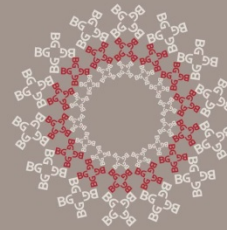


# Customs Modernisation and the Impact on Supply Chain Movement

Virusha Subban



Lawyers  
who see  
the bigger  
picture, and  
the details.

**“The SARS Customs Modernisation Programme has gained tremendous momentum during 2011 and has in many ways totally transformed the way trade is conducted in South Africa.**

**The first half of 2011 saw amendments to the Passenger Processing System, including changes to the DA331, as well as the replacement of SARS’s Manifest Acquittal System (MAS) with the Automated Cargo Management (ACM) system – initially introduced only for sea and air cargo reporters”.**

**Key changes that offered trade the benefits of greater ease of movement of goods, faster turnaround times and cost savings, as well as increased efficiency for SARS, were introduced in 2011. This phase, known as Release 2, was characterised by the introduction of:**

- An electronic case management system, called Service Manager, linked to a new inspection process**
- Electronic submission of supporting documents**
- New Customs Status Codes**
- Centralisation of back-end processing in four “Hubs”**
- An electronic release system, reducing the need for paper and authorising stamps at branches and**
- Measures to enhance the flow of trucks through borders (in the cases of Lebombo and Beitbridge)**

These changes were introduced in a phased approach, starting with the four biggest Customs offices – OR Tambo International Airport (ORTIA), Johannesburg (Alberton), Durban and Cape Town – and followed by the other Customs offices that deal with international trade, as well as Lebombo (September) and Beitbridge (October).

Next up are the BLNS (Botswana, Lesotho, Namibia and Swaziland) border posts, where a number of additional changes are also being introduced in 2012.

# Customs implementation strategy built around

1. Collaboration with trade
2. Operational readiness
3. Collaborative border security

# The five programmes of Customs Modernisation

- Customs inspections
- Leveraging SARS capabilities
- Declaration processing
- Customs Systems Replacement
- Preferred Trader

# Preferred Trader

- Foundation of the Authorised Economic Operator (“AEO”) programme
- Based on extensive international benchmarking
- Facilitate trusted traders
- Commenced with approx 150 traders followed by manufacturers, warehouses and logistics
- SARS introduced a tiered approach to accreditation of which the Preferred Trader is the second level.
- Rules under Section 64E to the Customs and Excise Act have been promulgated in Government Gazette No. 34498 on 29 July 2011.
- Section 64E.13 stipulates that to be eligible for level two (2) accreditation, the person employed by the applicant who will be responsible for Customs matters must, before being employed in that capacity, first demonstrate sufficient knowledge of Customs and Excise laws.
- Audit followed by knowledge testing - Competency assessments were conducted within the latter part of November 2012. Test of Customs Knowledge that will be undertaken by the designated client officer responsible for Customs.
- Shift focus to risky trade
- Segmentation – customised services – different levels

# Preferred Trader / Authorised Economic Operator

What does it mean?

- “Mutually beneficial partnership”
- Improve the movement of goods across shared borders (economic and enforcement benefits)
- Mutual recognitions of AEOs and other Customs-to-Customs arrangements



*“**Mutual Recognition** of AEO is emphasised to connect Customs administrations and thereby the global trade of compliant traders. The way forward is to involve other government agencies in the AEO programme.”*

Kunio Mikuriya, the Secretary  
General of the WCO  
2012

## U.S. and E.U. implement mutual recognition arrangement for their supply chain security programmes.

- January, 2013 saw the United States and the European Union implemented the mutual recognition arrangement for their respective supply chain security programmes. The US Customs and Border Protection (CBP) administers the Customs-Trade Partnership Against Terrorism (C-TPAT), which is now recognised as equivalent to the European Union's Authorised Economic Operator (AEO) programme.
- Should they elect to allow CBP to share certain information with the European Union, US importers authorised under C-TPAT will be considered secure and their exports will receive a lower-risk score by the customs administrations of EU member states. In practice, certification translates into time and money savings for parties dealing with trusted operators. In that sense, certified operators are successfully marketing their status as a distinguishing competitive advantage.
- Both programmes are voluntary, security-based programmes aimed at improving supply chain security. As programme members, importers receive lower risk-assessment scores in customs administrations' computer targeting software. Therefore, members are subject to fewer security-related inspections and controls. The mutual recognition arrangement between the United States and the European Union allows for members of one programme to receive reciprocal benefits when exporting to the other jurisdiction.
- However, not all C-TPAT members qualify for full AEO benefits. Only Tiers 2 and 3 C-TPAT importers (considered as more secure) may receive a lower risk-assessment score, and consequently undergo fewer inspections when exporting to an EU member state. In addition, in order to receive these benefits, C-TPAT members must expressly elect for the United States to share certain information with the European Union and certify that their exports meet all applicable requirements.

- The mutual recognition arrangement may also exempt members' facilities from undergoing validation site visits by both administrations when initially being certified or during revalidation visits. This benefit is available for every tier of C-TPAT membership.
- The mutual recognition arrangement applies only to C-TPAT importers which also act as exporters. A C-TPAT manufacturer will benefit from the arrangement only if it also acts as the US exporter. For example, if a US company owns a C-TPAT-certified manufacturer in Mexico that directly ships merchandise to the European Union, those shipments will not benefit from the arrangement.
- CBP's targeting system recognises AEO-certified entities by their manufacturer identification number. Certified manufacturers will receive benefits under the arrangement regardless of whether they are the EU exporter. A certified exporter which is not a manufacturer may obtain a manufacturer identification number to gain from the benefits of mutual recognition. As such, AEO-certified manufacturers and exporters may benefit under the arrangement, but only US exporters are eligible for benefits.
- Although the United States and the European Union have recently announced the possibility of a US-EU free trade agreement, this arrangement is a trade facilitation measure that companies may elect to participate in immediately, regardless of the results of potential free trade agreement negotiations.
- The United States also has mutual recognition arrangements for supply chain security with Canada, Japan, Jordan, Korea, New Zealand and Taiwan.

# The Customs Act 91 of 1964

- Does it facilitate modernisation?
- Rewrite?

Gaertner, PLM and Two Others v Minister of Finance (HC 12632/12 WC) 8 April 2013  
– Constitutionality of section 4(4)-(6)

- Taxpayer's right to privacy
- Section 4 - search without a warrant
- Does this infringe on the right to privacy?
- Routine /random intrusions - are they to be expected?
- Sections 4(4) to 4(6) declared inconsistent with the Constitution and invalid. Effect of invalidity suspended for 18 months to allow the legislature time to amend the offending sections and to make them constitutionally valid.
- During the period of suspension or until sooner date of amendment sections 4(4) to 4(6) the judge outlined how the section should be read and read certain words into the existing text

## Customs Bills - update

- Draft Customs Duty Bill
- Draft Customs Control Bill
- Rules being drafted

*“We are in the process of drafting the Rules and will circulate the first draft rules as soon as possible after Cabinet has approved the Bills. We are hopeful that the Draft Bills will be tabled in Parliament during the second half of 2012.”*

SARS April 2012

# SARS Compliance Programme 2012/13 – 2016/17

- 5 year plan to grow compliance with tax and Customs legislation
- Planned interventions to increase customs compliance
- Sars plans to roll out its preferred trader programme, strengthen border control and inter-governmental coordination at border posts, deploy cargo and container scanners at border posts and develop a customs risk screening tool. It will also develop and implement an integrated customs and border management solution via its wholly owned subsidiary, Interfront.
- A key part of risk management was establishing and constantly refreshing reference price databases to help detect under-declaration.
- Similar programmes have been rolled out in other jurisdictions



## 7 Key focus areas for the next 5 years

- Wealthy South Africans and their trusts
- Large business and transfer pricing
- Construction industry
- Illicit cigarettes
- Undervaluation of imports in the clothing and textile industry
- Tax practitioners and trade intermediaries
- Small businesses

# What does this mean for trade?

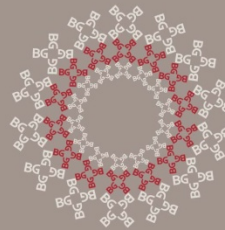


## **SARS values**

- mutual trust and respect;
- equity and fairness;
- integrity and honesty;
- transparency and openness; and
- courtesy and commitment.

## **SARS strategic goals**

- to optimise revenue yield;
- to provide excellent service;
- to engage in responsible enforcement;
- to transform our people and culture;
- to transform the business and build capability; and
- to promote good governance.



Thank you