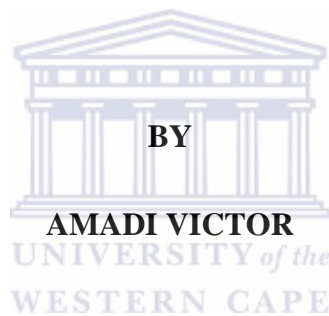


**UNIVERSITY OF THE WESTERN CAPE**

**FACULTY OF LAW**

**CUSTOMS REFORM AS A MEANS TO ENHANCING TRADE FACILITATION  
FOR INCREASED MARKET ACCESS: A SOUTH AFRICAN PERSPECTIVE**

**Mini-thesis submitted in partial fulfilment of the requirements for the award of the  
LLM degree in Mercantile Law**



**STUDENT NUMBER: 3012670**

**SUPERVISOR: PROFESSOR PATRICIA LENAGHAN**

**SUBMISSION DATE: NOVEMBER 2015**

**DECLARATION**

I declare that, **Customs Reform as a Means to Enhancing Trade Facilitation for Increased Market Access: A South African Perspective** is my own work, that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

Signed: .....

Victor Tamunoseipreala Amadi

November 2015

Signed: .....

Professor Patricia Lenaghan

November 2015



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## **DEDICATION**

I dedicate this work to the Almighty God for the wisdom he gave me and to my parents Mr and Mrs Tennyson Amadi for their overwhelming support to ensure I get the very best education possible.



## **KEYWORDS**

Customs reform

Increased market access

Non-tariff barriers

Regional integration

Trade facilitation

Southern African Development Community

South African Customs Union

South Africa



## **LIST OF ACRONYMS**

<b>ACM</b>	Automated Cargo Management
<b>BLNS</b>	Botswana, Lesotho, Namibia, and Swaziland
<b>CCC</b>	Customs Cooperation Council
<b>CPC</b>	Customs Procedure Codes
<b>CMP</b>	Customs Modernisation Programme
<b>COMESA</b>	Common Market for Eastern and Southern Africa
<b>CTP</b>	Customs Transformation Programme
<b>CTTTFP</b>	Comprehensive Tripartite Trade and Transport Facilitation Programme
<b>DRC</b>	Democratic Republic of Congo
<b>FDI</b>	Foreign Direct Investment
<b>FTA</b>	Free Trade Agreement
<b>GATS</b>	General Agreement on Trade in Services
<b>GATT</b>	General Agreement on Tariffs and Trade
<b>GDP</b>	Gross Domestic Product
<b>ICC</b>	International Chambers of Commerce
<b>ICT</b>	Information and Communication Technology
<b>IMO</b>	International Maritime Organisation
<b>ISO</b>	International Standards Organisation
<b>IT</b>	Information Technology
<b>MAS</b>	Manifest Acquittal System
<b>MDC</b>	Maputo Development Corridor
<b>MFN</b>	Most Favoured Nation
<b>MoF</b>	Ministry of Finance
<b>NDP</b>	National Development Plan
<b>NSC</b>	North South Corridor

<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>OSBP</b>	One Stop Border Post
<b>PC</b>	Purpose Codes
<b>PTA</b>	Preferential Trade Agreement
<b>REC</b>	Regional Economic Community
<b>RTA</b>	Regional Trade Agreement
<b>SA</b>	South Africa
<b>SACU</b>	Southern African Customs Union
<b>SADC</b>	South African Development Community
<b>SAIIA</b>	South African Institute for International Affairs
<b>SARS</b>	South African Revenue Services
<b>SPS</b>	Sanitary and Phytosanitary Measure
<b>TBT</b>	Technical Barriers to Trade
<b>TDCA</b>	Trade Development and Co-operation Agreement
<b>TFA</b>	Trade Facilitation Agreement
<b>TFTA</b>	Tripartite Free Trade Area
<b>UNCEFACT</b>	United Nations Centre for Trade Facilitation and Electronic Business
<b>UNECE</b>	United Nations Economic Committee for Europe
<b>WCO</b>	World Customs Organisation
<b>WTO</b>	World Trade Organisation
<b>ZIMRA</b>	Zimbabwean Revenue Authority

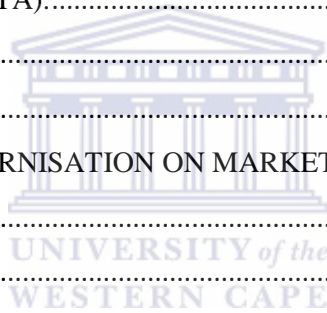




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# **CHAPTER 1**

## **INTRODUCTION.**

### **1.1 Background**

The world as we know it is now a global village. Countries tend to carry out transactions with each other and this leads to the global concept of international trade which has to do with the 'exchange of goods or services along international borders'.<sup>1</sup> International trade is one activity that is carried out by all countries to different degrees, since no country is so self-sufficient that it can put up barriers and ignore the rest of the world.<sup>2</sup> International trade can only materialise when one trading country has the required market access or could easily transport goods across national borders. Market access simply means 'the openness of a country's market to foreign goods and services'.<sup>3</sup> Therefore, it can be argued that international trade cannot exist without access to the domestic markets of trading countries.<sup>4</sup> Trade is an important driver of economic growth and development, and integration into world markets allows producers to specialise and reap the benefits of better development and increased competitiveness. The game is all about gaining access to both regional and global markets, getting the upper hand where possible, and avoiding every possible hindrance to accessing domestic markets.

However, market access for goods and services from other countries in present times can be hindered or restricted in various ways, generally through tariff barriers and non-tariff barriers.<sup>5</sup> Over time, international trade has been bolstered through successful multilateral trade negotiations where trade barriers such as tariffs, have been reduced drastically. While tariffs have progressively fallen as a result of successful multilateral negotiations and ratification of the Articles of the General Agreements on Tariffs and Trades<sup>6</sup> (GATT), non-tariff barriers are becoming more apparent and are a now a key challenge to regional trade

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<sup>1</sup> 'International Trade' available at [www.businessdictionary.com/definition/international-trade.html](http://www.businessdictionary.com/definition/international-trade.html) (accessed 21 May 2014).

<sup>2</sup> Hoyle MSW The Law of International Trade ed (1981) 1.

<sup>3</sup> [www.businessdictionary.com/definition/market-access.html](http://www.businessdictionary.com/definition/market-access.html) (accessed 21 May 2014).

<sup>4</sup> Van Den Bossche P The Law and Policy of the World Trade Organisation 2ed (2008) 401.

<sup>5</sup> Van Den Bossche P (2008) 402.

<sup>6</sup> General Agreement on Tariffs and Trade. The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts (1994).

since they can stifle the movement of goods, services and people across borders.<sup>7</sup> Non-tariff barriers include policies and measures other than tariffs that can impact on trade flows and can come in the form of ‘behind the border’ measures.<sup>8</sup> Some examples are quantitative restrictions,<sup>9</sup> technical barriers to trade generally through technical regulations, conformity assessment procedures and specifically through sanitary and phytosanitary measures, complex custom formalities and procedures, lack of transparency, and so on.<sup>10</sup> This mini-thesis focuses more on restrictions through non-tariff barriers, specifically through complex border or customs formalities and procedures, otherwise known as administrative barriers to trade, and the need for reform to further trade facilitation.<sup>11</sup>

On the African continent to further sustainable development and economic growth, international as well as regional trade are important to reaching that goal. Regional integration for decades now has been part of Africa’s overarching strategy for economic transformation.<sup>12</sup> In southern Africa;

‘Leaders have consistently expressed the desire to deepen regional integration through the creation of a free trade area (FTA) that will lead to a common market for goods and services. Greater integration could remove most of the supply-side constraints on regional and International trade and potentially facilitate the region’s participation in the global trading system, they judge.’<sup>13</sup>

Despite this agenda, border clearance processes imposed by customs and other agencies are posing greater stumbling blocks to further regional integration and trade than tariffs. These ‘cumbersome systems and procedures and poor infrastructure both increase transaction costs and lengthen delays to the clearance of imports, exports, and transit goods’.<sup>14</sup> In other to

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<sup>7</sup> Kanyimbo P & Manduna C ‘Trade facilitation in the Bali package: What’s in it for Africa? 2013’ available at <http://www.afdb.org/en/blogs/integrating-africa/post/trade-facilitation-in-the-bali-package-whats-in-it-for-africa-12698/> (accessed 21 May 2014).

<sup>8</sup> Staiger RW ‘Non-tariff measures and the WTO’ available at [http://www.wto.org/english/res\\_e/reser\\_e/ersd201201\\_e.pdf](http://www.wto.org/english/res_e/reser_e/ersd201201_e.pdf) (accessed 21 May 2014).

<sup>9</sup> Van Den Bossche P (2008) 444.

<sup>10</sup> Van Den Bossche P (2008) 461.

<sup>11</sup> Van Den Bossche P (2008) 461.

<sup>12</sup> Barka HB ‘Border posts, checkpoints and intra-African trade: challenges and solutions’: available at [www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/) (accessed 21 May 2014).

<sup>13</sup> Mbekeani K ‘Intra-regional trade in Southern Africa: structure, performance and challenges’ Regional Integration Policy Paper (2013) 9.

<sup>14</sup> McLinden G ‘Introduction and Summary’ in McLinden G, Fanta E, Widdowson E & Doyle T Border Management Modernisation ed (2010) 1-10 1.

really facilitate trade and materialise regional integration to the fullest potential, the issue of non-tariff barriers to trade has to be tackled.

The World Bank Group Doing Business Report ranked South Africa in the lowest quartile in trading across borders, placing it 110<sup>th</sup> out of 189 economies in 2013<sup>15</sup> and 106 in 2014.<sup>16</sup> This is as a result of non-tariff barriers in the form of complex custom formalities that can hinder sustainable development and economic growth by reducing access to regional and global markets. South Africa improving to 106<sup>th</sup> was due to changes it incorporated in customs processes which would be discussed in greater detail.<sup>17</sup> So, for effective regional trade and improved market access, removing these non-tariff barriers by carrying out a customs reform program is important because it aids trade facilitation.

To ensure effective trade at both the international and regional levels, the topic of trade facilitation is now part of the working programs of a number of international forums such as the World Trade Organisation (WTO), the World Customs Organisation (WCO), to mention a few to which South Africa is a signatory. Trade facilitation has been on the WTO agenda since 1996 during the Singapore Ministerial Round of negotiations.<sup>18</sup> However, Member States in 2013 reached an Trade Facilitation Agreement (TFA) during the ninth Ministerial Conference in Bali, Indonesia.<sup>19</sup> The TFA cannot be implemented by member countries currently because the WTO is yet to give Member States the requisite legal implementation modalities; but this could materialise in coming months.

Trade facilitation simply addresses reducing the costs and uncertainty of transporting goods across national borders, including the documentation needed to do so. For the purpose of this mini-thesis, trade facilitation focuses on the trading environment at the borders, including the transparency and professionalism of customs and the regulatory environment. Therefore, the concept of trade facilitation is used as understood in the WTO, ‘the simplification and harmonisation of international trade procedures, with trade procedures being (the activities,

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<sup>15</sup> ‘World Bank Doing Business Report’ 2013 available at <http://www.doingbusiness.org/data/exploreeconomies/south-africa/> (accessed 21 May 2014).

<sup>16</sup> ‘World Bank Doing Business Report’ 2014 available at <http://www.doingbusiness.org/data/exploreeconomies/south-africa/> (accessed 21 May 2014).

<sup>17</sup> See chapter 3.5.3.

<sup>18</sup> Hofmann H Agreeing and Implementing the Doha Round of the WTO (2008) 198.

<sup>19</sup> [http://www.wto.org/english/tratop\\_e/tradfa\\_e/tradfa\\_e.html](http://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.html) (accessed 21 May 2014).

practices and formalities involved in collecting, presenting, communications and processing data required for the movements of goods in international trade.)<sup>20</sup>

## **1.2 Problem statement.**

The fact that South Africa has acceded to the Revised Kyoto Convention on Simplification and Harmonisation of Custom Procedures and that consensus has been reached on the WTO TFA creates an atmosphere for Member States to examine their customs environment. Therefore, there is an obligation on South Africa, as a member of the WTO, to accede to the TFA. Against this background, the question to be asked is whether South Africa is rightly acting to reform its customs procedures and ensure easy movement of goods across borders.

In order to answer this question, this mini-thesis shall try to offer answers to the following questions:

- What is trade facilitation under international law, focusing on customs reform?
- Can customs reform improve or facilitate trade?
- Has South Africa adopted any customs reform measures? And if so, what custom reform initiative has been adopted and is currently in play.

## **1.3 Significance of study.**

In the modern business environment traders ensure timely production and, conversely, require timely delivery, fast and predictable release of goods at the border. South Africa as mentioned above is lowly ranked in trading across borders.<sup>21</sup> Experiencing delays make a country less competitive by adding costs that raise the price of export and import products. South Africa as a developing State needs to be competitive on every front to secure economic growth. One way to ensure this requires the customs environment to evolve, changes have to be made to customs processes to facilitate trade and enhance market access of foreign goods into South Africa. Trade facilitation is therefore expected to reduce uncertainties in trade transactions.

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<sup>20</sup> 'WTO training package on trade facilitation, market access, slide no. 52' available at [www.wto.org/english/thewto\\_e/whatis\\_e/eol/wto2\\_269.html](http://www.wto.org/english/thewto_e/whatis_e/eol/wto2_269.html) (accessed 22 May 2014).

<sup>21</sup> 'World Bank Group Doing Business Report' 2014 available at <http://www.doingbusiness.org/data/exploreconomies/south-africa/> (accessed 21 May 2014).

This mini-thesis provides a detailed insight into the importance of custom reforms as it is a major tool to facilitate trade. It will also enhance the academic literature on trade facilitation.

#### **1.4 Answer to the problem.**

This mini-thesis addresses the problems by looking at the steps taken so far by the government of South Africa in implementing customs reforms. It looks at the Custom Modernisation Programme (CMP) which have been implemented due to South Africa's accession to the WCO Revised Kyoto Convention in 2004<sup>22</sup> that requires changes to customs procedures. The Programme is currently being implemented as a requirement to make some significant changes to customs operations and procedures<sup>23</sup> and one significant step is in the re-writing of the customs legislation<sup>24</sup> to bring it in line with the model framework of the Revised Kyoto Convention in order to ensure an efficient and cost effective control system.

#### **1.5 Methodology.**

This mini-thesis relies on materials available from various primary sources including textbooks, national legislation, and international agreements that propose trade facilitation and customs reform such as the TFA<sup>25</sup> and the Revised Kyoto Convention on Simplification and Harmonisation of Custom Procedures,<sup>26</sup> Framework of Standards to Secure and Facilitate Global Trade.<sup>27</sup> Secondary sources such as journal articles, reports and newspaper articles would be looked at. This methodology includes the use of internet sources also in discussing the principle of customs reform as an important means to facilitate trade and ensure an increase in market access.

#### **1.6 Literature review.**

There is scholarly literature on South Africa regarding the need for customs reforms to facilitate trade. In an article by Barka HB, looking at regional trade, he first highlights the

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<sup>22</sup> 'What happened to the Portcullis?' available at <http://mpovello.com/sars-customs-modernisation/> (accessed 21 May 2014).

<sup>23</sup> 'What happened to the Portcullis?' available at <http://mpovello.com/sars-customs-modernisation/> (accessed 21 May 2014).

<sup>24</sup> Customs and Excise Act 91 of 1964.

<sup>25</sup> Agreement on Trade Facilitation, the result of the ninth Ministerial conference: The Legal Text (2013).

<sup>26</sup> Revised Kyoto Convention: International Convention on the Simplification and Harmonization of Customs Procedures, WCO, (1999).

<sup>27</sup> WCO Framework of Standards to Secure and Facilitate Global Trade, WCO (2005).



present situation of regional integration within Africa.<sup>28</sup> He further explains regional trade performance, including the current decline in regional trade and the reasons for such decline.<sup>29</sup> He also discusses obstacles to a successful regional trade regime, like border post issues within Africa and offers recommendations on what should be done to address the impediments.<sup>30</sup> This mini-thesis seeks to broaden the discussion on customs reform by providing a critical analysis of the law on the basis of international standards.

In a recent policy paper on regional integration Mbekeani K has also written on the structure, performance and challenges of regional trade in Southern Africa.<sup>31</sup> He gives a good explanation of issues stifling regional trade. He also discusses some trade policy developments on the regulatory framework of customs procedures. This mini-thesis broadens the discussion on the need for simplified and harmonised laws on custom procedure.

## **1.7 Chapter outline.**

### **Chapter 1**

This chapter gives a general overview of the whole research. It gives a general background to the research problem in order to vividly understand the significance and the aims of the research. The chapter also contains the premise of the research, the research methodology as well as other formal introductory aspects to this mini-thesis such as structure that will be followed holistically in this mini-thesis.

### **Chapter 2**

This chapter gives a general overview of the prescribed international standards on customs reform to boost trade facilitation. However, the focus is on the WTO and WCO developments on trade facilitation. It looks at some key standards that ensures changes are undertaken by customs of Member states to further facilitate trade

### **Chapter 3**

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<sup>28</sup> Barka HB 'Border posts, checkpoints and intra-African trade: challenges and solutions' available at [www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/) (accessed 21 May 2014).

<sup>29</sup> Barka HB 'Border posts, checkpoints and intra-African trade: challenges and solutions' available at [www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/) (accessed 21 May 2014).

<sup>30</sup> Barka HB 'Border posts, checkpoints and intra-African trade: challenges and solutions' available at [www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/) (accessed 21 May 2014).

<sup>31</sup> Mbekeani K 'Intra-regional trade in Southern Africa: structure, performance and challenges' Regional Integration Policy Paper (2013) 1-48.



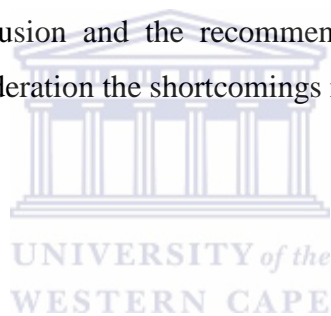
This chapter gives a general overview on customs and the role it plays within the trading environment on a global sphere. Furthermore, the chapter discusses the current position in South Africa with regard to customs reform, looking at the current Custom Modernisation Programme (CMP).

#### **Chapter 4**

This chapter examines whether custom reforms can positively or negatively influence market access in South Africa and the Southern Africa region. For the purposes of this research, the discussion on market access takes the form of trade agreements entered into between South Africa and some other trading parties. The chapter further looks at some points of entries where the CMP has been implemented.

#### **Chapter 5**

This chapter contains the conclusion and the recommendations with regards to possible customs reform taking into consideration the shortcomings noted in the research.



## CHAPTER 2

### INTERNATIONAL STANDARDS FOR CUSTOMS PROCEDURE TO ENHANCE TRADE FACILITATION.

#### 2.1. Introduction.

While increased trade openness through lowering of tariffs by both developed and still developing countries has fostered trade, it is clear that open global trade regimes will only foster trade integration when there are complementary policies in place. In effect, both the World Trade Organisation (WTO) and the World Customs Organisation (WCO) have worked to establish common sets of international standards and good customs practices for their member countries.

International trade is an essential driver of economic development and success. Removing non-tariff barriers, implementing trade facilitation initiatives, embarking on customs reform programs and having a harmonised system of rules are equally important objectives for promoting economic development. Based on this, there is a need for a recognised strategy to ensure that the movement of goods and services in global trade occurs in a way that is not impeded but is free flowing. However, the challenge remains to implement the customs procedures and other administrative measures based on these international standards.

Therefore, the main objective of this chapter is to look at the prescribed international standards for good customs practices and procedures. In order to achieve this objective, reference shall be made to several international instruments such as the General Agreement on Tariffs and Trade (GATT), Trade Facilitation Agreement (TFA),<sup>32</sup> Revised Kyoto Convention on the Simplification and Harmonisation of Custom Procedures,<sup>33</sup> Framework of Standards to Secure and Facilitate Global Trade.<sup>34</sup>

The chapter commences the discussion by first looking at various definitions of the concept 'trade facilitation'. Secondly there is a discussion on the WTO as well as the WCO developments on trade facilitation by looking at the prescribed international standards for customs procedures in order to boost trade facilitation. In doing so, the co-operation between

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<sup>32</sup> Agreement on Trade Facilitation, the result of the ninth Ministerial conference: The Legal Text (2013).

<sup>33</sup> Revised Kyoto Convention: International Convention on the Simplification and Harmonization of Customs Procedures, WCO, (1999).

<sup>34</sup> Framework of standards to secure and facilitate global trade, (2005).

the WTO and the WCO in aiding trade facilitation and specifically with regard to customs reform would be highlighted.

## **2.2 Discussion on trade facilitation.**

Trade facilitation is a growing aspect of discussion in WTO trade negotiations as well as in several other international organisations dealing with trade. The following sections discuss the various definitions of the concept. Thereafter, the application of a suitable definition to the South African context is examined.

### **2.2.1 Definition of ‘trade facilitation’.**

The concept of ‘trade facilitation’ has different interpretations. In public discourse, international and regional organisations have proposed both a narrower and a broader definition of the concept based on their objectives. In an article by Wilson, trade facilitation was interpreted in a narrower sense, as it simply addresses the logistics of moving goods through ports or more efficiently moving customs documentation associated with cross-border trade.<sup>35</sup> However, the definition of trade facilitation has also been given a broader meaning to include

‘the environment in which trade transactions take place, including the transparency and professionalism of customs and regulatory environments, as well as harmonisation of standards and conformance to international or regional regulations’.<sup>36</sup>

Sourdin and Pomfret have defined the concept as a reduction in trade costs.<sup>37</sup> In their view, trade costs refer to the ‘difference between the costs of domestic and international trade other than those costs related to traditional trade policy instruments such as import duties’.<sup>38</sup> Trade costs ‘also include transport costs and the costs of clearing goods at the borders.’<sup>39</sup> From their observation there is a grey area concerning which behind the border costs should be included in measuring trade costs.

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<sup>35</sup> Wilson JS, Catherine LM, & Otsuki T ‘Assessing the Benefits of Trade Facilitation: A Global Perspective,’ (2005) 28 World Economy Journal 842.

<sup>36</sup> Wilson JS, Catherine LM, & Otsuki T ‘Assessing the Benefits of Trade Facilitation: A Global Perspective,’ (2005) 28 World Economy Journal 842.

<sup>37</sup> Sourdin P & Pomfret R Trade Facilitation, Defining, Measuring, Explaining and Reducing the Cost of International Trade 1ed (2012) 3.

<sup>38</sup> Sourdin P and Pomfret R (2012) 3.

<sup>39</sup> Sourdin P and Pomfret R (2012) 3.

The narrow definition limits trade facilitation to customs and other border operations, the logistics of moving goods through ports more efficiently, and moving documentation associated with cross-border trade.

The definition used by the International Chamber of Commerce (ICC) also focuses on the border processes and procedures, related to preparation of customs and trade documents, custom clearance procedures, border control and release.<sup>40</sup> A 2007 discussion paper prepared by the ICC Commission on Customs and Trade Regulation<sup>41</sup> advocating an International Trade Facilitation Agreement as an outcome of the Doha Development Round included the statement of a preferred definition of 'trade facilitation' namely, 'ensuring the improvements in the efficiency of the processes associated with trading in goods across national borders'.<sup>42</sup> The ICC adopts this stance because in its view, 'efficient customs administration is paramount for companies that compete on international markets'.<sup>43</sup>

Trade facilitation in the WCO context is also indicative of this narrow definition. Under the WCO, trade facilitation means 'the avoidance of unnecessary trade restrictiveness which can be achieved by applying modern techniques and technologies while improving the quality of controls in an internationally harmonised manner'.<sup>44</sup> This definition is associated with the WCO mission, which is to enhance the efficiency and effectiveness of customs administration by harmonising and simplifying customs procedures.

The WCO was established in 1952 as the Customs Cooperation Council (CCC) and now has 179 members.<sup>45</sup> It is the intergovernmental organisation mostly clearly focussed on facilitation of international trade by enhancing the effectiveness and efficiency of customs

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<sup>40</sup> 'Updated ICC Recommendation for a WTO Agreement on Trade Facilitation' ICC World Business Organisation (2007) 1.

<sup>41</sup> The ICC Commission on Customs and Trade Facilitation has over 250 members from nearly 50 countries. Commission members comprise customs policy, transport and logistics specialists from ICC member companies and business representative organizations. The Commission primarily aims to ensure that the liberalisation of global trade and investment impacts positively at the level of the international trade transaction and in the business of transport and logistics available at <http://www.iccwbo.org/about-icc/policy-commissions/customs-and-trade-facilitation/> (accessed 22 November 2014).

<sup>42</sup> 'Updated ICC Recommendation for a WTO Agreement on Trade Facilitation' ICC World Business Organisation (2007) 1.

<sup>43</sup> Engman M 'The Economic Impact of Trade Facilitation', OECD Trade Policy Papers, 2005 21 6.

<sup>44</sup> 'What is Securing and Facilitating Legitimate Global Trade' available at <http://www.wcoomd.org/en/topics/facilitation/overview/customs-procedures-and-facilitation.aspx> (accessed 22 November 2014).

<sup>45</sup> 'WCO in Brief' available at <http://www.wcoomd.org/en/about-us/what-is-the-wco.aspx> (accessed 22 November 2014).

administrations.<sup>46</sup> As an objective, the work of the WCO include the development of global standards, simplification and harmonisation of customs procedures, trade supply chain security, enhancement of customs enforcement and compliance activities, anti-counterfeiting and piracy initiatives, integrity promotion, and sustainable global customs capacity building programmes.<sup>47</sup>

The WTO adopts a classic definition of ‘trade facilitation’ as ensuring the removal of trade barriers on goods on or around borders including the simplification of customs procedures. The WTO defines and limits the term ‘trade facilitation’ to

‘The simplification and harmonisation of International trade procedures’ where trade procedures are the ‘activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade’.<sup>48</sup>

Accordingly, the scope of the WTO definition of trade facilitation refers to administrative processes at the border which are the focus of trade negotiations in the WTO.<sup>49</sup> However, the WTO also deals with other aspects of trade facilitation covered by other Agreements like Technical Barrier to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS) while some behind the border trade related services are covered by the General Agreement on Trade in Services (GATS).<sup>50</sup>

Notwithstanding these narrower definitions, ‘trade facilitation’ is much wider than addressing customs administrative procedures as indicated in earlier paragraphs. The concept can tackle more challenges along the supply chain of goods from producer to consumer as it can have a positive economic impact on the time and cost of delivering goods into the trading system. Therefore, the definition of trade facilitation has been broadened to cover a wider spectrum of non-tariff barriers to trade apart from custom inefficiencies to include the costs involved from production to the delivery of goods and services to foreign buyers, transportation costs, physical infrastructures, and inaccessible technical regulations to trade.

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<sup>46</sup> ‘WCO in brief’ available at <http://www.wcoomd.org/en/about-us/what-is-the-wco.aspx> (accessed 22 November 2014).

<sup>47</sup> Sourdin P & Pomfret R (2012) 2.

<sup>48</sup> WTO training package on Trade Facilitation, Market Access, Slide no. 52 available at [www.wto.org/english/thewto\\_e/whatis\\_e/eol/wto2\\_269.html](http://www.wto.org/english/thewto_e/whatis_e/eol/wto2_269.html) (accessed 22 November 2014).

<sup>49</sup> Sourdin P & Pomfret R (2012) 4.

<sup>50</sup> Sourdin P & Pomfret R (2012) 5.

The definitions used by the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) and the Organisation for Economic Cooperation and Development (OECD) reflect these broader approach to defining trade facilitation, covering international procedures and associated information flows and payment along the entire supply chain.<sup>51</sup> These definitions include some ‘behind the border measures such as standards and conformity assessment measures, business facilitation, e-commerce, trade finance and logistics services’.<sup>52</sup>

The UN/CEFACT defines trade facilitation as ‘the simplification, standardization and harmonization of procedures and associated information flows required to move goods from seller to buyer and to make payment.’<sup>53</sup> The scope of the UN/CEFACT definition derives from the ‘UN/CEFACT Buy-Ship-Pay Model, which identifies three processes involved in international trade.’<sup>54</sup> In explaining this model,

‘Buy groups the activities of identifying a potential trading partner, establishing a business agreement and placing an order. Ship is broken down into five activities, from preparing for export, transport to preparing for import and import itself. Pay represents the payment activity from buyer to seller.’<sup>55</sup>

The Buy-Ship-Pay Model suggests the application of a total transaction approach to trade facilitation encompassing both at the border and other processes involved in International trade.

Common to all the mentioned above trade facilitation definitions is the desire to improve the trade environment and reduce, or to get rid of, any transaction cost between business, government and individuals. So in essence, irrespective of how one defines trade facilitation, its ultimate objective is to ease the movement of goods between the buyer and the seller across international borders.<sup>56</sup>

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<sup>51</sup> ‘Business Benefits of Trade Facilitation’ 2001 OECD Working Party of the Trade Committee TD/TC/WP 1-24 21.

<sup>52</sup> ‘Business Benefits of Trade Facilitation’ 2001 OECD Working Party of the Trade Committee TD/TC/WP 1-24 21.

<sup>53</sup> ‘Business Benefits of Trade Facilitation’ 2001 OECD Working Party of the Trade Committee TD/TC/WP 1-24 21.

<sup>54</sup> Sourdin P & Pomfret R (2012) 5.

<sup>55</sup> Sourdin P & Pomfret R (2012) 5.

<sup>56</sup> Sourdin P & Pomfret R (2012) 5.

However, for the purpose of this mini-thesis, a broader definition will be used. A broad definition is more economically meaningful because it holistically captures a wide range of issues and sectors, from government regulations to controls in custom operations, as well as improvements in transportation, information and communication technology. This mini-thesis's definition of trade facilitation would therefore incorporate customs and border elements, looking at port and customs administration efficiency and within the border elements, such as, the domestic regulatory environment and the infrastructural position in South Africa, to ensure the effective running of customs procedures with the use of modernised information technology.

### **2.2.2 Application of definition to South Africa.**

As mentioned in the earlier chapter, South Africa was ranked in the lowest quartile in trading across borders, ranking 110<sup>th</sup> out of 189 economies in 2013<sup>57</sup> and 106<sup>th</sup> in 2014.<sup>58</sup> Despite the slight improvement over a year, non-tariff barriers in the form of complex custom administration formalities and inefficiencies are arguably key factors that hinder free trade flow, sustainable development and economic growth by reducing access to regional and global markets. This issue is prevalent due to poor infrastructural developments at border points and a lack of consistency in the application of international customs regulatory provisions<sup>59</sup>. For instance, from a regulatory standpoint, Section 4<sup>60</sup> of the Customs and Excise Act No 91 of 1964<sup>61</sup> is widely seen as restricting 'information sharing' which is contrary to prescribed international standards of transparency within the global trading system. This Act has been amended<sup>62</sup> to be in accordance with international standards. These standards on custom processes will be looked at in subsequent paragraphs.

So, from a South African context, having a wider definition would be beneficial. A more comprehensive and wider approach to trade facilitation in a South African context would deal with physical infrastructural issues at the border as well as cross-border corruption issues. It also means that the overall trade transaction cost that traders and producers face from

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<sup>57</sup> World Bank Doing Business Report 2013 available at <http://www.doingbusiness.org/data/exploreeconomies/south-africa/> (accessed 21 January 2015).

<sup>58</sup> See chapter 1.1.

<sup>59</sup> See chapter 2.3 to 2.3.1.4 for a discussion on International Standards.

<sup>60</sup> Section 4 stipulates that the Commissioner or any officer shall not disclose any information relating to any person, firm or business acquired in the performance of his duties, except in the performance of his or her duties under this Act or by order of a competent court.

<sup>61</sup> Custom and Excise Act 91 of 1964.

<sup>62</sup> See chapter 3.5.3 for further discussion on the Act.



production to delivery would be addressed. In ensuring lower transaction costs, South Africa can be even more competitive within the South African Development Community (SADC), the South African Customs Union (SACU) region and also on a global level.

### **2.3 International standards for customs procedures to further trade facilitation.**

As mentioned earlier, trade facilitation is currently an important concept in the international trade supply chain and is rapidly growing in global trade.<sup>63</sup> Customs specifically has been at the centre of trade facilitation discussions due to the significant role it plays in various border processes.<sup>64</sup> For decades, numerous regulatory frameworks have been developed to ensure that cross-border procedures on trade are simplified and harmonised. So as a result, a series of international agreements, conventions, recommendations and guidelines have been concluded.

However, considering the numerous international regulatory framework in place, there are a number of international organisations involved in progressing the regulatory framework, regulating and implementing trade facilitation specifically in customs procedures although at different levels. These organisations include but are not limited to the WTO, the WCO, United Nations Economic Committee for Europe (UNECE), the UN/CEFACT, International Standards Organisations (ISO),<sup>65</sup> the ICC, and International Maritime Organisation (IMO).<sup>66</sup> It goes without saying that there are further regulatory frameworks on trade facilitation and trade supply chain security at both regional and national levels, like the Common Market for Eastern and Southern Africa, the East African Community and the Southern Africa Development Community Tripartite Free Trade Area (COMESA-EAC- SADC TFTA) in the case of South Africa.<sup>67</sup> These organisations have developed uniform standards on customs procedures through a series of agreements; such standards would be explored in the following

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<sup>63</sup> See chapter 2.2

<sup>64</sup> See chapter 3.3.

<sup>65</sup> 'International Organisation for Standardisation is 'an independent, non-governmental membership organisation and is the world's largest developer of voluntary international standards. It comprises of 163 member states including South Africa through the South African Bureau of Standards' available at <http://www.iso.org/iso/home/about.htm> (accessed 22 November 2014).

<sup>66</sup> The International Maritime Organization is the United Nations specialized agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships. As a specialized agency of the United Nations, IMO is the global standard-setting authority for the safety, security and environmental performance of international shipping. As a main role, it creates a regulatory framework for the shipping industry that is fair and effective, universally adopted and universally implemented.' Available at <http://www.imo.org/About/Pages/Default.aspx> (accessed 22 November 2014).

<sup>67</sup> Pearson M 'Trade Facilitation in the COMESA-EAC-SADC Tripartite Free Trade Area' 2011 TRALAC Working Paper S11WP11 1.



paragraphs with "Standard" under WCO rules meaning 'a provision the implementation of which is recognized as necessary for the achievement of harmonisation and simplification of Customs procedures and practices.'<sup>68</sup>

### **2.3.1. International instruments on trade facilitation.**

The following international instruments proposing trade facilitation measures will be looked at in detail: the WTO's GATT including the Trade Facilitation Agreement (TFA) and the International Convention on the Simplification and Harmonisation of Custom Procedures (Revised Kyoto Convention). These instruments propose certain provisions that are binding on signatories.

#### **2.3.1.1 General Agreement on Tariffs and Trade (GATT).**

Although trade facilitation is considered to be one of the new issues on the negotiating agenda in the WTO, the existing legal framework of the WTO contains a number of Arts and provisions in the GATT that are directly related to facilitating the movement of goods across borders. These provisions are included in the GATT 1994. The relevant Arts for the purpose of this mini thesis include GATT Arts V, VIII and X as they have a major influence on other WTO agreements. Also, another WTO agreement, the recently concluded TFA, is of relevance as it expands on the aforementioned GATT provisions.

These GATT provisions and TFA will be looked at individually as they identify the needs and priorities of members and commits members to implement these provisions. Trade facilitation as defined by the WTO is built on these three GATT provisions; thus negotiations on the subject of trade facilitation are built on these three provisions. It is therefore important to briefly discuss what these three Arts provide for.

##### **2.3.1.1.1 GATT Art V (Freedom of Transit).**

GATT Art V provides that traffic in transit will have freedom to move through the territory of a Member States through routes most convenient for international transit to its destination

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<sup>68</sup> International Convention on the Simplification and Harmonization of Customs Procedures, Revised Kyoto Convention: WCO, (1999).

country<sup>69</sup> and will receive Most Favoured Nation (MFN) treatment with respect to all charges, regulations and formalities. Traffic in transit refers to:

“Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a contracting party when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the contracting party across whose territory the traffic passes.”<sup>70</sup>

This traffic in transit must be ‘exempt from customs and transit duties and any unnecessary delays or restrictions imposed in respect of transit.’<sup>71</sup> Article V in essence prescribes two main obligations: first, being that Member States are not to hinder traffic in transit by imposing unnecessary delays, restrictions, and charges and secondly, to accord MFN treatment to traffic in transit of all Members. In essence, the message here is that each member state is obliged to treat products which have been in transit through the territory of any other member state ‘no less favourably’ than would have been the case if such products had been transported from their place of origin to their destination without going through the territory of the Member State concerned. In other words, any treatment accorded to one Member State must be accorded to all. Also, members of the WTO are obliged not to cause unnecessary delays or restriction or make any unreasonable charges on the traffic in transit, without any unfavourable treatment being rendered to any commodity due to its country of origin.

#### **2.3.1.1.2 GATT Art VIII (Fees and Formalities Connected with Importation and Exportation).**

GATT Art VIII calls for minimizing the number and complexity of fees and formalities connected with imports and exports. Article VII Para 1a stipulates:

‘a) All fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connection with importation or exportation shall be limited in amount to the

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<sup>69</sup> Article V, Para 2 of the GATT.

<sup>70</sup> Article V, Para 1 of the GATT.

<sup>71</sup> Article V, Para 3 of the GATT.

approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.

b) The contracting parties recognize the need for reducing the number and diversity of fees and charges referred to in sub-paragraph (a).

(c) The contracting parties also recognize the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements.<sup>72</sup>

Typical charges to which this provision applies include licence fees, document fees, stamp fees, analytical fees, quantitative restrictions, inspection fees, exchange controls, and so on.<sup>73</sup>

While there are no legal requirements for the reduction of fees and charges, contracting parties do recognise the need for a reduction of fees and simplification of documentation. The Art states that fees and charges should be kept proportional to the government services used in the process. It encourages decreasing and simplifying documentation requirements. Article VIII in essence aims at limiting the costs and complexity of the import and export process. It therefore imposes specific legal obligations on Member States with respect to the fees and charges that may be charged in connection with importation and exportation and the penalties that may be imposed for minor breaches of customs procedures.

#### **2.3.1.1.3 GATT Art X (Publication and Administration of Trade Regulations).**

GATT Art X contains two central principles for the international trade system: the first principle involves transparency of existing trade regulations and the second one involves the uniform application of these regulations. Art X paras 1 and 3 stipulates in detail:

‘Relevant information (laws, regulations, judicial decisions and administrative rulings of general application) made effective by any member state on the classification, valuation of goods for customs purposes, tax or duty rates, restrictions affecting their sale, distribution or transportation should be published in such a manner as to be accessible to third parties.’<sup>74</sup>

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<sup>72</sup> Article VIII, Para 1 of the GATT.

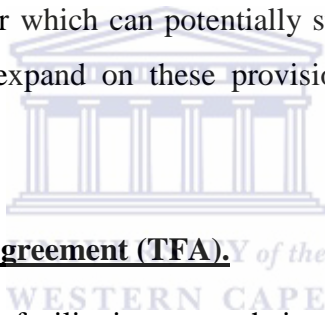
<sup>73</sup> Article VIII, Para 4 of the GATT.

<sup>74</sup> Article X, Para 1 of GATT.

‘Each contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.’<sup>75</sup>

These provisions requires the WTO members to promptly publish all laws, regulations, judicial decisions and administrative rulings affecting imports and exports and all bilateral agreements affecting international trade policy, so that traders may become acquainted with them. These laws, regulations, and rulings should be administered in a consistent, impartial and reasonable manner. The GATT Art X aims at enhancing transparency and good governance.

Based on these provisions, it is worth mentioning that the GATT Arts V, VIII and X signifies the need for seamless trading amongst Member countries on a regional and international level. By implication, they encourage implementing a system were little or no delay on the movement of goods across border which can potentially strengthen the efficiency of border clearance. The need to further expand on these provisions led to the Trade Facilitation Agreement (TFA).



### **2.3.1.2 The Trade Facilitation Agreement (TFA).**

While the first mention of trade facilitation as such in the WTO came in the Singapore Ministerial Declaration of 1996<sup>76</sup> when the WTO Doha Development Agenda (DDA) was adopted in 2001, the Doha Ministerial Declaration provided that the Council for Trade in Goods:

‘Shall review and as appropriate clarify and improve relevant aspects of Articles V (Freedom of Transit), VIII (Fees and Formalities Connected with Importation and Exportation) and X (Publication and Administration of Trade Regulations) of the GATT 1994 and identify the trade facilitation needs and priorities of members, in particular developing and least-developed countries.’<sup>77</sup>

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<sup>75</sup> Article X, Para 3 of GATT.

<sup>76</sup> World Trade Organization, Singapore Ministerial Declaration of 18 Dec. 1996, WT/MIN (96)/DEC.

<sup>77</sup> ‘Annex D of the Doha Development Agenda Text of the July Package’ available at [www.wto.org/english/tratop\\_e/dda\\_e/draft\\_text\\_gc\\_dg\\_31july04\\_e.htm](http://www.wto.org/english/tratop_e/dda_e/draft_text_gc_dg_31july04_e.htm) (accessed 11 February 2015).

These three Articles were seen to capture the very meaning of trade facilitation as they sought to further expedite the movement, release and clearance of goods, including those in transit.<sup>78</sup> It was therefore easier to clarify these provisions rather than formulate an entirely new agreement. Therefore, the WTO Member States adopted an approach of reviewing the three GATT Articles from the point of view of their impact on border measures.<sup>79</sup>

On 7<sup>th</sup> December, 2013 at the WTO 9<sup>th</sup> Ministerial Conference in Bali, Indonesia, the 159 WTO Member countries approved the TFA,<sup>80</sup> the first new WTO multilateral agreement since the establishment of the WTO in 1995.<sup>81</sup> After 12 years of largely unsuccessful negotiations, the Doha Round finally achieved some tangible, albeit limited, success, opening a new episode in its negotiating history in my view.

Trade facilitation negotiations under the Doha Ministerial Round were aimed at simplifying border procedures. This basically meant that, reducing one of the less visible barriers caused by inefficient custom administration of the trade transaction process is now a major focus of international trade professionals as other, more obvious barriers, such as tariffs, are gradually negotiated away. Therefore trade facilitation relates to reductions in trade costs and making trans-border trade much easier. Trade facilitation covers policies that deal with the entry of goods into a country or with the transparency of provision on measures and information relating to the entry of goods. These include but are not limited to customs and border requirements, from fees to rules governing transit. The TFA provides a framework of rights and obligations that should see reform of border procedures around the world. An overview of its key provisions is undertaken in the next sub-heading.

### **2.3.1.2.1 Overview of key provisions of the Trade Facilitation Agreement (TFA).**

The TFA has three parts: Section I contains substantive provisions on trade facilitation,<sup>82</sup> Section II specifies special and differential treatment provisions and defines the approach

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<sup>78</sup> Shayanowako P 'The Bali WTO Trade Facilitation Agreement: Implications for Southern Africa' 2014 Trade Law Centre TRALAC S14WP08 3.

<sup>79</sup> World Trade Organization, Singapore Ministerial Declaration of 18 Dec. 1996, WT/MIN (96)/DEC, 1, 8 (1996).

<sup>80</sup> 'World Trade Organisation' [www.wto.org](http://www.wto.org) (accessed 11 February 2015).

<sup>81</sup> Viljoen W 'Evolution of the Trade Facilitation Concept, best practices and the Tripartite Comprehensive Tripartite Trade and Transport Facilitation Programme (CTTTFP)' available at [http://www.ictsdsymposium.org/wp-content/uploads/bsk-pdf-manager/11\\_Evolution-of-the-trade-facilitation-concept-best-practices-and-the-CTTTFP\\_20131017.pdf](http://www.ictsdsymposium.org/wp-content/uploads/bsk-pdf-manager/11_Evolution-of-the-trade-facilitation-concept-best-practices-and-the-CTTTFP_20131017.pdf). (accessed 11 February 2015).

<sup>82</sup> Section I of the Trade Facilitation Agreement Ministerial Decision of 7 December 2013.

taken to determining the coverage of disciplines for developing countries;<sup>83</sup> and Section III deals with institutional arrangements.<sup>84</sup> For the purpose of this mini-thesis, the focus is on the substantive provisions under Section I of the TFA as it largely regulates the need for reform and expands on the GATT provisions discussed earlier.<sup>85</sup>

Looking at the Section I provisions of the TFA, the first group of Articles, (Art 1-5) essentially address transparency issues and expands on GATT Article X. Article 1 provides for the publication and availability of information.<sup>86</sup> This provision expands on GATT Article X in the sense that it entrenches the principle of transparency because it further provides that Member States should not just publish regulations on trade procedures, taxes and fees but should at their very best undertake to make these information available using the Internet<sup>87</sup> They are obliged to create national enquiry points<sup>88</sup> and notify the committee where the information have been placed, the URLs of website as well as contact information of enquiry points.<sup>89</sup>

Article 2 provides for an opportunity to comment by any trader or interested party on proposed new regulations relating to movement, release, clearance of goods.<sup>90</sup> Article 3 provides for advance rulings.<sup>91</sup> Members are under a binding commitment to provide traders with advance rulings on a timely basis when requested to do so regarding tariff classification and origin criteria, to do the same for the criteria used to determine valuation, exemptions, and quotas, including tariff quotas.<sup>92</sup> Article 4 basically provides for any person to whom customs or another relevant border agency issues an administrative decision to have the right within its territory, to administrative appeal or review by an administrative authority higher

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<sup>83</sup> Section II of TFA

<sup>84</sup> Section III of TFA

<sup>85</sup> See chap 2.3.1.1 to 2.3.1.1.3.

<sup>86</sup> Information under this Article 1 involves: 'Importation, exportation and transit procedures, applied rates of duties and taxes imposed on imports and exports, fees and charges on imports and exports, rules for valuation of products for custom processes, laws relating to rules of origin, import and export transit restrictions, penalty provision for breach of import and export formalities, appeal procedures, procedures on administration of tariffs, Agreement with other trading countries on import and exports'.

<sup>87</sup> Article 1 (2.1) of the TFA.

<sup>88</sup> Article 1 (3.1) of the TFA.

<sup>89</sup> Article 4.1 of the TFA.

<sup>90</sup> Article 2 of the TFA.

<sup>91</sup> Article 9 of the TFA defines advanced ruling 'as a written decision provided by a member to an applicant prior to the importation of a good covered by the applicant prior to the importation of a good covered by the application that sets forth the treatment that the member shall provide to the good at the time of importation with regard to the goods tariff classification and the origin of the good'.

<sup>92</sup> Article 3 of the TFA.

than or independent of the official that issued the decision, this mechanism extends to judicial appeal or review of the decision.<sup>93</sup>

Article 6 deals with fees and charges imposed by members on importation and exportation of goods, also it stipulates the requirements on transparency based on Article I of the TFA (publication) and the permitted level of fees and charges (to be cost based) and lastly, the basis/process for imposition of penalties which is binding.<sup>94</sup>

Article 7 overall deals with the clearance and the release of goods. It contains provisions specifically on 'pre-arrival processing; electronic payment; separation of release from final determination of customs duties, taxes, fees and charges; risk management; post-clearance audit; establishment and publication of average release times; trade facilitation measures for authorised operators; expedited shipments; and perishable goods.'<sup>95</sup> The central messages in all these provisions are the requirement for WTO Members to implement or maintain procedures that allows for the submission of import documentation prior to the arrival of goods at the point of entry, and to allow electronic lodgement of such documents. This article is essential to this mini-thesis as it emphasises the use of modern methods of management in the supply chain for goods like using a risk management system and having a post-clearance audit. This Article requires 'member states to adopt or maintain procedures allowing for the submission of import documents and other required information including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.'<sup>96</sup>

To further expand on GATT Article VIII, Article 8 of the TFA contains provisions for border agency co-operation, calling for co-operation between adjacent border posts on mutually agreed terms with a view to co-ordinate procedures at border crossings to facilitate cross-border trade through the alignment of working times and procedures, sharing common facilities, and exchange of information/data when requested.<sup>97</sup>

Article 10 also to further co-operation, calls for a review of customs formalities and documentations associated with cross-border movement of goods, thereby emphasising the need for the simplification of document requirements. So looking at Article 10 as a whole, it

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<sup>93</sup> Article 4.1 of the TFA.

<sup>94</sup> Article 6 of the TFA.

<sup>95</sup> Article 7 of the TFA.

<sup>96</sup> Article 7.1.1 of the TFA.

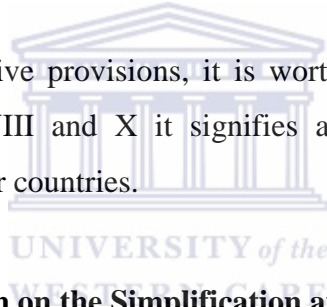
<sup>97</sup> Article 8 of the TFA.



provides for aspects relating to ‘documentation requirements; acceptance of copies; use of international standards; single window; pre-shipment inspection; use of customs brokers; common border procedures and uniform documentation requirements; rejected goods; temporary admission of goods; and inward and outward processing’<sup>98</sup>. Article 12 further contains provisions to ensure co-operation between customs administrations and provides for the establishment of specified mechanisms for customs to effectively share information on best practice and to ensure cooperation between customs agencies to exchange information on consignments.<sup>99</sup>

Article 11 contains provisions that concerns freedom of transit and expands on GATT Art V. In terms of this Art, members are under a commitment not to impose non-transport-related fees, custom charges, delays, restrictions or discrimination or to seek voluntary restraints and impose various disciplines on inspection and guarantee schemes.<sup>100</sup> They are required to maintain only regulations on transit traffic that are necessary and not trade restrictive.

Having looked at these substantive provisions, it is worth mentioning that the TFA is an expansion of GATT Arts V, VIII and X it signifies a huge leap towards the goal of facilitating trade amongst member countries.



### **2.3.1.3 International Convention on the Simplification and Harmonisation of Custom Procedures (Revised Kyoto Convention).**

The WCO ‘since its inception in 1952, it has been working to develop modern principles that would buttress effective customs administrations by examining customs policies and practices worldwide, cooperating with its member administrations, and working with trade communities and international agencies.’<sup>101</sup> One of the most important instruments flowing from this constant urge to further enhance customs procedures in international trade is the International Convention on the Simplification and Harmonisation of Custom Procedures commonly known as the Revised Kyoto Convention. According to the WCO, the Convention represents the international blueprint for a modern efficient, prudent, innovative customs

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<sup>98</sup> Article 10 of the TFA.

<sup>99</sup> Article 12 of the TFA.

<sup>100</sup> Article 11 of the TFA.

<sup>101</sup> Mikuriya K ‘Legal Framework for Custom Operations and Enforcement Issues’ in Wulf LD and Sokol JB Customs Modernisation Handbook (2005) 52-65 53.



management, and is designed to maintain the relevance of customs procedures ensuring predictability and efficiency of modern trade.<sup>102</sup>

The Convention was adopted in 1974<sup>103</sup> and was not so binding, some Annexes were outdated and did not reflect modern techniques in the areas of risk assessment and audit based systems of control and automated systems.<sup>104</sup> In essence, ‘globalisation, rapid transformation of International trade patterns and advances in information technology (IT) since then have compelled the WCO and its members to review and update the Convention.’<sup>105</sup> Also, in recent times, non-tariff barriers are being introduced, creating a major challenge to International as well as regional trade, and can consequently stifle the movement of goods, services and people across borders.<sup>106</sup> These issues and how to go about resolving them have been high on the agenda of the WCO and as a result the organisation developed the Revised International Convention on the Simplification and Harmonisation of Customs Procedures in 1999<sup>107</sup> (the Revised Kyoto Convention) in an effort to ‘promote the achievement of a highly facilitative International travel and trading environment while maintaining appropriate levels of regulatory control.’<sup>108</sup> The Revised Kyoto Convention entered into force on 3 February 2006<sup>109</sup> and currently has 98 contracting parties to the Convention.<sup>110</sup>

As a key objective, Widdowson suggests that the Convention is aimed at ensuring the achievement of a highly facilitative international travel and trading environment while

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<sup>102</sup> ‘The Revised Kyoto Convention’ available at [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv.aspx) (accessed 11 February 2015).

<sup>103</sup> ‘The Revised Kyoto Convention’ available at [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv.aspx) (accessed 11 February 2015).

<sup>104</sup> Messerlin PA & Zarrouk J ‘Trade Facilitation: Technical Regulations and Custom Procedures’ (2000) World Economy Journal 23 577 587.

<sup>105</sup> Mikuriya K ‘Legal Framework for Custom Operations and Enforcement Issues’ in Wulf LD and Sokol JB Customs Modernisation Handbook (2005) 52-65 53.

<sup>106</sup> Kanyimbo P and Manduna C Trade Facilitation in the Bali Package: What’s in it for Africa? 2013 available at <http://www.afdb.org/en/blogs/integrating-africa/post/trade-facilitation-in-the-bali-package-whats-in-it-for-africa-12698/> (accessed 11 February 2015).

<sup>107</sup> World Customs Organisation, ‘International Convention on the Simplification and Harmonization of Customs Procedures (as Amended)’ 1999 (Brussels: WCO).

<sup>108</sup> Widdowson C ‘The Changing Role of Custom: Evolution or Revolution?’ World Custom Journal (2007) 1 (1) 31.

<sup>109</sup> ‘The Revised Kyoto Convention’ available at [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv.aspx) (accessed 11 February 2015).

<sup>110</sup> ‘The Revised Kyoto Convention’ available at [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv.aspx) (accessed 11 February 2015).

maintaining appropriate levels of regulatory control across all member administrations.<sup>111</sup>

The Convention according to its preamble, is designed to

‘provide the underlying conditions and instruments to help contracting parties to achieve a modern customs administration and to make a major contribution to the facilitation of International trade by eliminating divergence between the customs procedures and practices of contracting parties that can hamper International trade and other International exchanges desiring to effectively develop trade by simplifying and harmonising customs procedures and practices’<sup>112</sup>

The Convention also seeks to ensure that

‘appropriate standards of customs control enabling customs authorities to respond to major changes in business and administrative methods and techniques ensuring that the core principles for simplification and harmonisation are made obligatory on contracting parties providing customs authorities with efficient procedures, supported by appropriate and effective control methods.’<sup>113</sup>

The Convention is very unique in that ‘it is designed to standardise and harmonise customs policies and procedures worldwide and by implication, customs processes based on national customs legislation that are consistent with the Convention will enable customs to process imports, exports, and international travellers more smoothly.’<sup>114</sup> The Revised Kyoto Convention incorporates important concepts and principles of modern compliance management. These include the application of ‘new technology, the implementation of new philosophies on customs control and the willingness of private sector partners to engage with customs authorities in mutually beneficial alliances.’<sup>115</sup> Additionally, there is much co-operation taking place between international organisations on issues relating to International trade. This uniformity and co-operation are prevalent between the WTO and the WCO as the

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<sup>111</sup> Widdowson C ‘The Changing Role of Custom: Evolution or Revolution?’ World Custom Journal (2007) 1 (1) 31.

<sup>112</sup> Article 1 of the International Convention on the Simplification and Harmonization of Customs Procedures (as Amended) 1999 (Brussels: WCO).

<sup>113</sup> Widdowson C ‘The Changing Role of Custom: Evolution or Revolution?’ World Custom Journal (2007) 1 (1) 31.

<sup>114</sup> Mikuriya K ‘Legal Framework for Custom Operations and Enforcement Issues’ in Wulf LD and Sokol JB Customs Modernisation Handbook (2005) 52-65 54.

<sup>115</sup> Pathway to Efficiency and Effectiveness in the Customs Environment available at [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/~media/WCO/Public/Global/PDF/Topics/Facilitation/Instruments%20and%20Tools/Conventions/Kyoto%20Convention/KYOTO2000\\_e.ashx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/~media/WCO/Public/Global/PDF/Topics/Facilitation/Instruments%20and%20Tools/Conventions/Kyoto%20Convention/KYOTO2000_e.ashx) (accessed 05 January 2015).

Revised Kyoto convention can serve to implement customs related principles developed by the WTO, such as Arts V, VIII, and X of the GATT of 1994<sup>116</sup> as discussed earlier.

In looking at some provisions provided for under the Revised Kyoto Convention, it is indicative that there are synergies between the WTO and the WCO in their attempts to further facilitate and expand trade by having uniform principles.

In the General Annex, Chap 3 deals with clearance and customs formalities. Standard 3.25 covers prior lodgement and registration of the goods declaration. This Standard provides that: 'National legislation shall make provision for the lodging and registering or checking of the Goods declaration and supporting documents prior to the arrival of the goods.'<sup>117</sup> Looking at this aforementioned provision, it is interestingly similar to the provisions under Art 7 of the TFA which seeks to also expand on the GATT Arts as discussed earlier.<sup>118</sup> Chap 6 also further emphasises the need for customs control and in carrying out customs control, Standard 6.3 provides that the 'customs shall use risk management.'<sup>119</sup> Furthermore, customs are obliged to use risk analysis to determine which persons and which goods, including means of transport, should be examined and the extent of the examination<sup>120</sup> and also adopt a compliance measurement strategy to support risk management.<sup>121</sup> In carrying out all customs operations, customs are also required based on chap 7 of the General Annex, to use information technology (IT) to support their operations, where it is cost-effective and efficient for customs and for the trade and they shall specify the conditions for application of this IT system.<sup>122</sup>

Also to further co-operation amongst customs administrations and border agencies, chap 3 and 6 of the General Annex to the Revised Kyoto Convention contains some provisions geared towards cooperation and coordination amongst border agencies and customs administrations respectively. For instance, Transitional Standard 3.35 states that 'if the goods must be inspected by other competent authorities and the Customs also schedules an examination, the Customs shall ensure that the inspections are coordinated and, if possible,

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<sup>116</sup> Mikuriya K 'Legal Framework for Custom Operations and Enforcement Issues' in Wulf LD and Sokol JB Customs Modernisation Handbook (2005) 52-65 54.

<sup>117</sup> Standard 3.25 General Annex of the Revised Kyoto Convention.

<sup>118</sup> See chapter 2.3.1.1.

<sup>119</sup> Standard 6.3 General Annex of the Revised Kyoto Convention.

<sup>120</sup> Standard 6.3 General Annex of the Revised Kyoto Convention.

<sup>121</sup> Standard 6.4 General Annex of the Revised Kyoto Convention.

<sup>122</sup> Standard 7.1 General Annex of the Revised Kyoto Convention.

carried out at the same time'.<sup>123</sup> Standard 6.7 stipulates that 'customs shall seek to cooperate with other customs administrations and seek to conclude mutual administrative assistance agreements to enhance customs control'<sup>124</sup> and this aligns with Art 8 and 12 of the TFA.

So, in adopting these standards, customs can process the information that is provided for in advance and make determination as to whether they need to examine the goods or not. Having this electronic procedure in play results in less delay at points of entry for goods is the possible effect as it enables the trading community to timely clear the goods before it arrives at the border or as soon as it arrives at the border.

#### **2.3.1.4. WCO Framework of Standards to Secure and Facilitate Global Trade (WCO Framework).**

In 2005, the WCO council adopted the Framework of Standards to Secure and Facilitate Global Trade. The Framework establishes standards that provide supply chain security and facilitation at a global level to promote certainty and predictability.<sup>125</sup>

One of the main objectives of the Framework is to establish customs to customs network arrangement to promote the seamless movement of goods through secure international trade supply chains.<sup>126</sup> This network would result in the timely and accurate exchange of information between customs so as to manage risk on a more effective basis. The aim of this network was to establish real-time co-operation between customs administrations through advanced electronic transmission of customs data and information, giving customs the opportunity to pick up high risk consignments before the arrival of the goods.<sup>127</sup> This aim is achieved by proposing a harmonised system of rules with regard to several Standards but for the purpose of this mini-thesis, only the following standards are referred to:

First of all, signatories are required to use modern technology in inspection equipment. The equipment should be 'a non-intrusive inspection equipment and a radiation detection equipment to conduct inspections, where available and in accordance with risk assessment.'<sup>128</sup> This equipment is necessary to inspect high risk containers or cargo quickly,

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<sup>123</sup> Standard 3.35 General Annex of the Revised Kyoto Convention.

<sup>124</sup> Standard 6.7 General Annex of the Revised Kyoto Convention.

<sup>125</sup> Gordhan P 'Customs in the 21<sup>st</sup> Century' World Customs Journal (2007) 1 (1) 52.

<sup>126</sup> Gordhan P 'Customs in the 21<sup>st</sup> Century' World Customs Journal (2007) 1 (1) 52.

<sup>127</sup> Gordhan P 'Customs in the 21<sup>st</sup> Century' World Customs Journal (2007) 1 (1) 52.

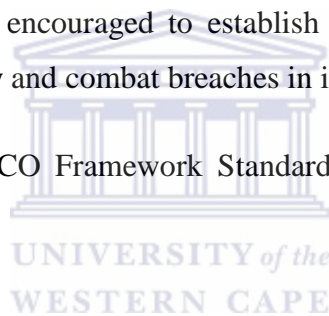
<sup>128</sup> Standard 3 of the WCO Framework of Standards to Secure and Facilitate Global Trade, WCO, Brussels 2005.

without disrupting the flow of legitimate trade. The customs administration should require ‘advance electronic information on cargo and container shipments in time for adequate risk assessment to take place.’<sup>129</sup> These provisions therefore aim at enhancing physical infrastructures across borders to ensure smooth trade flows.

In terms of Standard 4, customs administrations should establish a ‘risk-management system to identify potentially high risk shipments and automate that system. The system should include a mechanism for validating threat assessments and targeting decisions and identifying best practices.’<sup>130</sup>

Customs administrations should also maintain statistical reports that contain performance measures including, but not limited to, the number of shipments reviewed, the subset of high risk shipments, examinations of high risk shipments conducted, and customs clearances. Those reports should be consolidated by the WCO. Also, customs administrations and other competent authorities should be encouraged to establish programmes to prevent lapses in employee integrity and to identify and combat breaches in integrity.

However, the success of the WCO Framework Standards depends on implementation by member countries of the WCO.



#### **2.4. Relevance to South Africa.**

South Africa is uniquely placed among developing African countries to trade with its neighbours, being located at the foot of the African continent and being the second largest economy in sub-Saharan Africa. It has a far more diversified economy than the rest of sub-Saharan Africa and boasts better infrastructures for a developing country.

South Africa has been actively involved in intensive multilateral trade formation negotiations and institution building with countries on a global scale. South Africa was one of the founding members of the GATT 1947 which at a later stage changed to the WTO in 1994 after the Uruguay Round of trade negotiations.<sup>131</sup> South Africa subsequently became a

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<sup>129</sup> Standard 6 of the WCO Framework of Standards to Secure and Facilitate Global Trade, WCO, Brussels 2005.

<sup>130</sup> Standard 3 of the WCO Framework of Standards to Secure and Facilitate Global Trade, WCO, Brussels 2005.

<sup>131</sup> ‘South Africa and the WTO’ [www.wto.org/english/thewto\\_e/countries\\_e/south\\_africa\\_e.htm](http://www.wto.org/english/thewto_e/countries_e/south_africa_e.htm) (accessed 11 February 2015).

member of the WTO in 1995.<sup>132</sup> South Africa therefore, would be committed to a process of reducing tariffs and other barriers to trade. As a member, WTO agreements are binding on South Africa and it is under an obligation to fulfil certain obligations as set out in different Articles contained in the TFA.

As of 23 August 2013, South Africa showed this commitment to reducing non-tariff barriers by adopting ‘a new automated customs management system’<sup>133</sup> which centralises the clearing of imports and exports using a single processing engine which replaced a paper-based and manual administrative system.<sup>134</sup> Consequently, red tape has been reduced, and this has the potential of benefitting traders and companies within the country as they face lengthy and costly border delays. Interestingly, this new system was implemented before the conclusion of the TFA and it proves South Africa has recognised the importance of trade facilitation through changes in customs processes. The TFA would therefore elaborate on trade facilitation measures aiding South Africa further in customs reforms.

South Africa is a developing economy, on the basis of Section II of the TFA;<sup>135</sup> South Africa is offered an opportunity to identify areas where capacity building would be required and then set a realistic target to implement and comply with the provisions of the TFA.<sup>136</sup>

South Africa is also a member of the WCO and a contracting party to the Revised Kyoto Convention to which it acceded in 2004 and came into force in 2006.<sup>137</sup> Based on this, South Africa has commitments to fulfil certain provisions also of the Convention. South Africa is obliged to implement all provisions inclusive of those briefly referred to in earlier sub-heading<sup>138</sup> contained in the General Annex of the Convention and are bound by all the standards therein, but may enter reservations on these provision. The general annex requires contracting countries to automate data systems and implement risk management

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<sup>132</sup> ‘South Africa and the WTO’ [www.wto.org/english/thewto\\_e/countries\\_e/south\\_africa\\_e.htm](http://www.wto.org/english/thewto_e/countries_e/south_africa_e.htm) (accessed 11 February 2015).

<sup>133</sup> This new automated customs management system would be discussed in greater detail in Chapter 3.

<sup>134</sup> ‘South Africa unveils modernised customs system’ available at [www.southafrica.info/business/trade/export/customs-230813.htm#.VQki0ZMpp5k](http://www.southafrica.info/business/trade/export/customs-230813.htm#.VQki0ZMpp5k) (accessed 11 February 2015).

<sup>135</sup> Section II of the TFA provides for special and differential treatment for developing and least developed countries.

<sup>136</sup> ‘Implementing the WTO Agreement on Trade Facilitation’ available at <http://mpovello.com/category/safe-framework/> (accessed 11 February 2015).

<sup>137</sup> ‘The Revised Kyoto Convention’ available at [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv.aspx) (accessed 11 February 2015).

<sup>138</sup> See chap 2.3.1.3.



techniques.<sup>139</sup> South Africa has made a notification to the WCO to implement the General Annex.<sup>140</sup>

## **2.5 Conclusion.**

This chapter set out to discuss the concept of trade facilitation and the international standards on customs procedures to further trade facilitation. In order to understand fully the concept of trade facilitation, a narrow as well as a broad definition was referred to. For the purpose of this mini-thesis, a wider definition was adopted for the South African context.

The chapter has discussed trade facilitation in great detail as this is a crucial part of this mini-thesis. In attempting to understand the concept of trade facilitation, reference was made to several international organisations' perspectives on the concept as well as a proposed definition best suited to a South African context was proposed. Based on the discussion of this concept, it was highlighted that trade facilitation exists to improve to the trading environment. However, achieving a system where trade would be easy and unimpeded does depend on the individual countries implementing trade facilitation measures and also have international organisations that have dedicated themselves to trade facilitation ensure that countries meet these Standards.

The chapter further provided an extensive discussion of international standards to further facilitate trade, looking at the general Art V, VIII and X of the GATT which were seen as a foundation and a blueprint on which the recently concluded TFA was built and expanded. Customs play a role in facilitating trade, so further instrument providing for measures to ensure customs reform were looked at namely, the Revised Kyoto Convention and the WCO Framework. It is argued that if trade facilitation and more specifically customs reform are to be achieved, countries and more specifically South Africa must not relent in their strong commitments to reduce non-tariff barriers by fulfilling its obligation under these instruments because there is a need for further transformation from the current emphasis on trade liberalisation to further economic development.

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<sup>139</sup> See chap 2.3.1.3.

<sup>140</sup> 'Customs External Guide Overview of Customs Procedures' available at <http://www.sars.gov.za/AllDocs/OpsDocs/Guides/SC-CF-02%20-%20Overview%20of%20Customs%20Procedures%20-%20External%20Guide.pdf> (accessed 11 February 2015).

The next chapter looks at the position of South Africa is with regards to custom reform. It also discusses the CMP implemented by the South African Revenue Services (SARS), as well as other regional initiatives to bring about changes in customs operations.





## **CHAPTER 3**

### **SOUTH AFRICA AND CUSTOMS REFORMS.**

#### **3.1 Introduction.**

Trade is on the increase as years go by and countries are reliant on each other. Hoyle argues that no country is self-sufficient.<sup>141</sup> So the world has become ever more interconnected and interdependent through expanded cross-border flows of goods, services, people, transport, capital, information and technology. This has resulted in a globalised system and globalisation provides economies with the opportunity to fast-track positive growth and development goals through increased International trade. Having this increased system of trade flows or globalised system means that customs ought to effectively perform to keep up with the demands for transit goods and services regionally and internationally. However, customs administrations have to deal with challenges such as corruption, lack of human capabilities and poor infrastructure resulting in delays in clearing goods when trading takes place across borders. While globalisation is beneficial to legitimate trade, full benefits can be achieved if border procedures are less complicated and effective. Therefore, in seeking to combat these issue, in order to enhance economic development through trade facilitation and increased revenues, changes in customs processes and policies are vital because having ineffective procedures can undercut any gains that could be potentially made.

As discussed in the previous chapter, several international instruments have provided for core standards for customs procedures, as well as the need for changes in customs processes.<sup>142</sup> Thus, it is important to understand what customs is all about and the role that it plays in the global trading system and more specifically in SA. Also, it is important to understand what customs reform entails and the position of customs reform within SA, by looking at what has been done and what the current position is with regards thereto. The chapter begins with a definition of customs and the role that it plays with regards to international trade. This is followed by a discussion of SA's customs reform through the Custom Modernisation

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<sup>141</sup> Hoyle MSW The Law of International Trade (1981) 1.

<sup>142</sup> See chap 2.

Programme (CMP) and a regional initiative for customs reform like the Tripartite Free Trade Area (TFTA).

### **3.2 Brief definition of ‘customs’.**

To understand customs, it is important to first understand the notion of a border. A border is central to the concept of statehood and State sovereignty.<sup>143</sup> The border ‘demarcates the zone in which a state exercises jurisdiction and this includes the development, application and enforcement of policies and laws.’<sup>144</sup> Basically, the border is that point which connects countries with each other. Trade normally involves goods and services crossing international borders<sup>145</sup>; so borders are not just left to be operated in isolation. Borders are therefore administered by several government agencies, one of which is customs.

According to the Revised Kyoto Convention, ‘customs’ means the

‘government service which is responsible for the administration of customs law and the collection of duties and taxes and which also has the responsibility for the application of other laws and regulations relating to the importation, exportation, movement or storage of goods’.<sup>146</sup>

According to an online dictionary, ‘customs’ is understood to be ‘the official department or agency in a country that administers and collects the duties levied by a government on imported goods and can be referred to a place at a port, airport or frontier where officials check incoming goods, travellers or luggage.’<sup>147</sup>

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<sup>143</sup> Kieck E ‘Cordinated border management: unlocking trade opportunities through one stop border post’ (2009) 4 (1) World Customs Journal 4.

<sup>144</sup> Kieck E ‘Cordinated border management: unlocking trade opportunities through one stop border post’ (2009) 4 (1) World Customs Journal 4.

<sup>145</sup> See chap 1.

<sup>146</sup> General Annex Chapter 2 of the International Convention on the Simplification and Harmonization of Customs Procedures as amended (1999).

<sup>147</sup> ‘Customs’ available at [www.thefreedictionary.com/customs](http://www.thefreedictionary.com/customs) (accessed 3 April 2015).

### **3.3. The role customs play in international trade and in South Africa.**

Trade normally involves goods crossing international borders.<sup>148</sup> Customs administrations play an important role in enhancing international trade, and their roles differ from country to country.<sup>149</sup> Traditionally,

‘customs has been responsible for implementing a wide range of government policies, spanning areas as diverse as assessing and collecting of revenue based on the characteristics of imported goods, ensuring trade compliance and facilitation, interdiction of prohibited substances, protection of cultural heritage and enforcement of intellectual property laws.’<sup>150</sup>

However, custom’s role continues to evolve as it is now increasingly regarded as a key border agency responsible for all transactions related issues arising from the border crossings of goods and people.<sup>151</sup>

Revenue collection is a primary role of customs. The role of customs has however evolved as mentioned earlier. Customs will continue to collect trade data for statistical and regulatory purposes as well as be responsible for effective and efficient border management to facilitate trade. However, customs currently plays a key part in trade facilitation, therefore ensuring effective trade flow. Trade facilitation, as discussed in previous chapters has attracted increasing interest in recent years as evidenced in the WTO’s Trade Facilitation Agreement (TFA) and the WCO’s Revised Kyoto Convention and Framework on Standards to Secure and facilitate Global Trade.<sup>152</sup>

Customs would also be ‘heavily aware of the threat posed by International terrorism and transnational organised crime and so it would be expected that customs administrations

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<sup>148</sup> See chap 1.

<sup>149</sup> Widdowson C ‘The Changing Role of Custom: Evolution or Revolution?’ World Custom Journal (2007) 1 (1) 31.

<sup>150</sup> Widdowson C ‘The Changing Role of Custom: Evolution or Revolution?’ World Custom Journal (2007) 1 (1) 31.

<sup>151</sup> Wulf LD ‘Strategy for Customs Modernization’ in Wulf LD and Sokol JB Customs Modernisation Handbook (2005) 3-29.

<sup>152</sup> See chap 2.

ensure national security and law enforcement.’<sup>153</sup> Widdowson highlights this point of evolution based on the fact that in developing and least developed countries,

‘import duties and related taxes represent a significant proportion of the national revenue as a result of this, customs administrations partake in this primary role. Developed countries on the other hand have relatively little reliance on imports as a source of government revenue, so there is an increasing focus on other issues like ensuring trade facilitation and border safety’.<sup>154</sup>

This is indicative of the shift of customs responsibilities from only revenue collection to other areas. Thus, customs administrations are required to further adopt modern interventions such as risk management, to ensure that limited resources are focussed on the highest risk areas so as to ensure the safety and security of goods going through borders.

South Africa, for instance, is arguably a long way from being classified as a developed country considering the poverty rate within the country, the high unemployment rate, and medium infrastructural developments. That notwithstanding, South Africa’s reliance on imports has reduced over time as seen in the trade statistics for December 2013 where imports decreased by R8.9 billion from November to December 2013.<sup>155</sup> In essence, the role customs plays within South Africa has to be much wider than the collecting of revenues. In ensuring free trade flow, the South African customs play an

‘integral role to ensure facilitation in the movement of goods and persons entering or exiting the borders of South Africa. The core roles are to:

- i) Enforce Customs as well as related trade laws;
- ii) Collect duties and taxes;
- iii) Ensure the social welfare of the citizens of South Africa by controlling the import and export of prohibited and restricted goods;

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<sup>153</sup> Wulf LD ‘Strategy for Customs Modernization’ in Wulf LD and Sokol JB Customs Modernisation Handbook (2005) 3-29.

<sup>154</sup> Widdowson C ‘The Changing Role of Custom: Evolution or Revolution?’ World Custom Journal (2007) 1 (1) 31.

<sup>155</sup> ‘Trade Statistics for December 2014’ available at [www.transportworldafrica.co.za/2015/01/30/trade-statistics-for-december-2014/](http://www.transportworldafrica.co.za/2015/01/30/trade-statistics-for-december-2014/) (accessed 3 April 2015).

- iv) Ensure timely clearance of goods and facilitate the speedy movement of travellers through South African borders; and
- v) Support our integration into the global economy in a way that benefits all South Africans'.<sup>156</sup>

Customs' roles and procedures are governed by national laws and these procedures cover issues of security, standards and customs and are implemented by the Ministry of Finance (MoF).<sup>157</sup> In the South African context, the custom administration is controlled by the SARS at borders or points of entry<sup>158</sup> alongside other government institutions.<sup>159</sup> In terms of the South African Revenue Service Act 34 of 1997,

'SARS's mandate is to efficiently and effectively collect all revenue, ensure enforcement of the tax and customs legislation, to provide a customs service to control the movement of goods into through South Africa whilst facilitating legitimate trade, and to advise the Minister of Trade and Industry on matters concerning the control of goods.'<sup>160</sup>

From the above mentioned quote, SARS are required to ensure easy and facilitated trade just as they carry out revenue collection and controlling the inflow of goods and this is indicative of a wider role customs need to adhere to in the trading environment. The national legislation governing customs operations is the newly promulgated Customs Control Act 31 of 2004 which replaces the Customs and Excise Act 91 of 1964 and this would be discussed in later chapter.

Customs agencies are present at every point of entry including airports, seaports as well as land border posts, to undertake checks of goods entering and exiting the Republic so as to verify compliance rules. SARS seeks to further the South African Government's aim of

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<sup>156</sup> 'Customs External Guide Overview of Customs Procedures' available at <http://www.sars.gov.za/AllDocs/OpsDocs/Guides/SC-CF-02%20-%20Overview%20of%20Customs%20Procedures%20-%20External%20Guide.pdf> (accessed 3 April 2015).

<sup>157</sup> Wulf LD 'Strategy for Customs Modernization' in Wulf LD and Sokol JB Customs Modernisation Handbook (2005) 3-29.

<sup>158</sup> 'South African Revenue Service' available at <http://www.saembassy.org/south-africa-revenue-service/> (accessed 3 April 2015).

<sup>159</sup> National Intelligence, Departments of Home Affairs, Transport, Public Works, Agriculture, Health and Defence and the South African Police Service (SAPs).

<sup>160</sup> Section 4(1) of the South African Revenue Service Act 34 of 1997.

growing the economy and creating employment through trade facilitation and combating illicit trade activities,<sup>161</sup> as will be seen when examining the National Development Plan (NDP) below.

From an international standpoint, South Africa is a member of the WCO and has acceded to the Revised Kyoto Convention and the SAFE Framework of standards to secure and facilitate global trade which was discussed in previous chapter.<sup>162</sup> Therefore, in drafting new rules and processes for customs operations, the Convention has to be used as a blueprint so as to modernise and bring about efficient customs procedures. The same applies to the WTO TFA.

### **3.4 The customs situation in South Africa.**

During the 2012/2013 financial year more than 4.3 million containers moved across South Africa's borders, representing R2.5 trillion worth of trade.<sup>163</sup> One crucial role of customs administration within South Africa is to ensure the 'timely clearance of goods and facilitate the speedy movement of goods and travellers through South African borders.'<sup>164</sup> However, in trading across borders, there are constant delays in clearing goods for export and import. The World Bank Group Doing Business Report ranked South Africa in the 110<sup>th</sup> position out of 189 economies in 2013<sup>165</sup> and 106<sup>th</sup> in 2014.<sup>166</sup> These rankings are due to lack of an automated system and customs inefficiencies because prior to 2012/2013, SARS customs would have utilised around '16 million pieces of paper to process the 5.5 million declarations it would have received from commercial operators over this period'<sup>167</sup>; this can consequently

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<sup>161</sup> 'Customs News Bulletin May 2013' available at <http://www.jacobsens.co.za/Portals/1/News/Bulletin/Bulletin%20291.htm> (accessed 3 April 2015).

<sup>162</sup> See chapter 2.3.1.2 and 2.3.1.3.

<sup>163</sup> 'Implementation of New Custom system modernisation programme' available at <http://www.sars.gov.za/Media/MediaReleases/Pages/22-August-2013---Implementation%20of%20the%20new%20Customs%20Systems%20Modernisation%20Programme.aspx> (accessed 3 April 2015).

<sup>164</sup> 'Customs External Guide Overview of Customs Procedures' available at <http://www.sars.gov.za/AllDocs/OpsDocs/Guides/SC-CF-02%20-%20Overview%20of%20Customs%20Procedures%20-%20External%20Guide.pdf> (accessed 3 April 2015).

<sup>165</sup> World Bank Doing Business Report 2013 available at <http://www.doingbusiness.org/data/exploreconomies/south-africa/> (accessed 3 April 2015).

<sup>166</sup> World Bank Doing Business Report 2014 available at <http://www.doingbusiness.org/data/exploreconomies/south-africa/> (accessed 3 April 2015).

<sup>167</sup> 'Implementation of New Custom system modernisation programme' available at <http://www.sars.gov.za/Media/MediaReleases/Pages/22-August-2013--->

impact negatively on the supply chain of goods as it put traders within South Africa and South Africa as a whole at a competitive disadvantage. Customs needs to adjust to modern international standards to cater for this challenge and SA has taking the initiative to modernise customs.

Across South Africa, there are about 70 different points of entry for goods and services through all trade modalities that is by land, sea and air.<sup>168</sup> 52 are at land borders, and of which 19 are commercial border posts. An example to further indicate inefficiencies in processing and clearing goods by customs agencies, the Beitbridge border post<sup>169</sup> crossing between South Africa and Zimbabwe. The Beitbridge border post is an extremely important one on the North-South Corridor.<sup>170</sup> According to the South African Institute of International Affairs (SAIIA) this border post caters for a significant number of trucks and passengers entering and exiting South Africa on a daily basis;<sup>171</sup> each year more than 160 000 trucks move through Beitbridge border post.<sup>172</sup> However, these trucks experience average delays of approximately three days crossing the border from South Africa to Zimbabwe; the delays can extend for up to a week and truck drivers have reported being delayed for up to two weeks at times.<sup>173</sup> This delay is caused due to a lack of proper technology or an automated system as well as lacking a harmonised and co-ordinated approach to customs procedures. On either side of the border, the customs administration operates independently of the other. This lack of harmonisation between the SARS and the Zimbabwe Revenue Authority (ZIMRA) software means that

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[Implementation%20of%20the%20new%20Customs%20Systems%20Modernisation%20Programme.aspx](#)  
(accessed 3 April 2015).

<sup>168</sup> 'Border Control Operational Coordinating Committee Site Map' available at <http://www.borders.sars.gov.za/sitemap.html> (accessed 3 April 2015).

<sup>169</sup> The Beitbridge border post is situated on the border between South Africa and Zimbabwe, is the busiest regional transit link in Southern and Eastern Africa, connecting South Africa and Zimbabwe, Botswana, Zambia, the Democratic Republic of the Congo (DRC), Malawi, Tanzania and northern Mozambique.

<sup>170</sup> The North South corridor is an infrastructure project amongst Southern and Eastern African States.

<sup>171</sup> 'Beitbridge Border Post Progress Report Trade Mark Southern Africa 2010' available at [http://www.trademarksa.org/sites/default/files/publications/Beit\\_Bridge\\_BP\\_Progress\\_Report\\_August2010.pdf](http://www.trademarksa.org/sites/default/files/publications/Beit_Bridge_BP_Progress_Report_August2010.pdf) (accessed 3 April 2015).

<sup>172</sup> 'Custom Modernisation Processes: South Africa' available at <http://www.trademarksa.org/news/customs-modernisation-processes-south-africa> (accessed 3 April 2015).

<sup>173</sup> 'Beitbridge Border Post Progress Report Trade Mark Southern Africa 2010' available at [http://www.trademarksa.org/sites/default/files/publications/Beit\\_Bridge\\_BP\\_Progress\\_Report\\_August2010.pdf](http://www.trademarksa.org/sites/default/files/publications/Beit_Bridge_BP_Progress_Report_August2010.pdf) (accessed 3 April 2015).



customs clearance documents have to be duplicated.<sup>174</sup> The border post is seriously challenged particularly in terms of physical and systems infrastructure.<sup>175</sup>

In brief the SARS summarised the concerns faced by customs operations in general as follows:

‘Trade volumes had doubled over the previous 10 years, while staff numbers had in fact decreased. Systems and processes in Customs were still largely paper-based and labour-intensive, leading to large numbers of validation errors and wasting staff resources on low value-adding activities. Lack of adequate Customs presence at Ports of Entry, lengthy inspection turnaround times and poor trader awareness and management were also identified as areas of concern.’<sup>176</sup>

Customs can therefore be really effective and ensure the swift and unimpeded movement and clearing of goods by having a framework that modernises, harmonises and standardises procedures for the clearing and releasing of goods at the border. Therefore, tackling these concerns has led South Africa to adopt reformative measures to ensure improvement in custom operations through an overall economic development agenda in the National Development Plan (NDP) and the Custom Modernisation Programme (CMP) which focuses on four key areas: systems, policies, processes and people.<sup>177</sup> Both the NDP and the CMP would be discussed in subsequent headings.

### **3.4.1 South Africa’s approach to customs reform.**

South Africa is certainly not indifferent to the global call to ensure efficiency at borders by adopting international standards for custom procedures, considering the major delays that

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<sup>174</sup> ‘ADC Business Barriers: Case Study 7, Non-Tariff Barriers at Beit Bridge’ available at [http://www.saiia.org.za/doc\\_details/611-sadc-business-barriers-case-7-non-tariff-barriers-at-beit-bridge](http://www.saiia.org.za/doc_details/611-sadc-business-barriers-case-7-non-tariff-barriers-at-beit-bridge) (accessed 3 April 2015).

<sup>175</sup> ‘Gigaba visits Beit Bridge border amid service complaints’ available at <http://www.sabc.co.za/news/a/bb43ca00469300f5b03eba8c3c6d57d4/Gigaba-visits-Beit-Bridge-border-amid-service-complaints-20141512> (accessed 3 April 2015).

<sup>176</sup> ‘Custom Modernisation’ available at <http://www.sars.gov.za/ClientSegments/Customs-Excise/AboutCustoms/Pages/Modernisation.aspx> (accessed 3 April 2015).

<sup>177</sup> ‘Custom Modernisation’ available at <http://www.sars.gov.za/ClientSegments/Customs-Excise/AboutCustoms/Pages/Modernisation.aspx> (accessed 3 April 2015).



occur at border crossings. South Africa has recognised the need for change in customs operations, and Wulf and Sokol best describe changes in customs by saying

‘Customs reform involves more than the introduction of a set of new techniques for processing cargo and passengers, it calls for a new awareness of the developments in trade, requires political commitment to push through sometime difficult measures, and must start with a good diagnosis of the present situation’.<sup>178</sup>

In a working paper by Zake, he made reference to a quote by Minassia, which highlights a strategic response to issues faced by customs in present times. This involves a holistic approach to dealing with custom challenges ranging from reviewing and simplifying policies and legislation governing custom operations to utilising modern technologies by having an automated system rather than a manual paper based system. The quote says:

‘The basic strategy for modernizing Customs administration is straightforward: establish transparent and simple rules and procedures and foster voluntary compliance by building a system of self-assessment buttressed by well-designed audit policies. Implementing this, however, requires addressing a range of issues, involving links with trade policy, organizational reform, the use of new technologies, the appropriate nature and extent of private sector involvement, designing incentive systems to overcome governance issues and many others’.<sup>179</sup>

In South Africa, the approach to customs reform has been holistic. There has been a policy change on customs operations by adopting new customs control legislation,<sup>180</sup> creating a less labour intensive environment for customs officials to operate in, as well as improving the infrastructural and technological space at customs offices by adopting some key initiatives under the CMP. The customs reform initiative also has been a systematic and ongoing process, beginning with the Custom Transformation Programme (CTP) based on the overall SARS transformation programme in 1997, to the ongoing CMP.<sup>181</sup> Interestingly, this holistic

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<sup>178</sup> Wulf LD ‘Strategy for Customs Modernization’ in Wulf LD and Sokol JB Customs Modernisation Handbook (2005) 3-29 7.

<sup>179</sup> Zake, JO Customs Administration Reform and Modernization in Anglophone Africa-Early 1990s to Mid-2010. International Monetary Fund, Working Paper 2011 WP/11/184 9.

<sup>180</sup> Customs Control Act 31 of 2014.

<sup>181</sup> See chapter 3.5.3 for further discussion.

change to enhance customs operations is not occurring within the country only but on a regional level as well as ‘South Africa is championing an ambitious integration and development agenda in Southern Africa so as to customs cooperation within the Southern Africa Customs Union (SACU) and the Southern Africa Development Community (SADC) and other regional organisation.’<sup>182</sup> Some of these regional agendas will be discussed below.

Customs reform is not a case of “one size fits all.”<sup>183</sup> What is sought to be achieved in a particular customs administration differs from country to country, so when undergoing reform, it is important that the changes must be tailored to the situation at hand.<sup>184</sup> Hence, to fully account for this diversity, it is important that any customs modernization project start with a careful and complete diagnosis of the existing situation.<sup>185</sup> In South Africa, as mentioned earlier, ‘custom operation systems and processes were still largely paper-based and labour-intensive, there was lack of adequate customs presence at ports of entry, lengthy inspection turnaround times and poor trader awareness and management were also identified as areas of concern’<sup>186</sup>, and this had a potential of causing substantial delay in the clearance and movement of goods across borders. The current CMP is an ideal modernisation programme to cater for these concerns.

### **3.5 Brief history of customs reform in South Africa.**

In South Africa, customs reform has been a long-term process. The changes in South Africa’s customs administration can be linked closely to the changes that have been effected to SARS.

Starting from 1994, “Customs and Excise and the Inland Revenue were separate Directorates within the Department of Finance and were headed by Commissioners.”<sup>187</sup> Changes were

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<sup>182</sup> Grieve N “Building Hard and soft trade facilitating infrastructure key to tackle African trade cost.’ The Engineering News 02 November 2012.

<sup>183</sup> Wulf LD ‘Strategy for Customs Modernization’ in Wulf LD and Sokol JB Customs Modernisation Handbook (2005) 3-29.

<sup>184</sup> Wulf LD ‘Strategy for Customs Modernization’ in Wulf LD and Sokol JB Customs Modernisation Handbook (2005) 3-29.

<sup>185</sup> Wulf LD ‘Strategy for Customs Modernization’ in Wulf LD and Sokol JB Customs Modernisation Handbook (2005) 3-29.

<sup>186</sup> ‘Custom Modernisation’ available at <http://www.sars.gov.za/ClientSegments/Customs-Excise/AboutCustoms/Pages/Modernisation.aspx> (accessed 3 April 2015).

<sup>187</sup> ‘Paper: Border Security Crime Trends Since 1994. A Customs Perspective’ available at [http://www.thepresidency.gov.za/docs/reports/15year\\_review/jcps/bordersecurity.pdf](http://www.thepresidency.gov.za/docs/reports/15year_review/jcps/bordersecurity.pdf) (accessed 3 April 2015).

then enacted from '1995 in terms of which these two Directorates were removed from the Department of Finance to form the current SARS on 1 April 1996, which functioned as a separate government department, within the civil service until it became an autonomous National Public Entity on 1 October 1997.<sup>188</sup> From then on, the SARS has been undergoing reforms through the transformation programme. The transformation programme began 'in earnest during June 1998 when it was officially launched and this transformation had an effect of impacting every single organisation involved in SARS operations.'<sup>189</sup> In essence, the SARS becoming autonomous consequently impacted on customs and against that background, a CTP was launched in 1998.<sup>190</sup> The CTP sought to ensure that customs administration achieved the following objectives:

- i) Efficient revenue collections ;
- ii) Better risk analysis to detect and deter illegal trading activities, thereby protecting the local economy and facilitating trade for legitimate business;
- iii) Protection of the public against harmful goods and materials;
- iv) Meeting of international obligations in terms of international agreements; and
- v) Tracking of statistics.<sup>191</sup>

In continuation of the transformation, in 2000 a project called 'Siyakha', (an ethnic phrase meaning "We are building") was launched to fundamentally reshape the SARS into a 21st century organisation able to sustainably collect revenues and fulfil its responsibilities with best possible efficiency.<sup>192</sup> This project sought to further bring about extensive changes for customs operations. One of such changes was the development of the Manifest Acquittal System (MAS) in 2003. This system would sought to provide an electronic manifest acquittal facility which would faster process declaration entries submitted and reduce paper administrative work, and also enable the SARS to improve risk based targeting and eliminate unnecessary interventions.<sup>193</sup> In implementing these changes the SARS aimed at achieving a more effective control of in-transit cargo. Despite having this system it has been largely

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<sup>188</sup> Paper: Border Security Crime Trends Since 1994. A Customs Perspective' available at [http://www.thepresidency.gov.za/docs/reports/15year\\_review/jcps/bordersecurity.pdf](http://www.thepresidency.gov.za/docs/reports/15year_review/jcps/bordersecurity.pdf) (accessed 3 April 2015).

<sup>189</sup> Smulders, Sharon. "The transformation of the South Africa Revenue Authority in the post-Apartheid era: focus." TAXtalk 43 (2013): 54-61.

<sup>190</sup> South African Revenue Service Annual Report 1998-1999 (1999) 10.

<sup>191</sup> South African Revenue Service Annual Report 1998-1999 (1999) 10.

<sup>192</sup> South African Revenue Service Annual Report 2000-2001 (2001) 16.

<sup>193</sup> South African Revenue Service Annual Report 2000-2001 (2001) 16.

inefficient and plagued over the years with an inefficient technology architecture and infrastructure.

The SARS is still transforming and new initiatives have been implemented such as the CMP. This transformation has been geared to the creation of a stable, functioning organisation which will serve as a platform on which greater changes and innovation can be built.

### **3.5.2 The National Development Plan (NDP).**

In South Africa, trade has been liberalised significantly post 1994, and if South Africa is to increase market access for further regional and international competitiveness, having efficient border management is important to achieve that goal and to further integration. Research has established that ‘participating in world trade boosts growth and countries that have rapidly integrated into the world economy also experience huge growth rates.’<sup>194</sup> South Africa currently is ‘championing an ambitious integration and development agenda within the country and the Southern Africa region in an attempt to advance what is described as trade and customs cooperation within the SACU, the SADC and the TFTA, and other regional organisations.’<sup>195</sup> Having this initiative would consequently expose the country to better technologies and infrastructures and could enhance competitiveness.<sup>196</sup>

One high-profile effort currently being implemented within South Africa to enhance economic development is the NDP. The NDP was launched as a strategy for future economic and socio-economic development through the elimination of poverty, increased infrastructural development and reducing inequality by 2030.<sup>197</sup> The NDP in brief provides the strategic framework to put South Africa’s economy on a positive growth path with a strong emphasis on building capabilities and reducing poverty and unemployment through strong governance, effective leadership and active citizenry.<sup>198</sup>

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<sup>194</sup> Wulf LD ‘Strategy for Customs Modernization’ in Wulf LD and Sokol JB Customs Modernisation Handbook (2005) 3-29.

<sup>195</sup> ‘Building Hard and Soft Infrastructures to minimise Regional Cost’ available at <http://mpoverello.com/tag/southern-africa/> (accessed 3 April 2015).

<sup>196</sup> Wulf LD ‘Strategy for Customs Modernization’ in Wulf LD and Sokol JB Customs Modernisation Handbook (2005) 3-29.

<sup>197</sup> National Planning Commission National Development Plan 2030: Our Future-make it work (2011) 25.

<sup>198</sup> National Planning Commission National Development Plan 2030: Our Future-make it work (2011) 25.

The Plan is divided into 15 chapters but of relevance to this mini-thesis would be chapter 7 which deals with ‘Positioning South Africa in the World.’ The chapter begins with the key objectives of ‘expanding intraregional trade in Southern Africa from present levels of 7% of trade to 25% by 2030 and also expand trade with regional neighbours from 15% to 30% over the same period of time.’<sup>199</sup> In brief, the anticipated actions involve a strong emphasis on road, rail and port infrastructure in the region, a reduction in red tape, corruption and delays at border posts, using financial institutions to partner with businesses wanting to expand on the continent, strengthening regional co-operation in food and energy markets and water management, and identifying and promoting practical opportunities for co-operation based on complementary regional endowments.<sup>200</sup>

The chapter also has a definite stance on the need for changes in customs procedures, and for trade facilitation frameworks to be implemented because trade can best be facilitated if infrastructures are upgraded and there is a co-ordinated approach to customs processes as well as their efficiency. The following quotation clearly illustrates that stance;

‘A good road cannot facilitate trade if there are disruptions at border posts and in customs procedures; these need to be made more efficient and all blockages need to be opened. Functionally integrating South Africa into regional and global production and supply chains necessarily includes: Creating adequate warehousing and logistic facilities, instituting efficient procedures at customs and border posts, standardising government policies and regulations to avoid duplicated processes and delays. These factors contribute significantly to creating and managing efficient supply chains.’<sup>201</sup>

Based on the aforementioned strategy, an effort emerging from the NDP is the CMP. Also, just before the strategies under the NDP were documented, from a regional perspective South Africa has been party to the TFTA agreement under the umbrella of the SADC.<sup>202</sup> The TFTA seeks to facilitate greater trade and investment harmonisation across the three existing

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<sup>199</sup> National Planning Commission National Development Plan 2030: Our Future-make it work (2011) 65.

<sup>200</sup> National Planning Commission National Development Plan 2030: Our Future-make it work (2011) 65.

<sup>201</sup> ‘South African Government Information 2012, Our Future-make it work: National Development Plan 2030’ available at <http://www.onfo.gov.za/issues/national-development-plan-2012> (accessed 3 April 2015).

<sup>202</sup> ‘Building Hard and Soft Infrastructures to minimise Regional Cost’ available at <http://mpoverello.com/tag/southern-africa/> (accessed 3 April 2015).

regional economic communities, viz, the SADC,<sup>203</sup> the Common Market for Eastern and Southern African (COMESA)<sup>204</sup> and the East African Community (EAC).<sup>205</sup> The TFTA will also be discussed as it is indicative of the adoption of a co-ordinated approach to border processes across the three regions.

### **3.5.3 The Customs Modernisation Programme (CMP).**

Inefficiencies in customs procedures are prevalent in South Africa. As indicated earlier, at the Beitbridge border post, trucks can take up to three days to be cleared for passage due to the poor infrastructure and IT systems at the border. As mentioned earlier also, borders connect countries with each other, so having an effective and smooth border operation at border crossings by customs officials is central to the economic and social development of South Africa. This in essence, was stated in the NDP, having a good and well maintained road link to a border cannot of itself facilitate trade. There have to be corresponding efficiencies at border posts and in customs procedures to ensure trade competitiveness and economic growth.<sup>206</sup>

In South Africa, there is a realisation of custom deficiencies and the problems that they cause. Based on that, to further reduce clearance times as envisaged in Art 7 of the TFA and Standard 3.25 of the Revised Kyoto Convention, there is an ongoing custom reform initiative under the CMP which is part of a larger economic reform program in the form of the NDP. Customs modernisation essentially ‘means a broad strategy and goal to improve the effectiveness, efficiency, transparency and predictability of an administration’s operations so that it can better meet the demands of modern times’.<sup>207</sup> Customs modernisation relates to the full range of customs operations. Its main objective is to ensure that customs administrations constantly keep pace with developments in International trade, whether of a technological,

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<sup>203</sup> The SADC comprises of Angola, Botswana, D.R. Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe available at [www.sadc.int](http://www.sadc.int) (accessed 3 April 2015).

<sup>204</sup> The COMESA comprises of Burundi, Comoros, D.R. Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Seychelles, Madagascar, Malawi, Mauritius, Rwanda, Sudan, Swaziland, Uganda, Zambia and Zimbabwe available at [www.comesa.int](http://www.comesa.int) (accessed 3 April 2015).

<sup>205</sup> The EAC comprises of Burundi, Kenya, Rwanda, Tanzania and Uganda available at [www.eac.int](http://www.eac.int) (accessed 3 April 2015).

<sup>206</sup> South African Government Information 2012, Our Future-make it work: National Development Plan 2030’ available at <http://www.onfo.gov.za/issues/national-development-plan-2012> (accessed 3 April 2015).

<sup>207</sup> World Customs Organisation World Custom News 2007- Special Report Custom Modernisation (2007) 1-44.



legal or economic nature. Furthermore, a modernisation programme for customs administrations ‘seeks to develop a competent and efficient administrative system, determine the best possible management of staff and available technical resources, and instil a culture of good governance and integrity to facilitate the crucial role played by customs in the global trading system.’<sup>208</sup>

South Africa’s customs modernisation initiative came about following the SARS accession to the WCO’s Revised Kyoto Convention in 2004, which required customs agencies to make significant changes to their business and processing models.<sup>209</sup> These changes included the introduction of simplified procedures, which would have fundamental effects on and benefits for trade and would require modern IT solutions. The CMP is run by the SARS. The Programme began intensively in 2009 and aims to speed up the process of clearance through borders by increasing the efficiency of documentation delivery and processing. From a South African perspective, the CMP involves the introduction of new customs rules, use of a modern, electronic and integrated technology platform, together with a redesign of basic processes to bring about several benefits for traders across the Republic and to SARS as a customs administrator.<sup>210</sup> These benefits, in brief, include greater ease of movement of goods, cost savings for traders, increased efficiency for SARS, as well as open and free access to South African market for goods and services. In essence, the CMP was introduced to focus on four key areas: our systems, policies, processes and people.<sup>211</sup> The CMP is a holistic and systematic programme bringing changes to different facets of custom operations and also occurring in different broad phases or releases and under these phases several initiatives are been implemented.

This initial phase of the programme was launched in 2010 and was viewed as a building block and a phase where traders and trade practitioners could re-align themselves with the ‘new’ way of presenting goods for clearance.<sup>212</sup> The phase of modernisation involved implementing risk management technologies and largely restructured the custom declaration

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<sup>208</sup> ‘Custom Modernisation’ available at <http://www.gfptt.org/node/89> (accessed 11 May 2015).

<sup>209</sup> ‘Custom Modernisation’ available at <http://www.sars.gov.za/ClientSegments/Customs-Excise/AboutCustoms/Pages/Modernisation.aspx> (accessed 11 May 2015).

<sup>210</sup> ‘Custom Modernisation’ available at <http://www.sars.gov.za/ClientSegments/Customs-Excise/AboutCustoms/Pages/Modernisation.aspx> (accessed 11 May 2015).

<sup>211</sup> ‘Custom Modernisation’ available at <http://www.sars.gov.za/ClientSegments/Customs-Excise/AboutCustoms/Pages/Modernisation.aspx> (accessed 11 May 2015).

<sup>212</sup> ‘Custom Modernisation’ available at <http://www.sars.gov.za/ClientSegments/Customs-Excise/AboutCustoms/Pages/Modernisation.aspx> (accessed 11 May 2015).

process to bring it in line with the international standard as proposed under the Revised Kyoto Convention and WCO Customs Data Model.<sup>213</sup> In adopting this Model, ‘new integrated customs solution is being introduced to standardise the processing and validation of customs declarations across all modes of trade.’<sup>214</sup> This means that all customs clearances will be processed through a single declaration engine;<sup>215</sup> prior to modernisation, customs had 37 diverse operating systems. A new Customs Procedure Code (CPC) was then introduced under this phase in the declaration process of goods at the border.<sup>216</sup> The CPC replaced the old Purpose Codes (PC) which existed in terms of S 39(1)(a) of the Customs and Excise Act of 1964 whereby ‘a person entering or exporting any goods will be required to indicate the purpose for which the goods are being entered.’<sup>217</sup> The SARS also replaced its old MAS with the Automated Cargo Management (ACM) system.

The second phase was then launched in 2011. One of the significant enhancements being launched as part of release/phase 2 in 2011 was ‘the introduction of an automated workflow driven system, called “Service Manager”, which is a case management system that allowed customs officers to complete all clearance processes end-to-end without having to perform manual functions.’<sup>218</sup> Also a system was initiated whereby traders had to submit supporting documentation electronically to the SARS. Basically, this meant that if a customs broker or trader receives an electronic customs status response message with the code ‘13’<sup>219</sup>, this will imply that customs requires the declarant to submit supporting documents for a desk audit.<sup>220</sup> ‘Supporting documents’ are simply shipping documents used in order to declare a consignment for duty, tax and regulatory purposes through customs.<sup>221</sup> As a result this cuts down on the running around time for custom brokers in checking the status of goods for clearance.

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<sup>213</sup> Transcript of the Presentation by the Executive: Strategy, Modernisation and Design.’ available at [www.mcli.co.za/mcli-web/mcli/agm/agm-2013/docs/sars.pdf](http://www.mcli.co.za/mcli-web/mcli/agm/agm-2013/docs/sars.pdf) (accessed 11 May 2015).

<sup>214</sup> South African Revenue Service, Trader Pocket Guide: Custom Modernisation, moving into the future Version 1 (2010) 6.

<sup>215</sup> South African Revenue Service, Trader Pocket Guide: Custom Modernisation, moving into the future Version 1 (2010) SARS 3.

<sup>216</sup> South African Revenue Service, Trader Pocket Guide: Custom Modernisation, moving into the future Version 1 (2010) SARS 6.

<sup>217</sup> Section 39(1)(a) of the Custom and Excise Act of 1964.

<sup>218</sup> ‘Custom Modernisation’ available at <http://www.sars.gov.za/ClientSegments/Customs-Excise/AboutCustoms/Pages/Modernisation.aspx> (accessed 11 May 2015).

<sup>219</sup> A code 13 serves to notify a declarant that the declaration submitted has been automatically selected by the Customs risk engine and standard clearance supporting documents must be submitted.

<sup>220</sup> South African Revenue Service, Trader Pocket Guide: Custom Modernisation, moving into the future Version 2 (2010) 5.

<sup>221</sup> South African Revenue Service, Trader Pocket Guide: Custom Modernisation, moving into the future (2010).



In the midst of all this progress, the Customs Control Act 31 of 2014 was enacted in 2014 establishing a customs control system for all goods imported into or exported from the Republic. This legislation standardises customs procedures across different transport modes; automates critical customs processes including import/export clearance, advance notification and secure recording of goods movements; and expedites clearance formalities based on provisions contained in chap 7 of the Act.

### **3.6 Some Regional Initiatives on Custom Reforms.**

As mentioned earlier, changes in customs operations are not just occurring within South Africa only but on a regional level also based on some initiatives and projects carried out by the SADC and SACU,<sup>222</sup> both of which South Africa is an active member. These initiatives seek to achieve a harmonised system of customs processes, and as a result further trade facilitation.

#### **3.6.1 South African Customs Union (SACU).**

To further liberalisation of trade within the SACU, Art 13 of the SACU Agreement provides for the co-operation of Member States on customs procedures. It stipulates that Member States should take ‘appropriate measures, including arrangements regarding customs co-operation, to ensure that the provisions of this Agreement are effectively and harmoniously applied and also such measures as are necessary to facilitate the simplification and harmonization of trade documentation and procedures.’<sup>223</sup> SACU launched a three year customs development programme in an endeavour to develop regional integration within Southern Africa and facilitate trade through the adoption of common regional customs policies and procedures.<sup>224</sup> The programme rests on three pillars enshrined in the SACU Customs Policy Framework, namely, trade facilitation, economic protection and lastly, border controls and protection of society.<sup>225</sup> Based on this programme, a common and harmonised set of customs policies was initiated to further ensure the implementation of the customs

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<sup>222</sup> Comprising of Botswana, Lesotho, Namibia, Swaziland and South Africa.

<sup>223</sup> Article 13(1) and (2) of the SACU Agreement 2002.

<sup>224</sup> ‘Quarterly SACU Customs Bulletin April to June 2011’ available at <http://www.sacu.int/newsletters/2011/april-june.pdf> (accessed 11 May 2015).

<sup>225</sup> ‘Quarterly SACU Customs Bulletin April to June 2011’ available at <http://www.sacu.int/newsletters/2011/april-june.pdf> (accessed 11 May 2015).

modernization agenda. The policies focus on the areas of improved infrastructure overall through enhanced risk management systems, Information Technology (IT) connectivity, having standard operating procedures.<sup>226</sup>

### **3.6.2 Tripartite Free Trade Area (TFTA).**

On a regional level, practically, there is also a lack of a co-ordinated approach to customs procedures and poor infrastructural development which result in hampering the movement of goods across borders. In an effort to address these challenges of non-tariff barriers as a result of inefficient customs procedures and high transportation costs, and to improve market access for producers and traders in the Southern Africa region as well as the Eastern Africa region, the member States of the three Regional Economic Communities (RECs) launched the COMESA-EAC-SADC TFTA on 12 June 2011 prior to a meeting of the Heads of State and Government of Member and Partner States of the COMESA, EAC and the SADC in Kampala, Uganda, on 22 October 2008.<sup>227</sup> At this meeting the three RECs agreed on a programme of harmonisation of trading arrangements, with the long-term goal of merging the three RECs into a single Free Trade Area (FTA) for the 26 member countries<sup>228</sup> of Eastern and Southern Africa.<sup>229</sup>

The TFTA is anchored on three pillars, namely the traditional Market Integration pillar, Infrastructure Development, and Industrialisation. Market Integration concerns the removal of tariff and non-tariff barriers and implementation of trade facilitation measures, all of which are essential for the establishment of a well-functioning TFTA by the 26 Member States. This pillar has two components to it. First, is the design, negotiation and implementation of the TFTA or “Grand” FTA; Second, the removal of non-tariff barriers and

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<sup>226</sup> ‘Quarterly SACU Customs Bulletin April to June 2011’ available at <http://www.sacu.int/newsletters/2011/april-june.pdf> (accessed 11 May 2015).

<sup>227</sup> ‘Final Communiqué on the First Tripartite Summit’ available at [www.trademarksa.org](http://www.trademarksa.org) (accessed 18 May 2015).

<sup>228</sup> Angola, Botswana, Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Lesotho, Libya, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, South Africa, Sudan, Swaziland, Tanzania, Uganda, Zambia, and Zimbabwe.

<sup>229</sup> ‘Tripartite Task Force Progress Report on the implementation of Decisions of the First COMESA-EAC-SADC Tripartite Summit’ available at [www.tralac.org](http://www.tralac.org) (accessed 18 May 2015).

improving trade facilitation programmes to reduce the costs of cross-border trade so as to improve the competitiveness of the region.<sup>230</sup>

With respect to the second pillar of Infrastructure Development, there is more concentration on improving the region's infrastructure so as to improve the efficiency of the internal trade and transport network (road, rail, water and air and including Information and Communication Technology (ICT) and energy).<sup>231</sup> It is therefore vital that Africa gets its infrastructure into shape by linking these countries in order to increase intra-African trade and thereby attempt to seriously make Africa's trade more inward-looking to the rest of Africa.<sup>232</sup> Infrastructure development is therefore important in regional integration to further facilitate trade and ensure trade expansion.

A key rationale of the TFTA is to ensure improved trade facilitation and customs procedures through joint development of instruments and mechanisms and the adoption of best practices, improved competitiveness through reductions in the cost of doing business, and the creation of an enabling environment for intra-regional trade and investment arising from liberalization of trade in services.<sup>233</sup> Also, the TFTA aims to co-ordinate and harmonise existing regional programs and to implement them jointly. The Draft Agreement establishing the TFTA gives substance to the aforementioned objective in Art 28 which provides that 'Tripartite Member States undertake to cooperate and develop infrastructure programs to support interconnectivity in the region and promote competitiveness.'<sup>234</sup>

In ensuring deeper market integration, Art 15 of the *Draft Agreement Establishing the COMESA, EAC and SADC Tripartite Free Trade Area* provides that: Tripartite Member States undertake to initiate some trade facilitation programs that will influence customs

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<sup>230</sup> Hartzenberg, T, Erasmus G & McCarthy C 'Tripartite Free Trade Area: Towards a new African paradigm?' Trade Law Centre for Southern Africa; Pearson M Trade Facilitation in the COMESA-EAC-SADC Tripartite Free Trade Area (2012) 4-144.

<sup>231</sup> Hartzenberg, T, Erasmus G & McCarthy C 'Tripartite Free Trade Area: Towards a new African paradigm?' Trade Law Centre for Southern Africa; Pearson M Trade Facilitation in the COMESA-EAC-SADC Tripartite Free Trade Area (2012) 4- 144.

<sup>232</sup> Simuyemba, S 'Linking Africa through Regional Infrastructure', available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/00157662-FR-ERP-64.PDF> (accessed 18 May 2015).

<sup>233</sup> Hartzenberg, T, Erasmus G & McCarthy C 'Tripartite Free Trade Area: Towards a new African paradigm?' Trade Law Centre for Southern Africa; Pearson M Trade Facilitation in the COMESA-EAC-SADC Tripartite Free Trade Area (2012) 4- 144.

<sup>234</sup> Article 28(1) of the Draft Agreement Establishing the COMESA, EAC and SADC Tripartite Free Trade Area 2010: available at [www.trademarksa.org](http://www.trademarksa.org) (accessed 18 May 2015).

processes along the Free Trade Area (FTA). In influencing the free flow of goods across borders, the programs should have an aim of:

- a. 'Reducing the cost of processing documents and the volume of paper work required in respect of trade between Tripartite Member States;
- b. Ensuring that the nature and volume of information required in respect of trade within the free trade area does not adversely affect the economic development of, or trade among, the Tripartite Member States;
- c. Adopting common standards of trade procedures within the free trade area where international requirements do not suit the conditions prevailing among Tripartite Member States;
- d. Promoting the establishment of one-stop border posts.<sup>235</sup>

In carrying out this obligation by removing these non-tariff barriers and by improving trade facilitation, COMESA-EAC-SADC has prioritised certain programmes addressing the challenges to facilitating trade and transport with the overall aim of reducing the costs of doing business and so improves the competitiveness of products from the Eastern and Southern African regions. The programmes in general involve regulatory and policy reforms encouraging the adoption of international instruments and best practices; national and regional capacity building programmes to facilitate cross-border movements; and the enhancement of infrastructure facilities at border posts in order to improve efficiency in cross-border movement.<sup>236</sup>

One such program is the Comprehensive Tripartite Trade and Transport Facilitation Programme (CTTTFP) which involves a series of initiatives from different regional groups that have been brought together into one large integrated trade facilitation programme. This programme indicates the cooperativeness as envisaged in Art 28(1)<sup>237</sup> as well as moving towards a harmonised system.<sup>238</sup> Some key initiatives involving customs that are sought to be

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<sup>235</sup> Article 15 of the Draft Agreement Establishing the COMESA, EAC and SADC Tripartite Free Trade Area 2010: available at [www.trademarksa.org](http://www.trademarksa.org) (accessed 18 May 2015).

<sup>236</sup> Hartzenberg, T, Erasmus G & McCarthy C "Tripartite Free Trade Area: Towards a new African paradigm?" Trade Law Centre for Southern Africa; Pearson M Trade Facilitation in the COMESA-EAC-SADC Tripartite Free Trade Area (2012) 4-145

<sup>237</sup> Hartzenberg, T, Erasmus G & McCarthy C "Tripartite Free Trade Area: Towards a new African paradigm?" Trade Law Centre for Southern Africa; Pearson M Trade Facilitation in the COMESA-EAC-SADC Tripartite Free Trade Area (2012) 4-145

<sup>238</sup> Hartzenberg, T, Erasmus G & McCarthy C "Tripartite Free Trade Area: Towards a new African paradigm?" Trade Law Centre for Southern Africa; Pearson M Trade Facilitation in the COMESA-EAC-SADC Tripartite Free Trade Area (2012) 4-145

achieved under this programme include improving customs procedures, legislation to have a harmonised system of rules, and the adoption of a ‘Coordinated Border Management System’, a one stop border post, of which the SADC has been a strong advocate as it promotes co-ordination and co-operation among relevant authorities and agencies involved in, specifically, the protection of the interests of a State at its borders.<sup>239</sup> The objectives to be addressed through the CTTTFP are aimed towards;

a) increasing trade and promoting economic growth in Eastern and Southern Africa through supporting developments in regional policies and in the regional regulatory and economic environment;

b) reducing the high costs of trade associated with conducting business in the region and to assist national administrations, working through the REC’s, to address barriers to economic growth; and

c) dropping the transit times and transaction costs along the principal corridors in Eastern and Southern Africa through faster border crossings and harmonised trade and transit regulations.<sup>240</sup>

Building on that, the TFTA seeks to further enhance infrastructural development and in meeting its goal of infrastructural development, a flagship infrastructure and trade facilitation programme in the form of the North-South Corridor (NSC) aid for trade initiative has been undertaken and was launched in 2009.<sup>241</sup> The NSC in brief is a crucial infrastructure project in on-going regional processes which aims at promoting economic growth, infrastructure development and trade facilitation across the sub-region.<sup>242</sup> This programme therefore would further enhance cross-border trade and minimise transport constraints.

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<sup>239</sup> Draft SADC Guidelines for Coordinated Border Management: A Practical Guide on Best Practices and Tools for Implementation 2011 15.

<sup>240</sup> The COMESA-EAC-SADC Tripartite trade and transport facilitation programme available at <http://www.oecd.org/aidfortrade/47407250.pdf> (accessed 18 May 2015).

<sup>241</sup> ‘Infrastructure component of the North-South Corridor’ available at <http://www.trademarksa.org/sites/default/files/publications/Report%20-%20Infrastructure%20Components%20of%20the%20North-South%20Corridor.pdf> (accessed 18 May 2015).

<sup>242</sup> ‘Infrastructure component of the North-South Corridor’ available at <http://www.trademarksa.org/sites/default/files/publications/Report%20-%20Infrastructure%20Components%20of%20the%20North-South%20Corridor.pdf> (accessed 18 May 2015).

### **3.7 Conclusion.**

The chapter has discussed the concept of ‘customs’ and the role they play in the globalised trading system. The chapter highlighted some border inefficiencies in custom procedures indicating the need for a modernised and harmonised system of operations. Customs reforms were then looked at and the discussion was focused on the SARS transformation and the on-going CMP. The discussion went further to look at some regional initiatives to bring about change in customs operations.

As discussed above, the SARS is one of the government agencies playing a major role in ensuring the free and unimpeded movement of goods across borders. In ensuring positive economic development, the NDP was formulated and, based on that, the CMP was initiated. This CMP is expected to address the challenges faced by customs officials and aims at ensuring a seamless, free and broadly effective trading system where customs procedures would be less paper based and more automated which in turn could effectively reduce transaction costs for traders. Furthermore, regional initiatives like the TFTA endeavour to address the lack of a co-ordinated and harmonised system affecting the COMESA-SADC-EAC regions thus facilitating the need for change. Furthermore, the CTTTFP initiative attempts to create a regional partnership by incorporating individual country programmes, and therefore make the three regions work hand in hand to further integration. The CMP and regional efforts to address customs inefficiencies will enable greater economic development and deeper integration within Southern and Eastern Africa.

The next chapter looks at the influence that the customs reform initiatives discussed in this chapter has on market access in South Africa as well as surrounding countries. This will be done by discussing the advantages of the strategy using specific points of entry and borders as an example.



## **CHAPTER 4.**

### **INFLUENCE OF CUSTOM MODERNISATION ON MARKET ACCESS.**

#### **4.1 Introduction.**

This chapter discusses the how customs modernisation could influence South Africa's market access for goods as well as surrounding regional countries. As discussed in Chapter 3, the world has become more interconnected through expanded cross border flow of goods and services<sup>243</sup> and in order to match this globalised trend, custom administration and their operations arguably needs to be reformed. However, this globalised system can be hampered by non-tariff barriers. Non-tariff barriers include policies and measures other than tariffs that can impact on trade flows and can come in the form of 'behind the border' measures.<sup>244</sup> This mini-thesis has focused primarily on non-tariff barriers specifically through complex border or custom formalities and procedures otherwise known as administrative barriers to trade and the need for reforms to further trade facilitation.<sup>245</sup>

In South Africa, the Custom Modernisation Programme (CMP) is the driving trade facilitative initiative to tackle this problem of ineffective custom formalities and bring about changes in custom operations. Custom modernisation as mentioned in the previous chapter deals with customs administrations keeping pace with developments in international trade, whether of a technological, legal or economic nature and further enhancing this global system of trading.<sup>246</sup> Getting to modernise custom can affect the access of goods, in order to have a clear understanding of how beneficial modernising custom operations could be, it is important to have a general understanding of market access and what resulting effect can modernisation have on market access. Therefore, the chapter begins with a brief discussion of market access considering various commitments South Africa has as a member of some international organisations as discussed in earlier chapter<sup>247</sup> as well as expand on various Preferential Trade Agreements (PTA) and Regional Trade Agreements (RTA) South Africa

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<sup>243</sup> See chapter 3.1.

<sup>244</sup> Staiger RW 'Non-tariff Measures and the WTO' available at [http://www.wto.org/english/res\\_e/reser\\_e/ersd201201\\_e.pdf](http://www.wto.org/english/res_e/reser_e/ersd201201_e.pdf) [accessed 11 June 2015].

<sup>245</sup> See chapter 1.

<sup>246</sup> See chapter 3.5.3.

<sup>247</sup> See chapter 2.4.

briefly discussed in the previous chapter<sup>248</sup> to further market access and this is followed by a discussion on what possible influence custom modernisation which was discussed in the previous chapter<sup>249</sup> would have on South Africa's market access.

In going about this discussion, focus would be on the benefits of the CMP as well as a discussion on the changes that have occurred at two ports of entry which are the Beitbridge and Lebombo border post as they are strategically placed along important development corridors like the North South Corridor (NSC) and the Maputo Development Corridor (MDC).

#### **4.2 Understanding market access.**

International trade is a key driver for economic development.<sup>250</sup> However, based on earlier discussions, trade can only materialise when one trading country has the required access to the market of another trading country or could easily transport goods across national borders without any hindrance.<sup>251</sup> Market access simply means 'the openness of a country's market to foreign goods and services'.<sup>252</sup> Therefore, it can be argued that international trade cannot exist without access to domestic markets of trading countries.<sup>253</sup> Market access matters and every trading country aspire to have greater market access. This means that there is increased trade and flowing from increased trade is greater income and economic growth.<sup>254</sup>

To further the discussion on market access, from the World Trade Organisation (WTO) perspective which South Africa is party to, 'market access for goods means the conditions, tariff and non-tariff measures, agreed by members for the entry of specific goods into their markets'.<sup>255</sup> In essence, the WTO offers a forum within which its member governments may negotiate over market access that could be beneficial to parties as they partake in bilateral or multilateral trades. This is the case because having difficult conditions in which goods enter

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<sup>248</sup> See chapter 3.6.

<sup>249</sup> See chapter 3.5.3.

<sup>250</sup> 'Benefits of International Trade' available at [www.economywatch.com/international-trade/benefits.html](http://www.economywatch.com/international-trade/benefits.html) (accessed 5 September 2015).

<sup>251</sup> Chapter 1.1.

<sup>252</sup> [www.businessdictionary.com/definition/market-access.html](http://www.businessdictionary.com/definition/market-access.html) (accessed 11 June 2015).

<sup>253</sup> Van Den Bossche P The Law and Policy of the World Trade Organisation 2ed (2008) 401.

<sup>254</sup> Hugo S, Squalli J, Wilson K What Explains Market Access? Working Paper No 06-08 (2006) 1.

<sup>255</sup> 'Market Access for Goods' available at [https://www.wto.org/english/tratop\\_e/markacc\\_e/markacc\\_e.htm](https://www.wto.org/english/tratop_e/markacc_e/markacc_e.htm) (accessed 11 June 2015).



one trading country could potentially affect how that particular good competes with domestic goods. Bagwell in his article gives a clear illustration of this perspective as he argues that market access is interpreted in the WTO as reflecting the competitive relationship between imported and domestic product.<sup>256</sup> He illustrates this ideology by highlighting the fact that if a:

‘government agrees to reduce its import tariff on a particular product, it alters the competitive relationship between imported and domestic units of the product in favour of imported units, and it thereby provides greater market access to foreign producers. Likewise, if government the same importing government decides to raise its import tariff on the good, then the competitive relationship will be tilted in favour of domestic units, which implies diminished market access for foreign producers.’<sup>257</sup>

In analysing the WTO’s perspective of market access and Bagwells quote, Bagwells’ interpretation of market access acknowledges that ‘there are many ways to alter the competitive relationship between imported and domestic products.’<sup>258</sup> In the above context the competitive relationship can be altered by reducing tariff concessions because the importing government in agreeing to lower its tariff, they are effectively agreeing to engineer a positive shift of its import demand curve that is, all else equal, a greater volume of imports will then be demanded at any given price from foreign exporters and as a result, foreign exporters can expect to enjoy an increase in sales into the domestic market and to receive a higher price.<sup>259</sup>

Having non-tariff barriers often strengthens the domestic production by forcing imports to be more expensive and difficult to access. From a WTO standpoint if a particular commodity is subjected to rigorous custom processes, cumbersome documentation requirements at the border, it would potentially influence the access of that good into a market in that there would be delays and this could consequently affect the prices of goods if they eventually enter the market as the supplier would be required to pay additional cost which can only be recovered

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<sup>256</sup> Bagwell K, Petros C. Mavroidis & Robert W. Staiger ‘It’s a question of Market Access’ American Society of International Law 2002 96 (1) 56-76 59.

<sup>257</sup> Bagwell K, Petros C. Mavroidis and Robert W. Staiger ‘It’s a question of Market Access’ American Society of International Law (2002) 96 (1) 56-76 59.

<sup>258</sup> Hugo S, Squalli J, Wilson K ‘What Explains Market Access?’ (2006) Working Paper No 06-08 5.

<sup>259</sup> Bagwell K, Petros C. Mavroidis and Robert W. Staiger ‘It’s a question of Market Access’ American Society of International Law (2002) 96 (1) 56-76 60.

by increased price on the good when it eventually enters the domestic market. In the WTO and WCO to improve market access member states have commitments to reduce these non-tariff barriers based on Agreements like the Trade Facilitation Agreement (TFA)<sup>260</sup> and the Revised Kyoto Convention by adjusting custom procedures and reduce administrative bottlenecks at border crossings and in making this changes they are effectively acceding towards an affirmative move for the entrance of goods into their markets.<sup>261</sup>

The elimination of non-tariff barriers is vital to creating regional markets in a developing region like Southern Africa. For instance, if many goods cannot move across borders unimpeded, then markets become very isolated and stagnant. One major goal to ensuring growth would be to make certain that the conditions on which goods enter a market ought to be less restrictive and free. South Africa is in the business of gaining access to both regional and global markets, getting the upper hand where possible and avoiding every possible hindrance to accessing fellow regional markets and also looking for ways to make access to its domestic markets less stringent.

In present time freer trade is more important than ever for increased market access which could bring about positive economic growth. SA has negotiated and signed a number of PTA and RTA or Free Trade Agreements (FTAs), which allow for preferential access (lower tariffs) between signatory countries for specific products across different sectors<sup>262</sup> and also enable for custom reforms as well as a coordinated approach to custom procedures on a regional level. An example of such an agreement is with the European Union (EU) under the Trade Development and Cooperation Agreement (TDCA) and the Economic Partnership Agreement (EPA),<sup>263</sup> the Southern Africa Development Community (SADC), the South African Customs Union (SACU) and the Tripartite Free Trade Area (TFTA). For purposes of this mini-thesis the discussion will only focus on these four agreements as it is relevant to this mini-thesis topic because they particularly aim at liberalising trade and on a regional level, enhancing intra-regional trade.

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<sup>260</sup> See chapter 2.3.1.2.

<sup>261</sup> See chapter 2.3.1.3.

<sup>262</sup> Freund C & Ornelas E 'Regional Trade Agreements' (2010) Policy Research Working Paper 5314 2.

<sup>263</sup> See 4.2.3.

#### **4.2.1 South Africa and the European Union (EU).**

Trade between South Africa and the EU is regulated by the TDCA.<sup>264</sup> The TDCA provides for the establishment of a FTA between South Africa and the EU over a transitional period of 12 years. The TDCA was signed in 1999 following 4 years of discussion but fully entered into force in 2004.<sup>265</sup> The main objective of the TDCA is to create a FTA between both parties over a 12 year period. The EU and South Africa would, in terms of the agreement, open their markets to each other at a different pace.<sup>266</sup> Particularly, the EU was supposed to liberalise the tariffs on 95% of the goods traded from South Africa and it had to liberalise 86%.<sup>267</sup> This liberalisation process was supposed to be carried out over a three-year period and by 2010, all of EU's imports from South Africa were to be liberalised with the exception of agricultural exports, wines.<sup>268</sup> The TDCA sets preferential trade arrangements with the intention of moving toward a free trade area.

South Africa is one of the 'EU's key Strategic Partners in the world with the EU-South Africa partnership launched in 2007. This partnership was created to upgrade a once development-focused relationship towards a more strategic dialogue.'<sup>269</sup> This consolidated and built on the achievements of the TDCA which provided for the gradual liberalisation of more than 90% of two-way trade by 2012.<sup>270</sup>

At the fifth South Africa-EU summit that took place in September 2012, South Africa President Jacob Zuma gave emphasis to the importance of the EU to South Africa.<sup>271</sup> The EU is SA's main trading partner with 28% of total exports, the first foreign investor in the country with 77.5% of Foreign Direct Investment (FDI) and its most important development

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<sup>264</sup> Frennhoff F 'Trade Negotiations between the EU and South Africa: A Three-Level Game.' (2007) *Journal of Common Market Studies* 45(4) 857.

<sup>265</sup> Grant C. 'Southern Africa and the European Union: the TDCA and SADC EPA' (2006) TRALAC Trade Brief 1/2006 3.

<sup>266</sup> Grant C. 'Southern Africa and the European Union: the TDCA and SADC EPA' (2006) TRALAC Trade Brief 1/2006 3.

<sup>267</sup> Grant C. 'Southern Africa and the European Union: the TDCA and SADC EPA' (2006) TRALAC Trade Brief 1/2006 3.

<sup>268</sup> Nyabongo D 'Trade Liberalization and its Environmental Impact in South Africa: An Empirical Analysis' (2011) available at [file:///C:/Users/user/Downloads/diana\\_nyabongo\\_uct\\_pgconf1.pdf](file:///C:/Users/user/Downloads/diana_nyabongo_uct_pgconf1.pdf) 7 (accessed 3 September 2015).

<sup>269</sup> Catherine Ashton travels to South Africa for the 11th EU-SA Ministerial political dialogue' available at [http://europa.eu/rapid/press-release\\_IP-12-908\\_en.htm](http://europa.eu/rapid/press-release_IP-12-908_en.htm) (accessed 14 July 2015).

<sup>270</sup> Catherine Ashton travels to South Africa for the 11th EU-SA Ministerial political dialogue' available at [http://europa.eu/rapid/press-release\\_IP-12-908\\_en.htm](http://europa.eu/rapid/press-release_IP-12-908_en.htm) (accessed 14 July 2015).

<sup>271</sup> 'President Zuma leads South African delegation to the 5th SA-EU Summit' (2012) available at <http://www.dfa.gov.za/docs/2012/sa-eu0917.html> (accessed 14 July 2015).

partner with 70% of all external assistance.<sup>272</sup> The two-way trade between South Africa and the EU has continued to grow, making the EU as a single customs territory, South Africa's largest trading partner.

#### **4.2.2 The South African Customs Union (SACU).**

The South African Customs Union (SACU) is a long-standing agreement between South Africa and Botswana, Lesotho, Namibia and Swaziland (BLNS), which came into effect in 1969 and is the oldest Customs Union in the world. The Agreement was renegotiated after the end of apartheid and a new agreement was finalised in 2002.<sup>273</sup> According to the customs union, each country agrees to remove all barriers to trade particularly tariffs for the other Member countries, as well as adopting common external tariffs amongst all five countries.<sup>274</sup> Trade between members is thus relatively free and unimpeded bringing about easier access to respective signatory countries market.

The aim of the SACU is to maintain the free interchange of goods between member countries. It provides for a common external tariff and a common excise tariff to this common customs area.<sup>275</sup> All customs and excise collected in the common customs area are paid into South Africa's National Revenue Fund. The Revenue is shared among members according to a revenue-sharing formula as described in the agreement. South Africa is the custodian of this pool. Only the BLNS Member States' shares are calculated with South Africa receiving the residual. SACU revenue constitutes a substantial share of the state revenue of the BLNS countries.<sup>276</sup>

SACU's impressive record of longevity shows relative importance to all member states, the fact that it already represents an effectively functioning regional trading arrangement which includes South Africa, the regions' economic powerhouse, a move to modernise customs can be beneficial to all members.

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<sup>272</sup> Catherine Ashton travels to South Africa for the 11th EU-SA Ministerial political dialogue' available at [http://europa.eu/rapid/press-release\\_IP-12-908\\_en.htm](http://europa.eu/rapid/press-release_IP-12-908_en.htm) (accessed 14 July 2015).

<sup>273</sup> Moleketi J & Michel L 'Multiannual Indicative Programme 2007 – 2013' (2007) 8.

<sup>274</sup> [http://www.thedti.gov.za/trade\\_investment/ited\\_trade\\_agreement.jsp](http://www.thedti.gov.za/trade_investment/ited_trade_agreement.jsp) (accessed 14 July 2015).

<sup>275</sup> Martin W 'Developing Countries' Changing Participation in World Trade' (2003) 18(2) The World Bank Research Observer 189.

<sup>276</sup> Khandekar G & Grevi G (ed) Mapping EU Strategic Partnerships (2012) 5.

### **4.2.3 Southern African Development Community (SADC).**

SADC includes all of the SACU members plus Angola, the Democratic Republic of Congo, Madagascar, Malawi, Mauritius, Mozambique, Zambia, and Zimbabwe. SA became a member of the SADC in 1994.<sup>277</sup> The key policy objective under the SADC Protocol on Trade is to strengthen intra-regional trade and investment linkages between amongst SADC countries<sup>278</sup> as well as improve cross-border and foreign investment, economic development within the region.<sup>279</sup> As a member of SADC, South Africa's focus is on regional cooperation for the socio-economic development of the Southern African region and to further facilitate cross border trade. South Africa's membership of SADC largely involves trade and investment as well as other development initiatives.

Although the integration targets have not been met in accordance with the timetable that was originally agreed upon under the SADC Protocol on Trade for instance, the protocol envisaged the establishment of the FTA by 2008 maximum tariff liberalisation was only attained by early 2012.<sup>280</sup> SA's market must remain open to constant supplies of goods and the movement of services across borders. Restricting their flow would backfire by increasing the costs of goods and reducing the competitiveness of South African businesses both at home and abroad.

Also the South Africa under the SADC is engaged in negotiations with the EU for an EPA which began in early 2005.<sup>281</sup> The EPA guarantees a long term market access to the EU market without any duties or quotas for SA and other SADC EPA countries.<sup>282</sup> This agreement was finally concluded and signed in July 2014.<sup>283</sup> So getting to conclude this agreement implies that South Africa would get to benefit from improved new market access conditions therefore building on the already existing TDCA between both parties.

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<sup>277</sup> Nunn A 'Managing Development: EU and African Relations through the Evolution of the Lome and Cotonou Agreements.' (2004) 12.4 Historical Materialism 203.

<sup>278</sup> Nunn A 'Managing Development: EU and African Relations through the Evolution of the Lome and Cotonou Agreements.' (2004) 12.4 Historical Materialism 203.

<sup>279</sup> Sandrey R 'Analysis of SADC Free Trade Area' 2013 TRALAC Working Paper D13TB01 2.

<sup>280</sup> Sandrey R 'Analysis of SADC Free Trade Area' 2013 TRALAC Working Paper D13TB01 2.

<sup>281</sup> Hurt SR 'EU-SADC Economic Partnership Agreement Negotiations: 'locking in' the neoliberal development model in Southern Africa' (2012) Third World Quarterly, 502.

<sup>282</sup> 'Southern African region and the EU complete negotiations for an Economic Partnership Agreement' available at [www.europa.eu/rapid/press-release\\_IP-14-872\\_en.htm](http://www.europa.eu/rapid/press-release_IP-14-872_en.htm) (accessed 5 September 2015).

<sup>283</sup> 'Southern African region and the EU complete negotiations for an Economic Partnership Agreement' available at [www.europa.eu/rapid/press-release\\_IP-14-872\\_en.htm](http://www.europa.eu/rapid/press-release_IP-14-872_en.htm) (accessed 5 September 2015).

#### **4.2.4 Tripartite Free Trade Area (TFTA).**

The TFTA was discussed in greater detail in the previous chapter.<sup>284</sup> This initiative has a potential to curb the issue of overlapping membership when it comes to RTA's or FTA's. As was seen in earlier discussions, South Africa is a member of the SACU and the SADC<sup>285</sup> and in effect, have to enact diverse rules based on the agreements entered into under those groupings. The TFTA creates a forum to harmonise and bring about a uniformity with regards to customs processes as it encourages the;

‘Tripartite Member States and Customs Territories, undertake to incorporate in their Customs Laws, provisions designed to simplify Customs procedures in accordance with internationally accepted standards, recommendations and guidelines particularly those which are contained in the International Instruments of the: World Customs Organisation (WCO).’<sup>286</sup>

By implication, upon ratification of the TFTA, Member States would have a uniform rule on trade and customs procedures and this can also deepen integration and further increase market access within the three REC's. On the 10<sup>th</sup> of June 2015, during the third tripartite summit, the Heads of State and Government of the COMESA, EAC and SADC Tripartite met in Sharm El Sheikh, Egypt and officially launched the COMESA-EAC-SADC TFTA.<sup>287</sup> At this summit, the TFTA was signed by 16 of 26 member countries but South Africa has not yet signed the Agreement since the legal polishing of the Agreement must still be finalised and internal process to get approval for signature must then be followed.<sup>288</sup> Hopefully, this process would be concluded in earnest.

As mentioned in the previous chapter,<sup>289</sup> cooperation and simplification between member states on custom procedures is important to further trade liberalisation and this is common in

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<sup>284</sup> See chapter 3.5.1.

<sup>285</sup> See chapter 4.2.2 and 4.2.3

<sup>286</sup> Art 5(1)(a) of Annex 2 on Customs Cooperation under Article 13 of the TFTA agreement

<sup>287</sup> ‘Sharm El Sheikh Declaration Launching the COMESA-EAC-SADC Tripartite Free Trade Area’ available at [http://www.tralac.org/images/Resources/Tripartite\\_FTA/Sharm\\_El\\_Sheikh\\_Declaration\\_Launching\\_COMESA-EAC-SADC\\_Tripartite\\_FTA\\_June\\_2015.pdf](http://www.tralac.org/images/Resources/Tripartite_FTA/Sharm_El_Sheikh_Declaration_Launching_COMESA-EAC-SADC_Tripartite_FTA_June_2015.pdf) (accessed 3 August 2015).

<sup>288</sup> ‘Presentation to the portfolio committee on trade and industry: COMESA-EAC-SADC tripartite engagement’ available at <https://www.thedti.gov.za/parliament/2015/TFTA.pdf> (accessed 3 August 2015).

<sup>289</sup> See chapter 3.5.1



these Agreements. South Africa occupies a dominant economic position in contrast to the size of the other four members of SACU.<sup>290</sup> These members depend on South Africa for a significant proportion of their trade and investment putting South Africa at the forefront of any regional trade. While the BLNS are dwarfed by South Africa in terms of economic and population size, some have experienced higher growth rates. For instance, ‘in the case of Botswana, the country has a higher level of GDP per capita. Botswana over the past two decades has experienced much higher growth rates than all other Member States based on the successful exploitation of its diamond reserves.’<sup>291</sup> However, despite these positive agreements to further market access in the country, potential gains from these agreements can be hindered based on non-tariff barriers through complicated custom processes for goods into the Republic. The CMP has the potential to curb this problem and further enhance the process in which goods get through borders and this would be discussed next.

#### **4.3 Custom Modernisation Programme in South Africa’s as a means of increasing market access.**

In general, ‘a positive relationship exists between trade liberalisation and economic growth, market openness and investment rates within countries.’<sup>292</sup> Trade facilitation in the area of customs procedures is expected to make a significant contribution to the expansion of trade and income of developing countries. Based on what has been said in earlier chapter, several regulatory and infrastructural difficulties obstruct economic development and export from developing countries and imports into developing markets.<sup>293</sup> Successful elimination of these barriers will lead to the development of a secure and for timely supply chain which would bring about easier and better access to domestic markets. Furthermore, having an inefficient and a non-automated customs process could result in restricting trade flow, revenue losses which on the long run aids in economic development. To further increase market access for goods, having a system in which trade is free and less disturbing is paramount.

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<sup>290</sup> Draper P, Halleson D & Alves P, ‘SACU Regional Integration and the Overlap Issue in Southern Africa: From Spaghetti to Cannelloni’ Trade Policy Report 15 SAIIA 17.

<sup>291</sup> ‘Botswana GDP growth rates’ available at <http://www.tradingeconomics.com/botswana/gdp-growth> (accessed 3 August 2015).

<sup>292</sup> Wacziarg R and Welch KH ‘Trade Liberalization and Growth: New Evidence’ 2003 Working Paper 10152.

<sup>293</sup> See chapter 1.1.



From a South African perspective, furthering regional integration and ensuring freer trade is key.<sup>294</sup> Freer trade occurs primarily when there are no artificial barriers (tariff and non-tariff barriers) put in place by governments to restrict the flow of goods and services between trading nations.<sup>295</sup> It is however important to note that having this freer trade could materialise by carrying out not just regional changes but domestic reforms as well. Many countries have and are currently following this trend in reforming their regulatory framework to trade and any process relating to trade and South Africa is no exception. The South African Revenue Service (SARS) has implemented changes through the CMP across several points of entry or borders across the Republic.

In implementing this programme, South Africa seeks to achieve a less burdensome trading process and creating the freest possible flow of legitimate trade under the umbrella of ‘trade facilitation’. Trade facilitation in the area of customs procedures can make a significant contribution to the expansion of trade as well as the income of developing as well as developed countries. This process is always a continuous and never ending one considering the ‘role customs play in international trade.’<sup>296</sup> The EU which is South Africa’s largest trading partner<sup>297</sup> is arguably one of the most proficient and advanced regional grouping in the world. The customs union is well advanced, handling about ‘16% of world trade, over two billion tonnes of goods a year with a value of EUR 3,400 billion.’<sup>298</sup> Consequently, custom procedures need to be modernised to keep up with these huge trade demands. In January 2008, the EU adopted a decision on a paperless environment for customs and trade.<sup>299</sup> Recently, on 28 July 2015;

‘The EU commission adopted a legal act to create a simpler, more modern and integrated customs system to support cross border trade and to provide for more EU-

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<sup>294</sup> See chapter 1.1.

<sup>295</sup> Understanding the WTO: Basics, principles of the trading system available at [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact2\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm) (accessed 3 August 2015).

<sup>296</sup> See chapter 3.2.1.

<sup>297</sup> See chapter 4.2.1.

<sup>298</sup> ‘Commission Modernises EU Customs Procedures’ available at [http://europa.eu/rapid/press-release\\_IP-15-5445\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5445_en.htm) (accessed 3 August 2015).

<sup>299</sup> EU Parliament and Council Decision No. 70/2008/EC, 2008, Official Journal of the European Union (2008).

wide cooperation in custom matters. This act builds on the Union Customs code adopted in 2013, which sets out detailed rules for 21<sup>st</sup> century customs processes.<sup>300</sup>

Looking at this action by the EU, one could rightly infer that indeed various regulatory and infrastructural difficulties hamper business development and export from other countries and there is a need to constantly make the custom environment more efficient and effective in this modern times. Basically, for trade facilitation to materialise the elimination of any restrictive mechanism is essential and this will potentially lead to the development of a secure supply chain and easier access across borders and to third countries markets. In essence, there is always a constant need for change so as to further growth by making the movement to goods across border easier. Common to top ranked countries on the ease of trading across borders have the following in common have fewer documents, traders are required to submit those documents electronically, preferably before the goods arrive at the port and having this in reduces the amount of physical inspection required and this is what the CMP offers.

The CMP in South Africa is a means to further trade facilitation and it involves many facets. However, most of what has taken place under the CMP as discussed in chapter 3, is the upgrading of Information Technology (IT) system like the replacement of the SARS's Manifest Acquittal System (MAS) with the Automated Cargo Management (ACM) System,<sup>301</sup> aligning SARS operation model to the World Custom Organisation (WCO) 3 Data Model as well as establishing a Service Manager system.<sup>302</sup> Upgrading and increasing the use of IT significantly have been an essential customs reform component because they primarily make it possible to establish an automated clearance process from submission of the cargo manifest and customs declaration to the release of goods.<sup>303</sup>

Having a modernised IT system can arguably facilitates trade which can in turn positively affect market access in that it encourages electronic submissions of documents and makes it easy to implement ways in which to control the flow of this information and documents. In an OECD working paper, it was suggested that;

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<sup>300</sup> 'Commission Modernises EU Customs Procedures' available at [http://europa.eu/rapid/press-release\\_IP-15-5445\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5445_en.htm) (accessed 3 August 2015).

<sup>301</sup> See chapter 3.4.3.

<sup>302</sup> See chapter 3.4.3.

<sup>303</sup> Duran P and Sokol JB Policy and Operational Lessons Learned from Eight Countries Case Studies in Wulf LD and Sokol JB Customs Modernisation Handbook (2005) 105-124.

‘There is a general consensus that automation may efficiently serve both public and private interests. Automation has the potential to facilitate trade while also helping to meet objectives related to the maintenance of national and social security’.<sup>304</sup>

Looking at the CMP, it is based on risk-assessment,<sup>305</sup> so it potentially increases the availability of accurate electronic information by traders which could almost result in eliminating physical inspection of goods when they arrive at the border because under the new system, inspections are undertaken only if a trader's customs declaration form is flagged as red and therefore having a level of risk.<sup>306</sup> In essence, an upgraded IT contributes to shortening the time of customs clearance and improves the efficiency of operations. Gordhan in a speech on the implementation of this system mentions that:

‘By managing customs declaration and supporting documents in electronic format, the processing of cargo movements by land, sea and air will now be much quicker and more accurate. The system will also curb cross-border corruption, while enabling SARS to detect false declarations automatically and so increase its revenue. The system will have significant benefits for importers, exporters, clearing agents and trade facilitators and will make our economy and commercial trade more competitive globally.’<sup>307</sup>

So, having this paperless system can in effect bring about shortage of time in the supply chain of goods which therefore implies that there would be easier access of imported goods into South Africa markets and a reduction in transaction costs for traders on the long run.

Just as IT is important, having a modernised policy initiative is also important to regulate this modernised process. South Africa has enacted a new customs Act in the form of the Customs Control Act 31 of 2014. The Act is very elaborate, comprising of 41 Chapters and 944

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<sup>304</sup> Organisation for Economic Co-operation and Development Trade Policy Working Paper 2005-The Role of Automation in Trade Facilitation (2005) 4-26.

<sup>305</sup> A system of risk assessments provides the basis for selecting goods for physical inspections. Risk criteria typically include the origin of goods, importer track record, types of goods, trade patterns, misclassification incentives, and shipment value.

<sup>306</sup> Duran P and Sokol JB Policy and Operational Lessons Learned from Eight Countries Case Studies in Wulf LD and Sokol JB Customs Modernisation Handbook (2005) 105-124.

<sup>307</sup> ‘South Africa unveils modernised customs system available at [www.southafrica.info/business/trade/export/customs-230813.htm#.Vc-Oisppy4](http://www.southafrica.info/business/trade/export/customs-230813.htm#.Vc-Oisppy4) 2013 (accessed 3 August 2015).

Sections.<sup>308</sup> To ensure effective implementation of customs control, the Act provides for elaborate systems for customs processing of goods at places of entry and exit such as seaports, airports and land border posts.<sup>309</sup> Having a modern legislative framework is a major milestone for the custom community in South Africa and the effect this new legislation cannot be simplified. However, its incorporation into the on-going automated systems and procedures as well as the required re-adjustments to be made by trading parties in business with SARS Customs including border officials is enormous, so enacting this rules should be gradual.

That notwithstanding, having a standard control mechanism can be rewarding to customs and the South African economy on the long run because it would create an atmosphere of certainty and sureness for traders and other role players in the supply chain regarding what is expected of them in the movement of goods across borders. For instance, the Act provides for clearer rules to fast track trade and to ensure documents are electronically submitted by traders. Chapter 7 of the Act specifically regulates the standard processes and requirement for clearance and release of goods and Section 168(1) provides that ‘clearance declaration must be submitted to the customs authority electronically in accordance with Section 913 unless the persons required to submit the declaration is authorised in terms of that section of falls within a category of persons authorised by rule to submit documents manually in paper format.’<sup>310</sup> Section 170(1) further requires that ‘clearance declarations in relation to goods imported or to be imported into the Republic may be submitted to the customs authority before the arrival of the goods at the place referred to in section 90, provided that the goods have already been loaded on board the vessel, aircraft, railway carriage or vehicle transporting those goods to the Republic.’<sup>311</sup> Based on these provisions, it is paramount that traders get to declare their goods electronically prior to arrival at the border and having this in play creates a positive obligation on traders. In doing this, it creates a forum whereby the goods get to be processed for clearance before arrival at the border and it consequently results in reduced time at the border.

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<sup>308</sup> Customs Control Act 31 of 2014.

<sup>309</sup> Section 3 of the Customs Control Act 31 of 2014.

<sup>310</sup> Section 168(1) of the Customs Control Act 31 of 2014.

<sup>311</sup> Section 170(1) of the Customs Control Act 31 of 2014.

In looking at South Africa's position in the Southern Africa regions, it has the largest and most sophisticated economy accounting for about 60% of the SADC total trade and about 70% of SADC GDP.<sup>312</sup> Having this position offers a wide range of benefits to the SADC and SACU as most of the countries can procure goods and services from South Africa that previously have been difficult and expensive to procure from international marketers. Conversely considering South Africa's good economy and its relative political stability, it also creates a stable environment for external investors and traders to come and explore the diversified economy as well as take advantage and fairly compete within this diversified economy. With a system of modernised custom, further opportunities are created for goods to enter South Africa unimpeded because from a general perspective, customs reform has the potential of bringing about reduced delays and costs to traders because there would be improved turnaround times in processing of declarations and inspections.<sup>313</sup> Furthermore as the system is more electronic, there would also be potential improvements on compliance of custom processes and revenue collection, more risk based assessments, improved physical infrastructure as well as improved and skilled professional staffing if they are well trained. From a statistical standpoint, having this automated system has resulted in SARS collecting R9.2 billion in revenue and more than R2.5 billion in duties of which R1.9 billion was in value-added tax.<sup>314</sup> With these possibilities, there can only be increased interest to venture into South African market.

South Africa is also well located and the port like Beitbridge and the Lebombo border within the country play a vital role in the economies of countries within the SADC and SACU as well as their neighbours. It is estimated that '95% of all trade to the region passes through South Africa ports and those of East Africa, providing a vital link in the logistic chain that binds southern Africa inextricably together'<sup>315</sup> and this is largely due to South Africa's geographical location. Looking at South Africa's relative location through other African states Draper and Scholvin highlights that

'One sees that South Africa shares borders with Namibia, Botswana, Zimbabwe and Mozambique. Lesotho and Swaziland are virtually islands within the South African

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<sup>312</sup> 'South Africa and Regional Economic Integration' available at <http://www.osisa.org/economic-justice/south-africa-and-regional-economic-integration> (accessed 3 August 2015).

<sup>313</sup> Duran P and Sokol JB Policy and Operational Lessons Learned from Eight Countries Case Studies in Wulf LD and Sokol JB Customs Modernisation Handbook (2005) 105-124.

<sup>314</sup> SARS drag customs into 21<sup>st</sup> Century available at <http://mg.co.za/article/2013-09-06-00-sa-drags-customs-into-21st-century> (accessed 3 August 2015).

<sup>315</sup> 'Ports of South Africa' available at <http://www.ports.co.za/ports-of-southern-africa.php> (accessed 3 August 2015).

territory. Five continental members of the Southern African Development Community (SADC) do not share borders with South Africa. Among all regional states, only tiny Lesotho, Swaziland and landlocked Botswana appear to be tied to South Africa for locational reasons. This is because their connection to the oceans, and thence to world markets, is via South African territory, albeit Swaziland also has access to the sea via Mozambique. Zimbabwe, another landlocked country, can also access the sea via Mozambique.<sup>316</sup>

Consequently, if a single border or port of entry within South Africa experiences any sort of delay or interruption the effect could also be felt across countries linked to that border or port within the southern African region. South Africa thus provides a critical trade link between several countries in the region.

Furthermore, in assessing the TFTA by considering the number of member countries party to the agreement and one of its key pillars in infrastructural development<sup>317</sup> which is paramount to further improve the efficiency of internal trade and bring about deeper regional integration.<sup>318</sup> One key initiative to enhance infrastructural development as a group is the North-South Corridor (NSC) which is a comprehensive programme.<sup>319</sup> Some of South Africa's trade through land borders go along this corridor as the corridor links Dar es Salaam in Tanzania to Durban in South Africa<sup>320</sup> through Zambia, Zimbabwe through the Beitbridge border and Botswana, so having a reformative programme in customs from a South African perspective can directly influence the overall purpose of this corridor which is to make internal trade more efficient and less restrictive,<sup>321</sup> and this in turn could influence the flow of trade into South African markets. The need for the country, especially its border posts to play a trade facilitative role can therefore not be overemphasised.

Having considered South Africa's relationship with other southern African countries, improvements in South Africa's custom processes can have an effect not just to the South African market but also the Southern African region. To further discuss what possible

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<sup>316</sup> Draper P & Scholvin S 'The Economic Gateway to South Africa? Geography, Strategy and South Africa's Regional Economic Relations' (2012) 121 SAIIA 9.

<sup>317</sup> See chapter 3.5.2.

<sup>318</sup> 'Presentation to the portfolio committee on trade and industry: COMESA-EAC-SADC tripartite engagement' available at <https://www.thedti.gov.za/parliament/2015/TFTA.pdf> (accessed 3 August 2015).

<sup>319</sup> 'Presentation to the portfolio committee on trade and industry: COMESA-EAC-SADC tripartite engagement' available at <https://www.thedti.gov.za/parliament/2015/TFTA.pdf> (accessed 3 August 2015).

<sup>320</sup> 'Presentation to the portfolio committee on trade and industry: COMESA-EAC-SADC tripartite engagement' available at <https://www.thedti.gov.za/parliament/2015/TFTA.pdf> (accessed 3 August 2015).

<sup>321</sup> See chapter 3.5.2.



influence the CMP could this have on the openness of South African market to regional and international traders, for the purpose of this mini-thesis, determining this influence would be based on a theoretical discussion, looking at the Beitbridge border post and the Lebombo border post.<sup>322</sup>

#### **4.3.1 The Beitbridge border post.**

The Beitbridge border post as mentioned earlier ‘is an extremely important border for the southern and eastern Africa region. It is the busiest transit link between the east and southern Africa, and the main axis of the NSC linking South Africa by road and rail with Zimbabwe, Botswana, the Democratic Republic of Congo (DRC), Malawi, Tanzania, Zambia and northern Mozambique , owing to the fact that it is the gateway to the sea for most countries along the North-South Corridor.’<sup>323</sup> This border caters for a significant number of trucks and passengers entering and exiting South Africa on a daily basis,<sup>324</sup> this is estimated to be more than 160 000 trucks move on an annual basis.<sup>325</sup> Despite the importance of this border post, poor infrastructural development is a pertinent issue and has caused significant delays in clearance times at the border and has also been recognised by the TFTA as a border to work on under the NSC. To curb this issue SARS implemented some changes at this border to reduce turn-around times. Some of the new initiatives implemented under the customs modernisation programme included ‘the introduction of an electronic case management system called Service Manager, a new inspection process, electronic submission of supporting documents, new customer status codes, an electronic release system that reduces the need for paper, new status codes.’<sup>326</sup>

Having this automated system can drastically reduce turnaround times. Practically, ‘border turnaround times can be reduced from two hours to just nine minutes.’<sup>327</sup> Similarly,

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<sup>322</sup> See chapter 4.1.

<sup>323</sup> See chapter 3.3

<sup>324</sup> ‘Beit Bridge Border Post Progress Report Trade Mark Southern Africa 2010’ available at [http://www.trademarksa.org/sites/default/files/publications/Beit\\_Bridge\\_BP\\_Progress\\_Report\\_August2010.pdf](http://www.trademarksa.org/sites/default/files/publications/Beit_Bridge_BP_Progress_Report_August2010.pdf) (accessed 3 August 2015).

<sup>325</sup> See chapter 3.3

<sup>326</sup> ‘SARS Implements key changes at Beitbridge’ available at <http://www.worldnetlogistics.com/2011/10/sars-implements-key-changes-at-beitbridge-101011/> (accessed 3 August 2015).

<sup>327</sup> ‘SARS pass Beitbridge test with flying Colours’ available at <http://cdn.nowmedia.co.za/NowMedia/ebrochures/FTW/Standard/FTW-Issue-2011-15June2012.pdf> (accessed 3 August 2015).



inspection processing was expected to drop from eight hours to two hours.’<sup>328</sup> That notwithstanding, having a very efficient border management system requires

‘the cooperation of all border management agencies and such cooperation can only be achieved if proper coordination mechanisms, legal framework and institutions are established’.<sup>329</sup>

With respect to harmonisation, it should not be restricted to internal agencies but should also extend to external agencies as well the processes involved in custom operations. This is very much lacking between South Africa and Zimbabwe at the Beitbridge border. In a recent study by Khumalo, he highlights that

‘There are no tangible changes in respect to the alignment of processes and co-ordination between the different agencies on both the South African and Zimbabwean side of the border. Furthermore, the freight clearing processes and passenger immigration processes conducted on the South African side of the border post are also duplicated on the Zimbabwean side. This means that separate customs clearance functions, freight security checks, and immigration checks and services are conducted by each jurisdiction.’<sup>330</sup>

From Khumalo’s research, it essentially means that despite modernisation by SARS, a truck trying to cross this border has to experience the same rigorous process twice. Clearance may be much faster by SARS on the South African side but delays on the Zimbabwean side of the border can influence but the mere fact that the same process has to be done on the Zimbabwean side can influence the time on which goods could gain access into the South African market. To further make trade seamless and less restrictive, a harmonised and cooperative system should be utilised on both sides of the border.

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<sup>328</sup> ‘Customs Inspections slow trade flow’ available at <http://www.financialmail.co.za/features/2013/10/31/customs-inspections-slow-trade-flow> (accessed 3 August 2015).

<sup>329</sup> Shayanowako P, ‘Study into the cooperation of Border management agencies in Zimbabwe’ 2013 TRALAC Working Paper No S13WP06 5.

<sup>330</sup> Khumalo S ‘Unlocking South African Cross-border transport challenges: A case study of Beitbridge border post’ 2014 840.

#### **4.3.2 The Lebombo border post.**

Lebombo border post is a point of entry between South Africa and Mozambique and is situated on the South African side.<sup>331</sup> The border is situated under the Maputo Development Corridor (MDC). The MDC is a major import/export route that connects the northeast provinces of South Africa with the capital and main port of Mozambique.<sup>332</sup> This corridor has been a long standing project to deepen integration and further development between South Africa and Mozambique as it was aimed at re-establishing trade links between the two countries through the corridor which had existed since the late 19th century.<sup>333</sup> In brief, there have been reasons to improve this corridor to ensure efficiency because

‘This was a major transport route until the mid-1970s, when the war in Mozambique and South Africa’s destabilisation activities disrupted it. At the core of the MDC is a series of projects to upgrade the infrastructure that makes up the transport route from Gauteng to Maputo. This includes four major elements: the road, the railway line, the border post and the port of Maputo.’<sup>334</sup>

The Lebombo border is a focal point linking both South Africa and Mozambique and the Southern region at large. In 2011, for instance, ‘trade between South Africa and Mozambique totalled R25.1 billion with 38% of that trading going through the Lebombo border post.’<sup>335</sup> So this border experience huge volume of goods and just like the Beitbridge border post, the Lebombo border has some on-going concerns that need to be addressed to further ensure efficiency. Some of these issues were highlighted in a report made by USAID which were that; ‘there are delays and longer clearance times including congestion caused by combined processing of passengers and freight, separate clearing and immigration systems for

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<sup>331</sup> ‘Maputo Corridor Logistics Initiative’ available at <http://www.mcli.co.za/mcli-web/mdc/border.htm> (accessed 3 August 2015).

<sup>332</sup> Soderbaum F & Taylor I ‘Transmission belt for transnational capital or facilitator for development? Problematising the role of the state in the Maputo Development Corridor’ (2001) 31 4 Journal of Modern African Studies 678.

<sup>333</sup> Soderbaum F and Taylor I ‘Transmission belt for transnational capital or facilitator for development? Problematising the role of the state in the Maputo Development Corridor’ (2001) 31 4 Journal of Modern African Studies 678.

<sup>334</sup> Driver A & Barros JB ‘The Impact of the Maputo Development Corridor of Freight Flows: An Initial Investigation’ 2000 Working Paper 00/38 2.

<sup>335</sup> Maputo Corridor, regional Integration that works’ available at <http://ecdpm.org/great-insights/africa-turning-point-mozambique-case/maputo-corridor/> (accessed 3 September 2015).

commercial and passengers, customs declaration is done twice, each time requiring different procedures and documentation, inefficiency at borders due to inadequate staffing.<sup>336</sup>

By September 2011, SARS implemented changes at Lebombo border, in the form of introducing service manager, a new inspection process that would eliminate the manual inspection process at the border as well requiring the need for supporting documents.<sup>337</sup> These changes came under release two of the custom modernisation process which was discussed in earlier chapter.<sup>338</sup> Having an upgraded and automated system on the custom process can play an important role in reducing transport costs for importers and exporters.

#### **4.4. Conclusion.**

South Africa has progressed towards creating market access for goods through trade agreements such as the PTA with the EU and RTA with the SADC, COMESA and the TFTA is notable; however, the issue of getting through points of entry with relative ease can stifle this access to domestic markets. Though a tiny piece of the jigsaw, customs operations and procedures need to be addressed in order to ensure timeous and less restrictive access to the domestic market established under these agreements.

Therefore, in ensuring that South Africa remains economically competitive, it is important that there is a facilitative process to trade were goods get to enter the market with relative ease. So to ensure this, South Africa has implemented the CMP across different points of entry to ensure the fact that custom processes need to be paperless and manual but automated put to further facilitate the flow and movement of goods. Two notable points of entries were looked at in the Beitbridge border which is a focal point in the NSC and the Lebombo border which is also key along the MDC.

Having this system in play at land borders for instance implies that across the supply chain, customs declarations and documents are submitted and processed electronically. So prior to a truck driver arriving at the border, all goods have been declared online and once they arrive they spend little or no time in clearing their goods and moving on to the market. The

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<sup>336</sup> Maputo Corridor Summary Report USAID 2008 28

<sup>337</sup> Customs Lebombo available at [http://www.mcli.co.za/mcli-web/news/2011/2011-1037/Release\\_2-Basics\\_to\\_Trade-Lebombo.pptx](http://www.mcli.co.za/mcli-web/news/2011/2011-1037/Release_2-Basics_to_Trade-Lebombo.pptx) (accessed 3 September 2015).

<sup>338</sup> See chapter 3.5.3.

influence is more positive than negative as it increases the possibility of goods gaining access to the domestic market.

The final chapter furthers the discussion by providing the conclusion of this mini-thesis as a whole and examines recommendations for South Africa. These recommendations are drawn from the discussion generated in chapters 2, 3, and 4.



## **CHAPTER 5**

### **CONCLUSION AND RECOMMENDATION.**

#### **5.1. Introduction.**

This chapter provides a conclusion and recommendation arising out of the substantive chapters 2, 3, and 4. It integrates the recommendations to provide a cohesive proposal on the way forward; including ways in which South Africa and the South African Revenue Service (SARS) can stay on track and possibly improve on the on-going implementation of the Custom Modernisation Programme (CMP) across different points of entry. The recommendations are made against the background of the discussion of the CMP issued by the SARS, in the above-mentioned chapters.

#### **5.2. Conclusion.**

The objective of this research has been to provide insight into the importance of customs reform as a tool to facilitate trade with a view of drawing attention to the possible implication this could have on market access with particular focus on South Africa. This was done in order to answer the question whether South Africa is rightly acting to reform its customs processes<sup>339</sup> and ensure easier movement of goods across border considering its accession to the WTO TFA and the ratification of the WCO Revised Kyoto Convention. To better achieve this, the first task was to understand what trade facilitation entails from an international perspective.<sup>340</sup> Following this was a discussion on whether South Africa has adopted any reforms based on those international agreements and lastly, can these changes in customs improve trade flow. The answers to these questions were given in subsequent chapters

From the discussion in chapter one, international trade is a major driver to economic development and it has become imperative that countries look for ways to better improve their trading environment by combatting tariff and non-tariff barriers to trade.<sup>341</sup> Trade facilitation has come to the fray on trade discussions to tackle this issue and further enhance

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<sup>339</sup> See chapter 1.2.

<sup>340</sup> See chapter 2.2.

<sup>341</sup> See chapter 1.1.

the movement of goods across borders.<sup>342</sup> Measures on trade facilitation particularly on customs reforms are expected to have a favourable impact on trade expansion, market openness and hence economic development just as trade liberalisation in a traditional sense through the removal of tariffs have had in WTO negotiations.<sup>343</sup> Some public discussions support this argument also that a positive relationship exists between trade and economic development.<sup>344</sup> So in essence, trade facilitation will then contribute to economic development as it is likely to trigger an expansion of imports and exports.

Chapter 2 of this mini-thesis gave a discourse on this concept of ‘trade facilitation’<sup>345</sup> and adopted a broader definition of the concept in a South African context<sup>346</sup> as this would capture a wider range of issues from transport infrastructure to customs operations.<sup>347</sup> So, going that route can potentially contribute to the overall trade and development approach which South Africa seeks to advance by optimising the use of modernised regulatory framework and physical infrastructure in customs operations for instance. Also, this modernised system can potentially increase the trade advancement efforts by improving South Africa’s capacity to trade in a timely and cost effective manner through its border posts.<sup>348</sup> Having this broader definition can also facilitate the development and management of trade relations by making trade regulations and procedures more transparent and consistent with internationally accepted standards.

The research in chapter 2 shows that several international instruments have provided for standards on trade facilitation. These instruments were looked at in detail and they were the GATT Art V, VIII, and X which was used as a blueprint for the just concluded TFA,<sup>349</sup> the Revised Kyoto Convention<sup>350</sup> and the SAFE framework. Central to these agreements is a required commitment by customs administration to provide transparency and predictability for all those involved and this include customs officials in aspects of international trade. In assessing these agreements, it was seen that there are compatibilities amongst them in that the GATT Arts set out the high principles for formalities and procedures for movement of goods,

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<sup>342</sup> See chapter 1.1.

<sup>343</sup> See chapter 4.3.

<sup>344</sup> See chapter 4.3.

<sup>345</sup> See chapter 2.2.1.

<sup>346</sup> See chapter 2.2.1.

<sup>347</sup> See chapter 2.2.1.

<sup>348</sup> See chapter 4.3.1.

<sup>349</sup> See chapter 2.3.1.2

<sup>350</sup> See chapter 2.3.1.3.

transit of goods and publication, in addition to administration of trade regulations.<sup>351</sup> On the other hand, the instruments of the WCO including the Revised Kyoto Convention; provide the basis and practical guidance and information for the implementation of these high principles.<sup>352</sup> So South Africa decided to ratify the Revised Kyoto Convention and implement these high principles by carrying out a customs reformative programme through the CMP which is a current customs modernisation initiative carried out by SARS.<sup>353</sup> Trade facilitation on its own can play an essential role in not only stimulating economic development in South Africa but also in facilitating the integration of the country into the global economy. However, if trade facilitation is to yield positive outcomes it must be incorporated within domestic reforms that seek to create the proper conditions for social and economic development.<sup>354</sup>

Primarily, measures that tend to ease trade flow and leads to time and cost reductions in the overall transaction cycle can fit into the category of trade facilitation and this is what the CMP is all about. The CMP introduces an automated system in customs operations in a system that has been largely paper-based.<sup>355</sup> It is therefore clear that strengthening trade is a government priority in South Africa and this CMP can bring improvements toward developing an effective and well-rounded customs operation in key points of entry like the Beitbridge border post.<sup>356</sup> Chapter 4 discussed the influence the implementation of the CMP would have on the access of goods into South Africa market. It looked at the concept of 'market access'<sup>357</sup> and particularly analysed this concept from the view of the PTAs and RTAs South Africa has successfully negotiated with the EU, SADC, SACU and the TFTA. This research submitted that having the CMP in play across points of entry will result in shortening the time of customs clearance and improves the efficiency of operations.<sup>358</sup> This chapter further analysed the Beitbridge border posts and it was submitted that having implemented the CMP, turnaround times can subsequently reduce from two hours to nine minutes and the inspection process for goods to two hours.<sup>359</sup> It was however acknowledged in this chapter that although the CMP at present can make access of goods into South Africa

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<sup>351</sup> See chapter 2.3.1.1.1, 2.3.1.1.2 and 2.3.1.1.3.

<sup>352</sup> See chapter 2.3.1.3.

<sup>353</sup> See chapter 3.4.3.

<sup>354</sup> See chapter 3.

<sup>355</sup> See chapter 3.4.3.

<sup>356</sup> See chapter 4.

<sup>357</sup> See chapter 4.2.

<sup>358</sup> See chapter 4.3.

<sup>359</sup> See chapter 4.3.1.



less restrictive, there has to be a co-ordinated and harmonised system on either side of the border.

In light of all the above, this mini-thesis submits that South Africa is rightly doing something to ensure customs operations are in line with international standards by creating an automated system and adopting a new customs control Act to further control and regulate this modernised process. Having such infrastructure can imply favourable environment for efficient functioning of ports and customs thus, a greater capacity in trade facilitation and better access of goods.

## **5.2. Recommendation.**

As already discussed in Chapter 4, South Africa has made remarkable progress with regard to creating market access through the conclusion of trade agreements to further economic growth.<sup>360</sup> It is imperative that undertaking to negotiate trade agreements indicates political will on the part of the South Africa government to better its regional competitiveness. With negotiations just concluded on the TFTA and ratification due to happen, better things are expected. The first recommendation would be that to supplement this political will, the South Africa government should however ensure that this fast economic growth process which is largely sought to be achieved under the NDP should be largely driven by alliances between private companies and the South Africa government as well as international organisations. The CMP has been implemented and it has taken an enormous amount of resources to get this running at the level it is currently. However with infrastructural development comes maintenance and lack of resources for continuous maintenance of the system can stifle or completely undo the proper implementation of activities that the CMP seeks to achieve.

In as much as this CMP is a positive move to better infrastructural development, it is also imperative that the programme should seek to further ensure a harmonised and coordinated approach by border agencies on the South African side of the border as well as cooperation amongst customs on either side of border crossings considering the TFTA that has been signed by South Africa. With regard to inter-agencies' cooperation, there is certainly much that needs to be done within the Southern Africa region. In South Africa particularly, import/export inspection and certification procedures involve many government bodies which

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<sup>360</sup> See chapter 4.2.

include Customs through SARS, South African Police Service, Department of Health, the Department of Agriculture, Forestry and Fisheries Department of Home Affairs, Department of Environmental Affairs. Across borders also, there is lack of coordination towards border controls. These bodies do not collaborate adequately.<sup>361</sup> This causes duplication of functions and wastage of resources which hinders the efficiency in trade. Therefore, it is suggestive that in addressing this issue of have multiple agencies regulating entrance of goods, this custom modernisation process should ensure the development of a single window processing system for customs. This is a processing system whereby trade related information and supporting documentation need only be submitted once at a single entry point by a trader or business entity.<sup>362</sup>

Also, in adding to this single window process, it would be desirable that the CMP encourages the implementation of the One Stop Border Post (OSBP) across borders in South Africa and the Southern Africa region especially through the Beitbridge and Lebombo border posts which were discussed earlier.<sup>363</sup> The OSBP offers significant mutual benefits in that border and customs authorities from two countries perform joint controls on clearance processes and consequently, there can be more efficient resource utilisation through a reduction in the duplication of document processes and also a reduction in trading costs.

However, in recent course of events, a bilateral legal framework for the OSBP between South Africa and Mozambique at Lebombo border post is being ratified and this is a highly recommendable and positive move. As a recommendation, it would be largely beneficial that this process should be replicated at Beitbridge border and other parts of the SADC because having this OSBP implies that goods and passenger vehicles only stop once at the border and exit from one country and enter another country at the same time.<sup>364</sup> This results in a reduction in time and costs involved in border crossings and would be highly beneficial in this custom modernisation process. Also, in August 2015, a 'Border Management Agency Bill' was published by the South African parliament for public comment and this Bill seeks to establish an agency that will balance secure cross-border travel, trade facilitation and national security imperatives, within the context of South Africa's regional, African and

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<sup>361</sup> See chapter 3.4.

<sup>362</sup> Economic Commission for Europe: 'The Single Window Concept' available at <http://unpan1.un.org/intradoc/groups/public/documents/UNECE/UNPAN019892.pdf> (accessed 7 September 2015).

<sup>363</sup> See chapter 4.3.1 and 4.3.2.

<sup>364</sup> Kieck E 'Cordinated border management: unlocking trade opportunities through one stop border post' (2009) 4 (1) World Customs Journal 6.

international obligations.’<sup>365</sup> This also is a positive move and indicates the political will of South Africa to further enhance economic development under the NDP<sup>366</sup> and it would be interesting to see this agency come into play once the Act is implemented and would be a further area of research as time goes by.

To achieve effective and efficient border management, considerable effort and investment should be devoted to improving the competence and compliance of customs officials. So capacity building of staffs involved on the running of the programme is crucial because the trading environment is ever evolving due to the advancement of technologies. The CMP brings a modernised and automated approach to previously paper based system, so custom authorities are expected to comprehend and adapt precisely with these changes, know the ins and outs of the programme and this requires constant training on the technicalities of this programme and partnerships with experts and international organisations that could facilitate and offer the technical know-how on this modernised processes. Also, offering staff complements to customs official for the better work they have done can boost morale and increase effectiveness and efficiency.

South Africa is strategically located within the continent and has the economic potential to inevitably be a major market for goods to the regional community as well as the world economy at large. Getting to this level will require an active role by customs to continuously adopt a modernised framework on custom operations that are less restrictive in order to promote and support the development of a facilitative trading system.

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<sup>365</sup> South African Cabinet publishes Border Management Agency (BMA) Bill for public comment’ available at <http://www.tralac.org/news/article/7871-south-african-cabinet-publishes-border-management-agency-bma-bill-for-public-comment.html> (accessed 7 September 2015).

<sup>366</sup> See chapter 3.5.2.

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