

# Introduction to the Draft Customs Control Bill and Draft Customs Duty Bill



Workshop  
February 2010

# Contents

- Background
- Customs Act 1964 comparison to proposed Bills
- High-level overview of the draft Bills
- Proposed approach
- Key changes and envisaged potential impact
- Revision of the penal provisions
- The way forward
- Questions and answers

## Introduction

- Current Customs and Excise Act in force since 1964 (as amended)
- Many amendments and restructuring over the years. However, the framework is unsuitable for the effective implementation of a modern system of customs control
- There has been uncertainty and inconsistent application of the existing penalty guidelines

### **What South Africa requires:**

- New Legislation to bring customs control in line with recommendations of the World Customs Organisation as per the Kyoto Convention;
- Modernised customs control that is in line with other legislative instruments; and
- Clear and unambiguous policies for the imposition of penal measures

## A case for change

- International trend is to modernise customs systems in order to minimise their disruptive impact on legitimate trade;
- Compliant traders are trusted to be self-compliant
- Move toward a better balance between the need for rigid customs control and the facilitation of the international movement of travellers and goods
- Effective collection of taxes on imported as well as exported goods
- Combating cross-border crime
- Implementing a simple, predictable and efficient Customs System
- Increasing collaboration between Customs Administrations as well as more Customs to Business partnerships

## South Africa's obligations as a WCO Member

**Facilitation of trade** between member countries

Establish a **model framework** for **customs control**

Create a **modern, efficient** and **cost-effective** customs organisation

Adoption of the **General Agreement on Tariff and Trade**

Adoption of the **Harmonised Tariff System**

“The Revised Kyoto Convention provides a model framework for customs control and is considered the blueprint for modern, efficient and cost-effective customs control system. The Republic has acceded to this Convention on 18 May 2004”

(source: Draft Customs Bills – Explanatory Memorandum)

# The Objectives of the proposed legislation

## Benefits for SARS as a Revenue Authority

An **effective control system** as a mechanism for **revenue collection**

Enhancement of the **powers of the Commissioner** and its **officers**

**Enhanced control** in respect of **persons departing or entering** South Africa

**Enhanced control** of the **importation and exportation of goods**

**Enhanced ability** to **levy, collect** and **recover import duties** and **taxes** on goods imported and exported

## Benefits for Industry / SARS' Clientele

A **simple, predictable** and **sufficient** customs system

**Electronic clearing** systems available to **accredited clients / agents**

**Electronic payment** systems

**Electronic release** of clearances

**Fast-tracking** facilities if **accredited** client

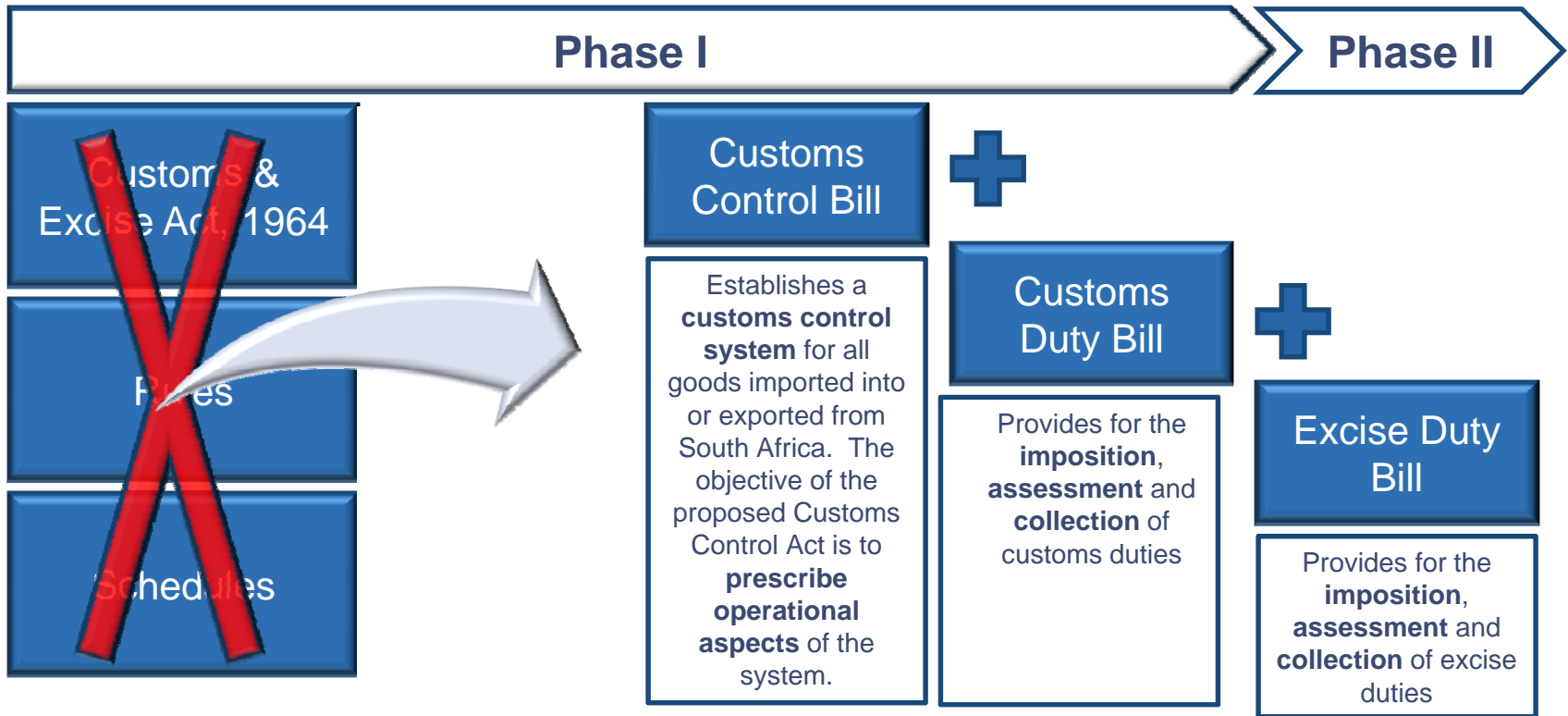
## SARS' justification for the re-write

“The structure of the current Act is not suitable to serve as a vehicle for implementing a modern system of control in accordance with current international trends and best practice”

“What is required is a fundamental restructuring of our customs and excise legislation not only to give effect to Kyoto and other binding international instruments but also to establish a sound, clear and logical legislative framework that would enhance and “speak to” the many other legislative instruments that rely for their implementation on customs control”

(source: Draft Customs Bills – Explanatory Memorandum)

# The envisaged approach to implementation



# Content of Customs & Excise Act compared with the Proposed Draft Bills



# Proposed structure of the Revised Customs & Excise Legislation

It is envisaged that the Excise Legislation will be completely independent of the Customs Legislation

**Customs Control Bill**



**Customs Duty Bill**

**Excise Duty Bill**

# Pillars & Considerations

The Customs Duty Bill has 3 main pillars and 2 key considerations

Main Pillars

Key Considerations

- Customs Classification
- Valuation Determination
- Origin Determination

- Tax-free status
- Tax-due status

## Structural components of the legislation

### Customs & Excise Act, 1964



- Act 91 of 1964 (“One” Act)
- Schedules to the Act
- Rules
- Other instruments

### Proposed Customs & Excise Acts



- Customs Control Act
- Customs Duty Act
- Excise Duty Act
- New Tariff
- New Schedules 1 to 5
- New Rules
- Regulations
- Other Instruments

## Preliminary observed Structural Changes

The proposed legislation appears to be more robust in terms of content, especially in respect of the provisions relating to the exportation of goods. It should also be borne in mind that the proposal for the legislation concerning excise has not yet been drafted.

### Customs & Excise Act, 1964

- 240 pages (including excise)
- 120 Sections
- 14 Chapters

### Customs Control Bill & Customs Duty Bill

- Total 589 pages (excluding excise)
- Draft Control Bill – 858 Sections;
- Draft Customs Duty Bill – 228 Sections
- Draft Excise Bill – ?? Sections (to be released)
- Draft Customs Control Bill – 40 Chapters
- Draft Customs Duty Bill – 12 Chapters
- Draft Excise Bill - ?? Chapters (to be released)

## Discussion of the proposed legislation



### Control Bill

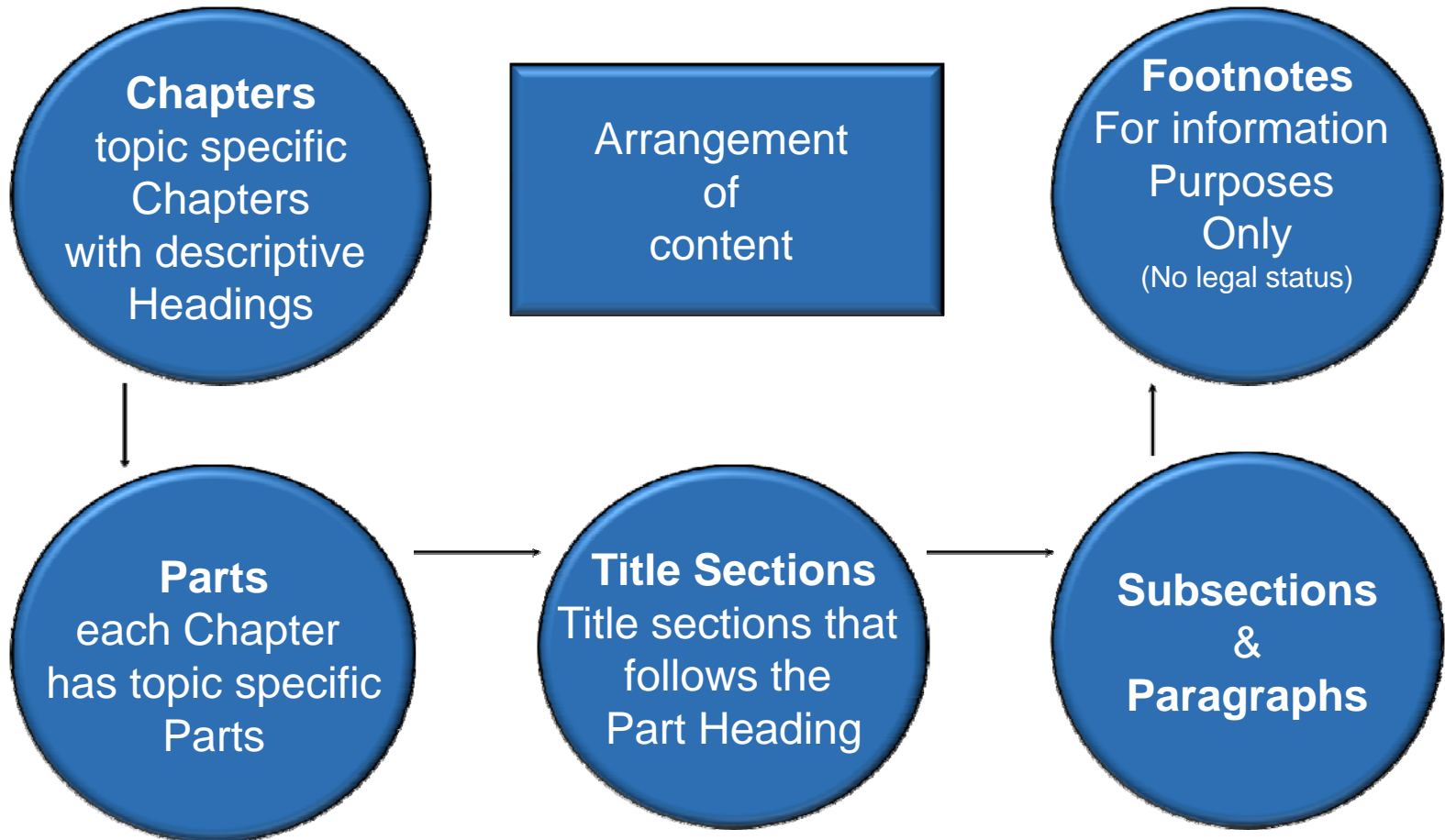
- Serves as a platform for the implementation of any tax levying Act concerned with goods imported into or exported from the RSA or travellers entering / departing the RSA
- Determines the procedural requirements that must be complied with when goods are imported or exported



### Duty Bill

- The Draft Customs Duty Bill is a tax levying Act which will rely on the Draft Customs Control Bill for its intended application
- In essence, the bill is structured for the imposition of duties, the assessment of duties and the payment and collection of duties

# What will it look like?



## Proposed changes in terminology

New terminology has been used in the proposed Bills to describe / define a specific topic / requirement / procedure

Clear / Cleared	<ul style="list-style-type: none"><li>•“Cleared” is the new term that describe the action of entering goods for home use</li><li>•<b>Current Act:</b> “Entered”</li></ul>
Clearance declaration	<ul style="list-style-type: none"><li>•Notification by importers / exporters submitted manually or electronically</li><li>•<b>Current Act:</b> “Bill of Entry”</li></ul>
Release	<ul style="list-style-type: none"><li>•Action taken by customs to authorise the goods to be cleared –<ol style="list-style-type: none"><li>1.For “home use” or</li><li>2.In accordance with a “customs procedure”</li></ol></li></ul>

# Proposed changes in terminology

New terminology has been used in the proposed Bills to describe / define a specific topic / requirement / procedure

Home use	Means goods were put into free circulation  <b>Current Act:</b> “Home consumption”
Free circulation	Means goods may be dealt with free of any further customs control  However, customs may perform a own assessment within 3 year window period
Home use compensating products	Imported goods cleared and released for processing for home use compensating products  <b>Current Act:</b> “Industrial Rebate” (IR)
Outright Exports	The export of goods that are in free circulation

## Proposed changes in terminology

New terminology has been used in the proposed Bills to describe / define a specific topic / requirement / procedure

Tax Levying Act	Acts imposing taxes on imported and exported goods <ul style="list-style-type: none"><li>• Customs Duty Act</li><li>• VAT Act</li><li>• Proposed Excise Duty Act</li><li>• Diamond Export Levy Act</li></ul>
Tax due Status	A tax payable if required in terms of a tax levying Act  <b>Current Act:</b> “Dutiable”
Tax free status	No tax is payable as provided for and in terms of a tax levying Act  <b>Current Act:</b> “Non – dutiable”

## Proposed changes in terminology

New terminology has been used in the proposed Bills to describe / define a specific topic / requirement / procedure

Confiscate	In relation to goods, means to divest a person of ownership of goods and to vest ownership of the goods in the state
Enforcement function	In relation to the customs authority or a customs officer, means a power or duty assigned to the customs authority in terms of this Act or assigned or delegated to a customs officer in terms of this Act

## Proposed changes in terminology

New terminology has been used in the proposed Bills to describe / define a specific topic / requirement / procedure

<p>The prefix “Self –”</p> <p>As contained in “self - assessment”, “tariff self – determination”, “value self – determination” and “origin self-determination”</p>	<p>Means a self – assessment and self - determination made by persons submitting clearance declarations</p>
<p>Customs Broker / Clearing Agent</p>	<p>Any person clearing goods, arranging transport or delivery of goods on behalf other persons or providing information, assistance or handling formalities on behalf of another person</p> <p><b>Current Act:</b> “Agent”</p>

## Proposed changes in terminology

New terminology has been used in the proposed Bills to describe / define a specific topic / requirement / procedure

<p>Advanced rulings</p>	<ul style="list-style-type: none"> <li>• <b>Binding private rulings</b> – apply to specific persons or specific goods only</li> <li>• <b>Binding class rulings</b> – apply to specific categories of persons or goods</li> <li>• <b>Binding general ruling</b> – apply to persons and goods in general</li> </ul> <p><b>Current Act:</b> “Ruling” / “Determination”</p>
<p>Assessment</p>	<p>Means an action performed by customs to assess the duty based on –</p> <ul style="list-style-type: none"> <li>• Tariff Classification</li> <li>• Customs Valuation</li> <li>• Origin of goods</li> </ul>

## Proposed changes in terminology

New terminology has been used in the proposed Bills to describe / define a specific topic / requirement / procedure

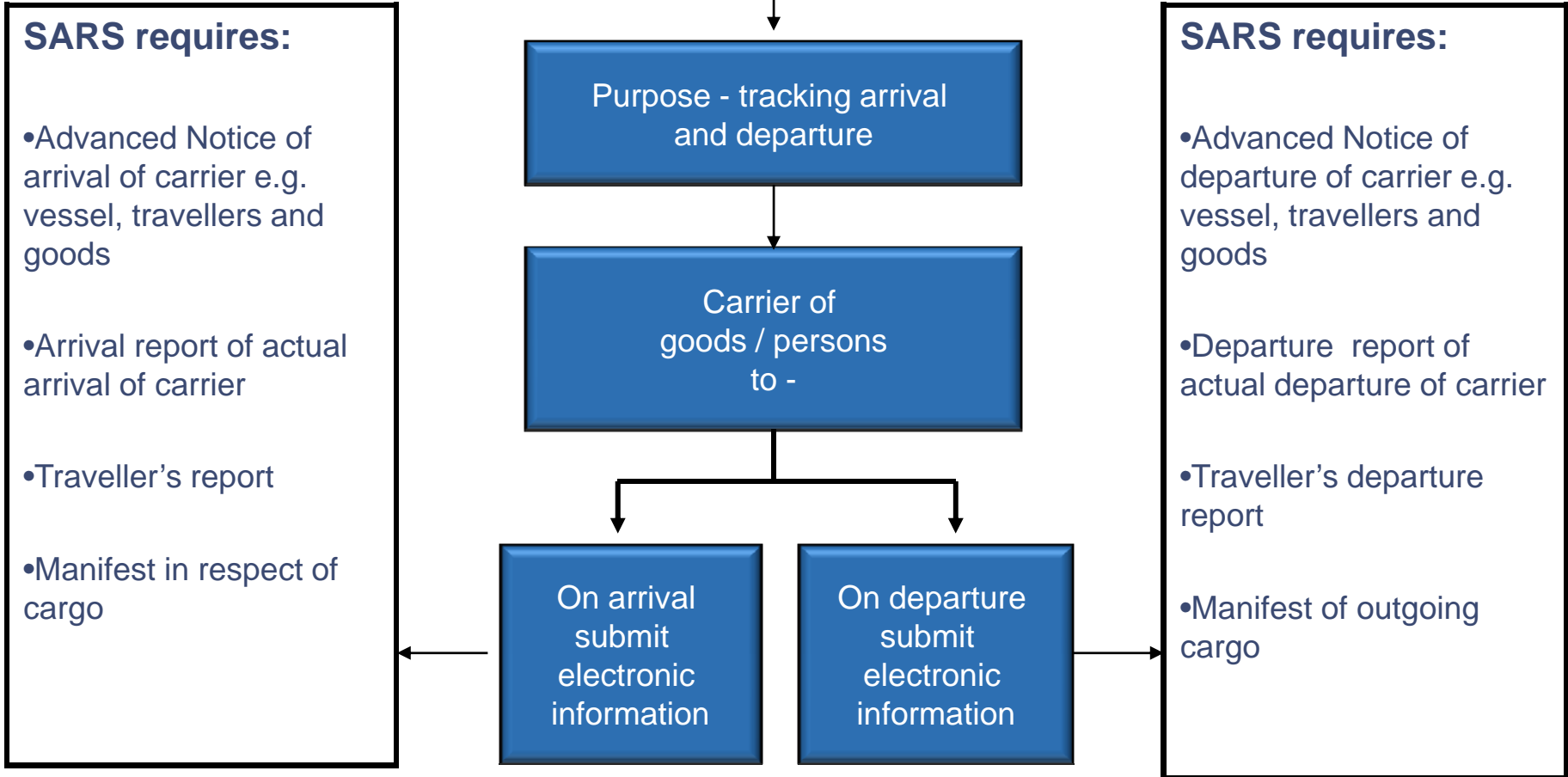
1. the national transit procedure
2. the international transit procedure
3. the transshipment procedure
4. the temporary admission procedure
5. the warehousing procedure
6. the tax free shop procedure
7. the stores procedure
8. the export procedure
9. the temporary export procedure
10. the inward processing procedure
11. the processing for home use procedure
12. the outward processing procedure

### **“Customs procedure”**

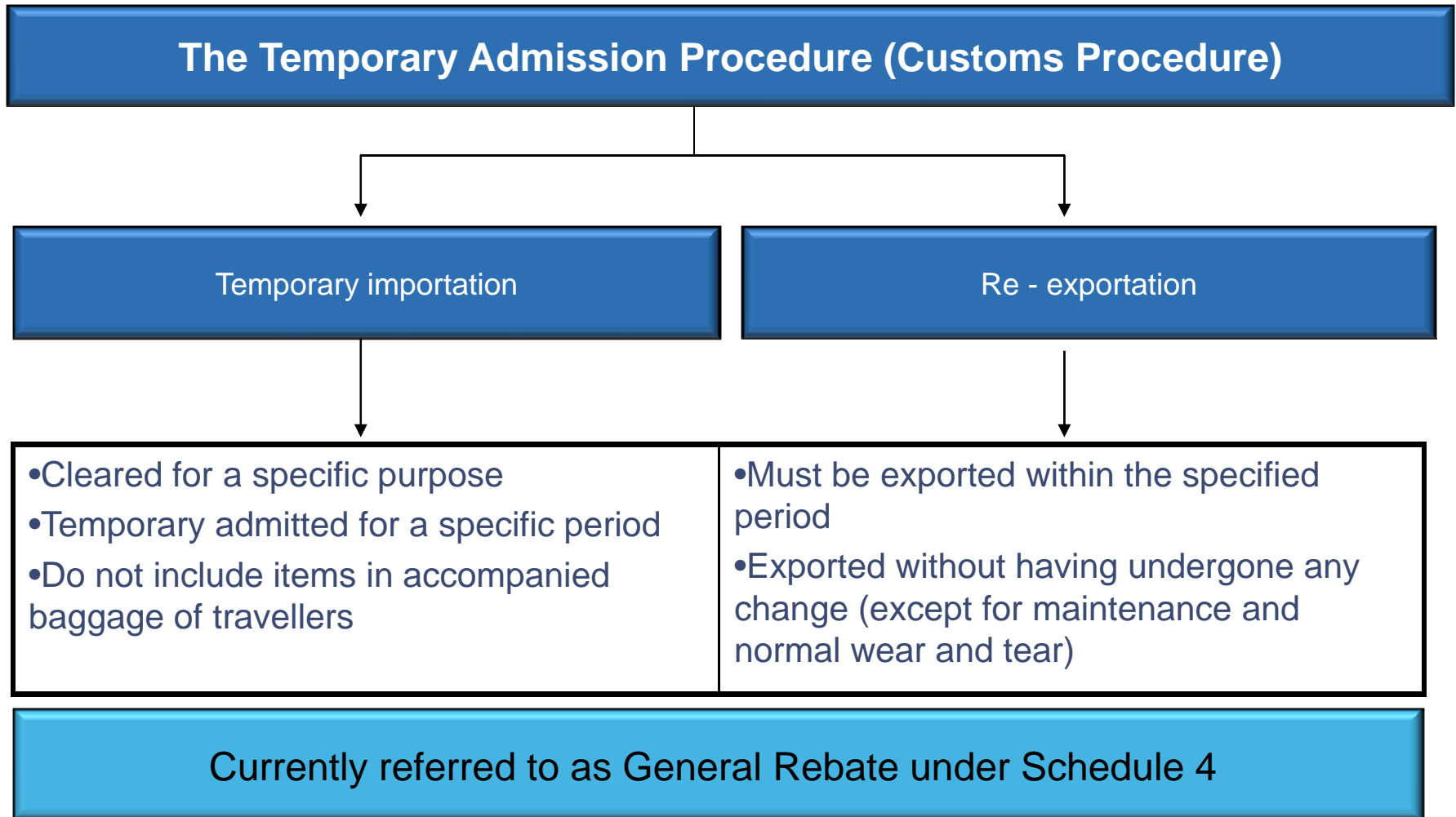
**Means goods are cleared and remain subject to customs control in terms of a relevant customs procedure**

# Control of vehicles

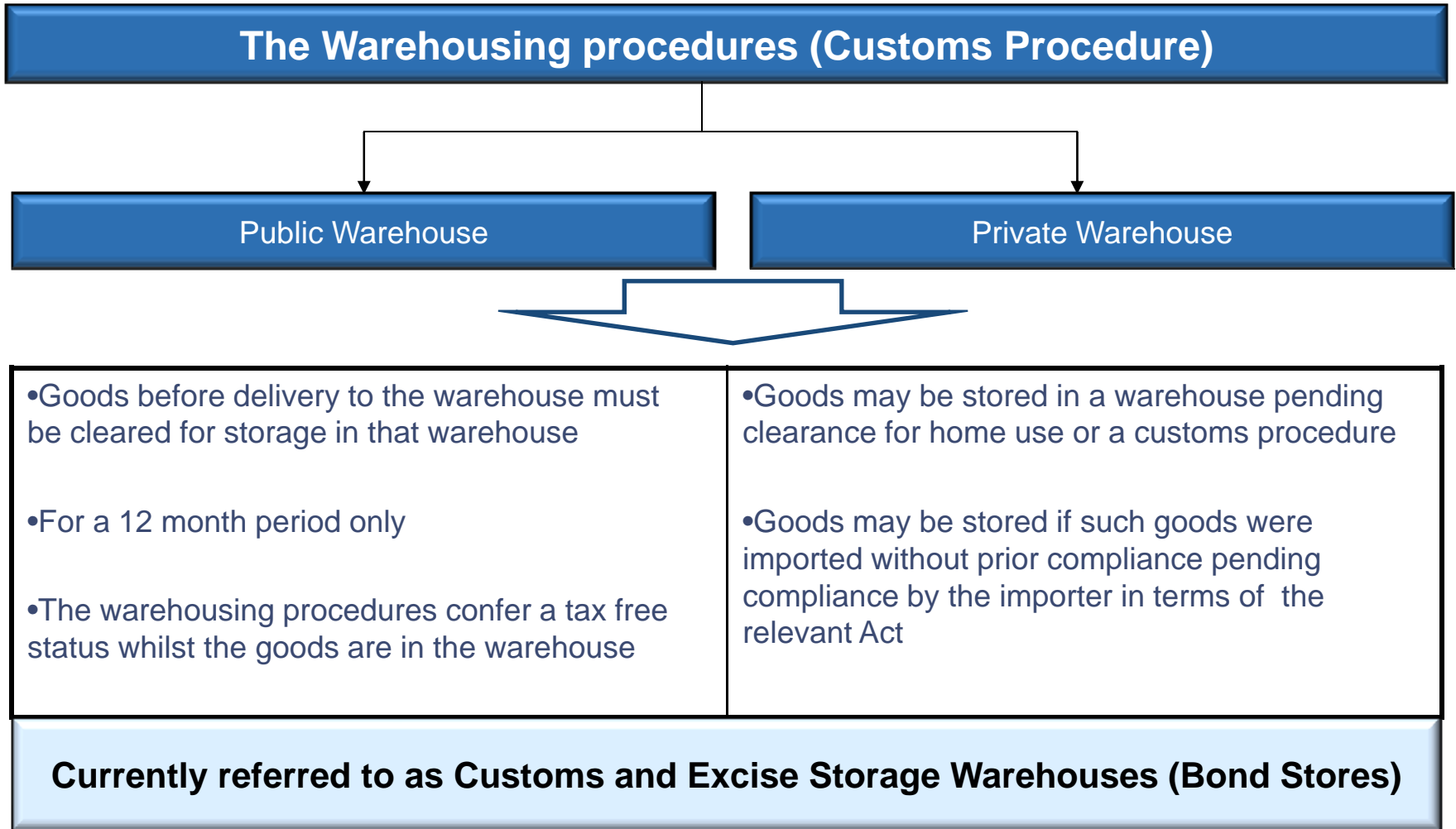
## Control of aircrafts, vessels, trains & vehicles (carrier of goods and / or persons)



# Temporary admission procedure



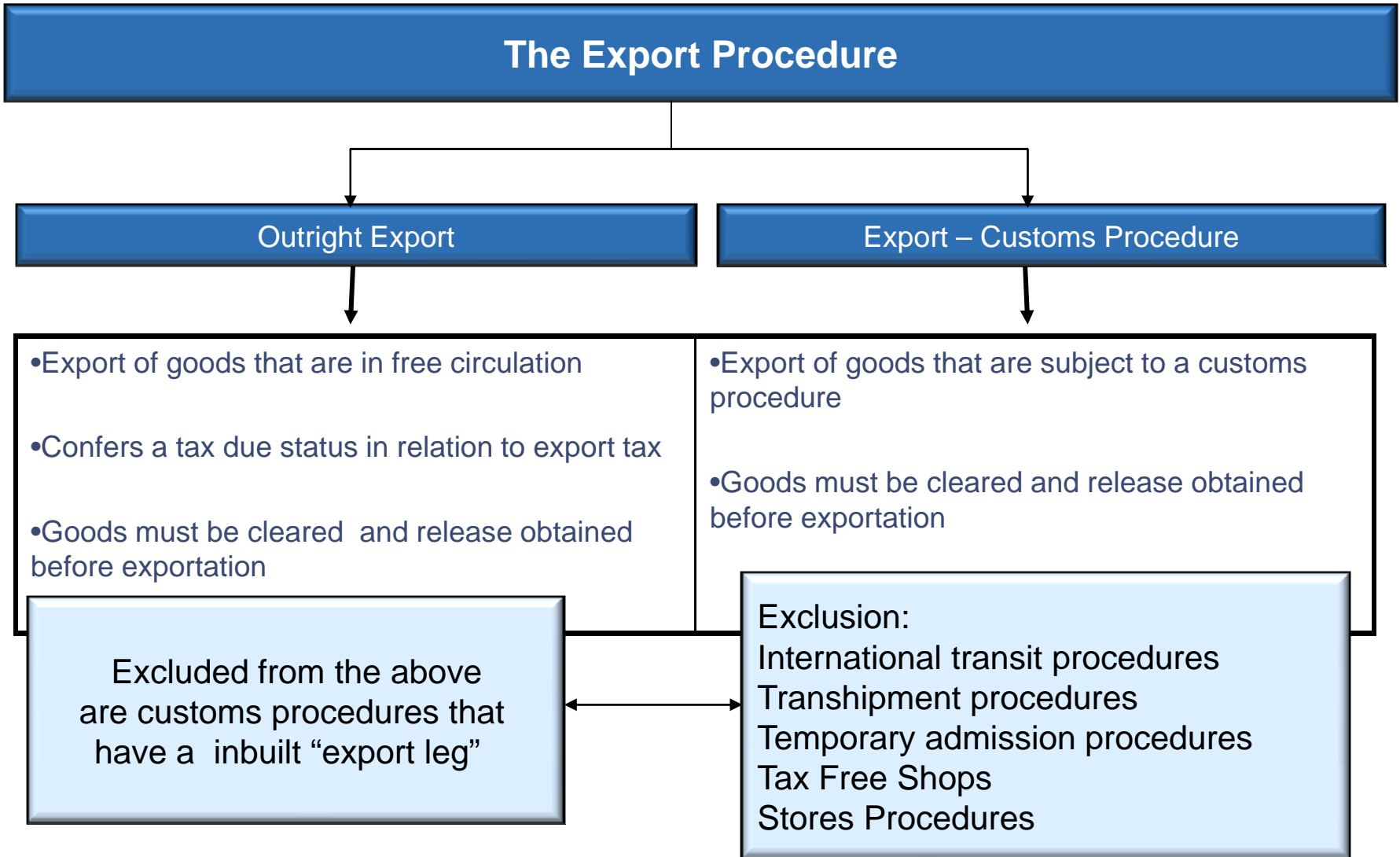
# Warehousing Procedures



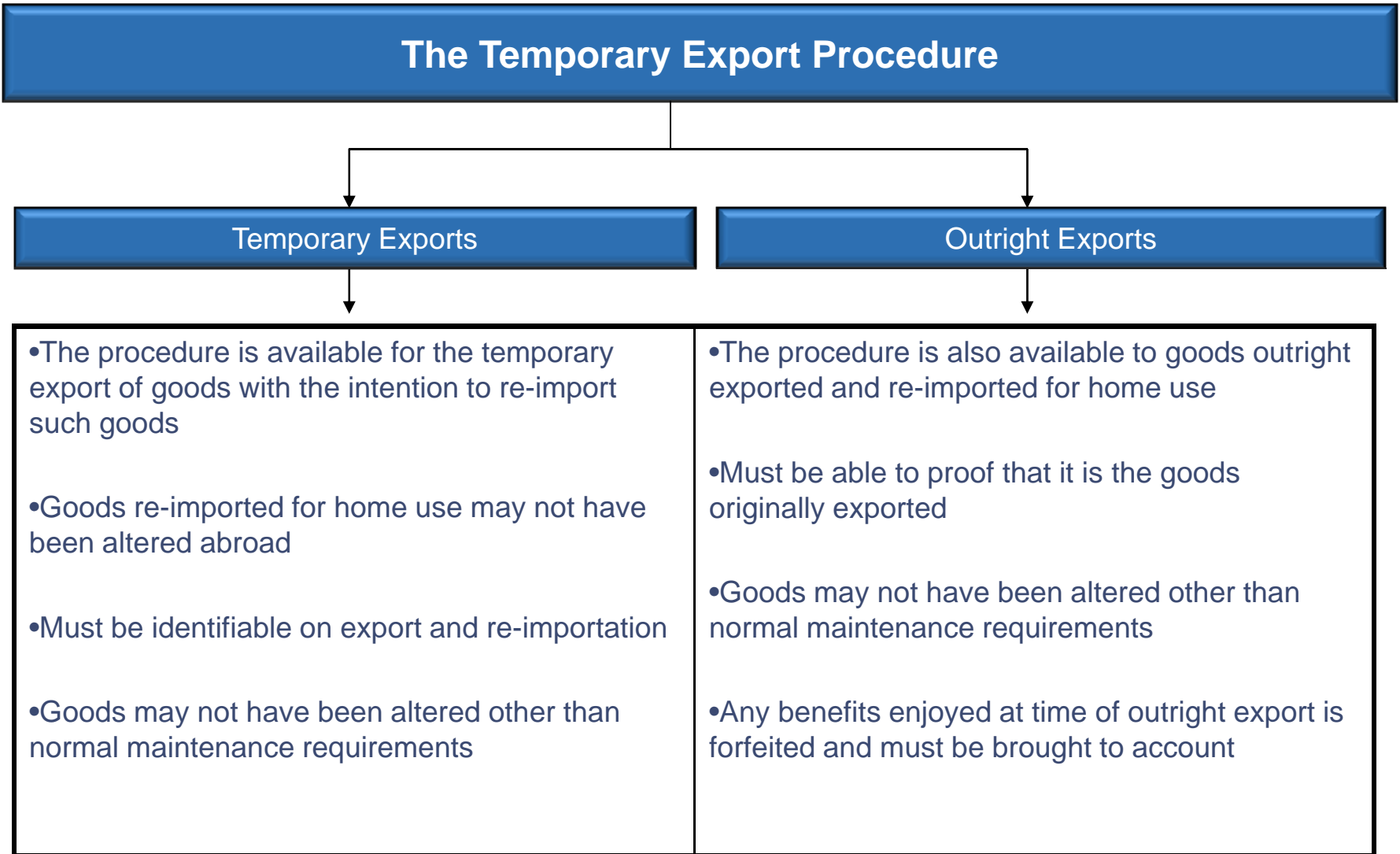
# Tax Free Shop Procedure



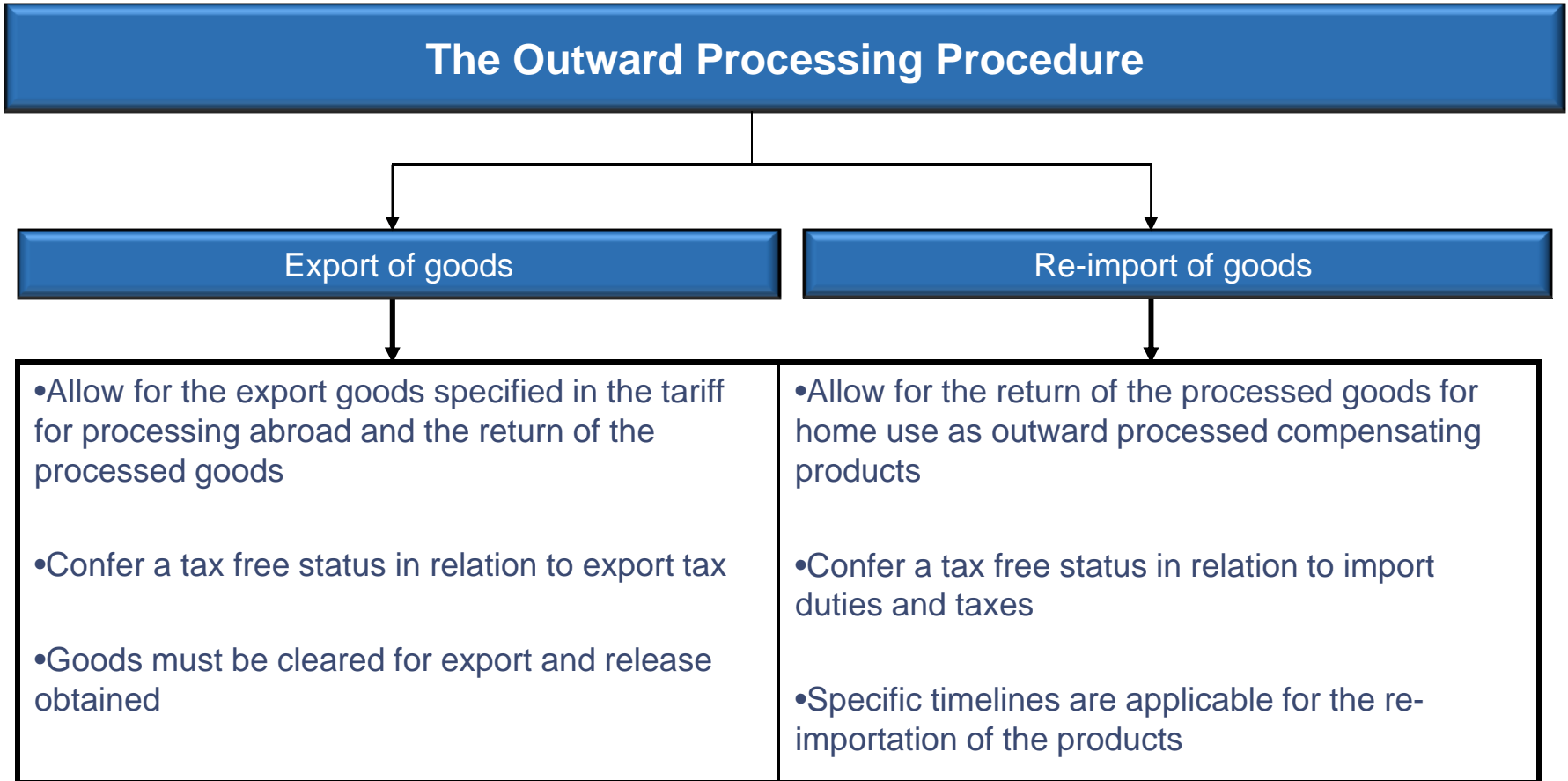
# Exportation of Goods (excluding temporary exportation)



# Temporary Exportation of Goods

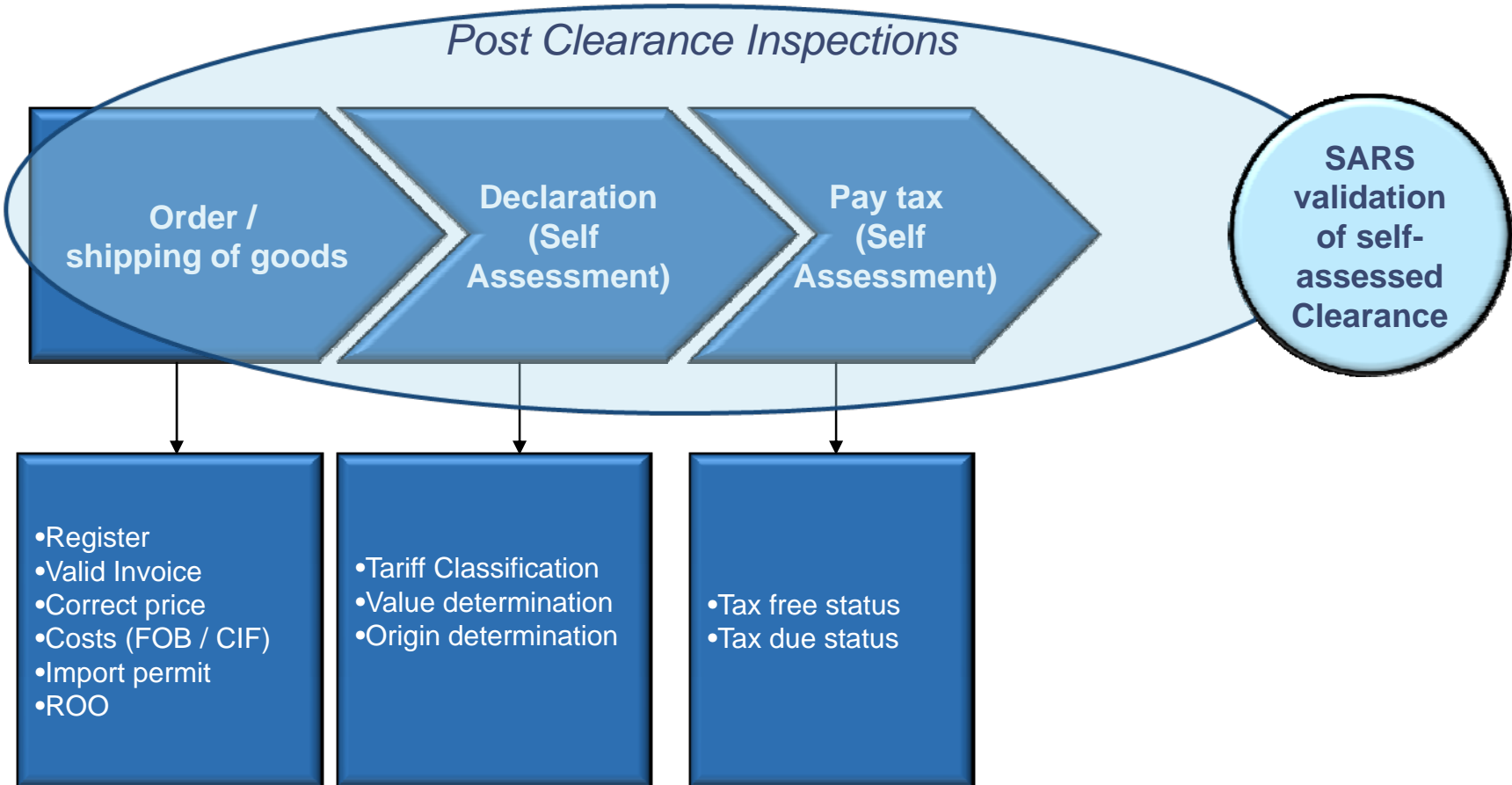


# Outward Processing Relief



# Operational considerations for taxpayers

The Customs Duty Bill was designed to give maximum effect to the notion of "Self Assessment"



## Key changes – Purpose Codes

The use of “purpose codes” to define the clearance objectives of the customs declaration will be replaced by a series of procedures when goods are not being entered for “free circulation”

### Customs & Excise Act, 1964

Removal in bond (RIB)  
Removal in transit (RIT)  
4<sup>th</sup> Schedule General Rebate  
Customs and Excise Warehouses  
Special Customs and Excise Warehouses  
Ships’ or aircraft stores  
Export  
4<sup>th</sup> Schedule General Rebate  
4<sup>th</sup> Schedule General Rebate  
Industrial Rebate, Schedule 3, rebate stores  
4<sup>th</sup> Schedule General Rebate

### Draft Bills

1. the national transit procedure
2. the international transit procedure
3. the transshipment procedure
4. the temporary admission procedure
5. the warehousing procedure
6. the tax free shop procedure
7. the stores procedure
8. the export procedure
9. the temporary export procedure
10. the inward processing procedure
11. the processing for home use procedure
12. the outward processing procedure

## Key changes – continued

<b>Description</b>	<b>Notes / comments</b>
Replace Customs Tariff Schedules 1 to 5	Will be replace after the implementation of the Customs Bills
The draft bills provide for both import and export duties	Does not mean that export duties are intended
Under payments of duty / tax	Can be recovered from: <ul style="list-style-type: none"><li>•Importer / Exporter</li><li>•Any interested party</li><li>•Person responsible (Clearing Agent)</li></ul>

## Key changes – continued

Description	Current Act	Draft Bills
Judicial Matters - General offences	Penalty R40 000.00	Fine not exceeding R1million
Advanced Rulings in respect of: Tariff Classification Customs Valuation Origin of Goods	Referred to as “rulings” / “Determinations”  Validity period: N/A  Binds both customs and the recipient of the ruling <b>(provided)</b>	Valid 3 years  Binds both customs and the recipient of the ruling <b>(provided)</b>  Processing fee as prescribed by rule
Publication of Tariff Determinations	N/A	Applicable

## Key changes – continued

Description	Current Act	Draft Bills
Flat rate of 6% on low value Non-commercial goods of a customs value of R2 000.00 or less	N/A	May still elect to clear goods using import duty rates by tariff
<p>Powers of the Commissioner and Officials</p> <ul style="list-style-type: none"> <li>•Carry firearm</li> <li>•Search of persons</li> <li>•Roadblock</li> <li>•Search premises</li> <li>•Remove documents /records</li> </ul>	Applicable	Applicable

## Key changes - continued

Description	Current Act	Draft Bills
Time within which imported goods must be cleared from date of arrival	7 days	3 days
Storage period for bond stores / customs warehouses	2 years	1 year
Period in which export declarations must be submitted	<p>Before goods are delivered for export</p> <p>No specific time</p>	<ul style="list-style-type: none"> <li>•Sea – 72 hours</li> <li>•Air - 24 hours</li> <li>•Rail – 48 hours</li> <li>•Road – 6 hours</li> </ul> <p>Before delivery to depot or road vehicle arrive at border</p>

## Key changes - continued

Description	Current Act	Draft Bills
Goods liable to seizure / confiscation	Forfeiture Once the value of the goods	Administrative penalty Once the value of the goods
Payment of administrative penalties	As per letter of demand	Within 5 days (No discretion)
Prescription period in which customs may perform a re-assessment of duties	2 year	3 years
Registrations renewals	N/A	3 years (30 days before)

A tall, vertical stack of numerous papers and documents is the central focus, resting on a light-colored wooden desk. The papers are of various colors, including white, pink, and yellow, and some have visible text or markings. In the background, a large wooden bookshelf is filled with books, creating a library-like atmosphere. The lighting is warm and focused on the stack of papers.

# Revisions to the Penal Provisions

## Comparison between the current penalty guidelines and the proposed measures

<b>Current</b>	<b>Proposed Penalty Measures</b>
<ul style="list-style-type: none"><li>•The current system is an internal document only</li><li>•Open to interpretation, ambiguous, discretionary powers</li><li>•Mostly manual procedures.</li></ul>	<ul style="list-style-type: none"><li>•CAMPS / EAMPS will be available as a public document</li><li>•The annexure is straight forward and very specific</li><li>•Discretion is removed by providing set procedures that need to be followed</li><li>•System capability with faster turnaround times</li></ul>

# Customs / Excise Penalty Guidelines (CAMPS & EAMPS)

- CAMPS / EAMPS clearly defines the procedure to be followed for both administrative and serious offences
- Clients have access to their compliance history
- Provides for Internal Administrative Appeals and Alternative Dispute Resolutions
- Provides a basis for fair, consistent, transparent and impartial treatment of all clients

# Customs / Excise Penalty Guidelines (CAMPS & EAMPS)

- Imposed in proportion to:
  - Type
  - Frequency
  - Severity
- Provides for specific amounts and moving away from the percentage base penalties
- Each time a clients issues a EAMPS amount the information will be added to their client contravention history
- Clients who demonstrate a poor compliance record can expect to receive increased attention from SARS

# Customs / Excise Penalty Guidelines

(CAMPS & EAMPS)

- The policy will allow for progressive administrative monetary penalties and when exhausted could possibly lead to criminal prosecution
- The determination of the CAMPS amount is not an imposition of a penalty and the client may provide mitigating factors or evidence that SARS would need to consider prior to deciding on what amount of the deposit is to be forfeited as a possible CAMPS amount
- In addition and depending on the nature of the contravention consideration should be given to the following:
  - Cancelling the clients' accreditation status (if applicable); and / or
  - Suspend or de-register in accordance with the provisions of the Act; or
  - Withdrawal of licenses or facilities (for example Clearing Agent licences, bonded warehouse, rebate stores etc.) in strict accordance with the relevant provisions of the Act.

# Customs / Excise Penalty Guidelines (CAMPS & EAMPS)

- CAMPS is imposed in terms of the Act
- Clients who choose to accept the offer of a CAMPS amount would need to complete a certain form. This includes agreeing to abide by the decision of the Commissioner
- Once the form has been completed and the CAMPS amount has been lodged the client may appeal (IAA process)
- SARS intent to implement CAMPS during 2010

## Existing Policy Documents

Topic	Document name	Reference	Effective
Valuation	QUICK REFERENCE GUIDE CUSTOMS VALUATION	SC-CR-A-01	2008.09.02
Security	EXTERNAL POLICY SECURITIES	SC-SE-05	2006.09.19
Deferment	EXTERNAL POLICY CUSTOMS DEFERMENT	SC-DT-B-02	2006.11.20
Refunds/Drawbacks	EXTERNAL POLICY REFUNDS AND DRAWBACKS FOR CUSTOMS	SC-DT-C-13	2009.05.22
Refunds/Drawbacks	EXTERNAL POLICY REFUNDS AND DRAWBACKS FOR EXCISE	SC-ID-43	2009.04.20
Ad Valorem	EXTERNAL POLICY AD VALOREM EXCISE DUTY	SC-ID-07	2009.03.27
Acquittals	EXTERNAL POLICY ACQUITTAL OF BILLS OF ENTRY / DECLARATIONS	SC-TR-01-02	2007.09.06
ROG	EXTERNAL STANDARD OPERATING PROCEDURE REMOVAL OF GOODS	SC-TR-01-05-S1	2008.09.23
Extra attendance	CUSTOMS AND BORDER MANAGEMENT EXTERNAL POLICY SPECIAL AND EXTRA ATTENDANCE	SC-CF-22	2009.12.24

## Draft Policy Documents

Topic	Document name	Reference	Effective
Penal	EXTERNAL STAKEHOLDER DISCUSSION DOCUMENT EXCISE ADMINISTRATIVE MONETARY PENALTY SYSTEM	SE-EXC- SD-02	2009.10.23 (draft for comment)
Penal	CUSTOMS AND BORDER MANAGEMENT EXTERNAL STAKEHOLDER DISCUSSION DOCUMENT CUSTOMS ADMINISTRATIVE MONETARY PENALTY SYSTEM	SC-ST-10	2009.10.22 (draft for comment)

# The way forward

**Deadline** for the submission of comments is **26 February 2010**

**Consider the proposals  
insofar as they affect  
your business**

Use this discussion to consider the proposals and to understand the nature thereof

**Test the thinking  
in terms of your  
transactions**

Apply your understanding of the proposals to your transactions and think about the practicalities of the changes for you should they be implemented in the current form

**Ensure you have  
adequate  
representation  
before the  
deadline for  
comments**

PwC is actively involved in the collaboration with SARS to consider and test the proposals

Discuss your issues with us so that we can understand the issues that will keep you awake at night

This handout is provided by PricewaterhouseCoopers Tax Services (Pty) Ltd for information only, and does not constitute the provision of professional advice of any kind. The information provided herein should not be used as a substitute for consultation with professional advisers. Before making any decision or taking any action, you should consult a professional adviser who has been provided with all the pertinent facts relevant to your particular situation. No responsibility for loss occasioned to any person acting or refraining from action as a result from using the information in the handout can be accepted by PricewaterhouseCoopers Tax Services (Pty) Ltd, PricewaterhouseCoopers Inc or any of the directors, partners, employees, sub-contractors or agents of PricewaterhouseCoopers Tax Services (Pty) Ltd, PricewaterhouseCoopers Inc or any other PwC entity. The information contained in the handout is based on our interpretation of the existing legislation as at February 2010. Whilst we will have taken every care in preparing the handout, we cannot accept responsibility for any inaccuracies that may arise.

Copyright:  
© 2010 PricewaterhouseCoopers. All rights reserved. "PricewaterhouseCoopers" and "PwC" refer to the network of member firms of PricewaterhouseCoopers International Limited (PwCIL). Each member firm is a separate legal entity and does not act as agent of PwCIL or any other member firm. PwCIL does not provide any services to clients. PwCIL is not responsible or liable for the acts or omissions of any of its member firms nor can it control the exercise of their professional judgment or bind them in any way. No member firm is responsible or liable for the acts or omissions of any other member firm nor can it control the exercise of another member firm's professional judgment or bind another member firm or PwCIL in any way.