



STANDARD OPERATING PROCEDURE

Licensing: Customs Controlled Areas
and Customs Brokers

Owner : Manager Trade Tariff & Compliance
Manager Border
Manager North

Review: Annually
Period

Operative
Date

1. Legislation

Customs Controlled Areas – Section 15–25 Customs Act
Customs Regulations 5-8; 37
Excise Act 8-13
Excise (Application & Licence) Order

Customs Brokers - Sections; 107 & 108; 142; 205-210 Customs Act
Customs Regulations 36; 49 - 53

2. Introduction

The licensing framework that DCIR employs provides for a quality control mechanism over the movement and storage of goods through the licensing of customs controlled areas and compliance with customs declaration requirements for the importation and exportation of goods through the licensing of customs brokers.

There are number categories of customs controlled areas identified in Section 15 of the Customs Act and each category by virtue of the customs regulations has a different licence fee. Customs controlled areas are used as follows:

- Section 15(a) manufacture and storage of excisable products
- Section 15(b) the deposit, keeping or securing of imported or excisable goods without the payment of duty pending the export of those goods or their entry for home use.
- Section 15(c) the temporary holding of imported goods for the purpose of examination by Customs.
- Section 15(d) the disembarkation, embarkation and processing of passengers.
- Section 15(e) processing of vessels and aircraft and loading and unloading cargo
- Section 15(f) any other purpose.

It is important that constraints are in place to ensure that all persons and goods subject to customs control come to these areas for the purposes of assessment according to risk, and processing by customs in a controlled environment. Generally all imported goods are subject to custom's control from the time of importation until the goods are lawfully removed from a customs controlled area. It is essential that while goods remain within a customs controlled area, the licensee or operator of the customs controlled area is responsible for the physical security of those goods and accounting to customs for their subsequent movement and/or release. This

principle is the basis of all customs compliance and audit activity in regard to customs controlled areas.

The licensing procedures allows customs to establish standards for the physical security of customs controlled area, as well as providing a means of ensuring that those people responsible for and operating customs controlled areas are fit and proper persons for the role. Licensing provides an avenue for establishing operating procedures for the flow of goods and people through the premises.

The licensing of customs brokers provides customs with the means of ensuring only those properly qualified and meeting required ethical standards and other criteria are issued with licenses.

Licensing fees are a means of recouping expenses involved in undertaking audits, inventory controls, and operational activity to ensure compliance by the customs controlled area operator with customs requirements. The ability for some enterprises to store goods subject to customs control provides flexibility for their operations which results in a more efficient flow of cargo, or assists an enterprise with cash flow advantages by not having to pay duty at the time of importation. The payment of fees also provides an indication that the operator of a customs controlled area, recognises the responsibility bestowed upon them.

3. Customs Controlled Areas

3.1 Premises

3.1.1 Section 15 (a) Manufacture and storage of excisable products.

Excise licence fees are paid according to the type of excisable product manufactured and are coupled with a licence fee for premises for securing excisable product without the payment of duty under Section 15(b) of the Customs Act. It is usual for excise manufacturers to store their product after manufacture in a warehouse facility until it is duty paid or exported. Consequently excise manufacturers are liable to two annual fees, one as a licensed manufacturer and the other for their storage facility.

The fees are as follows:

Excise manufacturer licence VT 260,000
Alcohol manufacturer licence only

Alcohol Production	Licence Fee
Less than 100,000 Lt	VT 150,000
100,000 to 200,000Lt	VT 350,000
200,000 to 400,000Lt	VT 700,000

More than 400,000Lt	VT 1,000,000
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Warehouse Licence under Section 15(b) Customs Act

VT 260,000

These fees are to be paid annually and become due on the 1st January each year. Licenses issued for the first time during the year are subject to a fee pro-rated from the time of issue to the end of the year. Eg. A manufacturer obtains a licence on 18th September. The formula used to calculate the licence fee payable would be:

$\frac{74 \text{ days to end of the year}}{365 \text{ days in the year}} \times \text{VT } 260,000 = \text{VT } 52,712$

3.1.2 Section 15 (b) Premises (warehouses, duty free shops)

Premises licensed under this section are for the storage of imported or excisable goods pending their entry for home use or export. These would include premises previously called “customs bonded warehouses” and duty free shops. Warehouses are used to defer duty payments from the time of importation to the time of actual release into the market place. Vehicle importers store imported vehicles in licensed premises and pay the duty once they have been sold. Warehousing is a means of improving cash-flow by not having to pay large amounts of duty on importation, but duty is paid incrementally on sales.

The annual licence fee payable on premises licensed under Section 16(b) is VT 260,000 and becomes due on 1st January. Licences fees for premises licensed during the year are to calculated according to the example in 3.1.

3.1.3 Section 15 (c) Premises (freight forwarders, CFS shed, air cargo terminal)

These premises are commonly called depots and are licensed for the temporary holding of imported goods for the purposes of examination by customs. These premises include those operated by freight forwarders who carry airfreight on behalf of courier companies. The wharf shed used to store LCL cargo after de-vanning, and the airfreight terminal are also included in this category.

The annual licence fee under Section 16(c) is VT 100,000 annually and becomes due on the 1st January each year, with fees for part years calculated as per the example in 3.1

3.1.4 Section 15 (d) Premises (airport passenger hall)

These are premises licensed for the control of embarking and disembarking passengers and their processing for immigration and customs purposes. Commonly referred to as customs halls, these premises are located at international ports and airports, and are clearly physically defined. At airports they form part of the sterile area for airport security purposes, and airport security identification cards are required for all staff operating in the area. Although these premises are licensed by customs, and Section 23 of the Customs Act identifies the facilities to be provided for customs to operate within these areas, no licence fees are payable.

It is essential that a strong relationship exists between the operators of these premises and customs to ensure their efficient operation.

There are currently no defined areas for processing passengers embarking or disembarking from vessels.

3.1.5 Section 15(e) Premises (airports, wharves)

These premises or areas are those used for the discharge of air cargo and sea cargo. The areas encompassed include the tarmac areas of an airport and the wharf areas at any proclaimed port. By licensing these areas, it places the responsibility for the cargo under customs control on the airport or wharf operator. It also means that customs has a role in ensuring these areas are physically secure and that controls are placed on who has access to these areas. Customs officers have the power to detain and question any person within a customs controlled area in relation to their identity and purpose for being in the controlled area. Customs officers also have the power to search vehicles and persons within a customs controlled area. Consequently it is important that these areas are clearly defined so that these powers are only used within that defined area.

There are no licence fees payable for these areas, however it is important that the operators are fully aware of their obligations under customs legislation and the powers officers hold for functions within those areas. As a consequence the areas to be licensed must be clearly defined and based on the survey documents held by the operators. A whole of airport and whole of wharf approach is required in the licensing process so that customs is able to apply its powers over all areas of possible risk. The wharves to be licensed under Section 15(e) are:

- The wharf and container stand area in Port Vila; Efate
- The wharf at Luganville, Espiritu Santo
- The wharf at Sola, Vanualava;
- The wharf at Lenakel, Tanna

The airports to be licensed are:

- Bauerfield Port Vila International airport, Efate
- Pekoa airport, Espiritu Santo
- Whitegrass airport, Tanna

3.1.6 Section 15(f) premises

These are premises which may be used to house goods subject to customs control but do not fit within the preceding categories. Premises under this section may be licensed by the Director for some specific purpose, such as a project warehouse, for goods being “manufactured in bond”, or perhaps the declaration of a free trade zone. The licence fee for these areas is VT100,000.

3.2 Issue/Renewal of Licence Procedures

All applications for a licence for a customs controlled area under Section 15(a), 15(b), 15 (c), 15(d) and (f) must provide these details.

Name of Premises:

The postal address and physical location are to be included.

Construction and Physical Security

Not prescriptive, but must be adequate. Alarm systems, barring of windows, guard dogs, security firm.

Provide details of who will hold keys. How are duty free and duty paid goods physically separated.

Plan:

Exact area in which controlled activity or storage will occur should be defined by hatching.

Access points including doors, windows, rollers, vehicular access are to be indicated on the plan.

Details on plan should indicate where other activity will occur. eg packing, retail, storage, office space etc. Area for customs usage, including where examinations, testing and compliance checks are to occur.

Ownership/Lease verification

Evidence of ownership of the premises is to be provided. A Copy of title deed or copy of lease document is required. Where the owner or operator is a company, a copy of corporate registration is required.

Details of Goods to be Stored

The type and range of goods to be stored within the customs controlled area are to be identified.

Insurance

Details of insurance coverage for goods subject to customs control, within the premises are required.. Insurance coverage should include arrangements in the event of theft or burglary, while goods under customs control. Operators must provide copy of current insurance policy, to ensure coverage of customs/excise component.

Undertaking by Applicant

The covering letter for any application must contain an undertaking that goods stored in the warehouse will not be removed from the warehouse, altered or interfered with, displayed or demonstrated without the authority of customs.

Procedures and Recording Systems

Details of receipt, inventory control and delivery systems used by the operator must be provided with copies of all commercial documents including registers used in the receipt, storage, sales and subsequent delivery are to be provided with flowcharts of any automated systems.

Details of Key Personnel

Provide the name and areas of responsibility for all warehouse personnel, including contact point for customs audits or visits.

Security

For all customs controlled areas licensed under this category a secured security must be held by a bank or financial institution of an amount sufficient to cover the level of risk associated with the duty liability of the goods stored.

These details are only required on the initial application for a licence for a customs controlled area. Specific requirements for individual premises or types of premises are able to be included in the conditions of the licence on issuance. For example one of the conditions for premises licensed as duty free shops is that they are members of the Duty Free Traders Association, providing uniformity in procedures and access to audited accounts by customs.

The identification of conditions attached to the licence, permits the management of risk peculiar to those particular premises. Conditions also provide the means of identifying duty payment arrangements, the requirement of returns or any other criteria that needs to be set for those premises to operate as customs controlled areas.

3.3 Renewal of Licenses

Licenses for customs controlled areas are to be renewed at the beginning of each calendar year, with the payment of the annual licence fee. The renewal period also provides an opportunity to review the performance of the customs controlled area. The levels of compliance the operator achieved during the year will determine the level risk attributed to those particular premises for the subsequent year. Terms and conditions contained in the licence can be reviewed for them to be relaxed if the operator is compliant or become more stringent if the level of revenue risk is perceived to have increased.

As an example, the privilege of periodic payments may be withdrawn if it is considered that the level of risk has increased, or conversely accounting procedures can possibly be relaxed if it has been shown that the operator is fully compliant and the level of risk has diminished.

3.4 Administration

It is essential that proper files are maintained for the licensing and of activity undertaken in customs controlled areas. The files provide a chronological record of events and assist in providing an indication as to the risk to customs and the compliance record of the operator.

If it is considered that the operator is no longer a fit and proper person to hold a licence, the Director should be provided with a report recommending the cancellation or non-renewal of the licence.

Any operators prosecuted and found guilty of a customs offence should have their licence cancelled immediately upon conviction.

Responsibility for management of the customs controlled areas is spread across Border and CRU and Manager Northern. The Manager Border is responsible for the operations of premises licensed under Sections 15 (d) and (e), except those in Santo. The Manager Border is also responsible for those premises licensed under Section 15(c) that are physically located on the wharf, airport and town area.

The Manager CRU is responsible for premises licensed under Section 15 (a) and (b).

The Manager Northern is responsible for all categories of customs controlled areas in Santo.

All licenses will be approved for issue by the Deputy Director, Customs and signed by the Director.

3.5 Cancellation/Revocation of Licences

The circumstances under which the licence for a customs controlled area may be cancelled are contained in Section 18 of the Customs Act. This is considered a drastic step and is usually accompanied by prosecution action or a continuous pattern of poor performance in accountability. As all goods subject to customs control remaining in a customs controlled area must be duty paid on the cancellation or revocation of a licence, this will have significant financial impact on the operator. The decision to cancel or revoke a licence for a customs controlled area can only be made by the Director or Deputy Director, Customs.

4. Customs Brokers

4.1 Categories

Only those people licensed as customs brokers are permitted access to the ASYCUDA system. There are two categories of customs broker – those who lodge customs declarations on behalf of other people and charge a fee for this service, and those who only lodge declarations for their

own importations. The former group is known as Principal Brokers and the latter are Corporate Importers/Exporters.

4.1.2 Principal Brokers

These brokers act on behalf of importers and exporters by lodging customs declarations. They may also operate as freight forwarders and be licensed under Section 16 (c) for premises they control. Principal Brokers may also employ staff licensed as brokers and each licensed broker has an individual ASYCUDA identification. The ASYCUDA access and licence to operate as a principal broker will only be issued once:

- An annual fee of VT 150,000 has been paid;
- The broker has successfully passed an examination testing knowledge of tariff classification, customs valuation and legislative and procedural knowledge;
- Pay a one-off application fee of VT15,000
- There is an historical record of the principal brokerage lodging in excess of 200 import declarations in the previous calendar year.

4.1.3 Corporate Importers/Exporter

These entities are large importers who are permitted to engage internal staff as customs brokers to lodge declarations on the corporation's behalf. These brokers are only permitted to lodge declarations on behalf of their employer. To be licensed as a corporate importer/exporter a company must:

- Lodge in excess of 100 import declarations in a calendar year;
- Pay an annual license fee of VT100,000;
- Be registered as an ASYCUDA user; and
- Employ a licensed customs broker to lodge declarations on behalf of the company.

4.1.4 Licensed Customs Brokers

Licensed customs brokers are either employed by a principal broker or a corporate importer/exporter. To become a licensed customs broker a person must:

- Pay a one-off application fee of VT15,000
- Pass an examination testing knowledge of tariff classification, customs valuation customs legislation and procedures;
- Pay an annual licence fee of VT50,000;
- Be a registered user of the ASYCUDA system

4.2 Procedures

As with customs controlled areas, a “administration” file and an “operations” file must be kept on each customs broker, principal broker and corporate importer/exporter. The “administration” file should hold the base documents such as:

- Original licence application
- Details of payments and receipts
- Examination results if applicable
- Employment details
- Corporation documents
- Business licence details

The “operations” file should provide an ongoing record of the brokers performance including:

- All correspondence with DCIR
- Details of any administrative penalties
- Reports from selectivity officers on performance
- ASYCUDA fraud reports relevant to declarations lodged
- Any complaints made by clients

The “operations” file should be reviewed annually at the time of licence renewal to ensure that the broker continues to meet the criteria required to be a licensed broker, and that the broker’s performance has been of an acceptable standard. Those brokers whose performance has been unacceptable or they are considered no longer to be a fit and proper person to hold a broker’s licence, a report is to be lodged with the Director and cancellation of their licence considered.

Any customs broker prosecuted and found guilty of a customs offence, must have their licence cancelled immediately upon conviction.

The Manager CRU is responsible for the management of broker performance and of the licensing process. All brokers’ licences are to be approved by the Deputy Director, Customs and signed by the Director. The Manager IT is to issue ASYCUDA access to licensed brokers on the authority of the Manager CRU.

Examinations to qualify as a customs broker are to be held on a demand basis, but with a maximum of one examination to be held annually.

4.3 ASYCUDA Access

ASYCUDA access is required for all licensed customs brokers and those entities who lodge cargo manifests for aircraft and vessels in the system. The Customs Act requires that all

ASYCUDA users are registered. The registration of ASYCUDA users as either customs brokers or manifest providers is administered by The Manager IT.

ASYCUDA registration for customs brokers is covered by their licensing process, and the licence fees paid by brokers include registration as an ASYCUDA user. Those users who are not licensed customs brokers are to pay an annual fee of VT25,000 per entity.

4.4 Cancellation/Suspension of Licence

The circumstances under which a customs broker's licence may be cancelled or suspended are contained in Section 206 of the Customs Act and Regulation 62 of the Customs Regulations. This is a drastic step and requires careful consideration prior to its occurrence, as the livelihood of individuals and/or companies is at stake. Cancellation of a broker's licence should only be considered if the broker has been successfully prosecuted for customs offences, or their performance and the quality of their declarations is consistently of such poor quality that they are obviously not to the standard expected. Evidence of this may be available through the number of administrative penalties levied; the number of fraud reports generated by ASYCUDA; or the number of amending declarations required to be lodged.

The decision to cancel or suspend a customs broker's licence can only be made by the Director or Deputy Director, Customs.

APPLICATION FOR CUSTOMS CONTROL AREA (SECTION 15 OF CUSTOMS ACT CAP No. OF 2013)

Lodgment number:

1. Contact Details For Application		
Name:	Designation:	
Phone:	Mobile:	e-mail:
Postal address:		
2. Operator Name:		
3. Business License Number:		
4. Establishment (CCA) Name:		
5. Physical Site Address:		
6. After Hours Contact		
Name:	Phone:	
Current address:		
7. Company membership & persons who participate in the management or control of the CCA		

Name:	Position:
Name:	Position:
Name:	Position:
Name:	Position:
Name:	Position:
Name:	Position:
If space is insufficient, please attach extra pages	
8. Prior Experience	
Does the applicant or any of the persons nominated in a position of management or control have any prior experience in the operation of a CCA? (Please tick) Yes <input type="checkbox"/> No <input type="checkbox"/>	
If yes, please provide a brief outline:	
If space is insufficient, please attach extra pages	
9. Customs Control Area Categories	
Indicate the activities you propose to undertake should the CCA license be approved (Please tick):	
<input type="checkbox"/> Excise Manufacturer	
<input type="checkbox"/> Warehouse / Duty Free Shops	
<input type="checkbox"/> Temporary Storage of Goods (Depot) for Customs Examination	
<input type="checkbox"/> Wharfs and Airports	
<input type="checkbox"/> Passenger Processing Areas	
<input type="checkbox"/> Other	
Note: Examination of goods subject to Customs Control is conducted by Customs Officers at all CCAs.	
10. Use of premises for purposes other than Depot activities	
Do you propose to use the CCA for any purposes other than outlined above. (Please tick) Yes <input type="checkbox"/> No <input type="checkbox"/>	
If yes, please provide a brief outline:	
If space is insufficient, please attach extra pages	
11. Standard Operating Procedures (SOPs)	
Do you have documented SOPs in place that may be made available upon request by Customs? (Please tick)	
Yes <input type="checkbox"/> No <input type="checkbox"/>	
12. Attachments	
Tick when you have attached the required document	
<input type="checkbox"/> Constitutional Documents of the company	
<input type="checkbox"/> Management and Control	
<input type="checkbox"/> Corporate Membership Structure	
<input type="checkbox"/> Copy of Business License	
<input type="checkbox"/> Site Plans	
<input type="checkbox"/> Construction of Premises	
<input type="checkbox"/> Physical Security of Premises	
<input type="checkbox"/> Examination Facilities	
<input type="checkbox"/> Physical Separation of Premises	
<input type="checkbox"/> Ownership/Lease Verification	
<input type="checkbox"/> Procedures and Recording Systems	

I hereby declare that I have supplied all information required in this license application form and attachments as outlined above. I also declare that all the information provided above and the relevant attachments in relation to this license application are true and correct.

Name:

Title:

Signature of applicant:

Date: