

The WTO Agreement on Trade Facilitation: status of play in Southern African Customs

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Abstract

The September 11, 2001 attack on the World Trade Centre in New York brought a paradigm shift to the focus of Customs. Following that event and the global terrorist threat, a number of customs control initiatives and instruments were developed and implemented. Included amongst those are the World Customs Organization's (WCO) SAFE Framework of Standards, the Authorised Economic Operator (AEO) concept, the advance cargo information requirement, the 24-hour Advance Manifest rule, use of non-intrusive inspection equipment and the United States Container Security Initiative (CSI). Some of these security measures, such as the AEO concept, were developed and implemented to maintain the balance between customs control and trade facilitation of legitimate goods. When it comes to trade facilitation, Customs always needs to consider its obligations under the World Trade Organization (WTO). This paper gives an overview of the WTO Agreement on Trade Facilitation signed in Bali in December 2013 and the current state of play in Southern African Customs.

1. Introduction

The 'Bali Package' is a subset of the Doha Development Agenda (the Doha round) which began in 2001 and results from the Ninth Ministerial Conference of the World Trade Organization (WTO) held in Bali, Indonesia from 3 to 7 December 2013. As part of the wider 'Bali Package', and following some nine years of negotiations, WTO Members reached consensus on an Agreement on Trade Facilitation. GATT Article V on freedom of transit, Article VII on valuation for customs purposes, Article VIII on fees and formalities, and Article X on publication had already laid a solid base for trade facilitation. This latest Doha round of trade negotiations among WTO Members had the primary objective of enhancing the trading prospects of developing and least developed states. 'The Bali Package consists of decisions and declarations in two parts: Part I regarding the regular work under the General Council, and Part II regarding work under the Doha Development Agenda. The most significant part of the Bali Package is the Ministerial Decision on trade facilitation as a multilateral commitment to simplify customs procedures by reducing costs and improving speed and efficiency' (Trade Law Centre [TRALAC] 2013).

A Preparatory Committee has been established at the WTO level to ensure the expeditious entry into force of the agreement including the necessary ratification processes and to prepare for its efficient operation. One essential question at this stage is how the Agreement on Trade Facilitation will be incorporated into the existing WTO Agreement after the necessary 'legal review for rectifications of a purely formal character' has been carried out. It is also worth noting that two-thirds of WTO Members will need to ratify the new trade facilitation agreement for it to take effect. Those who do not ratify it, meanwhile, will not be bound by it. Some trade officials have suggested that this process could take at least two years (International Centre for Trade and Sustainable Development [ICTSD] 2013).

2. Costs of trade transactions

According to the OECD (2013a), ‘reducing global trade costs by 1% would increase worldwide income by more than USD40 billion, most of which would accrue in developing countries’. A recent study by the OECD revealed that the areas ‘that contribute the most to lowering trade costs in the [Sub-Saharan African] region are formalities: automation (with an estimated potential reduction of 2.9% in trade costs), the simplification and harmonisation of documents (2.7% estimated potential reduction) and information availability (1.9% estimated potential reduction)’ (OECD 2013b). The same study indicates that ‘in some African countries revenue losses from inefficient border procedures are estimated to exceed 5% of GDP’ (OECD 2013b).

3. Overview of the main Bali Package measures and current state of play in Southern African Customs

Article 1: Publication and availability of information

Article 1 provides that Members should publish and make use of trade-related information in order to enable governments, traders and other interested parties to become acquainted with it. This information would include import, export and transit procedures, rules for classification and valuation of goods, rate of duties, taxes, fees and related charges. In the Southern African region, in line with the Revised Kyoto Convention and the Southern African Development Community (SADC) Customs Information Communication Technology Strategy 2013,² most of the Revenue/Customs administrations have published trade-related information on their websites.

Southern African Development Community Member States



Source: SADC Regional Indicative Strategic Development Plan (n.d.).

Box 1: Trade Portal in Mauritius and Namibia

Some Member States such as the Republic of Mauritius (2013a; 2013b) have developed trade portals. The government of Mauritius refers to its trade portal as a web-based state-of-the-art system whose prime objective is to facilitate import and export. The trade portal is expected, initially, to store information relating to existing trade regulations and procedures, including but not limited to laws, administrative procedures, guidance notes, applicable fees, forms, licences, permits and penalties applicable in the case of breaches. In addition, the portal catalogues international, regional and bilateral trade agreements to which Mauritius is a party, including the applicable rules and requirements as well as the benefits devolving therefrom.

According to the Southern Africa Trade Hub (SATH), the government of Namibia expected to have its Trade Information Portal up and running by early 2014. The development of the portal is supported by the USAID Southern Africa Trade Hub, under its Partnership for Trade Facilitation facility. The Trade Information Portal will provide a single platform where all trade-related information for Namibia is collected in one system and readily available for searching and viewing, which will save time and expense for the trading community (Southern Africa Trade Hub [SATH] 2013).

Article 4: Appeal or review procedures

Basically, this Article makes provision 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 than or independent of the official or office that issued the decision. This mechanism goes further, to judicial appeal or review of the decision. According to a customs audit carried out in 2011, all revenue/customs administrations already have established appeal or review procedure mechanisms (AECOM International Development 2011).

Box 2: Appeal procedures in Mauritius

In Mauritius, for instance, the Revenue Authority Act 2006 makes provision for aggrieved parties under the Customs Act to lodge written representations to the Revenue and Valuation Appeal Tribunal (formerly known as Assessment Review Committee). Any party dissatisfied with the decision of the latter may also make appeal to the Supreme Court and subsequently to the Judicial Committee of the Privy Council which is the highest structure of the Mauritius judicial system. This judicial process also applies to any similar issues other than those under the Customs Act such as the Customs Tariff Act, the Excise Act and the Value Added Tax Act.

Article 7: Release and clearance of goods

Article 7 proposes various concrete and practical trade facilitation initiatives such as:

- Pre-arrival Processing
- Electronic Payment
- Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges
- Risk Management
- Post-clearance Audit
- Trade Facilitation Measures for Authorized Operators (WTO 2013, pp. 8-10).

According to the SADC Customs Audit 2011, ‘virtually all Member States are implementing Post Clearance Audits and Pre-Clearance with the exception of Lesotho and Swaziland respectively’ (AECOM International Development 2011, p. 18). The majority of Member States have risk management procedures in place except for Botswana, Lesotho and Swaziland. With regard to the Authorised Economic Operator (AEO) concept, in addition to Mauritius, Zambia and Tanzania, Southern African Customs Union (SACU) countries including Botswana, Lesotho, Namibia, Swaziland, and South Africa are implementing the Preferred Traders Program (Poverello 2013). This Article offers tangible benefits to traders as it has a direct impact on the clearance and release of merchandise. Several reasons have

been given for the lack of implementation of some of these measures in certain countries such as lack of automation, the need to review legislation, varied levels of infrastructure and development, and capacity constraints. The successful implementation of the AEO program will also rest on the zealous participation of the private sector. However, to the credit of the region, some notable progress should not be ignored. Mauritius and South Africa have gone 'paperless' and several countries are in the process of or planning to migrate to ASYCUDA World which has several standard and non-standard features such as electronic payment.

Article 8: Border agency cooperation

This Article calls for members to ensure that their authorities and agencies responsible for border controls and procedures dealing with the importation, exportation and transit of goods cooperate with one another and coordinate their activities with a view to facilitating trade. Such cooperation may include:

- (i) alignment of working days and hours
- (ii) alignment of procedures and formalities
- (iii) development and sharing of common facilities
- (iv) joint controls
- (v) establishment of one stop border post (OSBP) control (WTO 2013, p. 12).

Coordinated border management guidelines have been developed by SADC to assist Member States to enhance border management modernisation (SADC 2011). According to the guidelines, the transition from a Free Trade Area to a Customs Union and on to a Common Market requires effective controls of the internal borders and, eventually, of the external borders of the Common Market. A Common Market, furthermore, requires a common approach to security, movement of people, goods and means of transport, and to sanitary and phytosanitary measures (SADC 2011).

State interests at the border include protection of national security, enforcement of immigration requirements, enforcement of import and export restrictions and prohibitions, collection of revenue, recording cross-border statistics, and enforcement of sanitary and phytosanitary measures and technical standards. According to SADC (2012), there are complaints that the region has different border operating times and this inhibits intra-regional trade. This is also amplified by cumbersome and bureaucratic delays encountered in the processing of documentation and clearing of goods at the border posts.

Furthermore, the SADC 2012 report states that in June 2012, the Sub-Committee on Customs Cooperation (SCCC) (Heads of SADC customs administrations) resolved that customs administrations should consult with each other and relevant stakeholders to review the hours of operation of the border posts, with the objective of meeting the requirements by traders, and also noted that the extension of border operating hours will require the support of additional resources and structures. The Heads of Customs also noted the need to correlate the business hours and the competence of border posts in SADC which is in line with the provisions of the Revised Kyoto Convention.

In August 2012, the SADC Summit (Heads of State) approved the Regional Infrastructure Development Master Plan (RIDMP), a strategic framework to guide the development of a seamless, cost-effective trans-boundary infrastructure in a coordinated and integrated manner. The objective of RIDMP is to address regional infrastructure development (OSBP) and planning in a coordinated and integrated manner over a 15-year period (SADC 2012a).

Box 3: Chirundu One Stop Border Post

The implementation of the One Stop Border Post (OSBP) concept at Chirundu (between Zambia and Zimbabwe) was launched in December 2009, and significant progress has been made to date. Chirundu is the first operational OSBP in Sub-Saharan Africa. According to information available, before the OSBP was operational, clearing times were between three and five days. Now clearance is effected on the same day. An average of 480 trucks cross at Chirundu every day so a total of 960 to 1,920 travel days per day are being saved. This translates, at a conservative estimate, to between USD288,000 and USD576,000 in savings every day. There is no doubt that the Chirundu OSBP project will serve as a model for other OSBPs in the region and other parts of Africa (TradeMark Southern Africa 2011).

Article 10: Formalities connected with importation and exportation and transit

Article 10 calls for members to review their existing formalities and documentation requirements '[w]ith a view to minimizing the incidence and complexity of import, export, and transit formalities and of decreasing and simplifying import, export and transit documentation requirements' (WTO 2013, p. 12). Two essential measures under this article are the use of international standards and the implementation of the single window concept. Some examples of international standards are the Revised Kyoto Convention, Istanbul Convention, HS Convention, the WCO Data Model and the UN layout key for trade documents.

Significant progress has been noted in this area considering that eleven out of the 15 SADC Member States have already acceded to the Revised Kyoto Convention: Botswana, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Zambia and Zimbabwe. Additionally, a gap analysis undertaken recently as part of preparations for the Seychelles to accede to the Revised Kyoto Convention, shows that customs and related laws were 96% compliant with regard to the Convention's standards (Seychelles Revenue Commission 2013). A new Customs Management Act and regulations are being developed which reflect current international best practice as prescribed by the Revised Kyoto Convention (Seychelles Revenue Commission 2013). In the Democratic Republic of the Congo (DRC), a new Customs Code, inspired by the Revised Kyoto Convention, came into effect in February 2011. This Customs Code takes into account issues and initiatives such as deferred payment, integrity management, IPR, AEO, electronic payment, and ICT. The accession formalities beyond Customs seem to be the main challenge for the remaining countries to accede to the Revised Kyoto Convention. However, there is also a strong need for a mechanism to gauge implementation of the relevant provisions (Direction Générale des Douanes et Accises [Directorate General of Customs and Excise Duty] [DGDA] 2014).

Box 4: Malawi becomes the 91st Contracting Party to the Revised Kyoto Convention

On 6 September 2013, the Ambassador of the Republic of Malawi, Her Excellency Dr Brave Ndisale, visited WCO Headquarters to deposit her country's instrument of accession to the International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention - RKC). Malawi has thus become the 91st Contracting Party to the RKC.

The Ambassador conveyed a message from the President of Malawi, Dr Joyce Banda, expressing appreciation for the WCO's assistance, as well as the hope that accession to the RKC will contribute to improving Malawi's business environment. Secretary General Mikuriya had met the President in Blantyre on the occasion of the Meeting of Heads of Customs for the East and Southern Africa Region in May 2013, when he had encouraged accession to the RKC.

The Secretary General pledged his ongoing support for Malawi where the WCO had recently conducted a national trade policy dialogue involving Customs, business and other government agencies.

Source: www.wcoomd.org.

Regarding the single window concept, a number of countries in the Southern African region have already embarked on or are planning to implement a national single window, which is also part of the SADC Customs ICT Strategy 2013 and the Coordinated Border Management Guidelines. In addition to numerous guidelines and compendiums from the WCO and the United Nations Economic Commission for Europe (UNECE), the African Alliance for e-Commerce (AAEC) (2013) has developed guidelines to assist countries, more specifically in the African region, to implement a national single window. Within the region, countries such as Mozambique, Madagascar and Ghana have chosen the Public-Private Partnership (PPP) model to implement a national single window whereas some are utilising or planning to utilise the existing or planned ASYCUDA World.

Box 5: Mozambique National Single Window

One of the best examples of a national single window in the Southern African region is the case of Mozambique. 'Mozambique's Diagnostic Trade Integration Study conducted in 2004 noted the high transaction costs to traders resulting from delays, administrative burdens and corruption as the major constraint to Mozambican cross-border trade. ... Mozambique's Single Window was launched in 2011, providing a centralized platform to streamline and simplify the operation of customs and other government agencies involved in border control. ... The system was set up to handle approximately 400,000 customs declarations per year with up to 1,500 per day. ... Mozambique is a transit country to Swaziland, South Africa, Zimbabwe, Zambia and Malawi. Single Window has therefore been designed to enhance revenue collection by closing revenue leakage due to transit.'

Source: tfig.unece.org/cases/Mozambique.pdf.

Article 11: Freedom of transit

The importance of transit as an element of trade facilitation is critical particularly from the perspective of landlocked developing countries. They are, by definition, more dependent on transit for market access. SADC as a Regional Economic Community (REC) has the highest number of landlocked countries in Africa.

Box 6: SADC Regional Transit Management System

Recognising the importance of transit for the Southern African region, the SADC Transit Management System was developed in order to facilitate trade. The legal basis is derived from the Protocol on Trade and consists of:

- Annex IV of the Protocol on Trade concerning Transit Trade and Transit Facilities
- Appendix VI of the Annex IV concerning to the Regional Customs Transit Bond Guarantee (RCTBG)
- Transit Regulations, and Transit Manual.

Source: *SADC Protocol on Trade* 1996, as amended.

However, according to the SADC Customs Audit carried out in 2011, only one Member State is currently using the SADC Regional Transit Management System. Various challenges account for non-implementation of the SADC Transit Management System. The Customs Audit speaks about the domestication of the instrument by Member States into national law, and identifies recognition of the bond guarantee by relevant authorities throughout a certain corridor and multiple memberships as a contributing factor.

For a transit management system to be effective, an agreed regional bond must be recognised in all Member States. Without agreement and acceptance of a regional bond, it would be a challenge to implement a regional transit management system. Regardless, the SADC Regional Transit Bond Guarantee, which was approved by Ministers, is not operational despite the fact that implementation could yield significant improvements in trade facilitation in the region. This is in part due to the fact that some main countries along a corridor such as the DRC, Zimbabwe, Zambia, Malawi and Tanzania belong to more than one regional economic grouping, namely the Common Market for Eastern and Southern Africa (COMESA)

and the East Africa Community (EAC) that have already adopted other transit instruments. Interestingly, it appears that traders prefer to utilise national transit instruments of each country within that specific corridor which naturally adds to the costs of doing business in the region.

Article 12: Customs cooperation

This Article can be looked at from the perspective of the Customs-to-Customs and Customs-to-Business pillars of the WCO SAFE Framework of Standards. Members are encouraged to share information on best practices in managing customs compliance, to cooperate in technical guidance or assistance in building capacity for the purposes of administering compliance measures and enhancing their effectiveness, and to ensure that traders are aware of their compliance obligations. Other WCO instruments relevant to this article are the Nairobi Convention and the Customs Mutual Administrative Assistance Agreement.

Customs-to-Customs cooperation is enshrined in the SADC Protocol on Trade which, as noted above, makes provision for the establishment of a Sub-Committee on Customs Cooperation (SCCC). According to the Protocol, the Sub-Committee is responsible for all activities relating to customs cooperation among the Member States with the objective of simplifying and harmonising customs laws and procedures.

Furthermore, in May 2013, the SCCC approved a strategy to enhance Private Sector Involvement in Customs matters (SADC 2013b). The strategy was developed in collaboration with key private sector stakeholders and has three key recommendations:

- Strengthen Customs-to-Business dialogue mechanisms at the Member States level
- Enhance the quality of Customs Administration to Business dialogue through improving information flows
- Strengthen Private Sector involvement on customs issues at the regional level.

Box 7: Private Sector involvement in customs matters

Almost all SADC countries have formal or informal platforms that serve to enhance consultation with the private sector. Recently, a number of countries such as Malawi, Zambia, Namibia and the Seychelles, launched National Customs Business Forums. It is worth noting that the strategy proposes that Customs-to-Business partnership be reflected in customs modernisation programs and national legislative framework to support its sustainability.

The strategy recommends the establishment of Regional Customs Business Forums to address customs compliance and trade facilitation issues at a regional level. It is to be noted that the Southern African Customs Union (SACU) launched a SACU Regional Customs to Trade Forum in November 2013.

Article 13: Institutional arrangements

According to this Article, a Committee on Trade Facilitation needs to be established to facilitate both domestic coordination and implementation of provisions of the WTO Agreement on Trade Facilitation. Several countries in the Sub-Saharan region already have national structures or mechanisms on trade facilitation issues.

At a regional level, the SADC Protocol on Trade makes provision for the establishment of the SCCC and a Sub-Committee on Trade Facilitation (SCTF). As mentioned above, the SCCC comprises SADC Heads of Customs and its main objective is to cooperate in simplifying and harmonising customs procedures and to combat illicit trade and fraud. The SCTF comprises Senior Officials from Trade, Customs and Transport and its main objective is to take the necessary measures to facilitate the simplification and harmonisation of trade documentation and trade procedures (SADC 1996).

Box 8: National Working Group on Trade Facilitation in Zambia

In Zambia, a National Working Group on Trade Facilitation was established in 2007.

The scope of responsibility of this National Working Group includes:

- Doha Development Round of WTO negotiations
- Development corridors
- One Stop Border Posts (OSBP)
- Trade facilitation initiatives of the Regional Economic Communities
- Non-tariff barriers.

The responsibilities of the National Working Group will include, but not be limited to:

1. Building upon the report and matrix of Zambia's self-assessment on trade facilitation needs
2. Identifying gaps in Zambia's trade facilitation and analysing the types of capacity building required, both donor-assisted capacity building and possible Zambian-led initiatives
3. Monitoring and providing input to the resolution of Non-Tariff Barriers (NTBs)
4. Providing Geneva-based Zambian officials involved in the WTO negotiations with Zambia's position
5. Monitoring trade facilitation initiatives under the Regional Economic Communities (RECs)
6. Monitoring corridor developments
7. Monitoring the development of the OSBPs.

4. Implications and challenges

The WTO Agreement on Trade Facilitation came as a Christmas blessing for the border agencies in terms of its potential impact on compliance with related laws and regulations, for the private sector (traders) in terms of reducing the cost of doing business, and also for the government in terms of bolstering economic development through increased market access. However, implementation of the agreement in its totality has several implications and challenges including:

4.1 Need for political will

The WTO Agreement on Trade Facilitation was approved by the ministers responsible for trade while the majority of the measures impact the revenue/customs authorities that in most cases fall under Ministries of Finance. It is therefore essential to develop synergies between the two to avoid reluctance and slow progress. Note also that some measures need political commitment due to their level of importance and scope, such as the establishment of a national structure on trade facilitation.

4.2 Shift from revenue collection to trade facilitation

It's an indisputable fact that in many countries revenue collected from Customs constitutes a large share of the total revenue collected and this is why the focus is still on revenue collection. Implementation of this agreement will require a paradigm shift from revenue collection to trade facilitation.

4.3 Varied level of development

Within Southern Africa, different customs administrations are at different levels of modernisation and automation. This can pose a challenge in terms of harmonisation of initiatives.

4.4 Resource constraints

Introduction of the trade facilitation measures will entail massive investment in various components including but not limited to infrastructure, equipment, new regulations, training, institutional changes, business process reengineering, and ICT. Some measures might not be expensive to put in place but create challenges in terms of sustainability.

4.5 Need for capacity building

Successful execution of the agreement will require intensive capacity building of the relevant actors in the supply chain. The agreement has provisions for technical assistance and capacity building. Donor Members have agreed to facilitate the provision of assistance and support for capacity building to developing country and least developed country Members, on mutually agreed terms and either bilaterally or through the appropriate international organisations.

4.6 Review of legislative framework

Several measures will require an overhaul of the existing legislative framework related to international trade, particularly the Customs Act or Code.

4.7 Change and integrity management

Difficulty in changing entrenched behaviours and values and the desire to preserve rents will warrant a change of mindset and a robust ethical culture across the border agencies and relevant stakeholders.

4.8 Private sector involvement

Private sector consultation and participation will be essential in executing various projects such as the AEO concept, single window, post clearance audit, and establishment of a national structure on trade facilitation.

5. Conclusions

Southern African Customs have already established a solid base to implement or are already implementing the WTO Agreement on Trade Facilitation. While trade facilitation is key to economic development and growth, it is an undeniable fact that Customs remains the main thrust in this endeavour. In spite of the implications and challenges stated above, Southern African Customs are already doing well. Mikuriya, in an interview on the signing of a Memorandum of Understanding between the WCO and the African Development Bank (AfDB), rightly said, 'There is a strong commitment to customs modernization in Africa' (ADBG 2012). The objective may be an ambitious one and the road towards total implementation of the agreement may seem to be long. However, it can be concluded that Southern African Customs have already started the journey. Quoting the famous phrase by Nelson Mandela as referred to by Mr Gita Wirjawan, Indonesia's Trade Minister, at the WTO Ministerial Conference in December 2013: 'It always seems impossible, until it's done'.

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Notes

- 1 The views and opinions presented in this paper are those of the author and do not necessarily reflect the views or policies of the Southern African Development Community (SADC) or its Members States.
- 2 Southern African Development Community (SADC) 2013a, p. 28.

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