration certificates (Main reference: Clauses 614, 615(1))

Comment

Requiring a period of validity for registrations will create a massive administrative burden for SARS. This will compromise trade facilitation and is not in alignment with other tax practices.

As with other tax types, such as Income Tax and Value-Added Tax registration, the registration for customs purposes, in particular registration as an importer and exporter, should not be renewable on the basis of lapsed time since registration. In addition, the renewals would result in additional administrative activities for SARS and the registrants, resulting in unnecessary barriers to trade.

Previously there was no time period specified for registration of importer / exporter / EDI / Rebate user etc. Why do we not just update the DA185 each 3 years?

Response

It is recommended that this proposal be partially accepted. The registration provisions are aimed at improving customs control over commercial goods brought into or taken out of South Africa and the persons involved. SARS went through a lengthy customs registration data clean-up process during 2009.It is important that a tax administration has a clean and up to date register of its clients – “know your client”. However, SARS understands that a renewal process for active clients will prove onerous and so proposes that the expiry of registration be limited to clients who have been inactive for three years. As an administrative matter SARS will attempt to contact clients to be deregistered but contact details are likely to be out of date in many cases.

APPLICATION FOR NEW LICENCES

2.26. Period of validity of licences (Main reference: Clause 647(1)(b)

Comment

Currently a license is valid for one year and will now be valid for three years. Will renewals be electronic?

Response

No reason has been identified why renewals should not be electronic.

RESTRICTED GOODS

2.27. Clearance of restricted goods
(Main reference: Clause 784(3)(a))

Comment

Previously import permits were captured at time of warehouse clearance, now it will be captured at time of ex-bond clearance. If no permit is received whilst goods are in bond store may we proceed to export the goods?

Response

Yes, clause 301 allows for restricted goods to be placed in a private warehouse without prior compliance with legislation restricting the import of such goods, pending compliance with the legislation or export of the goods.

PENALTIES

2.28. Fixed amount penalties
(Main reference: Clause 876)

Comment

The quantum of the penalties is excessive and customs officers should be granted a discretion to reduce or waive penalties where *bona fide* errors have been made.

Response

It is recommended that this proposal be partially accepted. After further review it appears appropriate to reduce the values of the various categories of fixed amount penalties by 50%. Penalties for specific breaches within the ranges specified will be prescribed in the rules in order to ensure consistency across clients and offices. It is recommended that no penalty should be imposed for a breach if it was committed inadvertently, in good faith and does not result in revenue prejudice. It is further recommended that a penalty only be imposed for a breach that does not result in revenue prejudice after SARS has issued a warning to the client for the same or a similar type of breach.

3. DRAFT CUSTOMS DUTY BILL

LIABILITY FOR DUTY

3.1. Grounds and procedure for suspension or withdrawal of duty deferment benefit
(Main reference: Clauses 25(2)(a)(ii), 25(5)(b), 25(6))

Comment

The Bill proposes that SARS be permitted to suspend or withdraw a duty deferment benefit granted to a person if the person failed to pay within three working days after payment became due. The three working days should be extended to five working days. The Bill also proposes that SARS give clients three working days to provide submissions why the proposed (or actual) suspension or withdrawal should not take place. The three working days should be extended to twenty working days.

Response

It is recommended that this comment not be accepted. A customs authority is under no obligation in terms of the General Annex of the RKC to offer duty deferment benefits but, if they are offered, must specify the conditions under which they are offered. A deferment benefit provides a credit facility which deprives the fiscus of the availability of money that would otherwise be due immediately. There is thus a need for strict time frames to protect the fiscus.

SARS has, nevertheless, embraced a facilitative approach. The Rules will provide for 30 day deferment period and payment will be due within seven days after expiry of the deferment period. A client may thus enjoy a deferral of up to 37 days. If payment is not made within this period, a further three working day grace period is usually given in terms of clause 25(2)(a)(ii) before the question of the suspension or withdrawal of the deferral benefit arises. If the question then arises, a client is given three working days in terms of clause 25(5)(b) to provide reasons why the deferral benefit should not be suspended or withdrawn. Alternatively, if the deferral has been suspended without notice, if circumstances so demand, the client is given three working days in terms of clause 25(6) to provide reasons why the suspension should not stand. Both three day periods for the provision of reasons may be extended in terms of clause 908 if necessary.

Lengthening the three working day grace period will not encourage compliance with the deferral system. Lengthening the three working day periods to provide reasons will create a longer period of uncertainty regarding the deferral status of a client while the reasons are outstanding.

PAYMENT AND RECOVERY OF INTEREST AND ADMINISTRATIVE PENALTY

3.2. Interest on outstanding duty
(Main reference: Clause 45(1)(a))

Comment

Interest should only run from the first day of the month following the month in which payment was due.

Response

It is recommended that this comment not be accepted. The provisions on “interest” are aligned to the Tax Administration Act, 2011, to ensure equity between interest treatment across taxes administered by the Commissioner.

ASSESSMENT OF DUTY

3.3. Time limit on duty re-assessment (Main reference: Clause 86)

Comment

SARS is currently permitted two years to re-assess a declaration. SARS have been able in the past and will continue to go beyond the two year prescription period if they prove there was an intention to evade. We are directed to believe that modernisation and new risk modelling techniques allow more effective and efficient revenue collection and detection of evasion. If anything, SARS needs less time to initiate a post-clearance inspection (audit) and is more likely to hit the mark which means better utilisation of resources which means no need for a broad approach. We can only see that this makes it easier for SARS to schedule taxpayers for larger amounts upfront and be default, on account of the larger prescription window.

Response

It is recommended that this comment not be accepted. The three year period for duty re-assessment is now more closely aligned to the other tax types administered SARS, which permit three or five year periods. As a matter of balance, the time limit within which applications by traders for **refunds** can be submitted has also been increased to three years in terms of clause 69(1)(a) of the CDB. SARS will thus not only assess taxes but also pay refunds for a three year period.

ADVANCE RULINGS

3.4. Validity period of advance ruling (Main reference: Clause 191)

Comment

Obtaining a ruling is a resource intensive and technical process. SARS resources are currently under pressure and it is not clear how this will be managed and will likely be contrary to trade facilitation. Further a fee will also be payable, cash for compliance? This provision cannot be allowed and the Bill must be changed to maintain the status quo.

Rulings (referred to as “advance rulings”) whether in respect of tariff, valuation or origin are highly technical endeavours. Previously no validity period was imposed. Further, as with the registrations, we feel this is going to place an inordinate strain on the limited skilled individuals working in these specialised fields at SARS. Currently it takes months or even over a year to have a ruling issued. This is not practical, if for example, a client5receives a ruling after 6 months and then 2 years and six months later they are reapplying. Further SARS is insisting that a fee is payable in terms of S188, which means clients would have to pay for compliance / cash for compliance. Further this is not a licensing provision. This is contrary to the interests of trade facilitation and compliance. This places a greater burden on clients and the SARS. Further it is contrary to the intelligent risk management systems that are being touted by SARS modernisation. The status quo must remain and SARS must manage its database better in terms of its risk modelling and approach clients individually if they have a concern to have a new ruling issued and at no cost.

Response

It is recommended that this comment not be accepted. Advance ruling provisions are aimed at providing certainty to importers and exporters by way of rulings prior to the transaction. Advance rulings **must be distinguished** from tariff/value or origin determinations. Advance rulings are time bound and an appropriate period of validity may be specified in a ruling. The provisions relating to advance rulings are consistent with the WTO Bali Agreement, as well as the provisions for other taxes in the Tax Administration Act, 2011.

A specialized unit will have to be created, staffed with sufficiently trained people. The fee for the service allows SARS to recoup the costs of providing rulings and discourages frivolous applications. Jurisdictions such as Malaysia, Canada and Hong Kong charge a fee for advance rulings. Fees are also charged for advance rulings provided in terms of the Tax Administration Act, 2011.

4. CONCLUSION

A draft “A Bill” has been prepared for SCoF to give effect to the recommendations above, as well as recommendations relating to drafting issues that SARS has identified while reviewing the Bills.