

IDC FRIDGE RESEARCH PROJECT:

Comprehensive research into various areas of customs fraud and illegal imports, with a view to identifying mechanisms and structures which could be utilised to combat the current unacceptably high levels of fraud or illegal importation in various identified sectors

Final Report (Phase I – IV)

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EXECUTIVE SUMMARY

INTRODUCTION

The IDC contracted the Consortium to conduct a comprehensive research into various areas of customs fraud and illegal imports, with a view to identifying mechanisms and structures which could be utilised to combat the current unacceptably high levels of fraud or illegal importation in various identified sectors.

THE SCOPE

The scope of the research project consisted of:

- 1) A critical review of existing practice particularly relating to:
 - Law enforcement – levels of cooperation/coordination amongst enforcement agencies and between enforcement agencies and business and labour;
 - Level of resourcing of enforcement agencies (SARS / ITAC / SAPS); and
 - The prevalence of customs fraud and illegal imports in industrial goods sectors.
- 2) Review of international best practice to serve as a benchmark against which options for improvement in the South African system can be measured including co-operative structures amongst the enforcement agencies and between the enforcement agencies and Business and Labour. (Gaps)
- 3) Options for improvement (Recommendations) including, but not limited to:
 - Regulatory instruments (including penalties and sanctions);
 - Co-operation amongst enforcement agencies and between enforcement agencies and Business and Labour; and
 - Administrative instruments.

The research was conducted primarily as a desktop assignment, but included significant interaction and interviews with the sector stakeholders, government departments and related parties. To improve the sample of information, the Consortium also conducted a survey with the industry stakeholders, SARS, SAPS and other relevant parties. The sample provided some insight into the issues contributing to the successes and challenges within the Customs environment.

The research was conducted with the framework of an approved workplan and was guided by the input, comments and suggestions of the Counterpart Group (CPG).

SOUTH AFRICAN RESEARCH

The review of the South African customs environment focused on key elements of applied legislation, multilateral agreements as well as recent developments in relation thereto. This review and the stakeholder engagements formed a critical component of the gap analysis and recommendations.

Levels of co-operation and resources within the departments responsible for customs were explored. The Border Control Operational Coordinating Committee (BCOCC) is based on sound principles, but does not function effectively insofar as implementation is concerned. Infrastructure challenges and initiatives aimed at addressing customs fraud were identified. Representatives of customs enforcement agencies (SAPS, ITAC and SARS) were interviewed with focus on *inter alia*:

- Mandates;
- Staffing models;
- Resourcing;
- Risk management;
- Strategy and policy, and
- Other key initiatives aimed at effective enforcement protocol.

Our findings suggest that even though there are many initiatives aimed at addressing customs fraud, they have been plagued by poor integration, budget and capacity constraints as well as lack of project continuity.

Modernisation initiatives, which have framed SARS' customs agenda for many years, have started to see fruition with the implementation of a new IT platform in the form of a new system known as TATIS with its integrated risk engine.

These developments augur well for progressing with Authorised Economic Operators (AEO), an international standard by the WTO aimed at fast tracking reputable and compliant importers; and other key customs control developments that will align us with international best practice.

The survey, to which mainly SARS officials responded, reflected the following challenges:

- Lack of awareness of the anti-corruption hotline;
- Limited investigation capacity;
- Ineffective information sharing; and
- Perceptions in relation to fraud prevalence in the Clothing, textile and footwear sectors.

SECTOR REPORTS

Dairy

The primary production sector is more labour intensive than the secondary (processing) industry and directly employs approximately 60,000 workers while approximately 16,000 workers are employed by the secondary industry. Dairy products represent two of the top ten employment generators in the economy. **The total investment in the sector is estimated by the Milk Producers' Organisation (MPO)** to be approximately R20 to R25 billion per annum.

Our research indicated that SARS does not view the importation of dairy products as a high risk with regard to non-compliance and fraud. Products that are imported at abnormally low prices as a result of fraudulent activities place the dairy industry at a competitive disadvantage and increase the barriers to entry for potential emerging farmers and also impacts negatively on the sustainability of existing emerging farmers. As a result of the threat posed to the dairy industry by illegal and sub-standard imports, capacity was created by the primary dairy industry to identify and address such imports through the establishment of a forensic investigation company.

The perceived lack of co-operation and co-ordination among government agencies involved with customs services with regard to imported dairy products led to the establishment of a forum with representation from the Departments of Agriculture and Health, SARS, The Dairy Standard Agency and the dairy industry. All issues relevant to the import and export of dairy products are discussed by the forum and action steps are taken to address problems.

It was revealed that customs tariff classification for dairy products e.g. whereby products with a dairy content are classifiable under different tariff sub-headings at different rates of duty, *ad valorem* duties and inefficient administration of rebate provisions lead to customs fraud in the sector.

Importers who utilise rebate provisions when importing dairy products were found to purposefully not comply with the conditions of rebate provisions in order to avoid or minimise the customs duty payable. Consignments of dairy products, for which the Free on Board prices are extremely low and not in line with production costs or published world prices, are imported and frequently originate from questionable sources like the Isle of Man, Singapore and Thailand.

Livestock and Red Meat

Livestock farming takes place throughout South Africa with the numbers and species being dependent on production potential, climatic conditions, the concentration of population, the availability and accessibility of inputs and the location of markets. The livestock industry, which accounts for more than 40% of the total value of agricultural output, is a very important component of the agricultural sector and the national economy. Due to livestock farming being largely natural resource based, it occupies approximately 80% of the land available for agriculture. Animal husbandry is the primary income generator in the majority of the rural areas in the country.

The livestock sector is one of the top ten employment generators in the South African economy with approximately 425,000 direct and indirect employees and a further 2,125,000 people dependent on the livestock industry for their livelihood. The total investment in the industry amounts to more than R20 billion per annum.

The industry is well-organised within various organizations representing different commodities and services under the umbrella of the representative structure of the red meat industry, namely South African Meat Industry Company (SAMIC).

The prevalence of customs fraud, in particular, under-declaration of value and weight and smuggling, is very high in the livestock sector, especially with regard to the trade in livestock from neighbouring **countries such as Namibia, Zimbabwe and Lesotho through the country's land border posts**. Large numbers of weaner calves, sheep and goats are exported at under-declared values and quantities to South Africa from Namibia.

The content of the trucks is poorly inspected at the border post to verify the correctness of import documentation owing to various reasons which include; insufficient lighting, off-loading and inspection facilities at the border post. Cattle and sheep carcasses are smuggled from Namibia or brought in at under-declared values. Research indicated that SARS officials are not adequately trained with respect to livestock and red meat; and do not have sufficient product knowledge to conduct inspections for verification purposes.

Large sections of the boundary fence between Zimbabwe and South Africa are either damaged or do not exist anymore and are not repaired and/or maintained by the responsible authorities. During the winter months when the Limpopo River is not flowing, significant numbers of cattle are smuggled into South Africa posing a major risk with regard to the spread of transmittable diseases. The problem is exacerbated by the fact that the relevant South African authorities such as the SAPS Border Police, **SARS' Border Control Unit and the Department of Agriculture's Directorate: Animal Health, do not** have sufficient capacity to patrol, maintain and control the border fence adequately.

An investigation by the Red Meat Producers' Organisation revealed that large numbers of livestock are illegally entering South Africa from Lesotho. Illegal activities enable exporters from neighbouring countries to deliver livestock to the RSA meat market at prices against which South African livestock producers cannot compete. The under-declaration of value and numbers of imported livestock has a direct negative effect on the South African market price of red meat.

Footwear

The majority of factories producing footwear are small to medium sized employers. According to SAFLIA, labour statistics from the National Bargaining Council of the Leather Industry of South Africa (NBC) reflected a decrease of 1,4% in employment in 2008, compared to 2007. The statistics for investment over the period between 2006 and 2008 indicate a steady decrease in gross domestic fixed investment.

According to industry representatives, fraudulent imports have significantly contributed to job and investment losses. Research has revealed that the following types of fraud are most prevalent in the footwear sector: counterfeiting, under-invoicing and smuggling.

SAFLIA estimates that 50% of all imported footwear in SA has entered the country illegally, especially those from China. It is, however, not impossible for South African law enforcement agencies to prove this, since the Chinese Government refuses to supply them with information. SARS officials confirmed that, according to the WTO regulations, South African Customs Officials are obliged to accept the commercial invoice as the true value of the goods, if they cannot prove the contrary. Due to the vast number of containers brought in daily and comparatively few customs officials available to inspect such, the majority of these goods enter South Africa undetected.

The rates of duty on footwear imports vary between free and 30% *ad valorem*. Industry-related investigations indicate that *ad valorem* duties are an incentive for importers to under-value or under-invoice the imported goods.

As a result of different trade development and co-operation agreements with various countries, the rates of duty applicable to similar items differ depending on the country of origin. This creates a further incentive for fraud in mis-declaring the country of origin on the labeling and import documentation with regards to these goods.

SAFLIA requires payment of a compulsory levy in support of the Footwear Industry Technological Fund. **Part of this is used to train Customs Officials at POE's (to improve monitoring of compliance with legislation)** and to maintain a database on production, employment, imports, and exports in the footwear sector. SAFLIA indicated that these initiatives are only now starting to bear fruit, partly due to the problem of constant restructuring in SARS and the SARS Customs Academy not being widely known in the industry.

SAFLIA suggested that some form of footwear specific and general qualifications be instituted for the customs officials. It was further suggested that limiting the ports of entry for footwear (and other products) would greatly reduce illegal imports as expertise could be concentrated.

Clothing and Textiles

The textile industry was one of South Africa's major employers in the manufacturing sector in the past but is currently a relatively small employer. The clothing industry sector is a significant source of employment, particularly for women. The clothing industry is labour intensive while the textile industry is more capital intensive. During the period 2003 to 2008 both the local textile and clothing industries were characterized by the closure of a number of companies with the resultant loss of employment. The key challenges facing the clothing and textile sectors are seen by industry representatives as the loss of domestic market share to imports, together with low levels of profitability and investment; and the alarming level of job losses and a shortage of skills.

The concern that Eastern countries flood our local markets with low priced imported textiles and textile products is still real. According to SARS the rapid growth in illicit trade (such as counterfeit goods and under-valued textiles and clothing originating from the east, in particular) continually **eroded South Africa's revenue base and was the main cause of the closure of clothing and textile factories and numerous job losses.**

Our research has shown a significant decrease in production capacity from 2006 to 2008. This could be attributed to a decline in demand for textile products as a result of a combination of any of the following: continuous low priced imports from China; the economic recession, including increased interest rates and the higher fuel and electricity prices; closure of factories as a result of the economic recession; decline in exports of manufactured goods; and the perception that SA cannot leverage resources towards market needs.

Our research has indicated that the following types of fraud are most prevalent in the textiles and clothing sector: under-valuation, counterfeiting and mis-declaration of origin and tariff classification.

Industry related investigations indicated that the application of *ad valorem* duties creates a significant incentive for importers to under-value or under-invoice the imported goods. Similar products are further classified under different tariff sub-headings at varying rates of customs duty, which was also identified as an incentive for customs fraud. Importers tend to incorrectly clear the imported products under the tariff sub-heading subject to the lowest rate of customs duty. This is exacerbated by insufficiently staffed ports of entry and/or inexperienced or insufficiently trained customs officials. Because of the difficulties in distinguishing between different fabrics industry representatives suspect that rebate provisions are abused through the mis-declaration of the customs tariff classification of imported products.

Circumvention of the tariff as a result of preferential rates of duty in terms of trade agreements has emerged as a problem. Rules of Origin certificates are obtained fraudulently and presented to SARS officials who do not have sufficient product and/or sector knowledge and accept certificates as being authentic. Industry representatives cited insufficient product knowledge, a lack of training of customs officials and lack of communication, information sharing and coordination between SARS and SAPS as contribute to the problem.

According to industry representatives SARS has taken a positive step in the right direction by committing to the development/implementation of an Indicative Price System whereby recommended minimum prices per item will be loaded electronically onto the system and warning signals will be raised when items are imported at prices below these amounts. Such imports, however, can still not be stopped unless proven fraudulent.

Tyres

The SA pneumatic tyre manufacturing industry comprises four companies, operating six factories, all of which are controlled by international companies. The interests of the role-players in the industry include the South African Tyre Manufacturers' Conference (SATMC), the National Regulator for Compulsory Specifications (NRCS), the National Union of Metal workers of South Africa (NUMSA) and the Retail Motor Industry (RMI).

SATMC statistics show that the industry has suffered more than 1200 job losses from 2003. According to the SATMC, cheaper imports originating predominantly from China caused some of the job losses. According to the role players in the industry, the scams and malpractices that are prevalent in the industry are under-valuation, round-tripping, abuse of trade agreements, sale of second-hand tyres, removal in bond/transit abuse, and mis-declaration.

According to the SATMC, the existing tariff classification with regard to some of the types of tyres, in particular the bigger sized tyres is outdated and makes it difficult to meaningfully monitor imports. The relatively high level of customs duties coupled with the structure thereof (*ad valorem* duties) give rise to customs fraud. An example is when importers manipulate the free on board values of the imported products in order to minimize the *ad valorem* duties payable.

The under-declaration of the value of imported tyres has a significant negative impact on the competitiveness of the South African industry. Import statistics are available from SARS, but the usefulness of the statistics by the industry in terms of the identification and combating of fraudulent imports is extremely limited. The reason for this is that the identity of importers and access to import documentation is protected by law in terms of the provisions of the Customs and Excise Act, 1964.

In terms of the SADC Agreement, tyres manufactured in the SADC member States can enter South Africa free of duty. There is mis-declaration of origin since the rules of origin (RoO) are not applied consistently and efficiently. These results in tyres originating from destinations outside SADC, being exported by SADC member states to South Africa, and entering the country free of duty.

According to the SATMC, there appears to be a major problem between SARS and the Directorate: Import and Export Control at ITAC with regard to the verification of second-hand tyre casing imports against import permits issued. The SATMC proposes that imported containers of second-hand tyres should be targeted on a profile basis for physical inspection owing to under-declaration of quantities being highly likely; and the incident might include undeclared goods in the container like new tyres that should attract an import duty.

Used tyres brought into South Africa for retreading purposes from any of the Botswana, Lesotho, Namibia and Swaziland (BLNS) countries are supposed to be returned to the relevant BLNS country once it has been retreaded. These tyres are not captured in the SARS system and no acquittal system is in place. This could potentially give rise to fraudulent practices. The SATMC proposes that a formal system be put in place for the verification of conformance to compulsory National Regulator for Compulsory Specifications (NRCS) standards.

Employment is a significant issue for this sector owing, *inter alia*, to location of the manufacturing facilities. Therefore any job losses and lost investment opportunities due to import fraud have a significant impact on development and employment within the sector.

Motor Vehicles and Components

The automobile sector is the largest manufacturing industry in South Africa although its output in the world market is only about 1%. The sector accounts for about 10% of South Africa's manufacturing exports, making it a crucial cog in the economy. Locally, the automotive sector is a major contributor in that it contributes about 7.5% to the country's gross domestic product (GDP). Naacam reports that the employment fell to about 76,000 in 2008, 6% below 2007. The total employment in this industry combined is in excess of 106,000.

Industry representatives indicated that the following criminal activities are largely prevalent in the motor vehicle sector: illegal imports, under-declaration, round-tripping in exports, fraud, and corruption

The electronic clearance system introduced by SARS can be an effective logical and/or logistical tool for dealing with customs clearance and fraud of motor vehicles if the standard and universal way of capturing vehicle identification information could be applied and adhered to. The vehicle identification information like the VIN number, the model and colour constitute baseline information used to describe and identify vehicles the world over, SADC countries included.

Tariff classification of components is according to identification numbers for original parts. According to the industry, there are loopholes in the system to avoid higher duties because no effective control exists. This leads to the government losing billions in unpaid duties on imported parts. Illegal imports, under-declaration, round-tripping in exports, fraud and corruption result not only in revenue loss for the government but in job losses as that affects local industries.

Apart from an enabling legislative framework, there are 3 main measures put in place by government to pull back some of the negative effects of crime, fraud and corruption related to the motor vehicle industry. These are vehicle registration and licensing, police clearance, and vehicle roadworthy testing.

Vehicles from the BLNS countries at present require no permit to enter South Africa. This has created a serious loophole in the regulatory framework which is fully exploited for vehicle fraud and crime. Our research indicates that most used vehicles imported for SADC countries from Japan and other countries never leave South Africa. They never reach the declared countries of destiny. SAPS have warned motorists intending to buy second-hand cars to beware of illegally imported vehicles.

BENCHMARKED COUNTRY REVIEWS

Canada

The Canada Border Services Agency (CBSA) administers and enforces the collection of duties and taxes in terms of the Customs Act. The CBSA launched the Customs Self Assessment (CSA) programme for imported goods entering the country from the United States in order to provide low-risk, pre-approved companies which possess a history of good compliance, with an expedited border clearance option and streamlined accounting and payment processes for imported goods.

Partners in Compliance (PIC) is a CBSA pilot project which promotes partnerships between the CBSA and industry in order for businesses to attain the highest rate of compliance with the CBSA's trade programs (tariff classification, origin and value for duty). The main advantage of the system is that the CBSA can focus its post-release verification resources on areas of higher or unknown risk.

Through the Other Government Departments (OGD) Interface importers and brokers who have gone through the required testing can send transactions electronically instead of presenting documentation at the ports of entry offices.

The CBSA National Learning Centre located in Rigaud, Quebec annually trains 630 new recruits to be stationed all across Canada as Border Services Officers. The Port of Entry Recruit Training (POERT) programme currently consists of 13 weeks of training. The Detector Dog Training Programme also takes place at Rigaud.

Our research has determined that South Africa has made some improvements in line with **Canada's** best practice, although we have set out the South Africa gaps and made corresponding recommendations, which will align South Africa with some of these practices. Notwithstanding, we found a lack of strategic and operational coherence with the SARS academy.

France

As a member state of the European Union (EU), France is subject to its customs administration rules and policies. Council Regulation (EEC) No 2658/87 of 23 July 1987 established a Combined Nomenclature (the tariff and statistical nomenclature) and created the Taric (*Integrated Tariff of the European Communities*), which provides the best means of collecting, exchanging and publishing data on Community external trade statistics.

Co-operation among EU Member States' police forces and customs administrations is crucial to the maintenance of an area of security. The French Customs authorities have substantial infrastructure and equipment that are used in the customs environment. A 2006 Green Paper was developed with the aim to improve detection technologies and stimulate partnerships between public and a private sector.

Within the next few years, Customs will become paperless process. Thereafter, the customs **networks of all member States will be fully integrated electronically, providing a 'one-stop-shop'** system for customs interaction with traders throughout the EU. France plays an important role in the Customs Fellowship Programme, which it funds and is active in training programmes for other countries with WCO.

Malaysia

The Royal Malaysian Customs [(RMC/JKDM) / (Malay: Kastam Diraja Malaysia (KDRM))] is the **government agency responsible for administrating Malaysia's indirect tax policy. In this regard, the RMC / KDRM administers 7 main and 39 subsidiary laws related to its mandate – in addition to implementing 18 other laws for other government agencies.** Currently the administrative structure of the Customs and Excise Department is headed by a Director General, with Deputy Directors General for Enforcement and Compliance; Customs and Internal Taxes; and Management. One effective way Malaysia deals with this is by way of reviews by auditors on the effectiveness of existing revenue laws and procedures in order to identify deficiencies in the systems – thereby enabling tax administrators to introduce controls that can discourage, if not eliminate, tax evasion which, if unchecked, could eventually erode the tax base.

Malaysia has a comprehensive legal framework and well resourced specialist investigation and prosecution agencies to proactively combat corruption, including in customs fraud, across Malaysia.

Malaysia has offered to be an ASEAN (Association of Southeast Asian Nations) Customs enforcement training agent in an effort to strengthen cooperation and enforcement operations in the region.

According to a representative of the Royal Malaysian Customs Academy, Mr Abdul Rahman, *"An interesting aspect of the course will be practical training where the participants will be involved in enforcement operations like mounting roadblocks and conducting raids. The training methodology will expose the foreign participants to our enforcement strategies which have been recognized as **among the best in the world.**"* He also cited the smuggling of arms, drugs, dangerous chemical waste and timber as the main challenge facing ASEAN Customs.

India

The Directorate-General of Central Excise Intelligence (DGCEI), headed by the Director General, is the apex intelligence organization under the Central Board of Excise and Customs (CBEC), Department of Revenue, Ministry of Finance. Its purpose is to detect evasion of central excise duties and service tax. DGCEI gathers intelligence relating to evasion of central excise duties and service tax and disseminates it to the field formations.

The Directorate Revenue Intelligence (DRI) in its present form is charged with the collection of intelligence, analysis, collation, interpretation and dissemination on matters relating to violations of customs laws.

According to Global Integrity 2006, the Indian Customs Department is generally viewed as rife with corruption, favouritism and nepotism. Under-valuation is noticed in the case of medium and large scale units especially in case of consumer products. With the rationalisation of tariff and imposition of uniform duty of 16% on most goods, the incentive for mis-classification of goods for the purposes of duty evasion has been reduced.

The Government has framed a system of rewards for people who help in the detection of the tax evasion. ICEGATE is an infrastructure project that fulfils the department's EC/EDI and data **communication requirements**. The *"Risk Management System in Customs"* (RMS) **has been implemented in 23 major POE's, covering about 85% of India's international trade**. It has revolutionized the customs import clearance process by cutting down the clearance times drastically.

GAP ANALYSIS AND RECOMMENDATIONS

Regulatory Instruments

It is our assessment that certain sections of the Customs Act have become out-dated in relation to modernising customs control methods. It is recommended, that the first phase of overhauling the current legislative framework through the two draft Bills (referring to the Customs Control Bill and the Customs Duty Bill), be fast-tracked post the February 2010 deadline for public comment.

There is a lack of consistency in the application of the customs regulatory provisions. Section 4 of the Customs Act is widely seen as restricting information sharing. **It is recommended that SOP's or MOU's be formalised among the various departments** or agencies (e.g. SARS, DTI, ITAC, SAPS, and Agriculture) responsible for the implementation of the regulatory framework.

It is recommended that, with the assistance of the South African Law Reform Commission, proposals for an amendment to the legislation be considered in order to create a presumption that incorrect declarations are fraudulent particularly in cases of repeat offenders.

Significant fragmentation exists with regards to the administration and enforcement of customs tariffs, for which India is cited as a good practice model.

Circumvention of the tariff as a result of preferential rates of duty in terms of trade agreements has emerged as a problem. To support the efficient administration and enforcement of imports regulations, a formal MOU based on developed SOP's should be negotiated and formulated between ITAC and SARS. Motor vehicle clearance system must allow for vital information to be captured and shared with e-NaTIS, and with greater involvement of SAPS and Department of Transport. To this end it is recommended that formalised SOP's be drafted to structure the co-ordination and co-operation between SARS, SAPS and the Department of Transport.

It is recommended, that proposals be considered for the creation of an Offenders' Register to 'name and shame' convicted customs fraudsters, and one that is supported by blacklisting provisions. The National Treasury's Register of Tender Defaulters can be used as a model for development of such a list.

Administrative Instruments

Frequent restructuring within SARS has resulted in amended portfolios and little or no evidence of integrated understanding of roles and responsibilities within the customs environment. This poses a challenge to communication, co-ordination and the continuity of initiatives, resulting in project or program fragmentation and unreasonable and costly implementation delays.

There are clearly capacity constraints within SARS to investigate customs fraud. India and Malaysia are cited as good practice examples where the head of Customs Enforcement is at DDG level. A recommendation is made for the appointment of a Customs Ombudsman.

The lack of computer systems and connectivity at many of the ports of entry may negate many of the advancements in electronic developments. Furthermore, the usefulness of *import statistics* is limited by the format in which they are supplied by SARS. Some good practice examples from the benchmarked countries are cited.

Customs officials have insufficient product knowledge to frame a reference for pricing of products when reviewing declarations and validating values. The roll-out of the recommended Price Reference Guidelines for identified products must be developed in cooperation with industry stakeholders and be cognisant of international norms.

Law Enforcement – Levels of Cooperation/Coordination amongst Enforcement Agencies and Between Enforcement Agencies, Business and Labour

Challenges that impede the effective functioning of the BCOCC are highlighted, with recommendations for corrective action. Also, there are indications of tension between officials of SARS and SAPS that arise during joint operations at the ports of entry.

Level of Resourcing Of Enforcement Agencies (Sars/Itac/Saps)

A needs analysis of ports of entry should be undertaken, possibly under the auspices of the BCOCC. This must take into account the nature and volumes of imports in order to ensure the necessary numbers and expertise of officials to address import fraud.

Collaboration between SARS and SAPS should include establishing a dedicated joint Customs Fraud Investigation Task Team to ensure that cases of import fraud are investigated by specialists based at key ports of entry.

Insofar as inspection facilities at POE's are concerned, the recommendations of the 2008 Report of the AG on a Performance Audit of Border Control at the SAPS must be implemented and actioned as a matter of extreme urgency.

The initiative to establish Centres of Excellence (COE's) using experienced officers needs to be spearheaded. The SARS Customs Academy must be formally structured and established with dedicated courses of specialisation. It is also recommended that members of SAPS who perform duties at the ports of entry, specifically inspections, should be trained by the Academy.

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LIST OF MAIN ACRONYMS

ACRONYM	DESCRIPTION
BCOCC	Border Control Operational Coordinating Committee
BUSA	Business Unity South Africa
CBCU	Customs Border Control Unit
CPG	Counterpart Group
DAFF	Department of Agriculture, Forestry and Fishery
DoH	Department of Health
DTI	Department of Trade and Industry
EFTA	European Fair Trade Association
EU	European Union
GATT	General Agreement on tariffs and Trade
IDC	Industrial Development Corporation
ITAC	International Trade Administration Committee
MPO	Milk Producers Organisation
NPA	National prosecuting Authority
POE	Port of Entry
RPO	Red Meat Producers Organisation
SACTWU	South African Textile workers Union
SACU	Southern African Customs Union
SADC	Southern African Development Community
SAFA	South African Feedlot Association
SAPS	South African Police Service
SARS	South African revenue Service
SAFLIA	South African Footwear and Leather Industries Association
WCO	World Customs Organisation
WTO	World Trade Organisation

DETAILED RESEARCH REPORT

1 INTRODUCTION AND SCOPE

1.1 INTRODUCTION

The IDC contracted the Consortium to conduct a comprehensive research into various areas of customs fraud and illegal imports, with a view to identifying mechanisms and structures which could be utilised to combat the current unacceptably high levels of fraud or illegal importation in various identified sectors.

The period under review for obtaining statistical information was a three year calendar period, from 1 January 2006 – 31 December 2009.

1.2 SCOPE

The scope of the research project consists of:

- 4) A critical review of existing practice particularly relating to:
 - Law enforcement – levels of cooperation/coordination amongst enforcement agencies and between enforcement agencies and business and labour;
 - Level of resourcing of enforcement agencies (SARS / ITAC / SAPS); and
 - The prevalence of customs fraud and illegal imports in industrial goods sectors.
- 5) Review of international best practice to serve as a benchmark against which options for improvement in the South African system can be measured including co-operative structures amongst the enforcement agencies and between the enforcement agencies and Business and Labour.
- 6) Options for improvement of the current system including but not limited to:
 - Regulatory instruments (including penalties and sanctions);
 - Co-operation amongst enforcement agencies and between enforcement agencies and Business and Labour; and
 - Administrative instruments.

1.3 BRIEF OVERVIEW OF WORKPLAN

The following deliverables were agreed on and is reflected in the workplan:

PHASE	DELIVERABLE
1	1) Approved workplan 2) Finalisation of a list of resources
2	1) Sourcing and extracting information 2) Feedback on interviews held 3) General feedback on status of research project 4) Results of GAP brainstorming session
3	1) GAP analysis completion 2) Workshop planning
4	1) Final report

This document is the final report, representing the combined deliverables for phases 1 – 4.

1.4 RESEARCH METHODOLOGY

As a result of the nature and scope of the research project, the Consortium proposed that a combination of quantitative and qualitative methods be utilised. This approach is more effective in diagnosing fraud than relying on findings from a single assessment only.

The Consortium proposed utilising a range of methods to uncover multiple perspectives and probe into a variety of sectors. We developed a phased structure and approach in the interests of efficiency:

- Monitor broad trends through existing indicators;
- Complete quick checklists that identify areas of greatest vulnerability and risk; and
- Prioritise in-depth diagnostic activity, in particular sectors or at particular levels of government.

We utilised the following methods in our research project:

- Desktop reviews;
- Individual interviews;
- Surveys;
- Focus groups; and
- Case studies.

1.5 BENCHMARKING

The research into the two developed and two developing countries were used to conduct the benchmarking exercise. We have experienced significant constraints in the research into specifically France, India and Malaysia – despite daily requests to these Consulates and various other institutions; we received little or no response. As a result we limited our country research to mostly desktop (internet) reviews, with the exception of Canada.

One drawback of conducting desktop research as described herein, is that information regarding the programs and initiatives for these countries which was designed for combating and eradicating customs fraud, is only available on a very high level.

As a result of the limited information available on the countries, the Consortium elected to include international best practices as part of the benchmarking exercise. For this purpose, specific reference was made to the Customs Green Paper by SARS (dated 2007, with updates from 2009).

2 DEFINITIONS

2.1 UNDERSTANDING THE TERM 'FRAUD' AND THE APPLICATION THEREOF FOR PURPOSES OF THIS RESEARCH PROJECT

The legal definition of fraud is: *'The unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another'*.¹ Potential prejudice is thus also sufficient to constitute the completed act of fraud – actual prejudice is not required. Fraud can be constituted by the commission of an act or omission. Fraud by commission occurs when a misrepresentation is being made by a person stating or doing something which constitutes the misrepresentation. Fraud by omission occurs when a person has a duty to do or say something, but refrains from doing so, with the result that a misrepresentation is made by failure of the person to act on his/her duty to say or do something.

Fraud is a common law criminal offence, and the Criminal Law Act, No 105 of 1997, read with the Criminal Law Amendment Act (Sentencing) No 38 of 2007, regulates the imposition of discretionary minimum sentences for certain serious offences, *inter alia* fraud – if a person is convicted of fraud to a minimum value of R100,000.00 and there is no clear and compelling circumstances to do otherwise, the presiding officer has no option but to sentence the convicted individual to 15 years imprisonment.

Legislation such as the Prevention and Combating of Corrupt Activities Act 12 of 2004 (also known as PRECCA or PCCA) is well drafted and comprehensive. It provides for adequate sanctions, statutes of limitations and definitions of white collar crime offences. This indicates the seriousness with which the government considers fraud. Fraud and corruption is on the increase internationally. Challenging economic circumstances worldwide with added pressure to companies to retain profit margins to satisfy shareholders, or greed by individuals; continues to be a driving factor for fraudulent and corrupt practices.

What has become evident during our research (information obtained during direct interviews with law enforcement officials) is that there is not always an adequate understanding / appreciation of the difference between *non-compliance* with legislation or regulations and the *criminal offence of fraud*; or the difference in effect that the two has.

¹ Snyman, CR, Criminal law, Fourth Edition, 2002, p 520.

One of the objectives of this study is to address the issue of job losses (employment) and **threats to investment due to 'fraud in customs and imports'**. The Consortium's approach is that the various cases or causes of non-compliance with legislation / regulations should **also be considered when interpreting cases of 'fraud'**, even though these cases may not comply with the legal definition of the offence of fraud.

Information obtained from industry representatives and law enforcement officials indicate that the companies which make themselves guilty of continued instances of non-compliance with regulations (e.g. under-declaration of the value of consignments which results in lower import duties being paid) often fall back on excuses such as inexperienced employees, or lack of knowledge as reason for the non-compliance. Should one such consignment be seized by Customs officials, it is regarded by the importing company as negligible, since it is common knowledge that Customs does not have the capacity to inspect all containers entering South Africa.

The motivation to include issues of non-compliance in the broader definition of import fraud, is supported by the loss in revenue for the South African Revenue Service due to what appears to be intentional non-compliance, and will be reflected clearly on our review of the case studies.

2.2 TYPE OF CUSTOMS AND IMPORT FRAUD DISCUSSED

Various types of customs fraud were listed in the terms of reference. Through our research it became clear that the various, identified types of customs fraud can be classified under specific headings.

For various customs fraud terms, no formal definition could be referenced. As a result, some of the definitions below were compiled based on the practical examples discussed and the information obtained from Business, Labour and Government.

The following definitions are relevant for the purpose of this research (please note that further definitions may be added during the remainder of this project):

2.2.1 AD VALOREM DUTIES AND TAXES

Duties and taxes which are calculated on the basis of value.²

² http://www.aseansec.org/economic/customs/glos_wco.htm

2.2.2 CUSTOMS FRAUD

Any act which a person deceives, or attempts to deceive, the Customs and thus evades, or attempts to evade, wholly or partly, the payment of import or export duties and taxes or the application of prohibitions or restrictions laid down by the statutory or regulatory provisions, enforced or administered by the Customs administrations or obtains, or attempts to obtain, any advantage contrary to such provisions, thereby committing a Customs offence.³

The WCO glossary contains the following notes on the above definition:⁴

Notes:

1. In some countries, deceiving Customs constitutes Customs fraud only when it is international.
2. Deceit through an act of omission may or may not be regarded as Customs fraud.
3. In some countries, certain offences against statutory and regulatory provisions enforced and administered by Customs administrations on behalf of other government agencies are not considered as Customs fraud.

2.2.3 CUSTOMS OFFENCE

Any breach, or attempted breach, of Customs law.⁵

2.2.4 COMMERCIAL FRAUDS

The WCO Working Group on Commercial Frauds refers to commercial frauds to cover acts of commission or omission, contravention of statutory or regulatory provisions governing import, export and any other allied acts with the intention to:

- (a) evade or attempt to evade payment of duties;
- (b) circumvent any prohibition or restriction;
- (c) receive or attempt to receive refund of taxes without proper entitlement or in excess of entitlement; and
- (d) to garner other benefits under export promotion schemes.

³ http://www.aseansec.org/economic/customs/glos_wco.htm

⁴ http://www.aseansec.org/economic/customs/glos_wco.htm

⁵ http://www.aseansec.org/economic/customs/glos_wco.htm

2.2.5 SMUGGLING

- The WCO glossary defines smuggling as “Customs offence consisting in the movement of goods across a Customs frontier in any clandestine manner, thereby evading Customs control”;⁶
- More specifically, it is the entering of a product into South Africa by not using a registered or approved port of entry, as well as not being in possession of any legal import documentation is considered to be smuggling;
- Non-declaration (where no product is declared at port of entry) is also a form of smuggling.

2.2.6 MIS-DECLARATION

- Mis-declaration of tariff code: product falsely declared e.g. cut-rag as unmanufactured tobacco;
- Mis-declaration of end destination: Product taken to destination other than the declared end destination;
- Origin mis-declaration: intentionally concealing the origin of an imported or exported commodity. ‘Country of origin’ is defined in the WCO glossary as “*Country in which the goods have been produced or manufactured, according to the criteria laid down for the purposes of application of the Customs tariff, of quantitative restrictions or of any other trade*”⁷;
- Abuse of regional trade agreements: linked to origin fraud.

2.2.7 REMOVAL-IN-BOND / REMOVAL-IN-TRANSIT FRAUD

- Product declared for in-transit removal to other country but kept in South Africa and sold in the local market;
- This includes diversion/acquittal fraud, which happens when documentation is provided to SARS that falsely indicates that the product has been exported (referred to as a ghost export, then the product sold in the local market;
- VAT fraud: another form of acquittal fraud is when false documentation is submitted to indicate that product was exported (ghost exports), but no product was exported and VAT is claimed back illegally.

⁶ http://www.aseansec.org/economic/customs/glos_wco.htm

⁷ http://www.aseansec.org/economic/customs/glos_wco.htm

2.2.8 UNDER-VALUATION

- Under invoicing: for example incorrect declaring of weight, quantity or value, and invoices differing from the bill of lading. Product weight/quantity/price is under declared in order to minimize the payment of import duty and VAT. Forms part of under-evaluation;
- Other valuation problems: price/value manipulation by inflating insurance, freight and handling costs – for example non-declaration of costs, inflated costs and declaring incorrect quantities. Forms part of under-valuation;
- Split invoicing – splitting the value of 1 invoice into various invoices, in order to declare lower values, with the result that full duties and VAT are avoided. Forms part of under-valuation.

2.2.9 ROUND TRIPPING

Product is exported to a country (neighbouring country) and then smuggled back into the RSA and sold in the local market. An example: exporting motor vehicles to a neighbouring country. VAT fraud is committed when the vehicles are exported, and on selling the vehicles in the local market after smuggling it back into South Africa, the import / seller enjoys a price advantage above other local companies, who cannot compete with the low prices offered by such importers.

2.2.10 COUNTERFEIT GOODS

Counterfeit branded goods imported as unbranded goods to avoid declaring licence fees applicable to branded goods.

3 SOUTH AFRICA RESEARCH

3.1 OVERVIEW OF SOUTH AFRICAN CUSTOMS ENVIRONMENT

Various key elements of South African customs legislation, regulation, authority and stakeholders have been assessed and where available, organisations and individuals have been engaged. This assessment forms a critical framework against which to commence the benchmarking and gap analysis.

Below we provide detail of important components of the applicable legislation, regulation, authority and stakeholder engagement; incorporating resourcing and other development initiatives for consideration.

3.1.1 SOUTH AFRICAN LEGISLATION

The legislative environment that regulates the South African Customs environment is complex and extensive. Key elements against which consideration and application have been made within this research project include the following: -

3.1.1.1 Customs and Excise Act And Schedules

The Customs and Excise Act and supporting schedules regulate the importation into and exportation out of the RSA of goods and matters incidental thereto. Provisions include:

- Registration and compliance checks;
- Licensing approval and compliance checks;
- Passenger assessment;
- Check goods declaration, refunds and drawbacks;
- Check cargo information;
- Detention, seizure and release;
- Inspection of goods, people and craft;
- Border control function.

The act further enforces quotas as outlined in section 6 of the ITAC Act. Recent amendments to the Act have provided for the licensing of all port, terminal and similar operations whether private or public entities.

Through the application of the Act, customs officers are granted wide and extensive powers including the power to enter premises, board vehicles, search goods, persons and vehicles and detain and seize goods. The Act is currently being amended to allow certain customs officers to bear firearms and arrest persons

SARS performs an agency role and may, for the purposes of any law other than the Act or at request of a member of the police force or the authority administering such law, detain any goods while such goods are under customs control.

3.1.1.2 International Trade Administration Act, No 71 Of 2002

The Act addresses import and export control permits, rebate permits and detention by SARS Customs. It also empowers the Minister of Trade and Industry to regulate imports and exports. The importation and exportation of certain goods are either prohibited or restricted.

The International Trade Administration Commission (ITAC) is empowered to enter into an agreement with any regulatory authority or organ of state to co-ordinate and harmonise their respective functions with regard to international trade matters, in order to ensure the achievements of the objects of this Act.

3.1.1.3 Counterfeit Goods Act, No 37 Of 1997

The Act creates an inspectorate and provides for search and seizure, as well as detention and seizure by SARS Customs. The Act contains measures aimed against the trade in counterfeit goods in order to protect intellectual property rights. Police officials are also designated as inspectors in terms of the Act.

Customs officers are empowered to seize and detain counterfeit goods imported into or entering into the Republic. The Customs Act contains empowering provisions in respect **of customs officers' powers and duties in connection with counterfeit goods.**

The Act was recently amended to consolidate all provisions that apply to customs officers in relation to counterfeit goods which reside into the Customs Act. The Act **further addresses requirements in relation to the WTO's Trade-Related Aspects of Intellectual Property Rights (TRIPS).**

3.1.1.4 Merchandise Marks Act 17 of 1941

The Act creates an Inspectorate which provides for search and seizure, as well as statistics in relation to detained items by SARS Customs. It further addresses international obligations in terms of the Paris Convention for the Protection of Industrial Property.

3.1.1.5 Draft Customs Duty Bill and Draft Customs Control Bill

These bills were published on 30 October 2009. The Draft Customs Duty Bill provides for the levying, payment and recovery of customs duties on goods imported into or exported from South Africa. It has been referred to as a 'tax levying act' which will rely on the proposed Customs Control Act for its implementation.

These two bills and the amendments it may bring about will be considered and discussed during the gap analysis process.

3.1.1.6 South African Police Services Act

Besides the Constitution, numerous other acts and the common law, the South African Police Services Act also provides for powers, functions and duties of the South African Police.

Any member of the police may for the purpose of control over the illegal movement of people or goods across the borders of the Republic, without a warrant search any person, premises, other place, vehicle, vessel or aircraft, or any receptacle of whatever nature found within a prescribed geographical area and seize anything found in possession of such person or upon or at or in such premises, other place, vehicle, vessel, aircraft or receptacle - refer Section 13(6).

The Act also empowers the police to set up a road block on any public road in a particular area.

3.1.1.7 Other Legislation

The legislation listed below are important for guidance in relation to the various sectors reviewed, as well as framing an understanding of the customs fraud environment and the applicable legislative environment in addressing elements of non-compliance, fraud and corruption:

- Agricultural Product Standards Act, 1990;
- Agriculture Pest Act, No 36 of 1983;
- Animal Diseases Act, No 35 of 1984;
- Foodstuffs, Cosmetics and Disinfectants Act, No 54 of 1974;
- Livestock Improvement Act, 1977;
- Criminal Procedure Act, No 51 of 1977;
- Copyright Act, No 98 of 1978;
- Merchandise Marks Act, No 17 of 1941;
- National Ports Act, No 12 of 2005;
- Civil Aviation Authority Act, 1998;
- Airports Company Act, No 44 of 1993;
- Cross Border Road Transport Act, No 4 of 1998;
- Maritime Safety Authority Act, No 5 of 1998;
- Merchant Shipping Act, No 57 of 1951;
- Currency and Exchange Act, No 9 of 1963;
- Immigration Act, No 13 of 2002;
- The South African Police Service Act, No 68 of 1995;
- Marine Living Resources Act, No 18 of 1998;
- National Environmental Management Act, No 107 of 1998; and
- Standards Act, No 29 of 1993.

3.1.2 SOUTH AFRICAN MULTILATERAL ARRANGEMENTS

South Africa as a founding member of the **General Agreement on Tariffs and Trade** of 1947 (**GATT**), and participates in a number of preferential trade relationships, both regional and bilateral. South Africa is an active member of the **World Trade Organisation (WTO)**. As a member, South Africa is committed to a process of reducing tariff and other barriers to trade.

The **Southern African Customs Union (SACU)** is a long-standing multilateral agreement involving South Africa, Botswana, Lesotho, Namibia and Swaziland. The money collected by Customs and Excise through tariffs on imports into SACU is distributed between SACU members according to a revenue-sharing formula. South Africa actively participates in the **Southern African Development Community (SADC)**, comprising 14 sub-Saharan African countries, allowing access to a market of approximately 140-million, which is expected to grow at an annual rate of around 3%.

Development and Co-operation agreements, including preferential trade, with and the **European Union (EU)** are also in place.

Significant attention has been placed on agreements for greater South/South co-operation. The move to establish trade relations with **Mercusor *via* a free trade agreement with Brazil, and also with India**, is top of the government's export-oriented trade agenda. This will facilitate greater trade with South America and the East.

In addition to the above, the following deserves mentioning:

- General Trade Agreements - allowing for Most Favoured Nation (MFN) tariff treatment, which is the global minimum standard for international trade relations as established under the World Trade Organisation (WTO);
- Free Trade Agreements - South African Development Community (SADC), and European Union (EU), named the SA-EU Trade Development Co-operation Agreement. Currently exploring free trade agreements with Mercosur, EFTA, India, China, Nigeria and possibly the USA;
- The European Fair Trade Association (EFTA) is an association of eleven Fair Trade importers in nine European countries. Its aim is to support member organizations in their work encourage cooperation and coordination. It facilitates the exchange of information and networking and creates conditions for labour division and identifies and develops joint projects through organising meetings of members and by circulating information. The EFTA Maintains a database of EFTA suppliers, called Fairdata, which contains details on suppliers and their products;
- Preferential Trade agreements - South Africa is accorded generalised system of preferences (GSP) status by European Union countries as well as Canada, Czech Republic, Hungary, Japan, Norway, Switzerland and the US;

- The Africa and Growth Opportunity Act (AGOA) was signed into law on 18 May 2000 as Title 1 of the US's Trade and Development Act of 2000. The primary aim of AGOA is the facilitation of the integration of Africa into the global economy and the offering of tangible incentives to the countries as a *quid pro quo* for opening up economies and embracing a free-market economy. A key benefit is the provision for duty-free treatment and quota-free access without limit to the US market for textile and apparel products made in eligible Sub-Saharan Africa (SSA) countries from US fabric, yarn and thread. AGOA is however not without limitations – it is not a contractual agreement, therefore beneficiary countries do not have legal rights under the law and the status of individual countries is subject to an annual review.

3.1.3 STRUCTURE OF THE SOUTH AFRICAN CUSTOMS SERVICE BODY

Key role players and enforcement agencies that play a pivotal role in the customs service environment have been identified and are detail below. The various roles of these institutions and bodies are assessed later in this report when addressing the levels of co-operation and development initiatives. These engagements and reviews (which are ongoing) will frame important references in the benchmarking and gap analysis reviews.

ROLE PLAYER	ROLE PERFORMED
SARS	The South African Revenue Service (SARS) is responsible for the designation of a specific port of entry that may be used for the import and export of goods, as well as for the administrative control and levying of duties and taxes on imported and exported goods.
BCOCC	The Border Control Operational Coordinating Committee (BCOCC) is the custodian for strategic management of the border environment, and in response to this has developed a National Integrated Border Management Strategy (NIBMS), which has not been implemented to date.
DoH	The Department of Health (DoH) controls and regulates cross-border movement of medicaments and other health care products; prevents and controls cross-border transmission of contagious communicable diseases; and mitigate any health risks associated with cross-border movement
DoA	The Department of Agriculture regulates the importation of animals; plants, their products and other regulated articles that can carry pests, diseases and other bio-security threats which could harm South African agricultural industries, the environment and society.
NPA	Transnet National Ports Authority (NPA) is the custodian of the country's primary trading hubs, managing the most vital conduits of the country's

ROLE PLAYER	ROLE PERFORMED
	imports and exports. Eight of the country's major seaports are controlled and managed by the NPA. It is responsible for the administration of seaports; the Airports Company of South Africa regulates activities at airports while the Cross Border Transport Agency regulars cross border road transport.
SAPS	The South African Police Services (SAPS) is responsible for the prevention and detection of cross-border crime and border line control. It also performs functions on an agency basis for the Department of Home Affairs and SARS (Customs and Excise).
DoT	The Department of Transport regulates the movement of vessels, craft and vehicles in and out of the country
DTI	The Department of Trade and Industry (DTI) formulates import and export policy that is administered by SARS – Customs
NIA and SASS	The National Intelligence Agency (NIA) and the South African Secret Service (SASS) collect, collate and analyse information on security threats posed by movement of people and goods across international borders
DPW	The Department of Public Works (DPW) manages the provision and maintenance of accommodation (operational and residential) and required infrastructure in order to support the border control operations.
DEAT	The Department of Environmental Affairs and Tourism (DEAT) regulates and monitor cross-border movement of tourists within the Trans-Frontier Conservation Areas (TFCA's); indigenous plants and animals; and hazardous and dangerous materials.
Parastatals and regulatory bodies with an interest in border management	<p>Parastatals and regulatory bodies with an interest in border management are:</p> <ul style="list-style-type: none"> • ACSA: managing all commercial airport infrastructure and security • ATNS: regulating the airspace <p>Transnet Group: managing infrastructure and security at sea ports</p>

In addition the following international obligations exist within the customs environment:

ROLE PLAYER	ROLE PERFORMED
IMO	<p>The International Maritime Organisation (IMO) is a specialised agency of the UN. The International Ship and Port Facility Security (ISPS) Code is an amendment to the IMO's Safety of Life at Sea (SOLAS) Convention.</p> <p>The ISPS Code prescribes responsibilities to governments, shipping companies, shipboard personnel, and port/facility personnel to "detect security threats and take preventative measures against security incidents affecting ships or port facilities used in international trade".</p> <p>The Department of Transport has given effect to our international obligation by drafting Merchant Shipping (Maritime Security) Regulations in terms of the Merchant Shipping Act.</p>
ICAO	<p>The International Civil Aviation Organization (ICAO) is a specialized agency of the UN. It was established in terms of the Convention on International Civil Aviation. The Convention establishes rules of airspace, aircraft registration and safety, facilitation, and details the rights of the signatories in relation to air travel.</p> <p>The South African Civil Aviation Authority has recently proposed regulations in respect of air cargo security which are in line the requirements of the Convention.</p>
Kyoto Convention	<p>The Kyoto Convention came into force in 1974 with the aim of simplifying and harmonising customs procedures in order to facilitate and encourage international trade.</p> <p>The original Convention has been revised to ensure that it meets the current demands of international trade and to form the basis of an international blue print for modern and efficient customs procedures in the 21st century.</p> <p>Contracting parties are obliged to bring the Standards, Transitional Standards and recommended Practices of the Convention they have accepted into force nationally.</p>
CITES	<p>The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was entered into force on 1 July 1975. The aim of the Convention is ensure that international trade in specimens of wild animals and plants does not threaten their survival.</p> <p>It accords varying degrees of protection to more than 30,000 species of animals and plants, whether they are traded as live specimens, fur coats or dried herbs,</p>

ROLE PLAYER	ROLE PERFORMED
CBTA	<p>Cross-Border Transport Agreements</p> <p>The Minister of Transport is authorized in terms of the Cross-Border Roads Transport Act to conclude road transport agreements with other states.</p> <p>The Cross-Border Transport Agency (CBTA) established in terms of the Act regulates the transport market in accordance with bilateral and multi-lateral Cross-Border Transport Agreements.</p>

3.1.4 THE SOUTH AFRICAN LAW ENFORCEMENT AGENCIES

The various enforcement agency structures, resourcing, and protocols will frame an important component of the benchmarking and gap analysis to be conducted. All agency services play an important role in the overall management and enforcement of customs strategy and policy.

We have engaged with a number of role-players within the enforcement agencies (SAPS, ITAC and SARS) and have canvassed information which will frame a key component of the benchmarking and gap analysis that will be conducted when assessing the South African practices against those of the benchmarked countries and application within the various sectors.

Inputs received from SARS form the bulk of the information which will be used for the benchmarking and gap analysis. The balance of the agencies are limited in application within the framework of customs controls and in the case of SAPS, we experienced limited support and guidance on applied protocols in the context of customs fraud. The following detail from the associated agencies will be incorporated into the benchmarking and gap analysis to be conducted:

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SAPS	
<p>The South African Police Services (SAPS) is responsible for the prevention and detection of cross-border crime and border line control. It also performs functions on an agency basis for the Department of Home Affairs and SARS (Customs and Excise). Under the roles of Head of Protection and Security Services and the Head of Ports Entry, three distinct National Section Head units have been established with oversight of the air, sea and land ports. Each of these units is divided into Provisional and Unit Commanders and categorized (A-D) in accordance with the size of the port.</p> <p>Legislation that governs the operations of SAPS at the ports of entry include:</p> <ul style="list-style-type: none"> • South African Police Services Act 68 of 1995; • Customs and Excise Act of 1964; • Immigrations Act of 2002; • Explosives Act of 2003; and • Inter-Governmental Relations Framework Act 13 of 2005. <p>In respect of the air modality (particularly relevant to OR Tambo International) SAPS have inspection teams operating under the auspices of the Cargo Crime Combating Unit. No specialised investigators of commercial crime are however stationed at ports of entry and cases are referred to the Commercial Crime units for investigation. The National Ports Authority and the South African Police Service concluded an MOU in November 2007, in order to:</p> <ol style="list-style-type: none"> i. Ensure the effective deployment of SAPS personnel at all South African sea ports; ii. Integrate SAPS and TNPA roles that will result in safe and secure sea ports in South Africa; iii. Ensure joint implementation of an optimized policing and security strategy at the South African sea ports; iv. Co-ordinate the performance and minimize the duplication of functions between SAPS and TNPA personnel in the sea ports; and v. Enhance commercial operations of the South African sea ports. <p>An MOU was established between SAPS and SARS in 2008. This however remains unsigned.</p> <p>There is a basic border control course that new SAPS port of entry personnel are taken through. No specific customs related training is conducted short of ad-hoc industry specific training.</p>	
<p>Comment: We have to date not been successful in securing feedback and input outlining infrastructure and survey feedback from the SAP. We are continuing in our attempts to obtain, analyse and include relevant information on the SAPS where this is provided.</p>	

ORGANISATONAL UNIT	INFORMATION AND / OR DATA FOR INCLUSION IN THE BENCHMARKING AND GAP ANALYSIS
ITAC	
Import and Export Control	<p>ITAC was established through an Act of Parliament, the International Trade Administration Act, No 71 of 2002 which came into force on 1 June 2003.</p> <p>The aim of ITAC, as stated in the Act, is to foster economic growth and development in order to raise incomes and promote investment and employment in South Africa and within the Common Customs Union Area by establishing an efficient and effective system for the administration of international trade subject to this Act and the Southern African Customs Union (SACU) Agreement. The core functions are:</p> <ul style="list-style-type: none"> • Customs tariff investigations; • Trade remedies; and • Import and export control. <p>The ITA Act makes provision for a Chief Commissioner who serves as the Chief Executive Officer directly accountable to the Minister of Trade and Industry. The Chief Commissioner is assisted by a Deputy Chief Commissioner and a maximum of ten Commissioners who can be appointed to serve on a full-time or part-time basis.</p> <p>Customs Tariff Investigations</p> <p>The following types of applications for amendment to customs tariffs are handled by ITAC:</p> <ul style="list-style-type: none"> • Increase in customs duty to provide assistance to SACU industries to improve international competitiveness; • Reduction in the customs duty on imported products to reduce the cost of production; • Rebate of the customs duty on products that are not available in the SACU for manufacturing purposes; • Rebate of the duty of inputs used in exports (470.03) - rebate of the duty on products imported for the manufacture, processing, finishing, equipping or packing of products for export; • Refund of the duties paid on inputs used in export (521.00) drawback of the duty on products already imported with duty paid for the manufacture, processing, finishing, equipping or

ORGANISATIONAL UNIT	INFORMATION AND / OR DATA FOR INCLUSION IN THE BENCHMARKING AND GAP ANALYSIS
	<p>packing of products for export;</p> <ul style="list-style-type: none"> • Issuing of rebate permits in terms of The Motor Industry Development Programme (MIDP); • Administration of the Textile and Clothing Industry Development Programme (TCIDP). The objective of the TCIDP is to influence and encourage textile and clothing manufacturers to compete internationally. Specialization in export products is encouraged whilst the participant's domestic product range can be broadened by importing additional goods duty free, using the duty credit certificate. Participation in the TCIDP is linked to a Training and Development Requirement. <p>Trade Remedies</p> <p>The following types of applications for trade remedies are handled by ITAC:</p> <ul style="list-style-type: none"> • Action against dumping (Anti-Dumping Investigations). Protection for SACU industry against unfair trade practices where foreign producers export their products to the SACU at prices lower than their domestic selling prices, thereby causing material injury to the SACU industry; • Action against subsidised exports (Countervailing investigations). Protection for SACU industry against products imported at prices that are subsidised by the government of the exporting country, thereby causing material injury to the SACU industry; • Safeguard Action. Investigate a surge of imports that results in serious injury to the SACU industry; • Interim review of the anti-dumping or countervailing duty. To review the anti-dumping or countervailing duty to see whether it is adequate to remove the injury caused by dumping or subsidised exports and to amend the duty where injurious dumping/subsidised exports no longer take place; • Sunset review of duties in place for five years. To determine whether any anti-dumping or countervailing duty that has been in place for five years needs to be continued, i.e. whether there will be a continuation or recurrence of injurious dumping or injurious subsidised exports if the duty were to be removed; and • New shipper reviews. Exclusion of new exporters from

ORGANISATIONAL UNIT	INFORMATION AND / OR DATA FOR INCLUSION IN THE BENCHMARKING AND GAP ANALYSIS
	<p>countries against which an anti-dumping or countervailing duty were imposed from paying anti-dumping duties, where such exporters can prove that they did not export the product in question to SACU during the original investigation period.</p> <p>Import and Export Control</p> <p>The International Trade Administration Act makes provision for control, through a permit system, of the import and export of goods specified by regulation. The primary function of this directorate is the administration of the provisions of the International Trade Administration Act (Act 71 of 2003) with regard to the issuing of import and export permits in terms of Section 6 of the Act and investigations and enforcement in terms of part E of the Act.</p>
SARS	
<p>SARS is the custodian of the customs process and responsible for the implementation of customs tariff, trade agreements and industry incentives schemes.</p> <p>SARS is also responsible for the detection and prevention of import fraud. SARS customs national footprint covers a network of 42 SARS Customs Branch Offices which are situated in regional centers, transport nodes and designated harbours.</p> <p>Operations are maintained at: 10 international airports, 19 designated land border posts, 5 sea ports, 2 inland rail ports, 2 inland sea ports, and 3 international mail centers.</p>	
Staffing	<p>Data obtained from the SARS Activity Based Management Portal reflects total staffing numbers as at November 2009 across all SARS manned border posts, of a total of 2,171. This figure represents 15% of the total employment number at SARS, which is currently in the region of 14,000 staff members.</p>
Staffing structure (as at December 2009)	<ul style="list-style-type: none"> • Chief Officer: Customs and Border Management • Executive: Business Resource Services; portfolio consisting of the following roles <ul style="list-style-type: none"> ➤ Projects 2010 ➤ Divisional Planning. Performance Monitoring and Reporting ➤ Finance and Logistics ➤ Human Resources ➤ Learning and Development ➤ Modernisation

ORGANISATONAL UNIT	INFORMATION AND / OR DATA FOR INCLUSION IN THE BENCHMARKING AND GAP ANALYSIS
	<ul style="list-style-type: none"> • Group Executive: Border Management and Chair of BCOCC; portfolio consisting of the following roles <ul style="list-style-type: none"> ➤ BCOCC Programmes ➤ Regional Liaison ➤ Border Management Policy and Strategy ➤ National Inter-Agency Coordination • Group Executive: Customs Strategy and Policy; portfolio consisting of the following roles <ul style="list-style-type: none"> ➤ A number of international attachments (USA, China, Botswana, Kenya, Belgium) ➤ Customs Standard Operating Procedure ➤ National Customs Strategy and Policy ➤ International Trade ➤ International Customs ➤ Strategic Partnerships ➤ International Trade and Customs Policy • Group Executive: Customs Operations; portfolio consisting of the following roles <ul style="list-style-type: none"> ➤ Customs Border Control ➤ Operations, including <ul style="list-style-type: none"> ○ Modality elements ○ Audit elements, and ○ Legislative interpretation ➤ Customs Risk and Intelligence (Valuation, trade and Origin) ➤ Centralised Customs Operations Support
<p>Customs Risk Management</p> <ul style="list-style-type: none"> - Central Risk Unit 	<p>Research papers and case studies undertaken within identified sectors were made available to the research team for review and incorporation within the sector reports. These included research papers covering the following:</p> <ul style="list-style-type: none"> • Milk production;

ORGANISATIONAL UNIT	INFORMATION AND / OR DATA FOR INCLUSION IN THE BENCHMARKING AND GAP ANALYSIS
	<ul style="list-style-type: none"> • Imported used vehicles; • Footwear; • Clothing as well as reports addressing Lesotho border as well as Intellectual Property rights.
Customs Strategy	<p>Strategic considerations against the Customs Green Paper, addressing and referencing the various trends and areas of analysis that have framed the proposed SARS Customs Business Model and the characteristics detailed were considered. In addition we have reviewed the various implementation strategies and capacity building initiatives that have emerged from this model including the modernisation elements of:</p> <ul style="list-style-type: none"> • Customs policy shifts and adjustments; • Institutional developments; • Modernisation elements including: <ul style="list-style-type: none"> ➤ Scanner; ➤ AEO (Authorise Economic Operator); ➤ IT Platforms (including the IT platform replacement CAPE to TATIS); ➤ Regional developments; and ➤ 2010. • The review of partnering stakeholders in key process developments, technological and legal component was also addressed.
Customs Policy	<p>SARS Customs Policy considerations are developed against the backdrop of the adapted Kyoto Convention. We assessed the various customs standards, policy and procedure in place as these relate to both the sectors reviewed as well as providing a basis for the benchmark against identified countries.</p> <p>Key areas of assessment include:</p> <ul style="list-style-type: none"> • Management documentation; • Customs operating environment; • Quality Management systems documents; • Service level agreements;

ORGANISATONAL UNIT	INFORMATION AND / OR DATA FOR INCLUSION IN THE BENCHMARKING AND GAP ANALYSIS
	<ul style="list-style-type: none"> • Indirect taxes; • Stakeholder discussion documents; • Templates; and • Terms of reference documents.
International Trade and Customs Policy	<p>We have gained an understanding of the applied role of both the International Trade Agreements and International Customs Policy and monitoring of external trade relations by this division within SARS. The research team engaged with SARS embassy officials who provided guidance as to international contacts within the customs administrative environment to aid input against benchmarked country reviews and international best practices.</p> <p>International instruments and the adaptation thereof within the South African customs have been reviewed.</p>
Legislative interpretation	<p>This area of operation within the SARS custom environment provided us with valuable insight and structure in respect of the following areas :-</p> <ul style="list-style-type: none"> • Tariff; • Valuations determinations; and • Trade agreements and rules of origin <p>The application and processes in respect of the above and case study references against applications within various sectors and border posts were reviewed and are incorporated into sector reports and are referenced in the gap analysis.</p> <p>Current work-shopping initiatives in respect of capacity building for ensuring appropriate skill and training in particular areas of valuation have been addressed.</p>
Anti-corruption and security	<p>Internal structures in respect of:</p> <ul style="list-style-type: none"> • Anti-corruption hotline; • Recruitment vetting protocols; • Ethics; • National security initiatives; • Policy and procedure governing integrity and security; • Internal risk areas, i.e. modernisation of the customs environment;

ORGANISATONAL UNIT	INFORMATION AND / OR DATA FOR INCLUSION IN THE BENCHMARKING AND GAP ANALYSIS
	<ul style="list-style-type: none"> • Information security; • Research areas covering: - <ul style="list-style-type: none"> ➤ Tactical ➤ Thematic issues (trends) ➤ Strategy analysis <p>An internal corruption survey conducted in 2008, with the aim of measuring the perceived level of corruption in SARS presented with a number of interesting results. A few key points extracted from the survey include:</p> <ul style="list-style-type: none"> • Most common form of corruption was perceived as bribery • Reporting corruption: <ul style="list-style-type: none"> ➤ A low level of perceived belief that reports will be acted on; ➤ A high perception that employees at SARS are easily corrupted; ➤ SARS not providing the protection to the individual reporting. • Measures to deal with corruption <ul style="list-style-type: none"> ➤ A significantly high response indicating the perception that SARS system is conducive to corrupt activities. • Corruption at SARS compared to other government departments <ul style="list-style-type: none"> ➤ A high perception that other Government departments are more exposed to corrupt officials than SARS. • General points: <ul style="list-style-type: none"> ➤ A strong perception that corruption at SARS is 'rife'; ➤ It is easy to commit bribery; ➤ Nepotism is rife at SARS; ➤ There is abuse of public office; ➤ Perceived favouritism reflected very strong views from the respondents. <p>Internal staff dismissal statistics for Customs in respect of fraud incidents were requested. This data was however not provided for review.</p>

ORGANISATIONAL UNIT	INFORMATION AND / OR DATA FOR INCLUSION IN THE BENCHMARKING AND GAP ANALYSIS
Operations and Modalities	An understanding of the infrastructure and role-players within the various customs modalities was obtained.
Enforcement: Special Operations	<p>Case study references were provided. Detailed resourcing of the enforcement division including criminal investigations and prosecutions roles were addressed.</p> <p>The National Investigations Team (under the auspices of the SARS Enforcement Unit) is split provincially. They apply a disintegrated model whereby the investigation teams are allocated a range of investigations covering:-</p> <ul style="list-style-type: none"> • Income tax • VAT • Customs and excise • Debt and PAYE • Outstanding returns etc <p>This unit currently has capacity to initiate approximately 600 investigations per year (only approximately 100 of these being customs related). Whilst they do have skilled investigators who are specialised in certain areas (e.g. clothing) the level of dedicated skilled capacity in the customs area is unclear.</p> <p>No data in respect of the number of cases investigated and prosecuted over the period of review was presented.</p> <p>They make use of the customs academy where space is available and course content suitable to the needs of the team. There is a growing need for the customization of courses within the enforcement environment.</p>
Customs Dashboard and Activity Based Management Portal	<p>The Customs Dashboard or '<i>Managers Dashboard</i>' as it is commonly referred to is a web-based application available in all customs ports.</p> <p>Statistical assessment criteria (relevance to seizures) are agreed and measured annually, including anti-smuggling data detailing seizures in respect of identified commodities. We have obtained components of this data for the 2005 to 2009 against identified commodities. Against the mandated scope of the review, commodities covered included only clothing, footwear and motor vehicle seizures.</p>
Activity Based	Data held in respect of the current resourcing and headcount at customs border posts per role was provided. This detail outlines

ORGANISATONAL UNIT	INFORMATION AND / OR DATA FOR INCLUSION IN THE BENCHMARKING AND GAP ANALYSIS
Management Portal	staffing roles and numbers at each of the border posts. This information is referenced in the gap analysis.
Customs staffing capacity initiatives	<p>These relate to Human Resource capacity building initiatives undertaken. We have obtained valuable insight against these initiatives through the questionnaires reviewed as well as from areas of legislative interpretation.</p> <p>Commitments in respect of increasing staffing capacity to 5000 by 2011 were canvassed with the Senior Manager (HR Customs). No clear HR strategy outlining a plan for the attainment of these targets was available for review.</p>
SARS Customs Academy	<p>The SARS Customs Academy is an appointed Regional Training Centre (RTC) for the WCO East and Southern Africa (ESA) region.</p> <p>The mandate of the WCO RTC is to provide skills development through the delivery of various programmes and the running of identified initiatives aimed at the development and up-skilling of the general workforce and senior management in the ESA region.</p> <p>The training schedule consists of programmes identified through learning needs analysis (LNA) and diagnostic studies which are conducted through the ESA region and the identified skills gaps in the various customs operational areas within SARS.</p> <p>The academy was instrumental in facilitating the training of the recently established CBCU member force and has recently presented an RTC-ESA Trade Agreements course to the WCO member administrations in the ESA region.</p> <p>External stakeholder programmes are also facilitated by the academy and a number of E Learning programs from the WCO platform are also offered.</p> <p>Training initiatives for the 2009 / 2010 period have focused training initiatives on core skills in relation to Tariff, Valuation, Customs Risk and Origin. Other initiatives include Post Clearance Audit (PCA) Programme; CBCU, Female Development within customs and a Successful Plan Development Programme aimed at maintaining the skills level within the SARS customs environment through skills and knowledge transfer.</p> <p>The SARS training schedule is subject to funding and importantly the appointment of much needed trainer and product developers. The strategy and implementation model have been addressed and initiatives</p>

ORGANISATIONAL UNIT	INFORMATION AND / OR DATA FOR INCLUSION IN THE BENCHMARKING AND GAP ANALYSIS
	will be detailed and assessed further in the benchmarking.
Customs IT platform – the migration from CAPE to TATIS, Phase I implementation scheduled for July to October 2010	<p>An integrated technology platform has been developed under the auspices of TATIS. TATIS's incorporation of a risk engine as opposed to the current interfaced risk engine (ICAS) operational within the current system platform (CAPE) has been reviewed.</p> <p>The current functioning of the risk engine has been assessed and have been addressed in the context of the benchmarking and gap analysis.</p>

3.1.5 LEVELS OF COOPERATION BETWEEN ENFORCEMENT AGENCIES AND RELEVANT STAKEHOLDERS

3.1.5.1 *Border Control Operational Co-ordination Committee*

In South Africa border control is a multi-departmental activity and the main role-players in border activities are represented by the BCOCC which was established in 2001. The BCCOC is responsible for the **strategic management of the South African border environment in a coordinated manner**, with the following strategic functions-

- i. Harmonise and implement legislative and policy frameworks;
- ii. Advise policy makers on border environment;
- iii. Develop and implement National Border Control and Security Strategy;
- iv. Develop and maintain ports of entry, bases and borderline;
- v. Coordinate securing of ports of entry, bases and borderline;
- vi. Improve legal flow of persons and goods through ports of entry;
- vii. Improve legal flow of persons and goods through ports of entry; and
- viii. Coordinate law enforcement actions to combat illegal activities.

SARS has been designated as the lead agency at ports of entry and Chair of the BCOCC. The lead agency has the final responsibility and mandate to ensure proper and effective functioning of the border environment.

In summary, it is the responsibility of the BCOCC to coordinate law enforcement actions, develop and maintain border control operations, improve legal flow of goods and persons and to develop and implement a National Border Control and Security Strategy.

Despite having been created in 2001, the BCOCC still has no complete overall strategic plan relating to borderline policing as well as no divisional policy relating to borderline operations. These sentiments were captured in the January 2008 Report of the Auditor General on Performance Audit of Border Control at the South African Police Service.

Shortcomings identified in the current system flagged issues relating to operations and planning, training, vacancies, equipment, and data collection.

This element is to be addressed further in the benchmarking and gap analysis.

3.1.5.2 International Trade Administration Commission

ITAC operates in terms of the International Trade Administration Act, 2000 (ITA Act) and is responsible for the administration of ordinary customs tariffs, trade remedies, rebate and drawback provisions as contained in Schedules 1 to 5 of the Customs and Excise Act, 1964. The ITA Act makes provision for import and export control of goods specified by regulation and the Directorate: Import and Export Control issues import and export permits and investigates and enforces the import and export regulations in terms of the Act.

Research identified that significant fragmentation exists with regards to the administration and enforcement of customs tariffs. The Minister of Finance is the custodian of the Customs and Excise Act and amends Schedules 1 to 5 to the Act upon recommendation by ITAC. SARS administers and enforces the Customs and Excise Act and reports to the Minister of Finance. Customs tariff policy is formulated by the DTI and ITAC administers schedules 1 to 5 of the Customs and Excise Act accordingly and recommends amendments to the Minister of Finance.

Research indicated that concern exists within SARS regarding insufficient communication and consultation by ITAC when considering applications for amendment to the customs tariff. Furthermore representatives from the Department of Agriculture expressed serious concern about the lack of communication and consultation from ITAC when considering applications for amendment to the customs tariff on agricultural products. The lack of communication and consultation is perceived to result in unilateral amendments to the customs tariff which creates loopholes and opportunities for customs fraud.

According to ITAC officials, poor communication and co-ordination exist between ITAC and SARS with regards to the administration of import regulations. This does not relate to the issuing of import permits which are processed electronically, but to day-to-day communication and coordination.

This is demonstrated by changes to the SARS system that have not been communicated to ITAC, and the lack of information sharing from SARS with regard to specific import transactions where ITAC identifies irregularities in relation to such import transactions.

3.1.5.3 South African Police Services

Co-operation and information sharing by SAPS for the purposes of the research project were minimal. Information obtained through interviews is recorded here.

SAPS operates in terms of the SAPS Act, Customs and Excise Act, the Immigration Act and the National Key Points Act. A view was expressed that a good relationship exists with SARS on national level. A MoU was drafted between the two departments but have to date not been signed.

SAPS is also an integral part of the BCOCC structure at national, provincial and ground level with a BCOCC coordinator stationed at all ports. SAPS is involved with joint operations at root level where the Crime Combating Team cooperates with the CBCU. SARS supplies SAPS with manifests which enable them to do profiling to identify high risk imports, including illegal imports. SAPS has no formal link with SARS regarding the gathering and sharing of intelligence.

High level coordination (synergy, harmonization) between SARS and SAPS is regarded as not sufficient. The Customs Modernization Strategy where SARS has positioned themselves as the Lead Agency has created the impression that other government departments must report to SARS has led to tension and sometimes conflict.

Although the Inter-Governmental Act promotes cooperation and coordination tension exists between officials of SAPS and SARS, in particular, during joint operations at the ports of entry. One of the causes of tension is that different government departments have vastly different aims, structures, policies for remuneration, traveling and accommodation expenses etc. This tension is not conducive to efficient cooperative functioning.

A disturbing trend that was noted during research, is the territorial attitude displayed by officials from different departments. This is a cause for concern since it impedes efficient communication, cooperation, consultation and harmonization at operational levels and is not in the interest of the country as a whole.

3.1.6 LEVEL OF RESOURCING OF ENFORCEMENT AGENCIES

Information regarding resourcing and capacity within the enforcement structures (which are of relevance to the commencement of the benchmarking and gap analysis) was made available by SARS. Limited information was also supplied by SAPS.

SARS Activity Based Management Portal reflect that total staffing numbers as at November 2009 across all SARS manned border posts totals **2,171**. This figure represents 15% of the total employment number of at SARS, which is currently in the region of 14,000 staff members. Staffing of border posts vary reflecting a staffing compliment of **2** at Gateway International, **368** at OR Tambo International and **326** at Durban International.

Staffing portfolios at the various branches, each headed up by a Senior Manager include the following (not all portfolios are present at all branches):-

Administrators	Accountants	Analysts
Financial roles	Co-ordinators	Data Capturers
Detector Dog Handling	Port Commander	Quality Assurers
Registrars	Researchers	Verification officers
Various levels of Officers	General Assistants	Various levels of Inspectors

Very limited information regarding resourcing was obtained from SAPS. SAPS have inspection teams operating under the auspices of the Cargo Crime Combating Unit. The Unit focuses on crime but also deal with illegal imports based on information obtained from manifests which are supplied by SARS, freight forwarders and exporters. No specialized investigators of commercial crime are stationed at ports of entry.

It was proposed that such units be established at ports of entry because customs and commercial related crimes do not receive priority attention.

No investigations of dockets relating to commercial crime are conducted at the ports of entry. These investigations are handled by the various offices of the Commercial Crime Unit. For example at ORT investigations of customs and commercial related crimes are not investigated by the airport SAPS personnel but by the Germiston Commercial Crime Unit. Before 2003 Commercial Crime Units from all provinces were stationed at ports of entry. Problems with fragmentation and coordination, however, led to the removal of these units from ports of entry in 2003.

Customs fraud cases handled by SAPS are mostly related to under- valuation, counterfeit goods like footwear and clothing and prohibited cigarettes.

New SAPS port of entry personnel are taken through a basic border control course and industry specific training is also available. SAPS personnel are not given any customs specific training but much of the training that members receive is experienced based and through mentorships. Thus, there is no focused internal training, and skills are reliant on experience and business initiatives.

3.1.7 INFRASTRUCTURE CHALLENGES IDENTIFIED

The following infrastructure challenges were identified through stakeholder engagements. The Consortium was not mandated to conduct inspections at each border post and cannot attest to the infrastructure facilities available at each location.

- **Staffing** (particularly at seaports);
- The **layout of land ports** of entry is not conducive for the deployment of border control technology (e.g. biometric recognition systems, number plate recognition systems, CCTV for anti-corruption, flow control, security etc);
- **Facilities for searching persons and goods** are not adequately monitored by surveillance systems (blind spots);
- **Storage facilities for seized or detained goods** are not adequate, secure or monitored by surveillance systems;
- SAPS have a **scanner** at ORT Airport which is used to scan baggage. A big mobile container scanner is located at Durban harbour. According to a representative from SAPS funds were requested from Treasury jointly by SAPS and SARS for the procurement of the scanner. Funds were allocated and SARS handled the process. SAPS was of the opinion that the scanner will be shared by the two departments but **SARS controls the use of the scanner and it's availability to SAPS is limited. The two departments are currently considering the development of a MoU regarding the use of the scanner.** Information has come to light that on at least one occasion the scanner was utilised during a political event. It is unclear as to whether it was utilised for security purposes or not. Notwithstanding, this detracts from its original and key functions at this port of entry;

- Most of the ports **lack basic equipment**, including:
 - Four-wheel drive vehicles;
 - UV lights and portable document verification equipment (biometrics);
 - Two-way radios;
 - Binoculars;
 - Surveillance sensors e.g. CCTV, ground radar, barrier sensors;
 - Night vision devices.

3.1.8 INITIATIVES TO ADDRESS CUSTOMS FRAUD

3.1.8.1 Customs Modernisation initiatives which covers three key elements:

- Meeting obligations in terms of the Kyoto Convention, SAFE Framework and associated standards and principles. This requires the introduction of standards to maximize facilitation
- Implementing an integrated solution to support the above and meet future operational demands offering tailored services for traders;
- Maximising resources and skills sets through the delivery of common procedures and decision-making facilitating transparent and consistent delivery at all ports of entry.

3.1.8.2 SARS Customs Academy as well as initiatives to establish and partner with tertiary institutions in facilitating requisite qualification and standard in respect of Customs administration;

3.1.8.3 The New Customs Bill(s) which will frame the foundation upon which the operational objectives are to be based;

3.1.8.4 An integrated technology platform (**TATIS's incorporation of a risk engine as opposed to** the current interfaced risk engine (ICAS) operational within the current system platform, CAPE;

3.1.8.5 Customs / Excise Administrative Monetary Penalty System (CAMPS / EMPS);

3.1.8.6 The introduction of a reference price guideline for imported goods;

3.1.8.7 Risk measures to be introduced include:

- CBCU visible policing at ports of entry;
- Automated Cargo targeting and acquittal processes;

- Develop Audit capability (Accreditation, Licensing, AEO);
- Establishment of Post Clearance Audit Function;
- Customs specific enforcement capacity to follow-up on cases (this includes close working relationships with the NPA); and
- Increased information matching in which Customs to Customs agency, third party and historical information is utilised.

3.1.8.8 The initiative with Brazil and India (**IBSA Agreement**) where a system has been developed to electronically match export declarations with import declarations in order to pro-actively alert customs authorities of anomalies.

3.1.8.9 **National Stakeholders Forum** (Custom Branch Stakeholders Forum).

This forum is to actively engage on operational and local policy matters in order to improve trade facilitation, operational efficiencies and compliance. The forum aims to comprise the following key stakeholders:

- South African Association of Freight Forwarders;
- **South Africa Association of Ships' Operators and Agents;**
- Road Freight Association;
- Airline operators;
- Chambers of Commerce;
- Exporters Association; and
- Any other bodies / entities requiring representation.

3.2 SURVEY RESULTS

3.2.1 BACKGROUND

The questionnaire distribution took place over October 2009 to January 2010. It was designed and presented with the aim of identifying serious fraud and illegal imports challenges. The questionnaire was distributed to various role-players in the Customs environment and included enforcement agencies as well as industry role-players. We received 68 responses as at the end of January 2010. No response was received from SAPS.

3.2.2 LIMITATIONS

- The questionnaire was neither scientifically formulated nor controlled;
- Distribution was aided by a number of role-players in the enforcement and industry environment and the research team we were unable to ascertain the level and depth of the distribution;
- Notwithstanding directives issued to SAP permitting the support of officials to the project elements, no responses have been forthcoming from SAPS officials.

3.2.3 RESULTS

- Number of responses received: 68
- Number of responses were spoilt: 3
- Response areas reflected the following:
 - 89% of responses were received from SARS officials;
 - 5% of responses were received from the textile industry;
 - 3% of responses were received from anonymous sources;
 - 1.5% of responses were received from the dairy industry; and
 - 1.5% of responses were from unknown sources.

3.2.4 SUMMARY OF KEY RESPONSE AREAS:-

Section B: Customs Fraud Risk Management Capacity

- Between 30% and 40% of respondents were aware of anti-fraud initiatives, including a whistle-blowing mechanism and policy;
- Only 37% of respondents were aware of the SARS / Anti-corruption hotline mechanism – 0800002870;
- Only 3% of respondents acknowledged training in the areas of customs fraud and / awareness; and
- In excess of 40% of respondents acknowledged that programmes aimed at informing employees on customs related issues and operating policies are in place.

Section C: Investigation

- The majority of respondents indicated that they had neither the capacity to investigate nor detect fraud;
- Respondents are mostly satisfied that disciplinary action for fraud and the referral of matters to the law enforcement agencies is in place and effective;
- Very limited responses were received in respect of the co-operation between the various enforcement agencies. Where these responses were forthcoming, concerns in relation to conflicting roles and mandates and the inefficiencies of the BCOCC are detailed.

Section D: Information Management

- The majority of respondents indicated that unit information systems are ineffective in the recording of allegations, tracking the progress of allegations and revealing systemic weaknesses and risks;
- Very few respondents could confirm as to whether information sharing protocols are in place and whether the existence of applied policy to manage information sharing amongst the enforcement agencies is effective.

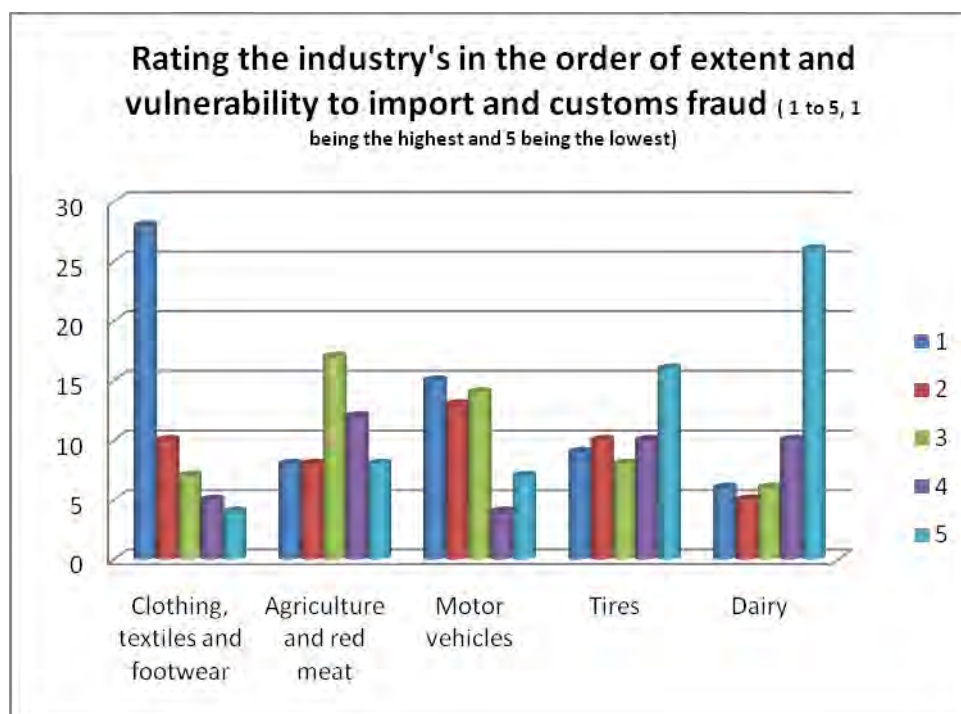
Section E: Support Requirements

- Only 58% of respondents responded to the question as to whether a multiple or single agency approach would be effective in addressing customs fraud;
- The majority of the resources received indicated a preference to the multi-agency approach.

Section F: Fraud Prevalence

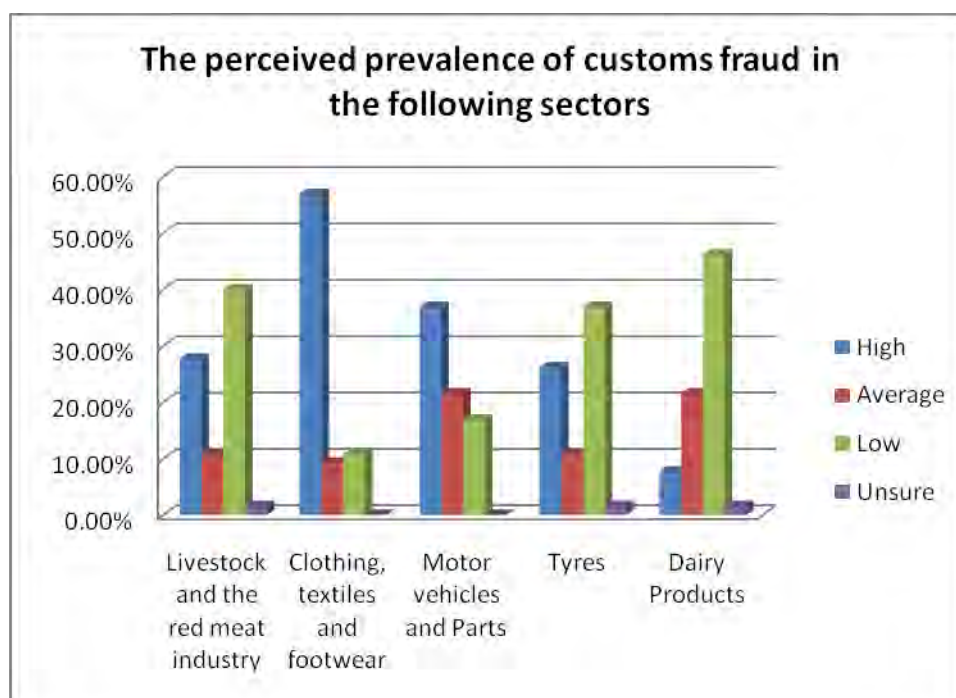
- Responses in relation to the perceived rating (1 to 5, 1 being the highest and 5 being the lowest) of the extent and vulnerability to import and customs fraud per identified sector:

Figure 1



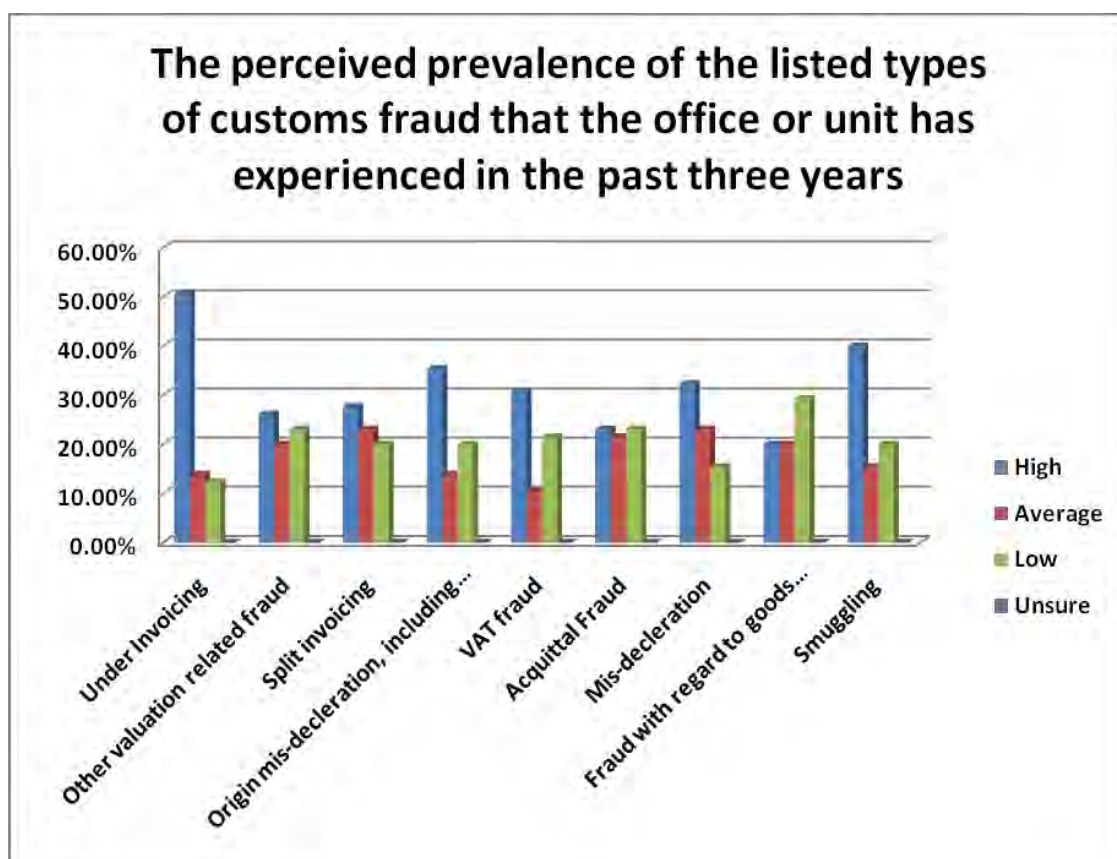
- Responses in relation to the perceived prevalence of customs fraud in the identified sectors:

Figure 2



- Responses in relation to the perceived prevalence of customs fraud experienced is illustrated below:

Figure 3



Section G: Strategy, Resources and Logistics

Reponses in relation to the top three priorities for improvement that would aid fraud risk management in the customs and import arena's illustrated the following elements:

- Staffing numbers
- Training and
- Sophisticated Electronic Equipment

3.2.5 SARS DASHBOARD

The SARS Customs Dashboard or 'Managers Dashboard' as it is commonly referred to is a web-based application available in all customs ports. The Dashboard is used as a performance management tool within the customs environment. Criteria for analysis and reporting against the dashboard are agreed upon on an annual basis and continuity therefore against common elements, year on year, is not always present.

Of relevance to the research is the data available on anti-smuggling and in particular seizures. The data extracted from the SARS Dashboard over the preceding five year period reflects that seizures are recorded against the following criteria:

Contraband seizures (which have included data captured against commodities such as cigarettes and alcohol)	Counterfeit seizures (which have included data captured against commodities such as cigarettes, DVD's and CD's, clothing and footwear
Prohibited drug seizures	Cash seizures
Cites seizures	Abalone seizures
Firearms/ammunition explosives	Child pornography/bestiality seizures
Motor vehicle seizures	Diamond and precious metal seizures
Second hand clothing	A number of other seizures

As of 2008, the Customs Border Control Unit (CBCU) involvement and seizure data records against identified commodity items were captured on the Dashboard. In addition, the Dog Unit, established in 2007, have accounted for the seizures in relation to commodity items in respect of:

- Prohibited drugs seizures (narcotics);
- Endangered species seizures;
- Firearms / ammunition / explosives seizures;
- Contraband seizures (cigarettes);
- **Counterfeit seizures (cigarettes, DVD's and CD'S); and**
- Cash seizures.

Data in respect of the Dog Unit-related seizures is recorded separately.

The appointed statisticians and / or designated staff in the branches / ports are required to capture relevant incident and seizure activity against these criteria as determined, and submit the same to the SARS head office for consolidation and subsequent reporting.

We were advised that this source of data is the only available statistical data source that would support the research. No compliance-related data is available although plans are in progress to build a broker database against which seizures and detention trends per broker can be calculated.

In relation to the scope of the research project, relevant SARS Dashboard stats are reflected below. The stats detail seizures in relation to clothing, footwear and motor vehicles as extracted from the SARS 'AST' Dashboard in October 2008:

Table 1

		2009/2010 (up to September 2009)	2008/2009	2007/2008	2006/2007	2005/2006
COUNTERFEIT SEIZURES		Total Seizures	Total Seizures	Total Seizures	Total Seizures	Total Seizures
Number of clothing seizures	No.	23	264	302	475	334
Quantity (Pieces)	No.	1,418,550	756,187	221,276	394,607	186,760
Value	Rand	R 30,476,451.00	R 89,818,719.00	R 104,989,928.00	R 65,267,903.00	R 30,076,231.00
Number of footwear seizures	No.	18	66	77	147	129
Quantity (Each)	No.	368	61,322	112,535	80,097	119,786
Value	Rand	R 79,050.00	R 32,181,637.00	R 28,069,426.00	R 38,153,767.00	R 30,320,504.00
SECOND HAND CLOTHING SEIZURES	No.	55	144	151	234	
Value	Rand	R 675,589.00	R 918,193.00	R 2,023,055.00	R 2,122,659.00	R 1,585,386.00
MOTOR VEHICLE SEIZURES	No.	25	106	116	152	103
Value	Rand	R 1,398,470.00	R 3,964,823.00	R 10,077,407.00	R 5,183,077.00	R 1,608,029.00

3.3 SECTOR IDENTIFICATION AND MOTIVATION

The sectors identified for research were identified between the CPG and the Consortium by mutual agreement, after motivation of specific sectors by the Consortium and consultation with the some stakeholders namely Enforcement Agencies, Business, Labour and Government before finalisation of the sectors. The following criteria was utilised as a guideline in the decision making process:

- **The sector's GDP;**
- Investment potential of the sector;
- Current employment and potential employment generation within the sector;
- The prevalence of customs related fraudulent activities within the industry sector;
and
- The availability and accessibility of industry information.

The sectors chosen for the research were dairy, livestock and red meat; textiles, clothing and footwear; rubber products and tyres; and motor vehicles and parts. Feedback in respect of each of the sectors will be provided separately. The high level overview of the various sectors is framed within the context of import fraud and the effect on the sectors in terms of job- and investment losses.

The information contained in this report reflects data available from the various sources consulted. Ideally, we would have liked to reflect all data in the same format (e.g. quantity/weight/value etc), however not all data sources were available to the research team in a similar and comparable format.

3.4 DAIRY

3.4.1 OVERVIEW OF THE INDUSTRY AND ISSUES TO CONSIDER WHEN ADDRESSING THE PREVALENCE AND TYPES OF FRAUD

3.4.1.1 Introduction to the dairy sector

A distinction has to be made between the primary and the secondary dairy industry. The primary dairy industry refers to the production of raw milk which is undertaken by large scale and small scale dairy farmers. The secondary dairy industry processes raw milk into liquid milk products like pasteurised liquid milk and UHT milk, maas, yoghurt, cream and cottage cheese and concentrated products like milk powder, cheese and butter.⁸

The sector producing fresh milk and dairy products is the fourth largest agricultural sector in South Africa. The primary production sector is much more labour intensive than the secondary/processing industry. The secondary dairy industry has undergone major restructuring during the past ten years with increasing international presence in the market through joint ventures and take-overs. This exposed the domestic market to new technology and new products which intensified the level of competition experienced.⁹

Industry federations indicated that they felt compelled to create their own investigations capacity in order to investigate and prevent customs fraud, due to the fact that they were not receiving this support and co-operation from Government.

Low-priced imported products have a significantly negative impact on the processing (secondary) industry, since this industry cannot compete on a price basis against such products. This creates a cycle of downward pressure on the price paid to the producers of milk (primary industry), which in turn leads to job- and investment losses. Please note that not all low-priced imports can be regarded as fraudulent, but a significant percentage may fall within that category.¹⁰

⁸ Industry Statistics 2003 to 2009 – Milk Producers' Organisation

Investigation into the customs tariff dispensation with respect to dairy products, Report 89, 2004 International Trade Administration Commission

⁹ Industry Statistics 2003 to 2009 – Milk Producers' Organisation

Investigation into the customs tariff dispensation with respect to dairy products, Report 89, 2004 International Trade Administration Commission

¹⁰ Milk Producers Organisation

Furthermore, the sector is very important in terms of the establishment of emerging farmers, in particular, in impoverished regions like Qwa-Qwa and the Eastern Cape. Illegal and sub-standard imports increase the barriers to entry for potential emerging farmers and also impacts negatively on the sustainability of existing emerging farmers.

3.4.1.2 Sector role players

Three organisations represent the interests of the role players in the dairy industry¹¹, namely:

- **The Milk Producers' Organisation (MPO)** - established in 1998 and renders a variety of services in order to represent and empower milk producers;
- Milk processors are represented by the South African Milk Processors Organisation (SAMPRO) - established in 2003; and
- Milk SA - overreaching industry organisation created in 2002, a Section 21 company dealing with the collective interests of the primary dairy industry (raw milk producers), and secondary dairy industry (processors).

3.4.1.3 Importance of employment and investment in the sector

In line with the research mandate, the effect of import fraud on employment and investment in the sector needs to be considered. Due to the fact that the dairy sector is the 4th largest agricultural sector in South Africa, any job losses and lost investment opportunities due to import fraud will have a significant impact on growth and employment of the sector.

According to studies conducted by the Department of Agriculture, the agricultural sector creates the second largest employment multiplier per Rand invested and that an investment of R1 million in the agricultural sector creates twice the number of jobs than in the manufacturing sector¹². Nine of the top ten employment generators in the economy are within the agro-processing sector. Meat products and dairy products represent two of the top ten employment generators in the economy. The primary dairy industry directly employs approximately 60,000 workers while approximately 16,000 workers are employed by the secondary industry¹³.

¹¹ Industry Statistics 2003 to 2009 – **Milk Producers' Organisation**

Investigation into the customs tariff dispensation with respect to dairy products, Report 89, 2004 International Trade Administration Commission

¹² Livestock development Strategy for South Africa, 2007 – Department of Agriculture Forestry and Fisheries

¹³ **Milk Producers' Organization statistics**

The number of milk producers has decreased from 3,899 in January 2007 to 3,551 in January 2009. The biggest decrease in producers occurred in the Northern Cape (74,4%), while the number of producers in the Free State decreased by 27%.

The South African secondary industry consists of a small number of large processors who operate nationally and a large number of smaller processors who operate in specific areas. These large companies are Clover SA Ltd, which is in joint ventures with the French food group Danone and the British company Unilever, Parmalat Food Industries SA (Pty) Ltd, Nestlè SA (Pty) Ltd, DairyBelle and Woodlands Dairies.

For the purposes of this report the total investment in the sector is estimated by the Milk Producers Organisation to be approximately R20 to R25 billion.

3.4.1.4 Import Statistics

Import statistics is one of the first tools that the industry can utilise to determine whether:

- There is a unexplained increase in the import of dairy products, classifiable under specific tariff subheadings;
- Consignments enter the country at abnormally low prices; and
- Consignments enter South Africa from unexpected countries of origin, e.g. Singapore which does not have a dairy industry.

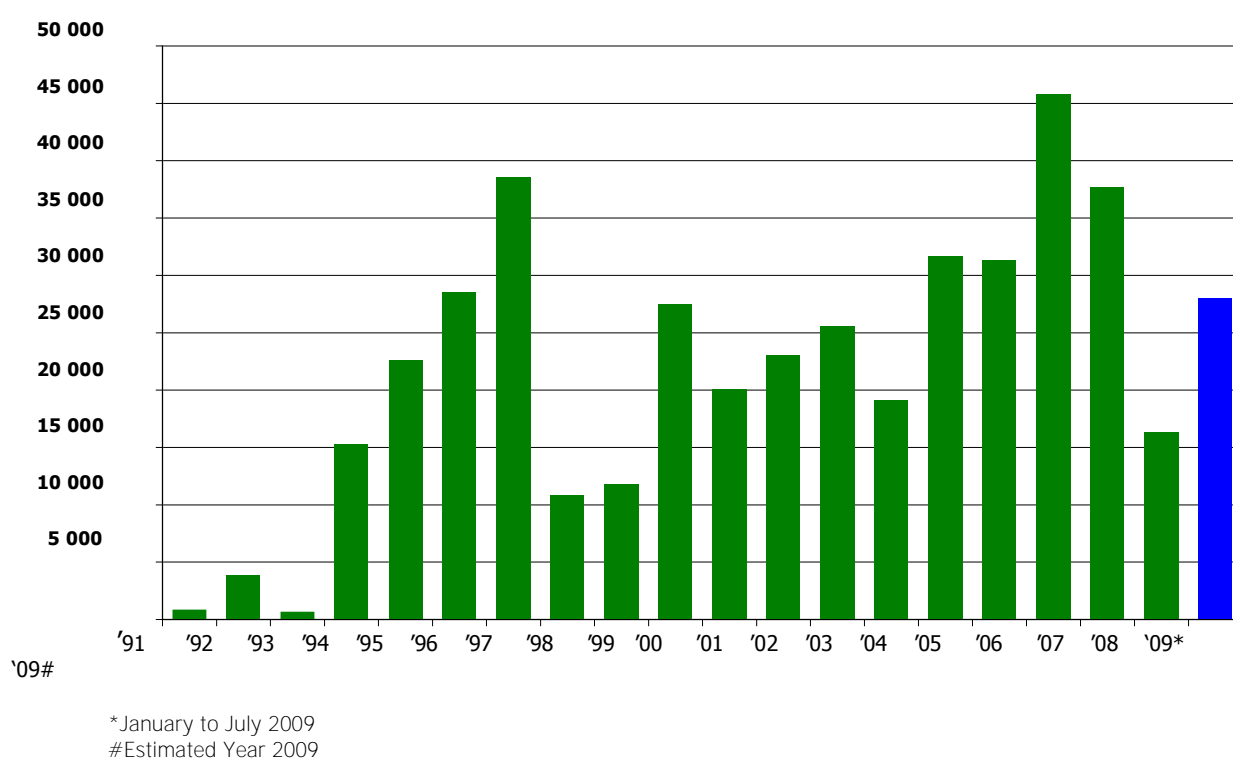
The usefulness of import statistics is limited by the format in which the statistics is supplied by SARS. Official import statistics reflect the total import quantity and value of a product from a specific country per month or year.

Statistics are not given per consignment and details like the port of entry and the purpose code (Warehouse Entry, General Rebate, Industrial Rebate, Warehouse for Export) are generally not made available by SARS. Furthermore, Section IV of the Customs and Excise Act prohibits SARS from making known the names of importers. The aforementioned information is essential to monitor and analyse the imports of a product in a meaningful manner and to identify possible fraudulent imports.

Export statistics of countries from which imports originate can be a useful tool in identifying irregularities with regard to imports. This can be done by comparing South African import statistics with the export statistics of the export country, using resources such as the International Merchandise Trade Statistics (IMTS).¹⁴

The following statistical data sourced from the Milk Producers Association is available for the dairy sector. This data offers an illustration of the increasing trend in imported dairy products.

Figure 4: **Annual Imports Of Dairy Products, 1991 – 2009**



¹⁴ International Trade Statistics Yearbook Tables (<http://unstats.org/unsd//trade/imts/imts>)

3.4.2 CUSTOMS FRAUD RELATED ISSUES AFFECTING THE INDUSTRY¹⁵

3.4.2.1 Introduction

In this section, we will discuss the prevalence of customs fraud in the sector and the effect of customs tariff classification, rebate provisions, trade remedies and other government interventions. Wherever we discuss a type of fraud identified as having occurred in the dairy sector, we will provide a corresponding definition of such term.

The importance of discussing the customs tariff classification is due to the fact that the simplification of the tariff, including the substitution of specific and formula duties by *ad valorem* duties in line with commitments to the WTO can be seen as an incentive for committing fraud. The same argument can be made with regards to rebate provisions and other government interventions (where applicable).

During the course of the research various role players in government and the sectors involved expressed the view that *ad valorem* duties are an incentive for customs fraud because it is calculated as a percentage of the value of imported goods. Importers then manipulate the value of imported products in order to minimise the customs duty payable.

Specific duties are calculated on the quantity of goods imported, i.e. R4,50 per kilogram and cannot be manipulated as easily. It was proposed by government officials and sector role players that *ad valorem* duties should be replaced by specific duties with regard to goods where a high risk of customs fraud exists.

Further The Free on Board (Fob) value of imported products is used by SARS for customs valuation purposes. This gives rise to fraud where imported products are subject to an *ad valorem* duty. The Fob value of imported products are manipulated to be as low as possible whilst freight, insurance and other costs are inflated in order to pay the lowest possible customs duty. This results in significant revenue losses for SARS.

¹⁵ Industry Statistics 2003 to 2009 – Milk Producers' Organisation

Investigation into the customs tariff dispensation with respect to dairy products, Report 89, 2004 International Trade Administration Commission

3.4.2.2 Prevalence of customs fraud in the sector

Our research indicated that SARS does not view the importation of dairy products as a high risk with regard to non-compliance and fraud. This results in minimal fraudulent import transactions being uncovered and/or identified in the dairy sector¹⁶.

The Milk Producers' Organisation recognised the threat from illegal and sub-standard imports and consequently created the capacity to identify and address such imports by the establishment of the forensic investigation company Agri Inspec. The company is responsible for identifying irregularities with regard to the import of dairy products and to take the necessary steps to address such irregularities.

Furthermore, the lack of cooperation and coordination between the government agencies involved with customs services with regard to imported dairy products led to the establishment of the Dairy Classification and Technical Liaison Committee. The Committee consists of representatives from the Departments of Agriculture and Health, SARS, the Dairy Standard Agency and the Milk Producers' Organisation.

All issues relevant to the import and export of dairy products are discussed by the Committee and action steps are taken to address problems. This forum has proven **extremely valuable in the industry's** endeavour to manage the import of dairy products effectively and efficiently.

Dairy products which are mis-declared also escape the attention of the Departments of Agriculture and Health – **these two departments' involvement is critical to ensure that legislation is complied with when importing dairy products, and that certain legislated standards are upheld (see 'Other forms of Government intervention' below).**

Through information obtained from forensic investigations conducted on behalf of the MPO it was ascertained that mis-declaration, under-valuation and circumvention of the tariff are the types of fraud prevalent to the dairy sector.

3.4.2.3 Customs tariff classification

For all the sectors reviewed, we will provide comments and information on the customs tariff classification and rebate provisions, since customs fraud cannot be viewed in isolation from these two items.

¹⁶ Reports on investigations conducted by Agri Inspec, 2006 to 2009

The customs tariff classification for dairy products is found in Schedule 1 to the Customs and Excise Act of 1964. The preferential rates of duty in terms of the trade, development and cooperation agreements with the EU, EFTA and SADC are included. Dairy products are classifiable under tariff headings 04.01 to 04.06 as follows:

- All dairy products imported from SADC member states are free of duty;
- All liquid milk products (tariff heading 04.01) and yogurt (tariff heading 04.03) are free of duty, regardless of the country of origin;
- Milk powder is subject to a rate of duty of R4,50 per kilogram;
- Whey powder originating from the European Union has a reduced rate of duty of R2,835 per kilogram while whey powder imported from other destinations is subject to a rate of duty of R4,50 per kilogram; and
- Imported butter and cheese are subject to a rate of duty of R5,00 per kilogram.

Products with a dairy content are also classifiable under different tariff sub-headings as follows:

- Food preparations of goods of headings 04.01 to 04.04, including preparations for infant use, are classifiable under tariff heading 19.01 at a rate of duty of 20% *ad valorem*;
- Ice cream, whether or not containing cocoa, is classifiable under tariff heading 21.05 at rates of duty that vary from 10% to 25% *ad valorem*; and
- Food preparations not elsewhere specified are classifiable under tariff heading 21.06 at rates of duty that vary from free to 20% *ad valorem*.

Since it is difficult to distinguish between different powders (whether containing dairy or not) and a very small percentage of imported consignments are physically inspected at the port of entry, some importers use the opportunity to circumvent the tariff payable on dairy products (classifiable under tariff headings 04.01 to 04.06) by clearing imported products under one of the abovementioned tariff headings.

The average MFN (most favoured nation) applied duty for dairy products in South Africa is 16.8%. This against comparative data illustrating that average MFN applied duty rate for dairy products across the benchmarked research countries reflects as follows:

- Canada: 126.2%;
- European Communities: 64.1%;
- India: 33.8%; and
- Malaysia 4.8%.¹⁷

The agricultural sector has generally demonstrated a lower tariff duty in SA. This is indicative in the above comparisons.

3.4.2.4 Rebate provisions

In South Africa, several provisions for rebate of the duty on imported dairy products exist. Details of these rebate provisions are as follows:

- Item 460.01/04.00 provides for rebate of the full duty on specified quantities of dairy products, classifiable under tariff headings 04.01 to 04.06, imported by Botswana, Lesotho, Namibia and Swaziland for domestic consumption only. Complaints are frequently lodged by the RSA industry that subsidised dairy products imported under rebate of the duty in terms of this provision are being traded on the RSA market and are disrupting the local market;
- Item 304.07/0403.90 provides for rebate of the full duty on buttermilk powder for the manufacture of ice cream;
- Item 304.07/0404.10 provides for rebate of the full duty on demineralised whey powder for the manufacture of prepared baby food. This rebate item was abused since 1998 by importers who utilised the provision for the manufacture of baby formula milk which is not included in the provision;
- Rebate item 460.25 provides for rebate of the duty on specified quantities of dairy **products in terms of South Africa's minimum** market access obligations. Permits in terms of this provision are issued by the Director-General: Agriculture. The rate of duty for dairy products imported under this provision is 19,2% *ad valorem*. This could give rise to fraud by way of under-invoicing.

3.4.2.5 Trade remedies

No trade remedies have been implemented with regard to imported dairy products.

¹⁷ Source: WTO World Tariff Profiles 2009

3.4.2.6 Other forms of Government intervention

The Department of Agriculture Forestry and Fisheries controls the importation of all live animals and animal products, including dairy products, in terms of the following legislation:

- Agriculture Product Standards Act, No 119 of 1990; and
- Animal Disease Act, No 35 of 1984.

All importers of dairy products are required to apply for and obtain a Veterinary Import Permit from the Directorate: Veterinary Services. Following receipt of the completed application form a Veterinary Import Permit is issued and sent to the importer.

A Veterinary Health Certificate which has to be completed by a veterinarian authorized thereto by the Veterinary Administration of the exporting country is sent to the importer to be completed within 10 days of departure.

An importer must present the original Veterinary Import Permit, Veterinary Health Certificate and any other documentation specified to the South African Veterinary Import Control Officer at the port of entry.

The National Department of Health administers and enforces the legislation regarding the health of dairy products. A summary of the applicable legislation is as follows:

- The Health Act, No 63 of 1977, provides measures for *"... the promotion of the health of the inhabitants of the Republic and describes the duties and powers of local authorities, especially with regard to the prevention of diseases..."*
- Regulations Relating to Milk and Dairy Products (R1555) were issued in terms of the Foodstuffs, Cosmetics and Disinfectants Act, No 54 of 1972.

3.4.3 TYPES OF CUSTOMS FRAUD IDENTIFIED

3.4.3.1 *Mis-declaration as a specific type of import fraud identified in the dairy sector*¹⁸

Dairy products, classifiable under tariff headings 04.01 to 04.06 are fraudulently cleared under other tariff headings like 19.01, 21.05 and 21.06, since the last mentioned tariff headings are subject to lower rates of customs duties. The purpose of such mis-declaration is thus to circumvent the customs tariffs payable.

An example of this is processed cheese which has for the past 5 years been imported by a specific importer and cleared as food preparations, classifiable under tariff heading 21.06 at a rate of duty of 20% *ad valorem* which is significantly lower than the rate of duty of R5,00 per kg applicable to the product. Furthermore, the Free on Board prices of the products are abnormally low (between R10,00 and R16,00 per kilogram) in order to minimise the *ad valorem* duty payable.

The matter was handed over to SARS in November 2008 together with all the relevant documentary evidence but the imports are still taking place on virtually a monthly basis. The calculated loss in revenue for SARS amounted to approximately R40,000 on only one of the consignments imported during 2009. The matter has now been taken up with the BCOCC at SARS.

Rebate item 304.07/0404.10 provides for rebate of the full duty on demineralised whey powder for the manufacture of prepared baby food, excluding baby formula milk. This rebate item was abused since 1998 by importers who utilised the provision for the manufacture of baby formula milk which is excluded from the provision. SARS launched an investigation into the matter in 2009 which has not been concluded yet.

¹⁸ Industry Statistics 2003 to 2009 – **Milk Producers' Organisation**

Investigation into the customs tariff dispensation with respect to dairy products, Report 89, 2004 International Trade Administration Commission

3.4.3.2 Abuse of rebate provisions as a specific type of import fraud identified in the dairy sector¹⁹

Rebate item 460.01/04.00 whereby Botswana, Lesotho, Namibia and Swaziland (BLNS countries) are allowed to import specified quantities of dairy products at free of duty has led to circumvention of the tariff in the past. Dairy products were imported from the EU at subsidized prices by Swaziland in terms of the provisions under rebate item 460.01/04.00 and sold on the South African market contrary to the conditions of the rebate item.

The products entered the South African market at very low prices without payment of the applicable import duty. This abuse not only resulted in loss of income for SARS but also impacted negatively on South African milk producers and processors who cannot compete against imported products entering the country at subsidised prices.

Towards the end of 2006 a complaint was lodged with the MPO that a certain milk processor in the Eastern Cape informed dairy farmers that the company was no longer going to purchase milk from them since the products required could be sourced, from Swaziland at significantly lower prices. The multinational company secured a supply contract for full cream milk powder, classifiable under tariff subheading 04.02.21.

The MPO suspected that the product was subsidized milk powder imported into Swaziland in terms of the provisions under rebate item 460.01/04.00, and then supplied to the company in the Eastern Cape. This practice is illegal since dairy products imported in **terms of the provisions of the said rebate item are for the import country's own use only and cannot be traded on any of the other SACU member countries' markets.**

In view of the above the MPO obtained written confirmation from the Deputy Director: Africa Trade of the Department of Agriculture (DoA) regarding the condition that any dairy products imported in terms of rebate item 460.01/04.00 are for home consumption of the import country only, regardless of value added.

Agri Inspec was requested to urgently investigate the matter and to submit copies of the letter from the DoA to SARS officials at all the RSA/BLNS border posts for their information. Agri Inspec conducted an investigation at the RSA/Swaziland border post situated at Oshoek and found the following irregularities:

¹⁹ Industry Statistics 2003 to 2009 – **Milk Producers' Organisation**

Investigation into the customs tariff dispensation with respect to dairy products, Report 89, 2004 International Trade Administration Commission

- Full cream milk powder, classifiable under tariff heading 04.02 and imported into Swaziland in terms of rebate item 460.01/04.01, was traded from Swaziland into South Africa during 2004 to the end of 2006;
- No record was found of any permits issued by the DoA to the importer;
- The packaging of the products did not comply with South African regulations; and
- Agri Inspec calculated that import tariffs amounting to approximately R5,000,000 were payable to SARS for the period under investigation.

The matter was reported to the DoA and handed over to SARS for investigation. SARS is prohibited by the provisions of the Customs and Excise Act of 1964, to divulge any details of the progress with the investigation.

3.4.3.3 Under valuation as a specific type of import fraud identified in the dairy sector²⁰

Under-valuation mainly occurs in respect of product subject to the payment of VAT. Consignments of dairy products of which the Free on Board prices are extremely low and not in line with production costs and published world prices are imported on a continuous basis.

These products frequently originate from questionable sources like the Isle of Man, Singapore, Thailand; etc. This places the dairy industry at a competitive disadvantage and jeopardizes the continued existence of the industry. Agri Inspec is currently investigating the matter on behalf of the MPO.

²⁰ Industry Statistics 2003 to 2009 – Milk Producers' Organisation

Investigation into the customs tariff dispensation with respect to dairy products, Report 89, 2004 International Trade Administration Commission

3.5 RED MEAT

3.5.1 OVERVIEW OF THE INDUSTRY AND ISSUES TO CONSIDER WHEN ADDRESSING THE PREVALENCE AND TYPES OF FRAUD

3.5.1.1 Introduction to the livestock and red meat sector

Livestock farming takes place throughout South Africa with the numbers and species being dependent on production potential, climatic conditions, the concentration of population, the availability and accessibility of inputs and the location of markets. The livestock industry which accounts for more than 40% of the total value of agricultural output is a very important component of the agricultural sector and the national economy. Due to livestock farming being largely natural resource based it occupies approximately 80% of the land available for agriculture. Animal husbandry is the primary income generator in the majority of the rural areas in the country.

Livestock production ranges from modern, highly sophisticated and intensive systems to subsistence and communal, pastoral systems. Herds consist of indigenous species and breeds as well as imported breeds and crossbreeds that are well adapted to local conditions.

In the Department of Agriculture Forestry and Fisheries' (DAFF) **Livestock Development Strategy, 2007** it is stated that livestock numbers were estimated at 13,9640,000 cattle and 28,952,000 sheep in 2002. The largest concentration of cattle and sheep is in the Eastern Cape. The Department of Agriculture Forestry and Fisheries calculated dairy cows to represent 21% of the total number of cattle in South Africa. The estimated contribution from the communal areas to the total cattle and sheep numbers was 40.8% and 12.1%, respectively. **The country's cattle population** is concentrated along the coastal areas of the Western and Eastern Cape, the western parts of KwaZulu Natal, the north-eastern and central areas of the Free State and the southern parts of Mpumalanga. The sheep population is concentrated in the Eastern and Northern Cape and is widely spread across the two provinces.

According to the national Department of Agriculture Forestry and Fisheries there are vast opportunities for improvement in production efficiency as measured by off-take (number slaughtered as percentage of total number over years) for cattle and sheep in the communal sector. The off-take for cattle and sheep in the commercial sector compares well with that of Australia but is much lower than that of New Zealand, the European Union and the USA.

Furthermore, the sector is very important in terms of the establishment of emerging farmers, in particular, in impoverished regions like the Eastern Free State and the Eastern Cape. Illegal imports increase the barriers to entry for potential emerging farmers and also impacts negatively on the sustainability of existing emerging farmers.

3.5.1.2 Sector role players

Three organisations represent the interests of the role players in the dairy industry, namely:

- The Red Meat Industry Forum (RMIF). The Forum created structures to continue performing the essential functions performed by the disbanded Meat Board;
- The Members of the RMIF created an Article 21 company namely the South African Meat Industry Company (SAMIC) which is the national representative structure of the South African red meat industry, managed through a democratically elected Board of Directors;
- The Meat Statutory Measure System (MSMS) is a service provider for the Red Meat Levy Administrator and collects statutory funds. The Red Meat Levy Administrator is responsible for the administration of statutory levies;
- The Red Meat Producers Organisation (RPO) is a service organisation that acts as a mouthpiece for South African commercial red meat producers, and promotes sustainability and the profitability of the red meat industry in South Africa;
- **The primary aim of the National Emerging Red Meat Producers' Organisation** (Nerpo) is to commercialize the developing agriculture sector and ensure meaningful participation of black individuals within the mainstream commercial agribusiness sector, hence ensuring the long term sustainability of the agriculture in South Africa;
- The South African Feedlot Association (SAFA) represents the red meat industry on all formal structures where members' interests are to be established and protected. The Association is involved with animal health issues, feedlot industry image building, the supply of relevant domestic and international industry information and other services to members; and
- The Red Meat Abattoir Association (RMAA) is a representative forum for abattoir owners in South Africa. The abattoir industry is responsible for the conversion of livestock to meat.

3.5.1.3 Importance of employment and investment in the sector

In line with the research mandate, the effect of import fraud on employment and investment in the sector needs to be considered. Due to the fact that the livestock and red meat sector in South Africa accounts for more than 40% of the total value of agricultural output is a very important component of the agricultural sector and the national economy.

Due to livestock farming being largely natural resource based it occupies approximately 80% of the land available for agriculture. Animal husbandry is the primary income generator in the majority of the rural areas in the country. Import fraud has led to job losses and lost investment opportunities in the sector and has to be addressed urgently to prevent further damage.

According to studies conducted by the Department of Agriculture²¹, the agricultural sector creates the second largest employment multiplier per Rand invested and that an investment of R1 million in the agricultural sector creates twice the number of jobs than in the manufacturing sector.

Nine of the top ten employment generators in the economy are within the agro-processing sector. Meat products represent one of the top ten employment generators in the economy. The livestock sector is a major employer and employment generator with approximately 425,000 direct and indirect employees and a further 2,125,000 people dependent on the livestock industry for their livelihood. Approximately 36,000 farmers employing about 108,000 farm workers farm with cattle and approximately 60,950 workers are employed in sheep farming.

The industry has high investment potential with the total investment in the industry amounting to more than R20 billion.

3.5.1.4 Import Statistics

Please refer to the comments in paragraph 3.4.1.4 supra, which is applicable to all sectors in relation to import statistics. According to the **Red Meat Producers' Organisation** the quantities of livestock and red meat exported are insignificant in comparison to industry output. The Bureau for Food and Agricultural Policy reflects the following export figures with regard to red meat in its report, "*The South African Agricultural Baseline*", 2009:²²

²¹ Livestock development Strategy for South Africa, 2007 – Department of Agriculture Forestry and Fisheries

²² Source: Bureau for Food and Agricultural Policy, 2009

Table 2

Year	Thousand Tons
2006	10.00
2007	9.00
2008	3.60

A summary of beef and sheep imports are as follows (**Red Meat Imports, 2006-2008**)

Table 3

	2006 Thousand Tons	2007 Thousand Tons	2008 Thousand Tons
Beef	66.60	66.20	59.90
Sheep	54.80	52.00	37.20
Total	121.40	118.2	97.10

3.5.2 CUSTOMS FRAUD RELATED ISSUES AFFECTING THE INDUSTRY²³

3.5.2.1 Introduction

Refer to the discussion under the Dairy Sector Report, paragraph 3.4.2.1 *supra*, which is also applicable to this section of the report. For brevity purposes the same information will not be repeated here.

3.5.2.2 Prevalence of Customs Fraud in Sector

Industry representatives are of the view that SARS does not view the importation of livestock and red meat as a high risk with regard to non-compliance and fraud. This results in minimal fraudulent import transactions being uncovered and/or identified in the livestock and red meat sector. Customs fraud related problems are mainly experienced with the import of livestock from neighbouring countries, specifically the BLNS countries.

Industry representatives mentioned that they are aware of significant instances of import fraud that cannot be effectively addressed due to *inter alia*:

²³ Red Meat Producers' Organisation
Reports on Investigations conducted by Agri Inspec

- Lack of boundary fences;
- Insufficient record keeping systems (border posts not being computerised);
- Lack of infrastructure e.g. lights, weighbridges and offloading- and inspection facilities;
- Lack of skilled and experienced Customs officials; and
- Lack of service-orientated approach amongst Customs officials.

The entering of a product into the RSA by not using a registered or approved port of entry is considered to be smuggling as well as not being in possession of any legal import documentation. Livestock enter South Africa from neighbouring countries by not using a registered or approved port of entry and with no import documentation. The animals are sold on the local market at low prices against which the local industry cannot compete.

The fraudulent imports not only have a significant negative impact on the competitiveness of the industry but also pose major health risks because the Departments of Agriculture Forestry and Fisheries whose responsibility it is to ensure that animal health legislation is complied with when importing livestock is not involved in the importation process. (See 'Other forms of Government intervention' below).

Through information obtained from forensic investigations conducted on behalf of the Red Meat Producers' Organisation it was ascertained that mis-declaration, under-valuation and smuggling are the types of fraud prevalent to the dairy sector.

3.5.2.3 Customs tariff classification

The customs tariff classification for cattle, sheep, beef and mutton is found in Schedule 1 to the Customs and Excise Act, 1964. The preferential rates of duty in terms of the trade, development and cooperation agreements with the EU, EFTA and SADC are included.

Live sheep and cattle are free of duty while the meat of sheep and cattle originating from all sources except SADC, are subject to a rate of duty of 40 per cent *ad valorem* or 240c/kg. Meat imported from SADC is free of duty. This may and does give rise to import fraud through mis-declaration of the origin of red meat as originating in SADC to circumvent the payment of the applicable import duty.

The average MFN applied duty for animal products in South Africa is 13.1%. This against comparative data illustrating that average MFN applied duty rate for animal products across the benchmarked research countries reflects as follows:²⁴

- Canada: 20.7%
- European Communities: 27.6%
- India: 31.6%
- Malaysia 3.8%

The agricultural sector has generally demonstrated a lower tariff duty in SA. This is indicative in the above comparisons.

3.5.2.4 Rebate Provisions

In the RSA several provisions for rebate of the duty on imported red meat exist. Details of these rebate provisions are as follows:

- Frozen, boneless meat of sheep or goats can be imported at rebate of the full duty less 56c/kg with a permit issued by the International Trade Administration Commission;
- Frozen, mechanically deboned meat of bovine animals for the manufacture of cooked or smoked sausage and similar products and of prepared or preserved meat in airtight metal containers can be imported at rebate of the full duty;
- Frozen, boneless meat of bovine animals for the manufacture of prepared or preserved meat in airtight metal containers can be imported at rebate of the full duty with a permit issued by the International Trade Administration Commission;
- **In order to comply with South Africa's commitment to the World Trade Organisation (WTO): Marrakesh Agreement regarding market access specified quantities of red meat are allowed to enter South Africa at reduced rates of duty annually. Rebate item 460.25 provides for rebate permits to be issued by the Director-General: Agriculture in terms of South Africa's minimum market access obligations. The reduced rates of duty on red meat of bovine animals and sheep are ad valorem duties which often lead to under-invoicing of imported consignments.**

Industry representatives indicated no knowledge of abuse of the above rebate provisions.

²⁴ Source: WTO World Tariff Profiles 2009

3.5.2.5 Trade remedies

No trade remedies have been implemented with regard to imported livestock and red meat.

3.5.2.6 Other forms of Government intervention

The national Department of Agriculture Forestry and Fisheries controls the importation of all live animals and animal products, including red meat, in terms of the following legislation:

- Animal Diseases Act, 1984 (Act No 35 of 1984)
- Meat Safety Act, 2000 (Act No. 40 of 2000)

All importers of live animals and red meat are required to apply for and obtain a Veterinary Import Permit from the Directorate: Veterinary Services.

3.5.3 TYPES OF CUSTOMS FRAUD IDENTIFIED

3.5.3.1 Mis-declaration as a specific type of import fraud identified in the livestock and red meat sector

During the importation of livestock from Namibia fully grown cattle are declared as weaner calves which weigh about 50% less per unit. The calves are transported in closed trucks and the content of the trucks is not inspected at the border post. In addition SARS officials are not adequately trained with respect to livestock and red meat and do not have sufficient knowledge to conduct inspections for verification purposes. Officials are not able to distinguish between weaner calves and fully grown livestock and this situation is exploited by importers. This results in an under-declaration of weight and consequent under-declaration of price per unit and total value.

These irregularities enable Namibian exporters to deliver livestock to the RSA meat market at prices against which South African livestock producers cannot compete.

3.5.3.2 Under-declaration of quantity and value as a specific type of import fraud identified in the livestock and red meat sector

Large numbers of weaner calves are being exported to South Africa from Namibia. The calves are transported in closed trucks and the content of the trucks is not inspected at the border post.

During the importation process, the value of the weaner calves declared on the documentation for customs purposes is significantly lower than the actual value of the consignment. The purpose of this under-declaration of value is to minimise the amount of VAT payable.

Under-declaration of value of weaner calves exported to South Africa by a single Namibian exporter was calculated to amount to approximately R25 million over a period of 2.5 years. Upon further investigation, it was found that the value of each consignment of weaner calves entering South Africa was under-declared by between R140,000 to R160,000 which is estimated to be R20,000 less than the actual value thereof.

The number of weaner calves entering South Africa is also manipulated as a result of the lack of sufficient offloading and inspection facilities. It is therefore not possible for officials at the border posts to count livestock and verify the correctness of import documentation.

The lighting at border posts is insufficient which results in inadequate control of trucks and loads of livestock transported at night. During the summer livestock is mainly transported at night because animals suffer from heat stress during the day.

The same problems are experienced with regard to sheep and goats. Large numbers of sheep and goats are brought into South Africa from Namibia via the Nakop border post, where the same trend of under-declaration of value and numbers is found. Furthermore, beef and sheep carcasses are brought in from Namibia at under-declared values.

These irregularities enable Namibian exporters to deliver livestock to the RSA meat market at prices against which South African livestock producers cannot compete. The under-declaration of value and numbers of imported livestock has a direct negative effect on the South African market price of red meat.

3.5.3.3 Smuggling as a specific type of import fraud identified in the livestock and red meat sector

Large sections of the boundary fence between Zimbabwe and South Africa are either damaged or do not exist anymore and are not repaired and or maintained by the responsible authorities. This poses a serious problem during the winter months when the Limpopo River is not flowing and for all practical purposes virtually no boundary exists between Zimbabwe and South Africa. The lack of border fences is conducive to illegal activities like the smuggling of livestock from Zimbabwe to the RSA on the one hand while on the other hand from a veterinary point of view these animals pose a great risk with regard to the spread of transmittable diseases.

The problem is exacerbated by the fact that the relevant South African authorities like the **SAPS Border Police, SARS' Border Control Unit and the Department of Agriculture's Directorate: Animal Health** does not have sufficient capacity to patrol, maintain and control the border fence adequately. Livestock which is smuggled into South Africa from Zimbabwe is sold at low prices to local residents and speculators and distorts the RSA livestock market. Losses are also suffered by SARS owing to the non-payment of VAT on the livestock.

The Department of Agriculture Forestry and Fisheries controls the movement of livestock from Lesotho to South Africa through two Acts in terms of which permits have to be issued before the livestock is allowed to enter South Africa. Firstly a permit issued in terms of the Animal Improvement Act, No 62 of 1998, by the Department of Agriculture is required before livestock is allowed to be transported from Lesotho into the RSA for purposes of grazing, direct sale and slaughter.

Secondly an import permit issued in terms of the Animal Disease Act, No 35 of 1984, is required before importation is allowed. **Investigation by the Red Meat Producers' Organisation** revealed that this system is being abused and large numbers of livestock are entering the country from Lesotho without permits.

According to the Red Meat Producers' Organisation it is estimated that between 100,000 and 120,000 head of cattle of which approximately 80% were brought into the country from Lesotho without permits and/or crossed the border illegally, are currently in South Africa.

Agri Inspec found that there is no fence left between Lesotho and the RSA and livestock are moved from Lesotho through the Caledon River at night, to where they can find suitable grazing on South African soil.

Large numbers of livestock from Lesotho origin are sold to speculators at prices that are substantially lower than the current South African market price and are delivered very cheaply to auctions and abattoirs. **The Red Meat Producers' Organisation states that this state of affairs has a very negative influence on market prices in the Free State, and poses a major threat regarding the spread of animal diseases.**

Furthermore, beef and sheep carcasses are smuggled from Namibia to South Africa at low prices. This highly vulnerable state is attributable to the fact that the relevant authorities are not exercising sufficient supervision and/or control over the situation.

3.6 FOOTWEAR

3.6.1 OVERVIEW OF THE INDUSTRY AND ISSUES TO CONSIDER WHEN ADDRESSING THE PREVALENCE AND TYPES OF FRAUD

3.6.1.1 Introduction to the footwear sector

The domestic footwear industry consists of 112 manufacturers under the umbrella of the Southern African Footwear and Leather Industries Association (SAFLIA) and the National Bargaining Council (in addition to at least 60 other SMME's).

South Africa has certain competitive advantages for the production of footwear, such as the availability of raw material to produce any type of footwear from low end to high end (e.g. bovine, ostrich, Nile crocodile, game leather, textile and PVC and PU synthetic raw materials can all be sourced locally without difficulty); and reasonably low labour costs (comparable to those of developed countries).²⁵

The outgoing President of SAFLIA mentioned in his message to members, that during the current tough economic times, South Africa has increased locally made shoe sales to 51 million pairs – up from 30 million a few years ago (thus a 70% increase) and exported 1.5 million pairs of the locally manufactured shoes. However, 149 million pairs were still imported; where South Africa has 40% of people unofficially unemployed, and 23% officially unemployed.²⁶

²⁵ <http://www.thedti.gov.za/publications/textiles.htm#overview>

²⁶ SAFLIA Annual Report 2009, p. 4

3.6.1.2 Sector role players and specific contributions to combat customs fraud

The Southern African Footwear and Leather Industries Association (SAFLIA) was established in 1997. It includes footwear and leather sector suppliers, and incorporates **the Footwear Manufacturers' Federation of South Africa that served the industry from 1944**. The footwear section in the National Bargaining Council of the Leather Industry of South Africa is still the dominant one and SAFLIA the largest employer party on the NBC. The other employer parties represent the Tanning and the General Leather Goods sections. The two unions are NULAW and SACTWU.²⁷

SAFLIA requires both members and non members to pay a compulsory levy in support of the Footwear Industry Technological Fund. Income from the Fund is used to finance ongoing projects by SAFLIA on behalf of the footwear sector, *inter alia*²⁸:

- Project to provide training to Customs Officials at border posts, including harbours and airports, with a view to improving monitoring of compliance with legislation relating to footwear imports;
- Maintaining a database on footwear production, employment, imports, and exports in the footwear sector;
- Ongoing liaison with Government and private sector organizations on a wide range of matters of vital importance to the industry in the field of international trade such as globalization, tariff issues, free trade agreements and a variety of micro- and macro- economic issues affecting the industry directly;
- Projects aimed at promoting sustainable economic growth and employment in the footwear industry, such as the development and implementation of the Customised Sector Programme (CSP) for the Footwear and Leather Goods Sectors;
- Financial aid to the footwear and leather export council (SAFLEC) to assist it in its export promotion programmes.

The Executive Director of SAFLIA indicated that although efforts had been made in the past to assist Customs Officials with training, these initiatives are only now starting to bear fruit, partly due to the problem of constant restructuring in SARS (and as a result changing requirements). In addition, the existence of the SARS Customs Academy was not widely known in the industry.

²⁷ SAFLIA Annual Report 2009, p. 25

²⁸ SAFLIA Annual Report 2009, p. 27

SAFLIA informed us that it had funds set aside for the purpose of assisting SARS Customs officials with specific and expert training. They have, however, had no request for a proposal in this regard from SARS. The industry has identified an immediate need for such training as a result of a lack of knowledge amongst customs officials on the classification of footwear.

SAFLIA suggested that some form of footwear specific and general qualifications be instituted for the customs officials. It was further suggested that limiting the ports of entry for footwear (and other products) would greatly reduce illegal imports as expertise could be concentrated.

In order for SAFLIA to assist SARS to identify which ports of entry the import of footwear should be limited to, they would need the import data for the different ports of entry for the last 3 years in order to draft a proposal in this regard.

3.6.1.3 Importance of employment and investment in the sector

The footwear industry is a major employer in the South African market. The majority of factories producing footwear are small to medium sized employers²⁹. The majority of employees per region are found in Kwazulu Natal³⁰.

According to SAFLIA, labour statistics from the National Bargaining Council of the Leather Industry of South Africa (NBC) reflected a decrease of 1,4% in employment in 2008, compared to 2007. The number of firms declined by 4.6% as there was a net loss of 7 firms.³¹

In terms of investment in the South African footwear industry, foreign businesses can either invest directly in wholly owned manufacturing plants or enter into business arrangements with existing producers through joint ventures, licensing or procurement. Investment-wise, several leading international companies (e.g. Beier, Barker, Jordan and Bata) have manufacturing facilities in South Africa already or have substantial procurement contracts with South African producers³².

²⁹ SAFLIA Annual Report 2009, p. 17

³⁰ SAFLIA Annual Report 2009, p. 17

³¹ SAFLIA Annual Report 2009, p. 17

³² <http://www.thedti.gov.za/publications/textiles.htm#overview>

The statistics for investment in the South African footwear over the period between 2006 and 2008 indicate a steady decrease in gross domestic fixed investment from 2006 to 2008³³ According to industry representatives; fraudulent imports have made a significant contribution to job- and investment losses.

3.6.1.4 Import Statistics

Please refer to the comments in paragraph 3.4.1.4 supra, which is applicable to all sectors in relation to import statistics.

Statistics reflecting the total value (FOB) of imports against tariff code chapter 64 (footwear and leather) reflect the following:

Table 4

2006	R 3,868,599,218.00
2007	R 4,475,293,527.00
2008	R 4,797,132,998.00
2009 (up to Sept)	R 3,703,372,237.00

The top 10 exporters to South Africa of Footwear and Leather (2006 – September 2009) are detailed below. The unit values of the stats varied between pair and kilogram values.

Table 5

	Country	2006 ("R")	2007 ("R")	2008 ("R")	To Sept 2009 ("R")
1	China	7,528,153,719	6,065,050,693	7,267,548,723	6,561,774,991
2	India	732,517,317	869,843,804	977,537,335	728,403,042
3	Pakistan	602,862,662	691,477,901	743,070,427	463,546,755
4	Germany	453,504,123	551,507,122	706,409,968	442,885,836
5	Taiwan	481,692,766	548,399,824	557,231,990	370,331,665
6	Italy	343,300,160	365,087,388	387,673,866	208,036,201
7	Korea	261,950,208	287,455,931	431,783,124	282,568,353
8	Zimbabwe	335,656,517	314,753,353	313,361,327	286,669,292
9	Mauritius	178,165,891	290,014,732	436,939,892	342,984,780
10	UK	313,939,200	328,372,543	349,398,743	206,674,308

³³ Source: Senior Economist, Research and Information, IDC

The above table reflects an increasing trend in the value (FOB) of imports into South Africa. Chinese import values reflect a marked increase of R6 and 7 Billion when assessed against the other importing countries. The marked increase of German imports of clothing and textiles, particularly in 2008 is notable.

3.6.2 CUSTOMS FRAUD RELATED ISSUES AFFECTING THE INDUSTRY

3.6.2.1 Introduction

Refer to the discussion under the Dairy Sector Report, paragraph 3.4.2.1 *supra*, which is also applicable to this section of the report. For brevity purposes the same information will not be repeated here.

3.6.2.2 Prevalence of customs fraud in this sector

Our research has indicated that the following types of fraud are most prevalent in the footwear sector: counterfeiting, under-invoicing and smuggling.

3.6.2.3 Customs tariff classification

The customs tariff classification for footwear is contained in Schedule 1 to the Customs and Excise act, 1964, Chapter 64. Chapter 64 contains 75 tariff lines of which the rate of duty vary between free and 30% *ad valorem*. As a result of various industry related investigations, it has been determined that these ad valorem duties create a significant incentive for importers to undervalue or under invoice the imported goods.

As a result of different trade development and co-operation agreements with various countries, the rates of duty applicable to similar items differ depending on the country of origin. This creates a further incentive for fraud in mis-declaring the country of origin on the labeling and import documentation with regards to these goods.

The average MFN applied duty for leather and footwear in South Africa is 13.3%. This against comparative data illustrating that average MFN applied duty rate for leather and footwear across the benchmarked research countries reflects as follows:³⁴

- Canada: 5.3%
- European Communities: 4.2%
- India: 10.1%
- Malaysia 14%

³⁴ Source: WTO World Tariff Profiles 2009

3.6.2.4 Rebate provisions

Schedule 3 to the Customs and Excise Act 64 (Tariff Book) contains 45 lines of Rebate Provisions. Forty-four of these lines are full duty rebate provisions, whilst one is a full duty rebate provision, less 15%.

3.6.2.5 Trade remedies

There have not been any anti-dumping duties or other trade remedies implemented with regards to imported footwear to South Africa.

3.6.2.6 Other forms of Government intervention

The WTO provides the footwear duty rates applied by South Africa as well as the WTO Bound Rates for South Africa. The Applied Rates contain 85 lines, of which the rate of duty varies between free and 30% *ad valorem*. The Bound Rates contain 29 lines, which vary between 20-30% *ad valorem*.

In the SAFLIA annual report 2009, it is specifically mentioned that the South African Government resisted the attempts of developed countries at the most recent round of negotiations at the Doha Development Round, held on 23 – 29 July 2008, to steamroller an agreement which would have resulted in a tariff reduction of 50% (to a duty less than 15%) – **this would have inflicted ‘untold and permanent damage’ to the footwear industry.**³⁵

In addition, South Africa has entered into preferential agreements with the US, EU and sub-Saharan countries. These agreements confer generous trade benefits.³⁶

National legislation applicable to the industry is the Customs and Excise Act of 1964 and the Merchandise Marks Act, 1941 (Act No 17 of 1941) covering SABS standards and Country of Origin Labeling.

³⁵ SAFLIA Annual Report 2009, p. 24

3.6.3 TYPES OF CUSTOMS FRAUD IDENTIFIED

3.6.3.1 Counterfeiting and non-declaration of country of import as a specific type of import fraud identified in the footwear sector

Section 10(1) and 11(1) of the Merchandise Marks Act, No 17 of 1941, prohibits the importation into or the sale in the Republic of South Africa, of the goods specified in the Schedule, irrespective of whether such goods were made or produced in the Republic or elsewhere, unless:

"a) There shall be permanently applied to them in a conspicuous and easily legible manner words stating clearly –

i) The country in which they were made or produced"

During September 2009 the Managing Director ('MD') of Beier Safety Footwear received information from the company's clearing agent that an irregular shipment of safety boots was destined for South Africa from an Eastern Country. The shipment of boots allegedly contained no labeling and in appearance looked exactly like the Beier safety boot, except that it did not contain the name "Beier".

The MD notified a SARS Customs & Excise Official in Durban of this shipment which was destined for Durban. SARS referred the MD to DTI in Pretoria on 21 September 2009 and informed him that DTI had a dedicated team that would deal with the complaint. They also informed him that they have forwarded the case to the DTI in Pretoria.

The MD attempted to contact the relevant DTI official from 21 September 2009 onwards and only reached him after 25 September 2009. According to the MD, the DTI did not show any interest in the case and was also unaware of any such case being forwarded to them from SARS. He tried communicating with the DTI *via* e-mail, but without success. When the MD realised that no response was forthcoming from the DTI, he decided to pursue the matter in a civil court. The case is still ongoing for Beier Safety Footwear.

This incident is an example of insufficient communication between SARS, the DTI and industry members. It appears that business is keen to assist Customs to improve law enforcement, but incidents of this nature cause a breakdown in the relationship and trust between law enforcement and business. Business sectors from various origins have indicated to us that they would like to assist in different sections of law enforcement, i.e. financial support, training, manpower, etc. It is critically important that relationships of this nature are maintained and improved.

SAFLIA stated that, next to under invoicing, counterfeit footwear imported to SA is the biggest customs fraud prevalent in the footwear industry. They estimated that 50% of all imported footwear in SA has entered the country illegally.

SARS stated that it is difficult to obtain the presence of the brand holders at the ports of entry in order to confirm the authenticity of goods entering the country. They informed us that in many instances the quantity of the goods do not justify the expense for the brand holder of dispatching an expert to the port of entry. In such cases, the goods are allowed to enter the country.

SAFLIA and SACTWU have proposed that the ports of entry be limited for specific goods. This would enable SARS to concentrate their expertise and resources and thereby preventing a large portion of illegal imports.

3.6.3.2 Under invoicing as a specific type of import fraud identified in the footwear sector

China is the largest exporter of footwear to South Africa. Industry role players conducted a study at the end of 2008/beginning of 2009. They obtained export information for products exported from China to South Africa and compared this information to the relevant import information from China into South Africa. They identified vast irregularities between these numbers. This study showed that only approximately 45% of the value of goods exported from China to South Africa is reflected or declared on the import documentation in South Africa.

Industry role players informed us that it is well known that the majority of imports from China are under invoiced or under evaluated. It is, however, impossible for South African law enforcement agencies to prove this, since the Chinese Government refuses to supply them with information. SARS officials confirmed that, according to the WTO regulations, South African Customs Officials are obliged to accept the commercial invoice as the true value of the goods, if they cannot prove the contrary.

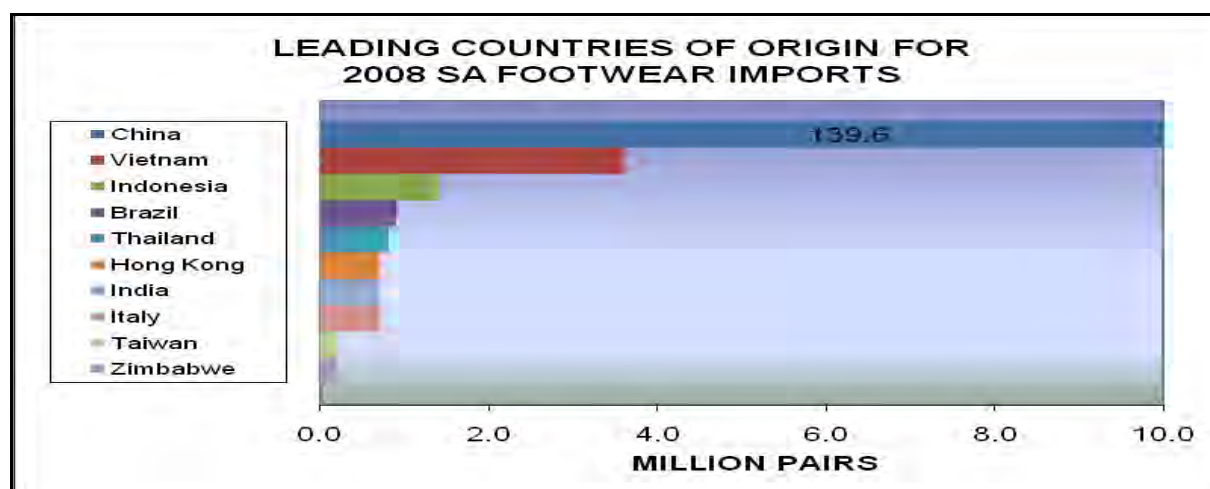
SAFLIA's 2009 annual report reflects that China still dominates in terms of footwear exports to South Africa, followed by Vietnam, Indonesia and Brazil³⁷.

The numbers in the table above is reflected in the graph below³⁸:

³⁷ SAFLIA Annual Report 2009, p. 18

³⁸ SAFLIA Annual Report 2009, p. 19

Figure 5



Please note that China's imports of 139,6 million pairs represent 93% of all footwear imports to the RSA, and in value 78%.³⁹

The average unit price of Chinese footwear imports into South Africa is R25,71 compared to R99,82 for imports from the rest of the world, raising questions of possible under valuation and/ or dumping of footwear from China.⁴⁰

3.6.3.3 *Smuggling as a specific type of import fraud identified in the footwear sector*

Role players agree that smuggling has a significant effect on the industry. Smuggling happens when consignments of footwear enter South Africa without Customs being aware of such consignments at all, for example footwear is placed in a container, but hidden underneath other goods being imported. Due to the vast number of containers imported every day and comparatively small number of Customs officials that are available to inspect such containers, the majority of these containers are not inspected and the goods enter South Africa undetected.

Industry representatives informed us about instances where importers were willing to pay fines for non-declaration of items on the odd occasions that containers were inspected, **since the possibility of losing a consignment is already 'built into' the pricing of the bigger lot of consignments that enter South Africa undetected.**

³⁹ SAFLIA Annual Report 2009, p. 19

⁴⁰ SAFLIA Annual Report 2009, p. 19

3.7 TEXTILES AND CLOTHING

3.7.1 OVERVIEW OF THE INDUSTRY AND ISSUES TO CONSIDER WHEN ADDRESSING THE PREVALENCE AND TYPES OF FRAUD

3.7.1.1 *Introduction to the textiles and clothing sector*

The textile industry was one of South Africa's major employers in the manufacturing sector in the past but is currently a relatively small employer. Its production represents less than 2% of that of the total manufacturing sector and its exports represent less than 1% of total merchandise exports. Although small, it is a major payer of rates and taxes in towns and cities across South Africa in which it is located.⁴¹

The key challenges facing the clothing and textile sectors are seen by industry representatives as the loss of domestic market share to imports, together with low levels of profitability and investment; and the alarming level of job losses and a shortage of skills.⁴²

The concern that Eastern countries flood our local markets with low priced imported textiles and textile products is still real. According to official import statistics, finished textile goods (like bed linen and curtains) are in some instances being imported into South Africa at prices equal to and sometimes less than the cotton yarn price. This practice is extremely damaging to the local industry.

Our research has shown a significant decrease in production capacity from 2006 to 2008. This could be attributed to a decline in demand for textile products as a result of a combination of any of the following:

- Continuous low priced imports from the East, especially from China;
- The economic recession, including increased interest rates and the higher fuel and electricity prices;
- Closure of factories as a result of the economic recession;
- Decline in exports of manufactured goods; and
- The perception that SA cannot leverage resources towards market needs. Raw material extraction and mass market production are a continuing focus which is the least profitable and competitive.

⁴¹ South Africa Textile Statistics and Economic Review 2008/2009 (issued by the Textiles Federation), July 2009, p. 7

⁴² Cape Clothing Association 2008 Annual Report, p. 2

3.7.1.2 Sector role players

The main federations and role players in the textile and clothing industries are as follows:

South African Technical Textile Manufacturers' Association ('SATTMA')	South African Worsted Manufacturers' Trade Association ('SAWMTA')
Textile Federation ('TexFed')	Apparel Manufacturer's Association
National Clothing Retail Federation of South Africa ('NCRF')	National Fabric Knitters' Trade Association ('NFKTA')
South African Cotton Textile Manufacturers' Association (SACTMA)	South African Clothing and Textile Workers Union ('SACTWU')
Cotton South Africa	Fibre Group

According to the Textile Federation, it liaises with various stakeholders, including government and business.⁴³

3.7.1.3 Importance of employment and investment in the sector

The South African clothing industry sector is a significant source of employment, particularly for women. The clothing industry is labour intensive while the textile industry is more capital intensive.⁴⁴ During the period 2003 to 2008 both the local textile and clothing industries were characterized by the closure of a number of companies with the resultant loss of employment.

South Africa has certain competitive advantages for the production of textiles and clothing, such as the availability of raw material, including cotton, wool, mohair and vegetable fibres.⁴⁵ In addition, South Africa has reasonably low labour costs in comparison to developed countries. Although the South African textile and apparel industry is small, a few local manufacturers had success on the international market, for example Gelvenor **Textiles, a local fabric mill, supplies more than 50% of the world's demand for parachute fabrics.**

As a result of low-priced imports of finished goods, a major producer and exporter of filament yarn (SANS Fibres) shut down. Increased low priced imports has also caused one of the major textile firms, the Frame Group, to close its spinning and weaving plants.

⁴³ Source: Texfed

⁴⁴ The Textile and Clothing Industry in South Africa, Etienne Vlok, 2006, p. 227

⁴⁵ <http://www.thedti.gov.za/publications/textiles.htm#overview>

In terms of investment in the South African textiles and clothing industry, foreign businesses can either invest directly in wholly owned manufacturing plants or enter into business arrangements with existing producers through joint ventures, licensing or procurement.

Investment-wise, several leading international companies like Ulster Carpets, Herdmans and KAP Holdings have manufacturing facilities in South Africa already or have substantial procurement contracts with South African producers.⁴⁶

3.7.1.4 Import Statistics

Please refer to the comments in paragraph 3.4.1.4 supra, which is applicable to all sectors in relation to import statistics. Statistics reflecting the total value of imports against tariff code chapter 50 to 63 (clothing and textiles) reflect the following:

Table 6

2006	R 14,375,195,551.00
2007	R 14,391,727,050.00
2008	R 16,943,330,661.00
2009*	R 12,906,629,750.00

* January to September 2009

The top 10 exporters of Clothing and Textiles to South Africa for the period 2006 – September 2009 are detailed below:

Table 7

	Country	2006 ("R")	2007 ("R")	2008 ("R")	Up to Sept 2009 ("R")
1	China	2,846,235,496	3,299,895,444	3,637,458,642	2,682,120,443
2	Vietnam	300,544,797	390,524,069	362,576,920	367,925,003
3	Italy	167,019,544	238,812,651	261,442,868	185,336,221
4	Indonesia	97,294,712	126,883,776	144,998,430	165,580,174
5	India	100,250,308	76,669,948	98,954,644	89,606,914
6	Brazil	73,859,408	74,655,385	65,961,188	49,627,111
7	Hong Kong	87,393,700	61,990,492	30,675,082	19,150,647

⁴⁶ <http://www.thedti.gov.za/publications/textiles.htm#overview>

	Country	2006 ("R")	2007 ("R")	2008 ("R")	Up to Sept 2009 ("R")
8	Thailand	55,493,319	53,156,797	42,057,157	28,525,465
9	Spain	11,794,167	15,603,186	13,404,671	11,232,579
10	Taiwan	17,715,720	9,882,660	14,935,403	4,887,557

The above table reflects an increasing trend in the value (FREE ON BOARD) of imports into South Africa year on year, with China again dominating this trend.

3.7.2 CUSTOMS FRAUD AND RELATED ISSUES AFFECTING THE INDUSTRY

3.7.2.1 Introduction

Refer to the discussion under the Dairy Sector Report, paragraph 3.4.2.1 *supra*, which is also applicable to this section of the report. For brevity purposes the same information will not be repeated here.

3.7.2.2 Prevalence of customs fraud in this sector

According to SARS the rapid growth in illicit trade (such as counterfeit goods and under-valued textiles and clothing originating from the east, in particular) continually eroded **South Africa's** revenue base and was the main cause of the closure of clothing and textile factories and numerous job losses. **South Africa's clothing trade is the worst hit by illegal imports.** The root causes are:

- The opening of the South African market to international trade;
- The continuous increasing surge of low priced imports, mainly from China, which contributed about 40% of textile imports;
- Corrupt officials;
- Widespread and systematic under-declaration of imported goods;
- Lack of a systemic and unified approach by government;
- Gaps in legislation and policy;
- Failure to share information and intelligence between government, business and labour;
- Lack of requisite skills in SARS and adequate professional education for customs officials,
- Public complacency; and

- The global economic meltdown aggravated the situation.⁴⁷

Our research has indicated that the following types of fraud are most prevalent in the textiles and clothing sector: under-valuation, counterfeiting and mis-declaration of origin and tariff classification.

3.7.2.3 Customs tariff classification

The customs tariff classification for clothing and textiles is included in Schedule 1 to the Customs and Excise Act of 1964, and detailed in Chapters 50 to 63. All these duties are *ad valorem* duties, meaning that it is determined on a percentage of the value of the goods. Various industry-related investigations indicated that this creates a significant incentive for importers to under-value or under-invoice the imported goods.

The fact that similar products are classified under different tariff sub-headings at varying rates of customs duty was identified as an incentive for customs fraud. This classification creates loopholes which are used by importers to mis-declare the tariff classification of imported products in order to circumvent the customs duty payable. Importers tend to incorrectly clear the imported products under the tariff sub-heading subject to the lowest rate of customs duty. According to industry representatives this problem is exacerbated by the fact that these actions frequently go unnoticed as a result of insufficiently staffed ports of entry and/or inexperienced or insufficiently trained customs officials.

South Africa has entered into several bilateral and multilateral trade and development agreements. Circumvention of the tariff as a result of preferential rates of duty in terms of trade agreements has emerged as a problem, in particular for the textile and clothing sector.

Industry representatives are extremely concerned with the insufficient administration of rules of origin which leads to importers exploiting preferential trade agreements by re-routing products through countries that benefit or have preferential trade arrangements with South Africa and then mis-declaring the country of origin on the labeling and import documentation.

⁴⁷ Customs fraud: SARS progress report in response to 'Framework for SA's response to international economic crisis, 20 October 2009

Rules of Origin certificates are obtained fraudulently and presented to SARS officials who do not have sufficient product and/or sector knowledge and accept certificates as being authentic. This results in, among others, significant quantities of products originating from Far Eastern countries like China and Thailand illegally entering South Africa at reduced rates of customs duty.

The average MFN applied duty for textiles and clothing in South Africa is 17.8% and 37.9% respectively. This against comparative data illustrating that average MFN applied duty rate for textiles and clothing across the benchmarked research countries reflects as follows:⁴⁸

- Canada: 6.6% and 16.9%;
- European Communities: 6.6% and 11.5%;
- India: 14.1 and 19.9%;
- Malaysia: 10.6% and 15.9%.

3.7.2.4 Rebate provisions

Schedule 3 to the Customs and Excise Act 64 (Tariff Book) contains one hundred and eighteen (118) rebate provisions for textiles and clothing. One hundred and six (106) of these provide for full rebate of the duty, whilst the remaining 12 are partial rebate provisions. Because of the difficulties in distinguishing between different fabrics industry representatives suspect that rebate provisions are abused through the mis-declaration of the customs tariff classification of imported products.

3.7.2.5 Trade remedies

Currently there are anti-dumping duties applicable on imports of acrylic blankets from China and Turkey, which is due to expire mid-2010. The industry has applied for the retention of the anti-dumping duties but the outcome of the investigation is still pending.

Before 1999 about 5 companies manufactured blankets in the SACU. As a result of the dumping of acrylic blankets from Turkey and China, some of the manufacturers closed down.

⁴⁸ Source: WTO World Tariff Profiles 2009

During June 1999 anti-dumping duties were imposed on acrylic blankets from Turkey and China (amongst others) – retrospective to December 1998. The applicable tariff subheadings are 6301.40 and 6301.90. This resulted in blanket fabric on rolls being imported at dumped prices from the latter half of 1999 (circumvention of anti-dumping duties on acrylic blankets).

During June 2004 anti-dumping duties were also imposed on acrylic fabrics imported from or originating in Turkey and China, used for the manufacture of blankets. The anti-dumping duties on acrylic blankets were reviewed during 2004/2005 and the anti-dumping duties on acrylic blankets from Turkey and China were retained (June/July 2005). The anti-dumping duties on imports from Turkey were retained at the same levels, while those against China were increased (as ITAC found higher dumping margins during the sunset review investigation).

As a result of the anti-dumping duties on acrylic blankets and acrylic fabrics for blankets, a number of Turkish companies invested in and set up manufacturing facilities in South Africa.

According to industry representatives importers of acrylic blankets from China have identified a loophole in the customs tariff which enable them to circumvent the anti-dumping duties by manipulating the acrylic fibre content of the blankets. Through adjusting the acrylic fibre content of the blankets to less than 50% importers can clear the blankets under other tariff subheadings which are not subject to the anti-dumping duties. For example the fibre content of the blankets is adjusted to be 49% acrylic and 51% polyester in which case the anti-dumping duty will not be payable as it is technically not an acrylic blanket anymore.

Texfed states that imports of blankets from China show an increasing trend from 58% of the total volume of blanket imports in 2005 to an estimated 93% of total blanket imports in 2009. Texfed is further of the view that it appears as if circumvention of the payment of anti-dumping duties on acrylic blankets imported from China occurs. After the implementation of the anti-dumping duties on acrylic blankets at the end of 1998, imports from China showed a declining trend, but as from 2002 onwards an increasing trend is evident as China apparently adjusted the fibre content of the blankets from acrylic to polyester.

3.7.2.6 Other forms of Government intervention

Resulting from consultation between government, manufacturers, retailers and organised labour during 2004 to 2006 a Customised Sector Programme (CSP) for the textile and clothing sector was formulated. Recommendations that were based on the CSP were made in 2008 and after consultation by government with all stakeholders a programme consisting of six key elements was developed to be implemented over an initial period of five years.

The CSP consists of the following six programmes and sub-programmes:

- (1) The **Competitiveness Programme (CTCP)** which includes the following:
 - The **Enterprise Investment Programme (EIP)** launched during July 2008 replaces the Small Medium Enterprise Development Programme (SMEDP). The programme has a special dispensation for the Clothing and Textiles sector and encourages enterprise-level upgrading of capital equipment in order to improve competitiveness;
 - **Preferential Loans** are available from the Industrial Development Corporation (IDC) for capital upgrading aimed at competitiveness improvement. Working capital loans are also available at an interest rate to be determined per applicant;
 - The **Competitiveness Improvement Programme** is administered by the Clothing and Textile Competitiveness Programme (CTCP) Desk at the IDC. The programme encourages interventions aimed at improving a company's people, processes and products;
 - The **Production Incentive Programme** was proposed to industry in August 2009 and industry responded with a counter-proposal in November 2009. The programme must still be finalized and will be administered by the IDC. At present a combination of a Manufacturing Value Add incentive plus a working capital facility is under consideration. Stakeholders will be notified accordingly upon approval of the structure of the incentive. The target date for implementation is 1 April 2010.
- (2) The **Skills Upgrading Programme** is aimed at the identification of the scarce and critical skills gap in the sector and to bridge the gap between the training interventions required and the available training. The Skills Upgrading Programme has been finalized.

- (3) **Combating Customs Fraud.** SARS has been conducting dedicated Clothing and Textile campaigns to address **customs fraud in the sectors** since December 2008. A permanent discussion forum has been established between SARS and the DTI with a view to develop and implement a monitoring and evaluation system and for information sharing.
- (4) The **Technology & Innovation Plan & Broad Based Black Economic Empowerment (BBBEE)** are to be addressed in the 2010/2011 financial year.
- (5) The **revision of input costs along the value chain** (revision of import duties) is the responsibility of the International Trade Administration Commission (ITAC).
- (6) The **SACU review** of the interim Textile Clothing Industry Development Programme (TCIDP) and the development of a SACU-wide strategy for the Clothing and Textiles sectors are still in progress. The TCIDP will finally lapse on 31 March 2010.

3.7.3 TYPES OF CUSTOMS FRAUD IDENTIFIED

3.7.3.1 Counterfeiting as a specific type of import fraud identified in the textiles and clothing sector

Section 10(1) and 11(1) of the Merchandise Marks Act, No 17 of 1941, prohibits the importation into or the sale in the Republic of South Africa, of the goods specified in the Schedule, irrespective of whether such goods were made or produced in the Republic or elsewhere, unless:

- "a) There shall be permanently applied to them in a conspicuous and easily legible manner words stating clearly –*
 - ii) The country in which they were made or produced"*

Representatives from industry are extremely concerned and frustrated about counterfeit branded clothing originating in the East being sold at main intersections countrywide. The fact that similar prints and goods appear across multiple areas confirms that the merchandise is being distributed through central locations. The apparent inability of government to prevent this from happening is cause for major concern.

Further, many retail stores that have not been appointed as authorized brand dealers sell imported branded products. Efforts made on an on-going basis by registered brand owners in cooperation with SAPS and SARS to prosecute offenders have been hampered by issues like store owners who cannot be traced and the unavailability of relevant documentation. Counterfeit branded goods, including clothing is also sold at stalls at flea markets and events and festivals despite assurances by event organizers and flea market landlords that the sale of illegal branded goods will be controlled.

During September 2009 SARS customs supported by the South African Police Service and Immigration Division of Home Affairs visited China City in Ottery, Inyanga Junction in Bellville and warehouses in Lansdowne. The operation resulted in the detention of an estimated 300 tons of clothing valued at R45 million, including 4 tons of branded sportswear counterfeit goods valued at R600 000. According to SARS the goods in a **warehouse in Lansdowne that supplies clothing to some of South Africa's leading retailers** were detained for several infringements including labeling, misclassification and under-evaluation. Furthermore, 5 tons of clothing and textiles with an estimated value of R1,9 **million was also detained from a leading retailer's distribution centre for infringements** against the Merchandise Marks Act and the Customs and Excise Act.⁴⁹

According to industry representatives, insufficient product knowledge and a lack of training of customs officials as well as a lack of communication, information sharing and coordination between SARS and SAPS contribute to the problem not being addressed adequately. Industry representatives propose that they be involved in the training of customs officials at all major ports of entry and that the necessary steps be taken to improve cooperation, communication and information sharing between SAPS and SARS.

SARS stated that it is difficult to obtain the presence of the brand holders at the ports of entry in order to confirm the authenticity of goods entering the country. Furthermore, SARS stated that in many instances the quantity of the goods do not justify the expense for the brand holder of dispatching an expert to the port of entry. In such cases, the goods are allowed to enter the country.

⁴⁹ <http://www.sars.gov.za/home.asp?PID=4232&ToolID=2&ItemID=52439>

3.7.3.2 Under-valuation as a specific type of import fraud identified in the textiles and clothing sector

The manipulation by importers of the free on board value for customs purposes of imported textiles and clothing is the type of customs fraud most prevalent in the textiles and clothing sector. Importers under- declare the value of imported textiles and clothing in order to minimise the amount of customs duty and VAT payable. This practise is evident with regard to virtually every single import consignment of textiles and clothing when studying the official import statistics.

Consolidated data is not available, however industry perceptions reflect that in excess of half of the imports of clothing and textiles in South Africa are under-invoiced. Examples of under-valuation as per the official SARS import statistics are:

- **Men's viscose suits were imported during the last quarter of 2009 at a declared Free on board value of R5,26 per unit; and**
- **Men's woven trousers, like jeans or chinos, at a declared Free on board value of R0,49 per unit.**

According to Texfed acrylic **"2 ply" blankets with a filling ("comforters") are classifiable under tariff subheading 9404.90.** Imports from China under tariff subheading 9404.90 increased by 5000% from 2006 to 2009, whilst the average free on board value decreased from R12.40 per kilogram in 2006 to R4.20 per kilogram in 2009. During 2009 the average free on board price of acrylic fibres which is the raw material from which the comforters is manufactured, originating in China amounted to R4.14/kg. It is evident that the price of R4.20/kg for the finished product is unrealistically low in comparison.

Texfed states that the injury or threat of injury to the local blanket industry as a result of mainly under-valuation of imported goods, is visible in respect of the following factors:

- Increase in imports at abnormally low prices; in particular from China;
- Decrease in local sales and production;
- Loss of market share; and
- Erosion of profit margins.

Industry representatives are of the view that one of the problems is that SARS only checks whether the documentation is in order before releasing a consignment. The contents of containers are not checked to verify the correctness of documentation.

According to industry representatives SARS has taken a positive step in the right direction by committing to the development/implementation of an Indicative Price System whereby recommended minimum prices per item will be loaded electronically onto the system and warning signals will be raised when items are imported at prices below these amounts. Such imports, however, can still not be stopped unless proven fraudulent.

3.7.3.3 Mis-declaration of origin as a specific type of import fraud identified in the textiles and clothing sector

South Africa has entered into several bilateral and multilateral trade and development agreements. Circumvention of the tariff as a result of preferential rates of duty in terms of trade agreements has emerged as a problem in the textile and clothing sector.

Research indicated that clothing originating in the East were re-routed through Malawi where the items were repacked and relabeled as products of origin from Malawi in order to benefit from the preferential customs duties in terms of the SADC trade agreement. Various industry representatives share the view that the administration of rules of origin by SARS is insufficient. Rules of Origin certificates are obtained fraudulently and presented to SARS officials who do not have sufficient product and/or sector knowledge and accept certificates as being authentic. This results in, among others, significant quantities of products originating from Far Eastern countries like China and Thailand illegally entering South Africa at reduced rates of customs duty.

3.7.3.4 Mis-declaration of tariff classification as a specific type of import fraud identified in the textiles and clothing sector

Industry representatives state that the structure of the customs tariff which results in similar types of products being classifiable under different tariff subheadings at different rates of duty creates loopholes whereby importers clear products under the incorrect tariff subheading in order to circumvent the higher duty payable under the correct tariff subheading. According to Texfed needleloom felt and stitchbonded fibre fabrics (nonwoven) fabrics are classifiable under tariff subheading 5602.10 at a rate of duty of 10% ad valorem. Stitchbonded knitted fabrics, with a visible chain of stitches, are classifiable under Chapter 60 (warp knitted fabrics) at a rate of duty of 22% ad valorem. Investigation revealed that **stitchbonded knitted fabrics with "visible chain stitches"** are cleared under tariff subheading 5602.10 at a rate of duty of 10% ad valorem.

Industry representatives propose that SARS conduct forensic investigations of high-risk and major importers that the rate of container inspections be increased with the establishment of a minimum percentage for random inspections and a 100 per cent inspection of goods from high-risk importers.

3.8 RUBBER AND TYRES

3.8.1 OVERVIEW OF THE INDUSTRY AND ISSUES TO CONSIDER WHEN ADDRESSING THE PREVALENCE AND TYPES OF FRAUD

3.8.1.1 Introduction to the tyre sector

The SA pneumatic tyre manufacturing industry comprises four companies, operating six factories, all of which are controlled by international companies. Many companies also import other international brands of tyres into SA. The SA industry previously manufactured aircraft and bicycle tyres as well as inner tubes but ceased production of these items due to the very low prices of the imported product.⁵⁰

3.8.1.2 Sector role players

Three organisations represent the interests of the role-players in the tyre industry, namely:

- **The South African Tyre Manufacturers' Conference (SATMC) acts as a watchdog** as well as a representative for the industry, and mediates issues experienced by industry with government and also with other regulatory bodies. The industry representative furthermore assists with the training material for SARS officials and **extends the SATMC's expert knowledge to any queries encountered by customs officials.** Further to this, when SARS conducts raids or when expert technical assistance is sought, the SATMC can assist with reference to the relevant expertise;
- New tyres are regulated by the National Regulator for Compulsory Specifications (NRCS). All new tyres have to be homologated by the NRCS which issues a certificate of approval once they are satisfied with the fact that a tyre has been homologated. The warehouse inspections by the NRCS are designed to expose various forms of misconduct;

⁵⁰ South African Tyre Manufacturers' Conference

- The National Union of Metal workers of South Africa (NUMSA) is the major trade union representing the workers in the tyre manufacturing industry; and
- Currently the Retail Motor Industry (RMI) is conducting inspections on the premises as well as equipment of retreaders wishing to import second hand tyres prior to approval of permits issued to them.

3.8.1.3 Importance of employment and investment in the sector

In line with the research mandate, the effect of import fraud on employment and investment in the sector needs to be considered. Due to the fact that five of the six factories in the sector are situated in areas with higher than average unemployment levels, namely Port Elizabeth, Uitenhage, Ladysmith and Brits; any job losses and lost investment opportunities due to import fraud will have a significant impact on the development and employment of the sector.

There are approximately 6000 people employed in the tyre / rubber industry. Employment is a significant issue owing to location of the manufacturing facilities. SATMC statistics show that the industry has suffered more than 1 200 job losses from 2003. According to the SATMC, cheaper imports originating predominantly from China caused some of the job losses.

According to the SAMTC annual investment in the tyre industry amounts to approximately three hundred million rand. Furthermore, the SATMC states that the investment potential in the industry is generally good. Factors such as the cost of employment, the unavailability of electricity, the increased price of raw materials and unfair competition from imported tyres impede future investment.

3.8.1.4 Import Statistics

Please refer to the comments in paragraph 3.4.1.4 supra, which is applicable to all sectors in relation to import statistics. Statistics reflecting the total value of imports against tariff code chapter 40 (tyres and related product) reflect the following:

Table 8

2006 ("R")	16,972,571,518.00
2007 ("R")	21,348,550,441.00
2008 ("R")	24,766,572,609.00
Up to Sept 2009 ("R")	15,464,872,277.00

The top 10 exporters to South Africa of Tyres and related product (2006 – September 2009) are detailed below. The unit values of the stats vary.

Table 9

	Country	2006 ("R")	2007 ("R")	2008 ("R")	Up to Sept 2009 ("R")
1	China	1,884,391,251	2,881,132,093	3,469,479,968	2,237,329,711
2	Germany	1,880,486,045	2,366,306,279	2,607,177,650	1,695,597,088
3	USA	1,239,460,368	1,660,625,109	1,937,265,022	1,288,295,901
4	UK	1,238,865,770	1,409,796,646	1,542,812,092	1,024,029,698
5	Malaysia	849,992,130	1,061,646,338	1,213,662,492	700,734,184
6	Indonesia	760,426,537	979,963,062	1,235,855,633	726,400,836
7	Japan	742,367,759	1,014,147,360	1,116,813,839	811,133,474
8	France	702,384,900	853,921,526	1,019,034,302	767,166,577
9	Finland	691,927,173	628,787,012	782,061,617	573,439,440
10	Italy	539,317,618	580,678,355	700,134,749	397,811,778

The above table reflects a significant increasing trend in the value (FOB) of imports into South Africa year on year, with China again dominating this trend.

3.8.2 CUSTOMS FRAUD RELATED ISSUES AFFECTING THE INDUSTRY

3.8.2.1 Introduction

Refer to the discussion under the Dairy Sector Report, paragraph 3.4.2.1 *supra*, which is also applicable to this section of the report. For brevity purposes the same information will not be repeated here.

3.8.2.2 Prevalence of Customs Fraud in Sector

The SA tyre market is fiercely competitive and operates at very low margins. There is a general over-supply of tyres in the world and manufacturers are always endeavouring to increase their export sales. South Africa is seen as a spring-board to sub-Saharan Africa and is therefore a popular market for exporters wanting to expand.

According to the role players in the industry, the scams and malpractices that are prevalent in the industry are under-valuation, round-tripping, abuse of trade agreements, sale of second-hand tyres, removal in bond/transit abuse and mis-declaration.

3.8.2.3 Customs tariff classification

Tyres are classifiable under the following tariff subheadings:

- 4011.10 -new tyres for motor vehicles subject to a rate of duty of 30% *ad valorem*;
- 4011.20 -new tyres for buses or lorries subject to a rate of duty of 25% *ad valorem*;
- 4011.30 -new tyres for aircraft at free of duty;
- 4011.40 -new tyres for motorcycles at free of duty;
- 4011.50 -new tyres for bicycles at free of duty;
- 4011.61 -new herringbone tyres for use on agricultural and forestry equipment subject to a rate of duty of 20% *ad valorem*;
- 4012.11 -retreaded tyres for motor cars subject to a rate of duty of 43% *ad valorem*; and
- 4012.12 - retreaded tyres for buses or lorries subject to a rate of duty of 36% *ad valorem*.

According to the SATMC the existing tariff classification with regard to some of the types of tyres, in particular the bigger sized tyres is outdated and makes it difficult to meaningfully monitor imports. Similar products are classifiable under different tariff sub-headings at different rates of duty; for example "*herring-bone*" tyres and (tractor tyres) are subject to import duties while tyres which have no pattern are free of duty. This classification leads to importers erroneously/falsely clearing tyres under the tariff sub-headings where no duties are payable.

South Africa's customs duties on tyres range from 23% *ad valorem* to 30% *ad valorem*, are relatively high when compared to the EU where import duties range from 12% *ad valorem* to 15% *ad valorem*. The high level of customs duties coupled with the structure thereof; namely *ad valorem* duties give rise to customs fraud. The duties were higher, but similar to the Motor Industry Development Programme, the tyre industry also had a programme where the duties were phased down over time.

Certain importers in the sector would like to do away with duties entirely, but the South African manufacturing industry will then become completely uncompetitive, particularly considering the input costs in the industry and country. Currently those duties are essential to protect the local industry.

3.8.2.4 Rebate Provisions

In South Africa, three provisions for rebate of the duty on imported tyres exist. The industry is not currently experiencing any specific import fraud-related problems with regard to the rebate items.

3.8.2.5 Trade remedies

During 2004 / 2005 the South African tyre industry lodged an application for action against the alleged dumping of tyres originating from China. ITAC initially found that dumping was taking place and that the industry was suffering material injury as a result of the dumping and recommended that provisional payments be implemented. This was in place for a period of six months.

Thereafter, ITAC conducted the final investigation and found that most of the exports operated on market economy principles which meant that Chinese prices had to be used for comparison purposes. These prices indicated that dumping was not taking place.

According to some industry stakeholders, government is not assisting the tyre manufacturers by levelling the playing field against unfair competition from imported products. An example cited by the SATMC is the importation of abnormally low priced motorcycle tyres from China which led to the demise of the South African industry manufacturing motorcycle tyres. The SATMC further states that motorcycle tyres are currently particularly expensive owing to the China imports destroying the local industry. Some of the bigger international role players such as Pirelli and Michelin are in the process of withdrawing from the country since they cannot compete with imported products originating from China.

3.8.2.6 Other forms of Government intervention

No other forms of government intervention exist within the sector.

3.8.3 TYPES OF CUSTOMS FRAUD IDENTIFIED

3.8.3.1 *Under-valuation as a specific type of import fraud identified in the tyre sector*

Tyres are imported at exceptionally low prices. The reason for this is that importers manipulate the Free on Board values of the imported products in order to minimize the *ad valorem* duties payable. In some cases a percentage of the total value of imported consignments is paid up front by importers and an invoice for the outstanding balance is presented to SARS resulting in less import duty and VAT being payable.

Like many commodities imported into SA, the under- declaration of the value of imported tyres has a significant negative impact on the competitiveness of the South African industry. According to SATMC under-valuation is most prevalent with regard to tyres imported from China.

The WTO rule of accepting declared value is making it difficult and sometimes impossible for SARS to act against perpetrators. Import statistics are available from SARS, but the usefulness of the statistics by the industry in terms of the identification and combating of fraudulent imports is extremely limited. The reason for this is that the identity of importers and access to import documentation are protected by law in terms of the provisions of the Customs and Excise Act, 1964.

The industry proposes that SARS should amend Section 4 of the Customs and Excise Act, in order to provide for the identity of importers to be made known and import documentation to be made available to affected third parties.

Customs could further utilize expertise within the industry by accepting industry **associations' comments or input on individual declared prices for specific types of tyres, by size and model.** The SATMC has a valuation model for every known size of tyre and country of origin which could be utilised as a reference guide.

3.8.3.2 *Round-tripping as a specific type of import fraud identified in the tyre sector*

This occurs when goods that are destined to be exported, either never actually leave the country or are simply re-routed back into South Africa and sold at reduced prices. Tyres are bought, ostensibly, for export and are therefore exempted from the payment of VAT. The 14% saving as a result of the non-payment of VAT is often in excess of normal profit margins. Importers take advantage of this fact as there is little, weak or no customs control of goods from neighbouring states.

3.8.3.3 Abuse of trade agreements (mis-declaration of origin) as a specific type of import fraud identified in the tyre sector

In terms of the SADC Agreement tyres manufactured in the SADC member states can enter South Africa free of duty. However, tyres are manufactured only by Dunlop Zimbabwe and General Tyre Tanzania. Strictly speaking this would mean that only tyres imported from these two countries are eligible for entry into South Africa at free of duty. This mis-declaration of origin is possible since the rules of origin (RoO) are not applied consistently and efficiently and this results in tyres originating from destinations outside SADC being exported by SADC member states to South Africa and entering the country at free of duty.

It is the view of the industry that all imported tyres that are declared to be manufactured in any SADC country, other than Tanzania and Zimbabwe should be queried by SARS and the origin thereof verified. The industry is further of the opinion that all tyres exported from SADC countries, other than Zimbabwe and Tanzania should be subject to ordinary customs duties. The industry proposes that SARS install a system for checking all tyre imports against country of origin.

The SATMC, Customs Training Manual, contains a complete list of all the producing countries and can be used by SARS as reference. It is also proposed that SARS investigate incorrect declarations of origin to ascertain the presence of underlying fraudulent declarations.

3.8.3.4 Sale of imported second-hand tyres as a specific type of import fraud identified in the tyre sector

Import permits for used tyres are issued to tyre retreaders. The permit requires that imported used tyres have to be retreaded. It has been found that some importers sort the used tyres on receipt thereof; and sell many of them directly as second-hand tyres. Used tyres can be purchased from exporting countries at extremely low prices. In terms of the ITA Act it is illegal for importers to sell these tyres without being retreaded. This practice results in diminished vehicle safety and also has a negative impact on the competitiveness of the domestic industry.

The industry also suspects that due to used tyres being free of duty; unscrupulous importers are importing new tyres and declaring them as used tyres. The savings for importers on duty payable ranges from 20% to 30% depending on the category of tyre imported.

According to the SATMC, there seems to be a major problem between SARS and the Directorate: Import and Export Control at ITAC with regard to the verification of second-hand tyre casing imports against import permits issued. Quantitative control is exercised by ITAC on these second-hand goods. The permit quantities are mostly also not acquitted at port of entry.

Every import of this nature should be reconciled electronically making use of a relevant system within SARS using the import permits issued by ITAC. Paper permits which can easily be abused by changing the details like quantity are used at present.

The SATMC proposes that imported containers of second-hand tyres should be targeted on a profile basis for physical inspection owing to under-declaration of quantities being highly likely and the indent might include undeclared goods in the container like new tyres that should attract an import duty.

3.8.3.5 Removal-in-transit / bond abuse as a specific type of import fraud identified in the tyre sector

The Customs and Excise Act No 91 of 1964 states:

"Goods upon which import duties are payable may be stored or manufactured in a warehouse (bond store). The importer is only required to pay the customs duty and VAT when the goods are cleared for home consumption, i.e. when removed from the bond store. It should be noted that if goods are subject, to VAT only, and not subject to import duty, they cannot be placed in a bond store. Goods could be kept in store for up to two years. Allowances may be made in exceptional circumstances by the Commissioner to the effect that certain goods may be kept for an extended period."

The type of customs duty evasion that occurs most frequently with regard to tyre imports is the re-routing of goods imported into South Africa for onward transport to neighbouring countries. These imports enter the country without the payment of customs duties or VAT and are placed in a warehouse or bond store pending exportation to a neighbouring country.

As the control over these shipments is not sufficient significant quantities of the imported products find their way into the local market. This is a major problem and requires urgent attention by SARS, since substantial losses in revenue are incurred and jobs are forfeited in the tyre manufacturing sector.

According to the SATMC, SARS does not have rigid systems to acquit Removal-in-Transit consignments. For example, some acquittals between Durban and Botswana are known to have taken place within the same day, which is physically impossible. Furthermore, SARS cannot provide any statistics with regard to acquittals on exported tyres which makes investigations in this regard impossible. The SATMC, states that the entire customs **acquittal system requires a major upgrade with built in safe guards and “warning signals”**.

3.8.3.6 Mis-declaration as a specific type of import fraud identified in the tyre sector

At present import permits are required for New, Retreaded and Used tyres, classifiable under tariff headings 40.11 and 40.12. Tyres on rims are classifiable under tariff subheading 8708.70.90 as **“Road wheels and parts and accessories therefore” at a rate of duty of 20% *ad valorem*** which is 10% lower than the duty of 30% *ad valorem* payable on new tyres, classifiable under tariff heading 40.11. Tyres can also be imported by motor vehicle manufacturers as **“Original equipment components”**, classifiable under tariff heading 98.01 at a rate of duty of 23% *ad valorem*.

No import permit is required when importing tyres under tariff sub-headings 8708.70.90 and 98.01. Importers erroneously clear tyres under these tariff sub-headings in order to avoid applying for an import permit and to pay less customs duty. The SATMC is of the opinion that this is an anomaly and that all types of tyres should be classifiable under Chapter 40 and be subject to the same rate of duty.

All passenger, light and heavy commercial tyres are subject to SABS homologation which is circumvented when importing tyres under tariff headings 87.08 and 98.01. Tyres imported under these tariff headings should be subject to compliance with SABS homologation requirements. Used tyres brought into South Africa for retreading purposes from any of the BLNS countries are supposed to be returned to the relevant BLNS country once it has been retreaded. These tyres are not captured in the SARS system and no acquittal system is in place. This could give rise to fraudulent practices.

The SATMC proposes that a formal system be put in place for the verification of conformance to compulsory National Regulator for Compulsory Specifications (NRCS) standards. The experience in the industry is that no verification of tyre imports against NRCS homologation certificates are being done at the time of indent clearing.

The SABS did endeavour, a few years ago, to integrate their regulatory system with SARS, but did not succeed. This requires urgent attention as lives on the roads are at stake. No new tyres should be imported without automatic electronic clearance via NRCS standards certificates.

3.9 MOTOR VEHICLES AND COMPONENTS

3.9.1 OVERVIEW OF THE INDUSTRY AND ISSUES TO CONSIDER WHEN ADDRESSING THE PREVALENCE AND TYPES OF FRAUD

3.9.1.1 *Introduction to the motor vehicle and components sector*

The automobile sector is the largest manufacturing industry in South Africa although its output in the world market is only about 1%. The sector accounts for about 10% of South Africa's manufacturing exports, making it a crucial cog in the economy. Locally, the automotive sector is a giant, contributing about 7.5% to the country's gross domestic product (GDP).

South Africa has been one of the best performing automobile markets in the world in recent years. Sales dropped by 5.4% in 2007, with the introduction of National Credit Act of South Africa, as well as rising prices which curbed spending, and dropped further in 2008 because of the global economic meltdown. The depth and severity of the downward spiral in domestic new vehicle sales reported in 2009 remain without precedent in the history of the SA automotive industry.

Up until 2007, major export programmes have kept the local industry buoyant. The impact of the global financial and economic crisis and the resulting reduced demand in **South Africa's major export markets is reflected in the sharply lower industry new vehicle** export sales which, during the first half of 2009, declined by 36,0% in aggregate volume terms⁵¹.

3.9.1.2 *Sector role players*

All of the major vehicle makers are represented in South Africa, as well as eight of the world's top 10 auto component manufacturers, and three of the four largest tyre manufacturers. Many of the major multinational companies use South Africa to source components and assemble vehicles for both the local and overseas markets.

Other significant role players are:

- National Association of Automotive Component and Allied Manufacturers (NAACAM);
- National Association of Automobile Manufacturers of South Africa (NAAMSA);

⁵¹ Ibid

- Retail Motor Industry Organisation (RMI);
- National Association of Automobile Manufacturers and Allied Manufacturers; and
- Motor Industry Bargaining Council (MIBCO).

3.9.1.3 Importance of employment and investment in the sector

During the recent boom in new vehicle sales, employment levels in the motor assembling sector peaked at 39,412 in October 2006 from 32,548 in March 2005. Employment in the industry as of March 2009 was sitting at 32,392 as of the second quarter of 2009, a level last seen 22 years ago. Employment levels during the second quarter of 2009 may be set out as follows:

Table 10: – applicable to the Motor Assembler trade only

Last pay week April, 2009	31,163
Last pay week May, 2009	30,725
Last pay week June, 2009	30,467

Compared to the 32,392 positions at the end of the first quarter 2009, aggregate industry employment declined by 1,925 jobs during the second quarter of 2009 to 30,467 jobs. Manufacturers currently operate predominantly on a single production shift basis, whilst some operate double shifts in selected areas such as machining, press shops, paint shop operations and body shop.

Most vehicle assembly operations were characterised by a shortened production week during this period. With regard to employment levels in the motor vehicle component manufacturing industry, Naacam reports that the employment fell to about 76,000 in 2008, 6% below 2007. The total employment in this industry combined is in excess of 106,000.

3.9.1.4 Import statistics

Please refer to the comments in paragraph 3.4.1.4 supra, which is applicable to all sectors in relation to import statistics. Statistics reflecting the total value of imports against tariff code chapter 87 (motor vehicle and related product) reflect the following:

Table 11

2006 ("R")	45,830,128,710.00
2007 ("R")	56,247,708,173.00
2008 ("R")	54,124,010,485.00
Up to Sept 2009 ("R")	26,861,444,376.00

The top 10 exporters to South Africa of Motor vehicles and related product (2006 – September 2009) are detailed below. The unit values of the statistics vary.

Table 12

	Country	2006 ("R")	2007 ("R")	2008 ("R")	Up to Sept 2009 ("R")
1	Germany	13,070,339,193	13,542,388,553	13,469,262,242	8,346,589,878
2	Japan	8,117,358,277	9,689,724,980	10,310,585,073	4,502,419,794
3	USA	2,910,438,089	4,938,731,697	5,120,467,983	2,608,747,930
4	UK	2,913,186,852	5,210,215,343	4,905,153,544	1,362,832,668
5	Korea	3,806,776,742	4,324,998,339	2,857,114,653	1,700,328,226
6	China	1,170,830,399	3,041,162,522	3,162,262,810	944,326,443
7	Spain	2,451,315,021	2,433,292,707	1,809,973,530	751,981,515
8	India	1,923,208,860	1,416,798,712	1,239,018,100	933,730,310
9	France	1,898,289,996	1,336,849,022	1,278,935,500	727,567,665
10	Italy	989,678,753	1,194,951,482	1,370,624,108	818,920,186

The above table reflects a marginal increasing trend in the value (FOB) of imports into South Africa year on year. China reflecting significant increase margins together with the US and the United Kingdom.

3.9.2 CUSTOMS FRAUD RELATED ISSUES AFFECTING THE INDUSTRY

3.9.2.1 Introduction

Refer to the discussion under the Dairy Sector Report, paragraph 3.4.2.1 *supra*, which is also applicable to this section of the report. For brevity purposes the same information will not be repeated here.

3.9.2.2 Prevalence of Customs Fraud in Sector

Industry representatives indicated that illegal imports, under-declaration, round-tripping in exports, fraud and corruption are rife in the motor vehicle and components sector. The electronic clearance system introduced by SARS can be an effective logical and/or logistical tool of dealing with customs clearance and fraud of motor vehicles if the standard and universal way of capturing vehicle identification information could be applied and adhered to.

The vehicle identification information like the VIN number, the model and colour constitute baseline information used to describe and identify vehicles the world over, SADC countries included.

After years of prompting by industry SARS is yet to redesign or re-programme its electronic data capturing system to capture this standard data which is *absolutely essential* in preventing crime in this sector. Cross-border crime, trading in stolen vehicle, round-tripping would all be stamped out if SARS could capture this essential data. Police clearance of vehicles would be easier and verifiable. Vehicles whose identification numbers and features have been properly captured at the point of entry or point of exit would be traceable because vehicles have features which by law cannot be tampered with e.g. the VIN number.

Equally dissatisfying to the industry is SARS insistence that vehicle information captured at the point of entry or exit on each vehicle is confidential. The vehicle identification information should be made public, the industry insists, or can be made accessible to law enforcement agencies, manufacturers, used car dealers and to industry associations to keep tap on illegal imports and exports.

The outcomes of the homologation should also be public information as that would indicate that an imported vehicle fully complies with local standards of vehicles on our roads. What needs to be done to arrest and reverse the ills and problems which beset the industry has been discussed and documented to SARS in numerous meetings and industry submissions since 1994. The industry is still keen to be of assistance through training and other collaborative work.

3.9.2.3 Customs Tariff Classification

Tariff classification of components is according to identification numbers for original parts. According to the industry, there are loopholes in the system to avoid higher duties because no effective control exists. This leads to the government losing billions in unpaid duties on imported parts. Illegal imports, under-declaration, round-tripping in exports, fraud and corruption result not only in revenue loss for the government but in job losses as that affects local industries.

3.9.2.4 Rebate Provisions

The Motor Industry Development Programme (MIDP) is a SACU Programme designed to develop the motor vehicle and automotive component manufacturing industry in the region. The programme commenced on 1st September 1995 and has been reviewed twice since then. Participation in the MIDP is on a voluntary basis.

The Motor Industry Development Programme is designed for manufacturers of motor vehicles and components destined for export outside the SACU region. It is split into three (3) components i.e. Light Motor vehicle, Medium & Heavy motor vehicles and components manufacturing. The objectives of the MIDP are to:

- Improve international competitiveness of manufacturers of vehicles;
- Improve adoption of technology;
- Make the cost of production more affordable;
- Encourage small companies; and
- Enhance work opportunities.

The MIDP is based on customs duties and various rebates. The duties and rebates are phased down until 2009 where upon they will maintain a certain value. Customs duties are levied on imported motor vehicles and components while Import Rebate Credit Certificates (IRCCs) are rebate permits granted for the export of SACU manufactured motor vehicles, automotive components and certain type of tooling.⁵²

The programme also grants a production-asset allowance to vehicle manufacturers that invest in new plants and equipment, giving them 20% of their capital expenditure back, in the form of import-duty credits, over a period of five years.

⁵² Source: www.sars.co.za (Manufacturer MIDP)

The Automotive Production and Development Programme (APDP) replaces the motor industry development plan (MIDP) and is aimed at facilitating growth, increasing production, improving the domestic value chain by focusing on value addition, creating employment and encouraging investment in the local motor vehicle industry over time. It will run until 2020 and aims to provide the following:

- Stable and moderate import tariffs from 2012 of 25% for completely built-up vehicles and 20% for components used in vehicle assembly;
- A local assembly allowance, enabling vehicle manufacturers producing more than 50 000 vehicles a year to import 20% of its components duty free, reducing to 18% over three years;
- A production incentive in the form of a tradable duty credit of 55% (a rebate provision) on the value-added element of a component, measured from the selling price less the raw-material input. This will reduce to 50% over five years. However, an additional 5% would be available for vulnerable sub-sectors; and
- An automotive investment allowance, which will take the form of a direct grant to the value of 20 per cent of the project over three years to be used to support investment into new plant and machinery.⁵³

3.9.2.5 Special initiatives

A major purpose of the SADC Trade Protocol is to promote the development of the region through greater economic integration. The overall growth of exports and investment in the South African motor industry has led the SADC Committee of Ministers to ask whether any of its benefits, especially those of the South African Motor Industry Development Programme (MIDP) could be adapted to include other SADC Member States or to form the basis for a SADC industrial policy in the sector. However, investigations have pointed to the following constraints:

- (a) **SADC's "rules of origin" requiring a 40% minimum regional content in products has led to less than favourable competitive advantage;**
- (b) The SADC market is not sufficient to support a competitive motor industry;
- (c) **The MIDP could not be replicated in any of the Member States'**

⁵³

(Car today.com September 04, 2009)

- (d) The South African government procurement policies have tended to be a hindrance to trade and investment prospects;
- (e) A need to accelerate preferential tariff reductions on motor vehicles and components.

3.9.2.6 Trade remedies

No trade remedies are applicable within the motor industry trade. .

3.9.2.7 Other forms of Government intervention

Apart from an enabling legislative framework, there are 3 main measures put in place by government to pull back some of the negative effects of crime, fraud and corruption related to the motor vehicle industry. These are

- (a) Vehicle registration and licensing;
- (b) Police clearance; and
- (c) Vehicle roadworthy testing.

As a result of these measures, it is reported that fraud and corruption are regularly uncovered.⁵⁴ The government has also put in place the Best Practice Model (BPM) to combat fraud and corruption related to motor vehicle registration. This system has been designed to:

- Reduce the opportunity for fraud and corruption;
- Improve service delivery;
- Increase revenue collection;
- Increase levels of uniformity between the various agents; and
- Improve levels of efficiency and effectiveness.

It is further reported that the BPM “has proven to be extremely successful, especially where adequately trained and competent staff and managers are employed”.⁵⁵

⁵⁴ Burgers, *et al*, 2007: 100

⁵⁵ Burgers, *et al*, 2007: 101

The second measure is one involving police clearance for all vehicles to be registered on the National Traffic Information System (NaTIS). This has been running for many years, with the aim of detecting stolen and illegally procured vehicles, including those brought into the country illegally. As Burgers, *et al* (2007: 102) point out, police clearance of motor vehicles may thus ***"be seen as a last check to authorise the registration of high risk vehicles."***

The only limitation of this would be the human element – as Burgers, *et al* (2007: 102) observe, it is possible for criminals to ***"obtain a clearance from any clearance office with the help of a corrupt police officer."*** In order to redress this weakness, the concept of 'one-stop-shop' has emerged – whereby the ***"registering authority, a vehicle testing centre and a police clearance office"***, are put together – ***"each fulfilling their designated and separate functions but having in place proper management, supervision and control to integrate the different business processes"*** (Burgers, *et al*, 2007: 103).

The main object of this measure is to optimise the detection of stolen and illegal vehicles, reduce fraud and corruption and improve service delivery to the public. So far, this approach has proven to be effective in places where it has been put into operation.

Attendant to the above measures has also been the recognition of ensuring that the NaTIS itself is strengthened, as a platform on which all the relevant information is placed. To achieve this, a number of measures have been undertaken – including the following:

- Online registration of vehicles by banks;
- Online notice of change of ownership;
- Online licence renewals;
- Electronic licensing (electronic licence disc);
- Cross border movement of vehicles;
- Biometric identification of NaTIS users;
- Information sharing. (Burgers, *et al*, 2007: 103).

A number of other measures are under consideration, including ***"electronic vehicle identification"*** applied in concert with related systems such as automatic number plate recognition (ANPR) and application of microdots to vehicles will offer IT and other applications or solutions over a broad spectrum to SAPS and other members of the Border Control Operational Coordinating Committee BCOC" (Burgers, *et al*, 2007: 105).

The long-awaited measures regarding permits needed for motor vehicles driven from neighbouring countries to South Africa are yet to be implemented. Permits of vehicles registered in neighbouring countries driven on a visit to South Africa are urgently needed if the round-tripping, driving out new vehicles as though they were exported and driving them back into the country to benefit from export rebates is to be stopped.

Vehicles from Botswana, Lesotho, Namibia and Swaziland at present require no permit to enter South Africa. This has created a serious loophole in the regulatory framework which is fully exploited for vehicle fraud and crime. The last Business Against Crime heard about the matter from SARS after the Road Traffic Act was amended for temporary permits to be instituted is that SARS systems were being adjusted to implement this requirement. This delay comes after protracted negotiations for a buy-in from neighbouring countries which has since been secured.

In 2004, the South African Cabinet took a decision in terms of which Beit Bridge had been reclassified as a high priority point of entry. The consequence of this was that the Protection and Security Services Division was to take over from the border police with an expanded personnel base – increasing the existing capacity of the border police from ten members per shift to approximately 60 police per shift.

Irish (2005) also reported the lack of a single authority to oversee border control systems at the Beit Bridge border post. She reported that monthly meetings were being held on a rotational chairmanship basis amongst the various departments. In addition line managers of the different departments meet weekly, and joint operations are frequently carried out. These operations focus on all forms of criminal activities and, more often than not, involve the establishment of 24-hour roadblocks and check points around the border area.

This, notwithstanding, a serious challenge still remains the absence of an official mandate on the form and nature of the cooperation amongst the various departments – leading to **a situation whereby “cooperation remains mainly dependent on individuals from the different departments and their will to work together with their colleagues in other departments” (Irish, 2005: 4).**

The industry is of the view that SARS should take charge of the border as the agency which is responsible for importation and exportation. In particular, SARS must tighten up controls to discourage ongoing manipulation of tariffs: under-invoicing, deliberate misclassification of imported or exported goods to attract no duty.

The industry emphasises that as long as there is under-resourcing: under-staffing, under-training, non-specialisation and lack of appropriate equipment, and the lack of political will to deal with all the inefficiencies at the borders the industry local industries and local jobs can be never be protected.

3.9.3 TYPES OF CUSTOMS FRAUD IDENTIFIED

3.9.3.1 *Illicit Trafficking of Motor Vehicles*

The problem of illegal trade in the motor industry remains a major challenge in South Africa. Burgers, Wright and Nel (2007) present three methods used in vehicle crime, namely:

- (a) Re-registration of stolen/hijacked vehicles (accounting for the disposal of approximately 50% of stolen and hijacked vehicles);
- (b) Illegal exportation (approximately 30%); and
- (c) Chopping of vehicles for subsequent sale into the second-hand parts market (accounting to approximately 20%).

Burgers, et al (2007: 104) estimate that ***"30% of all stolen or hijacked vehicles are illegally exported from South Africa, with the bulk of these passing through the land ports of entry/exit and border lines undetected."*** They further posit that at an average cost of ***"R80,000 per vehicle, a conservative estimate of the direct financial loss to South Africans as a result of the illegal export of stolen and hijacked motor vehicles is R2,16 billion per year."*** It is against this that Burgers, et al (2007: 104) observe that the relative ease with which these stolen and hijacked motor vehicles illegally leave the country contributes largely to the ongoing vehicle crime problem of the country. Whilst these market opportunities persist, there will never be a sustainable reduction in vehicle crime in South Africa.

The implications of this are far-reaching – including (in addition to the already stated financial loss to the economy) personal trauma, corruption of everyone (including the youth), loss of confidence in the government and the country, a feeling of insecurity and a negative influence on tourism (Burgers, *et al*, 2007: 104).

3.9.3.2 Importing used vehicles into South Africa in contravention with legislation

Importing used vehicles into South Africa is prohibited under the International Trade Administration Act. The importation of used vehicles and import permits are supposed to be issued only in very specific and defined circumstances. Importation of used motor vehicles for personal use requires that permits must be applied for through ITAC and is subject to the following:

- The vehicles must be owned and used for the period of 1 year and the imported vehicle may not be disposed of within a period of 2 years of the said importation.;
- Vehicles must be right hand drive and should comply with the South African vehicle regulations law;
- The importer must be able to present the registration documents proving ownership.

3.9.3.3 Removal-in-transit-fraud: importation of new and used vehicle for SADC Countries through South Africa

Most neighbouring countries rely on passage through South Africa for their imports, including used vehicles. More than 93% of the imports into the Southern Africa region are handled through the Durban port of entry. The volumes of second-hand vehicles imports, mainly from Japan, transiting South Africa has increased from less than 4,000 in 1998 to an excess of an estimated 60,000 vehicles in 2004, and in excess of 80,000 in 2009. The port of Durban is the gateway to Southern Africa for these vehicles, as the shipping costs, logistics and infrastructure make it the most competitive.

Our research indicates that most used vehicles imported for SADC countries from Japan and other countries never leave South Africa. They never get to the declared countries of destiny. SAPS have warned motorists intending to buy second-hand cars to beware of illegally imported vehicles.

Superintendent Ronnie Naidoo from SAPS said that a large number of vehicles were being brought into the country under false pretence. He stated that unscrupulous dealers are acquiring these vehicles and importing them on the pretext that these vehicles are in transit and destined for neighbouring countries that do not prohibit the importation of second-hand vehicles.⁵⁶

⁵⁶ Superintendent Ronnie Naidoo, Pretoria Police, Illegally Imported Cars Flood SA, <http://www.fin24.com-> Mar 27 2007

Motor dealers based mainly in Durban are the main conduits for such imports. They act as facilitators of illegal registration and many produce documentation designed to defraud the tax collecting authorities in the destination state. Many of these vehicles are driven illegally on our roads for protracted periods and consistent attempts are made to register them fraudulently in RSA.

Vehicles stolen in the UK, Singapore, Japan and Australia have been found in this trade. The depth and extent of the crime surrounding the illegal and illicit trading of vehicles in the Durban area was captured in the following case study whose ruling has since banned temporary permits for vehicles in transit.

Clearing Agents v MEC Transport [2007] SCA 35 (RSA): A Classical Case of Mis-declaration and Acquittal Fraud

In a judgement delivered in March of 2007, referred to as *Clearing Agents v MEC Transport* [2007] SCA 35 (RSA), it was reiterated that all motor vehicles must be registered and licensed in accordance with the National Road Traffic Act 93 of 1996⁵⁷.

Regulation 84, which is one of the regulations promulgated in terms of the Act, provides for unregistered and unlicensed vehicles to be operated on a public road temporarily under a temporary or special permit. It was found that this regulation cannot be used to facilitate the transport of vehicles, using their own power, from a South African port to a neighbouring country.

Customs and Excise have recently published draft rules to incorporate this understanding into their legislation. Rule 18.15 provides that any imported second hand road vehicle, in transit, may not be removed under own power or towed. In other words, the vehicle being exported may not have its wheels touching the road. The vehicle must be carried by a licensed remover of goods.

The practice of driving an imported second hand vehicle, in transit, for export, to its destination is thus illegal and would certainly incur severe penalties as well as the vehicle possibly being subject to forfeiture when discovered. This ruling was appealed continuing the legal wrangle which has been ongoing since December 2005 when the department of Transport in KZN clamped down on the issue of the permits, alleging that the vehicles did not meet South Africa's road worthiness standards and that, in some instances, the roadworthy certificates were being issued before the vehicles arrived in the harbour.

⁵⁷ An e-mail flyer created by Customs @ Wylie, an initiative of Shepstone & Wylie's, International Transport, Trade & Energy Division, [http://www.wylie.co.za/%7Duploads/Customs Flyer13May2008PDF.pdf](http://www.wylie.co.za/%7Duploads/Customs%20Flyer13May2008PDF.pdf), down-loaded on October 05, 2009.

4 BENCHMARKED COUNTRY REVIEWS

4.1 COUNTRY IDENTIFICATION AND MOTIVATION

4.1.1 The countries identified for benchmarking purposes were chosen between the CPG and the Consortium by mutual agreement, after motivation of specific countries by the Consortium and consultation with the stakeholders namely Enforcement Agencies, Business, Labour and Government before finalisation of the choice of countries.

4.1.2 It was agreed that two developing countries and two developed countries should be included in the study. The countries eventually agreed upon and approved were Canada, France, India and Malaysia.

4.2 CANADA – DEVELOPED COUNTRY



4.2.1 INTRODUCTION

Canada was chosen as a benchmarking country for this project, based on the following:

- Canada Customs is the oldest law enforcement agency in the country and was created in 1841. Currently the Canada Border Services Agency (CBSA) is the agency responsible for border guard and customs services;
- The CBSA oversees operations at 61 land border crossings, nine international airports and three major sea ports. The CBSA also has a comprehensive intelligence programme which supplies timely, accurate and relevant intelligence support to operational decision makers;
- The agency is an active member of the World Customs Organisation and is involved in capacity building and training of customs officials in a number of countries; and
- The CBSA has had major successes with regard to customs law enforcement.

4.2.2 CUSTOMS LEGISLATION AND REGULATIONS

4.2.2.1 *Canada Border Services Agency Act*

The CBSA was established in terms of the Canada Border Services Agency Act on December 12, 2003. This act outlines the responsibilities, mandate, powers, duties and **functions of the Minister responsible for the CBSA and the CBSA's President. In terms of the provisions under this Act, the CBSA is responsible for providing integrated border services that support national security priorities and facilitate the free flow of persons and goods, including animals and plants, which meet all requirements under the program legislation.**

4.2.2.2 *Customs Act*

One of the key pieces of legislation governing the CBSA's mandate is the Customs Act. The Customs Act was first enacted in 1867 with the following purpose:

- To ensure the collection of duties;
- To control the movement of people and goods into and out of Canada; and
- To protect Canadian industry from real or potential injury caused by the actual or contemplated import of dumped or subsidized goods and by other forms of unfair competition.

The Act provides legislative authority to administer and enforce the collection of duties and taxes that are imposed under separate taxing legislation, such as the Customs Tariff, the Excise Tax Act, the Excise Act and the Special Import Measures Act. The Customs Act was revised in 1986 to maintain the original Act's three purposes and to allow for greater flexibility in new transportation, communication, trade and business practices. Since 1986, the Act has been amended several times in response to free trade and other related international agreements.

In June 2009, amendments were made to support the Government of Canada's strategy to strengthen security and facilitate trade. With these changes to the Customs Act, the CBSA was enabled to strengthen the systems used for obtaining advance data on goods and people arriving in Canada and to better manage risk at air and sea ports.

4.2.2.3 Other legislation

The CBSA administers more than 90 acts, regulations and international agreements on behalf of other federal departments and agencies, the provinces and the territories. Amongst them are:

Canada Agricultural Products Act	Fish Inspection Act
Citizenship act	Food and Drugs Act
Criminal Code	Health of Animals Act
Customs Tariff	Immigration and Refugee Protection act
Excise Act, 2001	Meat Inspection Act
Export and Import Permits Act	Plant Protection Act
Feeds Act	Seeds Act
Fertilizers Act	Special Import Measures Act
Agriculture and Agri-Food Administrative Monetary Penalties Act	Proceeds of Crime (Money Laundering) and Terrorist Financing Act

4.2.2.4 Existing Trade Agreements

- North American Free Trade Agreement (NAFTA);
- Canada-Israel Free Trade Agreement (CIFTA);
- Canada-Chile Free Trade Agreement (CCFTA);
- Canada-Costa Rica Free Trade Agreement (CCRFTA);

- Canada-EFTA Free Trade Agreement (CEFTA);
- Canada-Peru Free Trade Agreement (CPFTA); and
- Trade Regulations of Canada.

4.2.2.5 Importation Regulations and Requirements

- Prohibited or Restricted Goods. Items like pornographic material, weapons and ammunition, food, plant and animal products that are not allowed into Canada or that require a permit;
- Wood Packaging. The Government of Canada is committed to protecting Canada from all threats, including those posed to the environment through harmful pests and invasive alien species. As of July 5, 2006, the Canada Border Services Agency will refuse shipments containing wood packaging that do not meet Canadian import requirements;
- Anti-dumping and Countervailing measures. The Anti-dumping and Countervailing Program provides help to Canadian producers who face unfair foreign competition in the Canadian market place. The CBSA is responsible for the administration of the Special Import Measures Act (SIMA), which helps to protect Canadian industry from injury caused by the dumping and subsidizing of imported goods;
- Administrative Monetary Penalty System (AMPS). The Administrative Monetary Penalty System is a civil penalty regime that secures compliance with customs legislation through the application of monetary penalties. AMPS authorizes the CBSA to assess monetary penalties for non-compliance with customs legislative, regulatory and program requirements. AMPS applies to contraventions of the Customs Act and the Customs Tariff and the regulations under these Acts, as well as contraventions of the terms and conditions of licensing agreements and undertakings. The CBSA may impose monetary penalties based on the type, frequency, and severity of the infraction. Most penalties are graduated and will take the compliance history of the client into consideration. AMPS does not impact businesses who comply with customs requirements;
- Food, Plant and Animal Inspections. Travellers and commercial importers are required to properly declare any meats, fruits, vegetables, plants, animals and plant or animal products they bring into the country.

4.2.3 STRUCTURE OF CUSTOMS SERVICES BODY

4.2.3.1 Introduction

The CBSA provides Canadians with integrated border services that focus on two major priorities: national security and the flow of legitimate people and goods across our borders. The CBSA has implemented risk-management strategies to identify and intercept high-risk people and goods. The CBSA also works closely with its domestic and international partners to enhance trade and better manage the risks associated with terrorism, organized crime, war crimes and crimes against humanity.

CBSA's legislative, regulatory and partnership responsibilities include the following:

- Administering legislation that governs the admissibility of people and goods, plants and animals into and out of Canada;
- Detaining those people who may pose a threat to Canada;
- Removing people who are inadmissible to Canada, including those involved in terrorism, organized crime, war crimes or crimes against humanity;
- Interdicting illegal goods entering or leaving the country;
- Protecting food safety, plant and animal health, and Canada's resource base;
- Promoting Canadian business and economic benefits by administering trade legislation and trade agreements to meet Canada's international obligations;
- Enforcing trade remedies that help protect Canadian industry from the injurious effects of dumped and subsidized imported goods;
- Administering a fair and impartial redress mechanism;
- Promoting Canadian interests in various international forums and with international organizations; and
- Collecting applicable duties and taxes on imported goods.

4.2.3.2 CBSA organizational structure

The CBSA was created in December 2003 as part of Public Safety and Emergency Preparedness Canada (PSEPC), the lead department for protecting Canadians and maintaining the peace and security of Canadian society.

The other organizations within PSEPC are the Royal Canadian Mounted Police (RCMP), the Canadian Security Intelligence Service, the Correctional Service Canada, the National Parole Board, the Commission for Public Complaints Against the RCMP, the Office of the Correctional Investigator and the RCMP External Review Committee. The result of uniting these organizations under one portfolio is a better integration of responsibilities among the organizations within the Government of Canada that deal with national security, emergency management, law enforcement, corrections, crime prevention and borders.

With the creation of the CBSA, key functions formerly carried out by three government organizations were brought together: customs (from the Canada Customs and Revenue Agency), intelligence and enforcement (from Citizenship and Immigration Canada) and inspection of imports at border crossings (from the Canadian Food Inspection Agency). As a result, the CBSA combines complementary business lines to protect public security and facilitate and control the movement of people and goods.

4.2.4 COOPERATION BETWEEN ENFORCEMENT AGENCIES AND RELEVANT STAKEHOLDERS WITH REFERENCE TO ENFORCEMENT PROGRAMMES AND INITIATIVES

Now in its sixth year of operation, the CBSA focuses on key priorities to strengthen public security while continuing to build a smarter, more secure border. Domestically, the CBSA administers and enforces the policies and programs of many departments and agencies (Citizenship and Immigration Canada and the Canadian Food Inspection Agency are the most prominent among these). The CBSA also works closely with its partners in border security, namely the Royal Canadian Mounted Police (RCMP), the organization responsible for border-related enforcement activities between ports of entry, as well as the Canadian Security Intelligence Service.

Canada takes a proactive role in establishing and maintaining strong working relationships with governments, organization and communities to foster an open dialogue for information sharing and risk management.

4.2.4.1 Export and Import Controls Bureau (TPI)

The Export and Import Controls Bureau (TPI) is responsible for administering the Export and Import Permits Act (EIPA) which was first enacted in 1947. The EIPA delegates to the **Minister of Foreign Affairs wide discretionary powers to control the flow of goods** contained in specified lists provided for under the Act. The Minister for International Trade provides policy direction in most areas involving market access and trade policy.

4.2.4.2 Department of Foreign Affairs and International Trade

The Department is responsible for the issuing of import permits for goods such as textile and clothing, agricultural and steel products, and some food items such as dairy products, poultry, and eggs.

4.2.4.3 Royal Canadian Mounted Police

The RCMP is the Canadian national police service and an agency of the Ministry of Public Safety Canada. The RCMP is unique in the world since it is a national, federal, provincial and municipal policing body.

The RCMP provides a total federal policing service to all Canadians and policing services under contract to the three territories, eight provinces (except Ontario and Quebec), more than 190 municipalities, 184 Aboriginal communities and three international airports. The Royal Canadian Mounted Police enforces laws made by, or under, the authority of the Canadian Parliament throughout Canada. Administration of justice within the provinces, including enforcement of the Criminal Code, is part of the power and duty delegated to the provincial governments.

4.2.4.4 Other Government Departments (OGD) Interface

The OGD Interface is a joint initiative between the CBSA and other government departments (OGDs) and agencies wishing to receive release information electronically on commercial import data. Instead of presenting documentation at the ports of entry offices importers and brokers who have gone through the required testing can send transactions with OGD requirements electronically.

The Canada Food Inspection Agency (CFIA), Transport Canada and Natural Resources Canada participate in the programme.

4.2.4.5 CFIA/ACROSS Interface

The Canadian Food Inspection Agency (CFIA)/ACROSS interface allows importers and brokers to transmit release information on CFIA-regulated goods to the CBSA that in turn transmits this information to the CFIA. Once the CFIA has made its decision regarding the admissibility of the goods, the CFIA transmits its decision directly to the CBSA inspector. The CBSA then makes a final decision.

The benefits of this interface include the following:

- Simplified release process for agricultural goods;
- Reduced paper burden;
- Increased accessibility to EDI for release of agricultural goods;
- Consistent treatment of imports with CFIA requirements;
- Increased focus on high-risk shipments; and
- Provision of timely release information for matching and tracking purposes.

The Automated Import Reference System (AIRS) is an important part of the CFIA/ACROSS interface. Through this system, importers and brokers have easy access to current information on agricultural import requirements. The system also allows them to quickly determine the additional data (codes) that must be included in the EDI release message.

4.2.4.6 Customs Self Assessment Programme (CSA)

The CBSA launched the Customs Self Assessment (CSA) programme in December 2001. The program was developed as one of the Customs Action Plan initiatives to enhance the **CBSA's effectiveness in processing an increasing volume of goods crossing the border.** The CSA program was designed to provide low-risk, pre-approved companies that have a history of good compliance, with an expedited border clearance option and streamlined accounting and payment processes for imported goods.

The CSA border clearance option is available only to imported goods entering the country from the United States. The vast majority of CSA releases take place at land border posts. To use the CSA clearance option, the goods must be imported by a CSA-approved importer. Goods entering Canada by highway must be transported by a CSA-approved carrier that is using a driver who is registered under the Free and Secure Trade (FAST) Commercial Driver Program (in Canada and the U.S.) and the Commercial Driver Registration Program (in Canada only). CSA clients, who are also approved as part of the

FAST program, can also benefit by using designated FAST express lanes upon arrival at the border.

Shipments cleared through the CSA process, like all other shipments, may be subject to examination. In principle CSA shipments are subject to fewer examinations than non-CSA shipments. CSA clients found to be in contravention of any acts or regulations are subject to penalties under the Administrative Monetary Penalty System, removal from the program or other enforcement actions depending on the severity of the infraction.

4.2.4.7 Partners in Compliance

Partners in Compliance (PIC) is a CBSA pilot project. PIC promotes partnerships between the CBSA and industry in order for businesses to attain the highest rate of compliance with the CBSA's trade programs (tariff classification, origin and value for duty). PIC builds on the principles of the Customs Self Assessment (CSA) program and risk management. PIC allows approved CSA importers to voluntarily demonstrate to the CBSA that their business systems, internal controls and self-testing processes are effective and reliable at ensuring their trade program compliance. Since these CSA importers are given greater recognition for the integrity of their internal controls and business systems, the CBSA can focus its post-release verification resources on areas of higher or unknown risk.

The first phase of the pilot is now complete. The CBSA developed a process to evaluate the effectiveness and reliability of participants' internal controls, including self-testing. The two original pilot participants have completed the PIC approval process. They are now conducting their own self-testing for trade program compliance and are submitting their results to the CBSA. In 2007-2008, the CBSA expanded the PIC pilot in a limited way to assess its viability as a future program for various importer types and industries. Eight eligible importers are now progressing through the expanded PIC process.

If PIC is fully implemented as a program, the CBSA expects that PIC will be available to all CSA importers from different industry sectors and business sizes (very large, large, medium and small).

4.2.4.8 Partners in Protection (PIP)

Partners in Protection (PIP) is a CBSA programme that obtains the cooperation of private industry to enhance border and trade chain security, combat organized crime and terrorism and help detect and prevent contraband smuggling. Partners in Protection (PIP) was developed in 1995 with the primary focus of promoting business awareness and compliance with customs regulations.

After the events of 9/11, the PIP program's focus shifted to place greater emphasis on trade chain security, which included urging members to improve their physical, infrastructure and procedural security. A security questionnaire was developed with suggested security recommendations. The importance of the PIP program increased in 2002 when a PIP membership became a prerequisite to participate in the Free and Secure Trade (FAST) program. FAST provides expedited border clearances into Canada for pre-approved importers, carriers and drivers.

In 2007, under the Security and Prosperity Partnership of North America, the Government of Canada announced \$11.6 million in funding to strengthen the PIP program in order to achieve mutual recognition and compatibility with the U.S. Customs-Trade Partnership Against Terrorism (C-TPAT) program. This milestone was reached on June 28, 2008, when the CBSA signed an arrangement with U.S. Customs and Border Protection. The signing of the arrangement enhances cross-border security as both countries now apply similar security standards and similar site validations when approving companies for membership in their respective trade security programs.

On June 30, 2008, a strengthened PIP program was introduced. It implements minimum security requirements; mandatory site validations; denial, suspension, cancellation, reinstatement and appeal policies and procedures; and an automated application process. These steps to strengthen the PIP program also ensure that it is better aligned with international standards such as the Framework of Standards to Secure and Facilitate Global Trade (SAFE) and the Authorized Economic Operator concept of the World Customs Organization.

It is a voluntary program with no membership fee that aims to secure the trade chain, one partnership at a time. Industry strongly supports the PIP program and greatly values the commitment of PIP members to do their part, together with the CBSA, to secure the supply chain and facilitate legitimate trade.

There are two categories for participation in the PIP program namely member and associate. A member can take advantage of the program benefits in addition to receiving PIP program information and updates and participating in program consultations. An associate receives PIP program information and updates and is consulted on program changes.

To be eligible to participate as a member in the PIP program, applicants must:

- Fall within one of the authorized eligible business categories namely importer, exporter, air carrier, rail carrier, marine carrier, highway carrier, customs broker, courier, warehouse operator (including marine terminal operator), freight forwarder or shipping agent;
- The applicant must own or operate facilities in Canada that are directly involved in the importation or exportation of commercial goods; or
- The applicant must be a U.S. highway carrier company that is a member of or is applying to the Free and Secure Trade (FAST) program into Canada.

In addition the applicant and its directors must be of good character and have a good record of compliance with the CBSA.

Companies that are not eligible for PIP membership but are linked to trade in commercial goods can become a PIP associate. Associates receive program information and updates, and are consulted on program changes. Potential associates can include those from associations, companies, groups, port authorities, lawyers and consultants.

Acceptance of participation in the PIP program depends on the completion of a Security Profile, a security review and assessment by the CBSA and the signing of a Memorandum of Understanding.

4.2.4.9 Register of Imported Vehicles Program (Transport Canada)

The Registrar of Imported Vehicles (RIV) was created to establish and maintain a system of registration, inspection and certification to Canadian standards of vehicles originally manufactured for distribution in the U.S. market that are being permanently imported into Canada.

4.2.4.10 Canada Revenue Agency and Environment Canada - Hazardous waste, Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act

The Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRIITA) prohibits the import, export and interprovincial transportation of specific species, unless the specimens are accompanied by the appropriate documents (licences, permits). In all cases, the Act applies to the plant or animal, alive or dead, as well as to its parts and any derived products.

International exchange of these species is controlled, either because they are threatened or because they could become threatened if there were no monitoring of their trade. CITES-listed plants and animals, as well as their parts and derived products, must be accompanied by permits in order to cross borders.

4.2.4.11 Free and Secure Trade (FAST)

The Free and Secure Trade (FAST) programme is a commercial clearance programme designed to ensure safety and security while expediting legitimate trade across the Canada-U.S. border. FAST is a joint initiative between the CBSA and the U.S. Customs and Border Protection that enhances border and trade chain security while making cross-border commercial shipments simpler and subject to fewer delays. It is a voluntary program that allows the CBSA to work closely with the private sector to enhance border security, combat organized crime and terrorism, and prevent contraband smuggling.

The CBSA and industry are mutually committed to maintaining the FAST program requirements and they work together to achieve compliance and to find solutions to problems.

All FAST program participants (drivers, carriers, importers) must undergo a risk assessment. FAST-approved participants are identified as low risk, which allows the CBSA to focus resources and security efforts on travelers of high or unknown risk. When a FAST-approved driver arrives at the border, he or she presents three bar-coded documents to the border services officer (one for each of the participating parties: the driver, the carrier and the importer). The officer can quickly scan the bar codes while all trade data declarations and verifications are done at a later time, away from the border.

Eligible goods arriving for approved companies and transported by approved carriers using registered drivers are cleared into Canada or the United States with greater speed and certainty, which reduces costs for FAST participants. Dedicated FAST lanes have been established at a number of major border crossings. According to the CBSA the benefits of FAST are the following:

- Access to dedicated lanes (where available) for faster and more efficient border clearance;
- A streamlined process that reduces delivery times and landed costs of imports;
- No need to transmit transactional data for every transaction;
- Minimal documentation required to clear the border;

- Increased certainty at the border resulting in fewer delays;
- A unified, ongoing partnership with the CBSA;
- Promotion of Canadian competitiveness; and
- Advancement of voluntary compliance and self-assessment.

4.2.4.12 The Canada-U.S. Smart Border Declaration

In the wake of the terrorist attacks in the United States on September 11, 2001, Canadian and U.S. government departments and agencies have worked in partnership to improve security and services on the shared border through the Smart Border Declaration. A collaborative 32-point action plan for identifying and addressing security risks while expediting the legitimate flow of people and goods across the Canadian border was created as a blueprint for the declaration. The four pillars of the Action Plan are:

- Secure flow of people;
- Secure flow of goods;
- Secure infrastructure;
- Coordination and information-sharing.

4.2.4.13 Canada-United States Cross-Border Crime Forum

The Cross Border Crime Forum (CBCF) was established in 1998. The CBCF is a joint effort of Public Safety, the Department of Justice Canada and the U.S. Department of Justice. It brings together senior law enforcement and justice officials from participating organizations in Canada and the U.S.

The CBCF addresses transnational crime problems such as smuggling, organized crime, mass marketing fraud, counter-terrorism, and other emerging cross-border issues. It also focuses on resolving obstacles and impediments (primarily with regard to policy, regulations and legislation) faced by law enforcement and justice officials who work on cross-border crime issues.

4.2.4.14 Integrated Border Enforcement Teams (IBETs)

Integrated Border Enforcement Teams (IBETs) are a Canada / US initiative, which is a combination of the intelligence and law enforcement expertise of various agencies and use a coordinated approach to identify and stop the high risk movement of people and goods between the ports of entry on the Canada – United States border.

Both countries share a common border and common objectives namely to facilitate trade and limit crime. IBETs enhance border integrity and security at their shared border by identifying, investigating, and interdicting persons and organizations that pose a threat to national security or are engaged in other organized criminal activity. The CBSA's role in the IBETs initiative is to:

- Provide strategic and tactical intelligence support to immigration and customs;
- Liaise with the port-of-entry operations; and
- Participate in the development of specialized training, joint risk assessments and intelligence sharing.

The immigration contribution includes specialized support in the areas of national security, organized crime, war crimes, irregular migration, anti-fraud and serious criminality, using its intelligence network with offices in National Headquarters, five domestic regions and its overseas migration integrity component.

The customs contribution includes expert delivery of strategic and tactical intelligence targeting suspected businesses and individuals involved in national security, transnational organized crime and other illicit border-related criminal activity, through specialized national and international customs intelligence networks.

4.2.4.15 Joint Targeting Initiative (JTI)

The CBSA and U.S. Customs and Border Protection work together under the Joint Targeting Initiative to target marine in-transit containers that arrive in Canada or the United States while en route to the other country. CBSA officers are assigned to the ports of Newark, New Jersey, and Seattle, Washington, to review containers destined for Canada. U.S. CBP has assigned officers in Canadian marine ports in Vancouver, Halifax and Montréal to review cargo destined for the United States.

4.2.4.16 Marine Trade Security

The enhancement of border security while facilitating the legitimate flow of goods are important objectives of both Canada and the United States. The CBSA works closely with its American counterpart, U.S. Customs and Border Protection (CBP), to achieve greater synergy and a coordinated approach to border security. The following programs are part of marine trade security:

- **Advance Commercial Information (Phase 1: Marine Mode)**

To specifically address container security, the CBSA launched the Advance Commercial Information (ACI) marine program in April 2004. The program provides officers with advance cargo reporting to make informed decisions about whether to inspect a container before it arrives in Canada. For example, industry must report marine data electronically to the CBSA 24 hours before loading shipping containers at foreign seaports for all Canada-bound vessels (24-hour rule). Through the National Risk Assessment Centre, the CBSA performs risk assessments and determines whether examinations are required in foreign ports to address any potential security threats. The ACI program is being delivered in phases in accordance with the Canada-U.S. Smart Border Declaration. Subsequent phases of ACI will focus on air, highway and rail.

- **Canada-U.S. Container Security Initiative Partnership Arrangement**

On October 20, 2005, the CBSA and U.S. CBP signed a Container Security Initiative Partnership Arrangement. The objective of this arrangement is to enhance marine security by deploying CBSA officers to foreign ports so that they can pre-screen and examine cargo containers in coordination with the host nation before the containers arrive in Canada. This partnership with the U.S. will allow Canada to better protect its citizens. At the same time, it supports the Canadian economy by facilitating trade across its borders.

- **Canada-U.S. Joint In-Transit Container Targeting at Seaports Initiative**

The Canada-U.S. Joint In-Transit Container Targeting at Seaports Initiative has 2 objectives: 1) to achieve maximum effectiveness in identifying high-risk containers at the first point of arrival in North America, and 2) to share important law-enforcement information from both sides of the border through an exchange of officers.

Under Action Point 18 of the Smart Border Declaration, CBSA officers are stationed at seaports in the U.S. while CBP officers are stationed at Canadian seaports. By working together, Canada and the U.S. can improve container inspection by jointly targeting marine in-transit containers that arrive in Canada or the U.S. en route to the other country. American officials have been stationed at Vancouver, Halifax and Montreal while Canadian officials are stationed in Seattle-Tacoma and Newark. The program simplifies the inspection process and helps avoid duplicate examinations.

4.2.4.17 Container Security Initiative

The Container Security Initiative (CSI) is a multinational initiative that protects the main method of global trade — containerized shipping — from being exploited or disrupted by terrorists. It is designed to safeguard global marine trade while enabling legitimate cargo containers to move faster and more efficiently through the supply chain to seaports worldwide.

CSI is in partnerships with other countries to strengthen CBSA's ability to identify, target and intercept potential threats before they reach Canada, and help to ensure that Canada's border is the last line of defense against such threats and not the first. Increased cooperation with these countries leads to greater awareness of legitimate trade so that attention can be focused on detecting and interdicting high-risk shipments.

The early identification of legitimate shipments in the trade chain ensures that they are processed in a timely and efficient manner when they arrive in Canada. CSI partnership **arrangements also strengthen each country's customs processes, including harmonizing systems and processes, as well as sharing advance information, risk management practices and other best practices and lessons learned.**

CSI partnership arrangements enable the CBSA to place its officers at strategic locations in host countries. These officers perform a number of key functions, including the following:

- Coordinating the examination of high-risk containers at foreign ports;
- Sharing information about potential security threats; and
- **Promoting data quality, which strengthens the CBSA's overall risk-assessment capacity.**

Through CSI partnerships, Canada is achieving a higher level of security and trade facilitation than it would by working alone.

4.2.5 LEVEL OF RESOURCING OF ENFORCEMENT AGENCIES

The CBSA carries out its responsibilities with a workforce of approximately 13,000 employees, including over 7,200 uniformed CBSA officers who provide services at approximately 1,200 points across Canada and at 39 international locations.

- The CBSA manages 119 land-border crossings and operates at 13 international airports;

- Of these land-border crossings, 61 operate on a 24/7 basis, as well as 10 of the international airports;
- Officers carry out marine operations at major ports, the largest being Halifax, Montréal and Vancouver, and at numerous marinas and reporting stations;
- Officers also perform operations at 27 rail sites;
- The CBSA processes and examines international mail at three mail processing centres; and
- The CBSA administers more than 90 acts, regulations and international agreements, many on behalf of other federal departments and agencies, the provinces and the territories.

The CBSA has made investments in detection technology to enhance officers' inspection capacity and efficiency, with the ultimate goal of preventing contraband, dangerous and/or restricted goods from entering Canada. The CBSA's detection technologies include the following:

- X-ray systems (fixed, mobile and vans): these imaging tools detect contraband and dangerous goods in baggage and cargo containers for all modes. Since 2001, the inventory of x-ray technology has drastically increased to meet operational needs and evolving technology standards;
- Gamma-ray systems (mobile and pallet VACIS units): the mobile VACIS is a truck-mounted gamma-ray imaging tool used on containers, rail cars, passenger vehicles and trucks. The pallet VACIS is a stationary unit through which pallets or pallet-sized cargo are passed. Both display images of the density of contents;
- Radiation Detection Portals are used to detect the presence of illicit radiation or nuclear materials in marine containers. If threshold levels of radiation are exceeded, the portals transmit an alarm to the National Risk Assessment Centre (NRAC) and the Laboratory and Scientific Services Directorate (LSSD). NRAC is responsible for conducting a risk assessment of the container. If the NRAC cannot negate the risk, they will contact the LSSD for scientific advice. From there, NRAC may either negate the risk or dispatch a carborne unit at the port;
- Carborne units are radiation-monitoring systems affixed to the roof of a vehicle. These units measure the radiation emitted and transmit the information to LSSD for further analysis (e.g., to identify the type of isotope present);

- Electronic personal dosimeters detect dangerous levels of radiation to ensure the safety and protection of CBSA officers. Handheld survey meters detect the source of radiation. These tools are used in conjunction with the radiation portals and the carborne units;
- Ion spectrometry technology: both handheld and portable devices (Ionscan, Sabre 2000) are used to detect a wide variety of trace organics such as narcotics and explosives. The CBSA recently deployed a new device, the Itemizer 3, which is capable of detecting both contraband and explosives simultaneously; and
- Contraband Outfitted Mobile Examination Truck (COMET): the COMET units outfitted for marine operations include equipment for deep rummage and dockside activities. The units used in air operations are outfitted with the necessary tools to examine air cargo and baggage.

The CBSA officers also use a wide variety of other detection tools. Such tools include mirror kits for inspecting under the carriage of containers; probes for inspecting bulk loads of goods; laser range finders to measure the length of containers; density gauges, and long and short-pole reach cameras for viewing hard-to-reach places.

4.2.6 PREVALENCE OF CUSTOMS FRAUD

In the fiscal year 2008/09, the Criminal Investigations Program of the CBSA concluded 535 cases which resulted in 476 convictions. Court sentences imposed as a result of these prosecutions totaled approximately CAD\$549,000 in court fines (this translates to R3,909,961.53 at the applicable exchange rate as at 11 December 2009⁵⁸). Incarceration days during the same period amounted to over 41,000. Charges were laid in a total of 582 cases, a 20% increase over the previous year.

It must be noted that 42% of cases were brought forward under the Immigration and Refugee Protection Act whereas charges under the Customs Act account for nearly half of all charges brought forward. The majority of cases are considered Port Prosecutions, concerning single isolated incidents that arise most often at ports of entry.

Transparency International (TI) provides a useful guide as to the relative compliance culture within Canada. The TI Corruption Perception Index (CPI) measures the perceived level of public-sector corruption in 180 countries and territories around the world. This survey is based on 13 different expert and business surveys. Canada was ranked 8th out of the 180 countries for the 2009 CPI scoring 8.7.

⁵⁸ <http://www.x-rates.com/cgi-bin/hlookup.cgi>

The TI's 2008 Bribe Payers Index (BPI) placed Canada in joint first place with Belgium with a score of 8.8 out of 10 indicting that that Canadian firms are seen as least likely to bribe abroad.

4.2.7 AREAS OF CUSTOMS FRAUD AND ILLEGAL IMPORTS

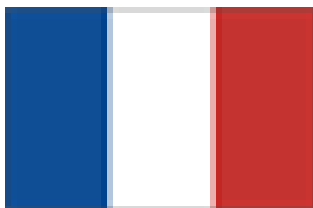
Examples over the past fiscal year have included:

- Smuggling of firearms (Customs Act);
- False statements on undeclared meat imports (Customs and Meat Inspection Acts);
- Counterfeit goods;
- Illegal import of shrimp (Fish Inspection Act); and
- Undeclared meat products (Health of Animals Act).

4.2.8 CAPACITY BUILDING AND TRAINING PROGRAMMES

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4.3 FRANCE – DEVELOPED COUNTRY



4.3.1 INTRODUCTION

France is a member state of the European Union (EU), a founding member of the EU, with a total land area of 550,000 km², and a population of 63.7 million. France has an advanced industrial economy and an efficient farm sector. Main activities include automobile manufacture, aerospace, information technology, electronics, chemicals, pharmaceuticals and fashion.⁵⁹

The European Union is a geo-political entity covering a large portion of the European continent. It is founded upon numerous treaties and has undergone expansions that have taken it from 6 member states to 27, the majority of states in Europe.⁶⁰

⁵⁹ http://europa.eu/abc/european_countries/eu_members/france/index_en.htm

⁶⁰ http://en.wikipedia.org/wiki/History_of_the_European_Union

France was chosen as a benchmarking country for this project, based on the following:

- France is a developed country with well developed customs laws and administration;
- France has land and sea borders which are similar to that of South Africa;
- France is very involved in the World Customs Organisation and, prior to EU incorporation had customs laws which have been in existence since before 1886;
- The current Secretary-General of the WCO is a former French customs official;
- It was reasonable to assume that South Africa would benefit from the knowledge, experience and expertise of the French Customs Administration.

We contacted the French Embassy and French Consulate in South Africa, who informed us that France no longer enforces French customs legislation in France, but rather adhere to and enforce the EU Customs legislation and regulations. We attempted to get specific information from French officials based in South African and France on practical experiences relating to customs fraud within the context of the EU legislation, but received no response, despite various written requests. As a result, the information reflected in this report is based on a desktop exercise and reflects the customs administration rules and policies of the EU only.

4.3.2 THE EUROPEAN UNION CUSTOMS ADMINISTRATION

The Customs Union was one of the EU's earliest milestones. It abolished customs duties at internal borders and put in place a uniform system for taxing imports. Internal border controls subsequently disappeared. Customs officers are now found only at the EU's external borders. They not only keep trade flowing, but help protect the environment and the cultural heritage, and protect jobs by combating counterfeiting and piracy.⁶¹

The customs union is a single trading area where all goods circulate freely, whether made within the EU or imported from outside. Examples:

- A Finnish mobile phone can be dispatched to Hungary without paying any duty and without any customs control;
- Duty on a TV from South Korea is paid when it first enters the EU, but after that there is nothing more to pay and there are no more checks.

⁶¹ http://europa.eu/pol/cust/index_en.htm

Customs activity remains very important nevertheless. Customs services in the EU handle nearly 20% of world imports. That is more than two billion tonnes of goods per year. EU Customs process well over 100 million customs declarations annually.⁶²

An example of customs fraud that the EU experiences: the EU lowers its tariffs on many imports from poor countries. Some importers try to qualify their goods for a lower tariff by producing false certificates of origin from one of these countries.⁶³

4.3.3 CUSTOMS LEGISLATION AND REGULATIONS

The following is a summary of the legislation under which the European Customs Union (ECU) operates:

4.3.3.1 EU Legislation - 02 Customs Union and free movement of goods

The EU legislation is vast and comprehensive, which prohibits us from stating each separate piece of legislation in this report. The following is a summary of the EU legislation that is in force for all member states⁶⁴:

- General - number of acts: 11;
- Statistics - number of acts: 212;
- General Customs Rules - number of acts: 20;
- Basic Customs Instruments - number of acts: 279;
- Application of the Common Customs Tariff - number of acts: 373;
- Specific Customs Rules - number of acts: 198;
- Mutual Assistance - number of acts: 5;
- Proceedings and Penalties - number of acts: 10; and
- International Customs Cooperation - number of acts: 65.

⁶² http://europa.eu/pol/cust/index_en.htm

⁶³ http://europa.eu/pol/cust/index_en.htm

⁶⁴ <http://eur-lex.europa.eu/en/legis/latest/chap02.htm>

4.3.3.2 Customs Tariffs Classification: Combined Nomenclature, Common Customs Tariff and Integrated Tariff of the European Communities (Taric)

Council Regulation (EEC) No 2658/87 of 23 July 1987 established a Combined Nomenclature and created the Taric.

The *Combined Nomenclature* is the tariff and statistical nomenclature of the ECU. The *Common Customs Tariff* is the external tariff applied to products imported into the EU. The *Integrated Tariff of the European Communities* is referred to as 'Taric'.

Taric incorporates all EU Community and trade measures applied to goods imported into and exported out of the EU Community. It comprises all customs duty rates and Community rules applicable to the Community's external trade. The European Community customs tariff has this Regulation as its legal basis. Taric allows goods clearance by the Member States. It also provides the best means of collecting, exchanging and publishing data on Community external trade statistics.⁶⁵

The Combined Nomenclature (CN) was established to satisfy Common Customs Tariff and Community external trade requirements. It is based on the Harmonised System nomenclature and supplements it with its own subdivisions referred to as "CN subheadings". The Combined Nomenclature is the result of the merger between the Common Customs Tariff nomenclature and Nimexe (Community Statistical Nomenclature).⁶⁶

The Taric is based on the Combined Nomenclature. It comprises additional Community subdivisions, referred to as "Taric subheadings" used to describe goods and their code number, customs duty rates depending on the origin of the goods, and many trade policy measures.⁶⁷

Each CN subheading has an eight digit code number. The first six digits refer to the harmonised system headings and subheadings. The seventh and eighth digits represent the CN subheadings. The ninth and tenth digits represent Taric subheadings.⁶⁸

⁶⁵ http://europa.eu/legislation_summaries/customs/l11003_en.htm

⁶⁶ http://europa.eu/legislation_summaries/customs/l11003_en.htm

⁶⁷ http://europa.eu/legislation_summaries/customs/l11003_en.htm

⁶⁸ http://europa.eu/legislation_summaries/customs/l11003_en.htm

4.3.3.3 EU Trade Agreements and International Conventions – with specific reference to China

The EU has trade agreements with the following countries:⁶⁹

Canada	China
Hong Kong	India
Republic of Korea	Japan
EU/US agreements in respect of container security	

We discuss the EU Agreement with China in more detail, simply because China has the majority share in the South African import market in respect of some of the sectors discussed.

The EU Agreement with China

Operations which breach customs legislation, including infringements of intellectual property rights, are prejudicial to the economic and financial interests of the EU Community and Chinese players alike. The European Union and China have concluded an agreement to enhance cooperation between their administrative authorities. The advantage of such cooperation for the EU budget and the European taxpayer is clear: own resources derive in part from customs duties.⁷⁰

Applicable EU Legislation

Council Decision 2004/889/EC of 16 November 2004 deals with the conclusion of an agreement between the European Community and the Government of the People's Republic of China on cooperation and mutual administrative assistance in customs matters.⁷¹

This agreement aims to improve co-operation between the administrative authorities responsible for the application of customs legislation. Actions to address breaches of EU and Chinese customs legislation are more effective if it is backed up by mutual assistance in customs matters.

⁶⁹ http://europa.eu/legislation_summaries/customs/index_en.htm

⁷⁰ http://europa.eu/legislation_summaries/customs/133309_en.htm

⁷¹ http://europa.eu/legislation_summaries/customs/133309_en.htm

The operations concerned are those prejudicial to the economic, fiscal and commercial interests of the two states: it is essential to any state to ensure the accurate assessment of customs duties and other taxes.⁷²

Developing customs cooperation

In terms of the agreement, the parties undertake to develop customs cooperation, in particular by:

- Establishing channels of communication;
- Facilitating effective coordination between administrative authorities;
- Providing for joint action on administrative matters;
- Facilitating the legitimate movement of goods;
- Exchanging information and expertise on customs procedures;
- Providing each other with technical assistance, e.g. exchanges of personnel and experts, training and the exchange of professional data, etc.; and
- Seeking a coordinated position when customs topics are discussed in international organisations.

Mutual administrative assistance

Under this agreement, customs authorities will assist each other by providing information to ensure the proper application of customs legislation. This agreement, however, should not prejudice the application of existing rules governing mutual assistance in criminal matters. Nor should it apply to information obtained at the request of judicial authorities. However, assistance to recover duties, taxes or fines, the arrest or detention of any person and the seizure or detention of property is not covered by this agreement. The agreement provides both for 1) assistance on request and 2) spontaneous assistance.

1. **Assistance on request:** the requested authority must provide the applicant authority with all information which may enable it to ensure that customs legislation is correctly applied. Such information may relate to:

⁷² http://europa.eu/legislation_summaries/customs/l33309_en.htm

- Activities that may result in offences within the territory of the other party, for example, the presentation of incorrect declarations or other falsified documents;
- The authenticity of official documents produced in support of a goods declaration; and
- The legality of exports and imports of goods from the territory of one of the contracting parties to the territory of the other and the customs procedure applied.

The requested authority must also, within the framework of its competence and at the request of the applicant authority, take the necessary steps to ensure special surveillance. Surveillance relates to persons in respect of whom there are reasonable grounds for believing that they have committed an infringement of the customs legislation of one of the parties. It can also cover places, stocks and goods transported, as well as means of transport that may have been used under fraudulent conditions.

2. **Spontaneous assistance: in cases where a formal request is not possible in view of the urgency of a situation that could involve substantial damage to the economy, public health, public security or similar vital interest, the parties will assist each other at their own initiative.**

Requests must comply with certain requirements of form and substance in relation to:

- The formal endorsement of the applicant authority;
- The action requested;
- The object of and the reason for the request.

The requested authority proceeds, within the limits of its competence and available resources, as though it were acting on its own account. It executes the requests in accordance with the legally binding instruments applicable in its own jurisdiction. The response must be in writing. Exceptions to the obligation to provide assistance are allowed: assistance may be refused or may be subject to certain requirements if it is likely to prejudice:

- The sovereignty of the People's Republic of China or that of an EU Member State which has been requested to provide assistance;
- Public order, security or other essential interests.

The agreement contains confidentiality clauses in relation to the information provided. The agreement applies to the customs territory of the People's Republic of China and to the territories in which the Treaty establishing the European Communities is applied, i.e. in the 25 EU Member States. The agreement came into force on 1 April 2005.

4.3.4 STRUCTURE OF FRENCH CUSTOMS SERVICES BODY

4.3.4.1 Introduction

The French Customs Services body consist of the following role players:⁷³

- The National Directorate for Recruitment and Vocational Training (DNRFP) is responsible for implementing the policy on recruitment and basic vocational and advanced in-service training for all the customs staff (3 schools in all);
- The Customs IT Centre (CID) is responsible for developing, maintaining, and running the processing software for customs clearance and excise operations and for developing the customs administration's computer applications;
- The National Directorate for Foreign Trade Statistics (DNSCE) compiles and publishes foreign-trade and balance-of-trade statistics and undertakes commissioned statistical work for businesses;
- The National Customs Intelligence and Investigations Directorate (DNRED), specialising in serious fraud, operates throughout French customs territory (metropolitan France and French overseas departments);
- The National Judicial Customs Department (SNDJ) headed by a magistrate is staffed by what is called 'Judicial Customs Officers';
- The Joint Department of Laboratories (service commun des laboratoires, SCL) forms part of this structure.

⁷³ <http://www.douane.gouv.fr/page.asp?id=3618>

4.3.4.2 Employment of staff:

As of January 1 2007, French customs had a staff of 18,836 (36% of the workforce are women) scattered across mainland and overseas France.

Customs operational departments are divided into 2 branches:

- *Commercial Transactions* (i.e. 54% of customs workers) in charge of goods clearance and indirect taxes; and
- *Surveillance* (46%) in charge of monitoring people, goods in transit and means of transport.

Further structure:

- There are 12 inter-regions, with 39 regional directorates, and 4 regional coastguard directorates,
- There are 43 regional tax collection offices, 261 customs offices, 60 wine growing centres, 302 surveillance brigades (smuggling/trafficking prevention, passenger processing, etc.), including 238 land brigades and 64 sea brigades.⁷⁴

4.3.5 LEVELS OF COOPERATION BETWEEN ENFORCEMENT AGENCIES AND RELEVANT STAKEHOLDERS

Legal obligations and political commitments for police and customs cooperation arise under the following measures:

- Treaty on European Union;
- Schengen Convention;
- 1998 Vienna Action Plan;
- Conclusions of the Tampere European Council of October 1999.

⁷⁴ <http://www.douane.gouv.fr/page.asp?id=3618>

4.3.5.1 Enhancing police and customs cooperation in the European Union⁷⁵

Co-operation between EU Member States' police forces and customs administrations is crucial to the maintenance of an area of security.

Communication from the Commission to the European Parliament and the Council: enhancing police and customs cooperation in the European Union [COM (2004) 376].

On 18 May 2004 the European Commission adopted the above communication to enhance police and customs cooperation. It recommended increasing information exchange and strengthening cross-border cooperation. It was considered necessary to create a common culture and common instruments and methods.

The need to make progress in this policy area is highlighted by the challenges of today's world, in particular combating terrorism. The European Commission focused on the following factors that adversely affect police and customs cooperation:

- Nature of police work;
- Lack of a strategic approach;
- Proliferation of non-binding instruments;
- Decision-making procedures in police and judicial co-operation in criminal matters;
- Insufficient implementation of legal instruments adopted by the Council;
- Lack of empirical research on police and customs cooperation;
- Databases and communication systems.

The Communication did not address matters relating to judicial cooperation, administrative assistance in customs matters concerning economic, social and environmental policies and preventive measures; or did so only to a limited degree. Police cooperation within the Union supplemented existing bilateral cooperation between Member States. The AGIS programme provided financial support for police and customs cooperation within the European Union.

⁷⁵ http://europa.eu/legislation_summaries/customs/116000_en.htm

4.3.5.2 Police co-operation⁷⁶

The Commission covered and assessed the achievements of the police and other competent services in the context of Schengen cooperation, Europol, police cooperation at operational level, the European Police College (CEPOL) and other areas mentioned in Article 30 of the Treaty on European Union (TEU), such as investigative techniques and combating terrorism.

The Schengen Convention

The following articles in the Schengen Convention are considered most relevant to police cooperation:⁷⁷

- Article 39 stipulates that Member States' police authorities are to assist each other to prevent and detect criminal offences. It finds that disputes occur because the competences of police in the different Member States differ widely. Nevertheless, it considers that bilateral and trilateral cooperation between Member States on the establishment of cooperation and information exchange structures in the form of Joint Police Stations and Police and Customs Cooperation Centres (PCCC) at internal frontiers has made good progress. Such cooperation centres have proved effective in addressing the "security deficits" in border regions caused by the abolition of border controls and the fact that law-enforcement services' intervention has to stop at the internal borders. The Vienna Action Plan calls for the extension of such cross-border cooperation;
- Article 44 seeks to improve communication links such as telephone, fax and computers in border areas. Since no data are available for cross-border operations, the Commission cannot assess whether real communication needs remain unattended but considers that the main obstacle to radio communications is a lack of interoperable communication systems;
- Article 45 stipulates that Member States must undertake to adopt the necessary measures to ensure that non-nationals complete and sign registration forms and confirm their identity by providing a valid identity document. This information can be crucial for the police;
- Article 46 gives police authorities the right to exchange information with another Member State on their own initiative to prevent crime and threats to public order;

⁷⁶ http://europa.eu/legislation_summaries/customs/116000_en.htm

⁷⁷ http://europa.eu/legislation_summaries/customs/116000_en.htm

- Articles 93 are intended to maintain public order and security, including security of the State, through information exchange via the Schengen Information System (SIS). In 1999, ten Member States were using the SIS and their number has now grown to 17. The current SIS was conceived for only 18 users and the ten Member States that acceded on 1 May 2004 must be connected in the future. The Commission has therefore been entrusted with the development of a second-generation SIS (SIS II). It considers that the SIS is crucial to police cooperation in Europe;
- The other articles of the Schengen Convention establish cooperation instruments concerning discreet surveillance of a suspect (Article 40) and where a person is caught in the act and avoids arrest by crossing international borders (Articles 41-43). The Commission finds that these instruments are rarely used.⁷⁸

Cooperation within Europol

Various measures concerning Europol have been implemented, producing mixed results, however. For example, a protocol extending Europol's competence to money laundering was adopted by the Council in 2000, but nine Member States had yet to ratify it on the date of the Communication. Moreover, the reluctance of Member States to transmit information and intelligence to Europol is hampering its operational development.

The Communication reviews progress achieved through signing cooperation agreements with third countries, such as the United States, following the events of 11 September. The Commission notes that a key prerequisite for Europol's effective functioning will be the existence of the Europol Information System (EIS), which Europol has been working on for the past few years. The EIS will allow decentralised storage and retrieval of information on organised crime held by Member States.

The Commission has made recommendations to improve democratic control of Europol. It takes the view that an awareness programme is essential to improve mutual understanding and cooperation between Europol and the Member States' law-enforcement services.

The Task Force of EU Police Chiefs

The Tampere European Council called for the establishment of a "European Police Chiefs Operational Task Force" (TFPC) to exchange experience, best practices and information on current trends in cross-border crime, in cooperation with Europol. It meets twice a year.

⁷⁸ http://europa.eu/legislation_summaries/customs/116000_en.htm

It has taken a large number of initiatives, particularly regarding the protection of the euro, which have, however, failed to lead to an operational added value at EU level. The Commission explains this lack of effectiveness by the fact that leading police officials of the Member States usually have to deal with a great number of issues, so that European issues are only one of many priorities. In addition, there are considerable differences in the competences of police representatives.

In some Member States there is one national head of police, whereas in countries with federal systems the representation is quite complex. In addition, organisational weaknesses have added to the problems of the TFPC's work: since only one meeting of the Task Force is held per Council Presidency, agendas are overloaded, which does not make for effective work. Nevertheless, TFPC meetings are considerably improving bilateral contacts.

The European Police College⁷⁹

By decision of 22 December 2000 [Official Journal L 336 of 30 December 2000] the Council established the European Police College (CEPOL). CEPOL assists the national police in increasing their knowledge of the operational structures of police in other Member States. In addition it aims to improve mutual understanding of Europol and police cooperation in the EU and at international level.

CEPOL has had a difficult beginning: it lacked a budget, did not have legal personality and faced administrative difficulties. By decision of 24 July 2004 the Council gave CEPOL legal personality [Decision 2004/556/JAI, Official Journal L 251 of 27 July 2004]. Despite the institution's difficult beginning considerable progress has been achieved in the following areas:

- Its range of specialised training is constantly increasing, extending from cooperation in counter-terrorism to public order and border control at the EU's internal frontiers, etc.;
- It has set up its own CEPOL website;
- It has established the European Police Learning Network (EPLN), an Internet site offering virtual police training. The Commission has supported the development of the EPLN through the OISIN and AGIS programmes.

⁷⁹ http://europa.eu/legislation_summaries/customs/116000_en.htm

The Commission noted that insufficient knowledge of foreign languages among members of European police forces may hinder effective cooperation. CEPOL should draw up joint programmes and courses for priority areas of policy cooperation.

Other subjects of police cooperation⁸⁰

The Communication deals with other significant subject areas of police co-operation, *inter alia* investigative techniques, forensic science, terrorism, public order and security of high-level meetings.

4.3.5.3 Customs Cooperation⁸¹

Customs cooperation plays a vital role in combating serious international crime such as illicit traffic in drugs, weapons, munitions, explosive materials, the theft of cultural goods, materials or equipment intended for the manufacture of atomic, biological and/or chemical weapons, etc.

The Vienna Action Plan sets out more specific aims for customs cooperation, in particular the ratification of the following:

- Convention on mutual assistance and co-operation between Member States: the Commission considers that the Member States do not make sufficient use of the special forms of cooperation such as hot pursuit, cross-border surveillance, etc. provided for in the Convention;
- Convention on the use of information technology for customs purposes: the Commission, with the support of the Member States, has made good progress with the technical development of the database. It calls on the Member States to supplement the CIS database.

Customs cooperation was introduced into the intergovernmental part of the Maastricht Treaty on European Union in 1992. However, an important element in customs cooperation is found in Article 135 of the Treaty establishing the European Community, which authorises the Council, acting on the Commission's proposal, to take measures to strengthen customs cooperation between Member States.

⁸⁰ http://europa.eu/legislation_summaries/customs/116000_en.htm

⁸¹ http://europa.eu/legislation_summaries/customs/116000_en.htm

4.3.5.4 Progressing Towards Effective Cooperation⁸²

The Commission is focusing on the following improvements:

- The nature of police work: police work goes to the heart of what constitutes a sovereign State. It is therefore understandable that States are reluctant to participate in international arrangements which encroach on national sovereignty. The Commission hopes to build up a culture of trust and cooperation with the competent authorities for sharing information that is essential for international cooperation. It considers it essential to designate central national contact points for the international exchange of information. Member States must have an electronic system for the safe and rapid exchange of information. Technical investigative tools facilitating cooperation must be used effectively by the judicial authorities;
- Strategic approach: the Commission regrets the lack of a strategic approach. Thus every Council Presidency defines a set of priorities according to its own priorities. The requirement of unanimity in decision-making in this area slows progress even more. The Convention on the future of Europe proposes improved decision-making mechanisms;
- Proliferation of non-binding instruments: a problem with intergovernmental cooperation remains the non-binding nature of the instruments approved, such as recommendations. If Member States consider a given subject important enough to be discussed at Council level, then such discussions should result in measures which are effectively implemented by all;
- Decision-making procedures: the Commission considers that the slow progress in police and customs cooperation can be linked to the decision-making rules. The Council must decide by unanimity. The right of initiative is shared between the Commission and the Member States. The Commission believes that the balance achieved in the Constitutional Treaty well reflects the respective competences of the Member States and the Union. The Constitution offers a considerable improvement in the decision-making procedure. It provides that decisions relating to the framework and mechanisms for cooperation (e.g. Europol) are to be taken by qualified majority and co-decision. Decisions on operational cooperation (e.g. operation by one Member State in the territory of another) remain subject to unanimity;

⁸² http://europa.eu/legislation_summaries/customs/116000_en.htm

- Implementation of legal instruments: the Commission is critical of the slow implementation of legal instruments adopted by the Council. It points out that the Laeken European Council of December 2001 reaffirmed the need for decisions taken by the Union to be transposed quickly into national law;
- Research on police and customs cooperation: the Commission finds that scientific research into police and customs cooperation has a number of shortcomings. Adequate funding needs to be made available for research, as a shared responsibility of the Member States and the Union;
- Cooperation between police and customs⁸³: the Commission hopes to secure more effective coordination and communication between police forces and customs authorities;
- Databases and communication systems: a number of databases and communication systems exist at European level. The main examples are: the EIS, the SIS, the CIS and the Customs Files Identification Database. There is a risk of duplication between some of them. The Commission also questions their interoperability. Three possible options should be considered:
 - Merge the existing systems into a single "Union Information System";
 - Keep the systems independent and allow the creation of new systems as required;
 - Investigate and implement the harmonisation of the data formats and the respective access rules between the various systems.

4.3.6 LEVEL OF RESOURCING OF ENFORCEMENT AGENCIES

4.3.6.1 French Customs' Equipment⁸³

- Vehicle fleet: 2,957 vehicles and 343 motorcycles;
- Marine fleet: 2 forty-three-meter coastguard patrol boats, recently commissioned on the Atlantic and Channel-North sea maritime facades, 20 nineteen to thirty-two-meter coastguard launches, 16 ten to fourteen-meter close-surveillance launches in charge of patrolling the coastal approach up to 24 miles offshore, 3 training vessels;

⁸³ <http://www.douane.gouv.fr/page.asp?id=3618>

- Air fleet: 12 twin-engine planes equipped to monitor approaches to territorial waters up to 200 nautical miles away (2 are equipped with a Polmar system for remote marine pollution detection), 5 new generation helicopters with a 12 nautical mile flight range (zone of the territorial waters), to detect suspicious vessels and guide coastguard launches to their location so the vessels can be controlled;
- Detection equipment: 17 particle detectors, 2 mobile scanning vehicles, 79 density meters, 1 X-ray machine for containers, 48 radioactivity detectors, 64 X-ray machines for customs/safety inspections of hold luggage;
- In addition, 252 dog-handler teams assigned to drug and explosive detection, 224 motorcycle officers, 169 pilots and flight engineers, 615 seamen.

4.3.6.2 EU view on detection technologies

Detection technologies in the work of law enforcement, customs and other security services⁸⁴

The Green Paper⁸⁵ discussed below aimed to stimulate partnerships between public and private sectors regarding the development of detection technologies to improve European policy in this area.

Green Paper the Commission on 1 September 2006, on detection technologies in the work of law enforcement, customs and other security services [COM (2006) 474 final]

The fight against crime and terrorism is an important element of European security policy. To combat terrorism and other forms of crime, security services and police authorities rely on detection technologies, for example to protect the borders, check the importation of goods and safeguard private property and infrastructure.⁸⁶

Public-Private Partnership

This Green Paper aims to encourage the development of detection technologies to improve European policy in this area. It aims to foster partnership between public and private sectors in the form of joint action, better coordination and information exchange. This will stimulate the development of a market related to technology on the certification and interoperability of detection systems and safety devices.

⁸⁴ http://europa.eu/legislation_summaries/customs/l11099_fr.htm

⁸⁵ <http://europa.eu/geninfo/query/resultaction.jsp?page=1>

⁸⁶ http://europa.eu/legislation_summaries/customs/l11099_fr.htm

The dialogue between the public and private sectors should focus primarily on investments in standardization, certification and research tools of detection. The results should be converted into tools, products and services necessary and appropriate that are widely available at lower cost.⁸⁷

Fundamental rights

The Green Paper stresses that the design, manufacture and use of detection systems and related systems must fully respect fundamental rights enshrined in the Charter of Fundamental Rights of the European Union (EU) and the European Convention on Human Rights.⁸⁸

Specific activities

A number of specific activities are planned to help improve the public-private dialogue in the field of detection technologies to access the best tools, solutions and practices. It is mainly active in the field:

- Standardization (development of minimum standards and common) and research on safety;
- The development of flexible solutions, portable and mobile product quality, effective and usable, and the interoperability of systems;
- Dissemination of best practices, use and identification of equipment and tools (new and existing), for example in respect of instruments of data mining and text;
- Certification and testing equipment and tools; and
- Work on issues that require further studies.⁸⁹

4.3.7 PREVALENCE OF CUSTOMS FRAUD

French customs filed 102,471 reports, and significant results were recorded. The following items were seized during 2007:⁹⁰

- 4,600,000 counterfeit products;
- 49.7 tons of narcotics;
- 202 tons of tobacco and cigarettes;

⁸⁷ http://europa.eu/legislation_summaries/customs/111099_fr.htm

⁸⁸ http://europa.eu/legislation_summaries/customs/111099_fr.htm

⁸⁹ http://europa.eu/legislation_summaries/customs/111099_fr.htm

⁹⁰ <http://www.douane.gouv.fr/page.asp?id=3618>

- 25,000 specimens of endangered species;
- 1,200 works of art;
- 5,991 weapons.

During the 2007 campaign, controlling safety standards, more than 1.6 million items were controlled by customs and 187 samples were analysed (43% of them were dangerous for consumers).

The importance of effective customs operations can be seen in the following:

- Customs officers do a vital job in collecting statistics;
- Their records contribute to decisions on whether to introduce limits on goods which may be competing unfairly with EU products;
- They collect trade flow data which help policymakers detect economic trends;
- Customs officers make sure that anyone travelling with large amounts of cash or its equivalent (such as bearer bonds or cheques) is not laundering money or evading tax;
- They help fight illicit traffic in people, drugs, pornography and firearms;
- They support the work of the police and immigration services in combating organised crime and terrorism.⁹¹

Customs officers are also responsible for detecting fraud in value-added tax (VAT) declarations and payments, or the evasion of excise duties on items such as cigarettes. Without this work by customs officers, it would be all too easy for goods to disappear into the black economy rather than entering the tax system, or for unscrupulous businesspeople to report fictitious trade.

By collecting money in customs duties and levies on agricultural imports, customs officers are not just enforcing trade rules. They are making an important contribution to funding the EU. This revenue makes up 15% of the EU budget. By fighting VAT fraud they help safeguard the source of another 16% of the budget. At the same time, customs officers must respect individual citizens' right to buy goods in another EU country.⁹²

⁹¹ http://europa.eu/pol/cust/index_en.htm

⁹² http://europa.eu/pol/cust/index_en.htm

Customs officers are at the front line in tackling counterfeiting of goods as diverse as mobile phones and medicines, and piracy of items such as CDs and software in the interests of public health and safety, and the jobs of those who work in legitimate businesses producing these goods. This requires a keen eye for the difference between jeans or watches genuinely made by big-name fashion houses and items that are merely copies. EU customs officials seized 250 million counterfeit items in 2006.⁹³

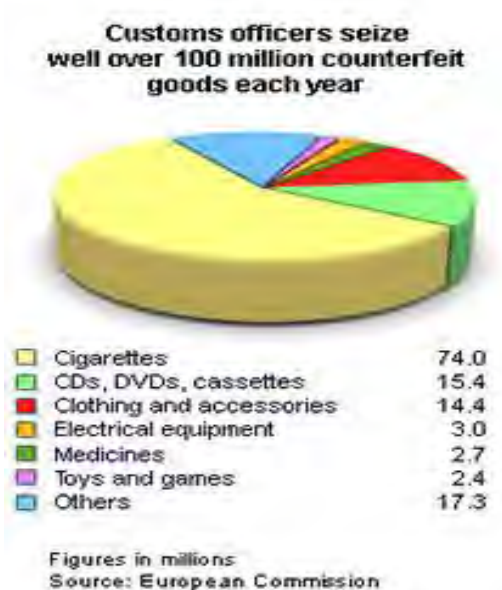
Transparency International (TI) provides a useful guide as to the relative compliance culture within France. The TI Corruption Perception Index (CPI) measures the perceived level of public-sector corruption in 180 countries and territories around the world. This survey is based on 13 different expert and business surveys. France was ranked 24th out of the 180 countries for the 2009 CPI scoring 6.9.

The TI's 2008 Bribe Payers Index (BPI) placed France in 9th place out of the 22 countries represented with a score of 8.1 out of 10 indicating that that French firms are seen as less likely to bribe abroad.

4.3.8 AREAS OF CUSTOMS FRAUD AND ILLEGAL IMPORTS IN THE EU

The pie chart below relates to the EU, and not to France only. Since a specific period was not provided for the back-up data supporting the pie chart, we accept that it relates to the whole customs history of the EU. It is very useful in showing the sectors within which customs fraud are being experienced.

Figure 6



⁹³ http://europa.eu/pol/cust/index_en.htm

4.3.9 INTELLIGENCE AND ENFORCEMENT ORIENTED PROGRAMMES AND INITIATIVES

4.3.9.1 *The role of customs in the integrated management of external borders*⁹⁴

The EU is constantly working on updating and automating procedures which will smooth trade across its internal and external borders. Within the next couple of years, customs will become paperless. And within a few years, the customs networks of all member states will be fully integrated electronically, providing a 'one-stop-shop' system for traders for their customs dealings throughout the EU.⁹⁵

With a view to simplifying administrative formalities while enhancing security, the European Commission has adopted a communication on rationalising the management of customs controls on the EU's external borders.

To do this, it suggests implementing a common approach to goods-linked risks involving all the relevant authorities so as to concentrate controls at border posts with the greatest risks. The communication's objective is to enable customs authorities and other authorities responsible for the management of goods at external borders to control security and safety risks in a coordinated fashion without putting an excessive burden on legitimate trade.

4.3.9.2 *Communication of 24 April 2003 from the Commission to the Council, European Parliament and the European Economic and Social Committee on the role of customs in the integrated management of external borders [COM(2003) 452 final - Official Journal C 96 of 21.4.2004]*⁹⁶

The present customs controls applied to goods are not adequate to protect the Member States from the growing threats to the EU at its external borders. Chief among these are:

- Criminal and terrorist threats: this category includes the introduction into the EU Community of prohibited goods such as explosives or nuclear, biological or chemical weapons, and also smuggling or trafficking of illegal goods such as drugs, cigarettes and counterfeit goods, often used to finance to finance terrorist organisations or organised crime;

⁹⁴ http://europa.eu/legislation_summaries/customs/111019_en.htm

⁹⁵ http://europa.eu/pol/cust/index_en.htm

⁹⁶ http://europa.eu/legislation_summaries/customs/111019_en.htm

- Health and safety risks to consumers: this category covers the unauthorised import of contaminated goods, narcotics and anabolic substances, and medicines and consumer products that do not comply with Community safety standards;
- Environmental and health risks: these include illegal trafficking of species of fauna and flora in danger of extinction, radioactive matter and risks associated with the undeclared introduction into Community territory of animal or vegetable species or products.

At present the measures, priorities, investment, equipment and resources used to combat these threats and protect the EU and its citizens differ from one Member State to the next. This means that security controls are neither harmonised nor uniform at Community level, and responses to threats at the external borders are sometimes slow. Common, integrated management of the external borders therefore needs to be established.⁹⁷

Customs operations need to be reorganised to increase the safety of goods. Hence the Communication proposes rationalising customs controls by identifying which ones could be carried out at internal borders to enable controls at external borders to focus on the goods that absolutely must be checked there for safety reasons.⁹⁸

The Commission proposes establishing a common approach to risk at the external borders. In the end this will mean all the authorities with responsibilities relating to the safety of goods (including customs, the police, consumer protection, health protection and environmental protection authorities) working together to establish priorities and define common risk profiles. The risk profiles can be used to identify the most relevant data for risk analyses.⁹⁹

In the long run this should also mean that traders will be able to electronically transmit all data on their goods to customs for initial identification of risks. The data should be supplied in electronic format to facilitate their transfer, evaluation and processing. Customs will then have to centralise the information and send it to the competent authorities.

A single transmission channel will have to be set up for this purpose, and it should be possible to process the information on the basis of the profiles established by all the authorities concerned. Effective and rapid systems for information transmission between customs and the other relevant authorities will have to be set up and operated.¹⁰⁰

⁹⁷ http://europa.eu/legislation_summaries/customs/l11019_en.htm

⁹⁸ http://europa.eu/legislation_summaries/customs/l11019_en.htm

⁹⁹ http://europa.eu/legislation_summaries/customs/l11019_en.htm

¹⁰⁰ http://europa.eu/legislation_summaries/customs/l11019_en.htm

Because of their experience in identifying movements of goods, Customs will have to cooperate more closely with the police in fraud investigations and have a more specific role in policing goods.¹⁰¹

The material and human resources necessary to implement the approach will need to be available at any point along the external borders. Where bulky or particularly expensive equipment is involved, it may be found desirable to designate certain specialised border posts to control certain well-defined types of goods, and to provide them with the necessary special equipment. This would make it possible to spread equipment costs more equitably and to concentrate expertise at these specialised posts. However, such specialisation should not create an obstacle to legitimate trade by imposing additional costs for processing goods at posts far from their destinations.¹⁰²

The proposal presents initiatives which could be introduced for sharing data on goods moving from one country to another to allow more effective identification of high-risk traffic. This would allow the transfer of data received from the exporting country, where information is easier to locate and fuller, and so accelerate customs procedures without compromising security. The Community should promote this principle of sharing responsibility with its neighbours and main trade partners. The Community should also step up export controls.¹⁰³ In the interests of risk management on its external borders, the Community should increase its cooperation with third countries and countries with which it shares borders. Measures to support the new Member States should also be adopted.¹⁰⁴

4.3.10 CAPACITY BUILDING AND TRAINING PROGRAMMES

France plays an important role in the Customs Fellowship Programme; funds the Fellowship Programme; and is active in training programmes for other countries with WCO.

¹⁰¹ http://europa.eu/legislation_summaries/customs/l11019_en.htm

¹⁰² http://europa.eu/legislation_summaries/customs/l11019_en.htm

¹⁰³ http://europa.eu/legislation_summaries/customs/l11019_en.htm

¹⁰⁴ http://europa.eu/legislation_summaries/customs/l11019_en.htm

4.3.10.1 e-Learning courses in Customs and Taxation

The blending of electronic learning with other forms of learning is becoming well established within Customs and Taxation training across the European Union. The European Commission developed e-Learning courses on topics of common interest in collaboration with customs and taxation administrations and representatives of trade.¹⁰⁵

Such courses support the implementation of EU legislation and ensure the dissemination of good customs and taxation practices throughout the European Union. The courses are used in numerous administrations and businesses. This approach to training allows consistent coverage of topics of common interest, provides value for taxpayers' money and is an example of trade facilitation in operation.¹⁰⁶

4.3.10.2 Taxation and Customs Training Interactive Campus (TACTIC)

A web based interactive environment, the Taxation and Customs Training Interactive Campus (TACTIC) is currently under development in a pilot phase involving a number of participating countries. In this online environment, training administrations have the opportunity to share training information and resources, share good training practices and collaborate online towards the goal of achieving excellence in customs and taxation training in European countries. Online networking of this type also facilitates the development of collaborative training projects between countries.¹⁰⁷

¹⁰⁵ http://ec.europa.eu/taxation_customs/common/elearning/general_overview/index_en.htm

¹⁰⁶ http://ec.europa.eu/taxation_customs/common/elearning/general_overview/index_en.htm

¹⁰⁷ http://ec.europa.eu/taxation_customs/common/elearning/general_overview/index_en.htm

4.4 MALAYSIA – DEVELOPING COUNTRY



4.4.1 INTRODUCTION

Malaysia has one of the highest standards of living in South East Asia. Whilst South Africa's economy is ranked 25th in the world, Malaysia's is ranked the 29th, with a population of just over 25 million, about half South Africa's. Malaysia has successfully developed from a commodity-based economy (mainly exporting rubber and tin) to one focused on manufacturing. Industry contributes nearly 50% to the GDP. The country has attracted significant foreign investment which has played a significant role in the transformation of Malaysia's economy.

Malaysia is well known for its openness to international trade. Foreign trade accounts for more than double of the country's GDP. The top 3 export and import partners are the USA, Singapore and Japan. The commodities mainly exported; are electrical and electronic equipment, machinery, mineral fuels and oils, animal and vegetable oils, wood and wood charcoal. The country mainly imports electrical and electronic equipment, machinery, mineral fuels and oils, plastics, and iron and steel.

4.4.2 CUSTOMS LEGISLATION AND REGULATIONS

4.4.2.1 Customs Act, 1967

This Act provides for the levy and collection of customs duties and export duties, based on declarations presented by the importers or exporters (together with supporting documents). Physical examinations are also carried out at random to ascertain the accuracy of such declarations. The collection of these duties is done at all major sea ports and the international airports in the country.

4.4.2.2 Excise Act, 1976

In terms of this Act, excise duties are imposed on locally manufactured or assembled goods, by Custom Offices located throughout the country. Factories producing excisable goods are licensed under the Act; and are controlled either physically or by means of documents by the Royal Customs and Excise Department. In factories that are physically controlled, Customs Officers are stationed at the manufacturing premises to keep physical account of all taxable goods produced, stored and released. In documentarily controlled premises, weekly and monthly statements of production and releases are submitted to the Royal Customs and Excise Department. In both types of control, duty has to be paid before the goods are removed from the premises. The only exception to the rule is motor vehicles where excise duty is paid at the time of sale to the buyer.

4.4.2.3 Sales Tax Act, 1972

Sales tax is payable on both imported and locally manufactured goods. Sales tax on imported goods is collected by the Customs Division at the import station at the time of release from the Customs control. Manufacturers of taxable goods are required to be licensed under this act. Sales tax is imposed on licensees on all sales and they are required to furnish monthly returns or statements of sales together with tax payable within 28 days of the end of the month. The Customs Department also exercises control through the inspection of records and premises of the licensee.

4.4.2.4 Goods Vehicle Levy Act, 1983

This act was introduced to encourage local exporters to export their products through Malaysian ports. In terms of this act, a levy is imposed on all goods vehicles leaving Malaysia.

4.4.2.5 Wind Fall Profit Levy Act 1998

This Act provides for the imposition of a levy on windfall profit derived from the production of goods, and for matters connected thereto and stipulates, *"Any proper officer of Customs shall, in addition to the duties and powers conferred under the Customs Act 1967, have all the duties and powers to enforce and ensure due compliance with the provisions of this Act"*.

4.4.3 STRUCTURE OF CUSTOMS SERVICES BODY

4.4.3.1 National Law Enforcement Agencies and Level of Resourcing

The following law enforcement agencies are represented in Malaysia.

- Royal Malaysian Police;
- Royal Malaysian Customs;
- Malaysian Maritime Enforcement Agency;
- Malaysian Anti-corruption Commission; and
- Malaysian Prison Department.

4.4.3.2 Royal Malaysian Customs

The Royal Malaysian Customs [(RMC/JKDM) / (Malay: Kastam Diraja Malaysia (KDRM))] is **the government agency responsible for administering Malaysia's indirect tax policy**. In this regard, the RMC / KDRM administers 7 main and 39 subsidiary laws related to its mandate – in addition to implementing 18 other laws for other government agencies.

The Royal Malaysian Customs is governed by the Customs Act No 62 of 1967, which gave the whole of Malaysia a single Customs law leading to the issuing of a collective tariff for the 3 zones by the Indirect Tax Committee of the Treasury. JKDM has the following divisions:

- Enforcement;
- Compliance Management ;
- Customs;
- Internal Taxes;
- Technical Services;

- Administrative Services and Human Resource;
- Corporate Planning Division; and
- Royal Malaysia Customs Academy (AKMAL).

4.4.3.3 Structure of Customs Services Body

Currently, the administrative structure of the Customs and Excise Department is headed by a Director General, with Deputy Directors General for Enforcement and Compliance; Customs and Internal Taxes; and Management.

JKDM's core business is to collect tax and in line with its vision to be a respected, recognized and a world class Customs Administration. JKDM's mission is to collect revenue efficiently and help the expansion of trade and industry through continuous facilitation whilst enhancing legal compliance in order to safeguard the nation's economic, social and security interest.

4.4.3.4 Continuous Review

Since tax revenue constitutes 81% of the total Federal Government's revenue the Government has become increasingly dependent on such revenues. In an effort to meet its obligations, Government has been budgeting for increases in tax revenue, even though there have been reductions in tax rates. This, according to Malaysian authorities, can only be realised by strict compliance, voluntary compliance or through the tax laws. Since voluntary compliance cannot be solely relied upon, strict monitoring by the tax administrators is, therefore enforced.

One effective way Malaysia deals with this is by way of reviews by auditors on the effectiveness of existing revenue laws and procedures in order to identify deficiencies in the systems – thereby enabling tax administrators to introduce controls that can discourage, if not eliminate, tax evasion which, if unchecked, could eventually erode the tax base.

The National Audit Department has on several occasions been instrumental in bringing about important legislative changes in revenue administration, especially income taxes. The Customs Act for example revealed that while importers were required by statute to declare their imports within 30 days, there was no provision as to when the resultant duty had to be paid. This led to abuse by several importers who delayed payment of duties by several months.

As a result of observations raised by the National Audit Department the Customs Act was amended requiring importers to make payment within 14 days of the import. Several other systemic changes in the administration of revenue laws have also been made and will be explored.

4.4.4 COOPERATION BETWEEN ENFORCEMENT AGENCIES AND RELEVANT STAKEHOLDERS WITH REFERENCE TO ENFORCEMENT PROGRAMMES AND INITIATIVES

4.4.4.1 *Anti-Corruption Initiatives*

Malaysia is addressing anti-corruption and integrity as a national priority in the context of the national goal of having Malaysia as a fully developed country by 2020. Malaysia has recently deposited its instrument of ratification to the United Nations Convention against Corruption (UNCAC). The UNCAC ratification by Malaysia is a testimony of the government's commitment in promoting and strengthening measures to combat corruption at domestic, regional and global level, in line with the national agenda to make ethics and integrity as an integral part of society's norm and culture, said the statement. The ratification also reflects Malaysia's intention to be a full convention member and be proactive in combating corruption.

Malaysia has a comprehensive legal framework and well resourced specialist investigation and prosecution agencies to proactively combat corruption, including in customs fraud, across Malaysia. Malaysia also conducts training and awareness campaigns for the public and private sector in its effort to detect and prevent corruption.

Malaysia's Anti-Corruption Agency (ACA) has a strategic focus on utilising anti-money laundering tools to tackle the profit motive behind bribery and corruption. This involves close cooperation with the FIU and use of AML/CFT provisions to combat the laundering of proceeds of corruption.

The ACA has set up the Malaysia Anti-Corruption Academy (MACA) as a regional hub for capacity and capability building of domestic and international law enforcement officers.

4.4.4.2 *Licensed Bonded Warehouse*

In Malaysia, Manufacturing Bonded Warehouse is known as Licensed Manufacturing Warehouse (LMW) established under the provision of section 65/65A of the Customs Act 1967. LMW is a type of bonded warehouse, where the manufacturing process is allowed to be carried out to produce finished goods for export.

Manufacturing operation therein is subject to minimal customs procedures. It is primarily intended to cater for export oriented industries.

Customs duty exemption is given to all raw materials and components used directly in the manufacturing process of approved produce from the initial stage of manufacturing until the finished product is finally packed ready for export. This includes packing materials and casings. The list of raw materials/components that can be imported and taken to a licensed manufacturing warehouse without payments of customs duty is issued together with the licensed manufacturing warehouse license.

Goods subject to excise duty incorporated in the final product may be exempted from excise duty. Application for such excise duty exemption should be made to the Treasury for consideration. Machinery equipment required for direct manufacturing process of approved final products is entitled to exemption from customs duty and sales tax. Generally, licensed manufacturing warehouse are documentarily controlled by Customs. As such, Customs officers will not be stationed at the licensed premises.

Manufacturing process can be carried out without any time limit, but no dutiable goods shall be brought in or taken out of the licensed premises outside the normal opening hours without written permission from customs authority. In the case of goods for export, the licensee or his agent is required to submit a document to the officer of Customs in charge of the LMW concerned.

Finished goods specifically permitted to be sold in the domestic market, will be released from the LMW on payment of whatever customs duty and sales tax to be levied thereon, unless so exempted by the Minister of Finance. Goods to be released for domestic market must be declared on Customs Form no. 9 for payment of duty.

4.4.5 PREVALENCE OF CUSTOMS FRAUD

The 2009 Corruption Perceptions Index (CPI) of Transparency International has placed Malaysia at 56 and South Africa is 55 out of 180 countries ranked. The vast majority of the 180 countries included in the 2009 Corruption Perceptions Index (CPI) scored below five on a scale from 0 (perceived to be highly corrupt) to 10 (perceived to have low levels of corruption). **Malaysia's score is 4.5 whilst South Africa's is 4.7. The first Malaysia Transparency Perception Survey, published in 2006, described integrity and transparency in government agencies as problems that were "acute and serious."** The survey also found that the Police Force, Road Transport Departments and Customs and Excise Department were among the least transparent agencies.

4.4.6 AREAS OF CUSTOMS FRAUD AND ILLEGAL IMPORTS

4.4.6.1 *False declaration of goods*

The Environmental Investigation Agency (2005) reported that in the mid 1990s, it was estimated that one third of all logging in Malaysia was illegal; ten years on the heavy unsustainable exploitation continues, and as local forests have been clear cut for palm oil plantations, or deforested, domestic supplies have declined. Without enough of its own supply, Malaysia's timber industry has moved on to launder timber from Indonesia. The sandalwood logs were seized from a container declared to be carrying a cargo of conveyor belts. The operation was carried out in cooperation with the Indian High Commission in Malaysia.

4.4.6.2 *Subsidies by the Malaysian Government leads to smuggling and customs fraud*

The Malaysian government subsidizes and controls prices on a lot of essential items to keep the prices low. Prices of items such as palm oil cooking oil, petrol, flour, bread, rice and other essentials have been kept under market prices to keep cost of living low. In 2008, the government announced that it had spent R 40.1 billion in 2007 in subsidies to keep prices leveled. As of 2009, 22 per cent of government expenditures were subsidies, with petrol subsidies alone taking up 12 per cent.

Smuggling and hoarding, which leads to shortages, is a prominent problem in Malaysia due to the subsidies. For example, cooking oil is subsidized for domestic use only. This situation creates an environment where industrial players hoard domestic cooking oil for industrial use.

Customs fraud is another problem with subsidized commodities. Vehicles from Thailand come to Malaysia to smuggle cheap petrol and diesel out of the country. The government is now looking into restructuring the fuel subsidy so that the selected needy group will benefit from the subsidy. The government is considering removing its subsidy on diesel for general consumers while maintaining subsidies for the right groups, for example those involved in public transport. The government in the meantime promised cash rebates for owners of vehicles with engine capacities of 2 liters or less, and diesel subsidies for truck and bus operators.

4.4.7 CAPACITY BUILDING AND TRAINING PROGRAMMES

4.4.7.1 Royal Malaysian Customs Academy

As Malaysia moved towards political independence, there was a dire need to boost staff performance to fulfill the needs of the country. Consequently, in August, 1956 a training center, the Royal Malaysian Customs College, was established in Bukit Baru, Melaka. Subsequently in 1987, following several years of research and planning, the college was expanded; the name changed to the Royal Malaysian Customs Academy (Akademi Kastam Diraja Malaysia or AKMAL). In summary, AKMAL's purpose is to:

- Equip RMC staff with knowledge, skills and attitude to allow them to execute their designated jobs following their location; and
- Plan and execute scheduled training programs.

Malaysia has offered to be an ASEAN (Association of Southeast Asian Nations) Customs enforcement training agent in an effort to strengthen cooperation and enforcement operations in the region.

According to a representative of the Royal Malaysian Customs Academy, Mr Abdul Rahman, *"An interesting aspect of the course will be practical training where the participants will be involved in enforcement operations like mounting roadblocks and conducting raids. The training methodology will expose the foreign participants to our enforcement strategies which have been recognized as among the best in the world."* He also cited the smuggling of arms, drugs, dangerous chemical waste and timber as the main challenge facing ASEAN Customs. He further stated that one good strategy to deal with this would be strengthening regional cooperation in enforcement.

For a rapidly developing country like Malaysia, the WTO multilateral process remained the best approach to overcome market constraints according to its position. Bilateral and regional trade agreements were seen as being complementary and formed the building blocks for the multilateralism that Malaysia adopts.

4.4.7.2 Harmonised Commodity Description and Coding System

The Royal Malaysian Customs (RMC) is considering having the Harmonised Commodity Description and Coding System, in short called the HS code, included in the cargo manifest. The HS code is developed by the World Customs Organisation (WCO) and is used worldwide as the basis for classifying goods, collection of Customs revenue and trade statistics.

Currently this information has not been made mandatory by the RMC. Many developed nations however have made it mandatory for the HS code to be included in the manifest.

Having the HS code information in the manifest will facilitate the Royal Malaysian Customs, other government agencies (OGA) which are involved in import / export approvals / licensing, Zone Authorities and other relevant authorities in expediting the clearance and release of goods imported and exported. The RMC plans to have this proposal implemented from 1 February 2010.

Currently self-assessment system for customs declaration, valuation declaration, valuation advice, valuation ruling, appeal, transparency, guarantee system is being utilised. A high level of compliance to Customs Law is achieved by giving the burden of proof to the importer. Fraud or mistakes are detected through commodity expertise, physical examination, post clearance audit, and scanning machines. A systematic training program whereby new recruits are trained together with experienced officials, market intelligence, cooperation with other enforcing agencies and reward system combined contributed to better enforcement of customs measures.

The main challenge that the RMC faces arises from employment of ex-officers of RMC as consultants for importers who are well versed on the internal working of the Customs. This in some way has led to innovative ideas in tax evasion by adopting measures that are new to the system.

4.5 INDIA – DEVELOPING COUNTRY



4.5.1 INTRODUCTION

India's size is 3,287,590 square km, which is slightly more than one-third the size of the United States. Its border countries are Bangladesh, Bhutan, Burma, China, Nepal and Pakistan. Its coastline is approximately 7,000 km long. **India's land boundaries total 14,103km.**¹⁰⁸ Its main industries are textiles, chemicals, food processing, steel, transportation equipment, cement, mining, petroleum, machinery and software. Its main agricultural products are rice, wheat, oilseed, cotton, jute, tea, sugarcane, potatoes; cattle, water buffalo, sheep, goats, poultry and fish.¹⁰⁹

¹⁰⁸ <http://www.india.travelsphoto.com/india-facts.php>

¹⁰⁹ <http://www3.uakron.edu/worldciv/india/ind-facts.html>

4.5.2 CUSTOMS LEGISLATION AND REGULATIONS

4.5.2.1 Customs Act, 1962

Chapter – IV of the act provides for the detection of illegally imported goods and prevention of the disposal thereof. In terms of S28D of the Act, there is a presumption that the incidence of import duty has been passed on to the buyer (i.e. when the price of goods is indicated for purposes of refund). The Customs, Excise and Service Tax Appellate Tribunal is constituted under section 129.

4.5.2.2 Customs Tariff Act, 1975

The rates at which duties of customs shall be levied under the Customs Act are specified in the First and Second Schedules thereof. It also contains General Rules for the Interpretation of Import Tariff Classification of Goods and General Explanatory Notes to Import Tariff. Products eligible for preferential concessions must be supported by a Certificate of Origin.¹¹⁰

4.5.2.3 Commencement of Customs Tariff (Amendment) Ordinance, No 1 of 2003

Central Excise Act, 1944: provides for "free trade zone" and "special economic zone". The Tariff Commission is established under the Tariff Commission Act, 1951.

4.5.3 STRUCTURE OF CUSTOMS SERVICES BODY

4.5.3.1 Board of Excise and Customs

The Central Board of Excise and Customs (CBEC) is a part of the Department of Revenue under the Ministry of Finance. It deals with the tasks of:

- Formulation of policy concerning levy and collection of Customs and Central Excise duties;
- Prevention of smuggling; and
- Administration of matters relating to Customs, Central Excise and Narcotics.

¹¹⁰ <http://www.cbec.gov.in/customs/cs-act/formatted-htmls/agmt-undr-devped.htm>; <http://www.cbec.gov.in/customs/cs-act/formatted-htmls/cs-import-rule12.htm>

CBEC is the administrative authority for its subordinate organizations, including Custom Houses, Central Excise Commissionerates and the Central Revenues Control Laboratory.

The Directorate General of Central Excise Intelligence (DGCEI), headed by the Director General, is the apex intelligence organization under the CBEC, Department of Revenue, Ministry of Finance; for detecting evasion of central excise duties and service tax. DGCEI gathers intelligence relating to evasion of central excise duties and service tax and disseminates it to the field formations. At present DGCEI have 6 Zonal Units and 18 Regional Units.

4.5.3.2 The detailed charter of functions of DGCEI

- To collect, collate and disseminate intelligence relating to evasion of Central Excise Duties and Service Tax on all India basis;
- To study the *modus operandi* of evasion peculiar to various excisable commodities and to alert field formations about it;
- To study price structure, marketing patterns and classification in respect of evasion-prone commodities;
- To supplement and coordinate the efforts of the field formations in investigations wherever necessary;
- To maintain effective liaison with enforcement agencies like Central Economic Intelligence Bureau (CEIB), Directorate of Investigation (Income Tax), Sales Tax Authorities, Enforcement Directorate etc;
- To investigate offences involving evasion of Central Excise Duty having ramifications in more than one Commissionerate;
- To investigate complicated cases selected by the Directorate General or entrusted to it by the Ministry; and
- To examine and study the effects of various tax concessions, exemptions and relaxations in controls and to make recommendations to the Government to ensure that they do not become a source of evasion.

4.5.3.3 Directorate of Revenue Intelligence (DRI)¹¹¹

Set up in 1953, the organisation was charged with the responsibility of developing intelligence on matters connected with anti-smuggling and anti-corruption in the Customs and Central Excise formations all over the country. The original brief of DRI was extensive. There was no separate organization to deal with either evasion of central excise duties or prevent narcotic drug trafficking. Thus, the charter of DRI, as it stood then, encompassed all aspects of work pertaining to customs, central excise and narcotics, which required control, direction and investigation from the Centre.

With the passage of time and the growth in the problems relating to effective control of violations of such diverse laws, a need for specialisation and expertise arose. The result was the creation in 1978 of a separate Directorate of Anti-Evasion (now known as Directorate General of Central Excise Intelligence) to handle violations of Central Excise laws; and the creation of the Central Economic Intelligence Bureau in 1985 to co-ordinate activities amongst various enforcement agencies of the Department of Revenue.

This Directorate's mission is:

- The collection of intelligence about smuggling of contraband goods, narcotics, under-invoicing etc. through sources of India and abroad, including secret sources;
- The analysis and dissemination of such intelligence to the field formations for action;
- Working out of intelligence by the Directorate officers themselves to a successful **conclusion, where necessary'**
- Keeping watch over important seizures and investigation cases;
- Associating or taking over the investigations which warrant specialised handling by the Directorate;
- Guiding important investigation/prosecution cases;
- Functioning as the liaison authority for exchange of information among ESCAP countries for combating international smuggling and customs frauds in terms of the recommendation of the ESCAP conference;
- Keeping liaison with foreign countries, Indian Missions and enforcement agencies abroad on anti-smuggling matters;

¹¹¹ <http://www.dri.nic.in/>

- Maintaining liaison with C.B.I. and through them with the INTERPOL;
- Co-ordinating, directing and controlling anti-smuggling operations on the Indo-Nepal border;
- Referring cases registered under the Customs Act to the Income Tax Department for action under the Income Tax Act;
- To keep statistics of seizures and prices/rates etc. for watching trends of smuggling and supply required material to the ministry of Finance and other Ministries; and
- To study and suggest remedies for loopholes in law and procedures to combat smuggling.

4.5.4 LEVELS OF COOPERATION BETWEEN ENFORCEMENT AGENCIES AND RELEVANT STAKEHOLDERS

The DRI in its present form is a lean organisation charged essentially with the collection of intelligence, its analysis, collation, interpretation and dissemination on matters relating to violations of customs laws, and to a lesser extent, anti-narcotics law. In order to ensure effective discharge of its responsibilities, DRI maintains close liaison with all the important enforcement agencies in India like the Central Economic Intelligence Bureau, Income-Tax department, Enforcement Directorate, Narcotics Control Bureau, Directorate General of Foreign Trade, Border Security Force, Central Bureau of Investigation, Coast Guard, the State Police authorities and also with all the Customs and Central Excise Commissionerates. It also maintains close liaison with the World Customs Organisation, Brussels, the Regional Intelligence Liaison Office at Tokyo, INTERPOL and foreign Customs Administrations.

4.5.5 LEVEL OF RESOURCING OF ENFORCEMENT AGENCIES

The DRI functions under the Central Board of Excise and Customs in the Ministry of Finance, Department of Revenue. Headed by Director General in New Delhi, it is presently divided into seven zones, each under the charge of an Additional Director General, and further sub-divided into regional units, sub-regional units and intelligence cells with a complement of Additional Directors, Joint Directors, Deputy Directors, Assistant Directors, Senior Intelligence Officers and Intelligence Officers.

4.5.6 PREVALENCE OF CUSTOMS FRAUD

According to Global Integrity 2006, the Indian Customs Department is generally viewed as rife with corruption, favouritism and nepotism. A significant number of companies in the World Bank & IFC Enterprise Surveys 2006 report that they expect to give gifts to obtain import licences.

While there has been reduction in conventional smuggling due to liberalisation of import regime and reduction in rates of duty, there is no respite in commercial frauds by way of mis-declaration / undervaluation of imported goods and misuse of export promotion schemes.

Further, there is an increased threat of smuggling of narcotic drugs, foreign currency, arms and explosives etc. due to growing nexus between smugglers and anti-national elements. Problems such as international terrorism, narco-terrorism, money laundering, IPR violations, cyber crimes, import of hazardous substances etc. will occupy centre stage in the future as the emerging global threats.

There are also issues like dumping of goods which cause more concern to developing economies like India and will, therefore, engage attention of the policymakers and enforcement agencies alike.

Transparency International (TI) provides a useful guide as to the relative compliance culture within India. The TI Corruption Perception Index (CPI) measures the perceived level of public-sector corruption in 180 countries and territories around the world. This survey is based on 13 different expert and business surveys. India was ranked 84th out of the 180 countries for the 2009 CPI scoring 3.4 reflecting an unfavorable corruption exposure.

The TI's 2008 Bribe Payers Index (BPI) placed India in 19th place out of the 22 countries represented with a score of 6.8 out of 10 indicting that that Indian firms are perceived to routinely engage in bribery when doing business abroad.

4.5.7 AREAS OF CUSTOMS FRAUD AND ILLEGAL IMPORTS

The Central Excise law and procedure has been substantially rationalized in last few years. However evasion of Central Excise duties is still noticed. Prevalence of parallel economy, desire of higher profits in products in which CENVAT (Central Value Added Tax) is not available to the end user industry / buyer and pressure of market forces are some of the most commonly noticed reasons.

Various modus operandi are adopted to evade duty depending on the risk assessment as perceived by the evader. As per past experience, outright clandestine removal is generally noticed in SSI sector or in cases where CENVAT is not available to end user.

Undervaluation, on the other hand, is noticed in the case of medium and large scale units especially in case of consumer products. Commodities like chewing tobacco, gutka and khaini are highly susceptible to evasion due to high duty structure, stiff competition and price sensitivity.

Some other commodities like iron and steel, plastics and chemicals are also quite vulnerable. Of late, EOUs, Area Based Exemptions and CENVAT especially through second stage dealers have also emerged as evasion prone areas.

An analysis of the major cases (involving duty of over Rs. 10 lakhs and above) booked by both DGCEI as well as the Commissionerates during last two years has been done and is reflected below:

Table 13

MODUS OPERANDI ANALYSIS OF DGCEI AND COMMISSIONERATES										
MODUS OPERANDI	2004-2005		2005-2006		2004-2005		2005-2006			
	No. of cases	Duty Evasion (in Rs. Crores)	No. of cases	Duty Evasion (in Rs. Crores)	% of Total		% of Total		% Change vis-a vis last year	
					No. of Cases	Duty Evasion	No. of Cases	Duty Evasion	No. of Cases	Duty Evasion
Clandestine removal	316	289.67	336	414.37	22.21	18.83	40.88	30.26	6.33	43.05
Misclassification	27	45.41	206	303.19	1.90	18.83	25.06	22.14	-48.15	378.04
Misuse of Exemption Notification	161	209.13	62	83.12	11.31	13.59	7.54	6.07	-31.06	28.87
Misuse of Cenvat/Modvat Credit	190	166.36	111	269.51	13.35	10.81	13.50	19.68	8.42	82.25
Undervaluation	135	387.72	14	217.08	9.49	25.20	1.70	15.85	-54.07	-78.56
Others	594	440.41	93	82.04	41.74	28.62	11.31	5.99	-84.34	-81.37
Total	1423	1538.70	822	1369.31	100.00	100.00	100.00	100.00		

The above figures show that Clandestine Removal and Undervaluation are still the most favoured *modus operandi* by the tax-evaders.

4.5.7.1 Clandestine Removal

Clandestine removal is generally noticed in SSI sector. The quantum of evasion is relatively low. Involvement of less number of people in planning evasion and proximity to the market makes the detection difficult. Further, the incriminating documents are generally destroyed once the goods reach destination and therefore establishing the case becomes difficult in the courts of law.

In case of medium scale sector, meticulous planning is generally undertaken to cover up clandestine removal. Techniques like parallel invoicing, wrong description on invoices, recovery of sales proceeds under the garb of other charges / commissions, creation of dummy / fictitious sellers / buyers etc. have been noticed. Clandestine removal has been detected mainly in commodities like pan masala / gutkha, iron & steel products, aluminum and its products and polyester yarn.

4.5.7.2 Misuse of Exemption Notifications

Several cases of misuse of small scale exemption, as well as other exemptions from duty were detected during the year. These include misuse of exemption notifications by certain sectors like Export Oriented Units and Area-Based Exemptions. In several cases goods and raw materials imported at concessional duties were diverted to the open market. Fraudulent exports by manipulating export documents were also noticed. Major detections were reported in respect of woolen yarn, medicaments, ethanol blended motor spirit and newsprint paper. In Area Based Exemptions, instances were noticed where goods were shown to have been manufactured by units falling in areas enjoying the exemption whereas they were actually manufactured in other areas.

4.5.7.3 Misuse of CENVAT

Misuse of Cenvat facility continues to be a favoured method of evasion as it provides instant credit to the manufacturer thereby helps him in saving interest on working capital which places him in an advantageous position vis-a-vis other manufacturers. Various modus operandi observed in this regard included cases where the goods were not received and only excise documents were obtained at a premium. Further, several cases of misuse of capital goods scheme were also detected where credit had been taken in respect of goods which were not used in manufacturing activities or were not installed in the unit.

4.5.7.4 Undervaluation

The sensitive consumer goods sector is now assessed, in most of the cases, to the MRP based assessment. The scope of under valuation in these commodities has therefore come down. Under valuation, however, has been detected in certain commodities like plywood, block boards and engineering goods.

4.5.7.5 Misclassification

With the rationalization of tariff and imposition of uniform duty of 16% on most of the goods, incentive for misclassification of goods for the purposes of duty evasion has come down substantially. However, there are still certain goods where misclassification was resorted to, either for availing the exemption or for going out of the purview of MRP based valuation. Major commodities detected in this area were wiring harness, proteins, vaccines, plastic floor coverings and papers.

4.5.7.6 Duty-Evasion Cases Detected by DRI (Scheme Wise)

Table 14 (figures in Rs)

S.No.	SCHEME	2006-07		2007-08		2008-09	
		No of Cases	Duty	No of Cases	Duty	No of Cases	Duty
1	Under Valuation	229	178.16	207	192.58	144	509.33
2	Mis-declaration	151	109.16	63	31.26	66	100.76
3	Mis-use of DEEC/Advance License	14	39.85	10	93.14	5	22.71
4	Mis-use of DEPB	7	49.62	9	16.20	12	7.60
5	Mis-use of EPCG	6	3.95	1	3.65	23	67.20
6	Mis-use of EOU/EPZ/SEZ	9	33.76	6	83.35	7	34.75
7	Mis-use of End-use & other notfn.	22	98.34	29	84.44	17	145.16
8	Drawback	34	142.92	37	12.82	7	21.80
9	Others	25	92.29	72	209.02	59	619.28
	Total	497	748.05	434	726.46	340	1528.59

4.5.7.7 Commercial Frauds

Despite a substantial reduction in the level of tariff protection in the country, commercial frauds continue to be major enforcement concern for DRI. As expected the intention behind perpetration of such frauds and the modus operandi adopted have been changing. Commercial frauds are not only limited to revenue and fiscal evasion, but may also be conduit for trade based money laundering and the financing of terror.

The increasing globalization and expected levels of trade facilitation along with rise in cross-border organized crime has prompted a serious rethink of the enforcement mechanisms for combating commercial fraud. In order to effectively prevent and detect commercial frauds, DRI has created a strategic multifaceted approach, including capacity building and international cooperation.

The statistical analysis of the commercial frauds cases booked by DRI indicates that undervaluation of imported goods continues to account for more than 42 percent of the number of cases booked, even as it accounts for about one-third of the duty involvement detected.

Mis-declaration regarding classification, description, quantity, etc. are often resorted to along with under-valuation. However, in many cases, goods are mis-declared to circumvent restriction or prohibition regarding import / export of certain goods. The cases of mis-declaration of non-basmati rice booked by DRI and Customs formations were resorted to with the objective of circumventing the prohibition on export of non-basmati rice, as a price control measure.

Mis-use of various export promotion schemes has continued unabated. In 2008-09, there was a significant increase in the cases of mis-use of EPCG cases to 23 vis-à-vis one in 2007-08 on account of number of cases with similar modus operandi booked by Kolkata Unit.

4.5.7.8 IEC Frauds

Mis-use of Import-Export Code (IEC) in various manners has been detected by the DRI and field formations in earlier years. Preliminary analysis of the cases booked by DRI had indicated that a prominent modus operandi used by the fraudsters and smugglers alike was the use of bogus or dummy Importer Exporter Codes (IECs) so as to minimize the possibility of enforcement trail and thus avoid penal action.

Therefore, DRI coordinated a special drive to curb the problem of IEC misuse at selected major customs stations with the Risk Management Division (RMD) and concerned customs preventive Commissionerates during the latter part of 2008.

4.5.7.9 Country of Origin Frauds

“Country of Origin fraud” or simply “origin frauds” refer to any attempt to knowingly violate or abuse rules of origin and / or Customs documentary requirements as laid down by prevailing law in the country concerned. Such frauds are being resorted to on account of increasing number of bilateral/regional trade agreements or imposition of anti-dumping duties which impose country/region-specific restrictions or bestow tariff or tariff concessions on the basis of country of origin of the goods concerned.

4.5.7.10 Undervaluation/ Overvaluation

Modus Operandi – I: Wrong/ Non-disclosure

In an undervaluation case detected by Bangalore Zonal Unit with duty involvement of Rs. 230 crore approximately, the company was found to be maintaining different price lists for the same items with respect to its exports from Singapore to India. The modus operandi revealed the following:

- For a transaction between Singapore branch and Indian branch, there were two Inter Company (IC) invoices that are generated by the multinational firm, viz. Level A and Level B invoices;
- Level A invoices were issued from Singapore (Distribution Centre) to their Head Office in Switzerland;
- Level B invoices were issued from Switzerland to India;
- Both these levels of invoices issued on the same date & time having common Order No. were not disclosed to the Indian Customs by the importer;
- The Level A invoices represented much higher value than the Level B invoices;
- For many of the products, the documents presented to the Indian Customs mentioned only the Level B invoice value;
- The investigations also revealed that the Singapore entity had received payment from the Swiss entity as per the invoices (Level A) raised by them for the same goods consigned to Indian entity.

Modus Operandi – II: Overvaluation

An interesting case of overvaluation in imports of rough diamonds/cut & polished diamonds from Hong Kong was detected at Surat by Ahmedabad Zonal Unit. Since there was no import duty on the rough/polished diamonds, the fraud appears to be intended to remit the excess foreign exchange overseas, either to cover the differential cost of the other undervalued imports or overvalued exports or to park money abroad for acquisition of assets overseas.

The value of the consignments declared to be USD 98.95 Million (about Rs 488 Crore) was detained on 27.11.2008. The importers had subsequently applied for amendment in the IGM and sought to amend the declared value from USD 9,89,51,493 to a meager USD 3,52,328.45, i.e. from Rs 488 crore to Rs. 1.74 crore.

Modus Operandi – III: Mis-declaration

In a case of mis-declaration with the intention to evade appropriate duty, Chennai Zonal Unit found that imports of Dense Wavelength Division Multiplexing (DWDM) equipment from China involved mis-declaring the description of goods, partly as DWDM Equipment (Hardware) and partly as DWDM Equipment (Software), and by attributing higher value to the software (about 70% of total value) so as to claim exemption from CVD on said value under Notification No. 6/2006-C.E. dated 1.3.2006 (which exempts CVD on software).

The software required for the goods in question was actually embedded in the hardware itself and is necessary for control, operation and performance of the equipment. In order to evade customs duty by following above modus operandi, the importers took assistance from their Japan based financier, who issued false invoices by splitting the values in the ratio of 30:70 for hardware and software respectively, and the software was mis-declared as customized software. The estimated duty evasion in this case is Rs 20 crore.

Modus Operandi – IV: Non inclusion of royalty

In some cases detected by different DRI Units in 2008-09 and in the previous year, non-inclusion of royalty in the assessable value in respect of imports of software from a reputed multinational company have been noticed. During this financial year, Delhi Zonal Unit has booked a case on the software supplied by MNC supplier. The total duty involvement for all these cases would be Rs. 132.77 crore.

4.5.7.11 Misuse of SEZ scheme

Mumbai Zonal Unit in coordination with the headquarters busted a group of fraudsters misusing the provisions of Rules 28(10), 29, 46(1)(c) and 46 (1)(d) of the SEZ Rules, 2006 which allow the SEZ operators to clear the imported goods and complete the export formalities by self-sealing and self certification. These fraudsters based at Delhi, Mumbai and Dubai had conspired in misusing the SEZ facilities and exporting metal scrap by mis-declaring them as gold ornaments while importing brand new high end gold jewellery mis-declared as outdated and old jewellery for re-melting.

Searches conducted in Delhi and Mumbai resulted in seizure of about 108 kg. of imported assorted high end gold jewellery along with few packages declared to contain high-end gold jewellery ready for export from the NOIDA SEZ, which were actually found to be bearing scrap and brass scrap totally weighing around 204 kg.

Investigations revealed that Indian jewellery retailers used to visit Dubai for purchasing high end gold jewellery and hand them over to Dubai based supplier. The said Dubai based supplier thereafter dispatched these individual jewellery packages in consolidated packages to certain Noida SEZ units. The said SEZ Units after clearing the imported jewellery items by mis-declaring them as “outdated gold jewellery for re-melting”, used to dispatch the individual packages to the respective owners of the said jewellery thereby evading duty on imported jewellery items.

Simultaneously, the SEZ units used to show their compliance of the Export Obligation by exporting metal scrap like bearing scrap and brass scrap by mis-declaring as manufactured gold jewellery.

Misuse of transfer of residence facility for duty evasion in import of high end luxury vehicles attempts to import premium automobiles without payment of appropriate customs duties by newer modus operandi continues despite of the DRI booking number of cases in the previous years and resultant plugging of the policy loopholes.

In the cases detected by the Mumbai Zonal Unit, the following modus operandi was adopted:

- (i) Import of several vehicles under TR facility through passengers coming from the Middle East;

- (ii) Tampering of chassis no. /odometer of second hand vehicles that are stolen / auctioned in Europe;
- (iii) Substantial undervaluation in import of the vehicles.

Mumbai Zonal Unit seized/ detained 32 vehicles valued Rs. 20 crore which included Toyota Land Cruiser (LX 470), Toyota Harrier (RX-330), BMW (740 IL, 745 Li) and also a Fiat Ducato Mini Bus. The duty evaded is to the tune of Rs 4.5 Crore approximately. Four persons have also been arrested.

4.5.7.12 Misuse of EPCG Scheme

Kolkata Zonal Unit had initiated investigations into misuse of EPCG Scheme by 9 importers of mining industry. These units had not installed the capital goods imported by them under the EPCG Scheme at the addresses mentioned in the respective condition sheets. Some of them even suppressed the name and address of the supporting manufacturer at the time of obtaining the Licence issued by the DGFT.

Further, these capital goods were being used by third parties on hire basis in violation of the conditions of the EPCG Licence and the provisions of the Notification No. 97/2004-Cus dated 17.09.2004. The above importers did not have any factory / mines at the specified addresses in their own names. In these cases, a total of 45 machines valued at Rs. 47.17 Crore (approx.) having total duty involvement of Rs. 10.60 Crore have been seized.

4.5.7.13 Containerised Cargo Frauds at ICD, Tuglakabad

DRI Hqrs detected a massive fraud in ICD, Tughlakhabad where smuggling of different goods viz. worn cloths, electrical and electronic goods mis-declared as printed books was being made in connivance of CHAs and Customs Officers. Out of 44 consignments, in 20 cases, the 30 consignments had been reportedly examined by the concerned officers and given out of charge even before the consignments had actually entered into the ICD.

The EDI examination in respect of all the 44 consignments revealed that the examining officers had reported that they had opened each of the consignments and had examined a significant number of packages in each consignment and found the goods to be as per invoice and they had also recorded that nothing objectionable was found in the said books. The total duty involved is Rs. 5 crore. 31

4.5.8 INTELLIGENCE AND ENFORCEMENT ORIENTED PROGRAMS AND INITIATIVES

4.5.8.1 Rewards System

The Government has framed a system of rewards for people who help in the detection of the tax evasion. The following are a few guidelines for the people who like to help detection of Central Excise Duty evasion/frauds:

- Under the existing Reward Scheme, Government of India grants handsome rewards to informers who provide specific information leading to seizure of goods, currency, bullion or leads to detection of duty evasion including wrong declaration of quantity, description, value etc;
- The information has to be given in writing addressed to the Head of Department, after affixing the signature of the person giving the information along with the left-hand thumb impression;
- The information should contain details of modus operandi being adopted by the tax evader. Details like name & address of the firm, addresses of the key persons, place where records of clandestine clearances are secreted, details of flow of illegal funds are considered important piece of information;
- The maximum amount of reward to the informers can be as high as 20% of the duty evasion detected plus 20% of the fine/penalty realized. There is also a provision of sanction of advance reward in suitable cases.

4.5.8.2 ICEGATE¹¹²

ICEGATE stands for the Indian Customs and Central Excise Electronic Commerce/Electronic Data interchange (EC/EDI) Gateway. ICEGATE is a portal that provides e-filing services to the trade and cargo carriers and other clients of Customs & Central Excise Department (collectively called trading partner). At present, about 8,500 users are registered with ICEGATE.

¹¹² <http://www.icegate.gov.in/>

ICEGATE is an infrastructure project that fulfils the department's EC/EDI and data communication requirements. Through this facility the department offers a host of services, including electronic filing of Bill of Entry(import goods declaration) and Shipping Bills (export goods declaration) and related electronic messages between Customs and the trading partners using communication facilities (e-mail, web-upload & FTP) including the communication protocols commonly used on the internet.

The airlines and shipping agents can file manifests on the internet filed using this facility. Besides, data is exchanged between Customs and the various regulatory and licensing agencies such as DGFT, RBI, Ministry of Steel and DGCIS. The National Import database (NIDB) and Export Commodity Database (ECDB) for Directorate of Valuation are also being serviced through ICEGATE.

All electronic documents / messages being handled by the ICEGATE are processed at the Customs' end by the Indian Customs EDI System (ICES), which is running at 40 customs locations. The ICEGATE provides for 24X7 helpdesk facility for its trading partners. To ensure secure filing, it is proposed to use digital signatures on Bill of Entry and other documents/ messages to be handled on the gateway. ICEGATE is working through a MPLS based Wide Area Network (under implementation), linking **582 department's** buildings all over the country.

In addition to e-filing, ICEGATE also provides host of other services like E-payment, on-line registration for IPR, Document Tracking status at ICEGATE and ICES, online verification of DEPB/DES/EPCG licences, IE code status, PAN based CHA data and links to various other important websites/information pertaining to Customs business.

4.5.8.3 Customs Risk Management System

The Director General of Systems and Data Management, Central Board of Excise & Customs, implanted a **"Risk Management System in Customs" (RMS)**. **RMS has been implemented in 23 major Customs ports/airports covering about 85% of India's** international trade. It has revolutionized the customs import clearance process by cutting down the clearance times drastically.

Instead of routine assessment and examination of all cargo, only selected consignments are taken up for scrutiny and examination. It is a tool to balance facilitation and enforcement which has been widely appreciated by the trade. Due to the introduction of RMS, the importers have greatly benefited by way of reduction in dwell time and transaction costs, which has improved their competitiveness. There has also been considerable reduction in the need for physical interaction between importers and Customs officers.

Clearances without assessment and examination and the facility of direct delivery of cargo have been given to eligible Accredited Clients of Customs. Importers today are able to plan their logistics and supply chain as per global **standards and follows “Just in time”** principles.

4.5.9 CAPACITY BUILDING AND TRAINING PROGRAMS

National Academy for Customs, Excise and Narcotics (NACEN)¹¹³

This is the main institute responsible for the co-ordination and training of customs officials and is represented by nine regional training institutes all over the country. The latter offer induction training, mid-term training and refresher courses as part of their training schedule. The NACEN knowledge bank assimilates information from various stakeholders of the customs department in a single forum, with the aim of availing it to all who require it.

The Directorate (Systems and Data Management) places great emphasis on capacity building through appropriate training. The Directorate also deputes officers for imparting training to departmental officers and officers of other enforcement agencies on request.

Specialized training on RMS and its enforcement capacity was imparted to 30 officers in two batches. The training was organized in coordination with the Risk Management Division, Directorate General of Systems & Data Management, Mumbai.

¹¹³ <http://www.nacen.gov.in/details.asp?mid=35>

The officers attended the following training programmes / courses in India:

1. Training programme on 'Computer & Internet Crimes' at Sardar Vallabhbhai Patel National Police Academy, Hyderabad.
2. Programme on Investigating Economic Crimes in Financial Markets conducted by Indian Institute of Capital Market, Mumbai.
3. Course on Anti-Smuggling COFEPOSA, WMD, X-Ray organized by NACEN, New Delhi.
4. Training on use of Risk Management System (RMS) at organized by Risk Management Division at Mumbai.
5. Workshop on action Plan for devising a strategy for prevention of FICN smuggling into India organized by RBI, Lucknow.
6. Basic training for upgradation of non-matriculate Gr 'D' staff to PB-I grade organized by Zonal Units and Hqrs.
7. Course on Special Economic Zone organized by NACEN, Faridabad.
8. Programme on International Police Cooperation against Cyber Crime organized by CBI, New Delhi.
9. International Observer Attachment Programme organized by Royal Canadian Mounted Police, Canada.

Officers were also deputed for the following programmes abroad: basic training to 45 non-matriculate Group 'D' staff was imparted by the Zonal Units and Hqrs for a period of two weeks to bridge the gap between the matriculate and non-matriculate Group 'D' staff. The basic purpose of this training was to prepare the non-matriculate staff for the office work and enabling them to get their pay fixed in PB-1 grade.

Officers were deputed to impart training to Customs & Central Excise Officers at NACEN, Faridabad and its RTIs and CBI Academy, Ghaziabad. Three of the DRI officers 41 also visited Maldives as part of Training team of Indian Customs to provide training to Maldives Customs in the month of June 2008.

5 GAP ANALYSIS

5.1 CRITERIA FOR BENCHMARKING

The criteria utilised for purposes of benchmarking in order to conduct the GAP analysis, are:

a	Customs legislation and regulations	e	Prevalence of customs fraud
b	Structure of Customs Services Body	f	Areas of customs fraud and illegal imports
c	Levels of cooperation between enforcement agencies and relevant stakeholders	g	Intelligence and enforcement oriented programmes and initiatives
d	Level of resourcing of enforcement agencies	h	Capacity building and training programmes

5.2 ABRIDGED RESULTS OF THE GAP ANALYSIS PLANNING SESSION

The methodology for conducting the benchmarking exercise was as follows:

- The researchers monitored broad trends through existing indicators; and
- The researchers completed a checklist to identify areas of greatest vulnerability and risk and compiled a framework of recommendations and/or actions for improvement.

The desktop review provided a synopsis of customs fraud by analyzing trends and debates in the field. When reviewing the literature the researchers supplemented the information with direct stakeholder interviews in order to arrive at an understanding of the domain of scholarship. A survey was conducted to gather both objective and subjective data, through the use of self-administered questionnaires, and the results thereof was incorporated into the gap analysis. The abridged version of the GAP analysis results are attached as **Annexure A** to this research report.

5.3 GAP IDENTIFICATION AND RECOMMENDATIONS

The next section of the report is drafted in the same format throughout, being the identification of the benchmarking criteria, the gap(s) identified and the corresponding recommendation(s) for improvement.

PLEASE NOTE THAT THE RECOMMENDATIONS MAY NOT ADDRESS EACH GAP IDENTIFIED IN EACH INSTANCE, BUT MAY CONTAIN A CONSOLIDATED RECOMMENDATION AND/OR OPTIONS FOR IMPROVEMENT.

5.3.1 REGULATORY INSTRUMENTS

5.3.1.1 Legislation

Gaps Identified	Recommendations for Improvement
<p>a) The Customs and Excise Act of 1964 is the cornerstone of our customs regulatory framework and its principles are generally in line with international best practice. It is however noted that certain sections of the Act have become outdated in relation to modernising customs control methods. This is so, not only in light of international customs trends, but also due to the increasing need to balance trade facilitation and customs control.</p>	<p>a) It is recommended that the first phase of overhauling the current legislative framework through the two draft Bills (referring to the Customs Control Bill and the Customs Duty Bill), be fast-tracked post the February 2010 deadline for public comment.</p> <p>The draft Customs Control Bill provides a legal framework for implementation of policy, processes and technology proposed in terms of the Customs Modernisation Programme. Once enacted, its provisions will meet South Africa's obligations in terms of the international instruments and conventions to which South Africa is a state party, along with key recommendations of the WCO.</p> <p>As regards the Draft Customs Duty Bill, its three core customs issues are tariff classification, customs valuation, and origin. Its application is dependent on the implementation of the former.</p>
<p>b) Paragraphs 3.1.5.2 and 3.1.5.3 refer. Multiple agencies are involved in the application of the customs regulatory provisions which leads to a lack of consistency. Customs fraud issues are not addressed timeously and effectively as a result of a lack of communication, coordination and harmonisation between the agencies (SARS, ITAC, the DTI, DAFF, SAPS) involved in implementation of the various aspects of the regulatory framework. Customs fraud issues are not dealt with timeously and efficiently as a result of the significant restriction on information sharing by SARS with other agencies by Section 4 of the</p>	<p>b) It is recommended that MOU's be formalised on operational level among the various departments or agencies responsible for the implementation of the regulatory framework. Key agencies include <i>inter alia</i>: SARS, the DTI, ITAC, SAPS, DAFF. Such agreements should contain guidelines/prescriptions based on the mandates and SOP's in terms of the legislation of the respective agencies for the establishment of formal structures for communication, the allocation of administration responsibilities, type of information-sharing required, level and frequency of consultation required and accountability within the agencies must be assigned to specific official designations. The purpose of these agreements is the coordination and harmonization of customs related activities and in order to address</p>

Gaps Identified	Recommendations for Improvement
<p>Customs and Excise Act, 1964, which deals with general duties and powers of officers in the administration and application of the Act. Information regarding specific import transactions, including import documentation and the identity of importers are not made available timeously or withheld completely by SARS. This impacts negatively on the efficiency and effectiveness of action against fraudulent imports. Section 4(3) reflects the secrecy limitation as follows:-</p> <p><i>"The Commissioner or any officer shall not disclose any information relating to any person, firm or business acquired in the performance of his duties, except in the performance of his or her duties under this Act or by order of a competent court."</i></p>	<p>the issue of lack of timeous access to critical information impacting on the efficiency and the effectiveness with which customs fraud issues are dealt with.</p> <p>c) We recommend the following amendments to the Draft Customs Control to address the issue of lack of access to critical information for industry role players, as a result of SARS' 'secrecy clause', as follows:</p> <p>Amendment of Section 22: insert a new paragraph (h) after the current last paragraph (g) to read as follows:</p> <p><i>"Any person or entity (based in the Republic) involved in sector-related activities, who (in the discretion of the Commissioner) can show a legitimate interest in obtaining consignment-related information relating to imports."</i></p> <p>Amendment of Section 23(1): insert a new paragraph (f) after the current last paragraph (e) to read as follows:</p>
<p>c) Paragraph 3.4.2.2 refers. The limitations of Section 4(3) of the Act and Sections 22 to 24 of the draft Customs Control Bill lead to a breakdown in effective collaboration and thereby negatively impacting on the fight against customs fraud and illegal importation. The usefulness of <i>import statistics</i> is limited by the current format in which they are supplied by SARS.</p> <ul style="list-style-type: none"> - Official import statistics are not given per consignment but only reflect the total import quantity and value of a product from a specific country per month or year; 	<p><i>"The following information relating to imports must be made available to any person or entity (based in the Republic) involved in sector-related activities, who can show a legitimate interest in obtaining information relating to imports:</i></p> <ul style="list-style-type: none"> <i>i. Date of import;</i> <i>ii. Port of entry;</i> <i>iii. Country of origin;</i> <i>iv. Country of export;</i> <i>v. Description of goods imported and quantity of goods imported;</i>

Gaps Identified	Recommendations for Improvement
<ul style="list-style-type: none"> - Details like the port of entry and the purpose code (Warehouse Entry, General Rebate, Industrial Rebate, and Warehouse for Export) are not made available by SARS; - SARS is prohibited from making known the identities of individual importers. <p>The aforementioned import information is essential for sector role players to monitor and analyse the imports of a product/s in a meaningful manner in order to identify possible customs fraud.</p>	<ul style="list-style-type: none"> vi. <i>Rand value of goods so imported;</i> vii. <i>Purpose code; and</i> viii. <i>Identity of importer."</i> <p>Amendment of Section 23: insert a new paragraph (3) between the current paragraph (2) and (3) which reads as follows:</p> <p><i>"An authorised representative referred to in 21(1)(f) supra, may utilise the information purely for monitoring and fraud detection purposes."</i></p> <p>It is further recommended that the above import information be shared on a confidential basis through the industry forums (representatives from business, government and labour) recommended in paragraph 5.3.3.2 (c) below, by way of MOU's to be formalized between the members of the forum. Such MOU's should contain prescriptions based on the mandates of government, labour and industry representatives for the establishment of formal communication structures, the allocation of administration responsibilities, type and frequency of information-sharing required, procedures to be followed when a suspect import transaction is identified, level and frequency of formal consultation required and accountability within the individual members of the forum must be assigned. The purpose of such agreements would be to enhance cooperation, coordination and transparency between the role players in government, business and labour involved in dealing with customs fraud issues.</p>
<p>d) Paragraph 3.4.2.1 refers. The Free on Board (Fob) value of imported products is used for customs valuation purposes. This gives rise to fraud where imported products are subject to an ad valorem duty. The Fob value of imported products are manipulated to be as low as possible whilst freight, insurance and other costs are inflated in order to pay the lowest possible customs duty. This results in significant revenue losses for SARS.</p>	<p>d) Serious consideration should be given to the replacement of the existing customs valuation system based on FoB import values with a system based on Cost Insurance Freight import values. Such a change would make a significant contribution to prevent and limit customs fraud. Due to the scope of such a change and the practicalities involved like the revision of the levels of all customs duties, a phased approach with a cost-benefit analysis as the first step, is recommended.</p> <p>e) The recognition of the presumption of innocence as a fundamental constitutional principle has brought</p>

Gaps Identified	Recommendations for Improvement
	<p>a desirable degree of clarity to the allocation of the burden of proof in criminal matters. However, it is recommended that, with the assistance of the South African Law Reform Commission, proposals for an amendment to the legislation be considered in order to create a presumption that incorrect declarations are fraudulent particularly in cases of repeat offenders.</p> <p>The Kyoto Convention, Annex B.1 (7) Standard states that, <i>"The declarant shall be held responsible to the Customs authorities for the accuracy of the particulars given in the Goods declaration and payment of the import duties and taxes."</i></p> <p>Drawing from best practice in the Netherlands with regards to false/incorrect declarations, goods are in fact forfeited as opposed to penalties or fines being imposed.</p> <p>ICC Guideline 39114 urges full implementation of the WTO Valuation Agreement, which has greatly reduced the scope for import fraud by obliging all member states to accept a simple and straightforward basis of transaction value.</p> <p>The Revenue Laws Amendment Act, 2008 came into effect on 1 October 2009. The legislative amendment has changed the status quo with the intention that the place where goods are packed into a container in a foreign country for export to South Africa will no longer be regarded as the port or place of export. Therefore, the full cost of transporting goods from an exporter's premises to the port or place where the goods are to be loaded onto a ship or other vehicle will be dutiable. This will bring the national legislation in line with the WTO Valuation Agreement.</p>

¹¹⁴ International Chamber of Commerce Guidelines on Customs and Trade Regulations

5.3.1.2 Administration of Customs Tariff, including Rebate Provisions (and Rules of Origin)

Gaps Identified	Recommendations for Improvement
<p>a) Paragraph 3.1.5.2 refers. Significant fragmentation exists with regards to the administration and enforcement of customs tariffs. Customs tariffs, trade remedies, rebate and drawback provisions are contained in schedule 1 to 5 of the Customs and Excise Act of which the Minister of Finance is the custodian. SARS administers and enforces the Customs and Excise Act and reports to the Minister of Finance. Customs tariff policy is formulated by the DTI and ITAC manages and investigates applications for rebate and drawback permits, tariff relief and assistance, action against dumping and protection for the SACU industry against unfair trade practices.</p> <p>ITAC does not sufficiently communicate or consult with SARS when considering applications for amendment to the customs tariff. Representatives from the Department of Agriculture are seriously concerned with the lack of communication and consultation from ITAC when considering applications for amendment to the customs tariff on agricultural products. The lack of communication and consultation results in unilateral amendments to the customs tariff which create loopholes and opportunities for customs fraud.</p>	<p>a) It is recommended that MOU's be formalised on operational level among ITAC and SARS and ITAC and DAFF with regard to communication and consultation when considering applications for amendment to the customs tariff. Such MOU's should contain guidelines/prescriptions based on the mandates in terms of the legislation of the respective agencies for the establishment of formal structures for communication, the allocation of administration responsibilities, type of information-sharing required, level and frequency of consultation required and accountability within the agencies must be assigned to specific official designations. The purpose of these agreements is the coordination and harmonization of customs related activities in order to enhance the efficiency and the effectiveness with which customs fraud issues are dealt with. The establishment of an electronic interface based on the Canadian OGD model (paragraph 4.2.4.4 refers) would facilitate the coordination and harmonization between the relevant agencies.</p>
<p>b) Paragraph 3.8.3.3 refers. South Africa has entered into several bilateral and multilateral trade and development agreements. Circumvention of the tariff as a result of preferential rates of duty in terms of trade agreements has emerged as a problem. Furthermore, the administration of the rules of origin is insufficient. Importers are exploiting preferential trade agreements by re-routing products through countries that benefit or have preferential trade arrangements with South Africa. Rules of Origin certificates</p>	<p>b) Paragraphs 5.3.1.1 (c) and 5.3.3.2 (c) refer. It is recommended that the forums consisting of representatives from business, government and labour as contained in the recommendations in the paragraphs mentioned above, be used as a vehicle for consultations in this regard. It is further recommended that MOU's be formalised between SARS and relevant industry representative organizations with regard to communication and consultation when considering/determining the authenticity of Rules of Origin Certificates pertaining to the importation of goods in terms of preferential trade agreements applications. Such MOU's should contain guidelines/prescriptions for the establishment of formal structures for communication, the allocation of administration responsibilities, type of information-sharing required, level and frequency of consultation required and accountability within SARS and the industry representative organization must be assigned to specific official designations. The purpose of these agreements is to prevent the abuse of the Rules of Origin Certificates and goods illegally entering the country at abnormally low prices against which the local industry cannot compete.</p> <p>c) It is further recommended that the current application of management protocols or policy in</p>

Gaps Identified	Recommendations for Improvement
<p>are obtained fraudulently and presented to SARS officials who do not have sufficient product and/or sector knowledge and accept certificates as being authentic. This results in, among others, significant quantities of products originating from Far Eastern countries like China and Thailand illegally entering South Africa at reduced rates of customs duty.</p>	<p>relation to Rules of Origin be revisited with a view to conducting a gap analysis against the WTO rules, given the extensive exposures identified in the current application.</p>
<p>c) Paragraph 3.4.2.1 refers. During the course of the research various role players in Government and the sectors involved expressed the view that <i>ad valorem</i> duties are an incentive for customs fraud because they are calculated as a percentage of the value of imported goods. Importers manipulate the value of imported products in order to minimise the customs duty payable. The relevant application of specific duties in the customs tariff is acceptable internationally and is illustrated by the customs tariff of countries like Switzerland.</p>	<p>d) It is recommended that SARS enter into consultation with ITAC and relevant industry representative organizations regarding an amendment to the customs tariff by substituting <i>ad valorem</i> duties with specific or formula duties in sectors with an identified high prevalence of customs fraud, in particular under-valuation. The Forums recommended under paragraphs 5.3.1.1 (c) and 5.3.3.2 (c) could be used as the vehicle for these consultations.</p>
<p>d) Paragraph 3.4.2.2 refers. Similar products are classified under different tariff sub-headings at varying rates of customs duty. This creates loopholes which in turn lead to the intentional mis-declaration of imported products in order to circumvent the customs duty payable. Importers tend to incorrectly clear the imported products under the tariff sub-heading subject to the lowest rate of customs duty. More often than not these actions go unnoticed as a result of insufficiently staffed border posts or inexperienced/untrained customs officials.</p>	<p>e) It is recommended that industry representative organizations enter into consultation with ITAC to identify loopholes in the tariff and discuss the possibility of closing these loopholes by equalizing the customs tariff applicable thereby preventing and limiting customs fraud. The Forums recommended under paragraphs 5.3.1.1 (c) and 5.3.3.2 (c) could be used as the vehicle for these consultations.</p>

***Interesting reading:**

In order to facilitate implementation of its provisions, the Revised Kyoto Convention's Transitional Standards and Guidelines aid governments to meet the obligations undertaken. A Management Committee provides all contracting parties a voice in the development and administration of the agreement. Active participation and consultation by South Africa at this forum will contribute to aligning our framework with international good practice.

5.3.1.3 ITA Act – Import Regulations

Gaps Identified	Recommendations for Improvement
<p>a) Paragraph 3.1.5.2 refers. In relation to the application of the ITA Act, there is poor communication and co-ordination between ITAC and SARS with regards to the administration of import regulations. This does not relate to the issuing of import permits which are processed electronically, but to day-to-day communication and coordination. This is demonstrated by changes to the SARS system that have not been communicated to ITAC, and the lack of information sharing where ITAC identifies irregularities in relation to import transactions.</p>	<p>a) The recommendation under 5.3.1.1 b) refers. It is recommended that a MOU be formalised on operational level between SARS and ITAC with regard to the administration and implementation of the regulatory framework. The MOU should contain guidelines/prescriptions based on the mandates and SOP's in terms of the legislation of the respective agencies for the establishment of formal structures for communication, the allocation of administration responsibilities, type of information-sharing required, level and frequency of consultation required and accountability within the agencies must be assigned to specific official designations. The purpose of the MOU is the coordination and harmonization of customs related activities in order to enhance the efficiency and the effectiveness with which customs fraud issues are dealt with.</p>
<p>b) Paragraph 3.9.2.2 refers. Documentation relating to the importation of vehicles, i.e. bill of entry, does not allow for the electronic capture of information essential to the identification of vehicles during inspections (VIN numbers, colour, model and make year, new or second hand).</p> <p>The lack of information sharing between SARS and SAPS in relation to imported motor vehicles, generates significant problems for SAPS when conducting investigations in relation to stolen vehicles and the smuggling of vehicles.</p>	<p>b) It is recommended that SARS develop and implement a motor vehicle clearance system which allows for vital information to be captured and shared through an electronic interface with e-NaTIS, SAPS and the Department of Transport. To this end it is recommended that formalised MOU's be drafted to structure the co-ordination and co-operation between SARS, SAPS and the Department of Transport. The MOU's should contain guidelines/prescriptions based on the mandates and SOP's in terms of the legislation of the respective agencies for the establishment of formal structures for communication, the allocation of administration responsibilities, type of information-sharing required, level and frequency of consultation required, procedures to be followed when fraudulent import transactions are identified and accountability within the agencies must be assigned to specific official designations. The purpose of the MOU is the coordination and harmonization of customs related activities with regard to the importation of used and new motor vehicles in order to enhance the efficiency and the effectiveness with which customs fraud issues are dealt with.</p>

***Interesting reading:**

The following international instruments are useful resources in this regard: ICC Integrity Toolkit: based on the premise that integrity and efficiency go hand in hand. It contains a set of guidelines, along with explanatory notes, that focus on procedural elements which *lessen opportunities for fraud, bearing in mind that there's a proclivity among dishonest traders to seek and reward customs officials for collusion in fraudulent arrangements.*

5.3.1.4 Compliance Strategy

Gaps Identified	Recommendations for Improvement
<p>a) There is no clear structure evident that comprehensively addresses a customs compliance strategy. The Customs Green Paper proposes a number of initiatives that may allude to the development of such strategy.</p> <p>Paragraph 3.2.4 refers. A 'Fraud and Anti-Corruption Hotline' exists within SARS and is available internally and to the public. Research indicates a very low awareness, and little understanding of the purpose of such hotline; on an internal and external level. The hotline appears to be under-utilized and external roleplayers seem to be unaware of the helpful role that the hotline can play in customs fraud prevention and response purposes.</p>	<p>a) It is of national importance that a culture of compliance is created and continuously promoted. This will require the development of a consolidated compliance strategy involving all role-players in the customs environment. Such strategy should include:</p> <ul style="list-style-type: none"> Implementing the Authorised Economic Operators strategy as soon as possible (refer paragraph 5.3.1.5) Expediting the implementation of the Customs Control Bill and Customs Duty Bill Continuous training internally and sensitization externally on the potential usefulness and purpose of the SARS Fraud and Anti-Corruption Hotline Continuous policy reviews to support the changing dynamics of the customs environment (refer paragraph 5.3.3.2 where the recommendation of use and application of the Customs National Stakeholders Forum is discussed). Current initiatives where customs policy is being reviewed needs to be expedited, clear deadlines set and accountability allocated to specific official designations. <p>b) Paragraph 4.5.8.1 refers. India has a formal Rewards Scheme which is a deterrent to non-compliance. It is an attractive solution to utilise industry stakeholders to guard each other, especially given South Africa's capacity constraints. However, such a scheme would have to be strictly managed in order to avoid any malicious or capricious reports. Ownership and control of such a measure should rest with SARS. Accountability should be allocated to a specific official designation.</p>

***Interesting reading:**

*The USA's Customs and Border Protection Agency fosters partnerships with global industry in pursuit of self-governance compliance programmes, such as Importer Self-Assessment (ISA) and National Account Management. Other aspects of its compliance strategy include rulings, regulations and international verification for the expeditious flow of legitimate imports and to ensure compliance with international trade laws. This presents a useful model to which South Africa can refer in developing and implementing its customs compliance strategy. However, what must be borne in mind are some of the challenges faced by the US agency. These include information analysis and goods verification prior to arrival, the performance of quality risk assessments and forging beneficial partnerships.*¹¹⁵

5.3.1.5 Standards on Authorised Economic Operators (AEO)

Gaps Identified	Recommendations for Improvement
<p>a) Paragraphs 3.1.8.1 and 3.1.4, page 25 refer. South Africa is clear on its intended adoption of AEO principles in line with the WCO framework of standards. This is evident within the SARS modernisation programme as well as the embedding and rolling out of new customs systems and risk engines.</p> <p>b) Whilst a number of initiatives at overhauling trader management are evident, including the clearing up of large volumes of broker data, single registration facilities going forward and the preferred trader scheme, there remains no clear policy and implementation procedure available against which to measure the success of its adoption and its progress.</p> <p>c) Initiatives at overhauling trader management and implementing the preferred trader scheme remain pending.</p>	<p>a) It is recommended that the South African AEO policy and implementation strategy be finalized as a matter of priority. Further, it should be noted that in a recent UK survey undertaken by Deloitte¹¹⁶ it was revealed that almost a third of the respondents did not fully understand the benefits of subscribing to the AEO scheme. In view of the importance that South African stakeholders understand the AEO scheme and the benefits thereof it is further recommended that awareness raising and training campaigns be held before the implementation of the South African model.</p> <p>b) The draft Customs Control Bill provides for fast-tracking clearance and release procedures in respect of certain categories of persons (accredited) or goods (low-value goods). The implementation of the new customs management system and preferred trader scheme processes must be fast-tracked to support this initiative. In France, the AEO concept is an EU-wide accreditation scheme, which recognises a reliable economic operator who has met common criteria (compliance record, accounting and logistical systems, financial solvency and safety and security) set down by the European Community. Full implementation of the systems</p>

¹¹⁵ US Customs and Border Protection Trade Strategy Fiscal Years 2009 - 2013

¹¹⁶ The Deloitte Customs Duty Survey 2009

Gaps Identified	Recommendations for Improvement
	<p>will be of great benefit to SARS who will then be able to focus on non-compliance and illegalities.</p> <p>Canada has a well-functioning customs self assessment tool in line with WCO AEO principles.</p> <p>India has an Accredited Clients of Customs policy.</p>

5.3.1.6 Unique Consignment Reference (UCR) number

Gaps Identified	Recommendations for Improvement
<p>There is no formal framework that applies the UCR system. However, there are emerging trends, whereby the sharing and standardisation of data can be ensured to allow for ease of verification, such as:-</p> <ol style="list-style-type: none"> Paragraph 3.1.8.2 refers. SARS has embarked on a pilot project which entails an IT solution under the auspices of the IBSA agreement. This provides for the sharing and comparison of import and export documentation which is an extremely valuable tool for the early detection of irregularities like diversion and valuation fraud. Paragraph 3.1.4, page 29 refers. BLNS countries – SARS have promoted the standardisation of systems across the BLNS countries through suggesting the adoption of TATIS, the customs border management tool currently being implemented by SARS. 	<p>It is recommended that SARS develops a strategy for the WCO proposals on UCR numbers to be applied as widely as possible. The model applied within the IBSA agreement could form the basis of such a strategy. Accordingly, the UCR should be¹¹⁷:</p> <ul style="list-style-type: none"> • Applied to all international goods movements for which customs control is required • Used only as an access key for audit, consignment tracking and information and reconciliation purposes • Unique at both national and international level • Applied at consignment level • Issued as early as possible in the international transaction

¹¹⁷WCO Unique Consignment Reference (June2004) www.wcoomd.org

5.3.1.7 Penalties and Sanctions

Gaps Identified	Recommendations for Improvement
<p>a) Paragraph 3.6.3.3 refers. In the application of the penal provisions with the Customs and Excise Act, penalties and sanctions are not seen as a deterrent to fraud by stakeholders. It has emerged from certain sources that offenders in fact make provision for fines.</p>	<p>a) On 23 October 2009, SARS published the Customs and Border Management External Stakeholder Discussion Document: Customs Administrative Monetary Penalty System ('CAMPS/EAMPS'). According to SARS it was deemed necessary to review the current penalty policy, with a view to radical changes being made. SARS stated that this was as a result of problems with the current penalty guideline and the changes that will be effected through its modernisation initiatives. In addition, as part of the modernisation programme, an electronic penalty system is also being developed, which will result in penalties being finalised in a shorter period and in a more efficient way. It is recommended that this process be fast-tracked and accountability within SARS be pinpointed to specific official designations.</p>
<p>b) Paragraph 3.6.3.3 refers. Repeat offenders are not managed properly insofar as the imposition of increased penalties is concerned. Exacerbating this is the fact that:</p> <ul style="list-style-type: none"> Paragraph 3.2.5 refers. No records exist that adequately detail trader compliance. Paragraph 3.2.5 refers. Details in relation to seizures are recorded, however the depth of this information in relation to trader detail is unknown. Paragraph 3.1.4, page 28 refers. Enforcement records are kept which detail investigations undertaken by the National Investigations Team. Detail in relation to these investigation records was not provided due to the secrecy clause in SARS legislation (item discussed in paragraph 5.3.1.1 <i>supra</i>). 	<p>b) It is also recommended that a more rigorous campaign be embarked upon in order to showcase law enforcement successes and the consequences of customs violations. This initiative can be supported through the application of section 86(a) of the Customs and Excise Act which allows SARS to publish the names of offenders, particulars of the offence, the amount of duty involved and particulars of the fine or sentence imposed at conclusion of judicial proceedings.</p>
<p>c) Paragraph 3.1.4, page 28 refers. There is an established enforcement capacity within SARS that covers the areas of criminal investigations and prosecutions, national investigations and significant case management across the full SARS portfolio. There is however limited resources dedicated to customs investigations.</p>	<p>c) It is recommended that proposals be considered for the creation of an Offenders' Register to 'name and shame' convicted customs fraudsters, and one that is supported by blacklisting provisions. The National Treasury's Register of Tender Defaulters and the provisions of Chapter 6 of the Prevention and Combating of Corruption Activities Act 12 of 2004 can be used as a model for development of such a list. This will have to be supported through close co-operation among investigating and prosecuting authorities to ensure that there is due process of the law. It is submitted that this will greatly contribute to the deterrent effect of sanctions.</p> <p>d) Refer paragraph 3.2.5. SARS confirmed they are currently putting together a broker database,</p>

Gaps Identified	Recommendations for Improvement
	<p>which would contain detail of seizure and detention trends per broker, with the intention of identifying repeat offenders. We recommend that this process be expedited, and extended to include a full non-compliance portfolio (e.g. non compliance with regards to tariff classification, valuations, mis-declaration of country of origin), not only regarding seizures and detentions. The revised monetary penalty system should make provision for the creation of this non-compliance database. Penalties must be concomitant to the degree of infringement and the legacy of infractions. It is recommended that these should be key features of a revised monetary penalty system.</p> <p>e) Refer paragraph 5.3.4.4 (a) and (b). We recommend that SARS increases its enforcement capacity with dedicated specialized skills allocated to customs investigations, and continuous training through the SARS Customs Academy to ensure that such individuals remain abreast of new legislation, policies and initiatives. Refer paragraph 5.3.3.2 - such individuals should have representation on the Customs National Stakeholders Forum to provide feedback to this Forum on practical constraints experienced by investigators with current legislation and policies; to enable the Forum to suggest, formulate and implement appropriate and suitable policies and legislative amendments.</p>

5.3.2 ADMINISTRATIVE INSTRUMENTS

5.3.2.1 Structure of Customs Services Body

Gaps Identified	Recommendations for Improvement
<p>a) Paragraph 3.6.1.2 refers. Frequent restructuring within SARS has resulted in amended portfolios and little or no evidence of integrated understanding of roles and responsibilities within the customs environment. This poses a challenge to communication, co-ordination and the continuity of initiatives, resulting in project or program fragmentation and unreasonable and costly implementation delays. In addition in results in a lack of accountability amongst officials for ensuring the successful implementation of long awaited and much needed initiatives.</p>	<p>a. SARS is to give immediate attention to designing and implementing a human resource capacity strategy for the commitments made to the Parliamentary Committee to increase the capacity of customs staff to 5,000 by 2011. Also refer to the recommendations made in paragraph 5.3.1.7(e) above.</p>
<p>b) Paragraph 3.1.6 refers. There is a disproportionate resourcing for customs within SARS: just over 2,600 staff service customs whereas its total staff complement is in excess of 14,000. Commitments made to increase the capacity of customs staff to 5,000 by 2011 are void of any human resource capacity strategy or plan.</p>	<p>b. ICC Guideline 31 (Ombudsman) calls for the appointment of an experienced customs officer as a central enquiry access point, to assist traders in approaching or raising queries with the administration. This could also be a useful and effective portal for trade assistance in reporting unusual or suspicious circumstances to customs It is recommended that consideration be given to creating such a dedicated function within the customs model.</p>
<p>c) The National Investigations Team (under the auspices of the SARS Enforcement Unit) is split provincially. They apply a disintegrated model whereby the investigation teams are allocated a range of investigations covering:-</p> <ul style="list-style-type: none"> • Income tax • VAT • Customs and excise • Debt and PAYE • Outstanding returns etc <p>This unit currently has capacity to initiate approximately 600 investigations per year (only</p>	

Gaps Identified	Recommendations for Improvement
<p>approximately 100 of these being customs related). Whilst they do have skilled investigators who are specialised in certain areas (e.g. clothing) the level of dedicated skilled capacity in the customs area is unclear. They make use of the customs academy where space is available and course content suitable to the needs of the team. There is a growing need for the customization of courses within the enforcement environment.</p>	

5.3.2.2 Programmes/Systems/Initiatives to Facilitate Customs Operations

Gaps Identified	Recommendations for Improvement
<p>a) Paragraph 3.1.8.1 refers. The current customs system, CAPE, operates independently from the risk engine (ICRAS) and information is merely interfaced between the two systems. With the pending introduction of TATIS, the first phase of implementation due to commence between July and October of 2010 driven by the Modernisation team at SARS, the risk engine will be incorporated into the customs management system. The implementation of the system and subsequent and supportive elements of the preferred trader scheme and the automated acquittal system will be reliant on the effectiveness of this roll-out. TATIS will furthermore allow for a number of system plug-ins, notably the SAP Finance module.</p> <p>The Revised Kyoto Convention requires Customs to apply information technology to support customs operations, wherever it is cost-effective and efficient for both Customs and trade. It provides administrations with detailed guidelines on how to apply and implement information technology for the clearance of goods, carriers and persons, thus assisting Customs to deal with the demands generated by electronic commerce. It also provides for the use of risk management techniques.</p>	<p>a) SARS is to determine dedicated time frames, implementation targets and official accountability for the implantation of modernization initiatives.</p> <p>b) It is also recommended that ICC Guideline 32 (electronic filing) be referred to in further development of ICRAS. The Customs Control Bill does place emphasis on electronic reporting and declarations in order to speed up processing, reduce errors and enable effective risk assessment. This has the added advantage of being paperless, thereby lessening the carbon footprint of the process.</p> <p>c) The recommendations made in paragraphs 5.3.1.1(c), and 5.3.1.7(d) applies to the gaps listed in this section of the report.</p> <p>d) The role-out of the recommended Price Reference Guidelines for identified products must be developed in cooperation with industry stakeholders and be cognisant of international norms.</p>
<p>b) Paragraph 3.5.2.2 refers. The lack of computer systems and connectivity at many of the ports of</p>	

Gaps Identified	Recommendations for Improvement
<p>entry may negate many of the advancements in electronic developments.</p>	
<p>c) In relation to statistics available to effectively manage the risk of fraud and compliance, only two sources are made available: -</p> <ul style="list-style-type: none"> i) Paragraph 3.2.5 refers. Seizures as contained in the SARS Dashboard. Whilst there are threads of consistency in the measured commodities year on year, an accurate measurement is difficult. Initiatives are afoot to develop this further to include compliance data records of traders; ii) Paragraphs 3.4.1.4 and 5.3.1.1 c) refer. The usefulness of import statistics is limited by the format in which they are supplied by SARS. Official import statistics reflect the total import quantity and value of a product from a specific country per month or year; iii) Statistics are not given per consignment and details like the port of entry and the purpose code (Warehouse Entry, General Rebate, Industrial Rebate, and Warehouse for Export) are generally not made available by SARS; iv) Paragraph 3.4.2.1 refers. Furthermore, Section IV of the Customs and Excise Act as well as Sections 22 to 24 of the draft Customs Control Bill prohibits SARS from making known the names of importers. <p>The aforementioned information is essential to monitor and analyse the imports of a product in a meaningful manner and to identify possible fraudulent activity.</p>	<p>In the development of the concept, reference has been made to Brazil's successful use of the pricing guideline to combat the flood of cheap imports. Reference price guidelines entail the determination of a base price for a particular item for purposes of calculating customs duty which traders will be obliged to pay.</p> <p>e) We recommend designated that SARS consider implementing Ports of Entry (POE) for specific products. This would facilitate the placement of relevant officials like sector specialists at ports of entry. The Malaysia model includes designated ports of entry and exit, which is gazetted under the Malaysian Customs Act and listed in the Customs Regulations and can be a useful reference in this regard.</p>
<p>d) Paragraph 3.6.1.2 refers. Customs officials have insufficient product knowledge to frame a reference for pricing of products when reviewing declarations and validating values.</p>	
<p>e) Paragraph 3.1.5.1 refers. BCOCC initiatives:</p> <ul style="list-style-type: none"> • Implementation of the National Integrated Border Management Strategy is fragmented, 	

Gaps Identified	Recommendations for Improvement
<p>lacks enforcement impetus resulting in the BCOCC widely being viewed as a body which is relatively ineffective in relation to its mandate.</p> <ul style="list-style-type: none"> • Notwithstanding, there are sub-committees which appear to be consolidating the collaborative effort. One such structure is amalgamated and based at the national police headquarters of the Port of Entry Department in Pretoria and comprises SARS, Home Affairs, SAPS and others. • However, it appears that the focus may not be on imports but rather on major events and immigration. <p>f) Paragraph 3.1.4 refers. Internal Anti-corruption initiatives. Although there is a policy in place, the assessment survey thereof (December 2008) raised a number of disturbing internal risks that require further attention. Identified areas of risk included responses relating to:</p> <ul style="list-style-type: none"> - The reporting of corruption - Measures to deal with corruption - Corruption at SARS in comparison to other government departments - General responses in relation bribery, nepotism and favoritism 	

****Interesting reading:***

Some ***useful initiatives being undertaken within the countries selected for benchmarking*** include:

Canada: All systems are fully electronically integrated, not only within the customs administrative structure but also with other enforcement agencies and stakeholders - EDI compliant.

- Programmes:
 - Customs self assessment, see paragraph 4.2.4.6– this includes the registration of drivers in the case of land crossings. This may not be feasible in South Africa
 - Partners in Compliance (pilot programme) see paragraph 4.2.4.7
 - Partners in Protection see paragraph 4.2.4.8
- Free and Secure Trade (FAST), see paragraph 4.2.4.11– an initiative to expedite the processes through established agreements. Conditions are that parties must undergo thorough risk assessment to qualify for participation. The principles of this initiative can be applied in South Africa particularly in relation to the challenges with the other SACU member countries (BLNS).
- Canada/US: Smart Border Declaration; Cross Border Crime Forum; Joint Targeting Initiative; Marine Trade Security (includes component of Advance Cargo Reporting) see paragraphs 4.2.4.12, 4.2.4.13, 4.2.4.15 and 4.2.4.16– a risk assessment is done prior to the goods leaving the ports of origin).

India: Icegate – is an up and running electronic filing system that has been praised for its effectiveness (users must be registered). India has also adopted a Customs Risk Management System, which covers 85% of India's international trade. Refer paragraph 4.5.8.2.

France: It has emerged that there is a multitude of systems including EIS, SIS, CIS and Customs File Identification Database and that this has resulted in duplication, issues of mandate and concerns about operational capabilities. The programmes are currently under review. There are proposals to automate and allow for electronic transmission of declarations in order to conduct adequate risk assessments. It is worth noting the challenges faced by France, since it is a key recommendation of this report that South Africa also aims at consolidation of the regulatory framework and rationalisation of mandates of the various agencies.

5.3.3 LAW ENFORCEMENT – LEVELS OF COOPERATION/COORDINATION AMONGST ENFORCEMENT AGENCIES AND BETWEEN ENFORCEMENT AGENCIES, BUSINESS AND LABOUR

5.3.3.1 Formal Co-Operation Arrangement between Domestic Enforcement Agencies

Gaps Identified	Recommendations for Improvement
<p>a) Paragraph 3.1.5.1 refers. BCOCC</p> <ul style="list-style-type: none"> It has no enforcement ability Its initiatives and strategy lack a coherent and integrated implementation plan There are conflicting priorities among its members and a distinct lack of shared vision and responsibilities/accountability 	<p>a) It is recommended that SARS as the lead agency of the BCOCC re-evaluate the inter-relationship among the various enforcement agencies, and that complementary roles and responsibilities be properly defined in line with the Integrated Border Management Strategy. This will clarify the common goals and contribute to a comprehensive enforcement approach. In addition it may assist to foster a culture of individual accountability amongst officials of the various agencies.</p>
<p>b) Paragraph 3.1.5.3 refers. There are indications of tension between officials of SARS and SAPS that arise during joint operations at the ports of entry. One such problem relates to the varying salaries of similar level employees based at the same port of entry, and from different departments or agencies. Furthermore, the policies of the different departments based at the ports of entry sometimes differ, such as on housing. This has led in some cases to tension among officials, which is not conducive to co-operative functioning. (2008 AG report on Performance Audit of Border Control at the SAPS.)</p>	<p>b) WCO has urged that, <i>"Members of the Customs Co-operation Council and Customs or Economic Unions should ... aim to secure the co-operation of commercial, fiscal, banking and other authorities involved in international commerce and trade, to assist in combating Customs commercial fraud."</i>¹¹⁸ It is highly recommended that such initiatives be undertaken in the investigation and prosecution of import fraud. This can also be re-enforced through the National Stakeholder Forum lead by SARS.</p>
<p>c) Paragraph 3.1.5.3 refers. The MOU between SARS and SAPS has not been signed although it was drafted in 2008. Although it is clear</p>	<p>c) It is recommended that MOU's be formalised on operational level among the various departments or agencies responsible for the implementation of the regulatory framework. Key agencies include <i>inter alia</i>: SARS, the DTI, ITAC, SAPS, DAFF. Such agreements should contain guidelines/prescriptions based on the mandates and SOP's in terms of the legislation of the respective agencies for the establishment of formal structures for communication, the allocation of administration responsibilities, type of information-sharing required, level and frequency of consultation required and accountability within the agencies must be assigned to specific official designations. The purpose of these agreements is the coordination and harmonization of</p>

¹¹⁸ RECOMMENDATION OF THE CUSTOMS CO-OPERATION COUNCIL CONCERNING ACTION AGAINST CUSTOMS COMMERCIAL FRAUD (1 July 2006)

Gaps Identified	Recommendations for Improvement
<p>that the intention and commitment of SARS and SAPS is to work collaboratively together, this is not reflected sufficiently at an operational level. There appears to be a disturbing trend of territorial attitudes which is a serious cause for concern and is not in the interest of business, labour, government or the country as a whole.</p> <p>d) Paragraph 3.5.3.3 refers. Other agencies, i.e. Health and Agriculture have very little capacity to ensure enforcement with legislation and regulations.</p>	<p>customs related activities and in order to address the issue of lack of timeous access to critical information impacting on the efficiency and the effectiveness with which customs fraud issues are dealt with. The establishment of an electronic interface based on the Canadian OGD model (refer paragraph 4.2.4.4) would facilitate the co-ordination and harmonization between the relevant agencies.</p> <p>d) The MOU drafted in 2008 between SAPS and SARS should be signed and implemented as soon as possible.</p>

****Interesting reading:***

Some ***useful initiatives being undertaken within the countries selected for benchmarking*** include:

Canada:

- *Integrated Border Enforcement Teams (IBETS), see paragraph 4.2.4.14 – Canada / US initiative which is a combination of intelligence and law enforcement expertise*
- *Other Government Department Interface (OGD), see paragraph 4.2.4.4 – joint initiative between government departments and CBSA. Electric interface that shares information presented by traders in advance*
- *CFIA (Canada Food Inspection Agency)/ACROSS Interface system see paragraph 4.2.4.5 - whereby importers and brokers can transmit release information on CFIA regulated goods to the CBSA, which in turn transmits this information to the CFIA. The interface capabilities of this programme are noteworthy. Importers and brokers have access to current requirements in relation to EDI requirements. It can be described as a one stop shop, which is more ergonomical for stakeholders and thereby facilitates effective trade*

Malaysia: *there are formal co-operation agreements with neighbouring countries' border control agencies at operational levels such as: Thailand, Brunei, Indonesia, Singapore, The Philippines and USA (Mega port Initiative and CSI).*

5.3.3.2 Multi-Sectoral Forum for Customs

Gaps Identified	Recommendations for Improvement
<p>Whilst there is an established forum under the auspices of the Customs (National) Stakeholders Forum, the absence of a forum in which sector relevant issues can be addressed and discussed has been flagged.</p> <p>Paragraph 3.4.2.2 refers. Sector representations and training initiatives to customs officials vary in extent, frequency and effectiveness. All sectors researched are not satisfied with the level of support by SARS. The lack of cooperation and coordination between SARS and the Departments of Agriculture and Health was flagged by the agriculture sectors researched.</p>	<p>a) Creation of sector-based forums: paragraphs 5.3.1.1 (c) and 5.3.3.2 (c) refer. ICC Guideline 30 (Memoranda of Understanding) supports the use of formal Memoranda of Understanding to enhance co-operation between Customs and the trade community. This is in respect of information exchange, security and training, with obvious associated benefits in the interdiction of Customs fraud and so the support of Customs integrity. The dairy industry has established a forum (see paragraph 3.4.2.2) with representatives from the Departments of Health and Agriculture and SARS where all issues relating to imports, including customs fraud related matters and training are addressed. The forum is unique owing to it creating a platform for cooperation, communication and consultation by all the role players involved in the operational issues around imports. It is recommended that this model be duplicated and extended to include ITAC, the DTI and labour in sectors where customs fraud is prevalent and the risk inadequately addressed. It is further recommended that MOU's be formalized between the members of the forum. Such MOU's should contain prescriptions based on the mandates of government, labour and industry representatives for the establishment of formal cooperation and communication structures, the allocation of administration responsibilities, type and frequency of information-sharing required, procedures to be followed when a suspect import transaction is identified, level and frequency of formal consultation required and accountability within the individual members of the forum must be assigned. This should go hand-in-hand with specific targets set on the improvement of the communication between the various agencies and sector representatives, as well as support that the sectors receive from the various agencies. The purpose of such agreements would be to enhance cooperation, coordination and transparency between the role players in government, business and labour involved in dealing with customs fraud issues.</p> <p>b) It is further recommended that the above sector-based forums be given representation on a national forum, which body could be the Customs National Stakeholders Forum. Please refer to paragraph 5.3.1.7(e) where it is recommended that specialist Customs investigators also be given representation on this forum. It is recommended that the TOR of the Customs National Stakeholders Forum be revised to ensure the inclusion of representatives of the sector-based forums.</p>

***Interesting reading:** Canada has the Partners in Compliance initiative, which aims for business to attain the highest rate of compliance with the CBSA. The features of this programme should be reinforced in relation to the AEO infrastructures and preferred trader scheme being developed for South Africa.

5.3.3.3 Mutual Administrative Agreements

Gaps Identified	Recommendations for Improvement
Paragraph 3.1.2 refers. Although such agreements are valuable, especially in the event of suspicious transactions, some terms of these agreements are too restrictive (confidentiality obligations and sovereignty protection) for effective enforcement. Currently, South Africa only has such agreements with Algeria, People's Republic of China, India, France, USA, UK, Mozambique and the Netherlands	a) It is recommended that SARS, the DTI and DAFF undertake a review of its significant international trading partners and pursue the adoption of mutual administrative agreements with these countries, which may aid in eliminating the risks associated with import fraud. It is further recommended that the negotiated mutual administrative agreements on customs that have been ratified in South Africa only, or have not yet entered into force; be expedited.

***Interesting reading:** It is worth noting the WCO proposals that, "Members of the Customs Co-operation Council and Customs or Economic Unions should:

- Increase their efforts to co-operate at bilateral, regional and international levels in the fight against Customs commercial fraud;
- Endeavour to provide administrative assistance in the prevention, detection and repression of the Customs commercial fraud and give appropriate feedback to those Member administrations providing such assistance;
- Examine the possibility of concluding bilateral or multilateral agreements for the exchange of information relevant to Customs commercial fraud, and consider acceding to **the Council's International Convention on Mutual Administrative Assistance in Customs Matters (Johannesburg Convention)**;
- Endeavour to apply the operational instruments and guidelines of the Customs Cooperation Council, such as the Guide to the Exchange of Customs Valuation Information, in their day-to-day operations."¹¹⁹

The following international conventions can be borne in mind to spearhead the conclusion of mutual administrative agreements:

¹¹⁹ RECOMMENDATION OF THE CUSTOMS CO-OPERATION COUNCIL CONCERNING ACTION AGAINST CUSTOMS COMMERCIAL FRAUD (1 July 2006)

- In terms of the **International Convention on the Harmonization of Frontier Controls of Goods, 1982, Article 4.** - "The Contracting Parties should undertake, to the extent possible, to organize in a harmonized manner the intervention of the Customs services and the other control services."

Convention on International Civil Aviation, Annex 9(4.17.1) Recommended Practice - "Contracting States, in giving effect to 4.17 (I.39), should encourage to the maximum extent practicable, alignment of documents required for the clearance of import cargo with the United Nations Layout Key for Trade Documents, to follow the format set forth in Appendix 9 (to Annex 9) - United Nations Layout Key for Trade Documents."

5.3.4 LEVEL OF RESOURCING OF ENFORCEMENT AGENCIES (SARS/ITAC/SAPS)

5.3.4.1 Visibility at Ports of Entry

Gaps Identified	Recommendations for Improvement
There is insufficient visibility of officials at ports of entry due to resource constraints.	Refer paragraph 5.3.2.1(a) - SARS is to give immediate attention to designing and implementing a human resource capacity strategy for the commitments made to the Parliamentary Committee to increase the capacity of customs staff to 5,000 by 2011. Also refer to the recommendations made in paragraph 5.3.1.7(e) above. Incorporated into this process should be conducting a needs analysis of ports of entry, possibly under the auspices of the BCOCC. This must take into account the nature and volumes of imports in order to ensure the necessary numbers and expertise of officials to address import fraud.

5.3.4.2 Staffing at Ports of Entry

Gaps Identified	Recommendations for Improvement
<p>a) Paragraph 3.1.6 refers. There is inadequate staffing of customs officials, particularly at land ports.</p> <p>b) Paragraph 3.1.6 refers. SAPS have inspection teams operating under the auspices of the Cargo Crime Combating Unit, however no specialised investigators of commercial crime are stationed at ports of entry. This means that customs and commercial-related crimes do not receive priority attention.</p> <p>- At ORT, investigations of commercial-related crimes are not conducted by the airport SAPS</p>	<p>a) It is recommended that SARS as the lead agency of the BCOCC re-evaluate the inter-relationship among the various enforcement agencies, and that complementary roles and responsibilities be properly defined in line with the Integrated Border Management Strategy. This will clarify the common goals and contribute to a comprehensive enforcement approach. In addition it may assist to foster a culture of individual accountability amongst officials of the various agencies.</p> <p>b) The MOU drafted in 2008 between SAPS and SARS should be signed and implemented as soon as possible. It is further recommended that SARS and SAPS should agree on establishing a dedicated joint Customs Fraud Investigation Task Team to ensure that these cases are investigated by specialists based at key ports of entry</p> <p>c) Refer paragraph 5.3.4.4 (a) and (b). We recommend that SARS increases its enforcement capacity with dedicated specialized skills allocated to customs investigations, and continuous training through the SARS</p>

Gaps Identified	Recommendations for Improvement
<p>personnel</p> <ul style="list-style-type: none"> - It is investigated by the JHB Commercial Crime SAPS. - Dockets are registered at OR Tambo and then transferred to the JHB Commercial Crime to be investigated - It has been reported to us that sometimes these case dockets remain uncollected at the OR Tambo SAPS station for days 	<p>Customs Academy to ensure that such individuals remain abreast of new legislation, policies and initiatives. Refer paragraph 5.3.3.2 - such individuals should have representation on the Customs National Stakeholders Forum to provide feedback to this Forum on practical constraints experienced by investigators with current legislation and policies; to enable the Forum to suggest, formulate and implement appropriate and suitable policies and legislative amendments.</p>

****Interesting reading:***

ICC Guideline 41 (Customs Experts) specifies provision of customs experts to advise traders on valuation and other procedures. It is recommended that this be incorporated into the South African scenario, bearing in mind the needs at the various ports of entry.

In Malaysia, there are concerns around prevalence of staff being poached from customs administration bodies into the private sector, and assisting with exploiting loopholes. This appears to be the trend in South Africa also. It is recommended that SARS adopts an effective staff retention strategy along with succession planning in order to ensure that this risk is alleviated to the best extent possible.

5.3.4.3 Facilities at Ports of Entry, including Inspection Equipment

Gaps Identified	Recommendations for Improvement
<p>a) Land ports:</p> <ul style="list-style-type: none"> - Paragraph 3.5.3 refers. Generally have insufficient lighting, cargo scanners and weigh bridges; - Paragraph 3.5.3 refers. There is a lack of boundary fences at some land ports which are a result of damage or neglect; - Insufficient cameras and surveillance equipment aid criminals with trans-border crime; - Paragraphs 3.5.2.22 and 3.5.3.3 refer. Insufficient offloading and inspection facilities, particularly at land border posts results in a lack of or ineffective inspections. 	<p>a) The recommendations of the 2008 AG's report must be implemented and acted upon as a matter of extreme urgency.¹²⁰ A summary of key recommendations include:</p> <ul style="list-style-type: none"> • Finalisation and approval of the strategy documents should be prioritised to give structure to the borderline policing process in line with the 2003 Cabinet <i>lekgotla</i>; • A specialized borderline-specific crime intelligence structure, in collaboration with intelligence agencies from neighbouring countries and international role-players, should be established, • Properly constituted borderline-specific training programmes should be formulated and implemented in conjunction with the relevant government departments to ensure improved service delivery; • Implementation of the proposed personnel structures for all borderlines policed by the SAPS should be prioritized effectively to combat the illegal movement of persons and goods along the borders; • The BCOCC should oversee the handover of SANDF borderline equipment to the SAPS on terms of the entry and exit strategy; • The frequency of patrols at areas where there are no fences to demarcate the borderline should be increased. Also, compensating patrol / monitoring processes should be implemented at mountainous areas which cannot be patrolled by conventional vehicular means; • An arrangement should be entered into between the SAPS and the SANDF (Navy) regarding joint operations to fulfill the sea borderline policing function in the most
<p>b) Technical infrastructure – systems: connectivity is very restricted and there is not always interoperability.</p>	
<p>c) Paragraph 3.1.7 refers. One big mobile container scanner is located at the Durban harbour. SAPS/SARS jointly requested funds for procurement of the scanner from Treasury. Funds were allocated and SARS handled the process. SAPS was of the view that the scanner will be shared but SARS controls the use of the scanner and it's availability to SAPS is limited. SAPS/SARS are considering a MoU regarding the use of the scanner. Information has come to light that on at least one</p>	

¹²⁰ Report of the Auditor General on a Performance Audit of Border Control at the SAPS (17 January 2008) p16

Gaps Identified	Recommendations for Improvement
<p>occasion the scanner was utilised during a political event. It is unclear as to whether it was utilised for security purposes or not. Notwithstanding, this detracts from its original and key functions at this port of entry.</p> <p>d) The 2008 AG report on Performance Audit of Border Control at the SAPS highlighted a number of issues of concern; but these do not appear to have been adequately addressed. These include:</p> <ul style="list-style-type: none"> - Delays in the procurement process which result in a shortage of necessary equipment to enhance the search function - Equipment is under-utilised because of a lack of training in the use of devices, inappropriate allocation of equipment, and deficiencies in their maintenance and repair 	<p>efficient manner;</p> <ul style="list-style-type: none"> • Adequate management oversight measures should be instituted to ensure that air borderline operations are performed in accordance with the relevant strategy; and • A coordinated structure should be established with the SANDF (SAAF) with regard to the use of radar and other specialized equipment to prevent air borderline crossings.

****Interesting reading:***

The benchmarked countries have the following which can be used as a frame of reference for recommendations:

Canada: *Wide range of highly sophisticated equipment (with a focus on terrorism, drug and people smuggling). In addition, there are:-*

- *mirror kits for inspecting under the carriage of containers*
- *probes for inspecting bulk loads of goods*
- *laser range finders to measure the length of containers*
- *density gauges, and long and short-pole reach cameras for viewing hard-to-reach places*

France: *Have very well-resourced vehicle, marine and air fleets, and equipment for detection and inspection.*

It is recommended that the provisions of the following international instruments be incorporated in order to address these constraints:

- *ICC Guideline 14 (Selective Examination) supports targeting suspect consignment through automated compliance measurement and risk-assessment systems*
- *ICC Guideline 17 (Non-intrusive Inspection) looks to methods which obviate the need for actual disturbance of packing, container or means of transport*
- *Kyoto Convention, Annex B.1(38) Standard - "When examining goods, the Customs authorities shall take only such action as they deem essential to ensure compliance with the laws and regulations which the Customs are responsible for enforcing.*

"Notes: - The examination of goods may be either summary or detailed. In a summary examination the Customs may carry out some, though not necessarily all, of the following checks - counting the packages, noting their marks and numbers and ascertaining the description of the goods. Detailed examination involves thorough inspection of the goods to determine as accurately as possible their composition, quantity, tariff heading, value, and, where necessary, origin.

"- Detailed examination of the goods is warranted, in particular, where the Customs authorities are not satisfied about the accuracy of particulars furnished in the declaration or in the supporting documents.

"- Goods liable to high import duties and/or taxes may be regularly subjected to detailed examination."

- *Convention on International Civil Aviation, Annex 9(4.30) - "Contracting States shall accomplish their physical examination of cargo imported by air on a sampling or selective basis. The appropriate public authorities of the State concerned shall also, in consultation with, inter alia, operators and airport administrations, devise physical means for carrying out such examination rapidly."*

5.3.4.4 Training and Capacity Building

Gaps Identified	Recommendations for Improvement
a) Paragraphs 3.5.3 and 3.6.3.1 refer. SARS: There is generally limited technical expertise of customs officials in respect of commodity and the ability to distinguish between commodity items. Furthermore, capacity to calculate and assess the accuracy of duties payable is lacking. Business / industry training input and requests are unstructured.	a) It is recommended that the initiative by the Customs Academy to establish Centres of Excellence (COE's) using experienced officers be expedited. They aim to deal with the following: <ul style="list-style-type: none"> • Industry specialists • Customs regimes (tariff classifications; valuations; rule of origin) • Customs functions (i.e. aircraft rummage) <p>Refer paragraph 5.3.3.2(a): we further recommend that the sector-based forums (to be established) also be involved in and consulted with on the creation of the Centres of Excellence.</p>
b) Paragraph 3.1.8.1 refers. Although the customs academy is a laudable initiative, it lacks sufficient training capacity and knowledge in the customs environment. The academy claims to train up to 500 customs officers a year, but the focus has been on the basics. Attempts at setting up schools of customs administration with local universities have not been successful.	
c) Paragraph 3.1.6 refers. SAPS: There is a basic border control course that new SAPS port of entry personnel are taken through and there is also industry specific training. SAPS personnel are not given any customs specific training but much of the training that members receive will be experience based and through mentorship. Thus, there is no focused internal training, and skills are reliant on experience and business initiatives.	b) The Customs Academy must be formally structured and established with dedicated courses of specialisation. Refer paragraph 5.3.3.2(a): we further recommend that the sector-based forums (to be established) be utilized as vehicles for the implementation of training initiatives. It is also recommended that members of SAPS who perform duties at the ports of entry, specifically inspections, should be trained by the Customs Academy within SARS. Successfully completing these courses should be a pre-requisite for customs officials of specific levels and application. Customs Academy management should ensure that the input of sector/industry representatives is incorporated into the course content. Industry representatives have indicated their willingness to support such training on a time and financial basis.

***Interesting reading:**

In furtherance of these initiatives, it is recommended that the provisions of the following international instruments be taken into account:

- i. ICC Guideline 3 (Customs Workforce) sets some basic requirements in salary levels, recruitment, promotion and career management.

WCO: RECOMMENDATION OF THE CUSTOMS CO-OPERATION COUNCIL CONCERNING ACTION AGAINST CUSTOMS COMMERCIAL FRAUD (1 July 2006): Members of the Customs Co-operation Council and Customs or Economic Unions should: Include specialized training on Customs commercial fraud in training curricula and ensure that staffs are adequately trained in this regard.

- ii. Customs Capacity Building Strategy prepared by the World Customs Organization on behalf of the International Customs Community. This strategy is an attempt to respond to the WTO Doha Ministerial Declaration in November 2001, where the role of capacity building is highlighted in customs-related areas.

- iii. **WCO's training instruments and technical material** could be categorized as:

I. Technical and training publications

II. Guidance in designing an effective customs enforcement structure and implementing control measures

III. Bilateral and multilateral instruments for administrative assistance, including for a better exchange of information.

The benchmarked countries have the following programmes that are useful guides in the roll-out of training to customs officials:

Canada: CBSA National Learning Centre annually trains 630 new recruits who will be stationed all across Canada as Border Services Officers (BSOs). The Port of Entry Recruit Training (POERT) program currently consists of 13 weeks of training. A newly graduated recruit of this program is trained in all three legacy functions (FPA, Immigration and Customs).

France: Customs Fellowship Programme, which also has training programmes for other countries together with WCO. There is also an e-learning course in customs and taxation through Taxation and Customs Interactive Campus (TACTIC).

Malaysia: the Customs academy provides training internally and externally to trading partners. They provide mentorships both internal to and external of the customs administration body.

6 SOURCE LIST

This source list includes reference to organizations, individuals, articles, books and websites.

GENERAL RESEARCH SOURCES	
1.	LEGISLATION, REGULATIONS, RULES, TEXT BOOKS, WEBSITES
	Snyman, CR, Criminal law, Fourth Edition, 2002
	WTO Agreement on Customs http://www.wto.org/english/docs_e/legal_e/legal_e.htm http://www.aseansec.org/economic/customs/glos_wco.htm
	WTO Agreement on Agriculture
	Customs and Excise Act and Schedules http://www.sars.gov.za/lnb/mylnb.asp?jilc/kilc/eggg/ttqg/utqg http://www.info.gov.za/view/DownloadFileAction?id=71016
	International Trade Administration Act, No 71 of 2002 http://www.info.gov.za/view/DownloadFileAction?id=68109
	Draft Customs Duty Bill and Draft Customs Control Bill
	South African Police Services Act
	Agricultural Product Standards Act, 1990
	Agriculture Pest Act, No 36 of 1983
	Animal diseases Act, No 35 of 1984
	Foodstuffs, Cosmetics and Disinfectants Act
	Motor Industry Development Programme (MIDP)
	Livestock Act
	Criminal Procedure Act, No 51 of 1977

GENERAL RESEARCH SOURCES
Counterfeit Goods Act, No 37 of 1997 http://www.info.gov.za/view/DownloadFileAction?id=70783
Copyright Act
Merchandise Marks Act, No 17 of 1941
National Ports Act, No 12 of 2005
SA Civil Aviation Act
Cross Border Road Transport Act, No 4 of 1998
Guidelines for Agreements and Licences and Permits in terms of the National Ports Act
Draft Port Rules in terms of the National Ports Act
Airports Company Act, No 44 of 1993
South African Maritime Safety Authority Act, No 5 of 1998
Merchant Shipping Act, No 57 of 1951
Currency and Exchange Act, No 9 of 1963
Immigration Act, No 13 of 2002
The Constitution of the Republic, 1996
Chapter 3 of the Constitution – Rules of Engagement
The South African Police Service Act, No 68 of 1995
Marine Living Resources Act, No 18 of 1998
National Environmental Management Act, No 107 of 1998
Standards Act, No 29 of 1993
2. MULTILATERAL AGREEMENTS AND OTHER RELEVANT REGULATION
GATT – General Agreement on Tariffs & Trade
Kyoto Convention

GENERAL RESEARCH SOURCES

National Integrated Border Strategy (NIBS)

Southern African Customs Union (SACU)

Southern African Development Community (SADC)

European Union (EU)

European Free Trade Association (EFTA)

Africa and Growth Opportunity Act (AGOA)

India-Brazil-South Africa (IBSA) Trilateral Agreement

http://www.ibsa-trilateral.org//index.php?option=com_frontpage&Itemid1

3. GOVERNMENT DEPARTMENTS

International Trade Administration Commission (ITAC)

Directorates: Trade Remedies , Tariff Investigations and Import and Export Control

<http://www.itac.org.za>

Border Control Operational Co-ordination Committee (BCOCC)

Current Chair – William Mype – SARS Group Executive (012 422 5945)

wmpye@sars.gov.za

SAP representatives

- Director Khonto
- Director Chilembe (082 575 5052)

South African Revenue Services (SARS)

Executive: Customs Risk Management – Patrick Matlotsi (083 555 4536) pmatlotsi@sars.gov.za

- Bernd Schlenter – Senior Manager (083 555 4691) bschlenter@sars.gov.za
- Lusanne Fouche (082 781 8839) – lfouche@sars.gov.za

GENERAL RESEARCH SOURCES

- Isaac Tau (082 447 3560) – itau1@sars.gov.za

Research & Segmentation – (prior research papers and surveys per sector)

- Cliff Naude (083 555 3537) – cnaude@sars.gov.za
- Helena Tripmaker (082 451 8251) – htripmaker@sars.gov.za

Customs Strategy & Policy

- Erich C Kieck - Group Executive: Customs Strategy and Policy (PA Elizabeth) Tel (+27 12) 422 4988 <ekieck@sars.gov.za>
- Christine Malan – **Senior Manager Customs SOP'S (082 828 1390)** cmalan@sars.gov.za
- Lucky Molefe – International Trade & Customs Policy Tel (+27 12) 422 6462
- Thabile Ntombela – Strategic partnerships (inter-government & business)

Stats and reporting (Trade statistics and dashboard and other reporting)

- Jack Heyns – Stats & Analysis (082 461 7113) – jaheyns@sars.gov.za
- Loshni Naidoo – Customs Business reports
- Mcebisi Basi – Customs Dashboard & Activity Based Management Portal – (083 447 2732)
- Lerato Dirapelo – Customs Dashboard – (073 866 2010 / 012 422 4352) ldirapelo@sars.co.za
- Max Ramnath – Customs Dashboard – (012 422 6567) – mramnath@sars.gov.za
- Yvonne Jelinek – Surveys - (012 431 9106)

Operations & Modality Executives (key points – airport; marine, land & rail)

- Cassues Sinthumile – (082 464 8983) csinthumile@sars.gov.za
- Airport - Anand Khelawon (082 447 3537) akhelawon@sars.gov.za
- Marine – Leon Potgieter (082 720 7650)
- Land & Rail – Gugu Africa (Sydwell Phokane) (082 371 1442)

Enforcement

- Johan van Loggenburg - Enforcement: Special Operations (082 456 1607) (PA Karin Verster)

GENERAL RESEARCH SOURCES

kverster@sars.co.za

- Ronel van Wyk – Criminal Investigations and Prosecutions
- Nelson Phayane – Illicit Economy Research unit (012 422 6836)

Anti-Corruption and Security

- Clifford Collings – Executive (083 300 0177)
- Carla da Silva – Research and Analysis (surveys and analysis)
- Yousaf Denath & Eben Schoeman – Special Projects

Legislative Interpretation (tariff & valuation determinations; trade agreements & rules of origin)

- Penny Bologo - Senior Manager (082 557 4122)
- Zanemvula Miza – Acting Valuations Manager (012 422 4451)

HR – Senior Manager (Customs) – (capacity issues) Manpura Mphahlele

Modernisation & IT

- Beyers Theron (082 468 3542)

South African Police Services (SAPS)

- Director Chilembe (082 575 5052)
- Senior Superintendent S.B Mahlangu – National Section Head: Air Ports

Department of Trade and Industry (DTI)

Embassies/Consulates of Canada, France, Malaysia and India

Department of Foreign Affairs

4. ASSOCIATION / LABOUR UNIONS

Border Control Operational Co-ordination Committee

Current Chair – William Mype – SARS Group Executive (012 422 5945) wmpye@sars.gov.za

Labour – COSATU

GENERAL RESEARCH SOURCES

Contact person: Mr. Tony Ehrenreich

Industry Bargaining Councils

5. GENERAL REFERENCE

Transparency International

Global Integrity Report

SECTOR RESEARCH SOURCES	
1. DAIRY	
Milk Producers' Organisation (MPO): Mr Bertus de Jongh & Dr Koos Coetzee	
South African Milk Processors Organisation (SAMPRO): Mr Alwyn Kraamwinkel	
Milk SA: Mr Nico Fouchè	
Agri Inspec: Dr Hennie Kleynhans	
SARS: various officials	
Bureau for Food and Agricultural Policy	
Department of Agriculture: Directorates: Agricultural Product Inspection Services, Veterinary Services, Import and Export Control, Quarantine Services, Food Safety and Quality Assurance	
Department of Health: Directorate: Food Control, Port Health Offices	
International Trade Administration Commission: Directorate: Tariff Investigations	
Industry Statistics 2003 to 2009 – Milk Producers' Organisation	
Investigation into the customs tariff dispensation with respect to dairy products, Report 89, 2004, International Trade Administration Commission	
Livestock development Strategy for South Africa, 2007 – Department of Agriculture Forestry and Fisheries	
Reports on investigations conducted by Agri Inspec, 2006 to 2009	
http://www.daff.agric.za	
http://www.doh.gov.za	
http://www.melksa.co.za	
http://www.dairyconnect.co.za	
http://www.sampro.co.za	
http://www.sars.gov.za	
http://www.bfap.co.za	

2. RED MEAT

South African Meat Industry Company (SAMIC): Mr Rudi van der Westhuizen

Red Meat Producers Organisation (RPO): Mr Gerhard Schutte

Agri Inspec: Mr Henk Heslinga

Department of Agriculture: Directorates: Agricultural Product Inspection Services, Veterinary Services, Import and Export Control, Quarantine Services, Food Safety and Quality Assurance

Department of Health: Directorate: Food Control, Port Health Offices

Livestock development Strategy for South Africa, 2007 – Department of Agriculture Forestry and Fisheries

Reports on investigations conducted by Agri Inspec

3. FOOTWEAR

Footwear Manufacturers' Association ('SAFLIA'): Mr Paul Theron

Southern African Clothing and Textile Workers Union (SACTWU): Mr Ettienne Vlok

South African Association of Freight Forwarders (SAAFF): Mr Chris Richards

Department of Trade and Industry: Mrs Elaine Smith

South African Revenue Services: Mr Cliff Naude

Senior Economist, Research and Information, IDC: Mr Nico Kelder

ITAC: Mr Marius Collins

StatsSA: Malerato Mosiane

Beier Safety Footwear: Mr Silvio Ceriani

SAFLIA Annual Report 2009

<http://www.thedti.gov.za/publications/textiles.htm#overview>

http://en.wikipedia.org/wiki/Doha_Development_Round

<http://www.sars.gov.za/home>

http://www.wto.org/english/tratop_e/tariffs_e/tariffs_e.htm

4. TEXTILES AND CLOTHING

SECTOR RESEARCH SOURCES	
Textiles Federation (Texfed): Ms Helena Claassens	
Cape Clothing Association: Mr Johann Baard	
Southern African Clothing and Textile Workers Union (SACTWU): Mr Ettienne Vlok	
South African Association of Freight Forwarders (SAAFF): Mr Chris Richards	
Department of Trade and Industry: Mrs Elaine Smith	
South African Revenue Services: Mr Cliff Naude	
Senior Economist, Research and Information, IDC: Mr Nico Kelder	
ITAC: Mr Marius Collins	
StatsSA: Malerato Mosiane	
National Clothing Retail Federation of South Africa: Mr Michael J Lawrence	
South Africa Textile Statistics and Economic Review 2008/2009 (issued by the Textiles Federation), July 2009	
Cape Clothing Association 2008 Annual Report	
http://www.thedti.gov.za/publications/textiles.htm#overview	
http://www.thedti.gov.za/publications/textiles.htm#overview	
http://www.sars.gov.za/home.asp?pid=2630	
http://www.wto.org/english/tratop_e/tariffs_e/tariffs_e.htm	
South Africa Textile Statistics and Economic Review 2008/2009 (issued by the Textiles Federation), July 2009; Government Gazette No 29316 dated 20 October 2006, under Notice No R.1056	
Source: TexFed Aide Memoir	
http://www.thedti.gov.za/publications/textiles.htm#overview	
http://en.wikipedia.org/wiki/Doha_Development_Round	
http://www.sars.gov.za/home	
http://www.wto.org/english/tratop_e/tariffs_e/tariffs_e.htm	

SECTOR RESEARCH SOURCES
http://www.encyclopedia.com/doc/1G1-167174134.html
http://www.mg.co.za/article/2009-04-04-chinas-quota-betrayal
http://www.fibre2fashion.com/news/textile-news/newsdetails.aspx?news_id=67056
http://www.bizcommunity.com/Article/196/174/40933.html
http://www.sactwu.org.za/pr031204.asp
http://www.fin24.com/articles/default/display_article.aspx?ArticleId=1518-25_2549091
http://www.commercial-property.co.za/2900_news_SARS-considers-new-customs-rules.html
http://www.pmg.org.za/report/20091020-progress-report-south-african-revenue-service-sars-regard-customs-fra
http://www.businessday.co.za/Articles/Content.aspx?id=78631
http://www.ifashion.co.za/index.php?option=com_content&task=view&id=1742&Itemid=237
http://www.bizcommunity.com/Article/196/462/38033.html
TexFed Aide Memoir
South Africa Textile Statistics and Economic Review 2008/2009, issued by the Textiles Federation
Cape Clothing Association 2008 Annual Report
5. TYRES
2008 Report on "Risks Involved in the Tyre Industry" prepared by Helen Mahlake of SARS BIU
Interview with Dr Human of South African Tyre Manufacturers Conference, September 2009
ITAC Report on "Investigation into the alleged dumping of tyres originating in or imported from the People's Republic of China (PRC)"
Interview with ITAC representatives
Interview with Dunlop's Marketing Director (Mr George Schram) and the CEO (Mr Luis)
Interview with NRCS (National Regulator for Compulsory Specifications) Official
"Union in bid to stop cheap tyre imports" Article in Daily Despatch, 8 April 2009

SECTOR RESEARCH SOURCES

South African Tyre Manufacturers' Conference

No 182: Investigation into the alleged dumping of tyres originating in or imported from the People's Republic of China: Preliminary Determination, 2005

6. MOTOR VEHICLES AND PARTS

Burgers, F., Wright, G. and Nel, L. (2007), National initiatives to Prevent and Combat Vehicle Crime

Business Against Crime South Africa, Organised Crime Project, P O Box 784061, Sandton, 2146

SAinfo, 2008

National Association of Automobile Manufacturers of South Africa

National Association of Automobile Manufacturers and Allied manufacturers

Irish, Jenni (2005), Illicit trafficking of vehicles across

Beit Bridge border post, ISS Paper 109. Institute for security Studies, Brooklyn Square, Pretoria, 1-10.

February 16, 2006, Business Report, Burger Fourie, Business Against Crime

Tristan Wiggill , www.autodealer.co.za, No Grey Areas in Imports, 2009-07-20

Superintendent Ronnie Naidoo, Pretoria Police, Illegally Imported Cars Flood SA, <http://www.fin24.com>- Mar 27 2007

An e-mail flyer created by Customs @ Wylie, an initiative of Shepstone & Wylie's, International Transport, Trade & Energy Division, [http://www.wylie.co.za/%7Duploads/Customs Flyer13May2008PDF.pdf](http://www.wylie.co.za/%7Duploads/Customs%20Flyer13May2008PDF.pdf), down-loaded on October 05, 2009.

<http://www.x-rates.com/cgi-bin/hlookup.cgi>

COUNTRY RESEARCH SOURCES	
1. CANADA	
Container Security Initiative (CSI) – Durban	
Canada Border Services Agency (CBSA): Mrs Christine Bradley	
Canadian High Commissioner: Mrs Adele Dion	
http://www.cbsa-asfc.gc.ca/	
http://www.rcmp-grc.gc.ca/	
http://www.forces.gc.ca/	
http://www.ccg-gcc.gc.ca/	
http://www.tc.gc.ca/	
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http://cbsa-asfc.gc.ca/prog/fast-expres/menu-eng.html	
http://www.dfait-maeci.gc.ca/anti-terrorism/actionplan-en.asp	
http://www.publicsafety.gc.ca/prg/le/oc/cbc-eng.aspx	
http://cbsa-asfc.gc.ca/publications/dm-md/d19/d19-6-2-eng.html	
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http://www.rcmp-grc.gc.ca/ibet-eipf/index-eng.htm	
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http://www.tbs-sct.gc.ca/dpr-rmr/2008-2009/inst/bsf/bsf00-eng.asp	
http://www.tbs-sct.gc.ca/rpp/2009-2010/inst/bsf/bsf00-eng.asp	

2. FRANCE

http://ec.europa.eu/taxation_customs/index_en.htm

<http://www.douane.gouv.fr/page.asp?id=3618>

http://europa.eu/abc/european_countries/eu_members/france/index_en.htm

http://en.wikipedia.org/wiki/History_of_the_European_Union

http://europa.eu/pol/cust/index_en.htm

<http://eur-lex.europa.eu/en/legis/latest/chap02.htm>

http://europa.eu/legislation_summaries/customs/l11003_en.htm

<http://europa.eu/geninfo/query/resultaction.jsp?page=1>

3. MALAYSIA

Emerson, CR (1979). Malaysia a study in Direct and Indirect Role

The Environmental Investigation Agency (EIA). Illegal Logging – General Overview, 62/63 Upper Street, London N1 0NY, United Kingdom

Wilkinson, RJW (1935). The Melaka Sultanate, JMBRAS, VOL. XIII- Pt.2: 31

Wilkinson, RJW (1971). Paper on Malay Subjects, O.U.P., London

http://www.asosai.org/R_P_government-revenues/chapter_15_malaysia.htm

4. INDIA

<http://www.cbec.gov.in/cs-manual.pdf>

www.icegate.gov.in

<http://www.globalintegrity.org/reports/2006/india/scorecard.cfm?>

www.dri.nic.in

<http://www.india.travelsphoto.com/india-facts.php>

<http://www3.uakron.edu/worldciv/india/ind-facts.html>