

# **Accession to the International Convention on Mutual Administrative Assistance in Customs Matters**

*Erich Kieck, South African Revenue Service  
14 March 2006*

# PURPOSE

To consider the International Convention on Mutual Administrative Assistance in Customs Matters (Johannesburg Convention) for Ratification.

- Adopted in June 2003 by the Council of the World Customs Organization (WCO)
- Opened for signature until 28 June 2004
- Not yet entered into force
- South Africa is in a position to accede

# BACKGROUND (I)

The WCO:

- Represents 169 Customs administrations
- These process 98% of all international trade transactions

The mission:

- To simplify and facilitate international trade - standardizing and harmonizing Customs formalities and by facilitating cooperation between Customs administrations
- South Africa is a Contracting Party to 13 of the 17 WCO Conventions

# BACKGROUND (II)

## Emerging Trends

- A rapidly changing world
- Globalization: greater mobility of people, goods and capital = increased inter-connectedness
- Rapid growth but ... growing inequalities
- Focus on poverty reduction
- Emergence of new threats
- Greater activism: non-state actors (governance, transparency and reforms)

## New Threats

- Emergence: trans-national organized criminal networks
- Illicit trade: smuggling
- International terrorism
- Economic security
- New threats recognize no national borders

# BACKGROUND (III)

## Drivers

- **Growth in international trade:** US\$8.8trillion in 2004 and growing
- **New logistics:** just-in-time procedures, low inventories
- **New trading patterns:** e-commerce, intra-firm trade, outsourcing
- **Economic Security:** smuggling and fraud
- **Supply chain security:** international terrorism and organized crime

## Implications for Customs

- ▶ Pressure: facilitate trade and secure international supply chains
- ▶ Emphasis: international trade administration
- ▶ Origin-to-destination supply chain management
- ▶ Pressure on Customs to develop a specialized understanding and approach
- ▶ The border can no longer be considered a physical entity

# BACKGROUND (IV)

## Impact of developments on role of Customs

### TRADITIONALLY

Customs performed fiscal and economic missions based on revenue collection – administering controls over:

- Movement of people
- Movement of goods
- Movement of conveyances

### TODAY

Customs nowadays:

- protects markets (rules of origin, customs valuation and counterfeits),
- protects society (drugs),
- protects the environment (waste)
- protects nature (CITES),
- combats terrorism (WCO, CSI),

# BACKGROUND (V)

## Multilateral Responses

### WCO

- Revised Kyoto Convention
- **Johannesburg Convention**
- **Framework of Standards to secure and facilitate trade**
- Customs-to-Customs network arrangements
- Customs-to-Business partnerships

### WTO

- Doha Development Round: November 2001
- Inclusion of Singapore issues
- July 2004 package: Trade Facilitation Agreement
- Binding Trade Facilitation standards
- Subject to Dispute Settlement Understanding
- Hong Kong Ministerial Conference: December 2005

# BACKGROUND (VI)

## WCO - FRAMEWORK OF STANDARDS

- *June 2005: WCO Council adopted Framework of Global Supply Chain Security and Facilitation Standards*
- *Objectives:*
  - *Provide international standards to promote certainty and predictability*
  - *Promote seamless international movement of goods*

### ● **FOUR CORE ELEMENTS**

- Advance electronic manifest requirements (Customs-to-Customs sharing of information)
- Risk management (aligned systems)
- Inspections using NII equipment (X-ray scanners)
- Customs-to-Customs standards; Customs-to-Business standards

### ● **OTHER PROVISIONS**

- Integrated border management
- Single Window
- Authorized Economic Operator: reward traders with defined facilitation benefits

# BACKGROUND (VII)

## National Response

- Acceded to Revised Kyoto Convention
- Deposited intent to implement the Framework of Standards to secure and facilitate trade
- Signed MAA's to support Customs-to-Customs network arrangements and intend expanding
- Started engagement to support Customs-to-Business partnerships
- Started to redefine the role of Customs
- Enter into arrangements with major trading partners (CSI model)
- Move towards paperless environment: automate interface with other Customs
- **Intention to accede to the Johannesburg Convention**

# THE JOHANNESBURG CONVENTION (I)

## OBJECTIVES

- To provide a binding and enabling legal instrument for reciprocal cooperation between Customs administrations.
- Contracting Parties accept the obligation to provide each other with administrative assistance under the terms of the Convention.
- This will enable real-time cooperation between Customs administrations as outlined in the WCO Framework of Standards.
- Expands Customs focus to export and transit control in addition to import control.

## BENEFITS

### Accession will:

- Integrate South Africa into the International Customs network, by creating a legal basis for the exchange of information.
- Strengthen South Africa's ability to provide economic security.
- Enhance our legal framework for combating those traders whose activities prejudice the South African economy.

# THE JOHANNESBURG CONVENTION (II)

## OBLIGATORY CORE PROVISIONS

Types of information and assistance that may be requested:

- For the proper application of Customs law (Article 5);
- Relating to Customs offences (Article 6);
- Assessing of Import duties and taxes (Article 7)
- Surveillance on goods, means of transport, premises, or persons (Article 11); and
- Notification on behalf of another administration (Article 13);
- All Contracting Parties shall supply immediate assistance on own initiative in cases of substantial damage to each other (Article 4);

# THE JOHANNESBURG CONVENTION (III)

## OBLIGATORY CORE PROVISIONS (II)

### Safeguards:

- To be used only for the purpose for which it is provided, although exceptions are allowed (Article 24);
- Where the National Law provides greater protection these rules shall supersede the provisions of the Convention. The Convention will apply where no provision is made either Nationally or Bilaterally for such protection (Articles 25 and 26).
- Non-personal data for analyses and risk assessments is to be collected in accordance with Article 28;
- Purpose of centralisation is to allow for risk assessment (Article 27);
- Limitations imposed by national law, the non-availability of resources (Article 2);
- Infringement of certain national interests, or where the efforts to be expended are disproportional to the perceived benefits (Article 42);
- The Convention also allows for reservations to be made on all the non-core provisions (Article 43);

# THE JOHANNESBURG CONVENTION (VI)

## OPTIONAL NON - CORE PROVISIONS

### Exchange of information:

- Contracting Parties may exchange information they deem useful on an automatic basis (Article 9);
- Contracting Parties may exchange information on specific data elements in advance of the arrival of consignments, to ensure the integrity of the international trade supply chain. The details of these exchanges can be agreed to by mutual arrangement between two or more Contracting Parties (Article 10)

### Modern methods of Customs co-operation:

- Various non-core Articles have been included to more effectively combat Customs offences, including controlled deliveries (Article 12), hot pursuit (Article 20), cross-border surveillance (Article 21), covert investigations (Article 22) and joint control and investigations teams (Article 23). The Articles establish criteria for the use of these techniques and Contracting Parties may agree to additional terms and conditions between themselves

# THE JOHANNESBURG CONVENTION (VII)

## OPTIONAL NON - CORE PROVISIONS (II)

### Provisions for officials

- With the consent of the requested party, experts or witnesses may appear before a court (Article 15), officials of one Contracting Party may be present in the territory of another, either by invitation or by request (Articles 16 and 17), with relevant arrangements to be made for visiting officials (Article 18)

### Management of personal data

- Information to be included and the use thereof (Articles 35 and 36);
- The retention period of personal data (Article 37);
- Access to personal data (Article 38);
- The modification of personal data (Article 40); and
- The responsibilities and liabilities for damages caused by the use of the information in the database (Article 41).