Chamber of Commerce
and Industry - Johannesburg
NafcocJCCI

CUSTOMS CONTROL BILL
SUBMISSION TO PARLIAMENT

28 JANUARY 2014

Since 1977, the Johannesburg Chamber of Commerce has been involved with City Deep, South Africa's first inland port. We are major trainers on all aspects of the international trading cycle and participate directly in the International Chamber of Commerce Commissions responsible for writing the rules governing all aspects of international trade. We welcome this opportunity to make a further presentation to the Parliamentary Standing Committee on Finance.

In response to SARS PowerPoint presentation we make comment as follows:

Page 4: CONSULTATION WITH SACU

As there is no reference to inland ports in the Bills, it is probable that this vital issue was not part of the discussion with the other SACU members. Our interaction with the SACU secretariat and other members on this subject is ongoing.

Page 6: NEDLAC CONSULTATIONS

This Chamber certainly made detailed reference to the protracted Nedlac process in our presentation on the 30th October 2013. Many concerns were resolved with only one material area of disagreement remaining, which became the subject of an Impact Assessment Study.

Page 8: ALLEGATIONS OF LACK OF CONSULTATION

SARS' reluctance to attend workshops arranged by stakeholders is noted. However, two years ago the one SARS Forum for all parties involved in international trade to interact with SARS, was unilaterally cancelled.

Our response to the UNISA legal option follows:

10. Containers are not consigned to a terminal or depot. They can only be consigned to a recognized international gateway. As vessels only ship port-to-port, the term Inland Port aligns with their operations.
11. In addition to the container operator, the bonded transporter is also liable
14. If there is a policy change, clearance will be a two-step process. It is presently a one step process. Our information is that traders will not pay for two presentations to Customs and, therefore, will clear at the coastal port.
16 The policy change will fundamentally alter the final clearance point as clearance will not take place inland. Lines will thus release at the coast after clearance and after their requirements have been met by the importer.

18 (a) The present manifest information is accepted internationally for inland movements where all Customs formalities are completed. If the Customs border is moved to the coast, the exporter and importer's roles will change at that point.

18(b) We do not believe that present movements under the responsibility of lines and the bonded transport operator compromise the process. The World Bank report on corruption in the Durban Port would suggest boxes are more secure seamlessly moving inland rather than dwelling in the coastal ports or depots uncleared.

18(f). We have not found one party involved in the international trading cycle who does not agree that the policy change will cause greater congestion.

21. The claim that insisting on clearance at the port of entry will force sellers to use the Delivered Duty Paid term is misleading. In the interest of clarity I append the following recent exchange with Customs Legal:

> Q. "Why goods from a legal and trade perspective cannot be contractually consigned to an inland port if clearance is required at the first port of entry?"
>
> A. From a legal and trade perspective containerised goods sold on the basis of delivery to an inland terminal, after clearance at the coastal port, would effectively be sold on a delivered duty paid basis (DDP). The seller would have to control the delivery as he could not rely on the performance of the importer to fulfill his (the seller's) delivery obligations. This would necessitate him being involved in a foreign country and a foreign currency and employing a forwarding agent, etc., etc. – altogether a cumbersome, expensive and financially unattractive arrangement.

24 (c) The seller certainly has further exposure since as issuer of the shipping instruction, the line would have recourse to him to recover any storage or over-stay costs.

24 (d) We disagree with the conclusion that the policy change would not affect the Contract of Sale. The exporter will not be able to obtain a Bill of Lading extending beyond the coastal port. The importer will take delivery at the coast instead of, as at present, the inland port. Our interaction with many lines has received a different response to yours. We have requested a statement from Maersk over the past eighteen months without success. In any event, the exporter would not contract beyond the Customs border.

24(e) The comment regarding the flexibility in the application of Incoterms is not applicable to the term CIF, which calls for a named port of destination.

24(f) The point of clearance has a direct bearing on the point of delivery as it is the place where the roles of the exporter and importer change.

24(k) A lot of emphasis is placed on the passing of risk. In fact the trader's main concerns are the receiving of payment and the passing of ownership.

25-27 Our consultation with numerous carriers does not support this conclusion.

28 Whether or not the term 'inland port' is a Customs term is of little consequence. What is important is a location being approved as an international gateway for containerized cargo. It then becomes a point to which the lines can issue a multi-model bill of lading and accept responsibility for delivering inland. As lines ship from port-to-port, it makes sense to use the term 'inland port' (a location with all the services and facilities found at a coastal port).

29 If the status of the inland port is not recognized in the new Bill, boxes will be cleared at the coast and only after release by the carrier will they be available for onward delivery. As there will not be a multi-modal bill of lading in place, the cost, and also the complexity, of international trade will increase, as will coastal congestion. Presently many containers are moved from our inland ports on a Removal in Transit (RIT) basis into SACU and SADC countries.

35 The reference to being able to modify Incoterms does not apply to the CIF term where a named port is a non-negotiable requirement.

41. We agree the seller complies when you ship to the named port of destination.

42 Changes in the Act do affect the named port of destination as this will then be the coastal port

47 CIF is a shipping Incoterm calling for a port as a final destination

48 The GMLS report is correct in stating that the point of Customs clearance is at the port of entry. If the proposed changes are introduced clearance will not, in practice, take place inland.

49 There will no two-step process in most instances as only one declaration will be made.

51-53 From the foregoing it is clear we are at variance with your conclusions. We believe that there is substantial evidence to indicate the changes will have far-reaching unintended consequences

CONCLUSION

We are supportive of the presentations made by our colleagues from Busa, SAAFF and GMLS and join them in appealing for the Bills to provide for inland ports as places of entry and exit for containerized cargo in order to maintain the *status quo*.

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JOHANNESBURG CHAMBER OF COMMERCE & INDUSTRY

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Pat Corbin – Past Pres JCCI
(Director ICC-SA)

INTRODUCTION

- Information presented 30/10/2013 confirmed
- Comment on SARS presentation 5/11/2013 has been circulated
- Unresolved matters:
  - Implication for SACU members
  - Defining ports of entry
  - Impact of WTO Bali Trade Facilitation Agreement 12/2013

S A CUSTOMS UNION

- Secretariat unaware of inland ports' (IPs) status change
- Existing inland port operators also unaware
- SACU 2007 WCO Development Programme objective to improve economy and seamless trade facilitation

BORDER DEFINITION

- Port of entry where cross-border transactions are processed
- Importer declaration required prior to release from coast would determine border
- All Incoterms except DDP require delivery before Customs border
- Effect of inland port elimination – clearance and line release at coast

WTO TRADE FACILITATION AGREEMENT BALI 12/2013

- Objective to address high transaction cost in developed and landlocked countries
- Easing border controls to allow transit movements under Customs bond
- Agreement will be binding on all 159 WTO member states

CONCLUSION

- Unintended consequences of IP removal on traders, Transnet, investment and employment
- Road movements, port congestion and berthing delays will increase
- Imposition of congestion surcharge anticipated
- Regressive step in conflict with WTO Agencies' recommendations

Conclusion continued

- IPs proven to stimulate inland investment and economic activity
- No substantial evidence produced to motivate removal after 37 years
- Customs acknowledges obligation to balance control with trade facilitation
- Status quo should be maintained