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**AN ANALYSIS OF THE CONSIGNMENT BASED CONFORMITY ASSESSMENT
(CBCA) PROGRAM IN ZIMBABWE**



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INTRODUCTION

The International Federation of Inspection Agencies (IFIA) say that many developed countries have strong National Standards and Technical Regulations that are supported internally with a network of enforcement bodies and testing facilities and the threat to the globalisation of trade from such countries' measures to protect their consumers, environment, etc., led to the propagation of the World Trade Organisation (WTO) 'Technical Barriers to Trade' (TBT) Agreement¹. However, in many countries, especially those that are still developing, there is still a shortfall in consumer protection due to a lack of infrastructure and these countries seek external assistance to ensure the safety of their populations. Such assistance is usually contracted out to qualified private companies by the country's Standards Body or Authority in the form of Consignment Based Conformity Assessment (CBCA) as a means of checking on imported goods. The countries aim to modernize their conformity assessment procedures and adapt to trade facilitation requirements in line with the TBT Agreement. In Zimbabwe it is the Ministry of Industry and Commerce which regulates the Consignment Based Conformity Assessment (CBCA) program.

The CBCA is defined as “... a process ensuring that a consignment of products to be shipped fulfils the relevant national or international standards and complies with technical regulations. Such process includes a review of conformity supporting documents, a physical verification of the consignment (where appropriate) and a correlation to shipping documents²”. The program is also defined as “...rules, procedures and management for carrying out Consignment-based Conformity Assessment (CBCA) in a determined country and to which the same specified requirements apply. CBCA programmes are set by competent Government authorities and Standardization bodies and require consignments of imported goods to be covered by documented evidence of compliance to technical regulations and/or national or international standards. The CBCA program is in many cases described as having objectives³ including to:

- Protect consumers from dangerous, substandard or counterfeit products,
- Protect the environment,
- Protect domestic industry from unfair competition from non-compliant goods, and

¹ Code of Practice, Consignment Based Conformity Assessment (CBCA) Services, International Federation of Inspection Agencies (IFIA), November 2012, accessed on https://www.tic-council.org/application/files/4215/5775/3490/CBCA_Code_of_Practice_November_2012.pdf

² Code of Practice, Consignment Based Conformity Assessment (CBCA) Services, International Federation of Inspection Agencies (IFIA), November 2012, accessed on https://www.tic-council.org/application/files/4215/5775/3490/CBCA_Code_of_Practice_November_2012.pdf

³ Abrie du Plessis, Consignment Based Conformity Assessment and Pre-Export Verification of Conformity to Standards programmes in SADC countries, Tralac, 28 October 2015, accessed on <https://www.tralac.org/discussions/article/8373-consignment-based-conformity-assessment-and-pre-export-verification-of-conformity-to-standards-programmes-in-sadc-countries.html>

- Facilitate trade through the avoidance of consignment testing upon arrival or multiple testing requirements.

The CBCA programmes could actually meet all these objectives, but Abrie du Plessis says that they pose challenges to governments in terms of design and execution as they try to avoid them being in breach of the provisions of the General Agreement on Trade and Tariffs (GATT), other applicable WTO agreements and certain aspects of regional trade arrangements.

With that in mind, this paper seeks to analyse the CBCA program in Zimbabwe where it is effected through Control of Goods (Open General Import License)(Standards Assessment) Notice, Statutory Instruments (SIs) 132 of 2015 and 124 of 2020. The paper also looks at benefits, the challenges being faced by importers and proposes recommendations to improve the program.

CBCA PROGRAM IN ZIMBABWE

Zimbabwe first legislated the Consignment Based Conformity Assessment Program (CBCA) in November 2015, which was later implemented in March 2016. Under this program, the importation of certain products into Zimbabwe requires a pre shipment inspection (PSI) to be conducted on the products by a competent assessment agent in the country of export prior to their shipment to Zimbabwe.

The secondary legislation on which the Zimbabwe CBCA program is anchored, is Statutory Instrument (SI) No. 132 of 2015, otherwise known as the Control of Goods (Open General Import License) (Standards Assessment) Notice, 2015. On 05 June 2020, SI 132 of 2015 was subjected to a significant amendment through SI 124 of 2020.

SI 124 AMENDMENTS TO SI 132 OF 2015

The changes brought about by SI 124 of 2020 to the original SI (132 of 2015) are described in the following paragraphs.

Section 2

In this section, the definition of “assessment agent” has been modified. Whereas SI132 of 2015 referred to Bureau Veritas as the only assessment agent, SI124 of 2020 describes “assessment agent” as “a company appointed by the Minister of Industry and Commerce to offer specialized verification of conformity services on behalf of the government of Zimbabwe”. Since no specific name(s) is/are mentioned, it is not clear if one or more companies will be appointed as assessment agents.

Section 2(ii) brings in a new definition – that of “destination assessment” which is described as meaning, “conformity assessment done within Zimbabwe at the port of

entry or at any other premises permissible by the Minister". Under SI124 of 2020, conformity assessment can now also be done post importation.

Section 4

Section 4(2) requires qualifying goods arriving in Zimbabwe without a Certificate of Conformity to go through compulsory destination assessment. The SI is, however, silent on who carries out this assessment. In addition to the compulsory destination assessment, section 4(3) imposes a 15% of CIF penalty for qualifying goods arriving in the country without a Certificate of Conformance.

Section 5

SI124 of 2020 has a new section, 5A appearing after Section 5.

In Section 5A(2), goods arriving at the port of entry without the required certificate of conformity may be moved to a bonded warehouse or any other suitable location to allow for the destination assessment to take place. If such goods are to be moved to a bonded warehouse, the bonded warehouse regulations must first be amended to accommodate such a requirement. Currently, the bonded warehouse regulations do not accommodate the acceptance of goods pending compliance with one or more controls into a bonded warehouse.

Section 5A(6) provides for the charging of inspection fees based on the selected destination service provider's tariff. In the case of pre-shipment inspections, the service fees to be charged are stipulated in the Second Schedule of SI132 of 2015.

Sections 5A(7) & (8) empower the destination assessment agents to destroy sub-standard goods at importer's cost.

Section 7

The old Section 7 is replaced by a new one which stipulates that goods issued with a Non-Conformity Report after a post-shipment assessment shall either be re-exported to the country of origin or destroyed at importer's cost.

Section 8

In SI124 of 2020, there is a new section, 8(2) (this is despite SI132 of 2015 not having Section 8(1)), exempting UN agencies & Diplomatic Missions from CBCA requirements.

First Schedule

SI124 of 2020 repealed the whole first schedule of SI132 of 2015 and replaced it with a new one.

The list of goods requiring CBCA inspection has been immensely expanded as it is now pegged at the HS 4 digit level. In SI132 of 2015, the list was at the eight digit subheading level and this meant that not all goods under a given heading would necessarily require CBCA inspection.

Typical examples are:-

- HS 40.11 - whereas SI 132 of 2015 covered light motor vehicle tyres only, SI 124 of 2020 now covers all new tyres, including aircraft and motor cycle tyres.
- HS 87.03 - all motor vehicles principally designed to transport persons (including ambulances and hearses) now require CBCA inspection.

SI 124 of 2020 also added another nine (9) HS headings to those that were in SI132 of 2015 (refer to Table 1).

Table 1

HS CODE	DESCRIPTION
22.07	UNDENATURED ETHYL ALCOHOL OF AN ALCOHOLIC STRENGTH BY VOLUME OF 80% VOL OR HIGHER; ETHYL ALCOHOL AND OTHER SPIRITS, DENATURED, OF ANY STRENGTH.
27.11	PETROLEUM GASES AND OTHER GASEOUS HYDROCARBONS.
38.08	INSECTICIDES, RODENTICIDES, FUNGICIDES, HERBICIDES, ANTI-SPROUTING PRODUCTS AND PLANTGROWTHREGULATORS, DISINFECTANTS AND SIMILAR PRODUCTS, PUT UP IN FORMS OR PACKINGS FOR RETAIL SALE OR AS PREPARATIONS ORARTICLES (FOR EXAMPLE, SULPHUR-TREATED BANDS, WICKS AND CANDLES, AND FLY-PAPERS).
39.20	OTHER ARTICLES OF PLASTICS AND ARTICLES OF OTHER MATERIALS OF HEADINGS 39.01 TO 39.14.
40.15	ARTICLES OF APPARREL AND CLOTHING ACCESSORIES (INCLUDING GLOVES,MITTENS AND MITTS), FOR ALL PURPOSES, OF VULCANISED RUBBER OTHER THAN HARD RUBBER.
48.18	TOILET PAPER AND SIMILAR PAPER, CELLULOSE WADDING OR WEBS OFCELLULOSE FIBRES, OF A KIND USED FOR HOUSEHOLD OR SANITARY CELLULOSE FIBRES, OF A KIND USED FOR HOUSEHOLD OR SANITARY PURPOSES, IN ROLLS OF A WIDTH NOT EXCEEDING 36 cm, OR CUT TO SIZE OR SHAPE; HANDKERCHIEFS, CLEANSING

	TISSUES, TOWELS, TABLECLOTHS, SERVIETTES, BED SHEETS AND SIMILAR HOUSEHOLD, SANITARY OR HOSPITAL ARTICLES, ARTICLES OF APPAREL AND CLOTHING ACCESSORIES, OF PAPER PULP, PAPER, CELLULOSE WADDING OR WEBS OF CELLULOSE FIBRES.
85.41	DIODES, TRANSISTORS AND SIMILAR SEMI CONDUCTOR DEVICES; PHOTO SENSITIVE SEMI-CONDUCTOR DEVICES, INCLUDING, PHOTO-VOLTAIC CELLS WHETHER OR NOT ASSEMBLED IN MODULES OR MADE UP INTO PANELS; LIGHT EMITTING DIODES; MOUNTED PIEZO-ELECTRIC CRYSTALS.
90.04	SPECTACLES, GOGGLES AND THE LIKE, CORRECTIVE, PROTECTIVE OR OTHER.
90.20	OTHER BREATHING APPLIANCES AND GAS MASKS, EXCLUDING PROTECTIVE MASKS HAVING NEITHER MECHANICAL PARTS NOR REPLACEABLE FILTERS.

Additional Tariff Headings Requiring CBCA Inspection

On the contrary, only two (2) HS headings that were in SI132 of 2015 have been left out in SI124 of 2020 (refer to Table 2 below).

Table 2

HS CODE	DESCRIPTION
19.01	MALT EXTRACT; FOOD PREPARATIONS OF FLOUR, GROUTS, MEAL, STARCH OR MALT EXTRACT, NOT CONTAINING COCOA OR CONTAINING LESS THAN 40% BY WEIGHT OF COCOA CALCULATED ON A TOTALLY DEFATTED BASIS, NOT ELSEWHERE SPECIFIED OR INCLUDED; FOOD PREPARATIONS OF GOODS OF HEADINGS 04.01 TO 04.04, NOT CONTAINING COCOA OR CONTAINING LESS THAN 5% BY WEIGHT OF COCOA CALCULATED ON A TOTALLY DEFATTED BASIS, NOT ELSEWHERE SPECIFIED OR INCLUDED.
62.05	MEN'S OR BOYS' SHIRTS.

Tariff Headings No Longer Requiring CBCA Inspection

Third Schedule

SI124 of 2020 has left the Third Schedule of SI132 of 2015 intact. This schedule relates to the contact details of the then assessment agent (Bureau Veritas) in the various locations throughout the world. If the number of assessment agents is now more than one, then it is expected that this schedule will include the contact details for the other assessment agents as well.

COMPLIANCE OF CBCA SIs TO INTERNATIONAL CONVENTIONS

The WTO Agreement on Pre-shipment Inspection recognizes the need for developing countries to have recourse to Pre-shipment Inspection (PSI) for as long and in so far as it is necessary to verify the quality, quantity of price of imported goods. They are within the provisions of Articles 5 and 6 of the WTO Technical Barriers to Trade Agreement (the TBT Agreement) and the WTO Agreement on Pre-shipment Inspection (the PSI Agreement)⁴.

The WTO Agreement on Trade Facilitation also covers pre-inspection under Article 10(5) where it says that members should not require the use of pre-shipment inspections in relation to tariff classification and customs valuation.

WTO GATT 1994 Article Viii (3) reads, "No contracting party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning. "

Article 6 paragraph 3 of the WTO Agreement on Trade Facilitation provides for penalty disciplines where one of them is that the penalty imposed should depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach. It also provides the need to consider as mitigation when establishing a penalty where voluntarily disclosures are done prior to the discovery of the breach by the customs administration.

A scrutiny of the relevant international agreement confirms Zimbabwe's compliance with their requirements in principle. The implementation part and the issue of penalties are the areas where the challenges are. The World Trade Organization Agreement on Technical Barriers to Trade (WTO/TBT Agreement) was established to ensure that technical regulations and standards, and the procedures for assessing conformity with them, do not create unnecessary obstacles to international trade. While Zimbabwe may desire "best practice" in conformity assessment, it is also important that it is used

⁴ Abrie du Plessis, Consignment Based Conformity Assessment and Pre-Export Verification of Conformity to Standards programmes in SADC countries, Tralac, 28 October 2015, accessed on <https://www.tralac.org/discussions/article/8373-consignment-based-conformity-assessment-and-pre-export-verification-of-conformity-to-standards-programmes-in-sadc-countries.html>

practically and cost-effectively. ZIMRA is therefore not considering its obligations under both WTO and WCO obligations as there is need to balance enforcement and trade facilitation.

BENEFITS AND CHALLENGES OF THE CBCA PROGRAM

Benefits

The benefits of CBCA include the protection of health, safety and the environment. Consumers are also protected through control of unfair trading practices and avoidance of dumping of low quality products to them. The CBCA assists in quarantining of harmful commodities, products, pests and diseases from entry into the Zimbabwean economy. At the same time international trading opportunities are improved by reducing technical barriers to trade and demonstrating compliance with specifications of international standards, technical regulations and commercial specifications through proper certification.

CBCA Challenges and How Its Implementation Negatively Affects Local Industry

From the benefits, the CBCA is a good thing to have but considering the classification difficulty of some goods and the language misinterpretation of description, the 15% of CIF penalty for qualifying goods arriving in the country without a Certificate of Conformance seems to be too much. Also to note is that ZIMRA also charges a penalty of Level 12 currently pegged at ZW\$36,000.00 in terms of Section 48⁵ of the Customs and Excise Act and this amounts to double penalty.

The scale of penalties provided in the Codification and Reform Act is a blanket scale covering a wide range of offences found in various Acts and Regulations. In applying this scale, ZIMRA is not considering its obligations under both WTO and WCO obligations. There is need to balance enforcement and trade facilitation as the Zimbabwe Customs legislation seems not to be aligned to the provisions of WTO instruments in this regard. The level of penalty imposed should be reflective of the gravity of the offence committed and not revenue generating measure. The obvious negative impact of levying maximum penalties is that traders pass on this cost to consumers resulting in the imported goods not being competitive, with the rate of inflation increasing.

The new amendment does not include the additional assessment agents and the post-importation assessment agents' details and these need to be included.

⁵ Zimbabwe Customs & Excise Act, Chapter 23:02, Section 48 Restricted importations restricts and penalizes importation of goods requiring CBCA as follows:

“(2) Goods the importation of which is restricted or controlled by this Act or any other enactment shall only be imported in conformity with the provisions of this Act or such other enactment, as the case may be.

(2a) Any person who imports goods in contravention of subsection (1) or (2) shall be guilty of an offence and liable to— (a) a fine not exceeding level twelve or three times the duty-paid value of the goods concerned, whichever is the greater; or

(b) imprisonment for a period not exceeding five years; or to both such fine and such imprisonment.”

RECOMMENDATIONS

The following are recommended to ensure better implementation of the CBCA Program in Zimbabwe:

1. Remove the penalty aspect in the CBCA SI as this is already covered in the Customs and Excise Act where it is collected by the implementing authority at importation.
2. Review the penalty aspect to be in line with WTO and WCO recommendations.
3. The CBCA SI only cover the issue of a fee to be charged by the local agent for local inspection and allow exemption where goods are found to be up to standard.
4. Amend the CBCA SI to include details of all external and internal inspection agents.
5. Describe affected commodities to the HS 4-digit level but with exclusions of those items that the SI never intended to be included as requiring CBCA inspection, e.g. ***“HS 40.11 NEW PNEUMATIC TYRES, OF RUBBER, except tyres of HS Codes 4011.30.00; 4011.40.00 4011.50.00 and 4011.70.90”***.

CONCLUSION

SI124 of 2020 brings significant changes in the areas of assessment agents and, more importantly, the significant increase in the number of commodities now requiring CBCA inspection. It also introduces a post-importation inspection facility as well as a 15% of CIF penalty for qualifying goods arriving at the ports of entry without a Certificate of Conformance. In order for these changes to be implementable, however, further amendments to include the additional assessment agents as well as their global contact details are required. There is also need for the post-importation assessment agents' details to be included in the amendments. Although the classification of affected commodities to 4-digit level removes doubt as to whether a commodity is covered by the SI or not, and whereas it will make it easier for those involved in ensuring satisfaction of CBCA requirements, the result is that a lot more commodities now require CBCA inspections. Instead of easing doing business, the CBCA program has actually increased the Zimbabwean cost of doing business by a significant margin

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