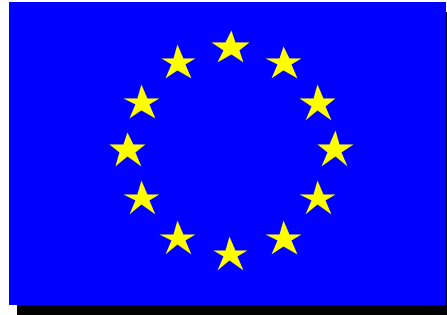




**DEPARTMENT OF TRADE  
AND INDUSTRY**



**DEPARTMENT OF TRADE AND INDUSTRY  
POLICY SUPPORT PROGRAMME**

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**STUDY TERMS OF REFERENCE FOR A STUDY ON THE  
LIKELY EFFECTS OF A MERCOSUR-SACU TRADE  
AGREEMENT ON THE LOCAL CLOTHING INDUSTRY**

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**1. CLOTHING & TEXTILE SECTOR SUMMIT MANAGING CUSTOMS & RELATED CONTROLS**

**A. Purpose**

The textile and clothing Sector Summit (29<sup>th</sup> August 2000) made a number of commitments to improve the administration of customs and related matters for the betterment of the domestic RSA textile and clothing industries.

The main purpose of this submission is to give structure and guidance to the roles and functioning of the various structures that the Sector Summit agreed should be established.

**B. Sector Summit Structures**

The Sector Summit agreement specified that following structures should be set up to deal with customs related matters:

- a Customs Control & Rebate Management Liaison Committee System (see Sector Summit agreement [SSA], s13.1 & s8.4);
- a structure to monitor of the SADC MMTZ quota (see SSA, s10.1);

**C. Sector Summit Agreements**

The Sector Summit agreed that a range of matters should be attended to. These are detailed in Annexure "A".

**D. SACTWU Proposals - structures; terms of reference; participation; meetings; reporting; agenda**

**Recommendation:** It is proposed that there should be a single umbrella industry structure – the Customs Control & Rebate Management Liaison Committee (CCLC) – that will process all customs issues emanating from the Sector Summit. Should other customs related issues arise, post the Sector Summit, then it should be agreed that most of these should fall under the jurisdiction of the CCLC.

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- Recommendation:*** It is proposed that the CCLC should have the following main terms of reference:
- the development of targeted and ongoing strategies to counter corrupt and illegal practices;
  - the monitoring and publicising of progress of these strategies
  - the development of recommendations on the improvement of customs control and rebate systems

***Recommendation:*** The following practical arrangements should pertain to operation and functioning of the CCLC.

***Participation***

It is proposed that the CCLC should be comprised of representatives from the following :

- SARS (a political head, with the senior managers responsible for the units that will be affected)
- DTI (including the BTT)
- SACTWU
- CLOFED
- TEXTFED
- Retailers ?

***Meeting frequency***

The CCLC should (as per SSA) meet on a monthly basis; once this committee develops a rhythm meetings could be less frequent. Where necessary, sub-committees will meet more frequently.

***Reporting***

The CCLC should report on its activities to the Textile & Clothing Industry Forum (TCIF) that has been set-up in terms of the SSA.

***Agenda***

This CCLC should have a structured agenda. The following broad areas are envisaged :

- customs transformation programme as it affects the clothing and textile industries
- rebate matters
- customs issues flowing from bilateral trade agreements
- general

The CCLC should determine the priority of issues.

**E. SACTWU - Prioritisation of issues**

Given the number of sub agenda issues that need to be addressed SACTWU would need to prioritise issues. To this end it is proposed that the following issues<sup>1</sup> be addressed by SACTWU :

***Issues to be given consideration by SALRI***

Issues SALRI will still need to provide SACTWU with reports on:

- dedicated ports of entry      – what should these ports be (See Annexure “B”)
- MMTZ quotas                      – a proposal needs to be made to give effect to the MMTZ quota monitoring proposal
- valuations                         – there is a need to develop a minimum valuations guide
- whistle blowers                 – SACTWU would need to initiate a “whistle blowers” campaign; associated with this is the requirement that SACTWU would need to develop and provide SARS with a risk profiling document
- publicity                            – SACTWU will need to publicise successful prosecutions and convictions
- legislative changes               – at the moment the law allows transgressors to walk away. Proposals are needed in order to change the law so that transgressors can be jailed and/or fined

**ABBREVIATIONS**

BLNS	Botswana, Lesotho, Namibia & Swaziland
BTT	Board on Tariffs & Trade
CCLC	Customs Control & Rebate Management Liaison Committee
CLETG	Customs Law Enforcement Task Group
CLOFED	Clothing Federation
CTP	Customs Transformation Programme
DCC	Duty Credit Certificate
DTI	Department of Trade & Industry
ICIC	Independent Complaints & Investigations Commission
MMTZ	Malawi, Mozambique, Tanzania & Zambia
RSA	Republic of South Africa

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<sup>1</sup> Issues already given consideration by SALRI include on tariff rebates; the disposal of seized textiles and clothing products; the “Buy RSA” campaign.

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SACTWU	Southern African Clothing & Textile Workers' Union
SACU	Southern African Customs Union
SADC	Southern African Development Community
SARS	South African Revenue Service
SSA	Sector Summit agreement
TCL	textile, clothing and leather (sector / industries / products / etc)
TCIF	Textile & Clothing Industry Forum
TEXFED	Textile Federation
VAT	Value Added Tax

**ANNEXURE “A”:**     **CONSOLIDATED SUMMARY OF SECTIONS OF SECTOR  
SUMMIT AGREEMENT<sup>1</sup> CONCERNING CUSTOMS  
CONTROL MATTERS**

**1.     Customs Transformation Programme (CTP):**

*Inspections*

- introduce a compulsory inspection of at least 10% of goods from the Clothing, Textile and Footwear industries; and higher inspection rates for removals in transit / removals in bond. It is proposed that the level of inspection be gradually increased over time. <sup>2</sup>[\*\*Parties to make proposals to SARS on how they can help to achieve 20% inspection levels on a sustainable basis, given SARS’ resource constraints.]
- include labour intensive sectors of manufacturing in the invoice analysis audit
- dedicated ports of entry be nominated for clothing and textile products, in order to ensure that limited technical capacity is concentrated for effectiveness. [\*\*Limiting ports of entry - parties to make proposals.]

*Valuations*

- enforce practical valuation procedures at ports of entry; improve the technical ability of customs officials to identify and value goods accurately (urgently develop a new valuation methodology). [\*\*SARS to update valuation systems by September 2000 and liase with industry on how they can assist in making it more accurate and effective. Introduce a minimum international valuation system on which to base minimum duties and VAT collections.]

*Tip-offs*

- improve and publicise the 0860 tip-off and award system. The parties further commit to introduce a ‘whistle-blowers’ campaign to encourage members to report possible customs fraud within their companies, both in the sector and in associated sectors such as customs, transport and retail. Parties will actively publicise the fact that SARS has an anonymous tip-off system in place (0860 12 12 14) and will actively use the system to provide SARS Special Investigations unit with information about corrupt and illegal activity.

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<sup>1</sup> The main areas of the SSA which deal with customs and related control matters are: Section 8.4.; s9.3; s10.1; & s13

<sup>2</sup> NOTE: all text with \*\* within [] indicates that there was no final agreement at the Sector Summit. (See SSA s13.10 “Governance issues still under discussion by the parties”)



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*Prosecutions*

- prosecute retailers and middlemen caught with goods which have entered the RSA without the proper payment of duties; publicly disclose the names of guilty parties; apply stiff tax penalties against companies and individuals found to have benefited from such abuses; and, utilise the asset forfeiture legislation to seize assets accrued through customs abuses. Fines should be increased and a few jail terms would assist in discouraging illegal activity. [\*\*SARS' criteria for administrative settlement vs prosecution. Request to SARS to consider removing admission of guilt option.]

*Publicity*

- The parties recognise the efforts that SARS has made in recent months in prosecuting individuals and firms that have carried out illegal activities. Parties recognise that successful prosecution and conviction rests on the evidence that SARS is able to present and undertake to provide the utmost assistance to SARS in these processes. All parties will use their newsletters and media to publicise the results of the campaigns that are being waged by SARS against illegal activity. Credit for prosecutions and convictions must be given to Customs in media releases.

*Resources for SARS*

- tighten security at customs warehouses to stop the theft of seized goods
- speed-up the computerisation of DTI, SARS and all ports of entry and providing information on a timely basis
- [\*\*SARS to provide feedback on the evaluation process on the effectiveness of scanners and their role in the SARS business plan.]

*Staffing*

- increase the number of inspectorate posts
- rotate customs staff between different posts
- utilise private sector technical assistance for customs related activities. The parties to agree to provide resources and expertise to SARS for assistance in the campaign to stamp out customs fraud. To this end, the union and industry will train a specified number of members who may act as a resource for customs officials.

*Statutory Powers*

- consider the incorporation of the Customs Law Enforcement Task Group (CLETG) into the Scorpion's unit.

**2. Rebate Issues**

- parties agreed that, in the interest of transparency, the names of the 470.03 and DCC rebate recipients would be published on a regular basis
- provide a dedicated and effective investigation facility to follow-up on DCC, 470-03 and other permit abuses in the TCL industries, and take immediate and appropriate steps to stop such abuse
- improve the resources available in the Board of Tariffs & Trade (BTT) for anti-dumping and countervailing investigations as well as investigations of rebate permits
- stop the importation of second-hand clothing immediately
- provide an effective control over exports of goods subject to incentives [\*\*DCCS high seas sales – a process is underway in parallel to the summit to resolve this matter.]
- To overcome abuse of the system, it is proposed that the following areas are given consideration in the relevant forum:

- Non-transferability of 470.03 imports

As a temporary measure, and to prevent leakage onto the domestic market, transferability between Companies should not be permissible; in other words the holder of the permit should be the importer of the input (e.g. fabric), the manufacturer of the product and the exporter of the product (e.g. clothing). The process of sub-contracting to CMT operations would still be permissible as there is not change in ownership of the inputs (e.g. fabric)

- Bond-stores

Bond stores (for 470.03) with proper record-keeping needs to be a requirement. This matter requires focused attention to ensure that there are proper records to link the raw material imports to the product exports, as well as proper audited reporting procedures. When the SAP permit system was effective, bond stores were a requirement. Industry was able to meet this requirement quickly and it is thus not difficult to implement. It is believed that all rebate facilities (3rd and 4th Schedules) should be subject to a harmonised/common bond-store requirement.

- 470.01

The 470.01 requirements need to be harmonized with those of 470.03. The conditions under 470.01 are more onerous (e.g. duty equivalent versus nominal deposits) which is a glaring anomaly as raw material ownership does not revert to the local manufacturer. It would then be possible to utilise 470.01 for its intended purpose and eliminate the need to use (and abuse) 470.03.

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International competitiveness does not allow non-core costs such as interest on duty, equivalent deposit and the strain on cash flow.

- [\*\*All parties agreed to make inputs on possible changes to 470.03 and 470.01 system by end-September 2000.]
- Parties recognised that RSA's Anti-Dumping system is used by industry. The parties agreed to work towards improving the performance of the Anti-Dumping system, recognising that Government's resources were limited and that there is room for Industry Associations to improve the performance of the Anti-Dumping system by providing better services to their members. In this context, CLOFED and TEXFED acknowledge that this was one area where they could consider providing a service to their members.

### **3. Bilateral Trade Agreements**

- take measures to stop the corrupt issue of import certificates within the Southern African Customs Union (SACU)
- the parties to consider the establishment of an ICIC (Independent Complaints and Investigations Commission) in SACU, with powers of financial and other sanctions for breaches, and entitled to utilise powers of investigation and seizure available in each country through inter alia the use of seconded officials, to investigate all complaints and be the centrepiece of trade intelligence for the customs union, and report to Ministerial level meetings and to national parliaments. It is noted that SARS has taken steps with its SADC counterparts to effectively manage and control the agreement including safeguard mechanisms
- set up manned border posts with the BLNS countries and have dedicated places of entry for goods
- SARS to play a role in the administration of MMTZ quotas; business and labour will also participate in the monitoring of the quota
- With the coming into force of the MMTZ quota arrangements government gave the assurance that textile and clothing exports by SADC countries can only enter the RSA under the MMTZ arrangement. This means that bilateral agreements will become redundant and fall away for clothing and textile products upon implementation of the SADC protocol on trade.

### **4. General**

- parties agreed that the systems that are in place to seize and dispose of counterfeit clothing and textile products need to be sound and oversight is needed to ensure that they are operating effectively. Destruction of seized goods is the most effective method e.g. SACTWU's shredding project needs to be implemented with immediate effect
- parties agree to work together to reduce the need for customs warehouses. Where such warehouses are necessary in respect of seized clothing and textiles, parties need to reduce the risks and costs associated with maintaining these inventories

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- Government undertakes to introduce to Parliament before mid-2001 and to pass into law before the end of 2001, a legislative requirement that all clothing, footwear and made-up textiles sold in South Africa, should carry a label of origin
- Government, together with the parties, undertakes to fast-track the implementation of the Made in South Africa / Buy SA Campaign, as set out in the agreed Nedlac process, currently underway.

**ANNEXURE “B”: REGULATING TEXTILE & CLOTHING FLOWS FROM  
SADC STATES DEDICATE PORTS OF ENTRY**

**1 Purpose**

With the coming into force of the SADC trade protocol the RSA will need to set up mechanisms to regulate, as well as monitor, the flows of clothing & textile products into the RSA.

The clothing and textile Sector Summit and other structures (e.g. NEDLAC’s TESELICO) have anticipated some of the issues. To this end note should be taken of the following:

- the Sector Summit agreement (SSA) stated that :
  - SARS should play a role in the administration of MMTZ quotas
  - organised business and labour should participate in the monitoring of the quota
  - manned border posts with the BLNS countries should be set-up and that there should be dedicated places of entry for textile and clothing goods
  
- within NEDLAC discussion focussed on :
  - the fact that there should be dedicated ports of entry into the RSA for MMTZ quota products
  - concerns over the inability of many SADC customs administrations to regulate customs matters

The main purpose of this submission will be to provide further detail on how SACTWU can take forward issues that have been discussed and agreed upon at the Sector Summit and within NEDLAC, as they relate to Customs controls within the region.

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**2 Dedicated ports of entry<sup>1</sup>**

There is no doubt that an important instrument to ensure effective control over the SADC trade flows quota would be to ensure that textile and clothing products can only enter the RSA via specified ports of entry.

2.1. For goods within the MMTZ quota

It is proposed:

	<b>Airport</b>	<b>Land Border Posts</b>	<b>Sea Ports</b>
<b>Malawi</b>	JHB International	Beit Bridge	-
<b>Mozambique</b>	JHB International	Komatipoort	Durban / CT
<b>Tanzania</b>	JHB International	Beit Bridge	Durban / CT
<b>Zambia</b>	JHB International	Beit Bridge	-

1.2. For goods from the rest of SADC<sup>2</sup>; and for goods outside of the MMTZ quota<sup>3</sup>

It is proposed:

	<b>Airport</b>	<b>Land Border Posts</b>	<b>Sea Ports</b>
<b>Malawi</b>	JHB International	Beit Bridge	-
<b>Mozambique</b>	JHB International	Komatipoort	Durban / CT
<b>Tanzania</b>	JHB International	Beit Bridge	Durban / CT
<b>Zambia</b>	JHB International	Beit Bridge	-
<b>Zimbabwe</b>	JHB International	Beit Bridge	-
<b>Mauritius</b>	JHB International	-	Durban / CT
<b>Botswana</b>	JHB International	Lobatse	-
<b>Swaziland</b>	JHB International	Oshoek	-
<b>Namibia</b>	JHB International	Voolsdrift	Cape Town
<b>Lesotho</b>	JHB International	Maseru	-

<sup>1</sup> Dedicated ports of entry were used to effectively control abuses that were occurring under the Malawian–RSA trade agreement.

<sup>2</sup> The SADC countries affected would include mainly Zimbabwe and Mauritius. At this point in time it appears that Angola, the DRC, and the Seychelles will not be participating in the free trade agreement.

<sup>3</sup> It must be remembered that not all clothing and textile goods that will be traded by the MMTZ states will fall under the quota; in addition once the quota has expired goods will be traded in terms of the regular conditions of the agreement

### 2.3. Summary

The above mentioned proposals will mean that SARS – which SACTWU understands has limited resources – will have to develop specialised knowledge relating to SADC originating clothing and textile products at **8** different ports of entry.

## **3. Stakeholder monitoring of SADC trade flows into RSA**

### 3.1. Monitoring MMTZ quotas

In 1999 the RSA government allowed far more Mozambican clothing & textile products to enter the RSA than was permitted in terms of the bi-lateral trade arrangement that existed between them. The RSA government then had to issue a notice in the government gazette to legalise the situation.

To avoid similar problems in the future it is proposed that the agreed “monitoring committee” should function on the following lines:

#### **Structural location**

- the monitoring committee should report to the Customs Control & Rebate Management Liaison Committee (CCLC).

#### **Participation**

- the monitoring committee should be composed of :
  - 1 representative each from TEXTFED, and from CLOFED
  - 2 representatives of SACTWU
  - 1 representative from the DTI (who has the responsibility of dealing with the SADC issues)
  - 1 representative from SARS (customs control)
  - 1 representative of the CLETG
  - 1 representative from the SACU Central Co-ordinating Authority (SACU-CCA)<sup>1</sup>

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<sup>1</sup> The SACU Central Co-ordinating Authority (SACU-CCA) is a structure that will be set-up in terms of the Maseru Protocol on Trade (Appendix 5 to Annexure 1 of the 1996 agreement). SARS has been appointed to run the SACU-CCA. The SACU-CCA's functions include :

**Meeting schedule**

- the monitoring committee should, initially, meet on a monthly basis; thereafter it should, after it has set-up its own internal operations, take a decision on as to how often it should meet in order that it would be able to effectively carry out its own business.

**Primary responsibilities**

- the monitoring committee would have two main areas of activity:
  - ensuring that the MMTZ quota levels set are not exceeded
  - obtaining and processing statistical and other information related to the quota; and using that information to make suggestions to tighten-up on actual or perceived abuses.

(see Appendix “1” for details of information that should be kept.)

- 
- maintaining a register of all MMTZ companies that have been allocated quota. All MMTZ states will be required to register with it the names of “certified exporters”;
  - maintaining a register of the quota allocations (held by “certified” exporters) made by each MMTZ state;
  - receiving formal notifications from “certified” exporters that they intend sending goods (under quota) into the RSA via a specified border post;
  - advising the specified border post of the fact that quota goods shall be entering the RSA;
  - subtracting from each MMTZ state’s quota the total amount of goods that have entered the RSA.



3.2. Monitoring other SADC trade

There will be a large amount of SADC trade – in terms of the trade protocol – that will take place outside of the MMTZ quota arrangement. There exists no structure (as there is for the MMTZ trade) within which the labour and the business stakeholders can play a “customs”<sup>1</sup> monitoring role.

It is proposed:

- that the structure created to deal with the monitoring of the MMTZ quotas (see 3.1. above) should have its primary responsibilities expanded to include the monitoring of the other customs aspects of the SADC trade protocol.

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<sup>1</sup> The main area of concern would be to ensure that the agreed rules of origin are being adhered to. A structured interaction would mean a proper channel for the free flow of information relating to potential abuses; stakeholders could constantly supply SARS and CLETG with solid risk profiling; etc.

**APPENDIX “A”:**                      **MINIMUM INFORMATION REQUIRED TO BE KEPT  
IN ORDER TO MONITOR THE MMTZ QUOTA**

It is vital that as much information as possible relating to SADC trade flows should be maintained in a format that is based on a solid information technology platform.

To manage the quota it would appear that as a minimum the following information will be required:

*Register of certified exporters:*

- this register (this is a formal requirement of the draft regulation) should list the name of the certified exporter; the contact details of the certified exporter (including the physical address and postal address of the enterprise);
- the quantity of quota (units or kgs) that each certified exporter has been allocated. This quota should also specify the quota allocation in terms of 6-digit HS tariff code level.

*Details of RSA consignees:*

- details must be kept of all RSA based consignees. This list should specify the legal identity of the consignee; and the contact details. In addition a register should also be kept of all the physical addresses at which the products are being delivered to. Details should also be kept of what products (per HS tariff code) are being delivered to each address