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Occasional Paper: Streamlining the regulation and certification processes to enhance trade facilitation

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Introduction

This paper contains an overview of the requirements of various governmental entities in trading across borders. These entities include ITAC (International Trade Administration Commission of South Africa), the NRCS (National Regulator for Compulsory Specifications), and SABS (South African Bureau of Standards). The shortcomings of the current LOA system are increasing due to its inability to regulate "dumping", which causes a significant threat to fair trade and the safety of South African citizens. In addition, there is a general lack of control escalating due to ever-increasing imports against severe capacity constraints. Unfortunately, only a small percentage of products can be inspected, which is why the pre-approval LOA process, and its limitations should be evaluated. For example, between 2017/2018, NRCS detected and subsequently destroyed non-confirming products valued at more than R300 million. More concerning is that a substantial portion of NRCS levy income is spent on destroying non-compliant goods, hindering the opportunity to address capacity constraints[1].

Against this backdrop, this paper specifically addresses the mandate of these entities and how they operate and cooperate within the South African trading environment. This paper further tries to identify how these different entities can effectively link together by using a single integrated system to accommodate the industry better.

The outline of this paper is as follows: **(1)** The mandate of ITAC, **(2)** The mandate of SABS **(3)** The mandate of NRCS **(4)** The Supplier's Declaration of Conformity (SDoC): **(5)** Current Constraints, and **(6)** Proposed Solutions.

The mandate of ITAC

The International Trade Administration Commission of South Africa (ITAC) is a public enterprise whose mandate is to encourage economic growth and development to raise incomes and endorse

[1] Connie Jonker. 27/08/2019. The LoA versus the Supplier's Declaration of Conformity – a comparison.

investment and employment creation in South Africa. ITAC's core functions are customs tariff investigations, trade remedies, and import and export control.

Under their mandate of import and export control, ITAC applies control measures on certain products to enforce health, security and safety, environmental and technical standards. These standards ascend from International Agreements, such as the Montreal Protocol on Substances that Deplete the Ozone Layer, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, and the 1988 UN Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, as well as other domestic laws.

The import and export control measures or restrictions are subject to those allowed under the relevant World Trade Organization (WTO) Agreements. Out of almost 6 650 tariff lines as per South Africa's version of the International Harmonised Commodity Description and Coding System, there are 276 tariff lines under import control and 177 tariff lines under export control. Furthermore, an import permit is required for the importation of controlled items and all used or second-hand goods, which is issued by ITAC. Certain goods destined for export may be restricted to support beneficiation strategies or assist local manufacturers in obtaining raw materials before the majority is exported. For these products, an export permit is required, as issued by ITAC.

a. The application process for an Import or Export permit of restricted, used, or personal items:

ITAC provides an electronic copy of the import and export permit applications to be downloaded from their website. A first-time importer or exporter of restricted, used, or personal items will need to register and complete an application form and, secondly, apply for an import/export permit for the respective product. Unfortunately, clients need to submit their applications via fax or physically to the ITAC offices for consideration. As per ITAC, the turnaround time for processing an export permit application is, on average, two working days. However, an exception for an export permit for scrap metals is in place, which could take around ten working days for circulation, plus additional time for processing and issuing.

For issuing an import permit application, the average turnaround time is between three to five days. Depending on the product in question, applications might require supportive documentation from other departments, which is DEA (Department of Environmental Affairs), Mineral Resources & Energy (DMRE), DALRRD, NRCS (National Regulator for Compulsory Specifications) and SAPS (South African Police Service)[2].

[2] International Trade Administration Commission of South Africa

The mandate of SABS:

The South African Bureau of Standards is responsible for regulating the quality of South African goods and services. There are various divisions responsible for different tasks, including the Commercial Services Division, the Standards Division, the Design Institute, and the Regulatory Division.

The Commercial Services Division is responsible for certification and training in various industries throughout South Africa. The Standards Division provides standards that enhance South Africa's competitiveness, which provide the basis for consumer protection, health, safety, and environmental issues. The Design Institute promotes the benefits of design to foster economic and technological development in South Africa. The Institute focuses on design education, industry, and information and includes several award schemes and design publications. Lastly, the Regulatory Division administers approximately 70 legal compulsory specifications across a broad spectrum of areas. These mandatory specifications are legal measures and requirements to ensure that products locally manufactured or imported into South Africa or exported from South Africa meet the minimum standards for health and safety as set out in the relevant South African National Standards.

The SABS has several international and regional affiliations, such as the British Standards Institute, being part of the development of the forerunner to the current ISO 9000 global benchmark in quality management, apart from being the founder member of the International Organization for Standardization (ISO)[3].

The mandate of NRCS:

The National Regulator for Compulsory Specifications Act (Act 5 of 2008) was promulgated in Government Gazette 31216 on 4th July 2008 and took effect on 1st September 2008. The Act transferred the Regulatory Division of the South African Bureau of Standards (SABS) and all regulatory functions of the SABS to a new statutory Department of Trade and Industry (DTI) institution - the National Regulator for Compulsory Specifications (NCRS). The new Act also transferred all employees in the SABS Regulatory Division to the NRCS, together with relevant regulation including compulsory specifications, agreements, assets, and obligations[4].

The NRCS operates, under the new Act, as a sub-division of the Department of Trade, Industry, and Competition (DTIC). It has been established to administer compulsory specifications and other

[3] Western Cape Government. SA Bureau of Standards (SABS)
[4] South African Bureau of Standards. NRCS Overview

technical regulations to protect the health, the environment, and overall safety of South Africans. The NRCS endeavours to achieve equal treatment of local and imported products and competition on a level playing field, which are fundamental principles of the WTO TBT Agreement (Technical Barriers to Trade) and SPS (Sanitary and Phytosanitary agreements). In addition, the entity's mandate is to ensure fair trade in accord with government policies and guidelines. The NRCS consults widely to involve all stakeholders, especially industry, in developing new compulsory specifications and amendments in terms of safety regulations.

Furthermore, the NRCS recognises various laboratories and certification schemes to provide reliable proof of conformity of products to the applicable mandatory specifications. The NCRS tries to align all regional regulatory requirements with international requirements where possible to help domestic products be internationally competitive. The NRCS Food and Allied Industries Department is recognized worldwide as a leader in food safety and has been appointed as the certification body to export frozen marine products to the EU. FAI is audited regularly by EU authorities and fully meets its requirements [5].

The technical regulations are based on the level of risk, which identifies certain safety-critical products to be regulated. Safety-critical products refer to those products that may harm the consumer or the environment if not manufactured per strict safety requirements. The regulatory model of the NRCS is dependent on the risk of the product, and it may include the pre-market approval (issuance of LOA (Letter of Authority) and other certificates), market surveillance and third-party certification. The burden to prove compliance lies with the Manufacturer, Importer or Builder (MIB). Where an LOA is required, the MIB must apply for an LOA before products are imported or made available on the market. The LOA must be accompanied by valid documentary evidence such as test reports from approved laboratories. A sample of the product may also be required to enable the NRCS to conduct its own tests[6].

Various issues have been raised by both importers, exporters and the NRCS, respectively. Importers and exporters claim that the application and verification processes take too long to be productive for trade, especially considering that manual processes are still involved. NRCS, on the other hand, revealed that in most cases, cargo is imported, and an LOA application is submitted after products are either detained at the port of entry or having been served with a directive by the NRCS. In addition, LOAs are not submitted timeously, and false or incorrect compliance and supporting documents are received. Furthermore, importers struggle to obtain

[5] National Regulator for Compulsory Specifications
[6] National Regulator for Compulsory Specifications

accurate test reports timeously when eventually applying for an LOA. These matters increase the time and costs for a shipment to reach its destination, which is not productive[7].

a. The application process for a Letter of Authority (LOA), Regulator's Compliance Certificate (RCC), and a Sales Permit via NRCS:

Application forms are available via the NRCS website and are to be submitted via the CRM system electronically. The application form must be accompanied by all the necessary documentation, including the proof of payment, test reports, declarations (where applicable), and any other documents required by the NRCS. Once the application is received online, the LOA evaluation process will resume, as shown in Annexure 1. Under normal circumstances, the evaluation of the LOA application will take up to 120 calendar days from the date of registration. If the application is approved, an LOA will be issued and sent to the applicant via mail. If a physical copy of the LOA is required, a request can be made to the NRCS to collect it from their offices. If any findings are made of non-compliance during the evaluation process, it will be communicated to the client to rectify within a period of 30 days. If the client fails to correct the non-compliance issues identified within the stipulated time, the application will be terminated, invoiced and a rejection letter issued to the client[8].

According to NRCS, a period of *120 working days instead of 120 calendar days* was required to carry out their duties effectively and that this turnaround time compared favourably with other countries. This time frame was implemented in April 2014, after which the industry raised numerous concerns. After several engagements with industry and parliament in September 2015, it was confirmed that LOA applications must be considered within 120 calendar days instead of 120 working days. In May 2016, the NRCS announced that they were in the process of fully implementing the new turnaround times, which is according to a risk-based approach. Based on an assessment of the risk of the product, the applicant, and the country of origin, three targeted turnaround times were identified[9]:

- Low-risk applications – to be processed within 75 calendar days
- Medium risk applications – to be processed within 90 calendar days
- High-risk applications – to be processed within 120 calendar days

[7] Parliamentary Monitoring Group. 2/09/2015. National Regulator for Compulsory Specifications. Letters of Authority effectiveness: hearing; SPII & THRIP: Innovation & Capacity Building DTI interventions

[8] National Regulator for Compulsory Specifications. 06/05/2019. Electrotechnical. Letter of Authority (LOA) Administration Procedure.

[9] Parliamentary Monitoring Group. 2/09/2015. National Regulator for Compulsory Specifications. Letters of Authority effectiveness: hearing; SPII & THRIP: Innovation & Capacity Building DTI interventions

Since this announcement in May 2016, there hasn't been any proof that this approach has been fully implemented and followed. As per the NRCS administration processes published in May 2019, the average turnaround is still 120 calendar days upon submission.

The Supplier's Declaration of Conformity (SDoC):

The Supplier's Declaration of Conformity (SDoC) concept, also known as the "*First Party Approach*", was developed by the European Union to assist in regulating products against the EN Low Voltage Directives. It was published as an EN standard outlaying the requirements of those suppliers that market their products under the CE mark.

An SDoC is a certification process whereby the supplier provides written assurance to the specified requirements. The ISO/IEC adopted the standard ISO/IEC 17050 Supplier's Declaration of Conformity, also published as a South African national standard, SANS 17050: 2013. The declaration identifies the party responsible for making the declaration of conformity and conformity of the product, process, or service itself. The SDoC is very valuable as it allows for the supplier to sign a written declaration of compliance based on the results of the appropriate type of conformity assessment, which is carried out by a first, second, or third party or a combination thereof including testing, measurement, auditing, inspection, or examination. Under this approach, the manufacturer or supplier – rather than the regulatory authority – ensures that products entering a market comply with the mandatory technical regulations[10].

The SDoC system is often predicated on adequate market surveillance, substantial penalties for false or misleading declarations, an appropriate regulatory environment, an appropriate product liability regime. A supplier will make a declaration based on its confidence in the quality control system, the results of testing or inspection they undertake himself or via another party. It is not a requirement to make use of an accredited laboratory/inspection body. The supplier can also choose where to test or inspect. For regulatory purposes, authorities can ensure that the integrity of a supplier's declaration of conformity is maintained by establishing requirements for who signs the declaration of conformity, requiring access to the declaration and/or compliance records[11].

The below table shows the differences in the regulatory processes between the LOA and SDoC processes.

[10] [10] Connie Jonker. 27/08/2019. The LoA versus the Supplier's Declaration of Conformity – a comparison
[11] National Institute of Standards and Technology. The Use of Supplier's Declaration of Conformity

Table 1: Difference in regulatory processes between LOA and SDoC processes:

Regulatory process	LoA process	SDoC process
Type test report third party	Yes	Yes
Type test report first party	No	Yes
Structured verification test programme (surveillance testing)	No	Yes
Risk assessment/product type	No	Yes
Product/disclosure in event of non-compliance	Yes, on minister's approval	Yes, supplier's corrective action and recall procedures
NRCS inspection	Yes	Yes
Technical file records	No	Yes
Compulsory levies	Yes	Yes
Apply in-house routine testing	No	Yes

Source: Jonker, 2019

Current Constraints

Unfortunately, the various requirements by the entities and documents outlined above do not always assist in the smooth functioning of trade flows, creating several constraints. To illustrate the current constraints, hereafter follows several areas which affect suppliers and end-users. The industry is critical of the requirements of ITAC and NRCS for the following reasons:

- The cost of the application for a permit and regulated products
- The timeframe for approval of LOAs (120 calendar days)
- The manual process for application via ITAC and LOA generation
- Certain goods listed by SARS do not require an LOA, while NRCS request an LOA if the final product contained materials that would usually require an LOA
- The NRCS regulations cover components that are commonly used in the manufacture of articles that are subject to NRCS control, potentially leading to a system of double control and double levy payments
- NRCS's processes are unpredictable, which is not conducive for trade
- NRCS's capacity constraints and the subsequent administrative delays as a result

- The cost of delays in obtaining LOAs. The impact results in additional costs incurred by trade through storage and demurrage charges while waiting for their applications to be approved
- The opportunity cost due to trade as without LOAs, goods cannot be imported or sold since traders cannot by law sell any non-compliant goods
- NRCS's lack of communication and awareness towards the general public regarding restricted items and associated requirements. Furthermore, a lack of communication between the NRCS and stakeholders on technical issues concerning product scope was covered yet not covered by the compulsory specification.
- There is a lack of direct access to suitable testing facilities for type testing.
- The type test report only applies to the sample tested and does not ensure compliance – often referred to as approval granted due to a "golden-sample". In addition, the lack of the ability of NRCS to determine such instances.
- There is a total lack of market surveillance testing as indicated by the NRCS Annual Reports, which allocate only 1% of income to surveillance testing.
- There are instances of double regulation over a single product requiring repetitive tasks. For example, in 2016, ICASA (Independent Communications Authority of South Africa – responsible for regulating the telecommunications, broadcasting and postal industries) reviewed their process of EMI (Electromagnetic Interference) or EMC (Electromagnetic Compatibility) Certificate of Compliance (CoC). ICASA then re-mandated SABS to reissue CoCs on electronic equipment that fall under their EMC/EMI requirements mandate. Effectively, there are two regulators with different mandates over these products, NRCS for safety and EE (Energy Efficiency) and ICASA for EMC/EMI and its type of approval outsourced to SABS. Furthermore, NRCS does not have their own labs, and the legislation does not provide for this. Therefore, NRCS uses CABs (Conformity Assessment Bodies) to test sampled products, and it's highly possible that ICASA will appoint the same CABs to issue a CoC.

Proposed Solutions

Despite the current constraints outlined above, the industry believes that several solutions are currently available to improve the existing constraints. The government can significantly help South African trade be competitive and sustainable once again by adopting these solutions. These are listed below:

Adopt a single electronic system that eliminates manual processes

Nowadays, the need to adopt technology and streamline business processes is paramount. Therefore, the industry suggests adopting an online electronic application system that eliminates timely and repetitive manual processes. Furthermore, the aim should be to empower the public by creating a system of self-assessment and self-registration incorporating ITAC registration, with SARS and NRCS evaluation. This approach will successfully alleviate the delays in submitting the "paper-based" forms physically.

Regarding registering as an exporter of restricted goods and registering the restricted goods via ITAC, it would be ideal to have this information shared with NRCS and be made available to SARS. For example, if an application comes through to ITAC for a particular product requiring NRCS evaluation, ITAC can send streamlined information to NRCS to initiate the process. The applicant is made aware of additional documents, requirements, and costs and can provide these electronically. Furthermore, the validated LOA should be sent to SARS automatically to align with the customs declaration. Once SARS's risk engine identifies the requirement of an LOA, it should retrieve the same from NRCS via an electronic linkage.

In terms of imports, late submission of NRCS detention notices by shipping lines negatively affect the importer, as storage, inspection, and associated costs increase. Suppose NRCS requests that certain goods be evaluated and approved before it enters the country. In that case, it will need to align itself with international standards and ensure that agents at origin are 1) made aware of additional NRCS requirements in South Africa, 2) can ensure shipping lines, airlines, and local agents can facilitate the evaluation process before arrival and 3) ensure such parties are made accountable for late submissions of manifest and subsequent detention notices. This approach calls for streamlining evaluation processes with international standards and implementing a service carter to realise accountability and transparency.

Promote the use of SDoC under supervision of a single regulatory authority:

Numerous studies have been done on the viability of self-declaration as a suitable mechanism for the mandatory registration of certain products. For example, in a study funded by the European Union (EU) and endorsed by NRCS and DTIC, it was highlighted that after interviews with international experts, that SDoC and 3rd party approaches provide an effective mechanism to maximise market compliance. They are supported by an appropriately funded and resourced MSA (Market Surveillance Authority), which undertakes regular and targeted testing[12].

[12] Theo Covary. Marc 2021. Assess the Viability of Self-Declaration as a Suitable Mechanism for the Mandatory Registration of Electro-Technical Products with the National Regulator for Compulsory Specifications

Some of the key limitations, especially true to South Africa's regulatory framework, is the absence of an MSA (Market Surveillance Authority) and limited access to independent accredited test laboratories. South Africa, therefore, needs an MSA which can undertake regular testing, enforce regulatory requirements, and further Act as a mediator between all the different government bodies acting under the mandate of product regulation and standardisation. In addition, the MSA can use a single electronic mechanism, as mentioned above, to link all the administrative and regulatory tasks together with the private sector.

Furthermore, in terms of accountability, the supplier is responsible for non-compliance under the Consumer Protection Act. However, in the event of product failure that resulted in harm or damage, and subsequent claims, it is the responsibility of the National Consumer Council, whereby the NRCS cannot be held responsible. The LOA system is funded by government grants and levies payable on each item offered for sale. However, it is worth mentioning that the NRCS has kept its budget for testing at a low of around 1% since its formation due to declining government grants and other financial pressures.

By incorporating regulation under an SDoC, NRCS funding can still be maintained under the supplier/manufacturer registration and regulatory levies. The supplier is accountable for non-compliance under the Consumer Protection Act[13]. Furthermore, allowing the issuance of SDoC under certain product classifications, industries, or registered traders could help alleviate the pressure on NRCS's limited resources.

Implement a service charter to enforce accountability and transparency of the process

With any regulatory requirements needed, accountability and transparency are of utmost importance. Consequently, the industry suggests creating a service charter as oversight and corporate governance structure that provides for the timeframes and standard guidelines to be followed by NRCS officials. Furthermore, by implementing a service charter, there would be legitimate accountability for shipping lines' late and inaccurate submission of manifests. This approach will allow importers and local freight forwarders to act pro-actively and not reactively, which is currently the case.

[13] Connie Jonker. 27/08/2019. Ee publishers. The LoA versus the Supplier's Declaration of Conformity – a comparison

Utilise the AEO (Authorised Economic Operator) program as a tool to facilitate ITAC and NRCS registration

A possible solution to the timeframe delay (120 days) to obtain a LOA could lie in "approved" traders self-regulating. These traders would have to meet the required specifications set out by NRCS and trade in products that have internationally accepted certification/standards. This change will, in turn, assist NRCS with capacity from a human resources point of view. Consequently, this will also allow these approved traders to move seamlessly through the supply chain, thereby reducing their costs and supplying their products at a competitive and affordable price to the public. The solutions will improve the capacity building of the NRCS by providing them with the tools and human resources required to conduct their roles.

Revisit the provisions contained in the ITAC Act 71 of 2002 and NRCS Act 5 of 2008

From a legislative perspective (ITAC Act 71 of 2002 and NRCS Act 5 of 2008), it is essential to apply and revisit the provisions to guide the practical aspects associated with these authorities. For example, LOAs are required for regulated commodities as specified in the NRCS guide, which determines, among other things, the branding requirements, compulsory specifications and homologation prescriptions, time frames, and others. Furthermore, Sunset Reviews fall under the ambit of ITAC as an arm of the DTIC (The Department of Trade Industry and Competition). They are also a concern as submissions are not coherent with the HS data reflected in the LAPD Schedules published by SARS. ITAC is an extension of the DTIC and should thus work with SARS as the administrative agency to streamline the process (via digitization), thus supporting trade facilitation.

In addition, inspectors have the powers but need the necessary ability to issue fines and penalties. Therefore, if possible, the DTIC should consider the available sanctions to enforce stringent accountability for misconduct.

Prioritise vast capacity building regarding ITAC and NRCS requirements

Create a clearly defined list of products linked directly to an HTS code. Ensure the list is shared between ITAC and SARS for evaluation purposes. Ensure that the list is regularly shared with all traders, freight forwarders, and associated stakeholders via online marketing initiatives. Currently, importers, manufacturers and sellers do not know if a product requires an LOA. The

current list is not accurate and detailed enough or made accessible and noticeable sufficient to assist trade.

Furthermore, there needs to be an impetus on skills development in the Customs Brokerage / Freight Forwarding sector on OGA requirements since the focus has primarily been on SARS related matters. One would also need to keep in mind that the Acts which govern the subject agencies were promulgated in 2002 and 2008, 19 and 14 years ago, respectively. Traders are not always au fait with LOA branding requirements as an example. Customs and freight forwarding compliance managers must add value to their clients at the stages of pre-shipment or at the origin so that all documentary requirements align before importation, thus keeping delays to a minimum at the time of arrival. Customs and freight forwarding agents should be made aware of their abilities to serve the client better and SARS, ITAC, NRCS and all other OGAs. Thus, they apply for additional free time from the shipping line at the booking stage to plan for delays regarding an inspection.

Conclusion

In summary, this paper contained an overview of the mandate of ITAC, NRCS and SABS and how these government bodies can work together to facilitate trade better. Currently, the average turnaround time and associated costs for ITAC registration and NRCS assessment of specific products strain traders and related parties. Global trade has moved from manual to e-commerce, and for South Africa, we will have to ensure that we also move to that environment. By moving applications to an electronic platform, we will be able to compete on that stage. In addition, the approval process can be enhanced as indicated by Annexure 1 by incorporating SARS's validation process with NRCS's database.

Furthermore, streamlining standards and processes between ITAC, NRCS, SABS, and SARS will effectively reduce the repetitive tasks and costs hindering trade. For example, suppose the issuance of a SDoC is allowed within certain industries or by certain registered traders. In that case, NRCS's limited resources can be deployed much more effectively, allowing the NRCS to facilitate trade on a broader level. In addition, South Africa needs a market surveillance authority to conduct regular testing and act as a mediator between all the different OGAs.

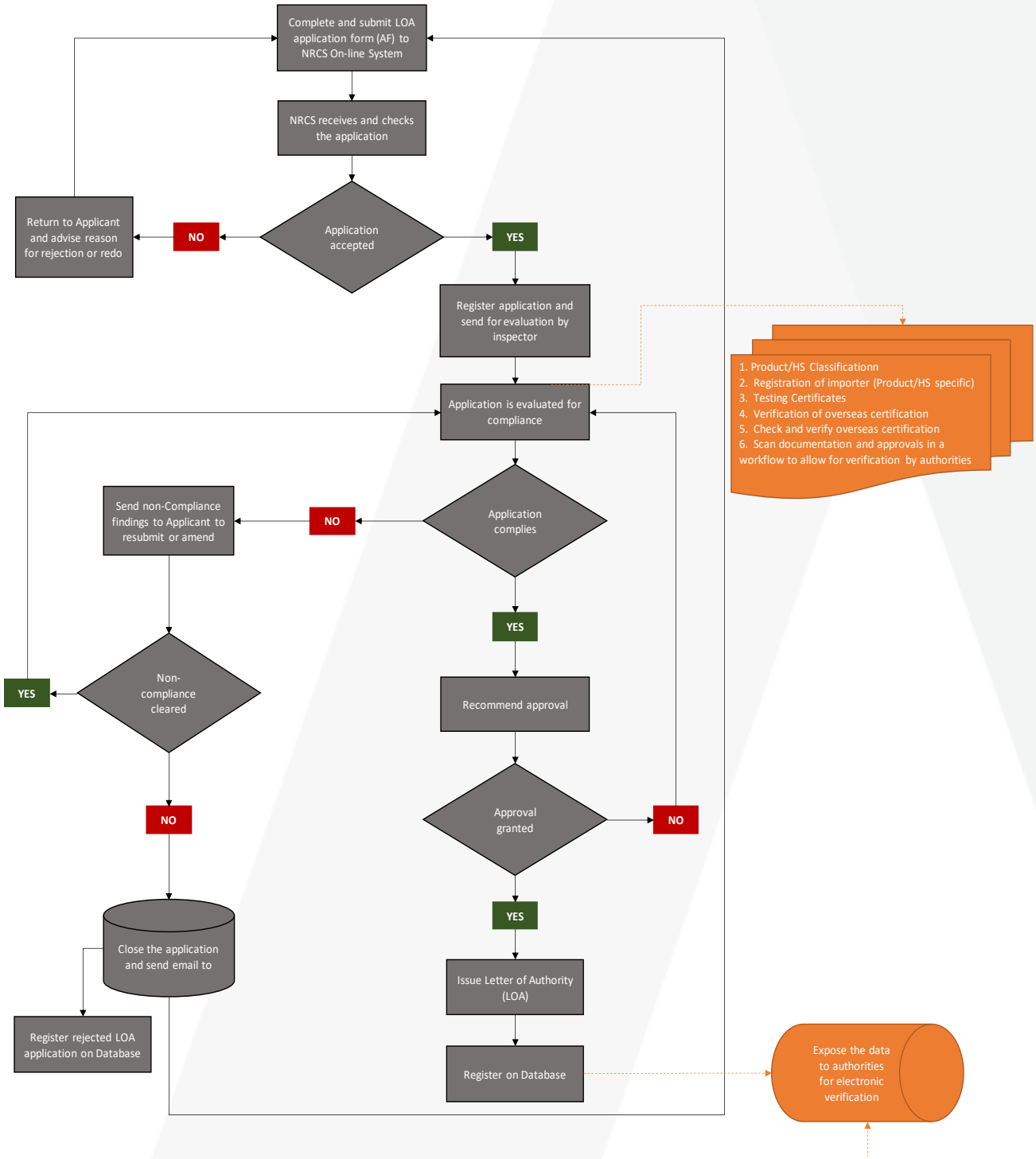
A service charter, such as the one implemented by SARS, will help enforce accountability by parties acting against the system and allow better transparency between all the associated role players. For example, approved traders could be registered via ITAC, using the AEO program and ensure NRCS requirements are adhered to on an additional platform. Furthermore, there is a great

need to establish an effective communication system regarding restricted goods. In addition, vast capacity building is needed among traders, customs and freight forwarding agents to better service the customer. These solutions, in turn, could help foster economic growth and the overall trading environment, which is the collective aim of each entity.

Annexure 1

SUGGESTED APPROVAL PROCESS:

1. **Follow the normal LOA application process on NRCS On-Line System**



2. **When Customs Declaration is submitted, SARS system to perform verification against NRCS database**