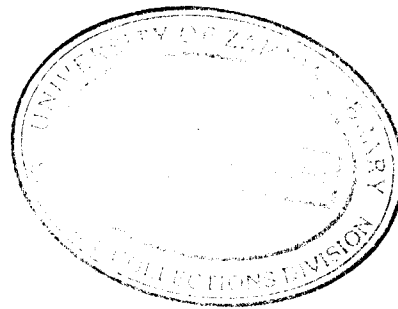


**THE EFFECTIVENESS OF THE CUSTOMS AND EXCISE
(AMENDMENT) ACT No. 47 OF 2010 IN EXPEDITING
CUSTOMS CLEARANCE PROCESS
– A CASE STUDY OF CHIRUNDU BORDER POST**

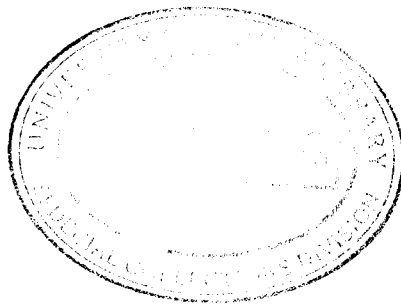
By

**EUGENE C. CHISENGA
(93088639)**

**A dissertation submitted to the University of Zambia in partial
fulfillment of the requirement of the Bachelor of Laws Degree**



**THE UNIVERSITY OF ZAMBIA
Lusaka
(2012)**

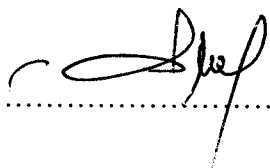
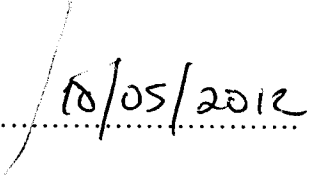


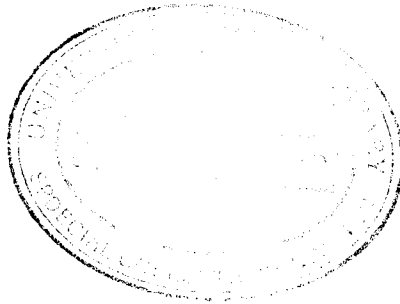
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I, **Eugene C. Chisenga**, Student No. 93088639, do hereby declare that this dissertation represents my own work, and that it has not previously been submitted for a Bachelor of Laws Degree at this or another University.

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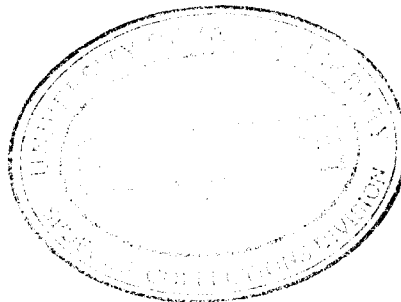
SCHOOL OF LAW

L410 – DIRECTED RESEARCH

I recommend that this directed research prepared under my supervision by the said Eugene C. Chisenga entitled *“The effectiveness of the Customs and Excise (Amendment) Act No. 47 of 2010 in expediting customs clearance process – case study of Chirundu Border Post”* be accepted for examination. I have checked it carefully and I am satisfied that it fulfills the requirements pertaining to the format as laid down in the regulations governing directed essay.

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Supervisor

10/5/2012
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Date



ABSTRACT

This has been an analytical study of the effectiveness of the Customs and Excise (Amendment) Act, No. 47 of 2010 in expediting the customs clearance process. In a bid to address the problem of congestions at the borders, the said Act has provided for pre-arrival declaration of goods and where this is not done, the declaration of goods within a day of arrival of the goods at the border. Therefore, the study examined the customs procedures and processes at Chirundu border post for the periods both prior to and after the coming into force of the said Act with a view to determine whether or not there has been any positive change in the customs release times. While it has been found that there has not been any change in the customs release times attributable to the Act, it is the failure to enforce rather than the inadequacy of the law that has rendered the new law ineffective in alleviating the delays associated with customs clearance process. The Act is more likely to enhance the expedited customs clearance process when proper guidelines for its implementation are fully developed and brought to the attention of all stakeholders in the customs clearance process.

ACKNOWLEDGEMENTS

To Jehovah God Almighty be the glory and honour for having preserved my soul to this date. It started as a pastime but has now become a reality because of the encouragement and support I received from my dear friend and wife Sarah. To my children, Joshua, David and now Jemima, thank you for understanding that I am as much a student as a father and for sacrificing your toys for my text books. To Mubamba and Marryat at Zambia Revenue Authority, thank you for the insight into customs processes and for being my contact persons during this study. I salute my employer for an effective human resource development policy without which I would not have afforded the time and resources to pursue this academic program. Not the least of all is my supervisor, Mr. Greenwell Lyempe, who would go out of his way to accommodate my unscheduled appointments just to ensure that this study is a success.

OPERATIONAL DEFINITIONS OF TERMS

Assessment of duties and taxes: the determination of the amount of duty and taxes payable;

ASYCUDA: an acronym for Automated System for Customs Data, a software used by the Zambia Revenue Authority, Customs Services Division, in the processing of imports and exports and excise duty assessment.

Clearance: the accomplishment of the customs formalities necessary to allow goods to enter home use, to be exported or to be placed under another Customs procedure;

Customs control: measures applied by the Customs to ensure compliance with customs law;

Customs duties: duties laid down in the Customs tariff to which goods are liable on entering or leaving the Customs territory;

Customs formalities: all the operations which must be carried out by the persons concerned and by the Customs in order to comply with the Customs law;

Declarant: any person who makes a goods' declaration or in whose name such a declaration is made;

Examination of goods: the physical inspection of goods by the Customs to satisfy themselves that the nature, origin, condition, quantity and value of the goods are in accordance with the particulars furnished in the goods declaration;

Form CE 20: a prescribed form for making a declaration in respect of imported or exported goods for which a declaration on this form is required.

Goods declaration: a statement made in the manner prescribed by the Customs, by which the persons concerned indicate the Customs procedure to be applied to the goods and furnish the particulars which the Customs require for its application;

Release of goods: the action by the Customs to permit goods undergoing clearance to be placed at the disposal of the persons concerned.

Release time: time from when goods are placed under customs control up to when they are released.

TABLE OF STATUTES

- 1. Customs and Excise Act, Cap. 322 of the Laws of Zambia**
- 2. Customs and Excise (Amendment) Act, No. 47 of 2010**
- 3. International Convention on the Simplification and Harmonization of Customs Procedures (as Amended), 1999**
- 4. General Agreements on Trade and Tariffs (Fees and Formalities Connected with Importation and Exportation), 1994**

TABLE OF CONTENTS

Title of the Studyi

Copyright.....ii

Declaration.....iii

Examiner’s Approval.....iv

Abstract.....v

Acknowledgments.....vi

Operational definitions of Terms.....vii

Table of Statutes.....viii

Chapter One

1.1. Introduction 1

1.2. Statement of the Problem..... 3

1.3. Purpose and Objectives of the Study 4

1.4. Significance of the Study..... 5

Chapter Two

2.1. Review of Related Literature..... 7

2.2. The Law..... 12

Chapter Three

3.1. Study Methodology..... 18

3.2. Sources of Data..... 18

3.3. Method of Analysis..... 20

Chapter Four

4.1. Presentation of Data.....	21
4.2. Organization of the Border Post.....	21
4.3. Customs Procedure.....	22
4.4. Customs Release Times.....	27
4.5. Release Time for Pre-Arrival Declarations.....	28
4.6. Factors Affecting Customs Release Times.....	29
4.7. Knowledge of the New Law.....	33

Chapter Five

5.1. Analysis of Data.....	35
5.2. Conclusions.....	30
5.5. Recommendations.....	41

Bibliography.....	44
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CHAPTER I

1.0. RESEARCH TOPIC

This has been an analytical study of the effectiveness of the Customs and Excise (Amendment) Act, No. 47 of 2010 in expediting customs clearance process – A case study of Chirundu border post.

1.1. INTRODUCTION

For sometime now, the customs clearance process has been generally perceived as a major bottle neck in trade facilitation, especially in developing countries. The functions of the statutory national customs administration of, among many others, determining the origins and the classification of goods and the assessment of the value of goods, collection and processing of duties, taxes and fees and the administration of waivers and exemption schemes and drawback (re-exportation) schemes¹ have often been criticized as factors that work against the quick movement of goods across the national frontiers². Against this background the major challenge of customs authorities has been that of achieving a balance between trade facilitation on one hand and customs controls on the other, i.e. expedited customs clearing processes on one hand and effective customs controls that secure revenue, ensure compliance with national laws, security and protection of society. In view of this, the World Customs Union, formerly the Customs Co-operating Council founded in 1952, has undertaken a number of initiatives that

¹ John Durgavich. *Customs Clearance Issues Related to the Importation of Goods for Public Health Programs-USAID/Delivery Project Task Order 1*; (New York, USAID, 2009) p. 3

² Patrick A. Messerlin & Jamel Zarrouk: *Trade Facilitation: Technical Regulations and Customs Procedure*; A paper presented to the WTO/World Bank Conference on Developing Countries' in a Millennium Round (Geneva, World Trade Organization, September 1999).

include formulating guidance on good customs procedures by which its member customs administrations have been able to offer their governments and other stakeholders such as traders and travelers enhanced trade facilitation combined with effective customs control.

One of these initiatives is the Revised Kyoto Convention (RKC)³ which was adopted in 1999 and entered into force in 2006. The RKC is comprised of a set of principles and Annexes that provide standards and best practices for customs procedures and related arrangements. It deals with key principles of simplified and harmonized customs procedures such as predictability, transparency, due process, maximum use of information technology and modern customs techniques such as risk management, pre-arrival information (pre-arrival declaration) and post-clearance audit. It has widely been recognized that the RKC accession and its implementation at domestic level affords considerable benefits to a member customs administration. It has been asserted that many RKC measures including use of Electronic Data Interchange (EDI) Customs systems, Customs risk management systems and pre-arrival information are likely to improve customs release times⁴. Faster release of goods at borders is beneficial directly and indirectly for both customs administrations and businesses. It enables customs administrations to process more transactions thereby increasing their revenue and enabling them to re-deploy their limited resources to high-risk cargoes. Further through faster release of goods, it enables traders to incur lower trade costs such as demurrages and further enhances the traders' businesses opportunities and competitiveness in both

³ The World Customs Organization, *The International Convention on the Simplification and Harmonization of Customs Procedures (as amended)* (Brussels, WCO, 1999). The original Kyoto Convention was adopted in 1973 at the WCO Council Sessions in Kyoto Japan and entered into force in 1974.

⁴ Yasui, Tadashi, *Benefits of the Revised Kyoto Convention*, (Brussels, WCO, 2010); p. 4

domestic and international markets. The RKC imposes an obligation on contracting parties to implement the prescribed standards within their municipal jurisdictions. In dualist States like Zambia the implementation begin with an enabling enactment to transform the provisions of the Convention into a law for domestic enforcement by the national customs administrations.

Zambia ratified the RKC on 6th February 2006⁵ and has since been systematically amending and, in some instances, repealing specific provisions of the Customs and Excise Act⁶, the enabling legislation for customs controls, with a view to giving effect to the aspirations of the World Customs Organization as expressed in the Convention. The latest of these endeavours has been the Customs and Excise (Amendment) Act No. 47 of 2010 which, among others, has repealed and replaced section 32B of the principal Act to provide for the pre-arrival declaration of goods (imports). In effect the repealing and replacing of section 32B of the principal Act has domesticated the pre-arrival provisions under Standards No. 3.23 and No. 3.25 of Chapter 3 of the General Annex to the Convention. Therefore, this study have analyzed the effectiveness of the Customs and Excise (Amendment) Act No. 47 of 2010 in expediting customs clearance process with the main purpose of facilitating trade as envisioned by the World Customs Organization.

1.3. STATEMENT OF PROBLEM

It has long been recognized that in modern business environment of just-in-time production and delivery, traders need fast and predictable release of goods. However,

⁵ *Signed without reservation by then Minister of Foreign Affairs, Rev. Lt. Gen. Ronnie Shikapwasha, M.P. and the Instrument of Ratification was deposited on 1st July 2006.*

⁶ Cap. 322 of the Laws of Zambia

despite the modernization (harmonization and simplification of customs procedures) of customs procedures as enunciated in the RKC, traders from both developed and developing countries have continued to cite the customs clearance process as lengthy and less efficient resulting in long delays and increased trade costs. In Zambia, like any other developing country, the customs clearance process has remained lengthy and less than efficient leading to delayed release of goods. In 1995, a study by Hebert Burma & Company⁷ reported that delays of two (2) days at Chirundu border were not uncommon. Later on in May 2004 a Trade and Transportation Facilitation Audit⁸ indicated that the delays at the same border were as long as more than five (5) days. Further, a self-assessment time-release-study conducted by ZRA in 2007 indicated that the average release time across all national customs ports was three (3) days. Therefore, it can be asserted that in spite of various international and national instruments, there still exists in Zambia a problem of delays in customs clearance process.

1. 4. PURPOSE/OBJECTIVES OF THE STUDY

The purpose of the study was to analyze the effectiveness of the Customs and Excise (Amendment) Act No. 47 of 2010 in enhancing the operational efficiency in the customs clearance procedures in Zambia. In particular, the study endeavoured to assess whether or not the repealed and replaced section 32B of the principal Act has reduced or likely to reduce the release time of goods from customs' custody. In pursuing this purpose, the following were the objectives that had to be achieved:

⁷Hebert Burman & Co. *The Harmonization of Road Transportation and the Problem facing Road Carriers in SADC Region – A report for Federation of Regional Road Freight Association*, (Windhoek, SADC, 1995).

⁸ Rene' Meeuws. *Zambia-Trade and Transportation Facilitation Audit (Ref. No. R20040147/30144)*, (Rijswijk, World Bank, 2004) pp. 41-42

1. To establish the procedures obtaining at Chirundu border post regarding customs clearance;
2. To compare the customs release time prior to the amendment (up to 31st December 2010) against the release time of goods after the amendment (from 1st January 2011 to 31st December 2011);
3. To establish factors that may be contributory to the change (if any) in the customs release times between the pre and post amendment periods;
4. To compare the custom release time of the pre-arrival declarations against the post arrival declarations;
5. To establish factors contributing to the difference (if any) in the customs release time between the pre-arrival declaration and post arrival declaration;
6. To establish any possible factor(s) that affect the customs release time of goods.
7. To establish the extent to which the main stakeholders (traders, clearing agents and customs' officers) are aware of the provisions of the Amendment Act No. 47 of 2010.

1. 5. SIGNIFICANCE OF THE STUDY

The study has contributed to the growing body of literature on the causes of inefficiencies in the customs clearance process in Zambia and the possible solutions to the problem. It has highlighted the major factors that may stifle the effectiveness of Zambia's legislation in addressing identified specific mischief and has built a strong case for the need to compliment the current legislative interventions with other measures in alleviating the

problem of the delays associated with customs clearance process at Zambia's borders posts. In this regard, it has also contributed to the materials that the government policy makers and customs administrators alike may use in finding a lasting solution to the problem of congestions at the borders which result from the delays in customs clearance process.

CHAPTER II

2. 1. REVIEW OF RELATED LITERATURE

Many different individuals and international organizations and agencies have been studying and writing about trade logistics and customs modernization. The World Bank has been leading this international effort on a number of fronts with the overall objective of strengthening economic performance and the competitiveness of developing countries in global trade networks. The Bank has since developed a Logistics Performance Index (LPI) which looks at, among other things, the efficiency of customs procedures and the average time and cost to import goods. In the LPI survey⁹ sorted in 2009 the average time for clearance of commercial goods for developing countries that were included in the survey was 5.2 days. In Zambia a self assessment survey conducted by the Zambia Revenue Authority (ZRA) in 2007 indicated that customs clearance process took an average of 3-5 days for the importation of commercial goods¹⁰. This appears to be an improvement from the more than 5 days delays reported in a World Bank's Trade and Transport Facilitation Audit of June 2004¹¹. Further, a survey conducted by the International Monetary Fund (IMF) reported that while the World's average efficiency ratings in the customs processes was 2.59 out of a total score of 5, the scores for Anglophone Africa and sub-Sahara Africa, both sub-regions of which Zambia is part, were 2.31 and 2.18 respectively¹². In this survey, while Zambia had improved to a 2.17

⁹ The World Bank. *Logistics Performance Index*; www.worldbank.org/lpi (accessed on 13th October 2011)

¹⁰ ZRA. *Time Release Survey*; www.zra.org.zm (accessed on 12th June 2009)

¹¹ Rene' Meeuws. *Zambia-Trade and Transportation Facilitation Audit (Ref. No. R20040147/30144)*. (Rijswijk, World Bank, 2004) pp. 41-42.

¹² Justin Zake. *Customs Administration Reforms and Modernization in Anglophone Africa – Early 1990s to Mid-2010*, a working paper No. WP/11/184, (New York, International Monetary Fund, 2011), p.8

rating from 2.08 recorded in 2006, the rating remained not only below the World's average but was below both the Anglophone Africa and sub-Sahara Africa averages. Elsewhere, in Tanzania, although that country had a higher customs efficiency score at 2.42 than Zambia, a survey undertaken by the United States Agency for International Development (USAID) in 2009¹³ indicated that the customs clearance for commercial shipment took almost 8 days and that the USAID had been experiencing actual delays of 27 days for the importation of donated medicines. Further away in Bangladesh, the clearance of a consignment has been reported to take 2-5 days but this period could lead to months if a dispute arose with regard to classification, valuation or origin of goods¹⁴.

The general conclusion of these studies is that despite the customs reforms and modernization initiatives, customs formalities in developing countries still lag behind the international good practices resulting in prolonged delays in the release of goods. Generally, the causes of these delays have been diverse and include the excessive documentary requirements in the customs process and the multiple physical inspections (verification) of goods by various government agencies at the borders. These causes are further compounded by the complexities of the customs clearance process which usually results in disputes over the classification and valuation of goods¹⁵. In isolated instances, the delays are caused by traders who have a tendency to undervalue or misclassify their goods with a view to pay less duty. This results in customs officials relying more on the

¹³ John Durgavich. *Customs Clearance Issues Related to the Importation of Goods for Public Health Programs*; (New York, IMF -Task Order 1, 2009) pp. 11 - 12

¹⁴ Md Almas Uzzaman and Mohammad Abu Yusuf. "The role of Customs and other agencies in trade facilitation in Bangladesh: Hindrances and Ways Forward" *The World Customs Journal*, Vol. 5 No. 1 (March 2011), pp. 29-42

¹⁵ S. Y. Chia. "Accelerating ASEAN trade and investment cooperation and integration: progress and challenges", in *Competitiveness of the ASEAN countries: Corporate and Regulatory Drivers*, eds. Philippe Gugler & Julianne Chaisse, (London, Edward Elgar, 2010) pp. 103-129.

physical verification of both goods and accompanying documents in order to ascertain the true values and class of the goods. This prompts customs officers to make arbitrary uplifts of values of goods to the dismay of the traders, a scenario that normally results in prolonged appeal process or failure by the traders to settle the assessed duty for the release of the goods in good time. These delays have a major effect on the costs associated with cross border transactions. On one hand, the delays entail unplanned costs such as storage fees and demurrage incurred by the traders at the borders and on the other hand, the loss of government revenue in terms of customs and excise duties which in some developing countries account for up to 62 per cent of their total domestic revenue. In Zambia, the IMF had reported that import duties accounted for an average 16.7 per cent of the total tax revenue for the ten-year-period from 1994 to 2004¹⁶. Further, the estimates of the Organization for Economic Co-operation and Development (OECD) indicate that for every 1 per cent saving achieved in cross border trade transaction costs, the worldwide benefit would be US\$43 billion¹⁷. Other studies have also found that a 10 per cent reduction in the costs associated with importing or exporting of goods would increase imports or exports by about 5 per cent¹⁸.

It is against this background that the pre-arrival declaration is being preferred around the world as a safeguard against delays resulting from documentary inspections and as a measure to meet the need for safety and security in relation to goods crossing

¹⁶ Justin Zake. *Customs Administration Reforms and Modernization in Anglophone Africa – Early 1990s to Mid-2010*, a working paper No. WP/11/184, (New York, International Monetary Fund, 2011) p. 8

¹⁷ Sandford & Temby: "Customs in the Regional Trade Agreements of Australia and New Zealand; efforts to improve customs instruments and develop trade", *Global Trade and Customs Journal*, Vol. 5, No. 11/12, (2010) pp. 445-459

¹⁸ Md Almas Uzzaman and Mohammad Abu Yusuf. "The role of Customs and other agencies in trade facilitation in Bangladesh: Hindrances and Ways Forward" *The World Customs Journal*, Vol. 5 No. 1 (March 2011), pp. 29-42

international borders. The pre-arrival declaration allows importers (and exporters alike) to describe in writing the nature, quantity and value of goods being imported prior to the arrival of such goods in order to enable the customs officials to conduct a thorough documentary examination and assessment of duty in advance. Further, it enables the customs officials to notify the traders whether or not there is need for further submission of further documentary proof about the goods or whether there would be need for physical verification of goods upon arrival. Where customs officers are satisfied with the declaration they will issue a release order immediately after the formal import/export entry is presented upon arrival of the goods. In this regard, the pre-arrival declaration regime does not only enables a trader to know in advance the exact amount of duty payable but also allows for the predictability of the release time of goods once they arrive at the border¹⁹. It is because of these benefits that the European Parliament and Council in 2005 passed a resolution to adopt the pre-arrival declarations and pre-departure declarations under Regulation Number 648/2005 of 2005. This regulation requires traders intending to import or export goods to furnish the customs authorities with information regarding the nature, quantity and value of goods in not less than 24 hours before goods could be imported into or exported out of the Union. The Regulation has been anchored on the belief that pre-arrival declaration would provide for better risk analysis and quicker process and release of goods upon arrival resulting in reducing costs for the traders associated with cross-border formalities. Apart from the European Union, Japan introduced pre-arrival examination in 1991 and according to the 7th Time Release Survey conducted by her Ministry of Finance, the release time of goods had reduced by 30 per

¹⁹ World Trade Organization, *Explanatory Note on pre-arrival examination-Japan's Experience*; TN/TF/W/53 (Geneva, WTO, 2005) p. 3

cent (to 51.3 hours) for cargo being imported or exported by sea compared to the period prior to the pre-arrival declaration regime²⁰. In Zambia, the pre-arrival declaration regime was proposed for adoption as far back as 2004 but had been awaiting an enabling legislation for implementation as part of the national law.

Notwithstanding the supposed advantages of the pre-arrival declaration, the World Bank has suggested that customs authorities are only responsible for approximately one-third of the delays that the trading community encounters at the border, and that a number of other government institutions are responsible for the majority of the problem the traders face at the border²¹. Therefore, the general view is that efforts by a single customs administration and a national legislation that is aimed at addressing only a part of the problem, i.e. customs process, in the border management may not be sufficient to reduce the delays in the movement of goods across the borders. Rather an integrated approach or a multifaceted legislation is imperative to address the identified problem. It is in view of this that the study examined whether or not the Customs and Excise (Amendment) Act No. 47 of 2010 in its current form and as a single legislation aimed at addressing the customs process is effective enough to facilitate trade by way of expediting customs clearance process.

²⁰ World Trade Organization, *Explanatory Note on pre-arrival examination-Japan's Experience*; TN/TF/W/53 (Geneva, WTO, 2005) p. 3

²¹ McLinden, Fanta, Widdowson & Doyle, eds., *Border Management Modernization*, (Washington D.C. World Bank, 2011), p. 1

2. 2. THE LAW

Prior to the amendment of 2010, the Customs and Excise Act in section 32B had provided as follows:

- (1) The Commissioner-General may, subject to such rules as the Commissioner- General may prescribe, accept entry of goods for customs purposes five days prior to the arrival of the goods at a customs port on the condition that the importer undertakes to present to the Customs Division goods which match the goods so declared in all material particulars.
- (2) Subject to section *eighty-seven*, where goods are entered under subsection (1) the Commissioner-General shall make an assessment of the duties due on the goods and the importer of the goods or the agent of the importer shall pay the duties so assessed within *five days* of such assessment unless the goods are entered to be warehoused or removed in bond.
- (3) The importer of the goods or the agent of the importer may, prior to the examination of the goods, request the Customs Division to amend the declaration made under subsection (1) and where the declaration is amended the Commissioner – General shall make an assessment of the duties due and the importer of the goods or the agent of the importer shall pay the duties so assessed within the period specified in subsection (2) unless the goods are entered to be warehoused or are removed in bond.
- (4) Where no request to amend a declaration is received or where the request is received after the examination of the goods has commenced, and if the reasons given by the importer or the agent of the importer for not

amending the declaration or for submitting the request late are deemed invalid, the goods shall be liable to seizure.

- (5) Subject to the provisions of sections *thirty-one, thirty-two, thirty-four* and *thirty – seven*, goods entered under the section shall be released from Customs control on the issuance of a release order by the Customs Division.
- (6) Any importer, importer's agent or other person who makes any declaration to the Customs Division with respect to the pre-entry of the goods under this section which that person knows to be false or incorrect in material particular commits an offence.

It must be noted that the Customs and Excise (Amendment) Act No. 47 of 2010 in section 2 has repealed and replaced the whole of section 32B of the principal Act. However, what has effectively been amended is section 32B(1) with a creation of section 32B(7) as an addition to the earlier six (6) subsections. Under the new **32B (1)** the Acts now provides:-

The Commissioner-General *shall*, subject to such rules as the Commissioner-General may prescribe-

- (a) require a person intending to import goods to describe, in writing, the goods intended to be imported, for duty assessment purposes, at least *seven days* before the goods arrive at a port of entry where customs formalities are to be conducted;

(b) where a person accompanies any imported goods, for which a description has not been made under paragraph (a), require the person to describe the goods, in writing, for duty assessment purposes, within *twenty-four hours* of the arrival of the goods at a port of entry where customs formalities are to be conducted; and

(c) accept the entry of any goods for customs purposes *five days* prior to the arrival of the goods at a customs port;

on condition that the importer undertakes to present to the Customs Services Division, within *twenty-four hours* of the arrival of the goods at the port of entry, goods which match the goods so declared in all material particular.

The added subsection (7) of section **32B** creates an offence for failure to declare the goods as prescribed under subsection (1). The new section 32B(7) provides that “*A person who, without reasonable excuse, fails or neglects to declare or present goods as required under subsection (1) commits an offence*”.

In terms of section 2 of the principal Act, the term “**entry**” in relation to the clearance of goods for importation, warehousing, removal from warehouse, or exportation means the presentation of a correctly completed declaration in writing in the prescribed form, and where electronic facilities are provided for direct trader input (DTI), entry means the registration on the Automated System for Customs Data (ASYCUDA), together with such bills of lading, invoices, certificates and other documents as are required to be furnished with that declaration. Therefore, while under the former provisions of section 32B (1) the Commissioner General had an option to either accept or reject the entry of

goods prior to their arrival at the customs port, the new law makes it mandatory for the Commissioner General to accept such registration of importation and to proceed to make an assessment of duties payable within five days prior to the arrival of the goods. However, it should be noted that the acceptance of the entry will be subject to such rules as the Commissioner General may prescribe. In this vein, the Commissioner General need not prescribe any rules before the pre-arrival declarations could be accepted but the customs officers shall be compelled to accept the entry of goods whenever a declaration is made within five days prior to the arrival of goods. Further in terms of paragraph (a) of subsection (1) it is now mandatory for any person intending to import any goods to describe in writing the goods intended to be imported at least seven (7) days prior to the arrival of goods. In the modern world trade, such a description is presented as a Packing List (or a Manifest) which reflects the nature, description and quantity of the goods forming up a consignment being or intended to be imported. The value of the goods on the packing list is reflected on the invoices, copies of which are normally attached to the packing list. In terms of the new legislation, these must be forwarded to customs officials at least seven (7) days prior to the arrival of the goods for duty assessment purposes. It is envisaged that seven days would enable customs officials to determine and inform the importer the duty payable in good time before the goods arrive at the border. This must enable sufficient time to prepare for the payment of duty on the goods. Further, where a trader is aggrieved by the assessment, there would be a leverage of time in which to exhaust the appeal process against the valuation and to prepare enough funds to settle the assessed liability.

In paragraph (b) of the said subsection (1) of section 32B makes it mandatory for any importer who had not lodged in the packing list and invoices seven days prior to the arrival of good, to do so within a day (twenty-four hours) of the arrival of the goods at the customs port. This is a significant departure from the earlier provisions of section 32B which did not provide for a specific time frame for lodging in a declaration upon the arrival of goods at the border. In this connection, it cannot be doubted that under the previous legal regime where there was no time frame for lodging an entry, importers with insufficient funds to pay customs duties would abandon their cargo within the customs yard to go and look for money. There had been instances known to this researcher at Nakonde border post whereby imported motor vehicles would stay for months within the customs yard without having been declared to customs while the importers traveled to Lusaka or the Copperbelt to look for money. In the process, such vehicles would block other vehicles whose duty had been paid from being driven out of the yard thereby causing undue delay in the release of such cleared vehicles from customs. The amendment has now made it obligatory for any importer to make a declaration to customs within a day of the goods arriving at the border, if he had not done so prior to the arrival of the goods, for the duty assessment purpose. Once an assessment has been made, the retention of subsection 2 in the repealed and replaced section 32B makes it mandatory for the importer to pay duties within five (5) days from the date of the assessment. This has complimented the provisions of subsection (1) whereby not only has the importer been given sufficient period (7 days) in which to begin the customs clearance process, independent from the internal customs procedures and processes, there has been given a specific time frame within which to finish the process by making a payment.

In terms of the new provisions of the new legislation, it is apparent that the period within which the customs clearance process can be concluded is now largely dependent on the importer fulfilling the mandatory obligations outlined in section 2 of Act No. 47 of 2010. The corresponding mandatory obligations on the Commissioner General generally lies in accepting the entry (declarations) when made within the stipulated time frame and to make an assessment of duty payable notwithstanding that the goods are not at the border or that they cannot be verified. In the same breath, it can be assumed that where the customs officials cannot proceed to assess the declaration, a reason and the next course of action is expected to be communicated to the trader or his agent before the arrival of goods. This invariably would enable the trader or his agent to make adequate arrangements to respond to the concerns raised by the customs officers. However, it should be noted that the Customs and Excise Act (as amended by Act No. 42 of 2010) is still silent on the time frame within which customs authorities should complete their part in the customs clearance process. Further, notwithstanding the provision requiring the Commissioner General to make rules in relation to the new law, the rules are yet to be formulated. It could be assumed that the new law could be enforced in accordance with the existing internal customs procedures and process outlined in the Customs and Excise Act General Regulations of 2000, the Compendium of Customs Procedures, the various Statutory Instruments that may be applicable to the new law and other relevant rules which the Commissioner General had prescribed in the past.

CHAPTER III

3.1. METHODOLOGY OF THE STUDY

This was a case study of the customs procedures and processes at Zambia's Chirundu border post. This border post was chosen as an ideal case because it is the biggest and busiest of all the posts across the country and it is one of the posts subject to complaints by various stakeholders regarding the delays in the clearance of goods. The study was an analytical time release study which focused at analyzing the customs procedures and assessing the days (release time) it takes to complete customs formalities for the importation of commercial goods during the period 1st January 2011 to 31st December 2011. This period signified the first year when the Act came into force. The release time for the year 2011 was then compared with the release times for the years 2009 and 2010 with a view to ascertain whether there had been in change in release time for the year when the Act came into force. The study further identified and isolated the pre-arrival declarations from the normal declarations (those done upon arrival of goods) and determined the difference in release times between the two. The difference identified formed the basis for determining whether the provisions of the Act have indeed addressed the causes of delays associated with customs border formalities.

3.2. SOURCES OF DATA

In conducting the study both primary and secondary sources of data as well as non-participatory observation were used in the collection of data. In the collection of secondary data, previous works and analyzed data on the subject matter was reviewed

whereas primary data was obtained through semi-structured interviews with various stakeholders namely traders (importers), truck drivers, customs clearing agents, government agencies operating at the border and the officers of the Zambia Revenue Authority. In all, fifty (50) interviews were conducted from the randomly selected persons as follows:

- ten (10) each from clearing agents, truck drivers and traders (importers);
- six (6) from the four (4) randomly selected customs officers and two (2) from the principal officers of customs at the border;
- two (2) each from the other government agencies operating at the border, i.e. Immigration, Police, Ministry of Agriculture, the Zambia Bureau of Standards, the Siavonga District Council, the Road Transport and Safety Agency and the Zambia Environmental Management Authority (formerly ECZ).

In addition to the interviews, the records, electronic and manual, maintained by ZRA at its head office and at Chirundu border were reviewed. The records included the Automated System for Customs Data (ASYCUDA) which is the register of all declarations, i.e. the Bills of Entry, the manual registers indicating date and time when trucks enter the customs area and when they leave and the literature regarding the standard customs procedures.

Furthermore, data was collected by means of observation. Observations were made regarding the points at which a truck driver and agent will proceed to in the process of clearing the goods.

3.3 EVALUATION OF DATA

The data regarding the release time for the year 2011 was then cross-checked with the release times for the preceding years 2009 and 2010 with a view to determine any difference in release times between the periods prior to the coming into force of the Act and that of when the Act became in force. Further, the factors contributing to the delays were checked against the current provisions of the Act with a view to determine whether or not the change in release times can be attributed to the enforcement of the new law. The gaps between the factors and the provisions of the law formed the basis for determination of the ineffectiveness of the law and the foundation of measures that need to be put in place in order to alleviate the problem.

CHAPTER IV

TOHE FINDINGS OF THE STUDY

4.1. THE ORGANIZATION OF THE BORDER POST

Chirundu border post is the nation's biggest customs port in terms of both the volume of imports and revenue collection. In the past five years (2007 – 2011) the post had been processing an annual average of 81,876 commercial imports of which 53,743 had been declarations for domestic consumption while 28,133 had been transit declarations either as removals in transit (RIT) to another country or as removals in bond (RIB) for further customs processing by inland ports. This translated in an average of 227 declarations per day. In terms of revenue, the port had been progressively collecting an average of K140 billion per month. In terms of operations, the border post is segmented into two: there is a commercial terminal that handles both imports and exports of commercial value, i.e. importation of which the value for duty purposes is more than US\$500 (the value has since been revised to US\$2,000) for which a Bill of Entry will have to be made, and the passenger clearance terminal which basically handles the hand-held luggage of non-commercial value associated with the cross border traders and the general traveling public. These terminals are located about 200 meters apart but within the same customs yard surrounded by a boundary wall fence.

4.2. CUSTOMS PROCEDURE

In the processing of commercial imports, the procedure is that the truck carrying the goods or a motor vehicle (as an importation) and the driver will have the details and the description of the goods being imported recorded in a register at the Zimbabwean gate,

i.e. gate admitting goods from Zimbabwean side into the customs yard, and the truck will then be driven in and parked at a designated spot within the yard after being issued with a serialized gate pass. The driver of the truck, the importer or whosoever is in charge of the goods will then look for a customs broker (clearing agent) to whom the Invoices, Bills of Lading, the packing lists (manifests) and the certificate of origin (where applicable) will be given for the purposes of drafting a Bill of Entry, i.e. Customs and Excise Declaration Form CE 20. The draft Form CE 20 is then taken to NECOR Limited, a company contracted by ZRA to provide the Direct Trader Input facility to customs brokers that do not have remote access to the ASYCUDA, for the capture of information from the draft Form CE 20 onto the ASYCUDA. Once this is done, the System assigns the Entry a unique reference number known as Bill of Entry Number as a way of confirming registration of the declaration. An electronic version of Form CE 20 is then printed. Depending on the nature of the goods, the truck will then be subjected to a non-intrusive electronic scan and the scan image is attached to the Form CE 20 (both the printed and the draft) and together with the invoices, Bill of Lading, Certificate of Origin, packing list and importation permits (where applicable) are then lodged with customs officials for assessment of the duty payable. Once duty is paid, a customs Release Order is generated as authority for the goods to be released from customs yard. The Release Order is statutory evidence that all customs formalities have been completed and the owner of the goods is at liberty to consume the goods.

In the assessment process, customs officials determine first, the origin of the goods; second, the classification of the goods and; third, the value of the goods on which duty

payable is calculated. The origin of goods is critical for the purposes of determining the duty rate applicable in view of the various international agreements, e.g. COMESA, SADC, etc. that Zambia has signed. The purpose of these agreements is to standardize the tariffs and determine a lower tariff rate in favour of the goods originating from state parties to the agreements. The rules governing the origin of goods are quite elaborate but for the purposes of this study it is sufficient to state here that depending on the nature of goods and the region/country of origin, at least 60 percent of the materials used to manufacture the subject goods should have been grown or produced from the country of exports. Where the goods merely underwent another process of manufacture, the goods could only be said to have originated from a particular country when such goods been substantially transformed in that particular country. In this regard, eligible goods for lower tariffs are normally issued with certificates of origin from countries of export and these have to be verified by ZRA at the time of importation.

Secondly, customs officials have to classify goods according to their nomenclature make up for the purposes of determining the appropriate rate of duty applicable. The World Customs Organization has harmonized and standardized the coding system for all commodities of commercial value and customs officials has a task to determine the appropriate class and the code in order to arrive at the appropriate rate of duty applicable to the subject goods at valuation stage.

The third aspect of assessment is the actual valuation of goods for duty purposes. The Customs and Excise Act has provided guidelines in its Fifth Schedule under clauses 4 to 8. The valuation process takes into account the free on board value (cost) of goods, the

cost of freight from the country of export up to the port of entry into Zambia and the insurance paid thereon. The valuation process is elaborate and has six methods of valuation namely the transaction value, the transaction value of identical goods, the transaction value of similar goods, the deductive value of goods, the computed value of goods and the residual basis of value which is commonly known as the fall back method. These methods are used as consecutive alternatives and it is incumbent on the customs officials to ensure that correct values are assessed.

4.2.1. Importation for Domestic Consumption

Notwithstanding the above highlighted elaborate customs process, not each and every importation is subjected to the rigor of the due customs process. The ZRA now employs risk management techniques in its valuation process mainly due to the low staffing levels at its border posts. In view of this, the ZRA has set specific parameters on the ASYCUDA with regard to the risky goods and risky importers with the main objective of rationalizing the available resources whereby resources are dedicated to the verification of goods classified as risky and the importations by traders classified as risky. To this effect the ASYCUDA has four selectivity lanes namely Green, Blue, Yellow and Red. The green lane implies that the Bill of Entry should be processed as declared by the agent and there will be no need for any other intervention. The Blue lane selection implies that the Bill of Entry should be processed as declared but there would be need to carefully scrutinize the supporting documents. The Yellow lane is an indication that the Bill of Entry should be processed as declared but there would be an inspection of the goods by customs officials at the point of destination. The Red Lane implies immediate physical

inspection to verify the nature and quantity of goods being imported. This will have to be done notwithstanding the fact that the truck had earlier been scanned. The outcome of the physical inspection will then be captured onto the system for the entry to be further processed. Furthermore, where the customs officials are doubtful about the truthfulness of the declaration or if there are some mistakes made by the agent on the declaration, the officers issue what are called “Amendment Queries” requesting the agent to furnish further information or indeed amend some information, e.g. the values, quantity, description of goods before the entry can be processed further.

When the assessment process is completed, a notice of assessment is produced which indicates that amount of duty that has to be paid. The importer or agent is then required to pay by a bank certified cheque at the cashier and a release order is then generated giving authority to the officers manning the Zambian gate (exit from customs yard into Zambia) to allow the truck or goods to be released from the customs yard. Where payment is not made within five (5) days of assessment, interest and warehouse rent begin to accrue and both the importers identification number and the agent’s account are blocked from further importations/dealings until the outstanding duties and taxes plus the interest and warehouse rent are paid. The above outline procedure has been subsisting since 2009 following the commissioning of the new border infrastructure and there has not been any deviation notwithstanding the enactment of the Act No. 47 of 2010.

4.2.2. Removals in Transit (RITs) and Removals in Bond (RIBs)

However, goods in transit across the country to other countries and those being moved in bond for inland warehousing are not subjected to scanning or physical inspection and the only money paid is the ASYCUDA processing fee of K50,040. The selectivity on the system for these importations is almost always a Green Lane for the simple reason that the duty payable on the goods is guaranteed by the agent handling the declaration. Of course duty payable on such goods are calculated and guaranteed by a customs broker that has a bond with ZRA and the duty becomes payable immediately when the goods for one reason or another do not exit the country or are consumed inland without having first been ex-boded. Under this type of importation, the customs officers accept pre-arrival clearance whereby a Bill of Entry is allowed to be processed even before the arrival of the goods at the border. In view of this, even prior to 2011 ZRA was accepting the pre-arrival clearance in respect of goods in transit.

4.2.3. Importation of Heavy Machinery and Hazardous Goods

Further, the importations of heavy equipment and machinery and hazardous materials such as fuel, chemicals and explosives are not subjected to the usual rigor of scanning and physical inspection because the nature of the goods involved is obvious in respect of machinery while there is need to ensure the safety of the border from harmful materials such as chemicals and fuel. Such importations are either treated like the removals in transit/bond whereby pre-clearance formalities are allowed or released from customs yard on special delivery whereby the payment of duty is deferred to a later date.

4.2.4. Customs Accredited Clients Programme

Furthermore, in an effort to enhance voluntary compliance among importers, ZRA has been running a Customs Accredited Client Program (CACP) whereby some regular importers of good repute are allowed to have their importations processed without being scanned or physically verified and the payment of taxes thereon is deferred to a later date. Reputable importers such as the mining firms, Trade Kings, Shoprite, Zambia Breweries, etc. are accredited on this program and enjoy the benefit to pre-clear their goods and the release of goods on special delivery. Where there is cause for suspicion of non-compliance, such cases are referred for destination inspection whereby goods are verified on being offloaded at the importer's premises or indeed periodical post clearance audits (PCA).

In respect of these exceptional importations, i.e. removals in transit, heavy machinery and chemicals and the CACP, the trucks are channeled through a "fast lane" within the customs yard and are normally released within a day of arrival at the border if not pre-cleared and within two (2) hours if pre-cleared.

4.3. CUSTOMS RELEASE TIMES

In the tax payers' charter ZRA has undertaken to process a clean customs declaration within one and half days (36 hours). However, this target has only been possible in respect of the exceptional importations earlier alluded to where goods had in most instances been released within the maximum period of two (2) days of arrival at the border. This has been the trend both prior to 2011 and it is subsisting to date. The records

indicate that for most of goods meant for domestic consumption there had been a minimum difference of three (3) days between the date of registering the entry and date of release of goods. This scenario has been the same both before and after the amendment. Of the 10 truck drivers interviewed, 2 stated that they had been at the border for the previous 5 days, 2 other drivers had been there for 4 days and the rest had arrived the previous 3 days. It was observed that most drivers had spread their sleeping mats underneath their trucks and built small fires for cooking, an indication of a prolonged or anticipated long stay at the border.

Further the gate registers at both ends of the customs yards indicate that some trucks had been within the customs yard for over a week (7) days. Besides, almost all the traders (importers) interviewed stated that they had traveled to Chirundu the same day to make payments after being advised by their agents that the assessment of duty payable has been done and the exact amount payable confirmed. Only 1 importer had travelled with the truck and had been at the border for the previous 2 days and the time of the interview the goods had just been referred for a physical inspection, the exercise that on average takes about half a day for a 20 feet size container/trailer.

4.4. RELEASE TIME FOR PRE-ARRIVAL DECLARATIONS

It should be noted that there had not been a pre-arrival declaration recorded at the border as envisioned by the Act. What has been common is the pre-arrival clearance whereby the procedure highlighted above is completed but before the arrival of goods. When such goods finally arrive, they are channeled to the fast lane and are not subject to scanning of

physical inspection per se and all what has to be done is just to confirm the details of the truck and nature of goods before the goods are released within an average time of two (2) hours of arrival at the border. This is in sharp contrast to the post arrival clearance whose release time is at least three (3) days both before and after the amendment of the Act in 2010.

Factors for the quick release of pre-cleared importations are various and they include: first, the nature of goods for which pre-arrival clearance is accepted is usually regarded as less risky. Second, the duty on goods in transit is guaranteed and there is no need to verify such goods because they are destined to other countries where the respective customs authorities will undertake the clearance process. The role of customs officers on in respect of these importations is to facilitate the movement by generating a transit document, known as a T1 and the placing of a seal, where applicable. Third, customs officials have the opportunity to complete the assessment process in time before the arrival of the goods at the border and; fourth, the goods may be released on special deliver before payment of duty.

4.5. FACTORS AFFECTING RELEASE TIME

The main factors include the delays by the clearing agent in lodging the Bill of Entry and the corresponding delays by the customs officer in assessing the declarations. The interviews with both the management and customs officials revealed that the staffing levels at the border are so low that some customs functions are performed by a named contracted private security personnel. It was found that unless a consignment is

manifested (i.e. has a specific customs agent indicated on the manifest) an importer has to appoint an agent when the goods arrive at the border. However, in a number of cases, some agents are not configured to transact on the ASYCUDA system while others have their agency licenses suspended or revoked. Nonetheless, the so-called agents would still pretend to still be in business and then look for another agent with a valid agency license to make a declaration. This in turn affects the information flow between the importer, the transacting agent and ZRA and hence the delays in lodging a declaration form. During the assessment process, customs officers may request additional information to enable them proceed with the assessment. These queries include requests for provision of additional documents, e.g. original invoices, import permits and certificates of origin, amending the values of the declaration and the need for an inspection of goods. In addition to this, most of the clearing agents are not very conversant with the customs procedures and therefore fail to understand the nature of the queries raised by the customs officers hence the delayed responses to the queries raised by the officers. It was established that there is no specific or minimum qualifications for being a clearing agent and all that is necessary is to just know what is involved in customs clearance process. Incidentally, the importers interviewed and the drivers alike are less knowledgeable about the customs procedures and depend entirely on their agents to guide them through the whole process of custom clearance. This poses a danger in the sense that a trader could easily be led into doing wrong things by an ignorant agent, as was confirmed by management at the border in relation to the cases where fraud has been detected.

Further, there is neither a statutory time frame on the part of ZRA within which to complete the assessment process nor a corresponding time frame on the part of the importers/agents in which to attend to queries raised by customs officers. As an administrative intervention, customs officers merely remind the agents after 48 hours, i.e. 2 days, of the need to respond to the queries. Related to this, management at the border indicated that some agents deliberately undervalue and misclassify the goods and provide forged documents (invoices, certificates and permits) with a view to pay less duty or to facilitate the importation of controlled goods. This entails that the assessment process would be suspended in respect of the subject declaration so as to investigate the suspected fraud with the attendant meticulous process of physically verifying each and every item in the consignment. It was established that 75 percent of the importation of groceries are subjected to a physical inspection because of the under-declaration and under valuation of goods. In addition to this, most occasional importers do not prepare enough money to pay for duties and only start looking for more money once the assessment notices are issued. Indeed, out of the 10 importers interviewed, 8 confessed that they had not prepared enough money to pay duties and had to look for more money to meet the obligation.

The payment arrangement also poses a challenge in the sense that importers through their agents can not pay cash above K1m and so must cut a banker's cheque in favour of ZRA at a cost of around K80,000. It should be noted that the bank transactions are conducted within the banking hours of between 08.15hours and 15.30hours with the implication that there are no payments made for assessments issued after 15.30hrs.

As earlier alluded to, it is common among agents to sub-contract their agency when their accounts are blocked or agency licenses suspended (on embargo) or revoked. In most instances, the agents that are embargo do not disclose their agency status this to their principals (importers and drivers) for fear of losing business. This entails delayed relay of information between customs officials and the importers. In fact under the current legislation all importation of value K10 million and above ought to be declared on a Bill of Entry through a customs clearing agent.

Further, that there are thirteen (13) other government agencies and security wings represented at the border. Of these agencies, only the Immigration, Drug Enforcement Commission (DEC), Ministries of Agriculture (Plant Quarantine and Phytosanitary Services (PQPS) and of Health (Port Health) and the Zambia Bureau of Standards (ZABS) have some bearing on the release time of the goods. First, the passenger terminal which houses the Immigration office is located about 200 meters from the commercial terminal and truck drivers walk over to complete the immigration formalities. Second, DEC and ZABS may from time to time inspect goods in search of drug contrabands and for approved standards respectively and; third, the Ministries of Agriculture and Health verifies the import permits for controlled goods and may take samples for scientific examinations. The inspection of goods and documentary checks may last up to two (2) hours and are conducted separately from those carried out by ZRA and at differing intervals to the extent of creating a duplication of work.

4.6. KNOWLEDGE OF THE AMENDMENT

All the customs officials interviewed are aware of the Amendment Act as this had been brought to their attention by management. However, they all indicated that they are yet to encounter a pre-arrival declaration as provided for by the Act but that they are very conversant with the pre-arrival clearance. The importers, agents and truck drivers interviewed expressed ignorance of the Amendment Act No. 47 of 2010 claiming that this had not been brought to their attention by ZRA as per normal practice regarding a change in clearance procedures. The agents indicated that they had handled pre-clearance declaration as and when allowed by ZRA management. According to them, a pre-clearance declaration is at the discretion of the ZRA and only in selected importations relating to goods in transit, hazardous materials and heavy equipment. It was underscored by the agents that in all pre-clearance declarations the agents had registered the entries and paid or undertook to pay the assessed duty before the arrival of goods at the border but they had never submitted a description of goods to ZRA just for the purposes of assessing duty either prior or upon arrival of goods at the border.

Further, all the importer/agents and truck drivers interviewed indicated that they had been lodging the customs declaration Form CE 20 as and when it was convenient to them because they were not aware of any legal requirement compelling them to lodge their declaration at least 7 days prior to the arrival of goods or within a day of the goods at the border. The importers and the agents insisted that although they could be presumed to be aware of any new national legislation, it was the role of ZRA to inform them of any new

changes in the clearing procedures as it was the enforcing agency with powers to provide guidelines on how to implement a law relating to customs and excise.

CHAPTER V

THE ANALYSIS OF DATA AND CONCLUSION

5.1. THE ANALYSIS OF DATA

From the findings, it is apparent that the Customs and Excise (Amendment) Act No. 47 of 2010 has not brought any positive change in the customs release times. The release times of goods from customs has remained the same in respect of importations for domestic consumption and the goods cleared in transit both prior and after the coming into force of the Act. Further, the customs clearance procedures and process have remained the same and there has not been in departure in the manner of lodging a declaration; the declarations are lodged in as and when it is convenient to both the agent and the importer to do so. The reason for the continued trend of lodging in a declaration at will has been attributed to the ignorance of the law regarding the statutory time frame within which to lodge in a declaration. While the ignorance of the law has never been any defense against a legal liability, the lack of enforcement of any provision of the law signifies the law's ineffectiveness in addressing a mischief for which it was enacted. It is a finding of this study that since the coming into force of the Act on 1st January 2011, there has not been any documented pre-arrival declaration at Chirundu border and that if peradventure such a declaration had been done, both the customs officers and the clearing agents interviewed could not remember a declaration done in the manner prescribed by the Act. What is common trend is the pre-clearance declaration in respect of selected importations. To this end, the effectiveness of the Customs and Excise (Amendment) Act

No. 47 of 2010 has not been evaluated by this study because there was no available data on which to make a definitive conclusion.

Notwithstanding this shortcoming, it is a finding of this study that the Act was enacted to reinforce the provisions of the principal Act regarding the manner and timeframe within which a customs declaration can be made. Under the new law, it is now mandatory for the Commissioner General to accept the registration of a Bill of Entry at least five days prior to the arrival of goods. It is now mandatory also for an importer/agent to lodge a declaration for duty assessment purpose at least seven days prior to the arrival of goods. Where a pre-arrival declaration is not done, an importer/agent is now expected to lodge in a declaration within a day of the arrival of goods at the border. It cannot be doubted that these provisions are meant to enable the customs officers enough in which to conduct a thorough assessment of duties payable prior to the arrival of goods.

It is also a finding of this study that the assessment process is lengthy and in certain instances requires an importer/agent to provide additional information or amend the declaration altogether. In extreme instances, the process could involve the actual physical verification of the goods, an exercise that could take up to the whole full day to be completed. Therefore, when the most part of the assessment process is conducted in advance, there would be very little at all to be done when the goods arrive at the border apart from a casual verification the general nature of the goods and the mode of transport as declared. Otherwise, goods would be released without delay upon payment of duty if the same was not made. In view of the risk management techniques used in the

assessment process, it can be predicted that only in exceptional circumstances where the selectivity on ASYCUDA is red would a pre-declared goods consignment be subjected to actual physical verification of the goods.

It is a further finding of this study that some importers fell short of the money required to discharge the tax obligations on the importation. The reason for this is that one would only be able to know the exact amount of duty payable once the assessment has been done. Therefore, by providing for pre-arrival declaration the importer would be able to anticipate the exact amount of duty payable before goods could arrive at the border and be able to raise any shortfall within a reasonable time. In so doing the importers would be able to avoid the interest and customs warehouse rent that would otherwise accrue for the late payment of duty. Considering the significant differences in release times between the post-arrival clearance and the pre-arrival clearance under the previous legal regime, it can not be doubted that the provisions of the Amendment Act when enforced to the letter could reduce the customs release times even for the clearance of goods imported for domestic consumption.

Furthermore, it is the finding of this study that the presence of numerous government agencies at the border has insignificant impact on the customs release times. To this end, the Act has in almost all respect addressed the main factor, customs clearance process, for the delays at the border posts. By providing for mandatory pre-arrival declarations, the respective government agencies would have verified the authenticity of the import permits and certificates in respect of goods intended to be imported while such agencies

like the DEC would have gathered enough intelligence that could enable them to concentrate on those goods reasonably suspected to contain concealed contrabands. In addition to this, where the full details of the impending importation are availed in advance, it is possible for all interested government agencies to coordinate their enforcement activities and be able to conduct a full physical inspection of goods, where necessary, at the same time.

Additionally, the non-compliance of the traders and agents alike with the new provisions of the law is not out of malice or resistance but because the same has not been brought to their attention. In other words, the stakeholders are willing to comply with the new law if only they are guided in the implementation of this new law. Understandably, it is only ZRA that can legally guide the other stakeholders regarding the manner of implementing the new law through the formulation of appropriate rules and procedures to give effect to the new provisions. The delays at the border are much a concern of all stakeholders and any interventions aimed at alleviating these delays would be appreciated by the society at large. Therefore, it cannot be doubted that Act No. 47 of 2010 is relevant in solving the problem and would be supported by all stakeholders, a requisite that is necessary for an effective enforcement of any piece of legislation.

It is also a finding that Chirundu border post processes on average 227 Bills of Entry per day and that the border has been progressively collecting an average of K140 billion per month. The volume of the Entries processes per day is in light of the previous legal regime where importers/agents decide when to lodge their declaration and when the

goods have already arrived at the border. This scenario undoubtedly exerts enormous pressure on the customs officers in a situation whereby an unprecedented number of entries are lodged all at once. In a bid to clear the backlog, it is possible that thorough examination of the entries and the assessment of duty would be compromised leading to under collection of revenue. The provisions in the new law envision an increment in the volumes of the declaration and enough time for the customs officers to conduct a thorough assessment of the lodged declarations. This would entail increased revenue collection as more entries would be processed at a quicker pace and with due care in ensuring that correct duty is paid.

In the same vein, the quicker processing of entries would stamp out corrupt practices with customs officers in the sense that there would be no need for an importer/agent to seek favours for the quick movement of goods. It has been asserted that corruption is rife at the customs border posts because of the perceived delays in the processing of imports. These delays result in anxieties and impatience among the importers especially in view of the fact that demurrages on the hired trucks begin to accumulate for each day that trucks remain marooned at the borders. Therefore, in order to avoid further damages importer/agent would find a way out by offering customs officers bribes to facilitate the quick processing of the declaration and at an illegal lower payable duty.

5.2. CONCLUSION

The Customs and Excise (Amendment) Act No. 47 of 2010 has merely reinforced the provisions of the earlier section 32B of the Principal Act, which provisions have proved effective in reducing the custom release time as demonstrated in instances where goods have been pre-cleared. Although its effectiveness in expediting the customs clearance process has not been evaluated due to its non enforcement as at the time of this study, it can not be doubted that it has provisions that have addressed the one major driver in the customs release times, i.e. customs assessment process. Therefore, it is the conclusion of this study that the Act is likely to enhance the expedited customs clearance process. Further that it is not the inadequacy of the provisions contained therein but the lack of enforcement that has rendered the Act ineffective.

5.3. RECOMMENDATIONS

1. While an enactment of Parliament is presumed to be of public knowledge to every citizen, deliberate efforts must be made to bring specific provisions therein to the attention to a class of citizens that are likely to be more affected. It is a notorious fact that changes in tax regimes regarding Pay As You Earn are widely publicized immediately after the budget speech. In line with this, the provisions of the Act in question relating to the manner of importing goods must be as widely publicized as possible to enable stakeholders participate in its enforcement. It is a shame for importers and agents alike to believe that pre-clearance procedure can be done at the discretion of customs officials when it is now law that every person intending to import must lodge in a pre-arrival declaration.
2. Further, while the Act has provided for the time frame within which to make a declaration and making payment, it is also necessary that a time frame within which customs officers should make the assessments as well as within which a query posed to the importer/agent should be attended to. Of course this may not be practical in certain instances but the law must provide for the manner in which customs officials should be able to inform the importer/agent the reason why the assessment has not been made within the stipulated time. Such a measure would curb speculations and anxieties among the importers that lead to customs procedures being perceived as less efficient.
3. The repealed and replaced section 32B of the principal Act now provides for the Commissioner General to make rules for the enforcement of the new provisions of

the law. This has not been done yet and is the major reason there has not been any effort by customs officials towards implementing the new law. In view of this it is recommended that where an enactment provides for subsidiary legislation such as rules or other practice notes, such a law should only come into force once such statutory instruments, rules or notes have been formulated. It should be noted that the value of any enactment lies in its applicability and any law without explicit guidelines regarding its enforcement can turn out to be a dead letter on the books of statutes notwithstanding the good intentions of the legislators.

4. In order to avoid duplicity of activities among government departments and agencies at the border with regard to inspections of goods, there is need for proper coordination so that an inspection of goods is done at once by all the interested parties. When a need arises for any government department or agency to verify the document or inspect the goods, the other wings that may be interested in the same goods must be informed to enable them be present during the verification or inspection exercise for all agencies' and departments' purposes.
5. Considering the lay out of the border infrastructure, it is important that the Immigration department create a desk at the commercial terminal to process the immigration formalities for commercial truck drivers. This would cut down on time taken by the drivers to walk over a two-hundred-metre-distance to the passenger terminal for immigration formalities.
6. In order to avoid further costs incurred by traders and agents alike in securing bank certified cheques for the purposes of paying duties, the Zambia Revenue

Authority should encourage and accept bank transfers and deposits into its account and then process receipts to acknowledge the payment upon production of a bank transfer or deposit slip. This in turn would ease the burden on ZRA of taking bundles of cheque leaves for depositing.

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