

RAPORT PREALABIL

Referitor la: Condițiile legale de activitate pentru magazinele duty free în Sudanul de Sud

Acte Normative:

Customs Act, 1986 (Legea vamala 1986)

Activitatea duty-free în Sudanul de Sud, se efectuează în baza permisiunii Ministrului finanțelor și a planificării economice, în forma unui Ordin publicat într-un ziar de specialitate (The Gazette) – art. 172, Customs Act.

Acest Ordin trebuie să conțină:

- Modalitatea prin care autoritățile vamale vor putea superviza activitatea respectivă și monitoriza realizarea marfurilor date.
- Modalitatea prin care autoritățile vamale vor putea colecta drepturile vamale în urma comercializării bunurilor respective.

Prevederile legale, ce țin de activitatea antrepozitelor vamale, menționate în capitolul X din Customs Act se vor aplica și activității de comercializare în magazinele duty free.

În urma analizei aspectelor legale am avut întâlniri cu:

1. Ministrul finanțelor și planificării Economice al Sudanului de Sud (GOSS)
2. Directorul Vamei Sudanului de Sud.

1. Ministrul finanțelor nu era la curent cu prevederile Customs Act. Pe teritoriul Sudanului de Sud nu activează în prezent vreun magazin duty free și respectiv nici precedent în acest sens nu există. Instituțiile eliberate de plata taxelor vamale, Organizațiile Internaționale și Corpurile diplomatice se aprovizionează individual, fiind scutite de plata drepturilor de vamă.

La prima discuție Ministrul auzind de implicarea companiei ASCOM în proiectul respectiv, a promis să elibereze autorizația respectivă fără a avea dificultăți.

Problema depistată la această fază însă, este că, conform Acordului de Pace (CPA) din 2005 și a Constituției Republicii Sudan din 2005 responsabile pentru politica vamală a țării și colectarea drepturilor de vamă sunt autoritățile Centrale ale Sudanului (Government of National Unity (GoNU)) din Khartoum și prin urmare este necesară Autorizația Ministrului finanțelor și a planificării economice GoNU.

2. Directorul Vamei Sudanului de Sud, mi-a comunicat că pentru a desfășura activitatea respectivă, este nevoie de Ordinul Ministrului, după care, anexându-l la o Cerere către Vamă, va fi stabilită modalitatea de funcționare a magazinelor duty free.

La intrebarea care Ministru este responsabil, cel din Sudanul de Sud (GoSS) sau cel Central (GoNU), el a mentionat, ca datorita faptului ca activitatea se va desfasura exclusiv pe teritoriul Sudanului de Sud, este posibila si permisiunea ministrului local (fapt discutabil insa sub aspect legal din considerentele mai sus expuse).

Careva acte, instructiuni suplimentare, care ar confirma aceste cerinte nu au putut fi prezentate de catre autoritatile din teren sus-mentionate.

Avind in vedere specificul local ce tine de relatiile de putere dintre Nord si Sud, care nu corespund intotdeauna actelor legale in vigoare, autoritatile Sudanului de Sud asumandu-si prerogative si puteri peste cele instituite prin acordurile si legile existente, pentru a ne putea expune definitiv asupra problemei in cauza este necesar a avea opinia autoritatilor vamale si a Ministerului finantelor si planificarii economice din Khartoum (GoNU) insotite de acte normative scrise.

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THE CUSTOMS ACT, 1986

PART X **WAREHOUSING OF GOODS** **IN BONDED WAREHOUSES** **POWER OF DIRECTOR** **TO ESTABLISH BONDED WAREHOUSES**

163. (1) The Director may, from time to time, by a written order under his hand, approve there under the establishment, permanently, or for a limited period, at any place, of one, or more warehouses, or other secure places, hereinafter to be known as “bonded warehouses” , in which goods subject to customs duties and charges are lodged, pending payment of such duties and charges, and there shall be specified, in the order, the class or classes of goods to be lodged in the bonded warehouses, and the Director may make for such warehouse, or warehouses or places rules to be applied thereto, with respect to lodging, custody, withdrawal and control of the goods lodged therein, upon lodging or withdrawal, and the over-time charges due thereon by reason of the supervision of the Customs thereupon, as to attendance outside the working hours, and also any additional expenses which may thereby be incurred.
- (2) The regulations shall specify the types and conditions of establishment of bonded warehouses.

WAREHOUSES ESTABLISHED BEFORE THE **COMING INTO FORCE OF THIS ACT TO CONTINUE**

164. The approval, by the Director, to establish any warehouse, prior to the coming into force of the **Act**, shall be deemed as has been issued under the provisions thereof.

SECURITY FOR PAYMENT OF DUTIES **ON GOODS IN BONDED WAREHOUSES**

165. Upon an order being made under section 163, the proprietor, or occupier of the bonded warehouse, or any person on his behalf shall, before any goods are lodged therein, give or be bound to advance an undertaking by, or without bond, as the Director may require, to be a guarantee for payment of the duties required on lodged goods, and for binding the proprietor, or occupier of the bonded warehouse to give due regard to the provisions of this **Act** relating to bonded warehouses and lodging, storage and withdrawal of goods there from, and the Director may enforce the bond, or otherwise of securities given by the proprietor, or occupier of the bonded warehouse, upon occurrence of any contravention of the same.

LIEN OF CUSTOMS ON GOODS **IN BONDED WAREHOUSES**

166. The Customs shall have a first and paramount lien on all goods deposited in any bonded warehouse; to secure the payment of all such duties, charges and fines, as may be due thereto, from any person, on such goods.

**REVOCATION OF APPROVAL OF BONDED WAREHOUSE,
THE EFFECTS AND PROCEDURE TO BE FOLLOWED**

167. (1) The Director may, at any time, by sending a written notice under his hand, addressed to the proprietor, or occupier of the bonded warehouse, revoke the approval of establishment of the bonded warehouse, and upon the expiry of three months of the date of delivery of such notice, or of affixing the same upon the bonded warehouse, the bonded warehouse shall cease to be used in this capacity; and it is required that the Director shall publish such notice in a local newspaper four times at least, before the expiry or the aforesaid three months period, at intervals of not less than 15 days for each, and where there is no local newspaper, the notice shall be published in the Gazette, within six weeks, of the date of sending the notice.
- (2) The notice of revocation, sent by the Director under sub-section (1), shall be deemed to be addressed to all persons who have interest in the goods lodged in such warehouse, and such goods shall be withdrawn, before the expiry of the aforementioned three months period, and be deposited either in another bonded warehouse, or placed in the customs enclosure, of re-exported, or all the customs duties and amounts due thereon be paid, and they shall thereafter be withdrawn from the Customs, and no other goods shall, within the said three months period, be accepted in such warehouse, without the approval of Director.
- (3) Where any goods remain deposited in any bonded warehouse which has ceased to be used as set forth in sub-section (2), the customs officer may remove the same to the customs enclosure. Where such goods have not been withdrawn, within three months of the date of removal of the same to the customs enclosure, the Customs shall be entitled to sell them and dispose of the price of sale, in accordance with the provisions of section 86.

**REQUAGING AND REWEIGHING
OF WAREHOUSED GOODS**

168. Warehoused goods may be re-gauged, re-measured, reweighed or examined by the customs officer, either by the order of the Chief Customs Officer, or at the request and expense of the owner, and the duty for the same shall be payable as to be result, unless there are reasonable grounds to suppose that any portion of the deficiency, or difference has been caused by unlawful means; provided that no allowance shall be made for any deficiency in wines or spirits in the Southern States, and in case of petroleum products the allowance in any evaporation, leakage or spilling shall not exceed such percentage, as the Director may specify, from time to time.

DEFICIENCY IN WAREHOUSED GOODS

169. Where at any time any deficiency which cannot be accounted for by natural waste, or other legitimate cause is found in any package of imported goods deposited in a bonded warehouse, the proprietor, or occupier of the bonded warehouse shall be bound to pay double the duty, on the quantity, or value of the goods which has originally been deposited, in such package, upon the written demand of the Chief Customs Officer.

RE-EVALUATION OF WAREHOUSED GOODS

170. Where the value of the goods decreases, while they are present in any bonded warehouse, they may be revalued, on application of the owner thereof, and the duties shall be paid according to the result, wherever the Chief Customs Officer is convinced that the decrease of value has been due to a natural or accidental cause.

LIMITATION OF PERIOD OF STORAGE
IN BONDED WAREHOUSE

171. Where the goods have not been duly released and withdrawn, from the bonded warehouse, within the period specified by the regulations, such goods shall be subject to being removed by the order of the Director and sold, for the same purposes, manner and conditions, as are prescribed under section 86.

PERMIT TO ESTABLISH FREE ZONES
AND DUTY-FREE MARKETS

172. (1) No body shall establish free zones and duty-free markets, in the customs aerodromes, and ports and in towns, save after the permit of the Minister, under an order, to be published in the Gazette, or by any other means, as he may deem fit; provided that such order shall specify:-

- (a) the manner in which the Customs may be able to enforce the full control of the goods stored in the stores of the free zones and duty-free markets;
- (b) the manner of collection of customs duties on the goods which are purchased in the free zones and duty-free markets;
- (c) the provisions of part X shall apply to free zones and duty-free markets.