New South African Customs
Acts Information
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CUSTOMS Modernisation Approach

- Advanced Electronic Cargo information, Processing & Acquittal
- All entries sent through a self-tuning risk engine
- Quality Client accounting & Recording systems
- All activities subject to Audit trail, & central management oversight & reporting

- Grow capability Audits (Licensing / AEO)
- Manual Acquittal of Manifests
- Multiple Registrations
- Paper Based Registrations
- Lack of capability Audits (Licensing / AEO)
- Manual workflow

- Integrated financial management
- Manual Supporting documents
- System Work Around
- Limited Post clearance Audit capacity
- Grow Enforcement capability

- Modern Customs - Trade Management Approach
- Level of Current Value Adding Activities

- Registration
- Declaration
- Assessment
- Inspection
- Audit

- Pre- Border
- At the Border
- Post Release
General Update – SARS Changes

THINGS THAT WILL CHANGE WHEN THE NEW CUSTOMS CONTROL ACT GOES LIVE

Customs have conceded that a complete switch-off of the old Act and switch on of the new Act is not feasible. As such they have decided to go about introducing the Act in modules.

Licensing and Registration

The first module set for roll out in late 2016 is the Licensing and Registration module. As such, all importers/Exporters/Removers/Bond Store Licensees – in fact anyone who has a Customs registration or license – including clearing agents or “Customs Brokers” as they will be known in the future will need to submit a new application to SARS for either relicensing or reregistration. SARS have indicated that the portal for this will be e-filing because there is no way that hard-copy applications, received from all of the entities above, will be able to be handled by SARS.

What traders need to make sure of now before August is that if they are on e-filing, they must ensure that whatever their registration details are on the Customs side of the fence is mirrored on the e-filing system.
General Update – SARS Changes

If there are any differences such as directors, address details, telephonic contact details, bank account details etc., they must now already start following the analogue application process and update these details with Customs now. When the e-filing portal is updated in August, to include electronic merging of Customs and e-filing details, the process should be simple, but if the details are different between Customs and e-filing, there will be complications. So traders need to pay attention and time to this between now and August 2016.

Other changes, and given the modular approach SARS have adopted i.e. not knowing when these might come into force, are:

1. Clearing Agents will no longer be known as such but will in future be known as Customs Brokers

2. Clearance and the timeframe within which clearance must be completed has gone from 28 days in the case of FCL and 14 days in the case of break-bulk, and has now been reduced to 3 days from the time the vessel carrying the cargo berths. So pre-clearance is a must and late clearance (where traders supply late documents) might be risky as the cargo should now go to the States Warehouse after 3 days.
General Update – SARS Changes

3. The period for which traders must keep documents has now changed from 5 years from the date of clearance to 5 + 1 – explained as the year in which the transaction took place plus 5 years thereafter

4. There is greater emphasis on traders (importers and Exporters and others) who instruct Customs Brokers to be more au fait with Customs Legislation to the extent that the person who completes the clearing instructions must have sufficient Customs knowledge to do so (and more importantly understand the implications of providing incorrect info e.g. tariff). In the past some Clearing Agents have made it as easy as possible for clients to complete abridged or incomplete instructions (to their detriment) in the interests of service. That will now definitely change. If Customs Brokers accept incomplete or abridged clearing instructions any liability for an incomplete or incorrect declaration will accrue to them. The information to be included in such instructions will in future include:

   a. Name & Customs Code of principal issuing the instruction
   b. Description of goods
   c. Customs procedure / home use
General Update – SARS Changes

d. Origin of goods
e. Any origin determination
f. The tariff heading
g. Any tariff determination applicable
h. Customs valuation method
i. Value determination
j. Any advance ruling applicable to the goods
k. Destination of the goods;
l. Trade agreement under which goods are to be cleared;
m. Tax payment method; and
n. Financial account Number (if any).

Previously too, no clearing instruction was required for amendments (VOCs). When the new Act comes into effect this will be required (even it was the Brokers error)

5. If a clearance declaration is submitted by a Customs broker on behalf of a person referred to in section 165 (1) (a), that person and not the Customs broker must, for purposes of this Act and a tax levying Act, be regarded to be the person clearing the goods.
General Update – SARS Changes

Another indication that ultimate responsibility for a clearance resides with the trader on whose identity the entry has been cleared

6. ‘Shipped on board’ date will no longer be the date used for currency conversion purposes. SARS will publish a rate on a Wednesday and this rate will stand until amended again the following week Wednesday.

7. Goods may now be imported without a permit and placed into a bonded warehouse for no longer than 90 days so that the permit can be obtained and then cleared from bond thereafter.

8. Duty free goods and bonded goods will be able to be stored in the same warehouse. No longer be required to store bonded goods separately from free store stock subject to the warehouse licensee having a system that at any time can distinguish these cargoes from each other and report thereon. The acquittal period for goods going into a bonded warehouse is reduced from 30 days to 3 hours due to real time electronic reporting. An electronic monthly report of goods received and dispatched must be made within 7 days of each month end.
General Update – SARS Changes

9. Traders will be able to apply for refunds for a period of 3 years now whereas it used to be 2. Similarly, SARS will be able to audit (backdated) for a period of 3 years whereas it used to be two.

10. RIT or international transit cargo will now need to move from port of entry to port of exit in 10 days versus the old 30 days provided for acquittal.

11. RIB or national transit will need to move from port of entry to place of delivery within 5 days versus the old 30 days provided for acquittal.

12. Goods moved from port to a rebate store will now need to be removed by a licensed remover unless moved by the owner of the rebate store. Previously these rebate goods were exempt from be removed by a licensed remover. This now includes goods cleared under Schedule 3 and Schedule 4.
Impacts Shortly after the Introduction of the New Customs Acts as Legislation

Introduction of the Customs Broker and distinguished from Agent:

- Different potential liabilities – Customs Broker can escape liability on similar basis as provided for in the current Act
- Agent incurs liability on the basis of normal Agency principals
- Important that Customs Brokers ensure that their agreements and their functions fall within the ambit of Customs Broker – otherwise could incur liability on the basis as an Agent and not be protected as a Customs Broker.

- Different Definitions

Self Assessment and Compliance:

- Introduction of self-assessment means that clients could perceive that there is no need for a clearing broker.
- Compliance devolved to importer and importer will have to show Customs knowledge with potential effect of more in-house Customs compliance officers – Customs brokers must re-invent their service to become the Customs compliance officers of their clients – involves a lot more that simply passing documents
Impacts - Shortly after the Introduction of the New Customs Acts as Legislation

All licenses and registrations including accreditations in terms of the current Act will be deemed to have lapsed in terms of specific time period (30 days of effective date) (Section 931 & 933):

- Not certain how it will be administrated but it means that every importer, exporter, clearing agent, depot operator, warehouse, etc. will have to reregister and re-apply for license in terms of the new Act once the Acts become legislation.

- The New Acts will have new compliance criteria and one must be aware of the changes and timeously take steps to ensure compliance or run the risks of not receiving new registration/license. This can potentially have disastrous consequences for a myriad of businesses.

- E-Filing Single Registration
Impacts – Pre-Clearances

170. Submission of clearance declarations before arrival of goods at place of entry

(1) A clearance declaration in relation to goods imported or to be imported into the Republic may be submitted to the Customs authority before the arrival of the goods at the place referred to in section 90, provided that the goods have already been loaded on board the vessel, aircraft, railway carriage or vehicle transporting those goods to the Republic.

(2) If a clearance declaration is received before the goods arrive at the place referred to in section 90, the Customs authority may proceed with processing and validating the declaration despite the fact that the goods have not yet arrived at that place but may not release the goods before their arrival at that place. (NB: Section 90 – processing & validating)
Impacts - Contents of Clearance Instruction of Principal

Rule 7.6 (1) read with section 176 (1) (c) must reflect at least the following:

a) Name & Customs Code of principal issuing the instruction
b) Description of goods
c) Customs procedure / home use
d) Origin of goods
e) Any origin determination
f) The tariff heading
g) Any tariff determination applicable
h) Customs valuation method
i) Value determination
j) Any advance ruling applicable to the goods
Contents of Clearance Instruction of Principal

k) Destination of the goods;
l) Trade agreement under which goods are to be cleared;
m) Tax payment method; and
n) Financial account Number (if any).

NB!! SIGNATURE OF RESPONSIBLE PERSON = Customs CODE NUMBER

(2) A clearance instruction reflecting the information listed in sub rule (1) must support every amendment of a clearance declaration (VOC) submitted by a Customs Broker, (even for Broker errors).
Impacts – Customs Value & rate of exchange daily
Chapter 7 of Duty Act

Current Customs and Excise Act, 1964

Section 65 to 67 is titled: “Value for Customs Duty Purposes; Transaction Value; Adjustments to Price actually paid or payable.” Section 73

New Act: What’s changed

Section 112 to 150: Self determination, determination by Customs and re-determination by Customs or Advanced Ruling by Customs (Chapter 10)

New Act: What’s new

No more “SOB” date to determine the date for currency conversion. The rate of exchange published every Wednesday and is valid for a week, except if a public holiday.
Impacts - Accredited Clients are required to have qualified staff that are familiar with the new Customs Acts

- Chapter 30 of Control Act

Section 64E is titled: “Accredited clients”

Section 667 to 684: Requires the accredited client to ensure that a skilled staff member in the employment of the client must be able to answer any questions/compliances the Commissioner may ask.

Client must be conversant to this Act, its Rules and procedures as well as with the requirements relating to the business of the client.

NB!!! Accreditation Criteria & Benefits
Impacts –
Chapter 39 of Control Act – Administrative Penalties

Chapter XI is titled: “Penal provisions”: Sections 78 to 96.

Sections 874 to 885: Fixed penalty amounts, prosecution avoidance penalties, penalties for missing goods an amount equal of the value of the goods.

Category A = R 2 500
Category B = R 5 000
Category C = R 7 500
Category D = R 10 000

3 Year and 1 Year repeat offences
Examples of Additional Administrative Penalties

- Failure submit advance notice within applicable timeframe – R 7,500
- Departure without Customs authority’s permission R 7,500
- Failure to submit required notice within applicable timeframe – R 7,500
- Failure to submit return message – R 7,500
- Failure to notify Customs authority of delivery of receipt of goods – R 7,500
- Failure to keep record of warehoused goods – R 10,000
- Failure to use approved conversion rate – R 7,500
- Failure to submit delivery of receipt notice – R 5,000
When is a penal provision imposed? - Chapter 40 of Control Act – Judicial Matters

Current Customs and Excise Act, 1964

Chapter XI is titled: “Penal provisions”: Sections 78 to 96.

New Act: What’s changed

Sections 886 to 901: Category 1 and 2 offences as well as imprisonment.

New Act: What’s new

Category 1 = R 1 000 000 or 5 years imprisonment
Category 2 = R 500 000 or a higher amount in terms of the Adjustment of Fines Act or 3 years imprisonment
## Changes to watch out for !!!

<table>
<thead>
<tr>
<th>Customs &amp; Excise Act, 1964</th>
<th>Customs Control Act Section</th>
<th>What has changed</th>
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<tbody>
<tr>
<td>38</td>
<td>90(1)(a)</td>
<td>Goods must be entered at first port of entry – first port of call</td>
</tr>
<tr>
<td>39</td>
<td>268</td>
<td>Goods which are released for temporary admission must state the period the goods will remain in the RSA and when it will be exported.</td>
</tr>
<tr>
<td>39</td>
<td>465(1)(b)</td>
<td>Goods must be exported if no period is determined within 2 years from date of clearance.</td>
</tr>
<tr>
<td>43</td>
<td>92(1)</td>
<td>Goods must be cleared within 3 working days of arrival or else it may only be cleared for home use, penalty imposed and goods are treated as/or removed to state warehouse. (Duty paid status)</td>
</tr>
<tr>
<td>40(3)(a)(ii)b</td>
<td>107(2)</td>
<td>The period in which to apply for substitutions has been reduced from 6 months to 90 calendar days</td>
</tr>
<tr>
<td>379 - 380</td>
<td></td>
<td>Goods cleared for temporary export must now return to the RSA within 1 year – previously it was not a requirement</td>
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<tr>
<td>76</td>
<td>465 (1) (a), (b)</td>
<td>Time limit on clearance for home use of outward processed compensating goods - new, if no time frame is given – 2 years from time of clearance</td>
</tr>
<tr>
<td>59A</td>
<td>614(1)(b)</td>
<td>Registration certificates for rebate users are now valid for a period of three years only – currently there is not a validity period</td>
</tr>
<tr>
<td>59A</td>
<td>615</td>
<td>Applications for registration as importer/exporter must be submitted 30 working days prior to expiry of the three year period.</td>
</tr>
<tr>
<td>60</td>
<td>647(1)(b)</td>
<td>Licences are now valid for three (3) years – increased from 1 year</td>
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<tr>
<td>874 - 885</td>
<td></td>
<td>Types of administrative penalties</td>
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<td>47</td>
<td>Customs Duty Act, Section 86(1)</td>
<td>The prescribed period in which Customs may perform a reassessment of duties has been extended from 2 to 3 years. Ditto – for refunds and drawbacks</td>
</tr>
<tr>
<td>Not provided for</td>
<td>208, 230, 304, 322, 415 &amp; 422</td>
<td>No person may redirect goods from the starting point or to the delivery point of a transit / warehouse operation. Approval from Customs required.</td>
</tr>
</tbody>
</table>
| Not provided for | 94(1)(a)(i) | Goods to be cleared for export by:  
**Sea** – no later than 2 hours before delivery to depot or terminal.  
**Air** - no later than 1 hour before the goods are delivered to a depot or terminal  
**Truck** – no later than the time the truck reaches the land border post. Goods may only be cleared once loaded on-board the truck and the doors sealed. |
Can we fight back?

• The new Customs Control Act has a Caveat Section.

CAVEAT = ”Let a person beware”  Latin

Section 942 CCA
Distribution legislation
Transport Validation

Gov. Gazette 38511 of 27 February 2015
Board notices 49 & 50
2.7.5.4 Transportation for the delivery of medicines

(a) Transportation of patient ready pack medicines must be in such a way that it is secure and the temperature is maintained to product specifications.

(c) For purposes of transportation, the route must be validated to ensure that delays and/or exposure to extreme temperatures are correctly assessed.

(e) During transportation pharmaceutical products must not be packaged with non-pharmaceutical items...which could result in contamination.
2.3.5.5 Transportation

(h) Temperature data loggers, refrigeration tags,......that comply with or meet WHO specifications must monitor the temperature of the loaded area.....and the validated cooler box packaging must have at least a temperature monitoring device that complies or meets with WHO specifications.
...the solution being used by UTi Pharma is at least equivalent to the minimum standards...it is confirmed that no additional monitors should be required.
Questions

For further information or to pose your questions to the panel, please contact us on:-

Email: zanationalcustomsboard@za.dsv.com

Thank you