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**FEDUSA SUBMISSION ON THE CUSTOMS  
CONTROL BILL AND THE CUSTOMS DUTY BILL**  
**2013**

**FEDUSA Submission to**  
**The Select Committee on Finance**

**Cape Town**

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## 1) INTRODUCTION

The Federation of Unions of South Africa (FEDUSA) and our affiliated union, the National Union of Leather and Allied Workers (NULAW) welcome the opportunity to submit the outlined comments on the Customs Control Bill and the Customs Duty Bill for consideration by the Committee, with the intent of the Bills including several measures that seek to remediate the problem of illicit trade and customs fraud, and thereby promote legitimate trade – and ultimately boost revenue collection, job creation and industrialisation in South Africa.

At its 5th National congress of November 2011, FEDUSA intensely deliberated on the trade policy stances and acknowledged that since 1994, South Africa has been rapidly reintegrated into the global economy, with the contribution of imports and exports rising strongly as a percentage of GDP. The economy has become more open, more productive and more outward orientated;

FEDUSA therefore resolved to align itself with the South African Trade Policy and Strategy Framework (TPSF) and National Industrial Policy Framework (NIPF), as well as the second Industrial Policy Action Plan (IPAP2). The federation shall support policies which encourage internal trade as well as trade with other countries, provided that it does not compromise local industries and local jobs. Furthermore, FEDUSA shall support further investigations into how the comparative advantages can be expanded to other sectors of the economy without harming internal trade and job creation;

FEDUSA Congress noting that :

1. Since 1994, South Africa has been rapidly reintegrated into the global economy, with the contribution of imports and exports rising strongly as a percentage of GDP. The economy has become more open, more productive and more outward orientated ;
2. This adjustment is partially a response to domestic factors and the ending of the country's trade and political isolation, but it is also part of a worldwide process of trade liberalisation and economic integration, commonly termed 'globalisation' ;
3. The gains from globalisation are not equally distributed and whereas some industries and consumers have benefited from higher output or lower prices, others have lost out to more competitive foreign industries or lost their jobs.;
4. These trends are likely to continue. Tariffs and other forms of trade protection will come down, exports and imports will rise, and there will be further adjustment costs and benefits;
5. Liberalization of trade, more general economic deregulation, and the dismantling of international sanctions on trade with South Africa have led to substantial restructuring of the economy;
6. At broad sector levels it can be seen that the entire economy has become more outward-oriented, with export orientation and import penetration increasing across both primary sectors and manufacturing;

7. The greatest change, however, has been in manufacturing where import penetration has risen by 54 percent and export orientation has almost doubled;
8. Export orientation has been uniformly experienced over almost all manufacturing sectors in South Africa, and the same is true of import penetration;
9. The second Industrial Policy Action Plan (IPAP2), released in February 2010, sets out a range of horizontal and specific interventions aimed at promoting industrial development and upgrading in South Africa; and
10. Of particular relevance are the actions specified to, strengthen and enforce technical standards, the range of measures to enhance customs enforcement mechanisms and measures designed to leverage government procurement for industrial development.

And believing that:

1. A supportive trade policy and an appropriate tariff reform programme can make a positive contribution to industrial development and upgrading, employment growth and the export of increasingly sophisticated, value added products;
2. Economic history is replete with lessons that tariff liberalisation per se will not induce the structural changes necessary to promote sustained and inclusive economic growth and development, nor will it address poverty and inequality;
3. Breaking out of poverty and underdevelopment requires nurturing industrial activities characterized by increased, rather than diminishing returns;
4. Of the range of policy interventions that have a bearing on industrial upgrading, tariffs are one important instrument;
5. Without appropriate pacing and sequencing, trade reform can destroy existing industries, including infant industries, without necessarily leading to the emergence of new ones;
6. There is an indeterminate time lag between liberalization and the emergence of new economic activities, as well as a significant complexity involved in sequencing and implementing the complementary regulatory and institutional policies that should underpin trade reform programmes;
7. In the absence of a robust industrial policy, any new industry that may emerge through liberalisation would be in line with static, rather than dynamic, comparative advantage, implying that the economy remains locked in the production and export of low value products, with diminishing prospects for upgrade; and
8. A global trading system that is supportive of, and conducive to, the developmental interests of developing countries would broadly favour our own national developmental objectives.

Congress therefore resolves that:

1. FEDUSA shall align itself with the South African Trade Policy and Strategy Framework (TPSF) and National Industrial Policy Framework (NIPF), as well as the second Industrial Policy Action Plan (IPAP2);
2. FEDUSA shall support policies which encourage internal trade as well as trade with other countries, provided that it does not compromise local industries and local jobs;
3. FEDUSA shall support initiatives with the point of departure of the revealed comparative advantage of South Africa's respective sectors, and promote trade and industrial development in these sectors;
4. FEDUSA shall support further investigations into how the comparative advantages can be expanded to other sectors of the economy without harming internal trade and job creation;
5. This should be complemented with value adding strategies in up- and downstream sectors;
6. FEDUSA supports the view of Minister Pravin Gordhan that South Africa should start producing what the world wants and needs and not only contain production to what South Africa has and wants;
7. FEDUSA shall call on Government to take the lead in above initiatives by providing start-up share capital in order to reduce the risks in these areas, with a specific focus on setting up new industries such as the green economy;
8. FEDUSA shall propagate the identification and targeting of appropriate value adding activities, the deployment of public and private resources to support innovation, entrepreneurship and infrastructure development;
9. FEDUSA remains convinced that tariffs and other forms of protection and support should be used judiciously, without the utilisation of protection measures which allow permanent rent-seeking by inefficient industries, but rather creating the space and time to allow such industries to develop, and/or to restructure in the face of global competition;
10. FEDUSA aligns itself with the National Industrial Policy Framework (NIPF) consideration of tariff policy, that it "should be decided primarily on a sector by sector basis, dictated by the needs and imperatives of sector strategies";
11. FEDUSA therefore agrees that tariff policy must be strategic, calibrated in terms of its pace and sequencing so that it supports industrial and agricultural upgrading, along a path that generates new employment possibilities;
12. FEDUSA fully aligns itself with additional areas identified by the South African Trade Policy and Strategy Framework:
  - a. South Africa must be able to retain the policy space to pursue its broad national development objectives, while considering existing national legislative and regulatory

frameworks as they relate to these issues as well as an assessment of the processes, rules and norms of multilateral institutions that have competence over these issues;

- b. It will be necessary to strengthen the institutional framework that ensures constituencies affected by trade reform actively participate in defining the terms and conditions of the structural adjustment process. This will ensure that the reform process retains both legitimacy and broad-based support. It is increasingly imperative that we design and build support programmes that can cushion the costs of reform, particularly for workers that lose employment as a result of trade liberalisation. The linkages and adequacy of existing social safety nets and worker re-training programmes to a trade reform needs to be fully explored and developed. This will be the subject of future work on trade policy. The Department of Labour will be central to ensuring that support programmes and skills development are mainstreamed into the process; and
  - c. Greater efforts will be needed to strengthen the institutional coordination necessary to enhance the quality of - capacity to deliver on - South Africa's trade policy objectives. Improved institutional coordination on trade policy and trade-related issues is required within the Department of Trade and Industry (DTI), amongst Government Departments, with the South African Parliament, and between Government and civil society. Enhanced outreach activities are also required to build the capacity in trade policy across South Africa in universities and research institutes in order to share the Government's perspectives on trade policy, to broaden and deepen the quality of debate on trade policy, and to build a cadre of new trade policy practitioners for the future.
13. Taking into account the increasingly integrated and networked global economy, FEDUSA agrees with the notion that trade policy and strategy must shape the terms and conditions of South Africa's integration into the global economy in a manner that secures the policy space to pursue national economic policy objectives, while leveraging opportunities that emerge from global markets and flows of trade and investment; and
  14. FEDUSA shall continue lobbying Government to ensure that the developmental agenda of South Africa and other developing countries remains at the centre of its foreign economic policy and at the top of the trade agenda and any subsequent trade agreement.

## 2) OVERVIEW

1. NULAW operates primarily in the South African Footwear, Tanning and Leather Goods manufacturing industry.
2. The union's members are intimately affected by international trade, particularly illicit and illegal trade in which customs duty on imported goods is evaded.
3. Government, Business and Labour agrees that the evasion of customs duties is a major driver of job losses in the local Footwear, Tanning and Leather Goods industry.

4. Increasingly this is also the case in many other manufacturing industries.
5. Not only does the evasion of customs duties lead to job losses and deindustrialisation, it also robs the fiscus of sizable and much needed income, and substantially hampers the efforts to create a country characterised by greater equality.
6. Customs fraud is therefore a substantial barrier to our developmental needs and priorities.
7. NULAW recognizes that the Customs Control Bill and the Customs Duty Bill include several measures that seek to remediate the problem of illicit trade and customs fraud, and thereby promote legitimate trade – and ultimately boost revenue collection, job creation and industrialisation in South Africa.
8. We note that many of these measures have their roots in in-depth and constructive negotiations that took place between Government, Labour and Business at NEDLAC, which were ultimately endorsed by the different social partners. It shows the value of social dialogue where social partners exchange ideas, enhance legislation and find common ground to deal with the pressing issues facing the country.

### **3) FOOTWEAR, TANNING AND LEATHER GOODS MANUFACTURING INDUSTRY**

9. According to Statistics from the National Bargaining Council of the Leather Industry of South Africa, the Footwear and Leather sector currently employs about 19 000 people.
10. The value to the country of mitigating customs fraud and stabilising and growing the Footwear and Lather Industry lies in the areas of employment, generation of economic multiplier activities, regional economic development, gender equity and broad-based black economic empowerment.
11. The Footwear and Leather Goods manufacturing industry is highly labour intensive and has been identified as a priority sector by government to boost industrial development and job creation.
12. The multiplier effect of the industry on economic activities elsewhere in the economy is also important. So too is the indirect job creation impact of the industry. The industry is a significant user of inputs from agriculture (hides and skins), manufacturing (chemicals, components), transport, electricity and water supply and services (design, finance).
13. The industry is a significant employer of women and of people in communities where few other employment opportunities exist. It is estimated that 94% of workers in the industry are black (i.e. African, Indian or 'Coloured'), and many are located in decentralised/ rural/ areas.
14. This means that any job losses or employment growth will have a disproportionate impact on black women and women-headed households.
15. The Footwear, Tanning and Leather Goods industry is concentrated in specific geographic areas, where it is a very significant employer. In towns like Wellington, Oudtshoorn, Groot Brak

Rivier, Ladysmith, Loskop, Garankuwa and in cities like Durban, Cape Town, Johannesburg, Port Elizabeth and Pietermaritzburg. It is a very substantial employer of labour. Any closure of factories or retrenchments in these areas has a massive social impact.

16. The flood of imports entering South Africa, including illegal goods, has resulted in the Footwear and Leather industry shedding thousands of jobs.
17. The past three years, however, have seen less job losses with employment in the industry largely stabilising in the last two years. While jobs are still being lost, the numbers are down from the 2000s.
18. A major part of the reason why job losses have slowed down has been the interventions by social partners at collective bargaining level, economic and industrial policy interventions by government, such as the New Growth Path (NGP) and the Industrial Policy Action Plan (IPAP), and recent customs interventions by the SA Revenue Services (SARS) etc.
19. This significant investment by government in industrial policy, however, is being threatened by the scourge of customs fraud.
20. Government, in particular the SA Revenue Services (SARS), has also been implementing more strategic customs surveillance in recent years, which is also assisting the industry. This includes a recent announcement by SARS in late August 2013 for new methods to combat illicit trade in clothing and textiles. Some of their success is reflected in the increasing value of seizures of illegally imported CTFL goods recently.
21. Nevertheless, despite the laudable actions of SARS, customs fraud is still rampant as we show below. We believe SARS can be assisted greatly in their task if the legislation allows it to deal more effectively with customs fraud. We believe these two bills will help to achieve this.

#### **4) CUSTOMS FRAUD AND ITS IMPACT**

22. Fraud and corruption represent enormous challenges for South Africa, for many obvious reasons but also for its impact on job creation and retention, inequality and distribution.
23. A common perception is that corruption is predominantly the domain of the public sector but corruption and fraud are rife in the private sector.
24. In 2012, accounting firm Ernst & Young found that globally there has been a rise in fraud committed by senior executives over the last few years (Business Day, 23 May 2012). This report followed a report by PricewaterhouseCoopers (PwC) from 2011 which claimed that South Africa has the second worst levels of economic crime out of the 78 countries surveyed. Economic crime includes bribery, accounting fraud and money laundering (Business Day, 1 December 2011).

25. One of the realms in which private sector fraud is especially prevalent is in relation to the avoidance of duties on customs transactions in instances of importing. This fraud is generally perpetrated by import and export companies, freight forwarders and clearing agents, often with the cooperation of those for which these transactions are done, such as retailers and wholesalers. Sometimes it occurs with the assistance of state officials, in this case, customs officials.
26. Customs fraud occurs in multiple forms, including under-invoicing, false declaration of goods, smuggling, rerouting goods via third countries and other activities that are aimed at evading tariffs or customs rules.
27. When tariffs are evaded and not paid, measures introduced to support South African jobs and industry are circumvented and nullified.
28. Customs fraud substantially hampers our efforts to create a country characterised by employment and greater equality. It hampers economic growth and job creation and leads to greater income inequality. In this way, fraud also jeopardizes the economic and industrial policy initiatives of our government such as the NGP and IPAP, and those of SARS too.
29. Customs fraud also denies the Government much-needed revenue that could be used for social security programmes or other development-related spending and increases the burden on ordinary taxpayers.

## 5) CUSTOMS FRAUD IN THE CTFL INDUSTRY

30. The nature of illegal activity, such as customs fraud, means that measuring the extent of it is difficult. However, some data exist that provide an indication of the extent of the customs fraud perpetrated in the Footwear and Leather Industry.
31. According to statistics from the Southern African Footwear and Leather Industries Association (SAFLIA), recent local footwear production amounted to 50 million pairs and imported footwear for the same period amounted to just over 200 million pairs.
32. According to SAFLIA, the successful curbing of customs fraud and illegal imports would result in the employment of a further 40 000 people in the footwear and leather industry.
33. Fraudulently imported goods enter the South African retail market at artificially reduced prices, allowing these items to be sold into the market at prices which undermine local factories and cause them to close and jobs to be lost.
34. The problem of customs fraud in the footwear and leather industry is so severe that government, business and labour have identified it to be one of the key challenges facing the industry. Indeed, if customs fraud were adequately addressed, the industry would not just stabilise further but possibly start to grow.

35. According to SAFLIA average import prices are low but cannot be verified easily. The Customs Bill gives strength to SARS Customs Division to ensure increased vigilance. The broad categories in the Tariff Classification System render many investigations impotent. The new bill however, provides a potential source to overcome some of the stumbling blocks.

## 6) COMMENTS ON CUSTOMS BILL

36. FEDUSA and NULAW welcome the many measures which have been included in the Customs Control Bill and the Customs Duty Bill to deal with the problems of Customs Fraud.

37. These measures were agreed by Government, Business and Labour during negotiations at NEDLAC level. The social partners began the negotiations with different starting positions. NULAW and other trade unions has advocated for much harsher treatment of customs offenders, and more mechanisms to control the flow of illegal goods into South Africa that is currently contained in the Bills.

38. NULAW, like other constituencies in the social dialogue process, compromised and shifted its positions towards positions which took greater cognisance of the interests and concerns of all constituencies, as far as possible.

39. In particular, we note and endorse the fact that the Bills strike a more appropriate balance between customs control and trade facilitation and, in certain circumstances, allow for :

40.1 harsher penalties for customs offenders

40.2 naming and shaming of customs offenders

40.3 suspending, revoking and withdrawing import licences of customs offenders

40.4 stemming the flow of illegally imported goods into the local market

40.5 disposing of seized goods in a manner that does not undermine local production and

40.6 additional customs capacity.

40. In addition to the above, we heartily endorse the inclusion in the bills of limitations around ports of entry, which are intended to curtail customs fraud that occurs at in-land ports (see Section 194 of the Customs Control Bill). After all, one of the main objectives of the Customs Control Bill is to control goods moving across our borders in a manner that promotes legitimate and legal trade. For this to happen, opportunities must be taken to manage the risk of diversion or smuggling of goods. NULAW fully agrees with SARS that clearing goods at the first post of entry is a very appropriate mechanism to mitigate the possibility of high risk goods moving inland.

41. Historically, fines have been preferred punitive measure by the customs authorities against those who commit customs fraud but the value of these fines has generally been fairly low. This

has created a context in which it has been cost effective for offenders to simply keep war chest : where the benefits of committing fraud outweigh the costs, and where offenders simply set aside monies in the event that their illegality is discovered, and simply “pay their way out of trouble”, when or if they are caught.

42. We therefore welcome that the Bill now identifies more punitive measures for dealing with customs fraud :

43.1 For instance, amongst other things, the Customs Duty Bill, part 1 of chapter 12 :

43.1.1 identifies different kinds of infractions, and provides for different treatment for these infractions.

43.1.2 provides for the impositions of higher fines,

43.1.3 provides the ability for offences to graduate from a serious category to a more serious category, in the event of repeat offending

43.1.4 compels courts to consider imprisonment when making judgements in criminal proceedings, in particular circumstance, and

43.1.5 provides for the ability of courts to wield additional punitive powers. In certain instances, including amongst others linking the level of fines to the level of duty evaded.

43.2 For its part, amongst other things, the Customs Control Bill

43.2.1 defines and outlines different kinds of penalties (Section 874; Sections 886-889),

43.2.2 defines the punishment and due processes for breaches of the Act (Sections 875-880, Section 885, Sections 890-892), and

43.2.3 identifies the liability of companies and persons engaged in importation, and define the circumstances in which they may be liable for illegal activity (Sections 893 and 894).

## **7) IMPORT LICENCES OF CUSTOMS OFFENDERS**

43. Another mechanism to ensure lawful international trade is through regulating those who can and cannot engage in import activities, based on prior compliance with the law, i.e. creating a mechanism to prevent companies which repeatedly break the law from participating in the trading regime.

44. We therefore welcome measures in the Bills which are intended to achieve this, including Sections 609, 610 and 618 (amongst others) of the Customs Control Bill.

## **8) STEMMING THE FLOW OF ILLEGALLY IMPORTED GOODS**

45. It is important to have mechanisms to manage the distribution of illegally imported goods through the supply chain into the market. After all, there are companies other than importers which may facilitate the transfer of illegally imported goods between importers and consumers. These companies' position in the supply chain is integral to the distribution of such goods into the South African economy.
46. We believe that this nexus must be better managed. The way to do this would be to treat the handling of illegally imported goods in much the same way as the handling of stolen goods is treated.
47. For example, handling and receiving stolen goods is punishable by law. The premise of this is that those who handle and receive stolen goods create a market for such goods and encourage the practice of theft.
48. In a similar manner, those who handle and receive illegally imported goods create a market for such goods and encourage the practice of customs fraud. Consequently, just as handling and receiving stolen goods is punishable by law, so should it be punishable by law to receive or handle goods that have been imported illegally.
49. We note that parts of Section 887(1) & (2) of the Customs Control Bill provide mechanisms to hold other interests in the supply chain liable for committing offences.

## **9) NAMING AND SHAMING OF CUSTOMS OFFENDERS**

50. A further penalty for all offenders exists with the possibility of public 'naming and shaming'.
51. This action would serve to penalise offenders by informing their customers and potential customers about the offences committed by the offender. This is likely to deter customers from trading with offenders since, by doing so, these customers may themselves suffer reputational damages.
52. The Customs Control Bill now allows for publicising the names of offenders under certain circumstances (e.g. Section 901).

## **10) DISPOSING OF SEIZED GOODS**

53. We support the possibility of Customs exercising greater customs control and seizing greater volumes of illegally imported goods. Nevertheless, this scenario could prove detrimental if the goods which are seized are simply disposed of in a manner that undermines local production of

those same goods – since this detrimental effect would echo the effect which customs fraud causes in the local economy.

54. Hence we support the existence of guidelines to prevent detrimental consequences from goods which are seized by the state being resold locally in a manner and at prices which cause local workers to lose jobs.
55. We recognise that the Customs Control Bill is cognisant of this fact: e.g. sections 594 and 596.

## 11) ADDITIONAL CUSTOMS CAPACITY

56. Part of the challenge for Customs is a capacity challenge: a dearth of human capital able to survey and inspect the enormous volumes of containers entering South African ports of entry every day.
57. Yet there is obvious use in Customs being able to conduct higher rates of inspections at ports of entry, if needs be and depending on the circumstances.
58. Hence, to increase the capacity and human capital to patrol South African ports of entry, there is merit in creating a mechanism which will allow SARS to be more flexible in its designation of customs officers and increase its capacity during certain times or under certain circumstances.
59. FEDUSA and NULAW supports this measure, and notes that it is included within Section 10 of the Customs Control Bill.

## 12) CONCLUSION

60. The South African government has taken crucial steps over the last four years to build and implement a strong policy framework intended to address the country's developmental priorities.
61. Part of the success of these national policies relies upon the Government achieving coherence across various policies, departments and functions. One of the keystones in this architecture is the alignment of industrial and trade policies and measures in the interests of employment creation.
62. We note that the Customs Control Bill and the Customs Duty Bill include several measures that are intended to enhance employment creation in South Africa by promoting legitimate trade and dealing with the problems of illegal and illicit trade.
63. We believe these measures have the potential to make a meaningful impact on employment creation, and greater equality, equity and legality, not only in the Footwear, Tanning and Leather Goods manufacturing industry but in several other industries that are increasingly being affected by customs fraud and illegal imports.

***We thank the Portfolio Committee for the opportunity to comment on the Bill.***

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