Regional Activity to Promote Integration Through Dialogue and Policy Implementation (RAPID)

RAPID

RECOMMENDATIONS FOR THE RCSA
CUSTOMS SUB-STRATEGY
SO2, TO1.4

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Submitted to:

Regional Centre for Southern Africa,
U.S. Agency for International Development

Gaborone, Botswana

20 March 2001

USAID Contract No. 690-I-00-00-00149-00

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TABLE OF CONTENTS

The author wishes to express special appreciation to Mr. Jacque Monette, RAPID Customs Consultant, and to I.V. Mazorodze, Ntshimane J.E. Mosuoe, and the many other employees of the South African Revenue Service (SARS) who willingly provided in-depth information about regional customs matters.

Executive Summary.

This study is intended to assist the RSCA in developing a substrategy for supporting the regional integration of customs administration. Over the last year RCSA/RAPID consultants have surveyed local customs administrations, conducted customs awareness workshops, and instituted Heads of Customs and Customs Advisory Work Group meetings to facilitate the implementation of the customs provisions in the SADC Trade Protocol. The Heads of Customs and Customs Advisory Work Group meetings are an optimum process for achieving regional integration and should be supported.

The Trade Protocol, as amended, has been ratified by 11 SADC countries. However, impediments to implementation of its customs procedures include the complexities introduced by other regional trade agreements (SACU, COMESA, and bilateral arrangements) and lack of resources and capacity.

Increased exports to the United States resulting from the recently enacted African Growth and Opportunity Act, particularly preferential access to the multi-billion dollar U.S. apparel market, will have a major, positive impact on the region. However, unless SADC customs administrations are modernized, computerized, and aligned with international "best practices," it will be difficult for regional businesses to obtain on a timely basis and in sufficient quantities the regional inputs needed for the production of AGOA qualifying products.

The SADC Trade Protocol provides the legal/political framework for regional customs integration. Projects not directly related to the Trade Protocol and its implementation should not be given high priority. The most immediate needs respecting the implementation of the customs provisions in the Protocol include: 1. Completion and implementation of SADC rules of origin. 2. Implementation in all countries of the up-to-date Harmonized System sufficiently detailed to capture regional trade flows. 3. Implementation in all countries of the WTO Valuation Agreement. 4. Adoption of a region-wide common computer system (or software that can "translate" between different systems) and a linked communications system. Common entry documents and harmonized customs procedures should "flow" from a linked IT system.

Intensified regional training should be directed toward the preceding items with consideration given to the establishment of a regional customs training facility. Private sector input should be formalized through establishment of an advisory committee chaired by the SADC Secretariat or as part of the Customs Advisory Working Groups. The SADC Secretariat is the logical institution for coordinating donor activities. In view of the great importance of AGOA benefits to the region, an AGOA information center should be established at the SADC Secretariat.

2. Objective, scope and methodology of study.

The primary objective of this study is to assist USAID's Regional Center for Southern Africa ("RCSA")[2] in developing a substrategy through September 2003 for providing cost/effective technical assistance to facilitate the integration and strengthening of customs administrations in the eleven Southern African Development Community ("SADC") countries that have ratified the Protocol on Trade ("TP"). In carrying out this objective, the author has reviewed customs-related work previously supported by RCSA, the relevant provisions of the TP and Amended TP, the experiences of SACU, COMESA and other relevant regional trade blocks, and interviewed government officials and private sector groups in 5 of the 11 SADC countries that have ratified the TP.[3] Since the Republic of South Africa accounts for approximately 80% of intra-SADC trade[4] and has a highly developed customs administration that provides technical assistance to other countries in the region, particular attention was devoted to that country.

Related issues examined include the strengths and weaknesses of current technical assistance being provided by RCSA and other donors respecting customs matters and whether alternative programs appear more promising. In that connection, this study attempts to evaluate expected results; what would result from technical assistance and what would result without it; and what areas are better handled at a national or bilateral level. An attempt has also been made to examine customs proposals in the context of other regional market integration proposals (e.g., trade, transport). Lastly, economic activity that will result from the African Growth and Opportunity Act ("AGOA") has been considered in the context of regional integration issues.

It is the customs administrations of the 11 countries that have ratified the TP that must implement its provisions. Free trade agreements have no practical value unless they can be put into effect. As is discussed below, major problems in the SADC region include the failure to implement fully internationally agreed upon classification and valuation standards; lack in many

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[2] RCSA was established in 1995 and based in Gaborone, Botswana, Its mission is to promote sustainable economic growth in the SADC region.

[3] South Africa, Namibia, Botswana, Zambia and Mozambique. South Africa represents as much as 80% of the trade in the SADC region. Namibia and Botswana have rapidly growing economies. Zambia, a member of COMESA, is currently having trade problems relating to imports from Zimbabwe. Mozambique is behind the other SADC countries in compliance with basic WTO/WCO customs procedures and reportedly has serious problems with smuggling and corruption. See e.g., U.S. Trade and Investment Policy Toward Sub-Saharan Africa and Implementation of the African Growth and Opportunity Act, Report Submitted by the President to the U.S. Congress (May 2001) at 77-78.

[4] South Africa's reported GDP in 1998 was $133.4 billion. Zimbabwe, the next largest economy of the 11 SADC countries, had a reported GDP in 1998 of $6.5 billion. Malawi had a reported GDP of $1.7 billion. U.S. Trade and Investment with Sub-Saharan Africa, USITC Pub. 3371 (Dec. 2000).

of the countries of modern computer and communications technology; inadequate training; cumbersome and outdated administrative procedures resulting in excessive delays; lack of capacity to apply complex rules of origin; and corruption.[5] These problems impede the implementation of the TP, seriously retard economic activity and must be addressed before true economic integration and accelerated development can take place.[6]

3. History of RCSA's support of SADC customs integration.

Recent work respecting regional integration of customs administrations within SADC began in September 2000 when USAID/RCSA SADC Trade Protocol Project mobilized Vince Castonguay to develop a strategy for regional customs cooperation.[7] Mr. Castonguay's report and conclusions are set forth in the Final Report for the SADC Trade Protocol Project, vol. 2 at 160-186, Price Waterhouse Coopers. (April 2001). In sum, the objectives of customs reform identified were: the development of harmonized customs procedures; the establishment of modern border facilities; the development of more effective enforcement mechanisms; the development of uniform standard operating procedures; and the facilitation of trans border trade and transit of goods. Id .at 39-40. Tasks relevant to these strategies included: initial assessments of the current state of customs administration; clear definition of institutional arrangements for dealing with SADC customs issues; involvement of key stakeholders; promoting the implementation of World Customs Organization ("WCO") and the revised Kyoto Convention as the "best practices" standards; and identifying skills gaps and performing appropriate training.

In February 2001, RAPID[8] mobilized Mr. Castonguay and subsequently Mr. Jacques Monette, both formerly Revenue Canada customs officials, to develop a regional customs program.[9] Contact with customs administrations in the region was established; customs awareness workshops were held in Zambia, Malawi, Tanzania, Swaziland, and Botswana; and the Heads of Customs ("HCs") in SADC were convened to develop a TP implementation program.

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[5] Ms. Lynn Harmon, in the course of preparing the parallel sub-strategy on transportation, was repeatedly told by transportation firms that customs documentation and border delays were a major impediment to the free flow of commerce.

[6] For a discussion of the economic costs of obsolete and corrupt customs administrations, see Robert Myers, Recommendations for the RCSA Finance and Investment Sub-strategy, Feb. 16, 2001, Sec. 30,31,57,84.

[7] See Final Report of the SADC Trade Protocol Project, vol. 1 at 39 (April 2001).

[8] In April 2000 Chemonics International Inc. was awarded a 5 year indefinite quantity contract ("IQC") by RCSA to implement Regional Activity to Promote Integration through Dialogue and Policy Implementation ("RAPID"). RAPID supports RCSA's strategic objectives ("SOs") for assisting regional integration in SADC.

[9] J. Monette, End of Assignment Report, 8/13/01.

A HCs meeting took place June 4-6, 2001, in Dar-es-Salaam. RAPID's recommendation was that the implementation of the customs aspects of the TP be the responsibility of the HCs. Customs Advisory Working Groups ("CAWGs") were formed to address rules of origin, customs cooperation, trade facilitation, and transit matters.[10] The CAWGs met in Johannesburg on July 17-19, 2001, reviewed terms of reference provided by the HCs and established work plans. See Appendix A. Subsequently, on July 30-August 1, the HCs met in Livingston, reviewed the proposals made by the CAWGs and approved the work plans. The SADC Secretariat was represented and it was agreed that the HCs should constitute the Sub-Committee on Customs Co-Operation called for in Article 11 of Annex II to the TP. The Secretariat is now involved in formalizing this by interpretative amendment of the TP, the Amended TP, and their respective annexes, and intends that the HCs also constitute the Sub-Committee on Trade Facilitation called for in Article 6 of Annex III.[11]

The CAWGs' work plans dated August 11, 2001, addressing TP implementation, relate to the four sectors covered in the TP (rules of origin, cooperation, trade facilitation, and transit trade) and training. See Appendix A. The number and complexity of the activities scheduled are very ambitious given the current level of support devoted to the program (no RAPID customs advisor will be in the region until the later part of September and present plans contemplate only two short-term advisors, Messrs. Castonguay and Monette). The intent is to have almost all of the work performed by the CAWGs and the HCs.

At least two other customs related programs are also being currently supported by RAPID. These are legal and technical analyses regarding the establishment of joint border posts involving South Africa and other SADC countries,[12] which appear to be connected to RAPID's transport corridor support; and development of an electronic certificate or origin. These programs are currently not integrated with RCSA/RAPID's principal customs support program.

4. Overview of SADC, other regional trade agreements impacting customs integration, AGOA and intra-SADC trade patterns.

1. SADC.

The Southern African Development Community ("SADC") was created in August 1992 with ten founding members: Angola, Botswana, Lesotho, Malawi, Mozambique, Naibia,

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10 Part 3 of the TP, "Customs Procedures," covers Rules of Origin (Art. 12), Co-operation in Customs Matters (Art. 13); Trade Facilitation (Art. 14); and Transit Trade (Art. 15).

11 Interview with Hennie Erasmus, SADC Secretariat, Aug. 27, 2001.

12 Draft Border Post Legislative Report South Africa, 3 April 2001, and Draft Report on the Customs and Excise Amendment Bill, 4 July 2001, prepared by Consilium Legis (Pty) Ltd. Additional work is ongoing.

Swaziland, Tanzania, Zambia and Zimbabwe.[13] Subsequently, South Africa, Mauritius, the Democratic Republic of Congo ("DRC"), and the Seychelles joined SADC.[14]

In contrast to the Common Market for Eastern and Southern Africa ("COMESA"), which is currently focused primarily on regional economic cooperation and integration, SADC's treaty also encompasses political, social, peace and security goals.[15] In fact, the 2001 SADC Summit Final Communique issued in conjunction with the heads of state meeting in Blantyrek, Malawi on August 12-14, 2001, focused on a variety of non-economic issues, such as HIV/AIDs, conflict in Angola and the DRC, the farm ownership situation in Zimbabwe, the current cereals deficit, land reform, gender equality, and racism.[16] Perhaps because of this broader focus, SADC lags behind COMESA in progressing toward regional economic integration.[17]

The capstone to date of SADC's economic integration activities was the recent negotiation of a Trade Protocol ("TP") and amended TP resulting in a free trade agreement ("FTA") in the region. The SADC TP, as amended, has been ratified by 11 of the 14 of SADC's members: Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe. As of this date, instruments of implementation have been received from all countries except for Mozambique.[18] However, many of the other procedures that are necessary prerequisites to the active functioning of a FTA have yet to take place. Thus, only one country, South Africa, has to date gazetted tariffs for SADC trade and rules or origin and printed SADC certificates of origin.[19] Additionally, many tariff reductions are being phased in over a long period of time and most of the products liberalized now are those

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13 See A. Van Nieuwkerk, Regionalism into Globalism? War into Peace? SADC and ECOWAS compared. African Security Review, vol 10, no. 2 (2001) at 11. A previous regional group, the Southern African Development Coordination Conference has been formed in 1980 as a counter to apartheid and colonization influences. Id.

14 See "Striving to eradicate poverty: The newly appointed executive secretary of SADC shares his ideas." Marung (Aug. 2001).

15 A. Van Nieuwkerk, supra.

16 See 2001 SADC Summit Final Communique, Blantyre, Malawi, 14 August 2001; "Public fanfare, secret talks," Insight, Sunday Times (South Africa), August 19, 2001.

17 COMESA was established in 1994 to replace the Preferential Trade Area ("PTA") for Eastern and Southern Africa, created in 1981. The focus of both COMESA and its predecessor, the PTA, has been economic integration.

18 See Appendix B, Checklist of Implementation Requirements, SADC internal document.

19 Id.

that already have low or no MFN rates or are insignificant in terms of intra-SADC commerce.[20]

Regional integration and tariff reductions within SADC are also complicated because of concern on the part of the government and private sector in countries such as Zambia and Namibia that South Africa, which is by far the dominant country in the region in terms of GDP and population, will overrun their economies.[21] South African interests in industries such as textiles and garments and automotive manufacturing have also been reluctant to accord duty free treatment to other SADC members because of concern that competing products from the Far East and elsewhere will be transshipped into South Africa through SADC countries. Thus, the negotiation and implementation of rules of origin ("ROOs") has been a particular bone of contention.

2. Other regional trade agreements relevant to customs integration.

Another impediment to regional integration of customs functions is the chess board of plurilateral and bilateral trade agreements entered into by SADC countries. Thus South Africa, Botswana, Namibia, Lesotho, and Swaziland are members of the Southern African Customs Union ("SACU"), which has a common external tariff, no tariffs as to its members, and specific rules of origin. COMESA includes two SACU countries - Namibia and Swaziland - as well as 7 other members of SADC: Angola, Malawi, Mauritius, the DRC, Seychelles, Zambia and Zimbabwe.[22] To complicate matters, Malawi, Mauritius, Zambia and Zimbabwe are part of a COMESA free trade area launched on October 31, 2000, whereas the DRC, Seychelles, Namibia, Swaziland, and Angola are not part of the FTA and take varying rates of duty under COMESA.[23] COMESA's rules of origin differ from and are simpler than those of SADC.[24] On top of this, other regional organizations, such as the East African Cooperation (EAC), Inter-Government Authority on Development (IGAD), and Indian Ocean Commission (IOC) also play a role in region.[25]

Many bilateral trade agreements also exist. Thus, Zambia has a bilateral trade agreement with Malawi, Botswana and Namibia have bilaterals with Zimbabwe, and so forth. South Africa currently has three bilateral agreements with SADC countries: Malawi, Mozambique, and

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[20] See F. Flatters, The SADC Trade Protocol: Impacts, Issues and the Way Ahead (Jan. 2001).

[21] Interviews with public and private sector groups, Lusaka, Zambia, August 23, 2001.

[22] COMESA, FTA Q&A, April 2001.

[23] Id.

[24] See COMESA Q& A (April 2001) at 4-7.

[25] See COMESA in Brief (Nov. 2000) at 4.

Zimbabwe.[26] These bilaterals are in essence one-way "GSP" agreements giving the three countries preferential access to the South African market.[27] More significant, however, is South Africa's FTA with the European Union which became effective in January 2000.[28] Duty rates are to be phased down according to complex annexes with all duties removed as to South African exports to the EU in 10 years and imports into South Africa in 12 years. This FTA has been viewed with concern by other SACU countries since under the customs union imports into South Africa can enter the BLNS countries without restriction.

Lastly, customs-specific memoranda of understanding (MOUs) are under negotiation between the customs services of some of the SADC countries. These are intended to cover join customs procedures. Thus Zambia is in the process of negotiating an MOU with Zimbabwe[29]and South Africa an MOU with Mozambique to address border customs issues.

3. AGOA

The African Growth and Opportunity Act ("AGOA") which became law in May 2000 is intended to promote increased trade and economic cooperation between the United States and eligible Sub-Saharan African countries. AGOA accelerates the need for regional integration. In sum, AGOA confers the following benefits:[30]

1. Offers eligible countries duty-free market access for products under the GSP program, ensures these benefits for 8 years and increases the number of eligible products by more than 1800 tariff items.

2. Eliminates the GSP competitive need limitation for beneficiary countries.

3. Removes all existing quotas on textiles and apparel products after a determination that an eligible country has adopted an effective visa

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26 Interview with Stoffel van Rensburg, SARS, Aug. 30, 2001.

27 Reportedly the conditions of access vary. Thus Malawi has been accorded one-way free trade for all products that meet lenient ROOs, whereas Mozambique has been accorded duty free treatment for all goods with an MFN tariff rate of 3% or less and a duty rate of 3% on all other goods, subject to quantitative limits. Imports from Zimbabwe are subject to a complicated import licensing scheme and only certain goods are tariff free.

28 See F. Flatters at 17, supra.

29 Interview with Sonny M. Ling'omba, Deputy Commissioner of Customs, Zambia, August 23, 2001.

30 U.S. Trade and Investment Policy Toward Sub-Saharan Africa and Implementation of the African Growth and Opportunity Act, Report submitted by the President of the United States to the U.S. Congress, May 2001 at 46.

system.

4. Accords duty and quota free access to the U.S. market for apparel made from fabrics/yarns not produced in commercial quantities in the U.S. (e.g., silk).

5. Accords duty and quota free access to the U.S. for apparel made from U.S. yarn and fabric and for knit-to-shape sweaters made from cashmere and some merino wools.

6. Accords duty and quota free access to the U.S. for apparel made with regional and third country fabric and yarn, subject to a "cap."

7. Provides an average 17.5% duty advantage on apparel imports into the U.S.

8. Allows eligible countries with an annual GNP under $1,500/capita to use third country fabric inputs for four years.

The Bush Administration has made implementation of AGOA a key trade policy priority.[31]

AGOA preferential access to the multi-billion dollar U.S. apparel market is resulting in substantial increases in employment and income in SADC countries. Thus, in recent weeks regional newspapers have reported new Asian investment in garment manufacturing in the region. South African textile and garment producers are "delighted" with the opportunity and have been increasing their production capacity.[32] "It is estimated that ...(AGOA) will create a further 300,000 jobs in the clothing and textiles pipeline" in South Africa.[33] The construction of large-scale production facilities is also reportedly underway in Namibia, Botswana and Lesotho. In Namibia, a Malaysian investor, Ramatex, is reportedly building a facility to produce sportswear which will employ 20,000 workers and use more cotton than Namibia produces in a year.[34] In Lesotho, Nien Hsing Textile Company of Taiwan has announced that it will invest $100 million in a project that will be the largest specialized denim fabric and garment manufacturer in the world.[35]

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31 Id at 47.

32 Interview with Peggy Drodskie, Director:Policy, South African Chamber of Business, Aug. 28, 2001.

33 SARS Annual Report 2000/2001 at 29.

34 Interview with Oliver Horsthemke, Namibian Agricultural Union, Aug. 27, 2001.

35 Sowetan, Monday June 25, 2001.

Economic activity generated by AGOA implicates regional integration because, as in the above-referenced Namibian case, inputs will have to be sourced from other sub-Saharan countries. Unless customs procedures, rules of origin, and the elimination of tariffs facilitate intra-regional trade, it will be difficult for businesses to obtain on a timely basis and in sufficient quantity and cost the regional inputs needed for the production of AGOA qualifying textiles and garments as well as other eligible products. Thus SADC area businesses benefitting from AGOA should have a particular interest in accelerated regional integration.

4. Regional trade patterns.

A brief overview of current trade flows within SADC makes clear that most current trade in the region is to and from South Africa and most of South Africa's trade is external to SADC. The implication is that regional harmonization and simplification of customs procedures may be less important to South Africa than to other SADC members. Indeed, in the view of some donors, regional integration within SADC is not of high priority to the business community in South Africa.[36] On the other hand, current business seminars seemingly reflect an interest in economic integration in the region.[37]

The most recent available trade statistics for South Africa indicate the relative unimportance of imports from SADC countries.[38] Thus, in April 2001, all imports amounted to R 64.3 billion, imports from the U.S. amounted to R 7.3 billion, imports from the United Kingdom amounted to R 6.0 billion, and imports from Germany amounted to R 9.1 billion, whereas imports from SADC countries (SACU excluded) amounted to only R 733.2 million, the majority (R 496.7 million) from Zimbabwe. On the other hand, exports to SADC countries from South Africa were more significant: out of a total of R. 78.5 billion exports, R. 5.8 billion were to SADC countries (excluding SACU), compared to exports to the U.S. of R 6.3 billion, exports to the U.K. of R. 6.2 billion, and exports to Germany of R 5.4 billion. The picture is of a one-sided trading relationship - strong exports from South Africa to SADC countries, but relatively weak imports.

5. The SADC Trade Protocol provides the legal framework for regional customs integration.

The TP, as amended, provides the legal framework for customs integration within SADC. In the author's opinion, all implementation programs must directly relate to this framework. The TP, as amended, expresses the political decisions of the member states which become

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[36] Interview with Ranieri Sabatucci, First Secretary, European Union, August 17, 2001.

[37] See Appendix C.

[38] Statistics compiled by SARS.

binding law when the protocol is ratified and implementing action is taken. Whatever their independent merits, programs not directly related to the TP, as amended, have no political or legal standing under the TP. For example, whatever the merits of South African joint border posts, a program currently funded by RCSA, this is a program not specifically contemplated in the TP, as amended,[39]and would appear to be more appropriate for national funding.

As previously mentioned, Article 12 and Annex 1 of the TP govern rules of origin; Article 13 and Annex II cover customs co-operation; Article 14 and Annex III govern trade facilitation; and Article 15 and Annex IV covers transit trade.

Annex 1 of the Amended TP sets forth in detail rules of origin for products to be traded between the member states of SADC. In general, goods are deemed originating if they are imported directly from a member state and they have been wholly produced in a member state, or have undergone sufficient working or processing within a member state.[40] Thirty one pages of the Annex are devoted to elaborating rules of origin. Additionally, the rules for certain "import sensitive" product sectors are still under development.

Annex II of the TP, as amended, sets forth details regarding customs co-operation within SADC. Article 2 states the objectives and scope of the Annex: "to simply and harmonize Customs laws and procedures...." Article 3 mandates that each member state adopt the Harmonized System for tariff and statistical purposes. This is also a WTO requirement. Article 4 requires that each member apply the WTO valuation agreement, also a requirement of WTO members. (All 11 countries party to the TP are WTO members.) Article 5 provides for the simplification and harmonization of customs procedures and Article 6 requires computerization of customs functions, where practicable. Article 8 contemplates joint training programs, and Article 9 requires the exchange of information on matters relating to customs. Article 11 establishes a "Sub-Committee on Customs Co-operation" under the Committee of Ministers, Trade ("CMT") responsible for customs co-operation and training matters.

Annex III relates to the simplification and harmonization of trade documentation and procedures. Articles 3 - 5 provide for the reduction of the cost of trade documentation and procedures, standardization, and trade facilitation. Article 6 provides for the appointment of a "Sub-Committee on Trade Facilitation."

Similarly, Annex IV governs transit trade and transit facilities. The licensing of transit traffic and carriers, bonds and sureties, transit documents, exemption from examinations and charges, and transit procedures are covered.

6. The current situation compared with Protocol undertakings in the customs area and

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39 See Annex IV to the TP.

40 Amended Annex, Rule 2.

WTO/WCO requirements.

A. Rules of origin have not been completed and most customs administrations are unprepared to apply them.

Annex 1 of the amended TP, dating from September 2000, sets forth detailed SADC rules of origin. However, negotiations are still taking place regarding some of the more contentious industry sectors. As of the date of this report, only South Africa has published ROOs for SADC trade. See Appendix B. Thus, despite the fact that eleven countries have ratified the TP it is not clear whether any SADC member other than South Africa is currently according preferential treatment to imports pursuant to the TP.

Rules of origin are generally divided into two categories: preferential and non-preferential. Non-preferential rules are used to determine origin for a variety of purposes, including marking and the application of special import measures, such as antidumping duties. The Uruguay Round Trade Agreement contemplated a WTO agreement on non-preferential rules of origin, and the World Trade Organization, assisted by the World Customs Organization, has been in the process of developing WTO origin rules that are largely based on a "shift" from one tariff description to another.

Preferential rules, developed for preferential duty programs such as GSP, AGOA, or the U.S.'s insular possessions, tend to be more lenient. Thus under AGOA a product originates in a beneficiary country if the cost of production in that country is at least 35% of value, or 20% if 15% if the cost of production consists of U.S. parts or materials, and textiles and fabrics may originate if specified processes are undertaken, irrespective of how much value is added.

Rules of origin can be complex and difficult to apply even in developed countries, particularly when origin is determined by whether an article has been "substantially transformed." In the United States, the courts are frequently called upon to determine whether a product, such as "hand tool forgings," has been transformed into a new and different product - a finished hand tool. See, e.g., National Hand Tool Corp. v. United States, U.S. Ct. Int'l Trade 1992.

ROOs have been a source of controversy in the negotiation and implementation of the TP.[41] Specific origin rules were developed for a number of products, including electronics and electronic goods, textiles and garments, and motor vehicles.[42] These ROOs are primarily based on "substantial transformation" criteria, a stricter and more difficult standard to apply than the standards generally used in preferential origin schemes such as AGOA.[43] ROOs for particularly

41 F. Flatters at 10, supra.

42 Id.

43 See T. O'Keefe, A Comparison of the Rules of Origin In AGOA (including GSP)

contentious products, including coffee, wheat flour, some textiles and apparel, consumer electronic devices, optical use equipment, the automotive sector, and recycled plastics are still under negotiation.[44] Concern has been expressed as to whether complex and "inward looking" ROOs will seriously undercut the benefits expected from the TP.[45]

The Rules of Origin CAWG Work Plan dated August 11, 2001, contemplates the development of implementation procedures for consideration by the Heads of Customs at their scheduled October 2001 meeting. See Appendix A. The Plan also provides for guidance in the development of implementation of an electronic Certification System, a formal consultative process with the private sector and other stakeholders, the development of a draft manual of guidelines by February 2002 and a final manual by September 2002,[46] the development of regulations by February 2002, and the development of a training program by September 2002. Id. Unless this timetable is expedited, countries other than South Africa may not be able to accord preferential treatment to SADC imports until the later part of 2002 at the earliest.

1. The Harmonized System is not being consistently applied.

Annex II of the TP, as amended, Article 3, requires that each member state apply the Harmonized System ("HS") in connection with tariffs and statistical nomenclatures. This is also a requirement of the WTO.

The International Convention on the Harmonized Commodity Description and Coding System ("Harmonized System" or "HS"), applied currently by 177 countries, is used to identify or "classify" merchandise into specific categories. This in turn is used to determine the duty rate applicable. The HS is comprised of 96 chapters which are ordered by degree of manufacture, i.e., from unprocessed goods to highly manufactured products. A 6 digit code is used to identify 5018 groups, but nations applying the HS can "fine tune" classification by applying up to 10 digits. The HS is administered by the World Customs Organization in Brussels.[47]

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and the SADC Protocol on Trade, and Procedures for Verifying Compliance with Those Rules, RAPID, June 2001. However, AGOA's "rule for apparel wholly assembled in one or more beneficiary countries from fabric wholly formed there that is, in turn, made from yarn originating in one or more AGOA beneficiary countries, amounts to a triple substantial transformation rule." Id.

44 Id.

45 See F. Flatters at 11, supra.

46 The SADC Secretariat would apparently like this manual completed as soon as possible, preferably by October. Interview with Hennie Erasmus, SADC Secretariat, August 27, 2001.

47 The text of the HS, general information, and training materials are obtainable from the WCO website: www.wcoomg.org/

According to the WCO website, all SADC members are either contracting parties to the HS[48] or, although not contracting parties, are "applying" the HS.[49]

Several problems currently exist in SADC countries in connection with the use of the HS to "classify" imports and exports. First, it appears that some of the countries (e.g., Mozambique) may be using out of date versions of the HS.[50] This means that their trade data does not correspond with the reported data of other countries in some respects.

Second, many of the countries are using only the 6 digit version of the HS, which is not specific enough to track many trade flows. The simpler 6 digit version of the HS is used because countries such as Namibia and Botswana do not have the capacity to classify merchandise using an 8 digit version.[51] This frustrates local businesses, who then resort to private firms to determine import and export trends with greater specificity.[52]

Third, in situations where imports are duty free, importers and customs officials tend to be lax in determining the correct classification of merchandise.[53] This in turn adversely impacts the collection of statistics.

The CAWG for Customs Co-operation is currently preparing a status report assessing, among other things, the status of implementation of the HS in member states. <u>See</u> Appendix A. This report was supposed to be completed by August 31, 2001. According to the CAWG work plan, accession to the HS by member states is supposed to be completed by December 31, 2002. <u>Id</u>.

2. The WTO Valuation Agreement is not being consistently applied.

Article 4 of Annex II to the TP provides in pertinent part that member states "undertake to adopt a system of valuing goods...in accordance with the WTO Valuation System." However, at least one of the SADC countries, Mozambique, although a WTO member, has not

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48 <u>E.g.</u>, South Africa.

49 <u>E.g.</u>, Mozambique.

50 Interview with Sonny M. Ling'omba, Deputy Commissioner Customs, Zambia, August 22, 2001,

51 Interview with Wazha Maunge, Deputy Director of Customs and Excise, Botswana, August 28, 2001.

52 Interview with Oliver Horsthemke, Namibia Agricultural Union, August 27, 2001.

53 Interview with J. Wolfaardt, SARS, August 30, 2001.

implemented the WTO Valuation Agreement.[54] Additionally, countries such as Zambia which have recently implemented WTO Valuation need to build capacity to understand how the WTO system should be applied. Thus, a Zambian high tech business owner recently had Zambian customs reject invoice price for computer imports because the invoice price was lower than a reference price used by Customs.[55] This appears contrary to the WTO mandated methodology.

The WTO Valuation Agreement prescribes a basic rule for valuing imports: value should be based upon "transaction value," the price paid or payable for the merchandise - i.e.- the invoice price. In developed countries, such as the United States, applying the WTO Valuation Agreement, typically 90% or more of imports are valued based upon transaction value. In those limited instances when transaction value cannot be used, the WTO Agreement prescribes alternatives: transaction value of identical merchandise; transaction value of similar merchandise; deductive value; computed value; and a "fall-back" based on an approach consistent with the foregoing methodologies.

The application of WTO Valuation may have an initial negative impact when a country shifts from the use of reference prices to establish value to the acceptance of invoice prices, but in the experience of the World Customs Organization, any negative revenue impact is short-lived.[56]

Even the South African Customs Service, SARS, finds it advisable to undergo periodic training in the application of the WTO Valuation Agreement. (The World Customs Organization provided such training to SARS the week of August 27.[57])

As in the case with application of the HS, the Customs Advisory Working Group for Customs Co-operation is currently reviewing the status of member states regarding the application of the WTO Valuation Agreement. <u>See</u> Appendix A. A status report regarding accession is supposed to be completed by December 31, 2002. <u>Id</u>.

3. No common customs computer system exists, nor is there a common facility for communication among customs administrations in SADC.

The TP, as amended, calls for the computerization of customs operations in SADC, using

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[54] Interviews with Mr. G. Mambo, Mozambique Customs, May-June 2001.

[55] Interview with K. Munyinda, Next Technology Ltd., Lusaka, Zambia, August 23, 2001.

[56] Interview with David Tyler, Technical Officer, World Trade Organization, August 31, 2001.

[57] Interviews with Mr. T. Cremore and Ms. V. Elenis, Valuation Division, SARS, August 31, 2001.

international accepted standards. Annex II, Article 6. “The Customs authorities of Member States shall consider developing or adopting common Customs application systems.” Id.

Currently, the 11 SADC countries that have ratified the TP have no common customs computer system nor a secure and reliable communications link between national customs administrations. A common customs software platform and a modern telecommunications/Internet system linking SADC customs services could greatly accelerate regional integration. Such a common platform and communications links could enable the 11 ratifiers of the TP to coordinate closely customs matters, act rapidly on goods shipped through the region, and keep abreast of all enforcement and other matters of concern. Of equal importance, it would greatly facilitate commerce in the region.[58]

In the opinion of Robert Myers, a RAPID consultant, computerization and modern telecommunications have made developing country customs administrations that have not adopted the new technology obsolete:

> “**Basically extensive computerization in most of the world's export producing factories, and by exporters themselves, and cheap, quick communications have made traditional customs functions and officials obsolete and unnecessary. In most developing countries it is probable that Customs Departments are 80% overstaffed, with most of the remaining 20% being inappropriately skilled.[59] Implementation of Customs Union protocols should force reductions in and rationalization and "internationalization" of SADC country Customs staff. Among other things, these staff will normally adjust their functions to reflect changes that de-emphasize traditional functions in favor of enforcing technical and environmental standards, that, like taxes, should be applied evenly across domestic production and imports alike.”**

R. Myers, Recommendations for the RCSA Finance and Investment Sub-strategy, Feb. 16, 2001, Sec. 31.

No attempt was made by the author to do a comprehensive survey of the extent of computerization of customs functions in the 11 SADC countries that have ratified the TP.

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[58] Interview with Edward Little, Chairman, Federation of Clearing and Forwarding Associations of Southern Africa, August 16, 2001. Mr. Little is also Executive Director of the South African Association of Freight Forwarders. He advocates an electronic “smart card” approach to bonded merchandise moving across frontiers.

However, discussions with senior officials in South Africa, Namibia, Zambia, and Botswana indicate that the situation is very uneven. Botswana's customs administration is currently not computerized, but it is considering the installation of ASYCUDA ++[60] and is working on this with UNCTAD officials.[61] Namibia reportedly does not have computers at border posts.[62]

According to Sonny M. Ling'omba, Deputy Commissioner of Customs for Zambia, Zambia has installed ASYCUDA 2.7 and uses a satellite VSAT for communication but has communications problems with some posts. Zimbabwe reportedly has installed ASYCUDA ++. Namibia has ASYCUDA 2.7. Malawi is working on installing ASYCUDA ++, and Mozambique uses a proprietary system installed by Crown Agents, a British firm currently managing Mozambique customs.

South Africa has developed and uses its own proprietary system, the "Cape System," which it claims is more sophisticated and powerful than ASYCUDA ++[63] and is also testing an EDI system. However, the author was told by Peggy Drodskie, Director, Policy for the South African Chamber of Commerce, that the South African business community had urged the adoption of ASYCUDA ++.[64] Even SARS reportedly has difficulty communicating with border posts when their VSAT system goes down.

In addition to the "Cape System," South Africa is also using a "small port Cape," an export system and a passenger system. SARS believes that it is possible to align its computer systems with ASYCUDA.[65] Efforts to automate and improve many functions are currently underway:

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[60] ASYCUDA, or the Automated System for Customs Data, is a declaration system used now in approximately 80 countries. It is largely based on the United States' ACS System.. In developing countries it is used to generate trade statistics, provide uniformity of input using edit files such as HS, country codes, importer identification numbers, tax rates, etc. UNCTAD is responsible for the system and provides technical assistance and funding to users. ASYCUDA++ is the most sophisticated version currently available and permits selective processing. Information can be obtained about the system for a website:www.asycuda.org.

[61] Interview with Wazha Maunge, Deputy Director of Customs and Excise, Botswana, August 28, 2001.

[62] Interview with Oliver Horsthemke, Namibian Agricultural Union, August 27, 2001.

[63] Interview with H. Marais, SARS, August 30, 2001.

[64] Interview with Peggy Drodskie, SACOB, August 28, 2001.

[65] Interview with Patricia Jones, SARS, August 30, 2001.

"Under development are an automated cargo manifest system which will enable SARS to provide an electronic manifest acquittal facility resulting in faster processing of entries submitted and reducing paper administrative work. More importantly it will enable SARS to improve risk-based targeting and eliminate unnecessary interventions.

A system to automate the control on goods removed in transit/bond, and including real-time electronic acquittal and security re-instatement at approved places of exit within specified time frames is also being developed....A Warehouse Inventory Management System is being developed....SARS will introduce an Accredited Client Scheme, which will provide for the accreditation of importers, exporters, agents, road hauliers, and bonded warehouses....An electronic system for refunding duties will be developed which will benefit operators through faster turn-around times....[66]

The CAWG work program entails reviewing existing systems through a questionnaire. See Appendix A. The questionnaire responses were supposed to be compiled by August 31. Following that, the work plan contemplates the development of an interface system with a status report to be submitted by February 28, 2002. Customs administrations that are not currently computerized are to be computerized. A submission to the CMT from the HCs regarding computerization is to be made by January 2002. Id.

4. Common entry documents, single border posts, and other measures.

1. Entry documents.

According to Peggy Drodskie of SACOB, several years ago when the SADC Industry and Trade Directorate was located in Tanzania USAID consultants helped develop a single customs entry document for SADC based on the COMESA entry document. She said that everyone agreed that the document should be adopted, but "the consultants went home and nothing ever happened."[67]

Currently, four of the five SACU countries, South Africa, Botswana, Lesotho, and Swaziland, use a common entry document, the CCA1.[68] Namibia, however, uses a different form (the NA 500). Within SADC many countries which are also COMESA members use the

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66 SARS Annual Report 2000/2001at 17.

67 Id.

68 Interview with Irvine Solomon, SARS, August 30, 2001.

COMESA form.[69] The SADC Industry and Trade Co-ordination Division ("SITCD") in March circulated a proposed SADC customs document and accompanying guidelines for discussion. SARS has proposed the EU form.

The Record of the 15th Meeting of the SADC Industry and Trade Committee of Ministers, Maputo, July 2, 2001, reflects that "considering the heavy cost of investment put in their current systems" members agreed to continue using existing customs documents for another six months and thereafter "a review would be made on the feasiblity of shifting to the harmonized SADC Customs Document." Id. at 8.

The work plan for the Trade Facilitation CAWG calls for member state comments on the development of a single declaration document by August 31, 2001, and the completion of a single document by December 31, 2001. See Appendix A.

2. One-stop border posts.

The Trade Facilitation CAWG is also preparing a status report by September 30, 2001, regarding "how customs will be involved in the implementation of one stop border post." See Appendix A . This is a project where there appears to be a lack of coordination with other RCSA/RAPID activities. Consilium Legis (Pty) Ltd., a South African law firm, has prepared several in-depth reports respecting joint customs controls at land border posts and drafted legislation to effectuate joint customs control on the part of South Africa.[70] Their work is funded by RCSA/RAPID but is proceeding independently from the CAWG initiative and the author was unaware of the project until it was mentioned by officials at SARS. A senior legal advisor at SARS, who wished to remain anonymous, questioned the wisdom of the proposed legislative initiative and was of the view that the goal could be much more easily accomplished by international agreement (MOU) between the nations involved. Indeed, Zambia and Zimbabwe are pursuing single border posts by negotiation of a MOU.[71] As noted above, the Consilium Legis work, which relates specifically to South Africa, would appear to be more appropriate for funding by a national aid program.

3. Kyoto Convention.

The CAWG for Trade Facilitation has initiated a study leading to the alignment of customs procedures with the revised Kyoto Convention by June 30, 2002. Mr. Castonguay, a

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69 Id.

70 Draft Border Post Legislative Report South Africa, 3 April 2001; Draft Report on the Customs and Excise Amendment Bill, 4 July 2001. A more recent report is now being circulated at SARS.

71 Interview with Sonny M. Ling'omba, Deputy Commissioner of Customs, Zambia, August 22, 2001.

Price Waterhouse Cooper and RAPID customs consultant, made the case for the adoption of Kyoto Convention procedures in his report, "Strengthening Customs in SADC: Options for Support," Final Report for the SADC Trade Protocol Project, vol. 2, April 2001, at 160-188. South Africa, the key member of SADC in terms of trade activity, has not yet acceded to the revised Kyoto Convention.[72]

5. Training initiatives.

The TP, as amended, provides that member states "undertake to develop or adopt joint training programmes, exchange staff and share training facilities and resources." Annex II. Article 8. Between February and June 2001, RCSA/RAPID organized and ran TP awareness workshops in Zambia, Malawi, Tanzania, Swaziland and Botswana. The objectives of these workshops included familiarizing customs personnel with the TP, making contacts for future activities and receiving information from local customs authorities respecting training and modernization of procedures and facilities.[73] However, no specific "deliverables" resulted from these workshops.

The CAWGs' work plans now link training to specific program objectives. Thus the Rules of Origin CAWG includes as an activity the identification of training needs and convening workshops and the Customs Co-operation CAWG contemplates holding periodic regional workshops and establishing a regional customs institute. See Appendix A.

The International Tax Program, Harvard Law School, has proposed the establishment of a Southern African Tax Institute ("SATI"), to be located at the University of Pretoria, which would include customs training.[74] Reportedly, initial funding for the project has been allocated by USAID and planning is underway. However, the proposed curriculum appears heavily weighted toward economic and tax subjects rather than customs administration.

SARS reportedly is also interested in conducting regional customs training.[75] In that connection, SARS' International Relations Office has proposed the establishment of a regional consulting office to be staffed by approximately 10 SARS managers. In addition to training, the office would provide consultancy and advisory services and coordinate project financing in the region.[76]

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[72] SARS Annual Report 2000/2001 at 52.

[73] See J. Monette, End of Assignment Report, August 13, 2001.

[74] Interview with Neal Cohen, USAID Pretoria, August 16, 2001.

[75] Id.

[76] Interview with K. Kenneth, SARS, August 31, 2001.

The World Customs Organization and the World Trade Organization also regularly sponsor customs training workshops in the region regarding topics such as the Harmonized System, the WTO Valuation Agreement, and the Kyoto Convention.. Information about WTO and WCO training programs and training modules can be obtained from the WTO and WCO websites.[77]

6. Corruption.

Corruption appears to be an issue in some of the SADC customs administrations, but it is a politically sensitive issue difficult to address directly.[78] In Mozambique, local businesses, USAID officials, and the Mozambique customs service estimated that as much as 70% of imports are smuggled into the country.[79] Reportedly this occurs not because of a high duty structure but because of long delays in processing imports. One local businessperson indicated that it was actually more costly to smuggle goods than to pay duty, but merchandise was delivered the next day rather than being delayed for weeks or months. Mozambique's long and porous border with its neighbors facilitates this situation. Mozambique has contracted with Crown Agents, an United Kingdom private customs firm, to assist in restructuring its customs administration and carry out customs functions. (Crown Agents is also a RAPID subcontractor.)

SARS has an Anti-Corruption Unit, part of the Compliance Division**,** which investigates corruption allegations.[80] Investigations during the most recent annual period led to 5 convictions in criminal court and the dismissal of 57 SARS employees.[81]

A Namibian source stated that Namibian customs is "90%" corruption free but that there is a general lack of customs controls on the Namibia - Angola border.

7. Lack of private sector input in connection with SADC customs issues.

While several SADC-wide business associations exist (e.g., the SADC Chamber of Commerce based in Mauritius, the Southern African Association of Freight Forwarders), they are viewed by the business community as largely ineffective and have limited resources.[82] Part of

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77 Www.wto.org/ and www.wcoomg.org/

78 For a discussion of the causes and costs of corruption from an economic perspective, see Robert Myers, Recommendations for the RCSA Finance and Investment Substrategy, February 16, 2001.

79 Interviews in Maputo, May 11-18, 2001.

80 SARS Annual Report 2000/2001 at 44.

81 Id.

82 Interview with Peggy Drodskie, SACOB, August 28, 2001.

the problem is that umbrella trade associations in the region have as members national trade associations which in turn have as members regional associations, which in turn have as members local businesses. The concerns of local business operators thus are several levels removed from the umbrella trade associations and not surprisingly umbrella organizations such as the Southern African Association of Freight Forwarders receive little or no membership funding.[83] The most active private sector group appears to be SACOB, which has a functioning customs committee concerned about regional issues.[84]

The strongest impetus for regional integration of customs administration would be a fully engaged private sector expressing its economic interest. Textile and garment manufacturers and other businesses obtaining materials from more than one country in the region for manufacture and export to the United States to take advantage of AGOA preferences should have a strong interest in facilitating regional customs procedures.

8. RECOMMENDATIONS: Regional integration assistance programs likely to yield the greatest return for investment in next two years.

The author's recommendations fall into two categories: process and substantive. Process recommendations address issues such as coordination with other donors and allocation of resources. Substantive recommendations address the specific programs that are considered most crucial and likely to give the greatest return for investment.

1. Process Recommendations.

1. <u>Aid should be linked to the TP, as amended.</u>

Aid connected with the implementation of the SADC TP should be directly linked to the specific agreements set forth in the TP, as amended. Whatever the merits of legislative drafting programs relating to the establishment of single border posts by South Africa, this has no direct connection with the political and legal undertakings expressed in the TP and they should be funded by the USAID program of the country concerned.

2. **<u>Donor coordination should be improved.</u>**

While most interviewees praised USAID's efforts supporting regional integration, they

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[83] According to Edward Little of the SADC Freight Forwarders Association, funding for the SADC-wide freight forwards association was initially provided by the Canadian Government. Funding no longer exists and the future of the association is in doubt. Interview with Mr. Little, August 16, 2001.

[84] The SACOB coordinator is James Lennox. The Chair of the Committee is Rod Lichkus, Senior Manager, Price Waterhouse Coopers.

were generally critical of the lack of coordination between donors in the region. SARS, on its own initiative, has instituted a "donor round table" which brings together on a periodic basis the 22 active donors in the region, including the "big 6": USAID, AUSaid (Australia), DfID (U.K.), GTZ (Germany), Sida (Sweden), and the French Trade Commission.[85] In SAR's opinion, this promotes useful dialogue which has resulted in collaborative efforts on the part of donors. The same process should be instituted in connection with the funding of regional customs initiatives. SADC would be the logical institution to call donor meetings.

3. **Resource allocation for customs integration should be increased.**

Much has been accomplished to advance customs integration and modernization in the region with very limited resources: two short-term consultants, Messrs. Castonguay and Monette. The HCs and CAWG mechanism is an elegant method of advancing the process. However, given the importance of integration and modernization regarding customs matters and the amount of work that remains to be done, the human resources allocated should be substantially increased. It would be desirable to have the project led by a long-term consultant from the region thoroughly versed in modern customs administration with short-term consultants called in to assist with specific projects in which they have special expertise.

4. **The SADC Secretariat should coordinate customs integration efforts.**

SADC is now in the process of restructuring and centralizing staffing at the SADC Headquarters in Gaborone.[86] The Trade, Industry, Finance and Investment Directorate is now located at SADC Headquarters and a staff person, Anatacio Mugambe, an experienced customs official from Mozambique, has been appointed to coordinate SADC customs matters. A trade advisor, Hennie Erasmus, is also involved. SADC personnel have indicated that in the future the Secretariat will "take ownership" of HCs and CAWG meetings and that staff work should be coordinated through the Secretariat. Accordingly, future USAID support activities regarding regional customs matters should be coordinated through the SADC Secretariat.

5. **The HCs and CAWGs should be supported.**

The programs and activities of the HCs and CAWGs should be supported and strengthened as an optimum process for achieving customs integration in the region. An effectively coordinated and staffed HCs and CAWGs program will involve the key decision makers and implementers of the TP customs implementation process. This should surface potential problems and give the implementers ownership of the solutions developed. All RCSA/RAPID customs-related programs should be part of the HC/CAWG structure. Work on

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[85] Interview with Keith Kenneth, Office of the Commissioner, SARS, August 31, 2001..

[86] See "SADC Today," vol. 4, no. 4 (April 2001).

single border posts and the electronic ROO certificate should not be handled separately.

2. **Substantive Recommendations: immediate action.**

1. Immediate implementation of the HS, Customs Valuation Agreement, and central collection of trade statistics.

It is critical for the progress of regional integration and economic development for SADC countries to apply the up-to-date HS, the WTO Valuation methodology, and to collect accurate and timely trade statistics. Indeed, without accurate and timely statistical data, it is difficult for trade policy to be formulated and for businesses to plan expanded activities in the area. Implementation of the most current HS and WTO Valuation methodology is required by the WTO and should be considered a condition precedent to further customs reform. This should be tied to the timely collection and dissemination of trade statistics. The highest priority should be given to immediate implementation and the CAWGs' work plans should be revised accordingly.

2. **Immediate implementation of the SADC Rules of origin.**

Duty reductions pursuant to the TP cannot be granted if regional customs administrations have no guidance respecting whether an import qualifies for SADC duty reduction. At this time, only South Africa has gazetted tariffs for SADC trade and issued a certificate of origin. The highest priority should be given to preparing guidelines for the SADC customs administrations and finalizing certificate of origin forms and procedures so that duty reduction benefits can be realized. The CAWG Rules of Origin work plan should be revised accordingly.

3. **Substantive Recommendations: implementation over a two year period.**

1. Computerization and communication links.

The single most significant action that could be taken to promote regional integration of customs administration and facilitate the movement of commerce through the region would be to computerize all customs administrations with a system the allowed instantaneous and secure transfer of data among customs administrations in the region. Such a computerized communications system would enable goods transiting several regional countries to move quickly and "seamlessly" and customs agencies to carry out their mission using modern technology. The analogy is to the development of transport corridors in the region to improve the flow of surface traffic.

As an example, customs documents could be available on-line on a website, risk assessment data could be encrypted in a barcode providing instructions to check points and border facilitates, and all shipments "in bond" could be accounted for electronically. There would be accurate and timely reporting at the earliest possible moment of goods scheduled to arrive in a country. Uniform SADC customs documents and procedures would be natural by-products of a comprehensive computer and communications system.

SARS appears to be far ahead of the other customs services in the SADC region in developing the sophisticated computer systems required for modern customs administration. The SARS Cape System has the capability of linking other customs services in the region as "branch offices." This would be a straightforward approach to computerization and linking customs administrations in the region but is probably not acceptable because of political/sovereignty issues. Alternatively, as is proposed by the CAWG work plan, software could be identified to link SARS Cape System with the ASYCUDA systems run by other countries in the region. SARS technicians believe that this is possible. Additionally, a secure Internet website or other central communications facility that could be accessed by SADC customs administrations and facilitate e mail communication would greatly facilitate communication regarding implementation of the TP. Aid should be focused on fully computerizing all customs administrations in the region and electronically linking together SADC customs administrations. Other projects, such as a single customs entry document, EDI for shippers, etc. should flow from the creation of a modern, linked computer infrastructure.

2. **Training of customs personnel.**

Planning for a regional tax academy, the SATI, proposed by Harvard University is underway and reportedly has been given initial funding. SARS reportedly is interested in playing a lead role in regional training and has proposed the establishment of a consulting/training group for this purpose. The Rules of Origin CAWG is planning workshops on ROO implementation and the Customs Co-operation CAWG is considering the establishment of a regional customs institute. See Appendix A. All these programs should be supported to build the capacity to implement the provisions of the TP and create efficient, modern customs administrations in the region.

3. Formalizing private sector input on customs integration and procedures.

Consideration should be given to establishing a SADC customs advisory group, modeled after the Industry Sector Advisory Committees ("ISACs") used by the U.S. Trade Representative's Office. The SADC Customs ISAC would be chaired by the SADC Secretariat and include CAWG representatives and private sector representatives. This should improve private sector input respecting regional integration of customs matters. Alternatively, each CAWG could include private sector representatives.

4. Centralizing AGOA information at SADC.

Economic activity generated by AGOA benefits will have a much greater impact on the region than intra-SADC trade. While AGOA requires that each Sub-Saharan African country be designated a beneficiary and have an approved visa system before textile and garment exports will qualify for duty and quota free entry into the United States, the establishment of an AGOA information and coordination office at SADC would provide a central point for the dissemination of information to exporters and local governments and would also serve to emphasize the importance of AGOA benefits to economic development in the region. While it may not be politically appropriate to establish an office in the Secretariat devoted only to AGOA issues, a SADC-based "export diversification" office could be established, possibly in conjunction with the EU.

4. **Longer-term programs.**

Other programs now being considered by the CAWGs - the single entry document, other SADC customs forms, harmonization and simplification of customs procedures, and ratification of the revised Kyoto Convention - should be an outcome of linking SADC customs administrations in a common computer and telecommunications system. The single border post initiative is best pursued at this time by the negotiation of bilateral MOUs.

9. Conclusion.

RCSA's support of regional integration of SADC customs services should be increased, with immediate focus on implementation of SADC rules of origin, an updated and sufficiently elaborated Harmonized System, and the WTO Valuation Agreement. High priority should also be given to computerizing fully all customs administrations and linking SADC customs administrations electronically. Common forms and procedures will flow from the creation of a common EDP network.