

Annex to Summary of Responses - Public Consultation on Customs (Amendment) Bill 2011

The other feedback and comments received and MOF/SC's responses are as follows:

Extend liability to the person who furnishes incorrect information to another person for making customs declarations

(a) Comment: Under the proposed amendment to extend liability to a principal who furnishes incorrect information to his agent for making declarations under the Customs Act, it will be an offence for traders to provide incorrect information to their declaring agents for making declarations. If the trader had deliberately provided incorrect information to his agent, the provision should apply to only the trader not both the trader and the agent.

MOF/SC's response: The intention of the proposed amendment is to make it an offence for any person who has provided incorrect information to the declaring agent for making a declaration under the Customs Act. This will increase SC's effectiveness in dealing with traders who seeks to abuse the trading system to carry out illegal activities, e.g. smuggling of contrabands surreptitiously with legitimate consignment. The proposed amendment does not change the legal responsibility of the declaring agent, who must continue to exercise due diligence and ensure that accurate information is furnished in the declaration. Operationally, SC will conduct proper investigation when an incorrect declaration is detected and take appropriate actions to ensure only the culpable party is being penalised. Legitimate traders are assured that they will not be negatively affected by the proposed amendment.

(b) What is the impact for an overseas principal (without any presence in Singapore) who committed the offence?

MOF/SC's response: An overseas principal (without any presence in Singapore) has to appoint a local party to act as the importer to bring the goods into Singapore. The appointed local party assumes the legal responsibilities of an importer and has to ensure that accurate information is provided when making a declaration under the Customs Act.

Allow disclosure of information collected under the Customs Act to domestic public agencies for the investigation and prosecution of offences under domestic laws and to safeguard national security, public health and safety

(c) Comment: Suggest extending the disclosure of information to the trademark owners, where, as part of a private prosecution or the enforcement of the rights of a trademark holder, a reasonable ground can be established that an offence has been committed under Singapore's Trade Marks and Copyright Acts. Trader's information can be kept confidential by undertakings provided by the Trademark owner.

MOF/SC's response: Not accepted for implementation. The policy intention is for disclosure of information to domestic public agencies for specific purposes. As the information could be commercially sensitive, there is no intention to provide for disclosure to private parties.

(d) Comment: Suggest for the amendment to include the prosecution and investigation of offences under existing laws.

MOF/SC's response: The disclosure of information to domestic public agencies for investigation and prosecution of offences under specific existing laws is already covered under the proposed amendment. The specific existing laws for which a disclosure can be made will be prescribed in the subsidiary legislation of the Customs Act.

Introduce a summons system for minor customs offences

(e) Is the proposed new section 125A of the Customs Act clear that the offence can be compounded and that Customs is able to issue summons without having to go to Court?

MOF/SC's response: There is already a provision in the Customs Act that provides for the composition of prescribed offences. However, if an offender chooses not to accept the offer of composition, SC will then have to arrest and prosecute the offender in court. The new section 125A provides the legal basis for SC to serve upon an offender a prescribed notice requiring him to attend court on a specified date. If the offender pays the composition sum before the due date, his attendance in court will then not be necessary.[Similar provisions on the summons systems are found in the Road Traffic Act and the Environmental Public Health Act.]

(f) Comment: Will the introduction of a summons system for minor customs offences encourage Customs to issue summons easily? The summon systems should only be applicable to third or fourth time repeat offenders.

MOF/SC's response: The introduction of the summons system is not related to the penalty regime or SC' policy on the situations under which composition would be offered and the applicable composition sum for an offence committed. The objective of the summons system is to streamline the administrative procedure for composition (and prosecution if the offer of composition is not accepted by the offender) of minor offences. The introduction of this summons system will not have the effect of "encourage(ing) Customs to issue summons easily".

(g) Comment: Would these minor offences affect the TradeFIRST grading band of a company?

MOF/SC's response: There is no intention currently to apply the summons system to offences relating to commercial imports (freight consignment). Hence, this proposed amendment will not affect any TradeFIRST grading band of a company.

(h) Comment: Does the summons system extend to the Strategic Goods (Control) Act?

MOF/SC's response: The summons system does not extend to offences under the Strategic Goods (Control) Act.

Allow appointment of agents for the recovery of duties to reduce administrative costs and aid timely recovery

(i) Comment: Is the proposed amendment to give Customs the authority to appoint an agent to collect unpaid duties on its behalf, or to collect unpaid duties from appointed agents of the importer who owes the unpaid duties? If latter, it seems that too much administrative power is accorded to the Director-General (DG) and more clarification will be welcomed to define who can be an “agent” (e.g. customs brokers, local subsidiaries / business partners of companies owning the goods) to give greater clarity on the potential financial exposure and responsibilities/risks.

MOF/SC's response: The proposed amendment allows SC to appoint agents for recovering from the person who owes SC the unpaid duties (the term “agents” here does not refer to declaring agents whom submit customs declarations on behalf of the importers). This will expedite the recovery process as well as increase chances of successful recovery by enabling payment from monies held with third parties, such as banks, without having to go through legal proceedings to recover the unpaid duties. There are similar provisions in the Goods and Services Tax (GST) Act, Income Tax Act, and Property Tax Act.

(j) Comment: Is it clear who the indemnitor is for section 98C? Is the indemnity given by the DG/Customs?

MOF/SC's response: When this proposed amendment comes into effect, the agent appointed by the DG under the new section 98B for recovering unpaid duties from the person owing the duties will be indemnified under the law. Similar provisions on the indemnification of agent are also found in the GST Act, Income Tax Act, and Property Tax Act.

Allow retention of trade documents in image systems instead of retaining paper documents

(k) Comment: Would there be clear guidelines on the types of documents to archive and the requirements for retrieval?

MOF/SC's response: In terms of the requirements for image retention/retrieval, SC is developing a guide which will provide the details of the types of documents to archive and the requirements for retrieval, and this will be made publicly available on the Singapore Customs website before this amendment is effected.

Miscellaneous Amendments to the Act

Clarify that it is not illegal to be in possession of dutiable goods outside customs control, when so permitted by the Director-General (DG) of Customs

(l) Comment: It should be made clearer under what circumstances the DG will accord such treatment, so that the trading community would not mistakenly perceive there is preferential treatment to certain companies / individuals dealing with dutiable goods over others.

MOF/SC's response: One typical scenario is when SC allows dutiable goods in a licensed warehouse to be removed before the payment of customs duty (i.e. under the Consolidated Payment Facility). Trade facilitation schemes devised by SC are open to all traders who meet the eligibility criteria which are open and transparent. This proposed amendment is purely a technical amendment for greater legal clarity, and there is no change in policy. Traders can be assured that there is no preferential treatment given to any company or individual over the others.

Provide enabling provisions to make regulations to facilitate trade

(m) Comment: What is the intention of the amendment relating to the enabling provision in the Customs Act for the Minister to make regulation to the WCO SAFE Framework of Standards?

MOF/SC's response: SC is currently engaged in discussion with several Customs administrations on the mutual recognition (MR) of authorised economic operators (AEO). The purpose of MR is to facilitate and secure Singapore's trade flows with its trading partners by mutually recognising companies which have been accorded AEO status by their respective Customs administrations. The intention of this proposed amendment is to be prepared in case other countries require that Singapore's AEO Programme [i.e. the Secure Trade Partnership (STP)] be legislated before they would enter into MR agreements of AEO with Singapore. The STP programme will remain as a voluntary programme.