



*South African Revenue Service*

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# STATUS OF THE LEGISLATION

- The Customs Duty Bill was assented to by the President of the Republic of South Africa and published as the **Customs Duty Act, 2014 (Act No. 30 of 2014)** in the Government Gazette No. 37821 of **10 July 2014**
- The Customs Control Bill was assented to by the President of the Republic of South Africa and published as the **Customs Control Act, 2014 (Act No. 31 of 2014)** in the Government Gazette No. 37862 of **23 July 2014**
- The Customs and Excise Amendment Bill was assented to by the President of the Republic of South Africa and published as the **Customs and Excise Amendment Act, 2014** (Act No. 32 of 2014) in the Government Gazette No. 37863 of **23 July 2014**
- Acts **only take effect** on a date determined by the President by proclamation

# THE RULE MAKING PROCESS

- Due to the scale of this project the process was divided into phases
- This should assist traders in evaluating the rules
- In the **first phase** we published Chapters 1 and 3 to 10 for external comment at the end of June 2014 with a due date of 29 July 2014
- In the **second phase** we published Chapters 11 to 20 and 24 for external comment on 4 August 2014 with a due date of 26 September 2014
- In the **third phase** we **aim** to publish the remaining Chapters of the Customs Control Act for external comment by the end of September 2014
- In the **fourth phase** we will publish the Customs Duty Act Rules
- Workshops will be organised to provide **feedback** to trade on the **main comments and concerns**

# RECOMMENDATIONS ON DRAFTING STYLE AND LAYOUT

- Many recommendations were received around **drafting style** and layout
- Recommendations pointing out **incorrect references** are appreciated and will be corrected
- Comments were made that rules were not drafted for all rule making provisions in the Act
- **Not every section** requires the enactment of rules
- They are included in the Act to provide flexibility and ensure that there are enabling provisions as and when rules may be required in the future
- Many of the rule making provisions are therefore discretionary

# MEASURES TO PREVENT ABUSE OF POWER BY CUSTOMS OFFICERS

- A comment was received relating to the enforcement functions performed by officers and measures to prevent potential abuse of power
- No specific rules drafted for measures to prevent abuse of power by customs officers
  - This is adequately covered in SARS HR policies such as:
    - Code of conduct
    - Disciplinary Code
    - Integrity policy
    - SARS has a dedicated division ACAS to investigate fraudulent/criminal conduct by employees
  - Furthermore, a person has recourse to the Ombud who is competent to review and address any complaint by a person affected by the application of the Customs Control Act, Customs Duty Act or the Excise Duty Act regarding a service, procedural or administrative matter

# IMPORTANCE OF REPORTING

- Internationally in modern customs administrations emphasis is placed on the reporting of third party information
- Reporting enables customs to risk assess information about the vessels, aircraft, trains, vehicles, passengers, crew and cargo entering or leaving South Africa
- Some of the **benefits** of reporting include:
  - It enhances **supply chain security**
  - It contributes to **fiscal assurance**
  - It supports effective customs control over the **movement** of means of transport and cargo
  - It enables **planning** by the customs authority
  - It establishes **cargo visibility** to determine the physical status of goods
  - It establishes cargo that is landed, short shipped, missing, broken, damaged and excess
- To cut the cost of compliance, information submitted in advance notices will not be requested on arrival or departure unless the information has changed or will require amendment



## **CANNOT COMPLY WITH 24 HOUR RULE**

- A comment was received that there will be insufficient time to comply with submission of the documents to comply with the 24 hour rule. A recommendation to submit the information after 5 days of vessel sailing was proposed
- This recommendation is not accepted
- The 24 hour advance loading notice is a legal requirement and is complied with in the following jurisdictions:
  - USA
  - Canada
  - Japan
  - EU
  - China
- The 24 hour rule is aligned to the SAFE Framework of Standards and complies with international best practice

## CARGO DESCRIPTIONS

- Comments were also received on what would constitute a precise description of goods and what are packages based on the smallest packing unit
- In line with international best practice shipping lines require shippers and agents to submit a precise description of the cargo or the 6-digit Harmonised Tariff number under which the cargo is classified
- Generic cargo descriptions such as “said to contain” or “freight of all kinds,” “general cargo,” “chemical products,” “agricultural products, ” “appliances” and similar are not acceptable
- Acceptable cargo descriptions will include for e.g. the actual chemical name (not brand name), for agricultural products (oranges, bread, rice), appliances ( refrigerator, stove, coffee machines etc.)

## CARGO DESCRIPTIONS

- Packages based on the smallest packing unit is for example, 2 pallets containing 50 pieces each must be reported as 100 pieces not 2 pieces
- These are requirements in the USA, Canada, Japan, the EU and China
- This policy allows potential threats to be identified before the container is loaded at the foreign seaport, thus preventing the cargo from entering the port in the Republic

# SHARING OF INFORMATION

- Comments were received that freight forwarders will not share their client details with competitors
- This comment is accepted
- Because the carrier is the party that comes into our jurisdiction the CCA places the legal obligation on the carrier to report cargo at a master as well as house bill of lading level
- This is not ideal since the carrier does not have cargo details of consolidated cargo
- The legal obligation to ensure that cargo information (both at master and house) is submitted **will remain with the carrier**

# SHARING OF INFORMATION

- However, the carrier may, by agreement with freight forwarders and consolidators, allow these parties to submit house bill of lading data
- This will give freight forwarders two options:
  - Provide the house bill information to the carrier to report; or
  - Report this information on their own
- An advance cargo loading notice will be required from the first level freight forwarder (i.e. the freight forwarder who contracts with the carrier) 24 hours prior to loading
- All other house bills will, in terms of Chapter 3, be required prior to customs clearance

# CUSTOMS PERMISSION REQUIRED TO TRANSFER GOODS BETWEEN VEHICLES AND CONTAINERS

- A comment raised the concern that asking for permission to transfer goods from one vehicle to another due to breakdown does not seem feasible. Trucks are changed a.s.a.p. to facilitate the movement, cannot wait for SARS to approve. Also, completing this under customs supervision, may be impractical
- This comment has not been accepted
- Carriers are required to communicate any breakdown, accident or other unforeseen event electronically to the customs authority
- In terms of Section 174(2) the clearance declaration will have to be amended to reflect the new truck and / or container details
- Submission of an amended clearance declaration (amending truck and container details) is regarded to be an application for permission to transfer goods between vehicles or containers

# CUSTOMS PERMISSION REQUIRED TO TRANSFER GOODS BETWEEN VEHICLES AND CONTAINERS

- A release notification issued is regarded to be the permission granted
- This process will be expedited to ensure a prompt response from Customs is received
- Provision is made in rule 5.3(7) for permission to be made after the goods have been transferred for goods that may be at risk if not immediately transferred
- Note that completing under customs supervision is discretionary

## SEAL VERIFICATION AND REPORTING OF SEAL DISCREPANCIES

- A proposal was made that the requirement for the verification of seals be removed, or alternatively, be amended to enforce the use of RFID (radio frequency identification) seals on export of goods out of South African ports
- Implementation of these rules will be informed by the outcome from the International Maritime Organisation (IMO) on the standardisation of the use of RFID seals
- Customs is aware of the challenges of seal verification and the reporting of seal discrepancies
- The IMO is currently in discussions to standardise electronic seals
- Standardisation will enable electronic reading of seals
- If this is not achieved by the time of implementation, SARS will re-visit this requirement



# CONTINUOUS TRANSMISSION COMMODITIES

- Comments received raised concerns in respect of the CTC regulatory framework in relation to –
  - exports
  - separate customs code for CTC's
  - office of manual submission
  - transit
- Definition of “accounting period” will be amended to include “exports’
- Rules in terms of Chapter 16 will regulate the export of CTC's
- Importers and exporters will at the time of registration also indicate on their respective registration forms whether they import or export CTC's
- A separate customs code for importers and exporters of CTC's will not be required
- Rule will be amended to provide for manual submission to any customs office in the event of a systems breakdown.
- Rules will be inserted under Chapter 9 to provide for the international transit of CTC's in an “accounting period”

# PAPER FORMAT VERSUS EDI & E-FILING

- Comments received indicated a preference for EDI by certain a category of clients and confusion regarding paper format (manual submission) as an alternative to electronic communication
- Wherever the Rules have a reference to “e-filing”, a reference to “EDI” will also be included
- Clients will be able to choose their communication channel depending on accessibility and affordability
- Submission in paper format is not an alternative to EDI or e-filing
- Submission in paper format is limited to instances of a systems breakdown and other circumstances determined by the customs authority
- Rules relating to submission in paper format in each Chapter will be consolidated into a single provision as it now appears to some as an alternative

# TRANSFER OF OWNERSHIP

- Comments received warrant a clarification of the transfer of ownership regime
- The draft amended clearance submitted to the customs authority by the prospective transferor (importer) with the prospective transferee (registered owner) as the person clearing the goods, serves as the application
- The customs authority will send the draft amended clearance to the transferee and it takes effect upon acceptance by the transferee as the person clearing the goods
- In the case where a portion of the goods (e.g. two of five stoves) is transferred, the transferor will submit two draft amended clearance declarations and the transferee will have to accept the draft declaration covering the goods to be transferred
- In the case where a share in a particular good( e.g. singular industrial machine) is transferred, the transferee must accept the draft amended declaration reflecting him as co-owner of the goods with the share being reflected as a percentage

# TRANSIT

- Comments received revealed confusion between:
  - transshipment and international transit
  - the transit procedure versus transit operation
- Transshipment is the transfer of imported goods at a customs seaport or airport from one foreign-going vessel or aircraft (arriving) to another (departing) at the same customs seaport or airport
- International transit involves the movement of imported goods between a place of entry in the Republic and place of exit in the Republic
- Goods come under the international transit procedure when goods are cleared for international transit and ends when goods are exported from the Republic
- Transit operation is the physical movement of the goods through the Republic from the starting point (e.g. container depot in Durban) to the delivery point (e.g. Beitbridge land border post)
- The distinction is necessary to regulate the different time periods

# TRANSIT

- Comments also revealed some confusion as to the times periods in relation to transit and concerns in complying with those periods for particular types of cargo
- There are three relevant time periods in the Rules.
  - The first time period measures the time **from release to commencement** of the transit **operation**. An extended time period will be considered to cater for the following categories of goods:
    - goods containerised at a container depot
    - bulk cargo
    - break bulk cargo
  - The second time period measures the **duration of the transit operation**. The Rule will be amended to provide for an extended period for abnormal loads.
  - The **transit procedure** is completed when goods are exported from the Republic. The third time period runs from the commencement of the **transit operation** to the export - ten days (inclusive of the three day transit operation period terminating at delivery point)
- As the customs authority's automated systems will record export by way of e.g. outturn reports and scanning of customs documentation at place exit, proof of export will only be requested in cases of a system breakdown

# RECORD KEEPING

- The comments received highlighted a need for off-site storage of records and electronic record keeping
- Rule 4.22(2)(b) only provides for storage of records in a secure place on the business premises
- Rules will be amended to provide for off-site record keeping in the Republic for records relating to-
  - goods that have entered free circulation
  - goods in respect of which the customs procedure has been completed
  - carriage of goods completed more than 12 months ago
- This amendment seeks to strike a balance between legitimate need for off-site storage and availability of documents during routine post clearance audits
- Section 919 provides for electronic record keeping and Rules are being developed to regulate such record keeping
- Rules are also being developed in respect of storage of such electronic records subject to approval in a location outside the Republic

# CLEARING INSTRUCTIONS

- Comments received raised concerns that the disclosure of the clients identity number will result in identity fraud
- Rule 7.6 will be amended to provide for the customs code of client instead of identity number to inserted on the clearing instructions
- Registration forms will contain fields that require the disclosure of person/s that are authorised to issue clearing instructions including their identity numbers.
- Further concerns were raised as to the difficulty in certain situations to receive clearing instructions timeously and the clients inability to provide a tariff heading
- In addition to clearing instructions contemplated in 7.6, consideration will be given to provide for:
  - A singular clearance instruction for a period of time provided the circumstances and purposes of each subsequent clearance are identical to the first one
  - Power of attorney
  - Draft clearance declaration endorsed by the person authorised to issue clearing instructions prior to clearance.
- Section 39(2) will be amended by inserting “(d) if not in possession of a clearance instruction of the principal on whose behalf the declaration was submitted.” to provide that the customs broker attracts liability when not in possession of clearing instructions.
- Rule 7.6 will be amended to provide for “a precise description of the goods or tariff heading” instead of “tariff heading”

# PRODUCTION OF RECORDS

- Comments received raised concerns regarding timeframes for the production of records
- Rule 4.23 provides for records to be produced within timeframe specified in a request or where no timeframe is specified within one working day after the date of the request
- SARS understands the concerns relating to timeframes in respect of the production of records and will reconsider the timeframes
- The timeframes will range between immediate production of documents and the production of records after a specified time
- The timeframes will be informed *inter alia* by the location of the records, the type of customs enforcement action and type of records requested
- An extension of the timeframe maybe applied for in terms of section 908 for the production documents except for those enumerated in section 176



# OTHER COMMENTS

COMMENT	RESPONSE
Train departure report be submitted one hour after departure from the last railway station in the Republic	Accepted, to ensure that the information submitted is reliable and final.
Sealing party throughout the supply chain may not be known	Accepted. This requirement will be deleted.
Trip number – to be removed or made non-mandatory for trucks and buses	Accepted – This requirement will be made optional
Reporting of breakdown, accident or unforeseen event in paper format to centralised office	Accepted
The definition" Accounting period" only indicate imports	Accepted – to include exports
Definition for Hazardous Cargo – refer to IMDG codes	Not accepted - SARS uses a dangerous goods code list compiled by Transnet for validation purposes. This list includes goods defined by the South African Bureau of Standards 0228 and the International Maritime Dangerous Goods ("IMDG") Code.

# OTHER COMMENTS

COMMENT	RESPONSE
Recommend to rather refer to the six digit “ Harmonized Commodity Description and Coding System” number as this is internationally recognized	Accepted
Use of kilograms	Accepted
Use IATA Dangerous Goods Regulations as international dangerous goods code for air	Accepted
Reporting of breakdown, accident or unforeseen event in paper format to centralised office	Accepted
VIN to Vehicle Identification Number	Accepted
“Export “ not defined	See definition of “export from the Republic.”
Recommend providing guidelines in the rules on how the MRN number should look	Not accepted – assigned by Customs Authority

# OTHER COMMENTS

COMMENT	RESPONSE
What is a customs seaport?	See definition of “customs seaport”
Correction / amendment of advance loading notice	Provision made in rule 3.42
Consolidation of reports	Not feasible in EDI format. May be feasible for web based version
Vessel has a port stay of less than 24 hours	Rule amendment to provide for vessel stay of less than 24 hours
Recommend providing guidelines in the rules on how the MRN number should look	Not accepted – assigned by Customs Authority
“Portnet” should be replaced with Transnet National Ports Authority	Accepted

# OTHER COMMENTS

COMMENT	RESPONSE
<p>Vessel departure reports must be submitted 30 minutes (will this time period be sufficient) after departure (when will the vessel deemed to be departing – after it left the berth/harbour/once in international waters?) of the vessel from a customs seaport</p>	<p>The time will be sufficient because the information to be reported is limited. See section 53 – departure from a customs sea port read with section 2 (b) (iii) – a foreign going vessel, or goods or persons on board a foreign going vessel must be regarded as departing from a customs seaport when the vessel undocks to move out of or away from the seaport</p>
<p>Rule 3.30(2)(a) mention that a manifest for the outgoing cargo must be submitted manually on a DA 187 – recommendation - consider electronic submission?</p>	<p>Manifest information must be submitted electronically in terms of rule 3.29. The rule will be amended to exclude the submission of a DA 187 if the information has been submitted in an advance truck, crew and cargo departure notice</p>
<p>Will containers be accessible for collection before the vessel outturn report has been submitted? If not then bottle necks may occur at the port?</p>	<p>Containers will be accessible for collection</p>
<p>Will outturn reports for containers loaded on board / and off-loaded from vessels be submitted be submitted by TNPA, through the Navis system and who will own the reporting?</p>	<p>The information must in terms of section 75 be submitted by the licensee of the sea cargo terminal (TNPA). In terms of rule 3.1 a reporting document must be submitted to the customs authority through the electronic data interchange system operated by the Commissioner for such documents</p>

# OTHER COMMENTS

COMMENT	RESPONSE
Application of rule 3.34 (outturn reports containers entering or exiting container depots) should be limited to exclude goods in free circulation	This reporting is restricted to goods not in free circulation
Rule 3.34 appear not to provide for the movement of groupage containers off loaded at a sea-terminal destined for a container depot situated within the jurisdiction of the customs office serving that customs sea-port	Rule 3.34 provides for outturn reports on containers received at or removed from all container depots regardless of where they are situated
Notification of export cargo remaining at a depot for longer than prescribed period – 3 days	3 calendar days will be amended to 5 calendar days
If any cargo remain at an air cargo depot for longer than 1 calendar day after delivery of the cargo to the depot for export, customs must be notified.	1 calendar day will be amended to 3 calendar days

# OTHER COMMENTS

COMMENT	RESPONSE
What supporting documents are required in Rule 4.10(4)(a)	Rule will be amended to identify supporting documents and will require submission simultaneously
Clarification required whether e-filing applications and manual applications in Rule 4.11(2)(a) will utilise same form	Both electronic and manual applications will contain the same data fields
Clarification required as what Office is referred to in Rule 4.11(2)(b)	Rule will be amended. The Customs Office that has jurisdiction in the area where the goods are to be exported
The number of lines on a declaration should not be a factor when determining who can submit manual declarations	Not accepted,. The CCA promotes electronic
Include the groupage operator as a person entitled to submit a transit declaration	Accepted, section 201 will be amended
Maintaining a specified route is difficult to control during a live operation such as road transport due to circumstances arising at a moments notice such as traffic diversions	Accepted, Rule 9.5(2) will be amended to provide for deviation in certain circumstances
Road manifest to be kept in paper format in the vehicle. Consider electronic format.	Accepted, section 214(3) will be amended to provide that the carrier transporting the goods must keep in the vehicle the road manifest unless submitted electronically

# OTHER COMMENTS

COMMENT	RESPONSE
Clarification required in respect of address requirement in Rule 4.4(2)(i)	Rule will be amended to require both postal and physical address
Clarification required whether road or rail transport documents must be presented in terms of Rule 4.4(3)(a)	Accepted, Rule will be amended
Insert “by a certified medical practioner at origin” in Rule 4.4(3)(b)(ii)	Rule will be amended only to refer to import permit issued by DOH. The certificates relating to death and infectious disease are produced to DOH before import is issued.

**THANK YOU**  
**Questions?**