SOUTHERN AFRICA GLOBAL COMPETITIVENESS HUB

Technical Report:

Assessment of Readiness of TKC Customs Authorities to Implement Regional Authorized Economic Operator Program

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EXECUTIVE SUMMARY

The Trade Hub Team visited the three Trans Kalahari Corridor (TKC) Countries (South Africa, Botswana and Namibia) to assess the extent to which each country was prepared to implement a Regional Authorized Economic Operator (AEO) Program, and the following were the findings:

South Africa: The South Africa Revenue Service (SARS) is currently well into a major internally driven customs modernization plan that will redefine working procedures and working relationships between customs and its business clients. SARS' approach is to improve its understanding of its clients and their businesses and to work with private sector partners to create an improved regulatory environment. SARS is now engaged with the various trade sectors to redefine registration and licensing standards and practices, to develop service options to meet specific trade sector needs, to provide better advisory services to its clients, and to improve compliance levels overall. As an element of this compliance-oriented modernization plan, SARS is replacing its current Accredited Trader Program with two related programs: (1) a Preferred Trader (PT) program that includes benefits to compliant importers, exporters and service providers trading within the region and (2) a WCO-compliant "world-class" AEO program that will include more substantial eligibility requirements including supply chain security requirements and will provide voluntary participants with tailor-made benefits. As a part of this modernization drive, SARS is totally revamping its customs code to bring it into full compliance with the Revised Kyoto Convention and replacing its CAPE system with a new SARS Integrated System that will provide a total e-Customs solution. The SARS modernization initiative is grounded on a well developed risk management capacity, a well developed external audit capacity, and a competent, forward-thinking capacity building organization. SARS has developed a holistic approach to establishing minimum standards to be achieved by customs and traders to ensure that all clients are treated fairly and consistently. SARS is actively collaborating with the private sector to identify potential PT and AEO program participants and to develop specific benefits of interest to each trade sector. SARS is an excellent source of capacity building talent and resources and has offered to provide full assistance to help the other customs administrations develop the necessary risk management and audit skills.

Botswana: The Botswana Unified Revenue Service Custom Division (BURS) has adopted a well-designed organizational structure and is in the process of developing the new skills, techniques and specialties required. BURS utilize the ASYCUDA++ processing system and have begun using the system's cargo selectivity module (MODSEL). While BURS does not yet have a fully functional, adequately staffed risk management department, it has an in-house understanding of the risk management process. The Systems Clearance and Management Information Department manager has instituted the basic elements of the risk process into the cargo selectivity system. BURS has recently established a Post Clearance Audit function that has not yet had the opportunity to fully develop and is not benefiting from any meaningful form of risk targeting. BURS have also taken the commendable step of establishing a Customer Support Department responsible for licensing, registration, appeals and other customer-oriented service. BURS is amenable to new, simplified procedures and anxious to develop a preferred trader program but has not yet identified potential participants. BURS needs assistance in developing its risk management and audit capacities.

Namibia: Namibia Customs and Excise (NCE) is awaiting approval of a new organizational structure that includes a new Risk Management Department with central office and field components. While the central office component will be responsible for managing the MODSEL cargo selectivity process, the field components will be primarily responsible for operating new non-intrusive scanners. At this time, NCE does not possess any meaningful risk management capability in the context of commercial cargo clearance. Approval of the new structure is expected within a matter of months but bringing the new risk management departments on line will require significant capacity building and a significant amount of time. NCE has not analyzed its client database to identify potential PT/AEO program participants nor has it begun working with its private sector clientele to develop sector-specific benefits. NCE needs assistance in developing its risk management and audit capacities.

Regional Risk Management Modality: Although the SARS Integrated Customs Risk Analysis System (ICRAS) provides more sophisticated risk analysis and profiling capabilities than the MODSEL selectivity module in place in both Botswana and Namibia, both systems require analysts to analyze the risk, evaluate the risk to identify and apply the most appropriate type and intensity of customs control, monitor the effectiveness of the controls, and revise risk profiles and exam criteria as necessary. The only significant difference in the process is that the ICRAS system is capable of self-analysis of historical data whereas MODSEL requires the analyst to do so. Once Namibia's and Botswana's risk analysts are properly trained in the standard risk management process now employed by SARS, a regional risk management modality will exist.

Identification of Potential PT/AEO Participants: SARS has already identified those industries it considers to be of strategic importance. BURS and NCE have yet to do so. Before going any further, each delegation must identify its primary focus industries, its highest volume companies, its highest volume commodities and the strategic focus that their program should initially take.

Establishing and Measuring Compliance Standards: SARS is now refining compliance standards and is capable of evaluating potential participants accordingly. Neither BURS nor NCE have established compliance standards and neither currently tracks compliance by company, industry or commodity. BURS does require copies of all administrative penalties to be forwarded to a central office for quality review. NCE does not. BURS and NCE would benefit from establishing uniform quality control processes and from the development of an automated database that would enable them to track historical levels of compliance by individual companies.

Capacity Building Requirements and Sources: In the cargo selectivity context, neither BURS nor NCE have a dedicated risk management process or staff. Both have expressed a commitment to implementing risk management throughout their organization. BURS have created a small risk unit in the passenger/anti-smuggling context and NCE is establishing a large decentralized risk department in the cargo-selectivity context. Both require basic risk management training focusing on the cargo selectivity context to be followed by on-the-job training. SARS has offered to provide both the classroom training through its Customs Academy and to assist with on-the-job training by sending a risk management expert to work with the new central office risk management units in both BURS and NCE.

Draft Guidelines: Prior to this assessment, the TKC Secretariat's TKC Regional AEO Program guidelines anticipated a joint implementation of a regional (three country) AEO program in a fairly short timeframe. While an admirable and worthwhile goal, the differences in the extent to which each of the three countries currently has the capacity to do so suggests that a somewhat different approach must be considered. As a result of this assessment, the draft has been revised to:

- Recognize that SARS has committed significant resources to the development of their PT/AEO program and must go forward with it according to their schedule;

- Allow BURS and NCE sufficient time to, with SARS assistance, build their in-house risk management capacity to the level necessary to support PT/AEO programs;

- Commit BURS and NCE to first implement a preferred trader program based on and adapted from the SARS model and then to proceed to the next step of developing and implementing AEO programs based on the shared experience of SARS and the WCO SAFE Framework of Standards; and

- Commit the TKC countries to develop mutual coordination and communications channels necessary to permit each country to grant mutual recognition and reciprocity privileges to PT/AEO program participants;

1. INTRODUCTION

Increases in global trade coupled with advancements in technology pose multiple challenges and will continue to pose more serious challenges to customs authorities and other agencies involved in the movement of international trade. This trend is expected to grow in leaps and bounds over time. It is with this in mind that the Memorandum of Understanding (MOU) for the Development and Management of the Trans Kalahari Corridor (TKC) together with instruments such as the World Customs Organization (WCO) Revised Kyoto Convention and Framework of Standards to Secure and Facilitate Global Trade emphasize measures to reduce risks associated with international trade and promote the efficient and effective utilization of limited resources.

The TKC MOU emphasizes facilitating the movement of goods and persons through simplification and harmonisation of procedures; joint controls to reduce transport costs and transit times through strategic partnerships with the private sector (Article 1.5). Similarly, the WCO Framework of Standards provides customs-to-customs and customs-to-private sector pillars designed to intensify security to the global supply chain and further improve compliance and facilitation.

The Revised Kyoto Convention requires customs authorities to integrate principles of risk management into all customs controls and programmes to ensure compliant business entities are facilitated with minimum delays through ports of entry. Risk-based controls focus resources on high risk individuals, companies and transactions and minimize customs and other agency interventions on those that are compliant and low risk. Risk-based controls encourage voluntary compliance and reward compliant clients through simplified procedures, reduced inspections, reduced delays and reduced cost of doing business.

The TKC customs authorities have determined that their needs and the needs of their business clients can best be met through the implementation of a two stage program. The first stage, which will be based on defined compliance standards, will primarily serve those traders whose import and export activity is primarily regional, i.e. within the TKC countries. This preferred trader program hopefully will, at some later date be expanded throughout the wider Southern African Customs Union (SACU)/Southern Africa Development Community (SADC) membership. The second element of the TKC program is aimed at those traders who in addition to trading regionally have or aspire to develop significant trading partners outside of Africa and recognize the importance of safeguarding their competitiveness in the international market by protecting export markets and brand names and developing an international reputation as a trusted trade partner. The WCO-compliant "world-class" Authorized Economic Operator (AEO) programs will add to supply chain security requirements to the previously established compliance requirements and will provide voluntary participants with additional tailor-made benefits.

The TKC Regional Preferred Trader/Authorized Economic Operator (PT/AEO) initiative is derived from both past regional experiences with accredited trader programs as well as from Pillar 2 of the SAFE Framework.

2. OBJECTIVES

The objectives of this consultancy were as follows:

1. Consult with customs administrations in TKC Countries (Botswana, Namibia and South Africa) to:

   - Assess the extent to which each is prepared to implement a regional AEO program;

   - Brief TKC AEO task teams regarding the latest proposed draft guidelines and obtain their comments, criticisms and suggestions; and

   - Meet with risk management staff to review current risk and compliance management practices, including post clearance controls, which will be necessary to effectively manage the proposed TKC AEO program.

2. Update the TKC AEO draft guidelines to incorporate comments and recommendations obtained during the consultations with the various AEO task teams.

3. Propose modalities for a regional risk management model that will effectively support the TKC Regional AEO program.

4. Identify the TKC AEO program related capacity building needs within each of the three customs authorities.

3. HIGHLIGHTS

The first task of Trade Hub team was to meet the TKC Secretariat and then the TKC Task Team on AEOs to review the AEO Guidelines that had been prepared by the task team and chart a way forward. The discussion centered on the capability of customs to actually implement some of the proposed benefits, including account management, paperless declarations, consolidated monthly declarations, deferred payment and simplification of border procedures which would reduce a truck's average dwell time at the border to five minutes or less.

The Trade Hub Team's next program was to visit each TKC Member Country to assess its preparedness to implement a regional AEO Program.

4. NAMBIA CUSTOMS AND EXCISE – FINDINGS AND RECOMMENDATIONS

4.1 FINDINGS

Risk Management – Namibia Customs and Excise (NCE) does not at this time have a dedicated risk management unit nor does it apply risk analysis techniques to available statistical data or proactively gather additional data in order to identify, define, assess and evaluate risks and to develop the types and intensity of controls most suited to address specific risks. Customs management recognizes this and has obtained approval of a new organizational structure that includes the formation of a dedicated risk management unit with five officers at headquarters and a similar contingent in each region. Customs expects to be able to fully staff these units with over fifty officers. This is a substantial investment in resources and perhaps a misleading one. NCE is currently in the process of installing and activating high technology scanners at various locations throughout the country and the responsibility for manning these scanners has been vested in the risk management department. As a result, a significant percentage of the total officers will be devoted to duties other than actual risk management.

NCE utilizes the selectivity Module (MODSEL) of the ASYCUDA++ declaration processing system. MODSEL is employed both at the head office and regional office level, but with minimal coordination between the two. Head office (or national) criteria address limited specific management concerns such as importation of automobiles. Regional office criteria are reportedly used to address suspicions or concerns raised at the field level: that is to say that if an examining officer in the field develops a suspicion about a particular importer or a particular line of import goods, that suspicion can be entered as an examination criterion for all offices within that region.

Regional criteria do not apply to declarations filed outside that region and there is no central (head office) monitoring of hits against the criteria or examination results. While results are reported via the MODSEL inspection act, it is unclear who monitors them and the examination instructions facility is not used. There does not appear to be any systematic effort to monitor effectiveness of existing criteria or workload impact. NCE provided a list of risk profiles prepared by an UNCTAD consultant and reported that these had initially been productive but that they had not been updated or monitored.

All declarations presented at cargo clearance offices now undergo a face vetting process, regardless of whether they are referred to the green, yellow or red channels. This is a common practice and an understandable one. It does, however, raise questions about how NCE will channel declarations filed by AEOs. The current thinking of the TKC working group includes a commitment to providing electronic clearance self assessment and electronic submission of declarations without any supporting documents. This is the purest application of a green channel process: the release of goods with no customs intervention other than data checks performed by the automated system.

To continue to face-vet all declarations presented by non-PT/AEOs but not do so on declarations filed by PT/AEOs would make it difficult to track the number of declarations released in the self assessment, paperless mode since statistics regarding green channel usage will now be including both "apples and oranges." The alternative to eliminating green channel face vetting altogether is to activate the MODSEL blue channel. The blue channel will release the electronically filed paperless declaration as though it were routed to the green channel but will refer it for post clearance review or audit. Although not specifically designed for AEO programs, the blue channel works well for that purpose.

Management Considerations - The consultant has provided a digital copy of the USAID Customs Modernization Handbook on Establishing Risk Management/Cargo Selectivity Capability to NCE's working team. This document provides a concise plan of action for implementing a risk management team and provides specific examples of sample directives and announcements that can effectively publicize and support the implementation of risk management procedures.

Compliance Management - NCE does not have a centralized repository of administrative penalties.

Procedural Readiness - From a practical perspective, all three customs authorities must take a proactive stance regarding the identification of new procedures or changes to existing procedures that will be required to fulfill their commitments to providing specific benefits. While it is clear that NCE management recognizes that this will be necessary, it does not appear that it has fully engaged in the necessary analysis and development. The

TKC customs authorities are currently contemplating a commitment to offer the following benefits:

- "Green Lane" priority treatment at border crossings;
- Fast processing and release of cargo;
- Minimum number of cargo security inspections;
- Pre-arrival filing and clearance of goods;
- Post-arrival clearance audit based controls;
- Self-assessment of declarations;
- Electronic submission of declaration without any supporting documents;
- Nominal bonds;
- Dedicated/designated AEO user counters; and
- Trusted partnership with designated customs liaison officers in each participating country.

Prior to implementation, each customs authority must be prepared to provide whatever benefits it has promised.

Looking at the issue of border "green lanes", early discussions suggested that NCE has been able to reduce truck dwell time at the border from eight to four hours. In subsequent meetings, others said, "No, we can do it in much shorter periods of time, maybe half an hour". The major concern from a readiness assessment perspective is that customs doesn't appear to actually track border dwell times.

There are two reasons why this knowledge is vital:

- First, the introduction of the TKC Regional Guidelines state: "The TKC MOU puts more emphasis on facilitation of the movement of goods and persons through simplification and harmonization of procedures; joint controls to reduce transport and transit times through strategic partnerships with the private sector (Article 1.5)."

- Second, the TKC is working on developing Client Service Charters which will publicly declare the length of time a client can expect a particular transaction to take. *(For example, "90% of all air passengers will depart Customs and Immigration areas within 30 minutes from the time their aircraft arrived" or "90% of all trucks operated by Authorized Economic Operators will be processed and released by both the exit and arrival country customs authorities in not more than X minutes.")* How can the border agencies define a process service standard if they don't know with statistical certainty how long that process currently takes?

On a very positive note, NCE has years of experience providing the exact "Green Lane" process that will be offered to PT/AEOs. This process is currently used under memoranda of agreement with petroleum importers and one major trucking company.

The current draft indicates that the three customs authorities will offer other benefits that might conceivably require new or modified procedures including consolidated monthly entries and duty deferrals. NCE offered these benefits to trusted traders as early as twelve years ago when it first implemented ASYCUDA. It subsequently terminated that practice.

Another concern is that no written procedures were available to describe these practices. Customs must ensure uniform application of all policies and procedures and the way to do that is to reduce them to writing, make them available to the officers who are required to

carry them out, and establish internal controls to ensure that they do so in the proper manner.

4.2 RECOMMENDATIONS

Risk Management

1. NCE should implement the blue channel within MODSEL. The blue channel will release the electronically filed paperless declaration as though it were routed to the green channel but will refer it for post clearance review or audit. In the interim, this will provide an effective tool for addressing valuation concerns to auditors who can go to the declarant's place of business and review contracts, bills of sale, letters of credit and other documentation to verify the declared value.

2. As NCE implements its new organizational structure and begins to develop its PT/AEO programs, it should consider the sample position descriptions provided in Annex 1 to this report.

Management Considerations

3. The consultant has provided a digital copy of the USAID Customs Modernization Handbook on Establishing Risk Management/Cargo Selectivity Capability to NCE's working team. NCE should review the concise plan of action for implementing a risk management process and make full use of the specific examples of sample directives and announcements.

4. It was not feasible at the time of this assessment to gather sufficient information to recommend where within the NCE organizational structure primary PT/AEO program management responsibilities will be assigned. This is a decision best made by customs management after the new organizational structure is actually brought on line. Should the new structure implement a customer service/licensing department similar to BURS, the recommendation made to BURS should be given due consideration.

Compliance Management

5. Copies of all penalty actions generated over the past three years should be forwarded to a specified unit and a centralized filing system should be established. Possibilities include the legal department or the client services and compliance office.

6. Beginning immediately, a copy of each new action should be referred to that office and reviewed for quality purposes.

Procedural Readiness

7. Consideration should be given to re-implementing consolidated monthly entries.

8. Once the PT/AEO program goals and potential pilot participants have been identified, NCE should engage the trader in an active collaboration role.

9. Customs must take the time to write clear and concise external and internal instructions explaining the new processes, what clients can reasonably expect and how customs

officers will be expected to process AEO transactions. Several head office customs personnel interviewed expressed frustration that they receive too many telephone calls from brokers, traders and field officers asking "how-to" questions. If a system of public notices and internal standard operating procedures were in place, most of these calls would probably no longer be necessary.

5. BOTSWANA UNIFIED REVENUE SERVICE (BURS) – FINDINGS AND RECOMMENDATIONS

5.1 FINDINGS

Risk Management - BURS has established a small "risk" unit that focuses almost exclusively on gathering information on penalties and seizures made from individuals at borders and at the airport rather than on commercial cargo clearance activities. The unit is performing a worthwhile function and, although it has not received any significant training, has begun a program of intelligence collection and dissemination. The anti-smuggling focus of this small group, its placement within BURS Customs Enforcement arm and its mode of operation characterize this unit more properly as an intelligence collection and analysis unit rather than a risk management unit.

Risk analysis and management can be applied to almost any functional activity within a customs administration or, indeed, within a combined revenue authority ranging from hiring practices to establishing bond amounts, to developing port profiles, to managing a cargo selectivity process and more. It is risk management applied in the context of the cargo selectivity process that is vital to the effective implementation of an AEO program.

Fortunately, BURS Customs has the nucleus of a risk analysis capacity currently supporting its cargo selectivity process. The Systems Clearance and Management Information Department is performing very basic risk management to the extent that its limited staffing permits. The manager of this department has a clear understanding of the basic tenets of the risk management process. He also demonstrated the interest, initiative and energy necessary to bring a limited risk management function on line. The pressing need here is to provide sufficient staffing and the training necessary to formalize and expand that process. A potential no-cost source for this staffing increase has been identified and will be discussed below.

Compliance Management - The Customs Division has most of the necessary organizational and procedural elements in place to implement effective compliance measurement and, later, compliance management. Copies of all administrative penalties and seizures are forwarded to the Appeals section of the Customer Service Department. This section is not only responsible for handling appeals but it also performs the equally important function of reviewing all punitive actions to ensure that laws and requirements are applied consistently and uniformly. This section would benefit from the provision of an automated database system.

Client Service Orientation - The formation of a Customer Service Department is an innovative modernization component that is not yet found in most developing country customs authorities. The fact that BURS Customs has established this department and that the manager has a clear vision, offers BURs the ability to distribute responsibility for risk management, compliance management and AEO management processes to existing departments with the understanding that they will work collaboratively in the development

and implementation of the AEO process. Since the Customer Support Department manages and oversees fines, penalties and appeals as well as clearing agent registration, this is the logical department to assume PT/AEO program management responsibilities. This would be the case even if the current department head was not the chair of the TKC AEO working group. The fact that she is and has demonstrated exceptional energy and management skill in helping to bring the TKC program to its current state of development only underscores the logic of doing so.

Procedural Readiness - Customs has an effective organizational structure that recognizes and provides for the functions necessary to develop and implement an effective, WCO compliant AEO program:

(1) The Systems Clearance and Management Inspection Department, which is now performing very basic risk management and, with appropriate staffing and capacity building, could fairly quickly rise to a level of competence necessary to support preferred trader programs;

(2) An Appeals Section that currently receives copies of all administrative penalties for the purpose of quality review that, with the proper tools, could take on the additional responsibility of evaluating levels of compliance over time;

(3) A post clearance audit department, that with proper training and risk management support will enable customs to ensure that AEOs continue to meet security and compliance standards; and

(4) An institutionalized client service orientation as evidenced by its Customer Support Department that could readily assume oversight responsibility for preferred trader programs.

Of these, all have been discussed except post clearance audit. The current organizational structuring and application of this function have resulted in duplicative efforts at the head office and regional offices further compounded by a lack of communications, coordination or oversight. This unnecessary duplication of effort provides a readily available source of experienced officers who could be reassigned to perform the necessary risk analysis and account manager/supply chain security functions. This, of course, warrants explanation.

The head office Post Clearance Audit department staff felt that its work is not based on risk profiles or even on an audit strategy. When asked about the ASYCUDA blue channel, the head office staff reported that this was reserved for use by the regional post clearance auditors and that the head office staff did not receive any information from them. This prompted a visit to the regional office post clearance auditors located in the same building to find out what functions they perform. Those functions were found to be so similar to the duties of the officers handling the yellow channel document reviews that the entire blue channel process and regional office post clearance audit function should be discontinued.

The regional office auditors explained that their job is to review supporting documents for technical errors. Declarations routed to the blue channel, by definition, have already been assessed and duties/collected just as if they were green channel declarations. The difference is that they are subsequently referred to the blue channel auditor. To do what? There is no information available to the regional auditors that are not available to the yellow channel document review officers. For example, if a regional auditor is suspicious of undervaluation, he or she has no additional documentation available to assess the correct value in accordance with WTO ACV guidelines.

None of those interviewed could provide an accurate number of how many post clearance auditors are assigned to the various field offices but it appears to be somewhere between 15 and 20. At the most, customs should have no more than 2 post clearance auditors stationed at each regional office. These officers should have the educational background in accounting necessary to effectively undertake a true audit process. Their qualifications should be exactly the same as the post clearance officers in the head office and they should be under the functional guidance of the head office post clearance audit department supervisor. They would serve as a supportive arm of that department.

A post clearance audit should only be conducted at the declarant's or the importer's place of business where the auditor has access to additional business records associated with the declaration: purchase orders, contracts, insurance documents, correspondence between the buyer and seller, etc. The regional auditors do not have access to any of this information and therefore can do no more effective a job than their counterparts who are examining yellow channel declarations and attached documents. Instead of being routed to the blue channel, all declarations requiring a document review should be routed to the yellow channel. The blue channel process can then be redirected to new purpose.

Instead of national criteria randomly directing 15% of all import declarations to the blue channel for this duplicative document review, the blue channel can now be reserved to route declarations to the central post clearance audit unit. This would include all declarations filed by AEO declarants as well as declarations filed by non AEO declarants in which the risk management department has created a risk profile and examination criteria. These would most often relate to declarations in which the risk management team had identified a high potential for undervaluation.

One other item was brought to the attention of the consultant that needs to be corrected. The current practice of granting some declarants the privilege of self-assessing their declarations based on a general consensus of regional managers needs to be stopped. Self assessment is a privilege that should only be granted to preferred traders or AEOs who have been thoroughly vetted by the Customer Support Department, the Systems Clearance and Management Information Department's risk management unit and formally authorized by the Commissioner. There is no indication that the current practice has been tainted by any unethical practices but the possibility that this could happen is so strong as to warrant its immediate termination. As described, any regional manager can recommend that a declarant be given self assessment privileges. Those recommendations are circulated among the other regional managers and if no one disagrees, then the privilege is granted. This of course assumes that every regional manager has a sufficient amount of experience with the proposed declarant and there is no guarantee of that nor is there any guarantee of impartiality.

The Customs Regions and Compliance Department appears ready to implement the operational procedures necessary at Botswana's borders and other clearance facilities in order to deliver the benefits promised to AEOs. It is suggested that all three TKC countries, with the assistance of the Southern Africa Trade Hub should identify their primary paired border crossings and jointly conduct time measurement studies to establish baselines. This will help to determine the extent to which facilitation issues must be addressed at each location and will also be useful in the ongoing project of establishing client service standards.

5.2 RECOMMENDATIONS FOR BURS

The following recommendations are specific to BURS and supplement the recommendations provided above:

Risk Management

1. The current risk management and intelligence unit should be re-titled to more accurately reflect its <u>intelligence collection and analysis</u> function. The position descriptions of the officers staffing that section should be modified to reflect their anti-smuggling focus.

2. *Five highly experienced, intuitive officers now performing blue channel reviews at regional offices should be converted to risk analysts and reassigned to the Systems Clearance and Management Information Department to upgrade and manage a formal risk management process in the cargo selectivity context. Note: Attachment 1 provides suggested revisions to the current risk and intelligence position description, a sample position description for a cargo selectivity risk analyst, and a proposed position description for a new specialization that may become necessary when the authorized economic operator program is fully operational.*

Compliance Management

3. To facilitate the Fines, Penalties and Appeals Department's ability to evaluate compliance of AEO applicants over time and to provide important management information, BURS Information Technology Department should be tasked with developing an automated penalty tracking system. This system should be shared with NCE.

Organizational Structure Refinement

4. The functions of two elements of the current organizational structure of the Customs Division would be clarified if their titles more accurately reflected the nature and range of duties performed: (a) the current risk unit located within the Enforcement Department is actually functioning as an intelligence collection and analysis Unit and (b) the current Appeals Unit located within the Customer Service Department is now functioning as an administrative penalties and appeals unit. While this may seem a minor issue, both suggestions are directly related to the preferred trader process.

Procedural Readiness

5. The current blue channel desk audit process should be phased out and the blue channel redirected to identifying AEO declarations and questionable value declarations to the head office Post Clearance Audit unit.

6. The current practice of granting the privilege of self-assessment to companies or individuals based on a general consensus of regional managers should be terminated. This process should be reserved for future use by PT/AEOs.

7. Once PT/AEO program goals and potential pilot participants have been identified, BURS should engage the Customs Business Forum in an active collaboration role.

6. SOUTH AFRICA REVENUE SERVICE (SARS) – FINDINGS AND RECOMMENDATIONS

6.1 FINDINGS

Risk Management - SARS utilizes a selectivity module known as the Integrated Customs Risk Analysis System (ICRAS) which provides risk analysis and profiling capabilities for imports and exports from a transactional and behavioral context. ICRAS offers a three phase targeting process. The first phase provides tactical targeting based on specific information developed by SARS risk analysts or provided to them by others. If a declaration hits against a Phase 1 risk profile, it is directed to the yellow or red channel as appropriate. If a declaration clears Phase 1 without hitting against specific risk profiles, it then moves to Phase 2 which initially performed a "generic" check against importer codes, tariff codes, clearing agent codes, country of origin codes and Customs Procedure Codes. This has subsequently been improved to include first time or infrequent importers, routing, relationships, and source countries to better address safety and security issues as well as fiscal and trade issues. Phase 2 provides a weighted scoring of each of these elements that provides a total score ranging from eight to 24. In Phase 2, the system is capable of searching its knowledge base to identify low frequency importers, unusual routings, questionable relationships, etc. Depending on staffing, facility capacity, etc. local managers are able to establish on a daily basis the range of scores that they will treat as low, medium and high risk. If a declaration clears both Phases 1 and 2 and is not selected for a specific customs control, it is then subjected to a Phase 3 random selection.

Compliance Management - SARS has historically had an accredited trader program but felt that there were significant weaknesses in the manner in which it had been implemented. Currently, a major initiative is under way to modernize SARS business systems including the accreditation of specific registrants and licensee segments supported by a transparent policy. SARS new scheme will initially be applicable to importers and exporters who are able to ddemonstrate historical compliance and ability to manage risk. SARS will validate the client's systems: risks and record of compliance, accounting, record keeping, computer system, staff skills, financial resources and will provide benefits and differentiated services to clients that demonstrate compliance. SARS will provide specific benefits such as account management, fewer interventions, lower bond surety, and periodic declarations

Client Service Orientation - SARS is currently engaged with its business clientele to identify sector-specific benefits. SARS approach is to replace the Accredited Trader designation with two separate compliance based certifications: a lower level Preferred Trader designation and a higher level AEO designation. The AEO must meet the highest security and compliance criteria. In order to qualify for the AEO partnership benefits, a client must meet stringent WCO compatible compliance and security standards. SARS policy is aligned to WCO SAFE Framework standards. Partnership requirements are being established for each supply chain type and SARS is working with its clients to develop tailored benefits and differentiated services. Benefits will increase according to the level of compliance certification (licensed trader, preferred trader, AEO). Accreditation status will be specific for client types: e.g. importers and exporters. The preferred trader program will focus on accuracy/validity of declared trade entering, leaving and transiting South Africa and facilitate movement through customs. The AEO program will focus on security and integrity of South Africa's trade entering the supply chain in order to establish South Africa's international reputation as a trusted trade partner.

Procedural Readiness - SARS is currently working on a radical rewrite of its customs code to make it fully compliant with the Revised Kyoto Convention and is in the process of

replacing its CAPE system with a new SARS Integrated System that will be in line with international best practices.

SARS initial focus will be on validating those operators that represent largest flow of goods in key sectors to and from key trade partners. SARS seeks a suitable ratio allowing for largest feasible transaction volume, largest trade value and most manageable number of valid operators. It is not desirable to be overwhelmed by applications at start of process, so specific and strict inclusion criteria are required. SARS will ensure that the AEO Program is implemented and expands in a learning environment, rather than a demanding one.

Capacity Building - SARS has offered its TKC counterparts capacity building assistance from its Customs Academy.

5.2 RECOMMENDATIONS

1. BURS and NCE should view SARS progress to date as a model for their programs. While the BURS and NCE programs will no doubt require adaptation and modification, the basics can and should be quite similar. In order to facilitate this process, SARS should provide two designated officers to serve as permanent members of the TKC AEO Working Group and ensure that these officers attend all meetings and provide necessary liaison, advice and assistance to their counterparts.

2. SARS should establish a practice of keeping NCE and BURS appraised of progress developing PT/AEO instructions, forms and processes, eligibility requirements and sector-specific benefits by routinely providing the working group in each country with copies of those work products that would be of value to the working group members as they go forward in the development of their systems. This material will establish an invaluable baseline and ensure that all three customs administrations are working on parallel tracks.

7. ISSUES

Risk and Compliance Management

Before addressing the findings regarding the three customs risk management capabilities, the following definitions are offered to properly set the stage:

- **Risk** – in the customs context, is defined as the potential for non-compliance with customs laws. Risk is a continuum that ranges from acceptable to catastrophic.

- **Analysis** – is defined as the separation of an intellectual or material whole into its constituent parts for individual study, the study of such constituent parts and their interrelationships in making up a whole, and a spoken or written presentation of such study.

- **Risk Analysis** – again in the customs context, is the systematic use of information available to customs to determine the likelihood of defined risks occurring and the magnitude of the consequences should they occurs.

- **Risk Management –** adds the determination of how customs can best manage specific risks by designing and implementing specific controls of the appropriate nature and intensity and then continuously monitoring the results of those controls and modifying them as warranted. While risk management may be applied to almost any customs

functional area, for the purposes of implementing a PT/AEO program the context is the ability to apply risk management processes to establish selective controls and measure commercial compliance.

Risk analysts evaluate data in their declaration processing system's database looking for patterns, anomalies and other indications of non-compliant behavior on the part of declaration filers. They also actively seek input from officers in the field regarding unusual or suspicious activities on the part of various importers or importations. In the later case, the analysts evaluate the field input by analyzing historical data contained in the database. In both cases, the analysts:

- Define the potential risk in clear and concise terms;
- Analyze all available information and, if necessary, gather additional information necessary to their analysis. (This might include liaison with other agencies.);
- Evaluate the data they have gathered to assess the level of risk ranging from acceptable to catastrophic risk;
- Determine the most efficient manner of addressing the risk in terms of control type and intensity *(for example, 10% of declarations are routed to yellow channel, or 30% of declarations are routed to yellow channel and 10% are routed to red channel, or any other distribution of controls to any of the various channels as deemed appropriate.);*
- Develop the risk-based examination criterion to be entered into MODSEL *(including all applicable risk indicators: if importer A imports goods listed in tariff item X from country Y, then 10% of declarations will be physically examined, 30% will receive detailed document reviews and 10% will be referred for post clearance audit).* AND provide specific examination instructions telling the examining officers what they are too look for:
- Estimate the anticipated impact on workload. Examination criteria cannot order more interventions than the available staff at any given cargo clearance facility can perform at the expected quality level;
- Monitor the results of the new criteria no less than monthly to determine if it has been productive. If not, the criteria must be modified or deleted;
- Provide management with monthly reports on the number of criteria developed that month, the number of criteria remaining in the system from previous months, the extent to which each has produced cost-effective results and the corrective actions taken to correct or eliminate non-productive criteria; and
- Document the entire process.

The process described above is the process normally used to identify potential non-compliance; i.e., "looking for the bad guys". This is where a novice risk management unit normally starts. A Risk Management Unit will also be responsible for identifying compliant traders and those traders who, with customs assistance, can likely be convinced to raise their level of compliance. This can be characterized as "looking for the good guys". Generally speaking, most customs administrations that are now embarked on the implementation of an AEO program in place already have a functioning risk management department equipped with the necessary skills to add the compliance element to their list of ongoing responsibilities. While SARS has the necessary risk management processes in place, BURS and NCE do not.

SARS utilizes a selectivity module known as ICRAS, which provides risk analysis and profiling capabilities for imports and exports from a transactional and behavioral context. ICRAS offers a three phase targeting process. The first phase provides tactical targeting

based on specific information developed by SARS risk analysts or provided to them by others. If a declaration hits against a Phase 1 risk profile, it is directed to the yellow or red channel as appropriate. If a declaration clears Phase 1 without hitting against specific risk criteria, it then moves to Phase 2 which performs a "generic" check against importer codes, tariff codes, clearing agent codes, country of origin codes and Customs Procedure Codes, previous importer activity, routing, relationships, and source countries to better address safety and security issues as well as fiscal and trade issues. Phase 2 provides a weighted scoring of each of these elements that provides a total score ranging from eight to 24. In Phase 2, the system is capable of searching its knowledge base to identify low frequency importers, unusual routings, questionable relationships, etc. If a transaction clears both Phase 1 and Phase 2, it is then subject to Phase 3; a simple random selection process.

BURS and NCE both utilize the ASYCUDA++ processing system. ASYCUDA has a less sophisticated, but basically similar selectivity module called MODSEL. MODSEL provides four customs control channels, green (designed for system checks only), yellow (document review), red (physical examination) and blue (post clearance audit). MODSEL requires the same analytical skills and procedures that are employed to manage the ICRAS system: analysts define the risk, gather the necessary data and analyze the risk, evaluate the risk to identify and apply the most appropriate type and intensity of customs control to address it, then periodically monitor the effectiveness of the controls over time, and revise the criteria as necessary. The major differences are (1) that the ICRAS system is capable of self-analysis of historical data whereas MODSEL requires the analyst to do so and (2) MODSEL is a two phase system that allows tactical targeting and random examinations but does not incorporate weighted scoring.

Neither BURS nor NCE has adequate risk management capacity at this time to support PT/AEO programs. If this were a contest, it would be a draw. BURS demonstrated a better understanding of the risk management process but have not provided the necessary staffing to focus on the cargo-selectivity context. NCE is awaiting approval of a new organizational structure to create central office and field office risk management components but does not yet appear to have a clear understanding of the risk management procedures that will be employed by the central office unit.

All three authorities recognize the importance of post clearance audit based controls to the proper functioning and monitoring of PT/AEO programs and have established units for that purpose. SARS expressed its desire to improve its audit capabilities to "world-class" level. The BURS audit function is bifurcated, as will be described later in this report, and is not risk driven. The NCE unit was not interviewed but it cannot be risk-driven at this point in the absence of a risk management process. Based on the expected differences in levels of experience, as soon as BURS and NCE have resolved their risk management deficiencies, they should immediately address building the capacity of their audit departments as an integrated part of their risk process.

Identification of Potential PT/AEO Participants

Neither BURS nor NCE has:

- Identified potential participants in their anticipated PT/AEO programs;
- Identified strategic or primary focus industries that they believe should be given priority consideration to participate in the PT/AEO programs;

- Identified, with statistical certainty, their highest volume importers, exporters, clearing agents or transporters; or

- Identified with statistical certainty, those commodities which comprise the highest import or export volumes.

This is an immediate "*Red Flag*" that must be given immediate and overriding priority. The data is readily available in ASYCUDA and is easily analyzed. This should be the primary topic of discussion at the first meeting of the TKC AEO working group following the March 3 to 4 meeting.

Any Customs authority must have the answers to the above questions in hand before it puts pen to paper to begin the design of a PT or AEO program. Without those answers, it is impossible to determine what direction a PT/AEO program should take. What are the concerns individually and as a whole for the TKC customs authorities? Is the primary concern expediting the movement of goods among the three countries and reducing transport delays and costs? If so, a preferred trader program is probably sufficient. On the other hand, is the primary concern making a country's exports more competitive outside of Africa and ensuring potential buyers that African suppliers meet international supply chain security standards or is the primary concern protecting the nation's homeland from terrorist attacks or other societal dangers introduced via the international supply chain; i.e., weapons of mass destruction or other dangerous contraband concealed in inbound containers? In that case, an AEO program is the answer, but should that program focus on imports or on exports? Each customs authority must have established a set of goals other than the fact that they have each committed to the WCO to establish AEO programs. To put it in the simplest terms, each customs authority must be able to clearly answer the question of "Why are we doing this and what's in it for us?"

Preferred trader and AEO programs are intended to be voluntary partnerships. Ultimately, these programs will be opened to a wide variety of business segments and to smaller companies. In the beginning, however, as each customs authority begins to bring its programs online, it should have targeted a specific set of primary focus industries; i.e., those industries that have the greatest economic impact on the economy. The customs authority should have also identified a small group of companies that collectively are responsible for a disproportionately large percentage of the nation's total imports or exports. These are the companies that should be approached to participate in the initial pilot. Their participation is voluntary, of course, but that does not preclude customs identifying them and extending an invitation, encouragement and assistance.

The forthcoming USAID Customs Modernization Handbook on AEO Programs offers the following commentary*: "Some AEO programs focus on imports, others on exports, depending on national priorities. Governments must not only guard against terrorist attacks on their own soil through the import supply chain, but they must also safeguard their competitiveness in the international market by protecting export markets and brand names. Ideally, an AEO program covers both imports and exports, but customs administrations should not try to do too much too soon. If a country considers its primary threat an attack on its homeland (e.g., United States and Canada), it will probably address imports first. But if the primary threat is to export markets (e.g., Jordan, New Zealand), the country would be wise to focus first on export security. Either decision does not preclude the development of a broader program covering both imports and exports. The key issue is*

where to start." The final draft of this handbook was provided to the members of the TKC AEO working group.

Before going any further, each delegation must identify its primary focus industries, its highest volume companies, its highest volume commodities and the initial focus that their program should take.

Establishing and Measuring Compliance Standards

After customs has established the minimum compliance standards that must be met for a company to participate in either a preferred trader or AEO program, how do customs determine whether or not the applicant meets the requirement? Do customs rely on the applicant's word or does it review its own records? Obviously, the second option is the correct response. This assumes that customs has a centralized filing system or database on administrative penalties, seizures, valuation uplifts and other enforcement or corrective actions. While SARS and BURS have a centralized repository for this information, NCE does not. From purely a quality control perspective, copies of every administrative penalty should be automatically forwarded to a designated head office unit for review to determine the validity, appropriateness and compliance with instructions of each such action. Actions not meeting those standards are clear indicators of sloppy workmanship, inattention to regulations or guidelines or integrity lapses.

From a compliance measurement perspective, the risk management unit should have unfettered access to all administrative penalty actions so that they can conduct the required historical compliance assessment of each applicant. As the risk management unit undertakes a compliance review of each AEO applicant, it will have to review every penalty action, seizure, valuation uplift and other significant modification of an original declaration. In conducting that review, the risk management unit will have to assess the significance of each case. Was it clearly the result of fraudulent intent, was it merely a clerical error, was it an honest difference in interpretation of a tariff description or regulation, or was it something in between?

Honest mistakes can be made as can careless mistakes. Not every mistake is an indicator of intent to deceive customs or to skirt some legal requirement. This risk management unit will have to exercise a reasonable review of all such actions. Obviously, before it can do so, it has to have ready access to them without the necessity of driving to the various regional offices. Further, the risk management unit will have to track all new penalty and similar actions in order to maintain a current overview on compliant and noncompliant traders as well as to quickly determine when a compliance improvement plan should be initiated.

The forthcoming USAID Customs Modernization Handbook on AEO Programs offers the following commentary*: "To participate in an AEO program, a potential industry partner must demonstrate a record of compliance over a certain period of time. A critical and often difficult question the AEO Working Group must consider is whether Customs has sufficient, reliable data to determine past compliance levels.*

The customs project implementation team works with the customs risk management department to analyze declarations received in the preceding 12 months and identifies the importers, exporters, transporters, and brokers with the most declarations, the highest customs value, and greatest revenue contribution. Because this information is confidential,

participation in this review has to be limited to customs officers who are constrained from revealing this information to others. The team also reviews declaration amendments and penalty cases to determine whether a past level of compliance can be reliably determined for those companies.

The team reviews declaration processing at clearance centers and all penalty cases issued for undervaluation during the preceding 12 months to determine if procedures have inadvertently created a lack of documented amendments, inappropriately identified legitimate customs valuation disagreements as violations, or encouraged undervaluation as a negotiating ploy.

Accurately gauging past compliance may not be possible, however, because of a lack of reliable data. Even if Customs cannot accurately ascertain past compliance, an appropriate record of compliance must be defined. The AEO Working Group may choose to define this record differently for past and future compliance. This recognizes that customs compliance tracking measures may not have been adequate before the implementation of the AEO program and does not unfairly penalize traders for this inadequacy. Exhibit 2-1 describes a scenario in which the issue of traders' compliance is clouded by local valuation practices.

If past or current customs practices have contributed to less-than-satisfactory compliance, setting the initial AEO compliance standard will be challenging. Setting it too high may be counterproductive. If customs cannot accurately analyze compliance levels on the basis of its records, what is the recourse? Absent a reliably documented pattern of an AEO applicant's willful misconduct, customs must rely on the applicant's willingness and demonstrated ability to conform to AEO requirements in the future.

In any case, customs must correct any procedure that contributes to a lack of compliance and begin documenting and tracking amendments to declarations accurately, if it is not already doing so. Customs must record all violations (of whatever type), and both positive and negative examination findings in a manner that is accurately attributable to the economic operator involved. Customs, if it has not already done so, also must pursue refinements in post clearance audit, risk managements programs, Information Technology (IT) solutions, and integrity programs"

A customs authority must have a central repository of administrative penalties. The department to which this function is assigned would be responsible for quality control reviews of every administrative penalty as well as discerning patterns of both violations by traders and lack of uniformity by customs offices. Both BURS and NCE would greatly benefit from automating this process. If the entire administrative penalty process cannot be automated, then each customs authority should at a minimum have an automated database to assist them in monitoring uniformity, patterns of non-compliance and historical levels of compliance by individual companies.

Capacity Building

The TKC countries are fortunate that they have a competent and cooperative source of capacity building skills and close at hand. Capacity building is needed in the following technical specialties before BURS and NCE can go forward with the implementation of their PT/AEO programs:

- Basic Risk Management Theory and Practice (a minimum of two weeks of classroom training for 5-6 officers from Botswana and a like number from Namibia with heavy reliance on practical exercises and a visit to the SARS targeting center);
- Risk Management On-the-Job Training (a minimum of one week working visit to each country by SARS risk management expert to work assist new BURS and NCE risk management teams develop their initial risk profiles and to establish systematic cost-effectiveness monitoring of examination criteria); and
- Post Clearance Audit On-the-Job Training – This could be accomplished in one of two ways. First, by having a SARS trainer travel to Botswana and Namibia and guide lead an actual compliance audit or by having one or two auditors from each country visit SARS and participate in an audit in progress.

Regional Program Draft

Prior to this assessment, the TKC Secretariat's TKC Regional AEO Program guidelines assumed, through the 4th draft, that a Regional AEO program could be brought online in a fairly short timeframe. While an admirable and worthwhile goal, the differences in the extent to which each of the three countries has the internal capacity to do so suggests that a somewhat different approach must be considered. As a result of this assessment, the draft has been revised recognizing that:

- SARS has committed a significant resource development into their PT/AEO program and must go forward with it according to their schedule; and

- BURS and NCE will need sufficient time to build their in-house risk management capacity to the level necessary to support PT/AEO programs.

The 5th draft takes a somewhat different approach, committing:

- BURS and NCE to first implement trader programs based on and adapted from the SARS model and then to proceed to the next step of developing and implementing AEO programs based on the shared experience of SARS and the WCO SAFE Framework of Standards; and

- The TKC countries to develop mutual coordination and communications channels necessary to permit each country to grant mutual recognition and reciprocity privileges to PT and AEO program participants.

8. RECOMMENDATIONS

1. If the TKC Regional Policy Framework is approved by the three customs authorities, the process can move from the concept design phase to the action phase. This will require the formation of a full-time implementation team in each customs administration. Since SARS, already has a full time team in place, it then falls to BURS and NCE to do likewise.

2. The immediate tasking at the conclusion of the March 3 to 4 TKC Working Group meeting should be for BURS and NCE team members to:
   - Work with their ASYCUDA departments to identify the highest volume importers, exporters, clearing agents, and transport companies (both by number of transaction and by fiscal impact);

- Work with their ASYCUDA departments and their Classification and Valuation departments to identify those commodities that comprise the greatest volume of imports and exports;
- Based on these two analyses, identify those industries that should be identified as primary focus industries and those specific companies that either due to their inclusion in a primary focus industry or their high volume of activity should be considered as prime candidates for the preferred trader/AEO program pilot;
- Propose whether their AEO program should initially focus on imports or exports or whether it should include both; and
- Reduce these proposals to writing and obtain management's approval prior to the next meeting.

3. The Capacity Building Departments of each customs authority should coordinate the training support listed in the Capacity Building Section above (Basic Risk Management Theory and Practice, Risk Management On-the-Job Training, and Post Clearance Audit On-the-Job Training). Training should commence at the earliest possible time.

4. The TKC Secretariat should assist in organizing a three day working visit by the head of the BURS Customer Support Department and the Deputy Director of NCE for Trade Facilitation, Procedures and Compliance to review and observe SARS schemes for centralized administrative penalty quality control and compliance measurement.

5. The working group should identify a means of developing or obtaining an automated database of administrative penalties that would enable BURS and NCE central offices to effectively track and measure the compliance history of PT/AOE applicant companies.

6. Recognizing that BURS and NCE will require time to develop the necessary risk management and compliance measurement expertise to bring them up to the SARS baseline, the TKC AEO working group should adopt the strategy proposed in the 5th draft of the regional guidelines, whereby BURS and NCE begin working with private sector counterparts to develop eligibility requirements and sector-specific benefits for the first level certification: Preferred Trader. This process will benefit from similar discussions already held by SARS and its clients. SARS should designate a primary point of contact both within customs and within the private sector for liaison purposes as Botswana and Namibia develop their programs. Strong consideration should be given to identifying related candidates (Mercedes South Africa, Mercedes Botswana, Mercedes Namibia, or a similar relationship in other primary focus industries).

7. As BURS and NCE identify their initial PT pilot participants, they should request SARS assistance in conducting the first application validations.

8. As soon as BURS and NCE have implemented their PT programs, the three customs administrations should review the three programs and take whatever steps necessary to enable each administration to grant mutual recognition to the others' programs.

9. Once the preferred trader program has achieved regional (mutual recognition) status, the same process can be followed to establish the second level AEO certification and mutual recognition.

10. Time measurement studies should be conducted at set of paired border stations where significant commercial transport activity is encountered. The Trade Hub can provide assistance in coordinating and conducting initial time measurements studies but each customs administration should adopt monthly time measurement studies to ensure that client service standards are being met. This undertaking should be tied to the parallel TKC Secretariat initiative to develop and publish client service standards.

ANNEXES:

Annex 1 – TKC Authorized Economic Operator Initiative – POLICY FRAMEWORK
Annex 2 – TKC AEO Initial Work Plan
Annex 3 – List of Contacts

ANNEX 1: TKC AUTHORIZED ECONOMIC OPERATOR INITIATIVE – POLICY FRAMEWORK

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**Regional Preferred Trader/Authorized Economic Operator Initiative
POLICY FRAMEWORK**

Background

Increases in global trade coupled with advancements in technology pose multiple challenges and will continue to pose more serious challenges to customs authorities and other agencies involved in the movement of international trade. This trend is expected to grow in leaps and bounds over time. It is with this in mind that the Memorandum of Understanding (MOU) for the Development and Management of the Trans Kalahari Corridor (TKC) together with instruments such as the World Customs Organization (WCO) Revised Kyoto Convention and Framework of Standards to Secure and Facilitate Global Trade emphasize measures to reduce risks associated with international trade and promote the efficient and effective utilization of limited resources.

The TKC MOU emphasizes facilitating the movement of goods and persons through simplification & harmonisation of procedures; joint controls to reduce transport costs and transit times through strategic partnerships with the private sector (article 1.5). Similarly, the WCO Framework of Standards provides Customs-to-Customs and Customs-to-private sector pillars designed to intensify security to the global supply chain and further improve compliance and facilitation.

The Revised Kyoto Convention requires customs authorities to integrate principles of risk management into all Customs controls and programmes to ensure compliant business entities are facilitated with minimum delays through ports of entry. Risk-based controls focus resources on high risk individuals, companies and transactions and minimize Customs and other agency interventions on those that are compliant and low risk. Risk-based controls encourage voluntary compliance and reward compliant clients through simplified procedures, reduced inspections and reduced delays and reduced cost of doing business.

The TKC Customs authorities have determined that their needs and the needs of their business clients can best be met through the implementation of a two stage program. The first stage, which will be based on defined compliance standards, will primarily serve those traders whose import and export activity is primarily regional, i.e. within the TKC countries. This preferred trader program hopefully will, at some later date be expanded throughout the wider Southern African Customs Union (SACU)/Southern African Development Community (SADC) membership. The second element of the TKC program is aimed at those traders who in addition to trading regionally have or aspire to develop significant trading partners outside of Africa and recognize the importance of safeguarding their competitiveness in the international market by protecting export markets and brand names and developing an international reputation as a trusted trade partner. The WCO-compliant "world-class" Authorized Economic Operator (AEO) programs will add to supply chain

security requirements to the previously established compliance requirements and will provide voluntary participants with additional tailor-made benefits.

The TKC Regional Preferred Trader (PT)/AEO initiative is derived from both past regional experiences with accredited trader programs as well as from Pillar 2 of the SAFE Framework.

Purpose

- To establish a policy framework for Trans Kalahari Regional PT/ AEO initiative.

Objectives

To describe:
- The TKC approach to a dual level certification program consisting of a compliance-based preferred trader program and a higher level, compliance and security based authorized economic operator program;
- The SAFE Framework which is the basis for this initiative;
- The voluntary nature of this public-private partnership;
- The importance of other agency participation;
- The importance of working with the private sector to develop eligibility requirements and specific benefits;
- Regional consultation, communication and coordination mechanisms;
- Regional monitoring and reporting mechanisms; and
- The "Way Forward" – an outline of a regional action plan to implement consistent PT/AEO programs in each TKC country with the ultimate goal of mutual recognition and reciprocal granting of benefits to participants.

The TKC Dual Level Trader Certification Initiative Concept

The TKC PT/AEO initiative will establish voluntary public-private mechanisms offering significant incentives to:
- Companies that primarily trade within the southern Africa region, meet defined compliance standards and wish to enter into a preferred trader partnership with defined benefits, and
- Companies that in addition to being involved in regional trade are engaged in trade with partners outside the southern Africa region meet defined compliance standards and are willing to further meet defined AEO supply chain security standards.

The TKC approach to will be for each country to independently establish two levels of certification: the first being the "preferred trader" and the second being the "authorized economic operator. TKC Customs authorities will work in close cooperation, providing mutual assistance and guidance to one another in order to ensure that eligibility requirements and defined benefits are essentially compatible. Once the three TKC countries have implemented their preferred trader programs, the next step will be to enter into mutual recognition and reciprocity arrangements for the three preferred trader programs. At that point, the next step will be to develop compatible AEO programs and suitable mutual recognition and reciprocity arrangements for the three AEO programs.

In the process of developing the preferred trader and authorized economic operator certifications, each TKC Customs authority will strive to improve its understanding of its

clients and their business practices and to work with private sector partners to create an appropriate regulatory environment and a better understanding of priorities and expectations. To achieve this, the three TKC Customs authorities commit to:

- Working closely with the various trade sectors to better understand their business practices and develop service and benefit options to meet specific needs;
- Providing dedicated trade advisory service to clients including assigning customs officers as account managers to each participating company;
- Introducing consistent certification standards with benefits;
- Introducing WCO AEO standards, providing tailor-made benefit solutions to AEO-status clients including the maximum level of simplified procedures; and
- Assisting clients to improve compliance levels.

Eligibility Requirements

For a company to achieve PT status or the higher AEO status it will be required to meet defined sector-specific eligibility requirements including an appropriate record of compliance, demonstrated systematic management and availability of commercial and transport records financial solvency, effective standard operating procedures and internal controls. Specific requirements and benefits for each level of accreditation will be developed collaboratively by the TCK Customs authorities to ensure the maximum possible compatibility while also providing for country-specific concerns.

Eligibility requirements for preferred traders and authorized economic operators will generally include:

- A compliance orientation including a high level of compliance over time;
- The ability to manage risk by implementing effective procedures and an ongoing internal control based self assessment process;
- The willingness to communicate any and all discrepancies and weaknesses identified through its internal control process to customs;
- Willingness to meet security and security training standards consistent with the SAFE Framework of Standards; and
- The willingness to communicate any suspicious activities by trade partners or service providers to customs.

In return each of the TKC Customs authorities will provide specific benefits to preferred traders and authorized economic operators in each trade sector (importers, exporters, clearance agents, transport companies). Benefits will vary depending on the accreditation status of the participant (preferred trader or authorized economic operators) and the sector or sectors in which the company is involved. Full certification as an AEO will require full compliance with the SAFE Framework Pillar 2 guidelines. Certification as a preferred trader will be the first step toward achieving AEO status and will be based on the participant's ability to meet a somewhat reduced set of standards. The AEO certification will only be given to only to those companies that voluntarily meet the highest security and compliance criteria. Both preferred traders and authorized economic operators will be assigned designated customs account managers.

SAFE Framework Standards

The SAFE Framework defines an AEO as "a party involved in the international movement of goods in whatever function that has been approved by or on behalf of a national customs authority as complying with WCO or equivalent supply chain security standards".

The Framework establishes the following six standards:

- Standard 1—Partnership. AEOs involved in the international trade supply chain engage in a self-assessment process measured against predetermined security standards and best practices to ensure that their internal policies and procedures provide adequate safeguards against the compromise of their shipments and containers until the shipments are released from customs control at destination;
- Standard 2—Security. AEOs incorporate predetermined security best practices into their existing business practices;
- Standard 3—Authorization. The customs authority, together with representatives from the trade community, design validation processes or quality accreditation procedures that offer incentives to businesses through their status as AEOs;
- Standard 4—Technology. All parties maintain cargo and container integrity by facilitating the use of modern technology;
- Standard 5—Communication. The customs authority regularly updates Customs-business partnership programmes to promote security standards and supply chain security best practices; and
- Standard 6—Facilitation. The customs authority works cooperatively with AEOs to maximize security and facilitation of the international trade supply chain originating in or moving through its Customs territory.

Voluntary Partnership Initiative

The TKC Regional PT/AEO initiative is a voluntary partnership initiative that will provide significant defined benefits to participants in return for their commitment to meet defined compliance and security standards. TKC Customs authorities will work collaboratively with the trade community to facilitate trade, improve compliance and secure regional and international supply chains. Participants will benefit in terms of simplified processes and in making them more attractive business partners. The TKC TP/AEO initiative will:

- Include mutual recognition by each customs authority of all preferred traders and AEOs certified by any of the participating country Customs authorities;
- Ensure cooperation and liaison among the participating Customs authorities in all PT/AEO policy and procedural matters through the assignment of a specified account manager in the customs authority that has granted the authorization; and
- Provide participants, regardless of the country that has certified them improved liaison in each participating country's customs authority.

Other Agency Participation

Preferred trader and AEO programmes are based on the application of risk management principles and techniques that are not limited to merely identifying high-risk actors or transactions and directing appropriate controls toward them, but also include reducing risks through the promotion of voluntary compliance. Neither cross-border movements nor cargo processing procedures are exclusively customs responsibilities. Other Government agencies are responsible for enforcing agricultural, veterinary, public safety, health and other standards related to goods and transport crossing their nation's borders. No matter how competent customs risk management techniques are, their effectiveness can be diminished by the failure to include and address these other agencies' concerns. Customs authorities must collaborate with these other agencies in the development of PT/AEO benefits and procedures in order to ensure that they understand the programme and are

encouraged to make use of the customs risk-based selectivity capacity through a single window approach.

Pilot Concept

The TKC Regional TP/AEO program will commence with a limited pilot. While it is the mutual intent of the TKC Customs authorities that the TP/AEO programs ultimately be open to a significant numbers of companies in all major trade sectors, the pilot will be restricted to importers, exporters, clearing agents and transport companies. The initial focus will be on identifying companies that represent the largest flow of goods in these key sectors with the goal of establishing a suitable ratio of the most manageable number of pilot participant companies to the largest cumulative trade volume (in terms of customs transactions and revenue implications). In the pilot phase, preferred consideration might be given to related companies in each country; for example a company that exports from one country to a related company that imports those goods in one or more of the other countries.

It is not desirable for the customs authorities to be overwhelmed by applications at start of the process, so specific and strict inclusion criteria are required. This will ensure that the PT/AEO programs can be implemented and expanded in a learning environment, rather than a demanding one. For this reason, customs authorities will identify potential pilot participants in each country. Once the strengths and weakness of the pilot implementation have been identified and necessary improvements made, the program will be opened to broader participation.

Working in Partnership to Develop National Eligibility Standards

Since the PT/AEO initiative envisions a public-private partnership, each participating customs authority commits to forming a close on-going working with relationship with representatives of the four initial trade sectors as it establishes country-specific, yet generally TKC compatible, eligibility requirements and sector specific benefits.

Further, since the PT/AEO initiative is a mutual undertaking by the customs authorities of Botswana, Namibia and South Africa, the three customs authorities will work in close cooperation and collaboration with one another to ensure that the ultimate goal of granting mutual recognition and reciprocity is achieved.

Each country may have slightly different national priorities and strategies regarding primary focus industries that will influence whether their initial orientation should emphasize imports or exports. Therefore this initiative allows each customs administration to individually formalize its specific requirements. These requirements will be generally consistent among the three countries but allow for country-specific adaptations as necessary. The SAFE Framework provides general guidelines that can be adapted to the appropriate target industries and the various trade sectors as well as providing the necessary flexibility to differentiate the eligibility requirements necessary to earn preferred trader or authorized economic operator status. They also provide the flexibility for each national customs authority to develop level-specific and sector-specific benefits. The following is a summary of Pillar 2 eligibility standards:

- **Sufficient Company information** – All applicants will be required to provide Customs with a "clear picture" of the company and its activities and should sufficiently outline this picture in respect of:
  o Company name;
  o Physical address of business;
  o Nature of business;
  o Company structure including owners and officers;
  o Date and place of registration;
  o Size of business; and
  o Primary contact person.

  Each applicant will be required to report any changes to the information provided in its initial application and accompanying documents within 30 days of such change. Additionally, on the anniversary of its accreditation, each AEO will submit a statement summarizing all changes that have been made during the preceding year or certifying that no such changes have occurred.

- **Appropriate Record of Compliance** – To enter into the PT/AEO program, all applicants must demonstrate a record of compliance over a specified period of time. The applicant must satisfy the following requirements:
  o It must not have committed any intentional or otherwise significant irregularities or breach of customs legislation for the past twelve months;
  o If the applicant has committed any intentional or otherwise significant irregularities or breach of customs legislation during the 24 months preceding this time period, it must disclose that fact and the corrective measures taken to ensure that such breach is not repeated;
  o It must not have committed any intentional or otherwise significant irregularities or breach of other agency legislation regarding import or export requirements for the same periods;
  o It must demonstrate an effective internal system of good record of self compliant checks and voluntary disclosures;
  o Owners and representatives should be conversant with customs procedures; and
  o If applicant is a previous AEO status holder, it shall disclose his previous compliance record, reasons for such deregistration, and if the deregistration was based on an act of noncompliance, he shall disclose the steps taken to ensure that such act not be repeated.

- **Management of Commercial and Transport records** – All applicants must demonstrate that they have a satisfactory system of managing commercial and transport record to satisfy customs requirements and concerns. An applicant must demonstrate that it:
  o Understands the legal requirements for recordkeeping, including the nature of the records to be maintained and the length of time that records must be kept;
  o Has procedures in place to explain the recordkeeping requirements to employees preparing, maintaining, and producing the records;
  o Has security measures to protect records from loss or unauthorized access;
  o Has procedures in place to prepare and maintain required records and to produce the records for customs, including documents relating to imports and exports, powers of attorney, and licenses;

- o Will provide Customs ease of access to company records including results on audits by qualified auditors and access to automated financial, inventory and other Customs-related records; and
- o Has procedures in place to notify customs of variances from or violations of the recordkeeping requirements as well as procedures to take corrective action when notified by customs of violations or problems involving recordkeeping.

It will be the applicant's responsibility to demonstrate that it has a business recordkeeping system that satisfies the standards. The applicant meets this burden of proof by documenting its records management system in its application, subject to customs validation.

- **Financial Solvency** – Customs and the applicant share the burden of establishing to customs' satisfaction that the applicant meets reasonable financial viability standards. Customs reviews the applicant's past performance in meeting its financial obligations. The applicant certifies in the application process that it meets any the following additional financial solvency standards:
  - o Financial viability evidenced from annual accounts;
  - o Past history in meeting financial obligations to Customs;
  - o Demonstrated ability of the company to pay legal debts;
  - o Credit rating; and
  - o Financial standing to meet the type and size of business.

- **Safety and Security** –The goal of the security standards is the implementation of meaningful Customs-specific security enhancement protocol. In this context "meaningful" calls for an approach that takes into consideration that what is reasonable for one company may not be reasonable for another.

  Applicants for either the preferred trader or AEO accreditation will be required to meet defined but not necessarily identical safety and security standards. Applicants desiring full AEO status will be required to meet a higher level of safety and security standard. Within each accreditation level, customs will define and apply security standards in a reasonable manner. Applicants that have large facilities or a large fleet of vehicles and a correspondingly large number of personnel require more sophisticated security systems than companies. This is entirely consistent with SAFE Framework guidelines. Based on the size and complexity of the applicant's operations and facilities, it must reasonably meet the safety and security requirements including:
  - o Internal controls that embody safety and security procedure;
  - o Security in relation to external boundary of premises;
  - o Employees issued with identification cards;
  - o Undertaking routine procedures to ensure and safeguard integrity of cargo;
  - o Administrative procedures on handling of cargo are maintained;
  - o Ownership & maintenance of cargo units;
  - o Sealing and tracking of cargo;
  - o Imposing entry restrictions to cargo areas;
  - o Supervision of loading and offloading of cargo;
  - o Imposing security requirements on partners;
  - o Contractual agreements should contain elements of safety and security, e.g. employment policy to include security checks on employees; and

o   Presence of security awareness programmes.

The three customs administrations, working in collaboration will define the specific requirements for preferred traders and authorized economic operators.

- **Training** – The applicant must:
  o   Agree to working with customs to educate its personnel, trading partners and other external stakeholders on the risks associated with the movement of goods in the international trade supply chain;
  o   Periodically train its employees to recognize potential internal threats to security and preventing unauthorized access to secure premises, goods, vehicles, automated systems, seals, records, etc.;
  o   Periodically train its employees on customs procedures, compliance goals and internal control processes;
  o   Familiarize customs with relevant internal information and security systems and processes;
  o   Make employees aware of the procedures for reporting suspicious incidents;
  o   Make employees aware of the roles of the Southern African Global Competitiveness Hub and the Trans Kalahari Corridor Management Committee of the Trans Kalahari Corridor Secretariat; and
  o   Keep adequate records of educational methods, guidance provided, and training.

Different training requirements will be established for the regionally-oriented preferred trader accreditation and the extra-regional oriented authorized economic operator accreditation.

The Application Process

While each of the TKC countries will have country-specific application requirements, the process will generally follow this model:
- Applicant pre-assessment – The first step in applying for AEO certification is to complete an application form, conduct a compliance self-assessment based on the established criteria set forth in the self-assessment form and prepare a security profile.
- Application Review **–** Upon receipt of an application, the Regional/Branch office shall acknowledge receipt in writing, specifying and providing contact information for the applicant's primary Customs contact.
- Application Review Meeting – After vetting the application, self assessment and security profile, customs will schedule a meeting with the applicant at the company premises at a mutually agreeable time. During this meeting, the customs validation team and the applicant's primary liaison officer and other staff will review, observe and validate information provided in the application and supporting documents. If any problems are noted, the will be discussed and the applicant will be given reasonable time to correct them. Customs will assist in developing improvement plan if requested.
- Approval and Accreditation – Customs will approve or disapprove the application. If the application is denied, customs will advise the applicant of the reason for the denial and of his right to appeal.

Working in Partnership to Develop Sector-Specific Benefits

While sector-specific benefits will be defined through collaboration within each county's public-private working group and each customs authority's PT/AEO working group, the following list provides those benefits most often associated with these programs:

- Simplified/expedited procedures;
  o "Green Lane" priority treatment at border crossings,
  o Electronic submission of declaration without any supporting documents,
  o Electronic clearance self-assessment,
  o Priority processing and release of cargo, and
  o Pre-arrival provisional release.

- Trusted partnership approach;
  o Customs Account Manager as primary point of contact in country where located,
  o Customs liaison officers in other countries, and
  o Dedicated/designated AEO user counters.

- Predictability, reduced delays and reduced costs;
  o Post-arrival clearance audit based controls,
  o Nominal bonds,
  o Monthly summary declaration and duty payment for all goods imported the previous month,
  o Direct delivery to importer's premises without having to route goods to Customs clearance office,
  o Reduced inspections, and
  o Almost immediate access to goods.

This general list will be further developed to identify sector-specific and accreditation-level specific benefits.

Consultation, Cooperation and Communication

- **Contact Information** – Each customs authority will provide each company which it has approved as a preferred trader or as an AEO with a designated point of contact, an "Account Manager". Additionally, each customs authority will make available to all participants approved by any of the member state customs authorities contact information for liaison officers in other TKC countries. Similarly, each preferred trader or AEO will designate and publish to all participating customs authority a management official designated as the primary contact for all private sector participants on other customs matters.

- **Suspicious Activitie*s*** – Both customs and PT/AEOs must establish specific procedures and mechanisms to identify and report incidents, suspected customs offenses, suspicious or unaccounted-for cargo, and any other risk associated with the movement of goods in the international supply chain. Each participant company will be required notify customs of any unusual or suspicious cargo documentation or other abnormality and to notify customs and other relevant authorities in a timely fashion when employees discover illegal, suspicious, or unaccounted-for cargo.

- **Deficiencies or Errors** – Customs and PT/AEOs must also establish procedures to voluntarily disclose to customs any specific errors or business process deficiencies discovered through the internal control process.

- **Revised Customs Procedures** – Customs will establish procedures to provide PT/AEOs with timely advance notification of any changes to current requirements or procedures that will affect them.

- **Regional Communications Plan and Periodic Consultative Meetings** – The Southern African Global Competitiveness Hub and the Trans Kalahari Corridor Management Committee of the TKC Secretariat will assist the participating customs authorities:
  o Coordinate regular public-private consultations on issues of mutual interest; and
  o Develop a regional communication plan to guide and encourage effective communication, safeguard the integrity of information, etc.

Capacity Building

TKC member customs authorities will establish liaison to support each other in establishing comparable risk management, supply chain security and post clearance audits capabilities within each customs authority.

Monitoring and Review Mechanisms

- **Annual Compliance Review –** The certifying customs authority and each preferred trader or AEO will jointly assess the level of compliance once a year. Other agencies participating in a single window approach may participate in these reviews when the participant's has significant business activity that falls under their purview. Based on the results of this compliance review, customs specialists will be made available to participants to assist in correcting any deficiencies noted. The primary emphasis on annual compliance assessments is not to identify and prosecute unintentional errors but to promote voluntary compliance and to identify and correct procedural weaknesses. Working together in this manner, customs, other border agencies, preferred traders and AEOs should ensure continuous identification of new measures to enhance compliance and security.

- **Quarterly Reports** – Each participating customs authority will conduct a quarterly review and publish a quarterly report as the current status, efficiency indicators, successes and identified areas where improvement is warranted. This report will include invited comments from all preferred traders and AEO's within each authority's area of responsibility.

- **Annual Regional Assessment** – Annually, each participating customs authority, the Trans Kalahari Corridor Management Committee and the Southern African Global Competitiveness Hub (or a mutually agreed upon successor project) will conduct a regional assessment to ensure that the provisions of this MOU have been uniformly, fairly, and efficiently administered and to obtain feedback from all preferred traders and AEO's as to their concerns and recommendations for improvement.

- **Role of TKC Secretariat** – The TKC Secretariat functions as the primary facilitator for effective communications, coordination and monitoring of the TKC Regional PT/AEO initiative. As such, the TKC Secretariat is authorized to communicate directly with each participating customs administration, with other border agencies

that exert controls over imported or exported goods and with each PT or AEO, regardless of country of certification, and with trade promotion and trade facilitation technical assistance programmes active in each participating country.

The "Way Forward" – Developing an Action Plan

Each customs authority shall develop an action plan incorporating the tasks necessary to design and implement a national TP/AEO program suitable in all respects to become the subject of mutual recognition and reciprocity arrangements with the other two customs authorities. The action plan shall include a prioritized listing of specific tasks, the projected date for completion of each task and the manager, department or officer responsible for completing that task. Each customs authority shall exchange draft action plans with its counterparts, request and consider their inputs. Once action plans have been finalized, each customs authority will prepare a monthly status and accomplishment report and share it with its counterparts. Action plans will be updated as needed.

ANNEX 2 – TKC AEO INITIAL WORK PLAN

INITIAL WORKPLAN

Consultant's note: This list consolidates individual lists created in a short period of time by BURS and NCE members working alone. This process did not provide sufficient time for full consideration of issues. It is suggested that it be circulated and comments/refinements requested. Of particular note is that not all tasks have projected completion dates.

Description	BURS Responsible Party	BURS Expected Completion	NCE Responsible Party	NCE Expected Completion
Assemble Project Implementation Team	Commissioner, Systems, Compliance and Enforcement, Customer Support, Regional Representative	15 March 2010	NCE Task team	Mid April 2010
Assign/Appoint existing experienced staff members to risk management division			Management	End of April 2010
Review and approve risk management policy			Management	
Identify and prioritize primary national interest in developing TP/AEO programs (reduced transport costs within region, protection of homeland security,	Project implementation team			
Undertake necessary actions to establish centralized risk management units working in the cargo selectivity context.	Management			
Undertake the necessary coordination for SARS to provide classroom training and on-the-job training to Namibia and Botswana risk management and post clearance audit unit personnel.	External Relations and Trade Facilitation, Human Resources		SARS, Secretariat, NCE	
Implement protocol for information sharing	TKC Secretariat	Continuous		

among TKC working groups to insure that each Customs authority provides the others with copies of draft and finalized work products, reports, etc. in order to ensure that the working groups are on a parallel track and do not substantially deviate from the established model				
Review the requirements, benefits, self-assessment forms and policy documents of SARS and benchmark against current drafts. Give feedback to secretariat			NCE Management	End of March 2010
Identify and set up a PT implementation team (responsible for application, approval and management functions)			Management	
Set up centralized repository of administrative penalties under the legal division			Management	
Activate the ASYCUDA MODSEL blue channel			IT Department	
Review the Customs Cargo and Passenger Processing Manuals			Implementation team	
Segmentation of stakeholders			Implementation team	
Identify stakeholders for the pilot of programme			Implementation team	
Draw up implementation project plan			Implementation team in consultation with SARS	
Establish private sector coordination and invite participation of representatives of designated sectors to assist in the planning and implementation process.	Chair of the project team			
Define the PT/AEO Project: create a project charter and scope of work. (See	Project implementation team			

Draft Project Implementation Plan and coordinate with other TKC Customs authorities	Project implementation team			
Working with the private sector and with TKC Customs counterparts, define sector-specific preferred trader and authorized economic operator eligibility requirements.	Project implementation team with assistance from risk management			
Working with the private sector and with TKC Customs counterparts, define sector-specific PT/AEO Benefits	Team already available to compare			
Working with the private sector and with TKC Customs counterparts, design the PT/AEO Application Process, application, self assessment and security profile formats.	Team to conduct a comparative analysis of SARS draft document			
Announce and Promote the Preferred Trader Program	Team with assistance of public relations			
Pilot the Preferred Trader Program				
Develop database and penalty tracking system	IT Department			
Renaming and relocation of staff	Commissioner			