In Re:

SOUTH AFRICAN REVENUE SERVICE **Consultant**

OPINION

Adv GTS Eiselen
Maisels Chambers
Sandton
1 November 2013

A. INTRODUCTION

1 The South African Revenue Service ("SARS") is an arm of government under the auspices of the Minister of Finance. SARS is responsible under the Customs and Excise Act 91 of 1964 ("the Act") for the control of all goods that move over the borders of South Africa and for the levying of customs duties and Value-Added Tax on imported goods. In terms of the Act SARS is entitled to prescribe the documents necessary for the movement and clearance of goods under the Act.

2 There are currently a number of inland terminals to which imported goods may be removed to for final clearance under a container manifest. The container manifest does not contain all of the information necessary for SARS to conduct a proper risk analysis on the goods in the container and therefore SARS wishes to change this policy by requiring importers to lodge a national transit declaration in addition to the manifest as set out in the Draft Customs Control Bill.

3 This change in policy was a contentious issue during the NEDLAC process. The representatives of business in NEDLAC strongly opposed this change in policy and were strongly supported by the Johannesburg Chamber of Commerce. It was accordingly noted as an area of disagreement in the NEDLAC report.

4 Although business raised several concerns on the possible impact the change could have, it appears that their main concern at that time related to the impact the policy change will have on the use of INCOTERMS and established business patterns. Business claimed that this change in policy and procedure would have an adverse effect on the use of current INCOTERMS (mainly CIF) as it would necessitate the use of DDP to which foreign traders would not be amenable. This in turn would have an adverse

impact on import trade and import pricing.

5 In the latest submissions made on this issue, the objection has shifted from this (untenable) position to claims that the change in policy and the requirement that goods be cleared at the first port of entry instead of at the inland terminal, for instance at Durban, rather than at City Deep as at present, will lead to a refusal on the part of carriers to engage in contracts of carriage past Durban and that all goods will have to be reconsigned in Durban leading to a congestion in that port, which is already congested, and to the downgrading of the facility at City Deep. It is further claimed that this will lead to a loss of business at City Deep and therefore also jobs in that area.

6 SARS now requires an opinion on the validity of these claims which will be set out in more detail below.

7 I have been briefed with the following documents:

(a) A written brief by SARS;

(b) Some media reports

(c) A research document commissioned by business and conducted by the University of Cape Town. The research was outsourced to Global Maritime Legal Solutions (Pty) Ltd (“GMLS”).

(d) The PowerPoint submission to the Parliamentary Standing Committee on Finance by Mr Pat Corbin.

B. BACKGROUND TO THE OPINION

SARS Change in Policy and Procedure

8 The current SARS policy in the Act makes provision for containers manifested for an inland container terminal to be removed in bond to such terminal without any form of customs clearance, the container manifest serving as authority for such removal. The manifest is a document issued by the carrier and contains no declarations for which anyone may be held accountable under South African customs law.

9 Section 18 of the Act provides that goods may be moved in bond to a place in the Republic to which it is destined. The goods are cleared to be removed in bond and security to the satisfaction of the Commissioner must be provided.

10 An exception to this rule is currently allowed for container operators who may remove a container in bond to the inland container depot or container terminal to which it was consigned, and the manifest of the goods packed in such container is deemed to be due entry for removal in bond of that container. Security is not required of a container operator removing a container to the container depot or terminal to which it was consigned.

11 The container operator is liable for duty whilst the goods are under its control. After the arrival of the goods at City Deep for example the importer passes a customs declaration and pays the duties.

12 Clearance of the goods is therefore a two step process at present:

(a) Lodging of the manifest by the carrier at the port of entry at the time of first entry;

(b) Lodging of a customs declaration at the inland terminal at the time of final clearance of the goods and the payment of customs duties.

13 The revised policy contained in the Customs Control Bill (CCB) will make it an obligation for importers to lodge a national transit declaration in terms of the new provisions at the first port of entry for goods consigned to inland terminals (e.g. City Deep). These declarations will form the basis for pre-clearance by importers 72 hours before a ship arrives at any port. The declaration is a formal customs declaration made by or on behalf of the importer and for which the importer may be held accountable if the information should prove false or incorrect.

14 Clearance of the goods will remain a two step process under the change of policy and procedures, namely:

(a) Lodging of the transport manifest and the national transit declaration at the time of first entry of the goods;

(b) Payment of customs duties at the inland terminal at the time of the final clearance of the goods.

15 The CCB (Chapter 9) will make it an obligation for an importer to pass a national transit declaration at the first port of entry moving the goods from the port of entry to for e.g. City Deep. Security to cover the duties and taxes based on risk must be lodged as well. At City Deep the importer will clear the goods for another permissible customs procedure or for home use. Alternatively the goods can immediately be cleared for another permissible customs procedure or for home use in Durban.

16 The change in policy and procedure therefore does not fundamentally change the final customs clearance of the goods which will still take place at the inland terminal in most cases, but requires additional information to be lodged by the importer at the time of first entry of the goods at the relevant seaport in a document and with a declaration for which the importer may be

held accountable. All of the information required in terms of the national transit declaration is already available to the importer well before the arrival of the goods at the first port of entry. Pre-clearance of the goods even before the ship arrives at the port should therefore pose no problem to importers. All of this information is already readily available at this stage and usually even much earlier. Requiring such information at an earlier stage than what is currently done is therefore not unnecessarily burdensome on importers. This is also not the main objection.

17 Requiring the lodging of security is an additional requirement not currently in practice, even though the Act currently already makes provision for this procedure. This also does not seem to be the main objection to the proposed change in policy and procedure.

18 The reasons for the change in policy and procedure are the following:

(a) The risk indicators to ascertain valuation and tariff risk are currently not declared on a manifest. No value is declared on the manifest and only a general description of the goods is provided. The national transit declaration envisaged in the Control Bill will require a value, the duties and taxes to be paid as well as the Harmonised Commodity and Coding System (HS Code) for the goods which would indicate whether the goods are prohibited or restricted. The inclusion of the HS code on the national transit declaration would thus facilitate electronic data processing.

(b) Although the manifest provides information to detect certain security related risks, the information contained in a national transit declaration will provide much more detail and relevant information than a manifest for the detection of high risk goods. Shipments identified as being high risk in terms of national security, national public safety, contraband and

shipments of unknown risk will be examined at the first port of entry rather than be allowed to be moved to an inland terminal and in the process be compromised or allow the opportunity for the goods to be diverted into consumption.

(c) Information on a manifest used to move goods to an inland terminal is submitted by the carrier who is not in possession of the mandatory information. The information on a national transit declaration will be supplied by the importer or its customs broker and is deemed to be a more reliable and accurate source of information than manifest information provided by the carrier. It contains more detailed and relevant information provided by the importer. The importer can therefore be held accountable for such information.

(d) Furthermore, customs will be able to match information on the goods from two sources i.e. the manifest and the declaration. Discrepancies will be flagged as a risk.

(e) The more detailed and relevant information provided will make it possible for customs officials to make a more informed and accurate assessment of which shipments should be stopped and inspected. It is my brief that customs has no intention to stop more shipments than at present. However, if the Bills are passed, they will be in a position to more accurately determine which shipments should be stopped.

(f) Because goods will be pre-cleared by customs before the ship arrives carriers will know exactly which containers will be stopped and which containers will be allowed to move to the inland terminals. The change in policy will therefore not occasion any greater congestion at the ports of first entry than is currently the case. On the contrary, carriers will have a more accurate picture and more accurate information about

how consignments will be dealt with when they land in Durban. The new procedures will therefore enhance and support the seamless movement of goods from the sea-ports to the inland terminals.

Business' Opposition with reference to INCOTERMS

19 Although business raised several concerns on the possible impact the change could have, it appears that their main concern until fairly recently relates to the impact the policy change will have on the use of INCOTERMS.

20 The issue about the downgrading of inland terminals from so-called 'inland ports' to mere terminals and the congestion that will cause at the sea-ports will be dealt with at a later stage in this opinion.

21 It is claimed that insisting on customs clearance at the port of entry will force sellers to use the delivered duty paid (DDP) INCOTERM for containerised goods sold on the basis of delivery to an inland terminal. Use of DDP means that the seller is responsible for delivery. This means that the seller would have to make use of a forwarding agent in SA to take control of the delivery and charges involved since the seller cannot rely on the importer to manage the seller's obligations. This arrangement will not be financially attractive to the seller.

22 It is also claimed that because of the disadvantages of using the DDP term, contracts will not be entered into on the basis of delivery past the customs port. The seller's and buyer's contractual terms would not be altered by the change in policy except that the port of delivery would move from inland e.g. City Deep (or any other inland terminal, i.e. Vaalcon or Pretcon, etc.) to Durban.

23 It is also claimed that there will not be the option of a multi-modal bill of

lading, as all boxes or the unpacked contents will remain at the coast until cleared and released by the line before being re-consigned.

The GMLS Impact Study

24 Business South Africa commissioned an impact study from the University of Cape Town who in turn outsourced the study to Global Maritime Solutions ("GMLS"). The GMLS report deals with the INCOTERMS issue in Section 7 at page 70-81. The following points are made in that document (my comments on the points made follows each point in italics):

(a) The INCOTERMS generally contained in a "Contract of Sale" are rules to explain a set of 3 letter trade terms reflecting business-to-business practice. The INCOTERMS Rules describe mainly the tasks, costs and risks involved in the delivery of goods from Sellers to Buyers. One of their most critical specifications is for the parties to specify the place or port of delivery at precisely as possible. (page 70)
This conclusion is accurate.

(b) "Delivery" is a concept that has multiple meanings in trade law and practice however, in INCOTERMS Rules it is used to indicate where the risk of loss or damage to the goods, passes from the Seller to the Buyer. (page 70)
This statement is also correct.

(c) As an immediate interesting observation under the CIF term, the risk passes to the buyer (South African importer) immediately when the goods have been loaded on board the vessel, however, the Seller pays the costs for delivery to the final place of destination in accordance with the "Contract of Carriage". It is clear therefore that interference in

INCOTERMS will have detrimental consequences to all concerned within the Global Supply Chain. (page 71)

This conclusion is incorrect and totally misleading. In terms of a CIF contract, which is the most widely used INCOTERM, the obligations of the Seller terminates when the goods are loaded onto the ship at the initial port of shipment. It is true that the Seller pays for the cost of carriage when engaging the carrier, but once the initial payment has been made, the Seller has no further involvement. Any additional costs that may incur, such as demurrage and stoppage costs, are costs that the Buyer will bear. The Buyer will have to pay the carrier for these additional costs as the carrier has a lien over the goods and will not release the goods until all outstanding costs have been paid. Any change of procedures in the country of import is therefore of no concern whatsoever to the Seller which has already fully performed its obligations.

(d) At first glance it would seem that requiring a Customs Declaration in respect of containerised cargo removed in bond by the Importer instead of accepting the manifest from the Shipping Line, as due entry should not impact on the international “Contract of Sale” between the foreign supplier and the local importer, or other Traders requiring the goods to move in transit on a multimodal Bill of Lading, such as the South African, SACU importer, SADC importers and even international importers. Closer scrutiny, however, shows that this important shift in trade practice (brought about by amending the current Customs and Excise Act through the Customs Control Bill) impacts on existing and long-standing trade patterns for parties involved in the multimodal options for containerised cargo. (page 71)

There is no analysis in the report showing how this closer scrutiny

leads to this conclusion which is shown to be incorrect below. This remains as a general and vague proposition without any proper foundation. Interviews with some of the biggest international carriers operating in South Africa such as MAERSK have also proved this conclusion to be false and misleading.

(e) These patterns are incorporated into the international "Contract of Sale" through specific clauses in model contracts and INCOTERMS. The amendment impacts on certain terms of delivery as they crystallise in INCOTERMS and might even mean that certain terms will not be available to the above named Traders or should be avoided due to the amendment. The "point of delivery" in the INCOTERMS is subject to a potential forced change. (page 71)

As already indicated above this statement is without any foundation in law. There is no substantiation for the conclusion that the point of delivery may be subject to a potential forced change. Parties are free to use INCOTERMS as they wish, even if they are not totally appropriate. The use of a specific INCOTERM is determined by the contractual needs of the parties. However, since the Seller has no interest in the import procedures in the country of destination, there is no reason why Seller's should change from CIF to any other INCOTERM. It is true that CIF in terms of INCOTERMS is indicated as a term that should be used only for sea or waterway transport and not for multimodal transport, the consequences of the two terms are very similar. The CIF INCOTERM will in any event be interpreted appropriately within the particular circumstances even if an inland terminal is named as the destination.

(f) In respect of containerised cargo, especially in South Africa where the heart of the industrial area is situated In-land and far from the main

commercial Port these trade patterns are important as they determine inter alia which party is responsible for Customs Clearance of the goods. Customs Clearance in turn can impact on the questions of delivery, passing of the risk and who is responsible for the costs. (page 72)

The underlined conclusion is simply incorrect. INCOTERMS determines inter alia *which party is responsible for customs clearance. Customs clearance has no bearing on the questions of delivery, passing of risk of who is responsible for the costs. Those issues are determined firstly by the sales contract and secondly by the INCOTERM used. Where the CIF or CIP term is used, there can be no impact on those elements by the customs clearance.*

(g) Moving the time and place where the obligation to present Customs Clearance must be met forward, i.e. the coastal Port, also heightens the risk of delay associated with the Customs intervention. (page 72)

This statement is misleading as the risk of delay is a risk that is borne by the importer and not the exporter. Generally the risk is no bigger than before as customs will in future be able to better target the appropriate consignments. This does not necessarily mean that there will be an increased number of stoppages.

(h) One of the conventions in which UNCITRAL played a substantial role was the United Nations Convention on Contracts for the International Sale of Goods ("the CISG). According to the CISG a delay in delivery for which the seller is responsible (i.e. which is not justified by force majeure) entitles the buyer to damages and, provided the delay implies a fundamental breach under article 25 of the CISG or where a seller has not respected a reasonable additional period of time granted by the

buyer to contract termination. (page 73)

Although this statement is true, it is totally misleading within the context where it is used. The Seller under CIF is responsible for any delays until such times as the goods have been placed on the ship for shipment. Any subsequent delays will fall within the risk of the Buyer and the Seller is not liable. There can therefore be no question of any breach on the part of the Buyer. The conclusion implied here that a customs delay in Durban will entitle a South African buyer to cancel the contract or claim damages for breach of contract is simply not true and is therefore misleading.

(i) The INCOTERMS rules determine which party is obligated to perform the export or import clearance obligations but does not resolve the question of liability when something goes wrong in fulfilling that obligation. “That is determined by the underlying “Contract of Sale” : Professor Ramberg : Page 32” (page 74)

This statement is generally true. However, under a CIF contract the obligations of the seller terminates when the goods are loaded on the ship. Any subsequent delay or costs are at the risk of the importer as indicated above.

(j) Normally it is appropriate that a party domiciled in the country of export or import undertakes to clear the goods for import or export as the case may be. The responsible party will attempt to do this as close as possible to its place of business and each party will attempt to reduce the risks and exposures associated to the period of transportation and clearance. (page 74)

This is true and also explains why most international trade is conducted under the CIF term as that term makes customs clearance the

obligation of the importer and not the exporter.

(k) To understand why the amendment impacts on the underlying international sale agreement relating to containerised trade, it is important to remember that INCOTERMS rules deal with the obligations such as the obligation to give notice, provide documents, procure insurance and pack the goods properly and clear them for export and import. These aspects normally determine if delivery, as intended occurred; the moment when the risk passed and who is responsible for Clearance and costs. This is again highlighted by Professor Jan Ramberg in the Guide to INCOTERMS® Rules 2010 on page 18. (page 72)

This statement is generally true, but misleading in the particular context where it is implied that the changed procedures in South Africa will have an impact on these aspects. Under the CIF term it will have no impact. Risk passes from the seller to the buyer when the goods are loaded unto the ship for export at the named port.

(l) In respect of containerised cargo, especially in South Africa where the heart of the industrial area is situated in-land and far from the main commercial port these trade patterns are important as they determine inter alia which party is responsible for Customs Clearance of the goods. Customs Clearance in turn can impact on the questions of delivery, passing of the risk and who is responsible for the costs. (page 72)

See my previous comment. This conclusion is simply wrong and unfounded in law.

(m) It falls outside the scope of this study to address the clauses of the CSIG or the ICC model contract and the specific INCOTERMS in more

detail. It is however evident that the amendment will have far-reaching impacts on existing trade patterns. (page 75)

It is significant that the impact report fails to make a detailed analysis of the most important aspects and INCOTERMS to show how the proposed Bills will in fact impact on the existing trade patterns. The report finds it sufficient to base its conclusions on generalities and misleading statements.

Business' opposition based on the change of the 'Inland Port' status

25 The reference to so-called inland port status in the various reports and submissions must be carefully scrutinized. It is alleged that the change in policy and procedures requiring pre-clearance at coastal ports will lead to congestion of the coastal ports and a downgrading of facilities such as City Deep from 'Inland Ports' to mere terminals.

26 It is further alleged that international carriers will refuse to engage in contracts for the carriage of goods past the port where customs clearance has to take place and that all goods will accordingly have to be reconsigned.

27 This analysis is based on misconceptions and is not borne out by the consultations held with carriers.

28 The term 'inland port' to which so much importance is attached in the current submissions is not an official customs term but a term used in trade to indicate facilities where customs clearance may be made other than at the first port of entrance. It is not any term or official status accorded to such facilities in terms of the current customs legislation. In terms of the current legislation these facilities are designated as terminals and in terms of the current practice Customs allows goods to be cleared on a ship's manifest to

such facilities for final clearance. In terms of the current legislation customs officials are entitled to stop any shipment at any coastal port for inspection before allowed to proceed to the inland terminals.

29 The proposed changes contained in the current Bills to the current practice is simply that it will require a different document from carriers and importers before goods will be cleared for carriage to the inland terminals. Essentially the procedure will still involve a two-step procedure in terms of which a pre-clearance declaration is lodged before the ship even arrives at the port. Customs will at that point decide whether a container will be stopped or allowed to proceed to the inland terminal. Goods will be finally cleared at the inland terminal when the appropriate duties are paid or the goods reconsigned for a different lawful purpose such as transhipment into a neighbouring country.

C. INTERNATIONAL SALES CONTRACTS AND INCOTERMS

30 The INCOTERMS are a set of trade terms that have been developed by the International Chamber of Commerce ("ICC") first in 1936 but as modified with the latest set being INCOTERMS 2010. These terms are aimed at dealing with three main issues, namely (a) cost of transport, (b) cost of insurance, and (c) transfer of risk. Additionally the INCOTERMS deal with a number of subsidiary issues which are nonetheless of importance, inter alia, for instance with the duty for customs clearance and payment of customs duties.

31 At present there are 11 different INCOTERMS. As indicated in the GMLS report the ICC has now split the INCOTERMS into two main sections

(a) Those suitable for waterways transport; and

(b) Those suitable for any mode of transport, including multimodal.

32 Despite this distinction being drawn, international practice has shown that traders often use inappropriate INCOTERMS which must then be interpreted according to the other provisions of the agreement. Traders will for instance use CIF, because they have done so since time immemorial, instead of CIP which is more appropriate for multimodal transport.

33 The INCOTERMS consist of a three letter abbreviation such as EXW, CIF and DDP which may be used by traders simply referring to the three letter code in their contract, without stating all of the underlying rules of interpretation in their contract. It is therefore sufficient to state that the sale shall be “CIF INCOTERMS 2010”, which is the most widely used INCOTERM in international trade, for the following consequences to take place:

(a) The seller is responsible for the negotiation and payment of carriage to the named port;

(b) The seller is responsible for the negotiation and payment of insurance to the named port;

(c) The seller must deliver the goods by placing them on board the vessel for carriage;

(d) The seller bears all the risk in the goods until they have been delivered, ie put on board the vessel. The risk is then transferred to the buyer.

(e) The buyer bears the cost of all duties, taxes and costs of carrying out customs formalities and the cost for their transport through any country unless included in the contract of carriage. This would also include the responsibility and cost of any security that must be provided for the movement of the goods.

34 The hierarchy of provisions determining the rights and obligations of the parties are important in international sales and the role of INCOTERMS in this hierarchy should be clearly understood. The INCOTERMS do not constitute any provisions of international law or custom. They have no inherent legal authority other than that bestowed upon them by the parties. They apply because the parties agree to make them applicable. Accordingly the parties are entitled to change or amend any rule or sub-rule under an INCOTERM by agreement. The INCOTERM used is simply a short-hand way of incorporating the various rules under that INCOTERM. The hierarchy of rules therefore is as follows:

(a) The Agreement between the parties;

(b) The INCOTERM used;

(c) The residual rules of the applicable domestic law such as for instance the Vienna Convention for the International Sale of Goods, 1980 (CISG). This convention does not apply to contracts where South African law is the applicable law, but will apply in the case where the applicable law is one of the 79 legal systems (accounting for 80% of international trade and includes most of South Africa's most important trading partners, except the United Kingdom and India) that have acceded to that convention.

35 The parties are therefore free to modify the provisions to any of the INCOTERMS to suit their particular needs. In international trade this also often takes place.

36 Any related costs or risks that may be introduced by the changed policy and procedures can be offset by the parties in specifically providing therefore in their contract. It does not necessitate the use of a different INCOTERM.

D. APPLICATION TO PROPOSED AMENDMENTS

37 The opposition by business to the proposed changes in the Bill is based on a number of misconceptions or intentional obfuscations highlighted by underlining in the parts of GMLS report set out above and my comments there.

38 It is instructive that GMSL states that it was outside the scope of their brief to consider specific INCOTERMS or standard international terms. It is however hard to see how one can come to specific conclusions on the effects of the change in policy and procedure to international trade without considering the specific INCOTERMS that will come into play. In the Nedlac discussions, subsequent media releases and submissions, however, it has been suggested that international traders will be forced to use DDP (delivery duty paid) instead of the more usual and acceptable CIF.

39 It is suggested that the proposed changes in policy and procedure will force international traders to switch from the current CIF to the more onerous DDP because international traders will be reluctant to agree to payment of carriage past the point of customs clearance and that international traders will not be amenable to that change.

40 There is no basis for this fear or allegation. Under the CIF INCOTERM the seller complies with the duty to deliver the goods when the goods are placed on board the ship of carriage. Risk also passes at that time. Under CIF there is no duty on the seller to deliver the goods at any place other than placing them on board the ship of carriage to the named port, whether that named port is a seaport or inland port. Any risks associated with the final destination being beyond the point of customs clearance is borne by the

buyer and not the seller.

41 The seller complies with its duties once it has arranged and paid for the carriage of the goods to the named port or destination. Any delay in the goods or further transport or handling costs not caused by the selle,r are for the account of the buyer.

42 The proposed changes in the Act cannot and does not force any change in the use of the CIF term. The rights and obligations of the parties remain the same. It is still the duty of the buyer to clear the goods for importation and pay any customs duties and associated costs. This has nothing to do with the seller any longer.

43 The DDP term is the most onerous term for the seller and is not widely used in international trade for the reasons stated in the GMSL report, namely that:

> *Generally the research revealed that international traders would be extremely reluctant to enter into Contracts of Sale in which the delivery obligation extended beyond the Customs point. Therefore, it is clear that the point of delivery of containerised cargo would be the coastal Port as the final place of delivery. "In respect of Customs Clearance the INCOTERMS rules are based on the main principle that the party best positioned to undertake the function to clear the goods and to pay duties and other costs in connection with the export and import should do so": Professor Jan Ramberg : Page 33 A*

44 It is for this very reason that sellers are reluctant to agree to DDP and therefore rather insist on CIF or related terms.

45 It is suggested in the GMLS report that the fear of potential delays in delivery and the consequent breach of contract and liability for damages may force international traders to use a different INCOTERM. However, under CIF, the delivery duty of the seller is fulfilled at the original port where the goods are loaded, not at the port of delivery, under the INCOTERM as well the CISG. Under the CISG the seller is not responsible for delays beyond its control under section 79. A delay caused by customs inspections

and procedures can hardly be said to be within the powers of the seller to control should the seller be liable for delays. That could only be the case under DDP and not under CIF.

46 The lack of particularity in the GMLS report is disturbing. The report relies on a number of generalities without giving concrete examples of how international sellers would be forced to use different INCOTERMS or change their behaviour. One would have expected an analysis of at least the most important and widely used terms that may become problematic. There is none.

47 There is certainly no reason to change the INCOTERM CIF which is generally used in international trade, even if the final destination lies beyond the point of customs clearance.

48 It is also incorrect to argue, as the GMLS report does, that the point of customs clearance is at the first point of entry. The customs clearance at present consists of a two-step approach where final clearance takes place at the inland terminal when the duties are paid. There is an increased risk that goods may be stopped due to improved controls, but in in principle the situation is no different from the present as far as final customs clearance is concerned.

49 The change in policy and procedure does not change this essential two step process, rather it simply requires more information at an earlier stage. Final clearance will still take place at the inland terminal.

50 The suggest change in policy does not in essence change the powers that SARS has at present to stop and inspect goods at the first point of entry. It can do so under present regulations. However, with access to more relevant information, it is likely that different imports will be targeted for an earlier

inspection based on internationally accepted procedures for establishing high risk goods. This is the improved control that SARS wishes to implement.

E. CONCLUSIONS

51 In my opinion there is no real evidence or substantive argument indicating that the proposed change in policy and procedure will force any international seller to change its policy on which INCOTERM to apply.

52 More particularly, there is no reason to believe that the proposed change will have any impact on the use of the CIF term as the proposed changes have no impact on the liabilities of the seller.

53 The lack of particularity in the GMLS report suggests that it was not possible to provide concrete examples of instances where the proposed changes will have the impact feared or complained of.

Prof GTS Eiselen