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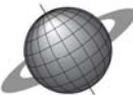
World Customs Journal

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WORLD CUSTOMS ORGANIZATION

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International Network of Customs Universities

World Customs Journal

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The International Network of Customs Universities (INCU) is an association that provides the World Customs Organization (WCO) and other organisations with a single point of contact with universities and research institutes that are active in the field of customs research, education and training. The *World Customs Journal* provides a forum for customs professionals, academics, industry researchers, and research students to contribute items of interest and share research and experiences to enhance its readers' understanding of all aspects of the roles and responsibilities of customs.

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Contents

Foreword

Editorial

SECTION 1

ACADEMIC CONTRIBUTIONS 1

Emerging issues in European customs law

Hans-Michael Wolfgang 3

A review of the European Commission's plans for an electronic customs environment

Peter Wilmott 11

EU customs law and international law

Michael Lux 19

The changing role of Customs: evolution or revolution?

David Widdowson 31

SECTION 2

PRACTITIONER CONTRIBUTIONS 39

New Zealand Customs Service: changes over the last decade and into the future

Martyn Dunne 41

Customs in the 21st century

Pravin Gordhan 49

Emerging issues on the role of Customs in the 21st century: an African focus

Creck Buyonge 55

SECTION 3

REFERENCE MATERIAL 63

Guidelines for Contributors 65

Editorial Board 66

FOREWORD



The challenges posed by globalization, trade facilitation initiatives, and security concerns, to the role of Customs in the 21st century necessitates a renewed professional approach to the management and operations of Customs administrations across the globe.

The responsibility of regulating international trade must simultaneously serve national goals and international standards and obligations. Issues such as the WTO Trade Facilitation agenda, international supply chain security, intellectual property rights, revenue management and fraud, all fall within the ambit of routine Customs work. Customs has a unique and complex role in this environment, which demands an understanding of globalization, political, economic and trading factors, and the ability to translate knowledge into practical strategies and operational policies.

The application of modern management techniques and new technology is vital.

The modern Customs manager therefore requires a much broader set of knowledge, skills and behaviour than has been traditionally required. This can only be derived from a more professional approach to development and career management, and the availability of well researched information on which to base decisions.

Against this backdrop, however, we have found that there is relatively little academic research or study dedicated specifically to Customs.

Recognizing that encouraging more academic research into topics relevant to Customs and establishing a vehicle to capture this information would significantly enhance strategic decision-making, in 2006 the WCO launched the PICARD programme (Partnerships in Customs Academic Research and Development). This initiative met with strong support and cooperation from universities.

At the first PICARD conference convened by the WCO in 2006, Members and the academic world alike recognized that there is a large gap in the market for research into Customs and border management. Included in the conference recommendations was the establishment of a research journal for Customs matters, as well as increased access to Customs by institutions for research purposes.

Universities agreed to initiate a journal through their newly established network, the International Network of Customs Universities (INCU), which had been established to provide the World Customs Organization and other organizations with a single point of contact with universities and research institutes active in the field of Customs research, education and training. The INCU was designed to provide a global resource for governments and the private sector, and an educational source for students wishing to further their knowledge in the field of Customs management and administration.

The *World Customs Journal* will serve as a valuable source of reference for Customs to meet the requirements of the new strategic environment. It will also serve as the flagship of the cooperative effort being made by the WCO and the academic world.

I hope that Customs managers, students and researchers everywhere will take this opportunity to publish valuable insights into the world in and around Customs. Indeed, the WCO itself will stand to benefit from the considerably expanded knowledge base.

In promoting this journal we are aware that the articles produced will be subject to rigorous academic standards and are therefore free from censorship by the Customs world or the WCO. This means that the viewpoints expressed, of necessity do not reflect the views of the WCO or its individual membership.

I am therefore pleased and proud to extend the gratitude and good wishes of the WCO Members to the editors and I look forward to many more editions.

A handwritten signature in black ink, appearing to read 'Danet', written over a horizontal line.

Michel Danet
Secretary General
World Customs Organization
March 2007

EDITORIAL



Welcome to the first edition of the *World Customs Journal*.

For some time a number of universities and research institutions have been seeking to raise the academic profile of the customs profession through the development and promotion of educational programs, academic and applied research and intellectual input to strategic decision making.

Last year the WCO formally recognised the efforts of the academic world at its inaugural Partnerships in Customs Academic Research and Development (PICARD) conference, at which it encouraged its academic counterparts to develop a publication such as this.

Initially being released as an e-Journal, but with the option of also publishing it as a print journal at a later date, the *World Customs Journal* is designed to provide customs professionals, academics, industry researchers, and research students with an opportunity to share and draw upon research, academic commentary and practical insights to enhance its readers' knowledge and understanding of all aspects of the roles and responsibilities of Customs.

Each edition will focus on particular topics of interest, and this first edition examines the evolving role of Customs from a number of perspectives, including the first part of Michael Wolfgang's comprehensive review of European customs law, the adept commentary by Michael Lux on the incorporation of international customs law into the European Community's legal system, Peter Wilmott's analysis of the EU's approach to customs reform, and my own commentary on the changing role of Customs.

This edition also provides some excellent insights into the key drivers for change facing practitioners around the globe. Martyn Dunne, Pravin Gordhan and Creck Buyonge address these issues in ways which not only highlight the distinctiveness of their respective operational environments but also emphasise the underlying national, regional and international interdependencies.

The next edition of the *World Customs Journal* will focus on the ways in which governments are seeking to ensure the security of international supply chains, including implementation strategies for the WCO Framework of Standards to Secure and Facilitate Global Trade.

On behalf of my colleagues on the Editorial Board, I would like to thank the World Customs Organization for their support in reaching this significant milestone and invite you to participate in the development of the Journal by contributing articles or by simply providing feedback.

A handwritten signature in black ink, appearing to read 'D. Widdowson'. The signature is fluid and cursive, with a large loop at the end.

David Widdowson
Editor-in-Chief



Section 1
Academic
Contributions

EMERGING ISSUES IN EUROPEAN CUSTOMS LAW

Hans-Michael Wolfgang

This is the first of a three-part article that will be continued in subsequent issues of the *World Customs Journal*.

Abstract

In 1968 the Customs of the six founding Member States of the European Economic Union (EEC) had already been harmonised to such a degree that the customs payable by third countries could be established on the basis of a common customs tariff. Since it was no longer possible to levy customs duties on goods traded between Member States, there existed a customs tariff union between the founding Member States of the modern European Community long before the creation of the European internal market.

However, by itself the creation of a common customs tariff was not enough to realise a customs union as a fundamental characteristic of the European internal market. The EEC Treaty already required customs law to be harmonised in addition to tariffs. For many years rules governing customs law were scattered among a number of Regulations and sometimes differed. However, in 1994 the Community Customs Code (CC) and the Regulation laying down provisions for the implementation of the Community Customs Code created a uniform European customs law binding on all Member States. This has now provided a sound basis for achieving uniformity in customs matters of 27 countries.

A. Foundations of ‘European customs law’

I. The definition of ‘tariff’

Tariffs are among the earliest form of duties levied by the state. Therefore, even the word ‘tariff’ represents an important foundation of existing European customs law. In etymological terms, this word derives from the ancient Greek word ‘têlos’ (meaning aim, end, final payment), the Latin word ‘teloneum’ (duty) and the Low German word ‘tol’.¹ Even today, the word ‘toll’ in Anglo-American English means a fee for using roads and bridges.

Despite this long history, there is no legally binding, universal definition. Nowadays, the term ‘tariff’ generally refers to duties which are levied when goods are imported, exported, or transported over the state border, not being remuneration for a service provided by the administration (as is the case when levying a fee) and without a similar duty (similar to excise duties) being imposed on domestic goods. Over time, only the levying of customs duties was justified differently according to the legal arrangement and purpose pursued thereby. If road, bridge or courtage charges mainly represented a source of income for the state (financial tariffs) during the middle ages, mercantile policy already regarded the states as an economic unit and regulator of commerce. Therefore, tariffs were used to close the markets to unwanted competition in order to protect the domestic economy (protectionist tariffs).²

Nowadays, when customs duties are levied in international trade, they are largely motivated by the concept of territorial or economic customs duties which was elaborated at the beginning of the 20th century by the customs law theoretician Karl Lamp. According to this economic theory of customs, the right to impose customs duties is linked to the direct entry of a product into economic circulation. Therefore, the right to impose customs duties arises as soon as a foreign product has been released for domestic circulation, thereby contributing to domestic pricing.³ Levying customs duties for products which are merely transported, stored or used without being released into the economic circulation of a state contravenes the economic theory of customs law. The structure of the individual customs procedures reflects this principle.

II. The legal sources of ‘European customs law’

1. The foundations of customs law in international law

European customs law is influenced by international law. The rules of commercial international law, which derive from international treaties or conventions, are of paramount importance.

a. The General Agreement on Tariffs and Trade

Nowadays, the world trade order is based on the General Agreement on Tariffs and Trade (GATT). This agreement was concluded in 1947 and entered into force on 1 January 1948 as the GATT 47.⁴ The aim of this multilateral agreement was to promote reciprocal international trade by the progressive abolition of customs duties and non-tariff barriers to trade and to bring about a realignment of trading relationships following the Second World War.⁵ In order to achieve these aims in the long term, the principle of most favoured nation treatment was created along with other fundamental principles. Accordingly, Art. 1 GATT 47 required all benefits and advantages (for customs and customs formalities) as well as exemptions from customs duties, granted to contracting parties in international trade, to be granted to all contracting parties of GATT.

Over the course of eight trade rounds (so-called ‘customs rounds’), which still regularly take place between the Member States, customs duties and trade barriers were considerably reduced. The customs duties levied on commercial imports could be reduced to such a degree that nowadays they have largely lost their commercial significance for international trade. According to a study carried out by the World Trade Organization (WTO) in 1999, the average rate of customs duties amounted to 6.9%. The average rate for agricultural products at 17.3% was clearly higher than the rate for non-agricultural products at 4.5%.

b. The World Trade Organization

The World Trade Organization (WTO)⁶ was founded on 1 January 1995 in Geneva. This transformed the General Agreement on Tariffs and Trade (GATT) 47, which had formed a contractual system, into an international organisation and provided a future organisational framework for the GATT 94 (concluded in 1994), as well as the further agreements of the Uruguay Round (1986–93). This new organisational structure ensured the success of the ‘single package’ approach. This approach required all the GATT contracting parties to adopt all agreements of the Uruguay Round which meant that it was no longer possible to limit membership to a particular agreement.⁷ The ‘pick and choose’ option is therefore no longer available. Those who wish to enjoy the benefits of liberal market access must also open up their own markets as well.

As a result of the many negotiations carried out during the Uruguay Round, the rules under the GATT 94 are no longer confined to the international trade in goods, but also apply to trade in services on the basis of the General Agreement on Trade in Services (GATS) and now contain a comprehensive agreement on intellectual property by virtue of the Agreement on Trade-Related Aspects of Intellectual Rights (TRIPS). Since then, the world trade order is based on three pillars of substantive law (GATT, GATS

und TRIPS) held together by the WTO. Owing to the fact that individual rules lack direct effect, an importer or exporter can only invoke the rules of a WTO obligation if the Community has issued specific provisions to transpose WTO obligations,⁸ as in the case of the Anti Dumping Regulation.⁹

The Ministerial Conference at Doha (Qatar), which took place in November 2001, signalled the ninth round of WTO negotiations, the 'Doha Round'. The main aim of the new trade round is to strengthen developing countries ('Doha Development Agenda'), although it will also discuss trade facilitation in international trade which is to be characterised, above all, by the reduction of paper-based formalities and the comprehensive use of IT systems (eCustoms). It was planned to complete negotiations before 1 January 2005 but they are still pending.

The euphoria, which greeted the transformation of the GATT into the WTO, has steadily declined since 1995 owing to continuing protectionism. However, the story is still one of success: after all, by mid-2003 almost 150 states had become members of the WTO. The People's Republic of China acceded to the WTO in December 2001 whilst Russia has been negotiating accession for some time.

c. The World Customs Organization

In 1952 the World Customs Organization (WCO)¹⁰ was founded in Brussels as the 'Customs Co-operation Council' (CCC) and given the task of ensuring the greatest degree of harmonisation and approximation of the system of tariffs between the contracting parties of GATT/WTO and working towards the development and improvement of customs law and its procedures.

Owing to its extensive jurisdiction, many important international conventions have been concluded under the auspices of the WCO. This is especially true of the *International Convention on the Simplification and Harmonization of Customs Procedures* of 18 May 1973, (the 'Kyoto Convention'¹¹). The Convention was only binding under international law to a limited extent because the contracting parties were only required to adopt an Annex, in addition to the basic Convention. The extensively reworked 'Revised Kyoto Convention'¹² issued in 1999 increased its binding effect under international law. According to Art. 12 (1) of the Basic Convention, all contracting parties are now obliged to adopt and apply the basic Convention and the General Annex without limitation. In addition, the General Annex contains all core provisions applicable to specific Annexes.¹³ The Revised Kyoto Convention entered into force on 3 February 2006 after it had been ratified by at least 40 contracting states. As one of the early contracting states, the European Community acceded by the Council Resolution of 17 March 2003.¹⁴

2. Customs union and the internal market

European law represents the most important source of law for applicable European customs law. The Treaty Establishing the European Economic Community (EEC) of 1957 as amended by the Treaty of Amsterdam (EU Treaty)¹⁵ plays an important role in this respect. The original formulation of the applicable Art. 2 EC Treaty had already declared the primary task of the Community as being the creation of a 'common market'. This 'common market' was based on the elimination of all obstructions to trade within the Community with the aim of merging national markets to one single market. Its conditions were to resemble those of a genuine internal market as far as possible.¹⁶ The Single European Act¹⁷ finally incorporated the term of the 'internal market' into the EC Treaty and, in Art. 14 (1) EC expressly stated that it was to be achieved by 31 December 1992. According to Art. 14 (2) EC, an internal market refers to an area without internal borders in which the free movement of goods, persons, services and capital is guaranteed. This term was further defined in Art. 23–30 EC.

In particular, the free movement of goods is defined by Art. 23–30 EC. Accordingly, the fundamental freedom of the free movement of goods is to be administered by a customs union. According to GATT, a customs union means that two or more sovereign states merge their territories to form one single customs territory (Art. XXIV GATT). According to Art. 23 (1) EC, a customs union involves the abolition of all import and export duties between the Member States (internal customs) as well as the

prohibition of duties having a similar effect to customs and the creation of a common customs tariff in relation to foreign states. Following the introduction of the common customs tariff in 1968, this goal was finally reached on 1 January 1993. From this time onwards, border controls on the basis of customs law became superfluous with regard to goods because all goods transported within the Community customs territory are considered Community goods (Art. 23 (2) EC) and thereby are no longer subject to customs supervision. This also applies to all goods from non-member states, which have been properly cleared by customs and released for free circulation (Art. 23 (2); Art. 24 EC).

The Treaty of Nice¹⁸ has been in force since 1 February 2003. In addition to organisational rules, which enabled the accession of the new Member States on 1 May 2004 and guarantee the ability of the EU organs to act effectively after this, the Treaty does not significantly alter the basis in Community law of European customs law. However, Art. 133 EC which deals with provisions on common trade policy, has been reworked. Before the EC Treaty was reformed, jurisdiction relating to international negotiations and conventions on services and rights to intellectual property remained the preserve of Member States. However, this jurisdiction has now been granted to the Community.

B. The Customs Code

I. Foundations and creation of the Customs Code

In order to facilitate the practical functioning of the internal market, the national customs law of the Member States had to be comprehensively approximated. For this reason, the Council of the European Communities issued the Community Customs Code (CC)¹⁹ on the basis of Art. 26, 95 and 133 EC Treaty. Since 1 January 1994 (Art. 1 sentence 1 Customs Code), this Customs Code has been the general customs law in the EC and is uniformly applicable in all Member States. Decades of effort marked by the issue of many hundreds of pieces of legislation aimed at harmonising customs law proved successful. Being a Regulation, the CC is legally binding in all Member States (Art. 249 EC). Throughout the Community, it takes precedence over any conflicting national law, which now only performs a complementary function.

II. The structure of the Customs Code

The nine titles and 253 articles of the CC only contain the basic provisions of European customs law. Details are found in the 915 articles of the Regulation Implementing the CC (CCIP)²⁰ and its 113 annexes. Its provisions are systematically related to the CC, in order to ensure the (uniform) application of CC which is limited to basic provisions. The only way of ensuring that the CCIP fully reflects the economic situation is through constant revision, which takes place at the middle and end of each year. After all, the CCIP reflect the practical environment of customs.²¹ All the provisions of the CCIP and CC must be clearly worded in order that traders can immediately understand their rights and act accordingly.²²

The contents of the CC are divided into three areas: Titles III–V deal with procedural law, Titles II, VI and VII deal with the law on duties or substantive law, and Titles I, VIII and IX list the general rules.

1. The general rules

The general rules of European customs law are placed at the beginning and end of the CC. The section ‘General’ in Title I of the CC defines the scope of the CC, the important terms (Art. 1–4 CC), agency (Art. 5 CC), decisions (Art. 6–10 CC), information (Art. 11–12 CC) and other provisions (Art. 13–19). Accordingly, universal, central terminology for the application of the CC is placed before autonomous, specific rules.

a. The scope of the CC

Art. 1–3 CC determine the extent to which international trade is regulated by the CC. Art. 1 sentence 1 CC clearly defines the substantive scope by stating the legal areas which are subject to customs law on the basis of the CC. According to the wording, these are the rules of the CC per se as well as related legislative measures issued at state and European level (for example, CCIP, combined nomenclature, customs tariff, agreement on preferential treatment and the Customs Relief Regulation).

The objective scope of the CC does not extend to trade in services or capital but only to the international trade in goods (Art. 1 sentence 2, first indent CC). The term ‘goods’ is not further defined either in the EC Treaty or the CC. Generally speaking, all movables are regarded as goods which are of value and can form the subject of international transactions.²³ Gas and electricity can also form the subjects of transactions.²⁴

There are no internal borders in a customs union. Therefore, foreign countries involved in international trade are all those areas which are located outside the customs territory of the Community. Such countries are generally non-EU states and are indirectly identified by Art. 2 CC which deals with the territorial scope of the CC. Accordingly, the scope of the CC extends to the areas referred to in Art. 3 CC. In principle, the sovereign territory of the Member States can generally be regarded as the customs territory of the EC, although historical, geographical and economic peculiarities may require adjustments (Art. 2 (2) CC). Territorial and coastal waters together with the airspace form part of the customs territory of the EC according to Art. 2 (3) CC of the EC.

b. The catalogue of definitions contained in Art. 4 CC

Art. 4 CC contains some important definitions which apply to customs law as a whole. Art. 4 no. 23 CC contains one of the most important definitions. This provision defines the term ‘applicable law’ (pursuant to the CC) as both Community and national law. National customs authorities may also regulate details at national level where this is expressly permitted. This maintains the principle of the supremacy of Community law. In such cases, Community law authorises the enactment of national laws. Despite its scope, the list of definitions is not exhaustive. There are other important definitions scattered throughout the CC, notably in Art. 84 CC and individual provisions dealing with customs procedures.

c. Appeals

Ever since GATT 47, legal protection in customs matters by independent courts has always constituted one of the most important principles of international customs law. When the CC entered into force, this principle was finally entrenched at European level by Title VIII CC. According to Art. 243 CC any person (pursuant to Art. 4 no. 1 CC) is able to lodge an appeal against decisions of the customs authority which have been issued or omitted by means of a two-stage procedure at administrative and judicial level, provided that the person is directly and personally affected. This is particularly the case where a ruling on duties (tax ruling) has been issued. A (partial) suspension of the decision appealed against is only possible under Art. 244 (2) CC if the customs authorities have justifiable doubts concerning the decision challenged or the party concerned thereby could suffer irredeemable loss. If national law does not expressly allow the appeal to be made directly before a court then the appeal must first be dealt with by a customs authority set up specifically for this purpose.²⁵ Any other procedural details are only roughly dealt with in the CC. Here, Art. 245 CC refers to provisions in national law.

2. Procedural law – Assignment of customs-approved treatment or use

Procedural law is at the centre of the Customs Code and is dealt with in Titles III, IV and V CC. The provisions govern all aspects of customs law which must be observed when importing and exporting goods. Title IV of the CC lays down the customs-approved treatment or use of goods, the conditions under which they can be placed under a customs procedure and the possible simplifications when carrying out the procedure in question.

The treatment of goods which have entered or left the customs territory of the Community depends on their customs-approved treatment or use. The traders decide the fate of the goods. Art. 4 nos. 15 and 16 provide a definitive list of the possible equal ‘customs procedures’ which may be chosen for import or export or the ‘other types of customs approved treatment or use’ which possibly apply to the goods. The two procedures differ in that placing goods under a customs procedure requires a declaration (Art 59 (1) CC), whilst other types of customs-approved treatment or use only require an act by the trader.²⁶

a. Traders’ freedom of choice

The traders’ freedom of choice forms the focal point of all customs-approved treatment and use. Under the auspices of the declarant, the goods may be assigned a customs-approved treatment or use according to choice and economic permissibility. The owner of the goods controls the customs procedure and not the customs authorities.²⁷

Whether the customs-approved treatment or use is permissible mainly depends on the status of the goods. Art. 4 no. 6 CC distinguishes between Community goods and non-Community goods. According to the legal definition in Art. 4 no. 7 CC Community goods are all goods with EC origin and those which originate from foreign customs territories but which are released into free circulation in the EC. There is no positive definition of non-Community goods. Art. 4 no. 8 sub-para. 1 CC merely states that these are all goods which are not Community goods. The territorial principle laid down in Art. 4 no. 8 sub-para. 2 CC states that all Community goods lose their status when they leave the customs territory. Therefore, non-Community goods are presumed to be all goods which enter the customs territory of the EC from foreign countries.

b. The limits to freedom of choice – prohibitions and restrictions

The freedom of traders can be restricted. Such limitations on trade may be based on the nature or quantity, or their country of origin, consignment or destination as well as other provisions (Art. 58 (1) CC). Such contrary provisions are regarded as prohibitions and restrictions and can arise from the application of trade or security measures of a commercial nature or prohibitions and restrictions of a non-commercial nature pursuant to Art. 58 (2) CC. Since these measures do not incur any duties, they are deemed to be non-tariff measures.

Commercial policy measures include all measures issued for commercial reasons which have been created on the basis of the common commercial policy (Art. 133 EC), such as surveillance or safeguard measures, quantitative restrictions, limits on import and export prohibitions (Art. 1 no. 7 CCIP). In particular, they serve to protect the domestic industry and agriculture.

Regarding possible prohibitions and restrictions (p & r) pursuant to Art. 58 (2) CC, which are unrelated to commerce (unlike commercial policy measures), a distinction is drawn between absolute and relative prohibitions and restrictions. Accordingly, a customs-approved treatment or use can be completely ruled out (absolute p & r) or made dependent on certain requirements (relative p & r) in order to protect human or animal life or for reasons of public morality, policy or security. In particular, the Member States have a discretion in interpreting the term ‘public morality, policy and security’. In the interests of protecting national principles, the Member States can, for example, decide whether magazines, books or films are to be banned as prohibited pornographic materials²⁸ or whether they are to be banned as endangering internal or external security.²⁹ Where applicable, Community law overrules any conflicting national restriction.³⁰

3. Procedural law – The individual customs procedures

Traders may choose between a number of different procedures. The CC provides a total of eight customs procedures in Art. 4 no. 16 CC. The first six procedures according to Art. 4 no. 16 (a)–(f) CC (release for free circulation, customs warehousing, inward processing, processing, temporary admission) refer to the importation of non-Community goods. The last two procedures according to Art. 4 no. 16 (g)–(h) CC (inward processing, export procedure) solely concern the exportation of Community goods.

According to Art. 84 (1) all import and export procedures make a distinction between the suspensive procedure (Art. 84 (1) (a) CC) and the procedure with economic impact (Art. 84 (1) (b) CC). The

procedures are compulsory and regulated in Art. 85–90 CC. They are generally applicable in the form of autonomous, specific provisions relating to customs procedures.

The suspensive procedures referred to in Art. 84 (1) a CC (transit procedure, customs warehouse procedure, inward processing (suspension procedure), processing procedure, temporary admission) permit the traders to import non-Community goods into the customs territory of the Community, without these import duties being subject to a customs debt or trade policy measures (Art. 1 no. 7 CCIP). In particular, import duties in the form of customs duties will not be levied. This also applies to charges having an equivalent effect as well as agricultural duties, which, according to Art. 4 no. 10 CC, are also categorised as import duties. Charges having an equivalent effect are (usually) state-imposed duties, which specifically increase the price of imported or exported goods so that they have the same effect as customs duties even though they are technically not customs duties.³¹ They include, for example, fees for import permits and transit fees.³²

Some of the suspensive arrangements are also customs procedures with commercial impact (customs warehousing procedure, inward processing, processing under customs supervision, temporary admission, outward processing). Ultimately, since (almost) every customs procedure has an economic impact in the sense of commercial effect, this definition in Art. 84 (1) (b) CC has a formal character and only assists in the systematic arrangement – unlike the suspensive procedures, which do not simultaneously represent a customs procedure with economic impact. In particular, carrying out customs procedures with economic impact requires the authorisation of the customs authorities, which will only be issued once certain conditions have been fulfilled (Art. 85–87 CC).

4. Procedural law – The release of goods into free circulation

The release of goods into free circulation (Art. 4 no. 16 a CC) is the classic customs procedure, and is comprehensively regulated by Art. 79–83 CC and 290–308 CCIP. This customs procedure must always be used if non-Community goods brought into the customs territory of the Community are intended for release into economic circulation in order to contribute to price formation and profit as Community goods. According to Art. 79 sub-para. 2 CC, such a change in status pursuant to Art. 79 sub-para. 1 CC requires that, when the goods are released, commercial policy measures (Art. 1 no. 7 CCIP) and the other import formalities are adhered to and statutorily imposed import duties (Art. 4 no. 10 CC) are collected. Only once these requirements have been satisfied are non-Community goods on an equal footing with domestic goods and no longer subject to customs supervision with the result that the trader is free to dispose of the goods.

In accordance with Art. 82 (1) CC the ‘principle of free disposal’ no longer applies if the goods have been released into the Community customs territory at a reduced or zero rate of duty owing to their use for special purposes. Provided that the imported goods are subject to a use for a special purpose, they remain under customs supervision in order to secure any duties until they have been used for their special purpose. A reduced or zero rate of duty can be provided for in the customs tariff or laid down in the Customs Relief Regulation.³³ In particular, the Customs Relief Regulation summarises a number of culturally and socially motivated criteria for relief, for example, in relation to travelling or removal goods or dowry.

Endnotes

- ¹ Witte/Wolffgang, *Lehrbuch des Europäischen Zollrechts* (ISBN 978-3-482-43545-4), 2007, 5th edn, p. 31.
- ² Lux, *Guide to Community Customs Legislation* (ISBN 2-8027-1512-7), 2002, pp. 1, 73.
- ³ Witte/Wolffgang, *Lehrbuch des Europäischen Zollrechts*, p. 33.
- ⁴ Original text of GATT 47 available online at: http://www.wto.org/english/docs_e/legal_e/legal_e.htm#gatt47.
- ⁵ Lux, *Guide to Community Customs Legislation*, p. 12.
- ⁶ Homepage of the WTO with many informative documents available at: www.wto.org.
- ⁷ Witte/Wolffgang, *Lehrbuch des Europäischen Zollrechts*, p. 48.
- ⁸ ECJ judgment of 7 May 1991, Case C-69/89, Judgment of the Court of 7 May 1991. *Nakajima All Precision Co. Ltd v. Council of the European Communities*, ECR 1991 I – 2069.

- ⁹ Council Regulation (EC) No. 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (Official Journal (EC) L 56, 06/03/1996, p. 1).
- ¹⁰ Homepage of the WCO with many informative documents available at: www.wco.org.
- ¹¹ Compare Official Journal (EC) L 100, 21.04.1975, p. 1. Original text of the Convention available online at: www.unece.org/trade/kyoto.
- ¹² Document available at: www.wcoomd.org.
- ¹³ Compare in detail, Lyons, EC Customs Law (ISBN 0-19-876492-8), 2001, p. 9.
- ¹⁴ Official Journal (EC) L 86, 29/06/2003, p. 21. Original and consolidated texts of European legislation are available at <http://eur-lex.europa.eu/en/index.htm>.
- ¹⁵ Official Journal (EC) C 340, 10/11/1997, p. 173.
- ¹⁶ ECJ judgment of 5 May 1982, Case C-5/81, *Gaston Schul Douane Expeditie BV v. Inspecteur der Invoerrechten en Accijnzen, Roosendaal*, ECR 1982, 1409; ECJ judgment of 17 May 1994, Case C-41/93, *French Republic v. Commission of the European Communities*, ECR 1994, I – 1829.
- ¹⁷ Official Journal (EC) L 169, 29/06/1987.
- ¹⁸ Official Journal (EC) C 80, 10/03/2001.
- ¹⁹ Council Regulation (EEC) No. 2913/92 of 12 October 1992 establishing the Community Customs Code (Official Journal (EC) L 302 of 19 October 1992, p. 1).
- ²⁰ Commission Regulation (EEC) No. 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code (Official Journal (EC) L 253 of 11/10/1993, p. 1).
- ²¹ Witte, *Zollkodex*, (ISBN 3-406-53960-2), 2006, 4th edn, Preamble Art. 1 CC para. 18.
- ²² ECJ judgment of 13 February 1996, Case C-143/93, *Gebroeders van Es Douane Agenten BV v. Inspecteur der Invoerrechten en Accijnzen*, ECR 1996, I – 431 (471).
- ²³ ECJ judgment of 9 July 1992, C-2/90, *Commission of the European Communities v. Kingdom of Belgium*, ECR 1992, I – 4431.
- ²⁴ ECJ judgment of 23 October 1997, Case C-158/94, *Commission of the European Communities v. Italian Republic*, ECR 1997, I – 5789 (I – 5799).
- ²⁵ ECJ judgment of 11/01/2001, Case C-226/99 and 1/99, *Kofisa Italia Srl v. Ministero delle Finanze*, ECR 2001, I – 207.
- ²⁶ Lux, *Guide to Community Customs Legislation*, p. 242.
- ²⁷ Witte/Wolffgang, *Lehrbuch des Europäischen Zollrechts*, p. 113.
- ²⁸ ECJ judgment of 14/12/1979, Case C-34/79, *Regina v. Maurice Donald Henn and John Frederick Ernest Darby*, ECR 1979, 3795.
- ²⁹ ECJ judgment of 4 October 1991, Case C-367/89, *Criminal proceedings against Aimé Richardt and Les Accessoires Scientifiques SNC*, ECR 1991, I – 4621.
- ³⁰ ECJ judgment of 14 January 1997, Case C-124/95, *The Queen, ex parte Centro-Com Srl v. HM Treasury and Bank of England*, ECR 1997, I – 81;
ECJ judgment of 19 February 1998, Case C-1/96, *The Queen v. Minister of Agriculture, Fisheries and Food*, ECR 1998, I – 1251.
- ³¹ ECJ judgment of 1 July 1969, joined proceedings 2 and 3/69, *Sociaal Fonds voor de Diamantarbeiders v. S.A. Ch. Brachfeld & Sons and Chougol Diamond Co.*, ECR 1969, 211;
ECJ judgment of 7 December 1995, Case C-45/91, *Cámara de Comercio, Industria y Navegación de Ceuta v. Ayuntamiento de Ceuta*, ECR 1995, I – 4385.
- ³² ECJ judgment of 11 August 1995, Case C-16/94, *Édouard Dubois & Fils SA and Général Cargo Services SA v. Garonor Exploitation SA*, ECR 1995, I – 2421.
- ³³ Council Regulation (EEC) No. 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty (Official Journal (EC) L 105, 23/04/1983, p. 1).

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A REVIEW OF THE EUROPEAN COMMISSION'S PLANS FOR AN ELECTRONIC CUSTOMS ENVIRONMENT

Peter Wilmott

This paper is based on work done by SITPRO the UK's trade facilitation agency, and has been produced with their permission.¹

Abstract

Success in international trade is an essential component in the current European Union (EU) 'Lisbon agenda' which aims to make the EU 'the most competitive and dynamic knowledge-based economy in the world'. The performance of customs administrations is very much a determining factor in the success or failure of the EU strategy, but there are reasons to believe that the current vision of creating a paperless customs environment in Europe is insufficiently ambitious, flawed at a practical level, and inadequately resourced and managed. The extension and rationalisation of reform plans need to be advanced by taking full account of the nature of modern supply chains or, more importantly, their potential for further development. Further, there is a need to advance the processes for increasing the political priority and momentum afforded to the customs reform project. Without significant remodelling the current blueprint for EU customs in the 21st century will fail to deliver key Lisbon agenda goals and will risk surrendering Europe's competitive edge in international trade to nations that have more aggressive customs strategies.

Introduction

The ability of European Union (EU) companies to compete in today's global markets depends to a crucial extent on increasing the efficiency and reducing the cost of border regulation covering the movement of goods into, out of and across the EU. Without efficient, modernised border controls, European companies face unnecessarily high transaction costs when in competition with emerging economies like China and India.

Europe's 'Lisbon agenda' aims to make the EU 'the most competitive and dynamic knowledge-based economy in the world'. Success in international trade is an essential component of this strategy, and the performance of our customs administrations is a determining factor in its success or failure. Despite brave words from Brussels, there are reasons to believe that the current customs vision for the EU is neither sufficiently ambitious nor adequately resourced and managed.

Although the EU is a customs union, with common tariffs based on a common commercial policy, its administration is in the hands of the customs authorities of individual Member States, whose practices differ substantially. Moreover, traders are still not able to treat the union as a genuine single customs territory and cannot, for example, declare goods in any Member State of their choice without having their own agent or representative there. This complexity militates against efficiency in the 21st century trading environment.

The European Commission is currently tackling this and other obstacles to the operation of the customs union through changes to the European Customs Code and the Multi-Annual Strategic Plan (MASP), which sets out the steps needed to implement its vision for creating a paperless Customs environment in Europe. But the MASP in particular is a complex jigsaw of some 20 IT projects and sub-projects, and it is managed in a fragmented and under-resourced way. It is not due for completion until 2012, with considerable risks of slippage. Companies in Europe simply cannot wait that long for customs modernisation to take effect.

It is not too late to make the changes needed for the radical shift towards a world class and competitive customs infrastructure for Europe. But achieving this calls for clarity of thought and openness of mind on the part of both the decision takers in Brussels and the Member States and the business community that depends on them. The starting point is to set out an alternative vision of what that infrastructure should look like and how we should build it.

The costs of compliance and benefits of trade facilitation

Much has been written about the costs of bureaucracy in international trade. Authoritative estimates are hard to come by, but a common thread running through the literature is the scale and importance of those costs. It is suggested, for example, that three quarters of all trade delays result from administrative hurdles such as customs and other clearance procedures, and the OECD has calculated that the cost of these hurdles can amount to as much as 15% of the value of goods traded. It further claims that a 1% reduction in costs would trigger worldwide gains of over US\$40 billion.² Border-related delays cause uncertainty over delivery dates, which impact on the reputation of business and depress trade; each additional day a product is delayed prior to shipping reduces the export trade of that country by more than 1%. And there is a larger impact on time-sensitive agricultural goods where a day's delay reduces the relative value of country's exports of such products by 7% on average. It is not the purpose of this paper to review or challenge any such estimates. Nor does it base any recommendations on particular sets of figures. But research of this kind does underline the relevance to global growth and prosperity of an unencumbered trade machine and points up the importance of removing unnecessary obstacles to efficiency.

An alternative vision

Legally the EU has a single customs territory. Therefore traders should be able to treat it as such and, for customs purposes, behave no differently in the larger EU than they would in their home member state. The internal market has sought to harmonise a large number of disparate rules and regulations affecting the way markets work in the Community, sweeping aside national restrictions and border-based procedures. Taken to its logical conclusion, this means that the unitary nature of the customs territory should be capable of being replicated for all other processes that require administrative interventions because goods movements (or related services, like transport) involve crossing internal EU frontiers. However, the *raison d'être* of customs procedures is to maintain control over and collect duties payable, as necessary and appropriate, on international trade, that is, trade between the EU and countries in the rest of the world.

Given the essentially outward-looking nature of the EU's customs union, it could be argued that it is not the purpose of customs reform to change the way the EU's internal market works. It is unreasonable though to attempt to divorce customs rules and their operation on the one hand from single market measures on the other that either promote or impede progress towards the competitive society that the EU has set as its goal. Artificial distinctions are therefore unhelpful and measures designed to streamline internal market processes so that businesses can engage in international trade at the lowest possible compliance cost and the highest possible level of competitive efficiency should not be ruled

out simply because they fall outside the formal remit of the services responsible in Brussels for the customs union. This is especially true of issues arising on the indirect taxation front which risk negating efficiency gains promised by customs reform. It is curious to note, for example, that work on designing a system to control the movement within the internal market of goods liable to excise duties still cannot be aligned fully on very similar customs control processes. Similarly, attempts to integrate VAT controls and certification into the new export procedures do not appear to be as straightforward and successful as logically they should be (VAT and customs are handled by the same Directorate General in the Commission).

These considerations make it possible to draw up a list of the features that – *as a minimum* – the EU's customs union and single market should embody in its procedures for handling international trade. More concretely, traders established in any of the EU's Member States should be able to do the following:

- Complete all customs formalities from the establishment or establishments that they choose, located in accordance with business needs rather than administrative constraints.
- Deal with only one customs administration, in respect of all customs operations wherever located in the EU's customs territory (an exception might be the case where a business has multiple establishments and chooses to allocate customs operations among them for purely commercial reasons, in which case more than one administration could be involved).
- Be able to organise their manufacturing, sales, distribution, accounting, after-sales and related services without having to worry about differences in customs treatment from one Member State or the implications of the present 'compartmentalisation' of the customs union by national and often conflicting regulatory requirements.
- Comply with all administrative requirements by submitting relevant data once and once only (that is, without being obliged to resubmit or re-key the same data to meet the requirements of different administrations).
- Expect the same rules and standards to apply to the customs treatment of their goods, wherever the goods or the related customs operations take place; be subject to identical regimes for selection for examination, for the punishment of irregularities or offences and for the settlement of customs or other debts that may arise from their operations.
- Expect controls and other formalities for which administrations other than customs are competent to be carried out in ways fully compatible and coordinated with the EU's customs procedures – this includes the application of risk management and selection techniques and the performance of documentary or physical checks on the goods.
- Interact with all competent border agencies through an up-to-date, transparent and low-cost IT infrastructure.
- Have full access to all laws, regulations, guidelines and advice relevant to their customs and related operations, wherever published within the EU.

As an example of the insufficiency of the MASP, the Single Window component of the reform program – necessary to deliver the fourth point of the list above – is barely more than a vague promise, without a concrete timetable, work plan, user requirement or technical specification. It hardly seems right for Europe to content itself with a vision that amounts to little more than a highly overdue technical upgrade to a system conceived in the mid-twentieth century and resting on principles that in many cases go back to the nineteenth.

This paper therefore puts forward the following more radical suggestions for key components of a twenty-first century customs system fit for the largest economic bloc in the modern world.

Going beyond the basic vision

There are few signs that the EU's vision really understands or takes into account the nature of modern supply chains or, more importantly, their potential for further development. In particular, a forward-looking strategy must be based on the fact that the companies accounting for the bulk of international trade have as great an interest as the traditional border agencies in complying fully and accurately with regulations affecting international trade. Governance is a complex matter for modern corporations. They have to obey a vast number of rules emanating from often poorly-coordinated government agencies in a range of countries, and then account for their compliance to shareholders, auditors, city commentators and politicians. Failure can result in severe damage to their reputation, loss of market share, loss of investor confidence and ultimately bankruptcy, take-over or some other dramatic or catastrophic event. Despite the prevailing cynicism over corporate behaviour, these factors weigh heavily with responsible companies.

It follows that customs administrations and their fellow border agencies could do worse than base their controls on the internal pressures to conform that exist within firms rather than on external measures. In other words, let companies assess their own liabilities, make their own duty and tax payments, and submit to periodic audits of the records that they maintain internally to demonstrate full compliance. This approach is followed by many countries for the control of value added tax, by some for the administration of other indirect and even direct taxes, and even by a few for ensuring compliance with customs rules on import duties and quotas.

It would be possible to apply the same approach to compliance with other rules. Security controls, however controversial the suggestion might appear, could be managed in a similar way, as could other regimes aimed at protecting society from threats to its health, well-being and general integrity. The prize would be simpler and less disruptive processes for companies, which would be able to internalise government rules and manage compliance with them in ways fully compatible with their commercial procedures. And for governments it would mean getting away from transaction processing, in which every customs declaration, for example, stood alone and was treated, to a greater or lesser extent, independently of its commercial context. Customs IT infrastructure would instead be orientated more towards discovering cases of non-compliance in the course of routine or extraordinary audits, and could be based on the concept of remote and fully automated examination of companies' own IT processes (this would require agreement between private and public sectors on data protection and security, and would have to set limits to administrative 'fishing expeditions'; nevertheless, such agreement should be attainable if the benefits were great enough).

This principle would make it possible for trade to flow freely with the minimum of delay and disruption at the EU's borders. Although some Member States have so-called simplified procedures that achieve a comparable objective, they are relatively unsophisticated and do not on the whole involve agencies other than customs. Their existence, however, suggests that this paper's proposal builds on existing fact rather than future conjecture.

A further advantage of this approach would be the incentive it gave to companies to maintain compliance at a high level. Once the appropriate systems had been installed, any move back to more traditional control methods would be little less than a disaster for the company concerned. So the sanction of removing permission to manage its own compliance would be viewed by companies as a serious matter indeed.

Some argue that procedures should only be introduced if they are capable of being used by all firms, big or small. Yet their lower frequency of trade activity can already disqualify SMEs from taking advantage of simplified procedures (and potentially Authorised Economic Operator [AEO] status) since they have less international trade activity, tend to have fewer specialised personnel, weaker capital reserves and less of a track record to demonstrate their legitimate intentions. Such variable geometry would no doubt continue to apply if the suggestion put forward in this paper was followed. However, the efficiency gains inherent in the new approach – for both companies and administrations – would be likely to offset such objections of principle. And there would be scope for intermediaries and other supply chain members to collaborate to accommodate SMEs, by operating systems that could perhaps be beyond the reach of members individually.

Looking beyond Europe's borders, there would be significant advantages in adopting a 'joined-up' approach to customs control, involving a collaborative relationship with the companies and administrations at the other end of supply chains starting or finishing in Europe. One embodiment of this principle could be the use of export declarations in the country of consignment as the basis for import information in the country of destination. If combined with the new approach to compliance set out above, this would mean that export declarations (or their equivalent in in-house company compliance systems) would be made available immediately to the partners in the supply chain responsible for import compliance on arrival at destination. Similar arrangements would apply to data used to check for compliance with security-related controls. In short, customs administrations would begin to use the supply chain as an integrated data source rather than a disparate and uncoordinated set of unrelated commercial transactions. Work has begun on such concepts in the World Customs Organization and elsewhere, but so far concrete results are thin on the ground. Building such a concept into the EU's vision of a paperless customs environment would give these projects a major boost.

With initiatives of this kind as basic building blocks, the EU could investigate the advantages of setting up and using commercial entities as 'third party certifiers' of compliance within the supply chain. This could take two routes, each compatible with the other. First, work now begun on the ISO 27000 series of security standards could embrace supply chain security practices. Second, any individual supply chain could see its security bolstered – and its acceptability to border and security agencies enhanced – by the involvement of independent certifiers in checking the integrity of transactions and processes in the supply chain. The current major reform of customs legislation and practices represents a real opportunity to create and exploit new concepts of supply chain security. Even if work is under way, it does not yet seem that its potential benefits and operational consequences are integrated into the vision of a paperless environment as seen by the European Commission and the Member States. Such integration is urgently needed if security controls are not to constitute as big a brake on economic competitiveness in the twenty-first century as traditional controls and inefficiencies did in the twentieth.

Feasibility

There is some overlap between this alternative vision and the program laid down in the MASP. This is hardly surprising, since both need to be coherent and self-contained if they are to be credible. But the vision set out here contains key components that the MASP omits ('self assessment' and 'joined-up controls', for instance) and calls for others that are in the MASP to be given greater or different priority. An approach based on a higher level of ambition that nonetheless retains most of the MASP's foundations must therefore be both realistic and feasible, provided there is sufficient political will to drive the agenda forward in the name of EU competitiveness. It would not require the abandonment of the Commission's current strategy, but it provides a basis for rationalising its components, changing some of the timing, improving its management and filling the gaps.

Political will

This paper should not be construed as in any way impugning the intentions or integrity or all those who have contributed to the development of the vision of paperless trading advanced by the Commission or have helped to agree and begin implementing the vision's components. On the contrary, it applauds the clarity of the initial vision and the commitment of the small band of officials charged in Brussels with its implementation. It is also right to believe that Member States generally welcome the customs reform project and support its goals. However, there does appear to be a major disconnect between those charged with the political management of the process in Brussels and the reality of customs administrations' reporting lines and budgetary responsibilities on the ground. The stark fact remains that it is Finance Ministers that ultimately drive customs activities in the Member States, but Brussels policy debates on customs reform do not generally involve Finance Ministers. For example, the Council's policy debate on the customs code

that took place in the Competitiveness Council on 4 December 2006 involved trade, industry, energy and European ministers. The UK was represented by a Minister of State for Energy. Notwithstanding the doctrine of the unity of the Council within the EU's institutions, it is hard to believe that customs reform will be driven forward as an active priority so long as Finance Ministers do not take charge of the political agenda.

It follows that, without disenfranchising the Competitiveness Council, business needs to see fuller involvement of customs administrations' direct bosses if belief in the success of the MASP and its wider reform program is to become widespread. This can be organised without difficulty, by setting up either special sessions within the Economic Council on Financial Affairs (ECOFIN Council) or by holding occasional joint sessions of the Competitiveness and ECOFIN Councils.

Demonstration of political will and belief in the importance of customs reform as a major contribution to the Lisbon agenda and the creation of a competitive customs platform in Europe would then energise both the European Parliament, a key partner in the development and adoption of customs policy, and national political figures, both in governments and in parliaments at national level.

It is therefore essential that Europe's Finance Ministers take direct control of the reform process in close association with the Ministers responsible for delivering the Lisbon Strategy.

Adequate tools for the job

The Directorate-General charged with customs reform in the European Commission (DG TAXUD) appears unable to allocate the resources needed to this important reform program. Evidence takes the form of a lack of detailed preparation (for example, no user requirements for key MASP components), difficulties in reaching out to business and other stakeholder groups in the Member States (the relative infrequency and cursory nature of some if not all consultative meetings organised by TAXUD), and a visible failure to lead from the front in persuading Member States to do the right thing and do things right. Some policy stances too (for example, the handing-off of responsibility for IT systems, or the reluctance to tackle work on the Single Window component) may be motivated by budgetary concerns at the centre.

The Commission and Member States need therefore to agree on additional resources for customs reform, as a matter of urgency, at both EU and national level. They should also recognise the importance of using proper project management techniques to push through change, in place of the ad hoc and frankly amateur arrangements currently in place.

Involving other border agencies

Success in key aspects of the MASP will depend on drawing non-customs border agencies into the process. For this to happen, there needs to be some convergence of expectations at the practical level and will at the political level. In other words, border agencies must acknowledge that customs reform will work in their favour, and their political masters must begin to understand the advantages that will flow from a joined-up approach to implementation of controls. Mechanisms are needed to make this happen, as inter-agency cooperation can so easily founder on the rocks of mistrust and suspicion, born out of ignorance and misunderstandings. The realities of turf wars have to be accepted and dealt with too, rather than – as sometimes happens – swept under the carpet.

The project therefore requires early and effective engagement with all border agencies and their respective political masters – whether at national or EU level – in order to produce the seamless approach to change that is a pre-requisite for success.

Revising the vision

There is nothing wrong with re-visiting the original paperless trading vision, in order to update it and adapt it to changing circumstances. This process would, it is contended, have the support of the European business community if it seemed likely to lead to more useful and beneficial projects that could be implemented sooner and in a more orderly fashion.

No re-launch of the strategy would be likely to succeed anyway if it could not energise Europe's business leaders and attract widespread support and, dare it be said, enthusiasm. Engaging CEOs of large companies in the progress of customs reform in Europe is vital in making the right changes happen. And drawing them in should be relatively simple, given appropriate political will and a compelling new vision.

However, this proposition expects the initiative for a re-launched strategy to come from Brussels, and calls on the Commission to direct its services to work in this sense.

Conclusions

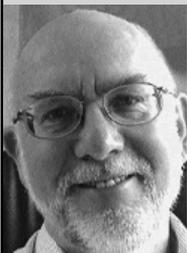
It is fashionable in some quarters to believe that bureaucrats cannot get practical things right and that politicians cannot lead in what seem to be largely technical subjects. This paper suggests that a successful and efficient customs union lies at the very heart of the European Union. But Europe has not so far succeeded in building one, and the present customs reform program may represent its last chance to do so for a very long time. The Commission's initial ideas were brilliantly simple and compelling. In other words, TAXUD has proved that it knows its stuff and can paint the big picture of customs reform in all its compelling detail. Europe's political leaders do not jib at getting embroiled in technical debate in other policy areas – a rapid glance at most Council agendas will demonstrate that. But for some reason they do not regard customs as important or worthy of their full attention. That can change, since the politics of customs reform is attractive and just waiting to be discovered.

Politics is the art of the possible. What this paper advocates is possible, and politically attractive. More than that, it is essential if Europe is to keep our place at the top of the international trading community.

Endnotes

- ¹ See www.sitpro.org.uk. For more details of SITPRO's activities in this area, please contact the secretary of its Strategic Advisory Group on Europe, Graham Bartlett (graham.bartlett@sitpro.org.uk).
- ² OECD Policy Brief October 2005, 'The costs and benefits of trade facilitation', at: <http://www.oecd.org/dataoecd/58/25/35459690.pdf>.

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EU CUSTOMS LAW AND INTERNATIONAL LAW

Michael Lux

The views expressed are those of the author and do not necessarily reflect the position of the institution in which he works.

An earlier version of this paper was presented at the conference on *Customs Law in the system of law*, held in Warsaw on 11 December 2004.

Abstract

The interdependence between international law and European Community law, particularly in the area of customs, is very complex. The ways in which international customs law is incorporated into the Community's legal system are many and varied, and there is a need to establish some standard mechanisms for the future in order to reduce the diversity of solutions that are found for problems that are similar. The introduction of the modernised Customs Code provides an opportunity to explore the application of a general model according to which international customs law may be made part of the Community's legal system.

1. Introduction

1.1 The status of international agreements in the Community's legal order

According to Article 300 (7), European Community (EC) Treaty agreements concluded under the conditions set out in this Article are binding on the institutions of the Community and on Member States. This means that such agreements are an integral part of the Community's legal order¹ and they must therefore be respected by the institutions of the Community and the Member States. Consequently, they do not need to be transposed into secondary legislation where the rules of an international agreement are sufficiently clear and precise to allow their application. This condition is considered by the European Court of Justice (ECJ) to be fulfilled for specific provisions of certain types of agreements, such as preferential agreements,² for others not, such as the GATT provisions.³ Direct applicability of certain international agreements does not, however, necessarily mean that the provisions contained therein, such as those on the prohibition of customs duties and charges having equivalent effect, are to be interpreted in the same strict way as the provisions of the EC Treaty concerning trade between Member States.⁴ Though the adoption of an international agreement by the Council makes the provisions thereof applicable in the Community insofar as they are sufficiently clear and precise (this is called the 'monistic theory'), the Council can also choose to make the application of the agreement dependent on the adoption of a specific Council or Commission Regulation or Directive (this is called the 'dualistic theory'), as the Council has done with regard to the agreements emanating from the Uruguay Round.⁵

1.2 Interdependence between international and Community law in the customs area

Furthermore, certain agreements, by their nature or because of the intentions of the contracting parties, cannot, as such, become directly applicable within a country, or indeed a union of countries, but are designed to be incorporated in, or taken into account, when drafting a legal instrument which is directly

applicable within a jurisdiction. Examples of these are:

- the World Trade Organization (WTO) tariff schedules and the Harmonized System, which have been agreed in order to be integrated into the customs tariffs of the contracting parties (see paragraph 5.1 below)
- the Kyoto Convention, which has been designed to be reflected, in part or completely, in the customs laws of the contracting parties (see paragraph 6.1 below).

In such cases, the question arises whether or not economic operators before the courts can invoke any compatibility between the international agreement and the legal instrument implementing it. The WTO agreements cannot normally be invoked before the courts in order to claim the invalidity of a Community Regulation.⁶ However, the ECJ does take such arguments into account in the following types of cases:

- a Community Regulation explicitly refers to an international agreement for the application of a measure concerning external trade⁷
- a Community Regulation was adopted with the aim of fulfilling obligations imposed by an international agreement, such as the WTO Antidumping Code,⁸ or
- the scope of a Community Regulation is not clear and, because of the supremacy of international agreements, is wherever possible, interpreted in conformity with international law.⁹

The interdependence between international and Community law in the customs area is a very complex matter. Authors of customs books therefore normally try to simplify matters by arranging the issues:

- according to the international organisation from which the agreement emanates, such as WTO, WCO or ECE, and/or
- according to the specific subject to be treated, such as customs tariff (GATT, Harmonized System) or customs valuation (WTO Valuation Agreement).

This paper leaves the well trodden paths and describes in general how international law in the customs area is made a part of the Community's legal order, and in particular addresses the following questions:

- Is there a general model according to which international customs law is made part of the Community's legal system? or
- Have different solutions been adopted for various sectors of customs law?

After a brief description of international customs rules which are reflected (or not reflected) in the EC Treaty and the draft Constitution for Europe, the case is made that the following categories of implementation methods can be distinguished:

- direct application without transposition
- transposition in spite of direct applicability
- literal or almost literal transposition where implementation is needed
- implementation which reflects (with varying degrees) international agreements
- the extension of Community customs rules to third countries
- the adoption or application of guidelines and explanatory notes.

Furthermore, implementation can take place at:

- Council and, where appropriate, Parliamentary level, or
- Commission level.

The classical distinction between multilateral and bilateral agreements does not seem to be relevant in this context.

2 International customs law reflected in the EC Treaty and the draft Constitution for Europe

According to Art. 23 EC Treaty¹⁰ the Community (or Union) is a customs union with a common customs tariff. This reflects, albeit incompletely, Art. XXIV (8) GATT, according to which the term ‘customs union’ means a single customs territory, in which ‘substantially the same duties’ are applied towards countries other than members of the union. What is missing in the EU definition, is the harmonisation of the ‘other regulations of commerce’ stipulated by Art. XXIV (8) GATT (in particular quantitative restrictions). This gap can, however, be closed by Art. 133 EC Treaty¹¹ which is the legal basis for regulations or agreements necessary for ‘the achievement of uniformity in measures of liberalisation’ or ‘to protect trade’.

It is interesting to note that the people who drafted both Treaties have struggled with customs law, insofar as they have wrongly placed the section on the common customs tariff in the part on ‘free movement of goods’ (between Member States) whilst other external trade measures (notably non-tariff barriers) are correctly placed in the part on ‘common commercial policy’. What makes this even more complicated is the fact that ‘changes in tariff rates’ are covered by Art. 133 EC Treaty,¹² as well as by Art. 26 EC Treaty¹³ catering for the fixing of ‘Common Customs Tariff duties’. While, on the one hand, the number of legal bases for amendments to the customs tariff is greater than necessary, there is, on the other hand, no explicit legal basis for customs legislation, as such, in the EC Treaty or the draft Constitution, other than Art. 135 EC Treaty¹⁴ which allows measures strengthening ‘customs cooperation between Member States and between the latter and the Commission’ (this definition excludes the possibility to base international agreements on these Articles).

Consequently, the authority to conclude international agreements on customs matters must be found in the general provisions, such as:

- Art. 133 EC Treaty¹⁵ with regard to commercial policy measures, or
- Art. 310 EC Treaty¹⁶ where an association agreement is to be concluded.

Another reflection of an international agreement is to be found in Annex I EC Treaty.¹⁷

The definition of goods subject to special rules under the common agricultural policy is based on the Brussels tariff nomenclature, a predecessor of the Harmonized System (see paragraph 5.1). This Annex has never been formally updated.¹⁸

Less transparency exists with regard to the list of military goods for which Member States may take measures that they consider necessary for the protection of their essential security interests (Art. 246 EC Treaty¹⁹). This list has never been officially published²⁰ nor has it ever been updated. As this list does not indicate the international tariff codes, more interpretation problems may arise²¹ than under the normal tariff rules. It should be noted that the Common Military List of the European Union²² does not replace the list stipulated under Art. 246 EC Treaty²³ but serves a specific purpose, namely to identify the military equipment covered by the EU Code of Conduct on arms exports, adopted by the Council on 13 June 2000. On the other hand, harmonisation has been achieved on those military goods which benefit from a tariff suspension.²⁴

3 International agreements which are directly applicable and therefore not transposed into Community law

3.1 Preferential agreements

Preferential agreements laying down the rules for a customs union (for example, EC–Turkey) or a free-trade area (for example, EC–Switzerland) are, in principle, directly applicable and do not need implementing provisions, as in the case of the origin rules or the tariff concessions.²⁵ The same applies to decisions taken by committees established under such agreements.²⁶ However, this principle does not apply to tariff quotas, for which the distribution mechanism (first-come-first-served or licences) must be laid down in a Regulation.

3.2 TIR Convention

The Customs Convention on the International Transport of Goods under Cover of TIR Carnets²⁷ was concluded for the Community by Regulation (EEC) No. 2112/78.²⁸ The fact that the Convention was adopted by means of a Regulation, and that substantive parts of this Convention have not been incorporated in the Customs Code, or its implementing provisions, indicates that this Agreement is considered to be directly applicable. This view has been confirmed by the ECJ.²⁹ However, subsequent amendments to this Convention have not been formally adopted and published by the Community legislator.

Secondary legislation only covers the following:

- movements within the EC customs territory (Art. 91 (2) (b) and Art. 163 (2) (b) CC)
- some internal rules for the EC customs union (Art. 451-457b CCIP), and, in particular, which Member State is competent to recover the duties where the goods have not arrived at the customs office of destination.³⁰

3.3 Mutual administrative assistance

The Community has concluded a number of agreements on mutual administrative assistance in customs matters, either in the context of preferential agreements, for example, with Switzerland³¹ or cooperation agreements, for example, with China.³² Such agreements are directly applicable, normally adopted by a Council decision,³³ and not transposed into secondary legislation.

4 International agreements which are directly applicable but nevertheless transposed into Community law

4.1 Istanbul Convention

The Convention on Temporary Admission³⁴ is directly applicable. The fact that the ATA Carnet has not been included in the CCIP illustrates that the Community legislator shares this view. Nevertheless, the various cases of temporary admission with full duty relief have been laid down in Art. 555–578 CCIP. The reasons for this approach are:

- as the Community is also a contracting party to other conventions on temporary admission (for example, for containers used in pools,³⁵ the CCIP set out the rules in respect of the Community's international commitments
- in certain cases, the Community applies more generous rules than those stipulated under the relevant international agreements.³⁶

4.2 Florence Agreement

The Florence Agreement on the Importation of Educational, Scientific and Cultural Materials³⁷ lays down certain types of goods that can be imported duty-free. The goods concerned are set out in Annexes I and II of Regulation (EEC) No. 918/83.³⁸ This approach is justified for the following reasons:

- the Regulation groups together all cases of duty relief granted for other than trade policy reasons, and thus promotes transparency
- the Regulation includes the tariff codes and thus creates a link to other relevant legislation (however, when the tariff codes have changed, no updates have been made by the legislator).

With regard to this agreement, one could also argue that the Council has chosen not to assume direct applicability according to the 'monistic theory', but to implement the agreement through secondary legislation in accordance with the 'dualistic theory'.³⁹

5 International agreements needing transposition and incorporated literally or almost literally into Community legislation

5.1 Harmonized System Convention, WTO tariff concessions

The list of goods contained in the Annex of the Convention on the Harmonized Commodity and Coding System⁴⁰ has been created to serve as the basis for customs tariffs and statistics for all contracting parties and many other countries. This list has been taken over literally – and further broken down – in Regulation (EEC) No. 2658/87 on the tariff and statistical nomenclature and the Common Customs Tariff.⁴¹ Whenever this list is modified at international level, an amendment to this Regulation takes this into account.⁴²

The Community's list of tariff concessions under the WTO⁴³ is also literally reflected in this Regulation which follows the evolution of the Harmonized System (HS) goods codes (although a formal update of the WTO list does not take place).

Given this literal incorporation, the Community does not even publish its list of tariff concessions or changes to the Harmonized System as such in the Official Journal.

5.2 Agreement on Pre-shipment Inspection

The WTO Agreement on Pre-shipment Inspection (PSI)⁴⁴ has been implemented by Regulation (EC) No. 3287/94 on pre-shipment inspections for exports from the Community.⁴⁵ Both texts largely correspond, even though their presentation is somewhat different. The Community subjects pre-shipment inspection entities to a prior notification before they exercise their activities in the Community (Art. 2).

It should be noted that PSI is a tool for developing countries that do not have the administrative capacity to check import declarations and must therefore rely on controls (for example, of the customs value) in the export country. Pre-shipment controls are a different matter for safety and security reasons. They are also applied by the Community, but are performed by the customs authorities, and not by private companies.

5.3 Customs Valuation Agreement

The WTO Customs Valuation Agreement⁴⁶ has been incorporated into the Customs Code and its implementing provisions (largely literally). However, the choice of a FOB or CIF basis for the determination of the customs value is left to the contracting parties (the Community has, like most other countries, opted for the CIF basis). Where necessary, the Community has adopted more detailed rules, for example with regard to:

- currency conversion (Art. 168–177 CCIP), or
- the treatment of damaged goods (Art. 145 CCIP).

5.4 Anti-dumping Agreement

The WTO Anti-dumping Agreement⁴⁷ has been incorporated in the Community's Anti-dumping Regulation,⁴⁸ with some additional elements.

These inter alia include:

- anti-circumvention rules (Art. 12-13)
- the examination of the Community interest (Art. 21)
- rules on the Community's decision-making process (Art. 7, 8, 9, 11, 14).

5.5 Non-proliferation arrangements

From a legal point of view, the non-proliferation arrangements are particularly interesting. They are not formal international agreements, but they are nevertheless implemented by Council Regulation⁴⁹ to the extent that they cover dual-use items and not goods used for purely military purposes:

- the Wassenaar Arrangement covering strategic goods⁵⁰
- the Nuclear Suppliers Group⁵¹
- the Missile Control Technology Regime⁵²
- the list of chemical precursors established by the Australian Group.⁵³

Annex I of this Regulation is regularly updated, in order to take into account changes to these lists of items agreed under these arrangements.⁵⁴ Goods used purely for military purposes⁵⁵ are still regulated under national legislation.

6 International agreements needing transposition and their reflection in Community legislation

6.1 Kyoto Convention

According to the preamble of the Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures,⁵⁶ this Convention will enable the achievement of a high degree of simplification and harmonisation of customs procedures and practices, and thus will be a major factor in the facilitation of international trade. This Convention largely encompasses matters which are regulated by the Community Customs Code and its implementing provisions. Comparing the two is made difficult by the fact that the Kyoto Convention has the following structure:

- a General Annex with definitions and some basic rules (standards and recommended practices) for any Customs Code
- eleven Annexes laying down standards and recommended practices for specific areas, such as duty relief (Annex B), customs procedures (for example, Annex E: Transit), customs offences (Annex H), and origin (Annex K), the adoption of which is at the choice of contracting parties.

Apart from this cumbersome structure which makes it impossible to adopt the Kyoto Convention as a model Customs Code, the Convention often allows a large margin of choice even with regard to texts adopted by a contracting party. Standard 4.1 of the General Annex reads for example: ‘National legislation shall define the circumstances when liability to duties and taxes is incurred.’

Consequently, there are differing degrees of conformity between the Community Customs Code and the Kyoto Convention. In certain cases, the degrees of conformity are:

- great (for example, with regard to the meaning of the terms ‘appeal’ or ‘repayment’)
- conceptually great, though different terminology is used (for example, ‘re-importation in the same state’ as opposed to ‘duty relief for returned goods’), up to
- non-existent, for example:
 - because the Community did not adopt the procedure concerned (for example, ‘transhipment’ or ‘carriage of goods coastwise’), or
 - because the issue has been left for Member States to legislate on (for example, ‘customs offences’).

A partial lack of conformity exists where the Community has adopted Annexes to the previous version of the Kyoto Convention, but has made use of the possibility to enter a reservation with regard to specific standards or recommended practices.⁵⁷ However, the fact that the Community has adopted the revised Convention and its General Annex means that the specific Annexes adopted previously are no longer binding until such time as the Community adopts one or several of the revised Annexes (which is planned in the context of the adoption of the modernised Customs Code). Under the revised Convention, reservations can be entered only in relation to recommended practices (Art. 12).

6.2 TRIPS Agreement

Section 4 (Special requirements related to border measures) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)⁵⁸ has been implemented by Regulation (EC) No. 1383/2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.⁵⁹ This Agreement needs implementing legislation, because it leaves options for WTO members, for example with regard to:

- what intellectual property rights are to be covered by border measures (an obligation to provide measures exists only in relation to trademarks and copyrights, whilst there is an option to include other kinds of rights, Art. 51 TRIPS)
- whether the measures should cover only imports or whether exports should also be included (an obligation exists only with regard to release for free circulation, Art. 51 TRIPS)
- whether customs authorities are empowered by the contracting party's implementing rules to suspend the release of goods on their own initiative (Art. 58 TRIPS)
- whether small consignments or travellers' luggage are excluded from the scope of border measures (Art. 60 TRIPS).

The Community has opted for a broad approach by:

- including almost all intellectual property rights and including the protection of geographical indications and designations of origin (Art. 2)
- covering all types of customs procedures, free zones, as well as the entry and exit goods into the Community customs territory (Art. 1)
- empowering customs authorities to act on their own initiative (Art. 4).

In some other aspects, the Agreement stipulates very precise provisions, for example, with regard to:

- indemnifying the importer and the owner of goods (Art. 56 TRIPS)
- the right holder's and importer's right to have the goods inspected (Art. 57 TRIPS).

These provisions are reflected in Regulation (EC) No. 1383/2003.⁶⁰

6.3 Convention on the Harmonization of Frontier Controls of Goods

Apart from the rules on the use of the UN layout key and on transit, the International Convention on the Harmonization of Frontier Controls of Goods⁶¹ is not reflected in the Community Customs Code for the following reasons:

- whereas the current Customs Code deals mainly with the collection or suspension of import duties, the main aim of this Convention is to achieve a coordinated control of customs and other border agencies (such as environmental and health agencies)
- the Convention also deals with how resources and equipment are to be used in order to guarantee a smooth flow of goods; this is a task of the Member States.

It is however, intended to introduce the single window/one-stop-shop concept in the modernised Customs Code, which will reinforce the implementation and the aims of the Convention.

7 Extension of Community customs rules to third countries

If the EU and a third country agree to apply the same customs rules, there are different ways to achieve this. These are:

- including the territory of the third country in the Community customs territory (as in the case of Monaco⁶²)
- extending the scope of a Community customs procedure to the territory of a third country by virtue of an agreement (as in the case of Community transit with Andorra⁶³ and San Marino⁶⁴)

- creating identical international rules (for operations with the partner countries) and Community rules (for operations within the Community) as in the case of common transit with Iceland, Liechtenstein, Norway and Switzerland⁶⁵ and Community transit;⁶⁶
- agreeing with countries wanting to join the Community, such as Bulgaria and Romania, that they align their customs legislation with Community law⁶⁷
- duplicating the Community and national rules of the partner country and supplementing them by international rules (so-called ‘bridging legislation’), so that a procedure can begin or terminate both in the Community and in the partner country concerned, as in the case of triangular traffic under outward processing between the EU, Turkey and a third country.⁶⁸

The problem with identical rules in an international convention and in the Community Customs Code (as in the case of the Convention on Common Transit) lies in the fact that the Community becomes dependent on the will of its Convention partners for all its rules, including its internal rules, if it wants both types of procedures (such as common and Community transit) to develop in parallel.

8 International recommendations, explanatory notes, guidelines

The diversity of approaches followed with regard to international agreements is matched by the way the Community deals with ‘soft law’ emanating from international organisations. In certain cases, the Community adopts a recommendation, as in the case of:

- the codes for data elements recommended by the WCO,⁶⁹ or
- duty relief in the framework of temporary admission for radio and television equipment⁷⁰ which is now superseded by Annex B2 of the Istanbul Convention.⁷¹

After such recommendations are adopted, the rules are incorporated into Community provisions or guidelines.⁷²

A more direct approach is employed in relation to the explanatory notes and classification opinions adopted by the Harmonized System Committee under Articles 7 and 8 of the Convention on the Harmonized Commodity Description and Coding System.⁷³ They are applied in the Community for the purposes of the classification of goods and are considered by the European Court of Justice to be ‘an important aid to the interpretation of the scope of the various tariff headings but which do not have legally binding force’.⁷⁴

Currently, the guidelines to the Kyoto Convention have the weakest form of recognition, given that the Community has so far only adopted the General Annex. These guidelines contain detailed information on how to organise customs clearance. They could, however, be taken into account when the guidelines to the modernised Customs Code and its implementing provisions are drafted.

9 Implementation through Council/EP or Commission Regulation

Where an international agreement leaves little or no margin for its implementation, the Council (and where appropriate, Parliament) delegates this task to the Commission. This is the case, for example, with regard to the implementation of changes to:

- the Harmonized System and the WTO bound duty rates,⁷⁵ or
- the Istanbul Convention.⁷⁶

A split approach has been taken with regard to the Customs Valuation Agreement where:

- some rules are to be found in Art. 28-33 and 35 CC
- the others in the CCIP.

In addition, a Valuation Compendium with guidelines has been published on the Commission’s Europa website.⁷⁷

Regulation (EEC) No. 918/83 on duty relief is also inconsistent in that its Annexes I–IV determine the goods concerned for some types of duty relief, whereas for others separate implementing Regulations exist.⁷⁸

A more coherent approach will be proposed for the modernised Customs Code.

10 Conclusions

After this overview of the different ways that international and Community law and Council or Commission regulations fit together, readers may be more confused than they were to begin with. Readers can judge whether the various Community legislators have pursued:

- a complex master plan, or
- individual solutions on an ad hoc basis.

The truth probably lies somewhere in the middle. Customs experts from all areas are called upon to do further work on the different categories, so that some standard mechanisms can be established for the future in order to reduce the diversity of solutions that are found for problems which are similar. The introduction of the modernised Customs Code will be an opportunity to enhance coherence in the areas covered by that Regulation and its implementing provisions.

Endnotes

- ¹ See ECJ, case 104/81 *Hauptzollamt Mainz v. Kupferberg* [1982] ECR 3641.
- ² See ECJ, case 104/81 above.
- ³ See ECJ, case C-280/93, *Germany v. Council* [1994] ECR I-4973.
- ⁴ See ECJ, Case 104/81 above, and case C-312/91 *Metalsa* [1993] ECR I-3751.
- ⁵ See Decision 94/800/EC, OJ 1994 No. L 336, p. 1, and at paragraph 6.2.
- ⁶ ECJ, joint cases 21-24/72 *International Fruit v. Produktschap voor groenten en fruit* [1972] ECR 1219 and case C-280/93 above.
- ⁷ ECJ case 70/87 *Fediol v. Commission* [1989] ECR 1781.
- ⁸ ECJ case C-69/89 *Nakajima v. Council* [1991] ECR I-2069.
- ⁹ ECJ case C-91/94 *Commission v. Germany* [1996] ECR I-3989.
- ¹⁰ Art. III-36 draft Constitution.
- ¹¹ Art. III-217 draft Constitution.
- ¹² As above, Art. III-217 draft Constitution.
- ¹³ Art. III-39 draft Constitution.
- ¹⁴ Art. III-41 draft Constitution.
- ¹⁵ Art. III-217 draft Constitution.
- ¹⁶ Art. III-226 draft Constitution.
- ¹⁷ Annex I draft Constitution which is still to be drawn up.
- ¹⁸ Hopefully, this will be done under the draft Constitution.
- ¹⁹ Art. III-342 draft Constitution.
- ²⁰ It has been published by Karpenstein, p. 377.
- ²¹ For example, with regard to No. 14: covering parts, or No. 15: covering testing and control equipment.
- ²² OJ 2003 No. C 314.
- ²³ Art. III-342 draft Constitution.
- ²⁴ Regulation (EC) No. 150/2003, OJ 2003 No. L 25, p. 1.
- ²⁵ See ECJ, case 104/81 *Hauptzollamt Mainz v. Kupferberg* [1982] ECR 3641.
- ²⁶ See ECJ, case C-188/91 *Deutsche Shell v. Hauptzollamt Hamburg-Harburg* [1993] ECR I-363.
- ²⁷ OJ 1978 No. L 252, p. 2.
- ²⁸ OJ 1978 No. L 252, p. 1.
- ²⁹ ECJ case C-78/01 *BGL v. Germany*, [2003] ECR I-9543 at I-9592.

- ³⁰ See ECJ, case C-78/01 *BGL v. Germany* [2003] ECR I-9543 at I-9594.
- ³¹ OJ 1997 No. L 169, p. 76.
- ³² OJ 2004 No. L 375, p. 20.
- ³³ See, for example, Decision 2004/889/EC, OJ 2004 No. L 375, p. 19.
- ³⁴ OJ 1993 No. L 130, p. 3.
- ³⁵ OJ 1995 No. L 91, p. 45.
- ³⁶ For example, in Art. 578 CCIP.
- ³⁷ OJ 1979 No. L 134, p. 14.
- ³⁸ OJ 1983 No. 274, p. 49.
- ³⁹ See paragraph 1.1 above.
- ⁴⁰ OJ 1987 No. L 198, p. 3.
- ⁴¹ OJ 1987 No. L 256, p. 1.
- ⁴² See recital 4 of Regulation (EC) No. 2031/2001, OJ 2001 No. L 279, p. 1.
- ⁴³ See Council Decision 94/800/EC, OJ 1994 No. L 336, p. 1.
- ⁴⁴ OJ 1994 No. L 336, p. 138.
- ⁴⁵ OJ 1994 No. L 349, p. 74.
- ⁴⁶ OJ 1994 No. L 336, p. 119.
- ⁴⁷ OJ 1994 No. L 336, p. 103.
- ⁴⁸ Regulation (EC) No. 384/96, OJ 1996 No. L 56, p. 1.
- ⁴⁹ Regulation (EC) No. 1334/2000, OJ 2000 No. L 159, p. 1.
- ⁵⁰ www.wassenaar.org
- ⁵¹ www.nsg-online.org
- ⁵² www.mctr.info
- ⁵³ www.australiagroup.net
- ⁵⁴ See OJ 2004 No. L 281, p. 1.
- ⁵⁵ See references in final paragraph of point 2 above.
- ⁵⁶ OJ 2003 No. L 86, p. 23.
- ⁵⁷ For example, OJ 1994 No. L 76, p. 28.
- ⁵⁸ OJ 1994, No. L 336, p. 214.
- ⁵⁹ OJ 2003 No. L 196, p. 7.
- ⁶⁰ Articles 9 (3) and 19.
- ⁶¹ OJ 1984 No. L 126, p. 3.
- ⁶² Art. 3 (2) CC.
- ⁶³ OJ 1993 No. L 42, p. 34.
- ⁶⁴ OJ 2003 No. L 253, p. 3.
- ⁶⁵ OJ 1977 No. L 226, p. 2.
- ⁶⁶ Art. 91 (2) (a) and Art. 163 (2) (a) CC.
- ⁶⁷ See Art. 94 of the Agreements. OJ 1994 No. L 357, p. 2, and No. L 358, p. 3.
- ⁶⁸ OJ 2003 No. L 28, p. 51.
- ⁶⁹ OJ 1987 No. L 362, p. 22.
- ⁷⁰ OJ 1988 No. L 161, p. 1.
- ⁷¹ OJ 1993 No. L 130, p. 48.
- ⁷² See Annex 38 CCIP in relation to codes and Art. 569 CCIP and guidelines in OJ 2001 No. C 269, p. 41 in relation to professional equipment.
- ⁷³ OJ 1987 No. L 198, p. 3.
- ⁷⁴ ECJ, case C- 270/96 *Sarget v. FIRS* [1998] ECR I-1121; and case C-259/00 *Biochem v. Oberfinanzdirektion Nürnberg* [2002] ECR I-2467.
- ⁷⁵ Art. 9 Reg. (EEC) No. 2658/87.
- ⁷⁶ Art. 141 CC.

⁷⁷ http://ec.europa.eu/taxation_customs/common/legislation/legislation/customs/index_en.htm

⁷⁸ Regulations (EEC) No. 2288/83, 2289/83, 2290/83 and 3915/88, OJ 1983 No. L 220, p. 13, 15, 20 and OJ 1988 No. L 347, p. 55.

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THE CHANGING ROLE OF CUSTOMS: EVOLUTION OR REVOLUTION?

David Widdowson

Abstract

Customs has traditionally been responsible for implementing a wide range of border management policies, often on behalf of other government agencies. The role of Customs has, however, changed significantly in recent times, and what may represent core business for one administration may fall outside the sphere of responsibility of another. This is reflective of the changing environment in which customs authorities operate, and the corresponding changes in government priorities. The World Trade Organization, World Customs Organization and other international bodies are responding through the development of global standards that recognise the changing nature of border management.

The role of Customs

The responsibilities of customs administrations vary from country to country, and are often the subject of regular review and modification to ensure their ongoing relevance in a constantly changing world. Traditionally, however, Customs has been responsible for implementing a wide range of government policies, spanning areas as diverse as revenue collection, trade compliance and facilitation, interdiction of prohibited substances, protection of cultural heritage and enforcement of intellectual property laws.

This breadth of responsibility reflects the fact that customs authorities have long been entrusted with administering matters for which other government ministries and agencies have policy responsibility, such as health, agriculture, environment, trade statistics and in some cases, immigration. This is generally achieved through the implementation of a diverse range of service level agreements, with Customs having regulatory responsibility at the point of importation and exportation. Such border management responsibilities stem from the more traditional customs role of collecting duties on internationally traded commodities, a common extension of which is the collection other forms of tax, such as Value Added Tax (VAT) and excise duties.

In many developing and least developed countries, import duties and related taxes represent a significant proportion of the national revenue. Because of this, the main focus for their customs authority is, understandably, revenue collection. In developed countries, on the other hand, with relatively little reliance on imports as a source of government revenue, there is an increasing focus on border protection, with particular emphasis on the enforcement of import and export prohibitions and restrictions, including those arising from Free Trade Agreements. Nevertheless, the current trend towards global free trade and the recent heightening of international terrorism concerns have seen border security emerge as a priority across all economies.

A general indication of a government's view of the role of their customs authority can often be gleaned from the manner in which administrative responsibilities are structured. For example, where revenue collection is the main focus, the customs administration generally forms part of the Treasury or Finance portfolio. Similarly, those administrations that are primarily seen to play a border protection role are likely to be aligned with other agencies that have a border management focus.

For example, prior to 12 December 2003, the customs authority in Canada formed part of the Canada Customs and Revenue Agency. At that time it became part of the newly created Canada Border Services Agency (CBSA), which in turn formed part of the new portfolio of Public Safety and Emergency Preparedness (since renamed Public Safety Canada). This portfolio now combines the functions of customs, food inspection and immigration, together with those of emergency preparedness, crisis management, national security, corrections, policing and crime prevention.¹

Consequently, while the traditional role of Customs is multifarious, the trend in recent times has been to assign regulatory responsibilities in a way which reflects government priorities, rather than tradition. While this is simply reflective of good governance, it brings with it a challenge to regulatory convention.

Indeed, it is becoming increasingly evident that no two customs administrations necessarily look alike. What may be core business to one may fall outside the sphere of responsibility of another, and this is simply a reflection of differing government priorities, the way in which a particular country manages the business of government and the manner in which the associated administrative arrangements are established. In this regard, even some of the more traditionally core customs activities are occasionally the primary domain of another government agency. For example, in Hong Kong, due to its free port status, tariff classification and valuation are more relevant to the Census and Statistics Department than to the Customs and Excise Department.

Consequently, if several people were asked to describe the role of Customs, the result is likely to be reminiscent of the six blind men who formed completely different perceptions of what an elephant might look like, having touched different parts of the animal such as the tusk, trunk and tail.²

Changing expectations

For several decades now, there has been mounting pressure from the international trading community to minimise government intervention in commercial transactions, and a growing expectation for customs authorities worldwide to place an increasing emphasis on the facilitation of trade.

This is in no small part due to the changing environment in which customs authorities operate. For example, the emergence of wide-bodied aircraft, shipping containers, e-commerce and the increasing complexities of international trade agreements have all impacted on the way in which regulatory authorities have fulfilled their responsibilities, and customs administrations world-wide have seen a dramatic increase in workload across all areas of activity, fuelled by the advent of the global marketplace and the technological advances that have revolutionised trade and transport.

For centuries, the customs role has been one of ‘gatekeeper’, with customs authorities representing a barrier through which international trade must pass, in an effort to protect the interests of the nation. The essence of this role is reflected in the traditional customs symbol, the portcullis, which is a symbolic representation of a nation’s ports.³ Such a role is often manifested by regulatory intervention in commercial transactions simply for the sake of intervention. Customs has the authority to do so, and no one is keen to question that authority. In this day and age, however, social expectations no longer accept the concept of intervention for intervention’s sake. Rather, the current catch-cry is ‘intervention by exception’, that is, intervention when there is a legitimate need to do so; intervention based on identified risk.

The changing expectations of the international trading community are based on the commercial realities of its own operating environment. It is looking for the simplest, quickest, cheapest and most reliable way of getting goods into and out of the country. It seeks certainty, clarity, flexibility and timeliness in its dealings with government. Driven by commercial imperatives, it is also looking for the most cost-effective ways of doing business.

Trade facilitation

The trade facilitation agenda is gaining increasing momentum as the Doha Ministerial Declaration and subsequent decisions of the General Council of the WTO have sought to intensify international commitment to further expedite the movement, release and clearance of internationally traded goods, including goods in transit. The success of the agenda is heavily reliant on the ability of Customs to raise the portcullis in an effort to achieve an effective balance between trade facilitation and regulatory intervention.

Achieving such a balance can provide significant flow-on benefits for national economies, and the issue of trade facilitation has consequently been added to the WTO agenda, with many countries now re-assessing their legislative and administrative approach to the regulation of international trade. Specifically, the Singapore Ministerial Declaration directed the Council for Trade in Goods to ‘undertake exploratory and analytical work, drawing on the work of other relevant international organizations, on the simplification of trade procedures in order to assess the scope for WTO rules in this area’.⁴

Following extensive consultation with commerce and industry, the WTO identified the following broad areas of concern at the international level:⁵

- excessive government documentation requirements
- lack of automation and insignificant use of information-technology
- lack of transparency; unclear and unspecified import and export requirements
- inadequate customs procedures; particularly audit-based controls and risk-assessment techniques
- lack of co-operation and modernisation amongst customs and other government agencies, which impedes efforts to deal effectively with increased trade flows.

The concerns identified by the WTO serve to highlight a number of potential weaknesses in the way in which governments, and more specifically customs administrations, approach the task of monitoring and regulating international trade. According to the WTO, the costs of import tariffs are often exceeded by the losses incurred by the international trading community as a result of slow clearance procedures, opaque and unnecessary documentary requirements and lack of automated procedural requirements.⁶

Recognising that the policies and procedures of a number of agencies impact on the processing and clearance of international cargo, the WTO has actively encouraged agencies other than Customs to participate in the negotiations on trade facilitation, in order to ensure a meaningful outcome. The WTO Trade Facilitation Negotiations Support Guide highlights the need for appropriate coordination among the relevant agencies in the context of the negotiations:

In many countries, multiple government agencies have an interest in the movement of goods, including agencies responsible for health and safety, food inspection, import licensing, tax collection, quality inspection and enforcement. In the absence of an effective coordination mechanism, the negotiators must attempt to interface with each of the agencies individually. The time spent on such a task would impact significantly on their ability to participate effectively in negotiations.⁷

Further, Annex D of The WTO ‘July Package’ – the decision adopted by the WTO General Council on 1 August 2004, which addresses the modalities for progressing the negotiations on trade facilitation – identifies the need for ‘effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues’.⁸

Customs blueprint

In recent years these issues have been high on the agenda of the World Customs Organization, which has developed the revised International Convention on the Simplification and Harmonization of Customs Procedures – the Revised Kyoto Convention – in an effort to promote the achievement of a highly facilitative international travel and trading environment while maintaining appropriate levels of

regulatory control. The Revised Kyoto Convention entered into force on 3 February 2006, and as at 10 January 2007, fifty two economies were contracting parties to the Convention.⁹

According to the WCO, the Convention represents the international blueprint for prudent, innovative customs management, and is designed to maintain the relevance of customs procedures at a time when technological developments are revolutionising the world of international trade and travel.¹⁰ Essentially, the Convention is intended to promote the achievement of a highly facilitative international travel and trading environment while maintaining appropriate levels of regulatory control across all member administrations. It is designed to provide the underlying conditions and instruments to help contracting parties to achieve a modern customs administration and to make a major contribution to the facilitation of international trade by:

- eliminating divergence between the customs procedures and practices of contracting parties that can hamper international trade and other international exchanges
- meeting the needs of both international trade and customs authorities for facilitation, simplification and harmonisation of customs procedures and practices
- ensuring appropriate standards of customs control
- enabling customs authorities to respond to major changes in business and administrative methods and techniques
- ensuring that the core principles for simplification and harmonisation are made obligatory on contracting parties
- providing customs authorities with efficient procedures, supported by appropriate and effective control methods.¹¹

The Revised Kyoto Convention incorporates important concepts of contemporary compliance management. These include the application of new technology, the implementation of new philosophies on customs control and the willingness of private sector partners to engage with customs authorities in mutually beneficial alliances. Central to the new governing principles of the Revised Kyoto Convention is a required commitment by customs administrations to provide transparency and predictability for all those involved in aspects of international trade. In addition, administrations are required to:

- commit to adopt the use of risk management techniques
- co-operate with other relevant authorities and trade communities
- maximise the use of information technology
- implement appropriate international standards.

The Convention also recognises the emerging whole-of-government approach to border management and the need for other areas of government to become actively involved in the global trade facilitation agenda. It requires that the conditions to be fulfilled and customs formalities to be accomplished for procedures and practices in its General and Specific Annexes ‘shall be specified in national legislation and shall be as simple as possible’.¹² In this context, the Convention defines ‘national legislation’ to mean ‘laws, regulations and other measures imposed by a competent authority of a Contracting Party and applicable throughout the territory of the Contracting Party concerned, or treaties in force by which that Party is bound’.¹³

It is evident that this definition is not restricted to legislation administered by the economy’s customs authority. Rather, it is purposely broad, encompassing the operational procedures, administrative instructions and other forms of documentation that relate to the regulation of international trade, regardless of which government authority is responsible for its administration.¹⁴

The WCO was also an early proponent of the need for customs authorities to reconsider their traditional approach to international trade control, and to abandon the ‘gatekeeper’ mentality that has traditionally dominated their thinking.¹⁵ Through the provisions of the Revised Kyoto Convention, the WCO is essentially attempting to achieve a general adoption of a risk-managed style of regulatory compliance.

In relation to the concept of customs control, the WCO states:

The principle of Customs control is the proper application of Customs laws and compliance with other legal and regulatory requirements, with maximum facilitation of international trade and travel.

Customs controls should therefore be kept to the minimum necessary to meet the main objectives and should be carried out on a selective basis using risk management techniques to the greatest extent possible.

Application of the principle of Customs controls will allow Customs administrations to:

- focus on high-risk areas and therefore ensure more effective use of available resources,
- increase ability to detect offences and non-compliant traders and travellers,
- offer compliant traders and travellers greater facilitation, and
- expedite trade and travel.¹⁶

It is considered that the WTO trade facilitation agenda and the Standards of the Revised Kyoto Convention are fully compatible. As stated by the WCO:

All the legal provisions and the principles in the WCO instruments are compatible with, and complementary to, the three GATT Articles referred to in the context of trade facilitation in the Doha Ministerial Declaration. There is a clear recognition that Customs procedures and their implementation exert a great impact on world trade and the international movement of goods across borders.

The GATT Articles set out the high principles for formalities and procedures for movement of goods, transit of goods and publication and administration of trade regulations. On the other hand, the instruments of the WCO - including the Kyoto Convention through its legal provisions and implementation guidelines - provide the basis and practical guidance and information for the implementation of these high principles.¹⁷

For this reason, a key initiative of many international organisations in their efforts to progress the trade facilitation agenda has been to promote full compliance with and accession to the Revised Kyoto Convention.

Security imperatives

As a direct result of 9/11, supply chain security now consumes regulatory thinking, and with this comes a real danger of focussing on tighter regulatory control at the expense of trade facilitation. In his address to Center for Strategic and International Studies on 17 January 2002, the then US Customs Commissioner, Robert Bonner said:

Immediately following the terrorist attacks on September 11th, at about 10:05 a.m. on September 11, Customs went to a Level 1 alert across the country at all border entry points. Level 1 requires sustained, intensive anti-terrorist questioning, and includes increased inspections of travelers and goods at every port of entry. Because there is a continued terrorist threat, we remain at the Level 1 alert today.

Shortly afterwards, the US Customs Container Security Initiative (CSI) and Customs- Trade Partnership Against Terrorism (C-TPAT) were announced. Primarily designed to protect global supply chains from concealment of terrorist weapons, these initiatives have had a sudden and major impact on the way in which customs and others involved in the international supply chain go about their business.

The idea behind C-TPAT is for US Customs and Border Protection (CBP) to work with those involved in international trade to improve the security of their supply chains. The aim is to provide CBP with a method of identifying and focusing their resources on potentially high-risk consignments, that is, those that do not form part of a supply chain that is assessed to be 'secure'. This approach – the need

to focus on identifying both compliance and non-compliance – reflects a key element of contemporary compliance management, and is consistent with the provisions of the Revised Kyoto Convention. In this way, the C-TPAT program provides CBP with an opportunity to risk-manage its activities by assessing the integrity its C-TPAT partners' supply chains, and in turn to provide those private sector partners with expedited processing and clearance.

Drawing heavily on the US C-TPAT initiative, the WCO released its Framework of Standards to Secure and Facilitate Global Trade,¹⁸ the intention being to provide 'a regime that will enhance the security and facilitation of international trade'.¹⁹ According to the WCO, the Framework aims to:

- Establish standards that provide supply chain security and facilitation at a global level to promote certainty and predictability.
- Enable integrated supply chain management for all modes of transport.
- Enhance the role, functions and capabilities of Customs to meet the challenges and opportunities of the 21st Century.
- Strengthen co-operation between Customs administrations to improve their capability to detect high-risk consignments.
- Strengthen Customs/Business co-operation.
- Promote the seamless movement of goods through secure international trade supply chains.

Under the Framework, there is a requirement that:

Each Customs administration will establish a partnership with the private sector in order to involve it in ensuring the safety and security of the international trade supply chain. The main focus of this pillar is the creation of an international system for identifying private businesses that offer a high degree of security guarantees in respect of their role in the supply chain. These business partners should receive tangible benefits in such partnerships in the form of expedited processing and other measures.²⁰

There is, however, evidence to suggest that some administrations are seeking to tilt the balance heavily towards regulatory intervention in the name of supply chain security. To some extent this is to be expected in the current climate of heightened security concerns. However, we are witnessing situations in which very high levels of control are being imposed on the international trading community on the incorrect premise that such action is required by initiatives such as CSI and the WCO Framework of Standards.²¹

It is of concern that an administration may seek to impede the facilitation of legitimate trade in such a way, bearing in mind that, in the current international climate, it takes a very brave soul to actively oppose the imposition of regulatory requirements that are allegedly introduced for the purposes of national security.

Conclusions

The role of Customs has changed significantly as a result of both evolutionary factors, including the increasing globalisation of trade, and revolutionary factors, such as the terrorist attacks of 9/11. The resultant shift in government policies and the way in which those policies are administered have brought us to a point where it is no longer possible to clearly define the role of 'Customs'. While the responsibilities of border management continue to be carried out, the nature and mix of relevant government agencies is changing. Consequently, what may represent core business for one administration may fall outside the sphere of responsibility of another. Indeed, while the tusk, trunk and tail of customs regulation remain, the organism known as 'Customs' appears destined for extinction. The World Trade Organization, World Customs Organization and other international bodies are responding through the development of global standards that recognise the changing nature of border management.

Endnotes

- ¹ Public Safety Canada's website is <http://www.publicsafety.gc.ca>.
- ² 'The Blind Men and the Elephant' is a poem by the American poet, John Godfrey Saxe (1816-87). It is based on an old Indian fable.
- ³ See, for example, CC Pond 1992, *The portcullis*, Factsheet No. 12, Public Information Office, House of Commons, London.
- ⁴ Paragraph 21 of the Singapore Ministerial Declaration, adopted on 13 December 1996.
- ⁵ Statement by the Chairman of the Council for Trade in Goods on 18 March 1998, summarising the outcome of the WTO Trade Facilitation Symposium held in Geneva, 9-10 March 1998.
- ⁶ World Trade Organization 2002, *Trade facilitation: overview of trade facilitation work*, World Trade Organization, www.wto.org/english/tratop_e/tradfa_e/tradfac2_e.htm.
- ⁷ WTO Document TN/TF/W/51, WTO Trade Facilitation Negotiations Support Guide, submitted by the World Bank.
- ⁸ Annex D, paragraph 1 of the 'July Package' – the Decision Adopted by the WTO General Council on 1 August 2004.
- ⁹ The number of contracting parties is regularly updated on the WCO website, <http://www.wcoomd.org>.
- ¹⁰ World Customs Organization 2002, *Kyoto 2000: The International Convention on the Simplification and Harmonization of Customs procedures (Revised) – Pathway to efficiency and effectiveness in the Customs Environment*, World Customs Organization, Brussels.
- ¹¹ World Customs Organization 1999, *International Convention on the Harmonization and Simplification of Customs Procedures (as amended)*, General Annex, Standard 6.2, Brussels, known as the Revised Kyoto Convention.
- ¹² Revised Kyoto Convention, Standard 1.2.
- ¹³ Revised Kyoto Convention, Article 1.
- ¹⁴ The APEC Sub-Committee on Customs Procedures also contends that the definition includes all relevant provisions, whether administered by Customs or any other government authority. See APEC Secretariat 2003, *The Revised Kyoto Convention: a pathway to accession and implementation*, prepared by the Centre for Customs & Excise Studies, University of Canberra, for and on behalf of the APEC Sub-Committee on Customs Procedures (SCCP), Asia Pacific Economic Cooperation (APEC) Secretariat, Singapore.
- ¹⁵ See, for example, T Hayes 1993, *Can EDI eliminate Customs?* Address by Mr TP Hayes, AO, Secretary General, Customs Co-operation Council, to the Pan-Asian EDI Summit, Kuala Lumpur, Malaysia, July.
- ¹⁶ Revised Kyoto Convention, Ch. 6, p. 9.
- ¹⁷ Trade Facilitation Issues in the Doha Ministerial Declaration Review of the GATT Articles, Article X: Communication from the WCO to the Council for Trade in Goods, dated 11 July 2002.
- ¹⁸ WCO 2005, *Framework of Standards to Secure and Facilitate Global Trade*, World Customs Organization, Brussels.
- ¹⁹ WCO Framework of Standards, p. 6.
- ²⁰ WCO Framework of Standards, p. 13.
- ²¹ For example, in 2005 one administration erroneously advised traders that 100% scanning of containers was mandatory under CSI.

Professor David Widdowson



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Section 2
Practitioner
Contributions

NEW ZEALAND CUSTOMS SERVICE: CHANGES OVER THE LAST DECADE AND INTO THE FUTURE

Martyn Dunne

Abstract

Like other border management authorities around the world, the New Zealand Customs Service has experienced a changed emphasis over the last decade from one of facilitation to one of facilitation alongside security. Agencies are, in many cases, being asked to articulate more clearly their contribution to broader government goals and work together in a ‘whole-of-government’ fashion. This has engendered a commitment to broader government goals and increased cooperation and connectivity with a wide range of government agencies as well as the business sector. Technological developments together with the proliferation of international alliances, trade agreements and standards, and changing business practices are similarly influencing the nature and functions of the New Zealand Customs Service.

Introduction

‘It’s a unique place because it is so far away from the rest of the world. There is a sense of isolation and also being protected.’

Elijah Wood, actor, *The Lord of The Rings*

New Zealand, or its Maori name, Aotearoa, is situated in the South Pacific and consists of two main islands (North and South) with mountain ranges down much of its length and a coastline of over 15,000 kilometres. Its two main islands cover over 266 square kilometres making it a similar size to Japan or California and slightly larger than Great Britain. However, where Great Britain has a population of over 60 million, New Zealand has a population of only four million.

New Zealand’s Exclusive Economic Zone (EEZ) is the fourth largest in the world, giving us a substantial border to protect. And, to add to our distinctiveness, our country has no land borders—the physical border control points are accessible only by sea or air.

The New Zealand economy is reliant on international trade. The four main trading destinations in 2006 were Australia (our nearest neighbour), the United States, Japan and China. Our main exports have traditionally included dairy, meat and wool. However, the products and markets we export to are diversifying. Forestry, horticulture, fishing, and manufacturing are becoming increasingly significant, as is tourism.

Our stunning scenery, which attracts millions of tourists every year, has been shared with the world through the work of local and international filmmakers. Their work, in turn, has attracted even more tourists. In 2006 tourism arrivals set new records and the forecast is that they will continue to grow.

All of these facts, figures and trends shape the role the New Zealand Customs Service plays in protecting the country’s unique community and border.

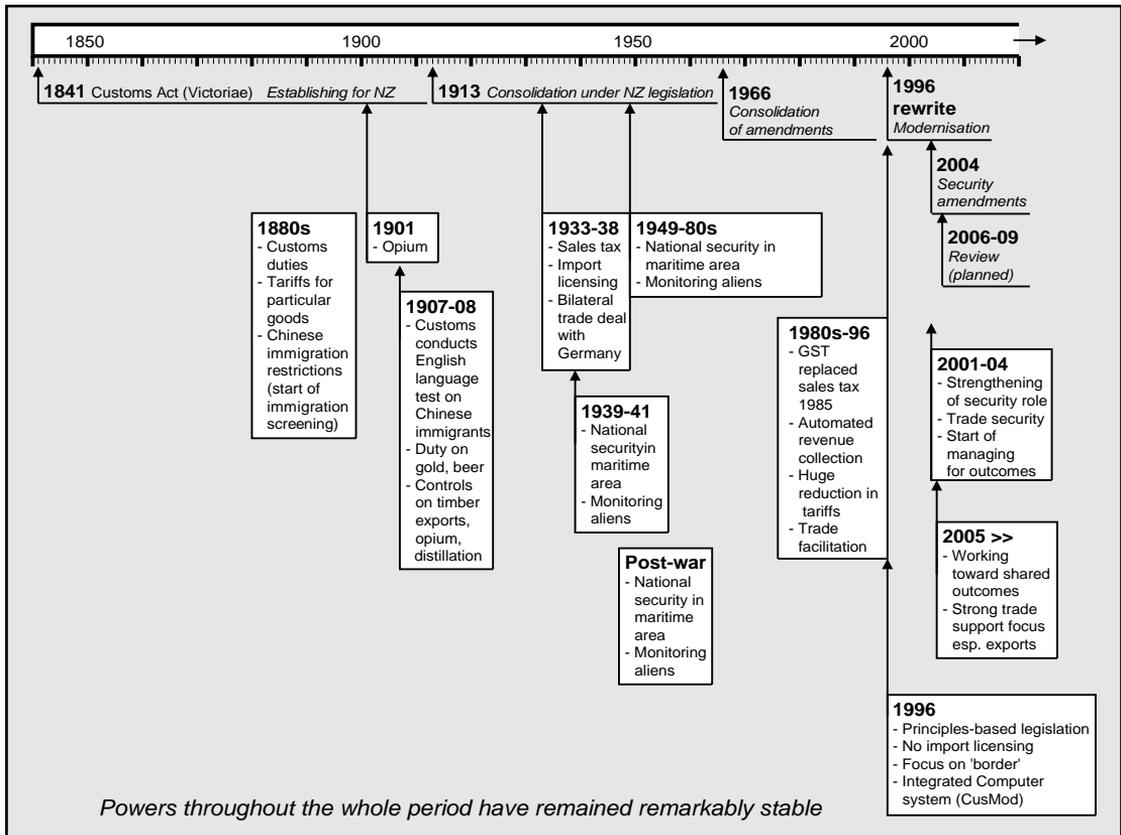
In October 2006, the New Zealand Customs Service commissioned Dr Andrew Ladley and Nicola White from the Victoria University’s Institute of Policy Studies to write a book called *Conceptualising the border*. The starting point for the thinking that went into this book was: *From the point of view of regulation, is there anything unique or different about ‘the border’?* Ladley and White suggest borders are places where governments exercise their sovereignty and that this is done by raising or lowering the fences into and out of the country to achieve a range of different policy objectives.

Taking this into account, we need to make sure that our border is open to those who are legitimate traders and travellers. We also need to make sure our border is closed to those who indulge in illegal activity such as illegal immigration and enterprises like drug smuggling and terrorism.

Too often, the process of managing borders is taken for granted until something goes wrong. In New Zealand, while our controls can’t stop everything, we have an enviable international reputation for the integrity, efficiency and effectiveness of our border agencies.

In the New Zealand context, our customs administration has been an ‘instrument’ of sovereignty since its inception in 1840, starting with revenue collection, picking up immigration screening in 1881 and undergoing a range of changes until the present day.

Figure 1: Timeline of New Zealand Customs Service adaptation



Source: New Zealand Customs Service

It is the vision of the New Zealand Customs Service to provide leadership and excellence in border management that enhances the security and prosperity of New Zealand. It is our mission to protect New Zealand’s border and revenue in order that New Zealanders may live in safety while actively participating in the global community.

Over the past ten years, one of the more significant changes to New Zealand's customs administration has been the increased cooperation and connectivity with a wide range of government agencies as well as with the business sector. We work with the Department of Labour – Immigration, the Ministry of Agriculture and Forestry, the Ministry of Economic Development, the Ministry of Foreign Affairs and Trade, the New Zealand Police, the Ministry of Health, the Ministry of Tourism, the Ministry of Justice as well as exporters, importers and airlines to name just a few. Our state service aims to achieve more coordination and all New Zealand Government agencies are encouraged to work closely together.

An example of agencies working together is the National Maritime Coordination Centre (NMCC) which was established in 2002 at the direction of the New Zealand Government to coordinate civilian maritime patrol and surveillance needs. The NMCC is an operationally independent unit within the New Zealand Customs Service that operates on behalf of all government agencies. The NMCC has its own staff as well as Liaison Officers from the New Zealand Customs Service, the Ministry of Fisheries and the New Zealand Defence Force.

This collaborative approach means we can better share resources and expertise and duplication of work is avoided. It is one of the benefits of living in a nation of only four million people that we can easily maintain good working relationships with other government agencies.

Key drivers for change

Over the past ten years, the context for border management has changed, and while the New Zealand Customs Service finds itself doing the same sort of job it was doing ten years ago, there are some significant differences. Change has come from several quarters but the defining event of the decade was the terrorist attacks in 2001. Those attacks put the word 'security' into the forefront of international laws and relationships, resulting in a major change of focus for customs' administrations and governments all over the world.

That change began with the United Nations Security Council Declaration 1373 which, among other things, identified borders as areas needing stronger controls internationally. The New Zealand Customs Service had (and still has) sound operations in place that enable a quick response to new risks and risk events. These are based on World Customs Organization (WCO) standards, such as the Kyoto Convention, and are built around an integrated information processing system of all border flows (people, craft and goods) which allows for risk assessment across the whole of the organisation. This meant we were able to automatically activate the procedures required on the day of the attacks.

That's not to say we didn't have to change our operations following the attacks. New Zealand Customs Service's initial need was to increase our staffing to enable us to focus better on the terrorism risk. However, the biggest change came from our response to the United States' focus on trade security. The US quickly recognised that containerised cargo was vulnerable, open to exploitation by terrorists, and that there needed to be a global customs response to trade security. The WCO position was that customs administrations globally were best placed to provide assurance over the contents of consignments. It also recognised that trade security could not occur at the expense of cargo facilitation. This led to the development of global customs 'supply chain security and facilitation' standards.

Early on, New Zealand looked at the impacts of the changed environment and developed an approach that was going to work for us. New Zealand has a strong focus on being a 'good international citizen', a national interest in safeguarding our export trade and traders (particularly in the event of a terrorist disruption) and a reputation as a low risk country. We therefore developed a trade security strategy deliberately focussing on security assurance for all exports from all ports within New Zealand.

The New Zealand Customs Service's trade security strategy was built on existing systems and expertise used to risk manage non-compliance within import cargo and for the detection of other trans-national crimes. Export controls were strengthened to secure the part of the supply chain that began in New Zealand, giving the New Zealand Customs Service powers to enable proactive risk management of the supply chain with minimum disruption.

The program of security initiatives was introduced in 2003 for trade between New Zealand and its third largest trading partner, the United States. The partnership was formally recognised in a Supply Chain Security Arrangement signed by the New Zealand Customs Service and US Customs and Border Protection (USCBP) in March 2006. The Arrangement acknowledges New Zealand goods as having US CBP 'Container Security Initiative' (CSI) equivalence status.

While the security standards applied in the Supply Chain Security Arrangement were developed before the WCO developed its Framework of Standards, New Zealand's security standards are consistent with it. Representing the benchmark for securing and facilitating trade, over 140 countries have now expressed their intent to implement the Framework of Standards.

The three interlinked concepts implicit in the WCO's supply chain security policy are demonstrated in the example above. Security of international trade is a 'national interest', an 'individual trader interest' and a 'global interest'. That is, secure trade protects the whole trading system (the global supply chain). For example, the explosion of a container ship in a crowded port would not only disrupt the trade of the nation in which the event occurred (both at a national level and for the individual traders involved), but also the global trading system. The closure of all US airports immediately following the events on September 11, 2001 is a case in point. Non-secure goods entering the global trading system could make such an event possible.

At the national level, countries are interested in protecting their own security. In other words, each country wants assurance that goods entering from the global trading system are secure. In times of disruption, this interest will extend to securing continued access to trade, and to limiting the potentially distorting effects on the economy from traders sourcing alternative suppliers and export markets.

While individual traders carry out the trade, nations have an interest in protecting the reputation of their country and their access to global trade. They can do this by providing assurance over goods entering the global trading system (that is, what is *said* to be in the consignment *is* what is in the consignment).

Traders seek certainty of outcome and access for their trade. They look for the minimum compliance costs for participating in the global trading system with the greatest possible access. In terms of trade security, that means having the same basic standards internationally, such as an agreed standard for container seals. This lets them know that the screening of their goods is going to be treated the same according to the standards for risk definitions.

Ladley and White (2006) set out a useful construct for the border environment that clearly shows why customs administrations are so internationally linked and why our role is expanding on both sides of the physical border. They talk about a zone and a process—that through technology 'the border' is not only a physical crossing but extends out into the international arena and back into the domestic arena according to the risk or opportunity being managed. The border management process determines what sorts of intervention will occur in what parts of the 'border zone'.

The New Zealand Customs Service has long operated a pre-border/at-the-border/post-border strategy. In the past, 'pre-border' meant activities carried out in the international environment (that is, before any border crossing occurs). Now, our export work gives 'pre-border' a new meaning: activities carried out before goods leave New Zealand. This is a simple example of how, as the result of a significant change in our environment, we have to challenge the way we think about our models of operating.

When developing our trade security strategy, we designed a scheme to build on other agencies' existing assurance programs (such as food safety and bio-security certification) to ensure trade facilitation objectives would not be compromised. This created some challenges while we and the other agencies worked through the implications of the new international trading environment and its impact on our respective roles and work methods.

We found new international requirements meant several agencies were being given new responsibilities and had to work through how these related to existing responsibilities. For example, the revised

International Standards for Port Security (ISPS) cover port security and the WCO SAFE Framework covers trade security. While the Standards are quite distinct, getting containers cleared as secure for export and getting them to a secure port had to be treated as part of the same process. It raised questions about who should be responsible for enforcing the Standards. As a result, we had to carefully examine our respective roles to ensure we weren't creating unnecessary duplication. To this end, our Customs Officers are also designated Maritime Security Officers.

Another change has been that our agency, along with other border agencies, is now a recognised member of the 'intelligence community'. Traditionally the core security information agencies have been the New Zealand Police, the New Zealand Defence Force and the security services. These agencies now recognise the valuable contribution the New Zealand Customs Service's well-developed intelligence function is able to make to the cause.

To this end, in 2005, we launched the National Targeting Centre (NTC)—a facility providing 24-hour coverage to help direct New Zealand Customs Service's risk management work in the travel and trade environments. The Ministry of Agriculture and Forestry (MAF) Quarantine Service has placed an officer in the facility, Maritime NZ will soon be placing an officer there and we are now looking to extend the invitation to other agencies.

Our security focus has also taken us into new international territory, such as the Proliferation Security Initiative; the Bali Process on People Smuggling, Trafficking and Related Transnational Crime and APEC's Secure Trade in Asia-Pacific Region (STAR) initiative. These new areas build on our existing work in the Pacific region, including that with the Oceania Customs Organisation. Coupled with the WCO's capacity building work (and the expectation that we, as a developed administration, will contribute to that), these developments have increased our international footprint.

These developments have reinforced for us the value of having an integrated view of border flows—while our origins are in the flow of goods across the border, it is people who are associated with, and responsible for, the goods and craft that bring them in or take them out. Without the ability to interact with all three (people, goods and craft) our ability to assess and respond to risk is greatly diminished. We have had to strengthen our legislative powers as a result, and are developing a more cohesive picture of border management.

In New Zealand, we consider our border management responsibilities, capabilities and activities to be part of a system. They encompass not just border agencies and their legislative frameworks, but also port authorities and transport providers. In turn, these form part of the global supply chain (for travel as well as trade). This shapes our view of the role of a customs administration as a border manager, but also reinforces that we do not, and cannot, ever do it on our own. The best results come from working together to pool expertise, and sharing information and knowledge.

As for other customs administrations, other developments have also influenced our environment such as the proliferation of trade agreements, faster and more pervasive telecommunications, and changing business practices. However, these developments have not caused us to rethink our role in the way the global focus on terrorism has done.

Future considerations

Global business practices will continue to drive the shape and nature of future trade and travel flows. A whole range of technology developments will significantly influence the nature of those practices in large part, as well as international alliances, agreements and standards. The demand for sustainable manufacturing, farming and trading practices is already gathering momentum in response to the effects of global climate change, for example. We can expect this to drive changes in international trade and travel practices, and the expectations of governments.

The criminal side of trade and travel will continue to develop alongside global business practices, with signs of increasing cooperation between transnational criminal groups as well as deep integration with the licit economy. There will continue to be a threat to New Zealand's security from the activities of trans-national organised criminal groups, with smuggling people and a range of commodities able to yield lucrative returns—particularly drugs.

The World Customs Organization offers a broad vision for Customs in the 21st Century, which is to support international development, security and peace by securing and facilitating international trade. In turn the work of the WCO itself will be to enable customs administrations to become interconnected, their systems to become interoperable and to build customs capacity where it is needed. Working with such a vision will lead to a more certain and predictable and cohesive international trading environment over time, where the intersections between different interests at the border are recognised and addressed. It will require increased connectedness between all parties involved in international trade and travel supply chains. Because of their regulatory roles, international connections, integrity, and common infrastructure, customs agencies will be uniquely placed to be central players in facilitating international trade and travel flows. The role of the WCO as a global customs cooperation network will be an important part of this.

In New Zealand, border control is an effective mechanism for a wide range of purposes. We are starting to ask some fundamental questions about what we are trying to do at the border and the best way of doing it. For example, sustainable economic development, and exports in particular because of their role in fuelling the New Zealand economy, will continue to be important to successive governments over the next 10 years. The New Zealand Customs Service is looking at how we can use our border management regulatory mechanism innovatively to contribute further to New Zealand's economic development.

At the same time, we will continue to provide the Government with as much value as we can from the border as an intervention point. Issues of border infrastructure, such as the number and location of international ports and related transport links and the ways in which the New Zealand Customs Service and other border agencies interact in the border zone, will become increasingly important in an increasingly connected but challenging global trading environment. An obvious area of collaboration is the management of information. Progress is already being made on more cohesive information systems and more connected intelligence processes.

Of course, none of this can be done without the right people. Already we have instigated a consistent, organisation-wide approach to selecting and training future leaders with the aim of building a pool of talented people who are skilled and able to take the organisation into the future.

Conclusions

Despite New Zealand being surrounded by water, with a small population and a lot of sheep, we are well respected internationally for our high-quality goods and the security of our trading relationships.

We are also visited by millions of tourists who come to experience our scenery and hospitality.

In order to help maintain this reputation, the New Zealand Customs Service needs to ensure the border is protected so New Zealanders can live safely and still actively participate in the global community.

We do not operate alone. Working collaboratively with other related agencies, customs administrations and international trade and travel industries is vital to us now and will continue to be into the future.

We can only do this effectively if we stay alert to local and global changes, and consider how these changes impact on our role including why and how we do things. We will continue to research and develop our own ideas and learn from the other organisations we work with. Most of all, we will continue to embrace change and the opportunities it brings.

References

Ladley, A & White, N 2006, *Conceptualising the border*, Institute of Policy Studies, School of Government, Victoria University of Wellington.

Endnotes

- ¹ The Container Security Initiative (CSI) is a US CBP security program involving the pre-load inspection by US CBP officers of 'at risk' containers at 40 ports of origin for goods being imported into the USA. Containers cleared under CSI are less likely to be held up on arrival into the USA.
- ² For example, the Maritime Safety Authority had previously had no 'security' responsibilities. It has since been renamed Maritime NZ as a result of this change.
- ³ World Customs Organization 2006, *Framework of Standards to secure and facilitate global trade*, WCO, Brussels, June.

Martyn Dunne



Martyn Dunne has been Comptroller of the New Zealand Customs Service since September 2004, following 27 years with the New Zealand Defence Force. Since 2004, Martyn has focussed on ensuring the Service is well positioned to meet, and anticipate, not only today's demands but also those of border management in the future.

CUSTOMS IN THE 21ST CENTURY

Pravin Gordhan

Abstract

In an increasingly globalised world in which both legal and illegal trade is expanding, customs administrations need to identify and understand the key international, regional and national strategic drivers in order to respond appropriately. These drivers are universal, and while most customs administrations recognise that their role has fundamentally changed and their mandate expanded, the international customs response has been uncoordinated. This has engendered an active response by the World Customs Organization (WCO) which, as part of its commitment to a new vision and action plan for Customs, has adopted the Framework of Standards to Secure and Facilitate Global Trade in order to provide a global response to supply chain security and facilitation.

Globalisation and the 21st century

Globalisation is resulting in an increasingly complex world. The world is interconnected as reflected by expanded flows of goods, people, capital, information and technology. It is becoming easier to conduct business internationally. This provides countries with the opportunity to fast-track economic growth and development through increased international trade. This is not only beneficial to legal trade; it benefits illegal trade too and criminals are making use of more integrated markets and freer movement of people to move goods, people and money across borders. These developments are resulting in the growth of the range and complexity of risks that have to be managed at the border. The lack of effective controls presents risks to the economy and society and can undermine gains that have been made.

Key strategic drivers

As a result of the dynamic and rapidly changing environment in which it operates, it is necessary for customs administrations to identify and understand the key international, regional and national strategic drivers in order to be more responsive. Some of these key strategic drivers that are impacting on customs administrations include:

Growing international trade volumes. International trade is continuing to grow globally and reached an all-time high of more than \$10 trillion in 2006. This trend is set to continue. This growth means that Customs have to process more transactions and the workload is increasing, usually with the same or less resources.

Trade liberalisation and reduced tariff and non-tariff barriers. With the end of the Cold War, the focus shifted to the creation of open economies by removing barriers to trade and investment. The average tariff decreased from 26.1% in 1980 to 10.4% in 2002. Tariff reductions were complemented by the removal of non-tariff barriers and measures to facilitate legitimate trade, such as the reduction of border controls. It is now being recognised that these measures not only created opportunities for legitimate trade but also for illicit trade.

New trade rules are emerging. With the conclusion of the Uruguay Round and the establishment of the World Trade Organization (WTO) in 1995, countries committed themselves to new rules that had to be applied to international trade. These cover a wide range of issues such as valuation and the protection of intellectual property rights. International trade is now subject to a wider and more complex set of rules. The conclusion of the Doha Round of trade negotiations will result in additional trade rules and improve and deepen WTO rules on trade facilitation.

Proliferation of Regional Trade Agreements (RTAs). According to a recent WTO report, some 220 RTAs are estimated to be operational and nearly all WTO Members belong to at least one RTA, with an average of six RTAs per Member. The number of RTAs is likely to continue to increase in coming years, considering the number of RTAs under negotiation and delays in concluding the Doha Round. The proliferation of RTAs means that less trade is administered on a Most Favoured Nation (MFN) basis but is subject to complex preferential rules of origin that are administered by Customs. Not only are these rules of origin complex, they are also unique to every RTA. The application of preferential rules of origin is also compelling Customs to have a good understanding of the domestic economy and extend its intervention in the supply chain from the border to the place of production.

Traditional trade patterns are changing and participants are increasing. The share of developing countries in world merchandise trade is now more than 30%, having increased from about 20% in the mid-1980s. Merchandise trade between developing countries, that is, South-South trade, has also significantly increased at an annual average rate of 11% during the past decade and around 40% of exports from developing countries are destined for other developing countries.

The structure of trade has changed significantly. Global production specialisation has advanced, in particular in manufactured goods. Firstly, the share of manufactured goods within world merchandise trade has grown significantly throughout the world. Secondly, the share of parts and components exports of total merchandise exports has greatly increased. Thirdly, exported goods contain a significant portion of imported intermediate inputs. This changing structure impacts on the types of transactions handled by many customs administrations.

New logistics and supply chain models. New procedures such as just-in-time distribution, low inventory retention, reverse logistics and multi-modal transport are resulting in innovative methods of moving goods across borders. These new procedures impact on freight logistics and put increased pressures on supply chains. The needs of modern international business exert pressure on customs administrations to process goods effectively and efficiently and to minimise delays. Unnecessary delays increase international trading costs and erode the competitiveness of traders.

Emergence of transnational organised crime networks. Transnational organised crime facilitates many of the serious threats to international peace and security. According to the United Nations, corruption, illicit trade and money laundering contribute to state weakness, impede economic growth and undermine democracy. Organised crime is increasingly operating through fluid networks rather than more formal hierarchies. This form of organisation provides criminals with diversity, flexibility, low visibility and longevity. Connections among different networks became a major feature of the organised crime world during the 1990s, thus creating networks of networks. The agility of such networks stands in marked contrast to the cumbersome sharing of information and weak cooperation in detecting and preventing crime between national law enforcement agencies and between states.

Security threats recognise no national boundaries. Global economic integration means that a major terrorist attack in the developed world will have devastating consequences for the developing world. At the same time, the security of countries can be held hostage by the inability of one country to contain an emerging disease. Global concerns regarding avian flu is a case in point.

Growing concerns regarding public health and the environment. The international community has adopted a number of international instruments aimed at controlling the international movement of harmful and dangerous goods. These instruments include the Convention on the International Trade in Endangered Species (CITES) and the Basel Convention on the Control of Trans-Boundary Movements of Hazardous Wastes and their Disposal. These and other international instruments are implemented by customs administrations at national borders. Growing concerns regarding the environment are also likely to result in new environmental treaties with an impact on the controls applied by Customs at borders.

The evolution of Customs: the impact of strategic drivers on the role of customs

The strategic drivers are universal and impact on all customs administrations, although the extent of the impact may differ. Notwithstanding, the responses by Customs have been unequal. Some administrations have responded and others have not. Those that have responded have done so in differing degrees ranging from comprehensive reforms to minor adjustments. Some of the trends identified include:

Most customs administrations recognise that a fundamental shift has taken place with respect to their role. The strategic drivers, especially the greater international mobility of goods, capital and people have increased and continue to increase the complexity, range and scope of the Customs' function. In many countries customs administrations, as the frontline trade administrators, are experiencing a sharply expanding scope and complexity of work.

Customs is a central part of the globalisation process and a catalyst to the competitiveness of countries and companies. Customs is no longer only a collector of state revenues at the border but is responsible for administering international trade and securing the economy and society with respect to the cross-border movement of goods. In its 2005 Global Economic Prospects report, the World Bank states that 'More efficient Customs are associated with more trade'.

The role of Customs at the border has expanded. In a number of countries, customs administrations are now regarded as the key border agency responsible for all transactions related to issues arising from border crossings and undertaking functions on an agency basis on behalf of other national administrations. Concerns regarding border security have also resulted in the establishment of unified border agencies by some governments.

Customs plays an important role in administering international trade. Traditionally, this administrative role has been understood as imposing and collecting the customs duties and taxes on imported goods. With the advent of trade liberalisation, more trade rules and the proliferation of trade agreements, this role is becoming more complex. In addition, with the reduction in customs duties, countries are increasingly making use of trade remedies to protect local industry from unfair international competition, and these remedies are administered by Customs.

Trade liberalisation does not mean that the role of Customs is diminishing. Even in times of extensive international trade liberalisation, restrictions and controls are necessary to give effect to trade and industry policy objectives. At the same time, Customs is required to protect society against the importation of dangerous and harmful goods. In the case of regional trade arrangements that are aimed at liberalising trade between the territories of the participating countries, the responsibilities of Customs actually increase. Even if multilateral and regional trade arrangements result in revenue reductions, VAT and other taxes still have to be assessed and imposed on imported goods as a means of both raising taxes and also levelling the playing field vis-à-vis imported goods. A further control function is to prevent unfair competition from goods diverted into the domestic market.

The emphasis is shifting to automation, risk management and intelligence to facilitate the movement of legitimate goods and to focus resources on high-risk areas. The expanding mandate and workload of Customs require a sharper ability to identify which goods or travellers should be allowed free passage and which should be stopped and checked. Scarce resources need to be targeted on high-risk, non-compliant traders. Customs administrations are introducing measures to obtain as much information as possible in advance and prior to the arrival of goods to make timely and effective risk-based decisions. This, in turn, has resulted in the introduction of modern information technology that enables the secure, real-time exchange and receipt of information, risk profiling and processing of declarations.

A total control approach is being adopted by Customs to broaden the scope by focussing on international trade supply chains in securing and facilitating the import, export and transit movement of goods. In line

with the traditional revenue collection focus, most customs administrations focussed on import control. The scope is now being broadened to include improved export and transit controls and some administrations are adopting production-to-destination approaches aimed at developing a total view of the supply chain.

The new and emerging strategic drivers have resulted in big shifts and significant changes for national governments and their customs administrations. Clearly, the traditional role of Customs in terms of mostly focussing on revenue collection is changing and the mandate of customs administrations has expanded. Although the objectives and priorities for controlling the cross-border movement of goods may differ from country-to-country, a greater awareness is emerging of the contribution of customs administrations to socio-economic development by, on the one hand, contributing to the expansion and facilitation of legitimate trade and, on the other, protecting national economies and societies through the application of controls on the cross-border movement of goods. According to the World Bank, it is being recognised that Customs plays a critical role in the implementation of a range of trade, economic and social policies and contributes to the achievement of national development objectives. Without an efficient and effective national customs administration, governments will not be able to meet their policy objectives in respect to revenue collection, trade facilitation, trade statistics and protection of society.

Although some customs administrations have started to respond to these challenges, the overall global reality is that customs administrations still apply unrelated, uncoordinated and overlapping controls to the movement of the same goods and largely operate in silos, resulting in unnecessary duplication.

New international responses and partnerships

A more responsive World Customs Organization

The WCO, as the inter-governmental organisation representing 170 customs administrations, has started to grapple with and understand the implications of the changing global trade, security and economic environment. This has enabled the WCO to develop responses that empower customs administrations, collectively and individually, to respond to the formidable challenges that they are confronted with.

At its June 2005 Sessions, the WCO Council adopted the Framework of Standards to Secure and Facilitate Global Trade. The main objective of the Framework is to establish standards that provide supply chain security and facilitation at a global level to promote certainty and predictability. This will enable the seamless movement of goods through international trade supply chains by creating measures that will enhance Customs-to-Customs cooperation and Customs-to-Business partnerships. The Framework is part of the WCO's comprehensive response to some of the challenges that its Members are faced with. It also represents a new way of doing business for the WCO. On the one hand, it aims to introduce greater standardisation in the way customs administrations operate and, on the other, it is a more flexible instrument than an international treaty and encourages faster implementation.

The Framework of Standards

The Customs-to-Customs provisions of the Framework aim, among others, to establish real-time cooperation between customs administrations through advanced electronic transmission of customs data, enabling Customs to identify high-risk consignments prior to the arrival of goods. This represents a fundamental shift in customs administration as control usually tends to focus on import control that is carried out in isolation from the controls undertaken by the export and transit administrations. To achieve this aim, the Framework envisages the harmonisation of advance electronic information requirements for all shipments and the use of a consistent risk management approach, and encourages the use of non-intrusive detection equipment.

With respect to Customs-to-Business partnerships, the Framework introduces the concept of an Authorized Economic Operator (AEO). AEOs are entities that are involved in the supply chain and the objective is to extend facilitation ‘rewards’ to compliant traders so that customs administrations can deploy their resources to focus on high-risk traders and goods. In June 2006, the Council adopted an appendix to the Framework on AEOs. The goal is to move towards a set of maximum standards that will enable international mutual recognition of AEOs.

The Framework of Standards is a living instrument. More work is needed to ‘unpack’ and build on the Framework. This does not, however, mean that the WCO Members should be idle with respect to implementation. Work can and should proceed with implementation in all areas of the Framework while the activities are under way to deepen and expand this instrument.

However, the success of the Framework of Standards depends on its implementation by both the developed and developing country Members of the WCO. With a view to ensuring widespread implementation, the new Capacity Building Directorate of the WCO launched the Columbus program in January 2006 and commenced with diagnostic missions to assist Members to identify the actions required to implement the Framework. The first phase of the Columbus program is nearing completion and the WCO Secretariat is gearing up for the second phase to assist Members with action planning.

Quo Vadis Customs? A new vision for Customs in the 21st century

Together with the development of the Framework of Standards, the WCO has launched a process to develop a new vision and action plan for Customs in the 21st Century. Some of the key principles that have emerged in this process are: the need to optimise the contribution of international trade to economic growth and development through the application of effective and efficient customs controls over the international movement of goods and people accompanying goods; the promotion of certainty and predictability in the international movement of goods and people accompanying goods by establishing clear and precise standards; and the development of capacity to promote compliance in a manner that facilitates legitimate trade. It has also been acknowledged that there is a need to eliminate duplication and delays in international supply chains such as multiple reporting requirements and inspections, and to encourage compliance with standards by clearly defining facilitation benefits.

Global Customs Cooperation Network

The WCO Membership has also recognised that the new challenges of the 21st Century demand much closer collaboration between customs administrations in facilitating legitimate trade and undertaking customs controls. This requires the development of a Global Customs Cooperation Network. The challenge for the WCO is to enable customs administrations to become interconnected, their systems to become interoperable and to build the capacity of customs administrations by creating the necessary policies, strategies and tools and by supporting implementation.

The development of the Global Customs Cooperation Network requires:

- internationally standardised data requirements for export, transit and import
- interconnected and aligned customs databases to enable the electronic exchange of data between customs administrations as early as possible in the international movement of goods
- mutual recognition and coordination protocols between exporting and importing administrations to eliminate unnecessary duplication of controls in international supply chains
- a set of maximum trader standards to enable the development of a system of mutual recognition for AEOs.

It also goes without saying that the Global Customs Cooperation Network relies on professional and competent customs administrations and that intensified and focussed capacity building efforts are required to achieve this objective.

Conclusions

It's no longer business as usual! The challenges of the 21st Century are placing massive demands on customs administrations. Now, more than ever before, there is a need for customs administrations to be more responsive. An understanding is required of issues such as globalisation, the dynamics of international trade, the technicalities of the trade supply chain, emerging policy directions and the complexities of the global landscape. It is imperative that we encourage and stimulate greater intellectual output and analysis. The new and emerging challenges will impact on our future development and demand a more proactive and action-orientated approach.

Pravin Gordhan



Pravin Gordhan, Commissioner, South African Revenue Service (SARS), is currently spearheading a major customs modernisation initiative aimed at preparing Customs for its new role to facilitate and secure South Africa's trade in a fast globalising world. Formerly a Member of Parliament and Chairperson of the World Customs Organization, Commissioner Gordhan has had a lifelong commitment to democracy, human rights, justice and the future of South Africa.

EMERGING ISSUES ON THE ROLE OF CUSTOMS IN THE 21ST CENTURY: AN AFRICAN FOCUS

Creck Buyonge

Abstract

The future role of customs administration in Africa, specifically in the context of inevitable modernisation and reform, will need to respond to increasing demands for revenue optimisation, greater involvement in trade facilitation, and enforcement of regulatory policies and practices through adjustment to both national and international imperatives. To compete in the global arena, African nations will need to adapt to changes in government and the strategic operating environment of international business, while concurrently responding to developments in technology and communications and the concept of integrated supply chain management and security.

Introduction

‘**Plus ça change, plus c’est la même chose.**’¹ This French expression aptly captures the genuine feelings of some observers of the customs reforms that have been taking place in many countries in Africa. So, are things changing or remaining the same? Or is it both?

There are three forces that are having an impact on the role of African customs administrations in this century. The first is the push for revenue optimisation, an agenda pursued through revenue consolidation using the revenue agency model. The second is a demand for Customs to play a greater role in facilitating trade in the context of various preferential trade arrangements. The third is the requirement for Customs to take on more enforcement responsibilities either as part of a global Customs response to the threat of terrorism, or part of the mission of Customs to protect society and the nation through enforcement of various restrictions and prohibitions.

Impact on Customs

Revenue optimisation

Apart from a few countries like South Africa, Customs still contributes the greatest revenue to the government in comparison to internal taxes. For example, in Kenya Customs contributes up to 40% of annual tax collections, and this is after the collection of local excise was transferred to the department responsible for internal taxes.

Up to now, there are some administrations that rely on collecting import duties and taxes ‘at the border’, in the belief that if you ensure all the revenue is collected at that point, there is nothing to worry about. This thinking is a relic of the fortress model of Customs currently under siege in our increasingly interconnected world. In line with the recommendations of the World Customs Organization (WCO), the World Trade Organization (WTO), and even donors, administrations are now setting up post clearance audit units. Operation of such units requires other skill sets, such as auditing and information technology, in addition to tariff classification, valuation and origin determination.

Some of the reforms are taking place in countries where revenue collection, including Customs, has been consolidated in one semi-autonomous revenue agency (Taliercio Jr 2004). This is the preferred model in sub-Saharan Africa. However, it is important to note two points. First, revenue optimisation reform programs are being carried out even in countries that have not adopted the revenue agency model (Kidd & Crandall 2006). Secondly, the inclusion of Customs in the revenue agency needs to take account of the fact that 'Customs and internal tax administration are two rather different administrative worlds' as one study notes:

While they do share numerous general features (e.g. the need for computerisation, personnel management and monitoring systems), their daily processes and procedures are quite dissimilar (Mann 2004).

In many cases, there is an assumption that Customs should pursue a reform path with leadership provided from the internal tax administration. In reality, in some countries Customs has championed reform, and customs leadership has been critical in improving the efficiency and effectiveness of revenue agencies.² In Kenya, Uganda, and Mauritius (to give examples from the East and Southern region of Africa), reforms in Customs preceded and provided an impetus to reforms in internal tax administration.

Trade facilitation

An August 2006 study report by the Business Action for Improving Customs Administration in Africa (BAFICAA)³ acknowledges that 'much work has been done on customs reform in the developing world, including Sub-Saharan Africa' (McTiernan 2006). At the same time, the report says that businesses find it very difficult to comply with customs laws and procedures in Africa:

In almost all countries, the general feeling was that the most senior customs officials did understand the issues faced by businesses. But equally, frontline customs officers everywhere were perceived as being usually unaware and mostly unsympathetic about the problems their individual performance could cause for businesses. They were generally seen as officious and unwilling to listen, always choosing to refer queries to their superior officers rather than seek to resolve them. They were also seen as susceptible to petty corruption. Legitimate businesses with unblemished histories of compliance with regulations and tax payment find themselves constantly treated with suspicion by customs officers. This was the case even in countries where substantial customs modernisation had already been achieved (McTiernan 2006).

Customs is therefore under pressure to play its part in reducing the cost of doing business in Africa. The World Bank, through its annual *Doing Business* publications, has helped to put the spotlight on ways in which Customs is facilitating trade, as well as cases where it is a hindrance. More impetus is being provided by national initiatives to improve the business climate and attract greater domestic and foreign investment. Thirdly, the World Trade Organization's trade facilitation agenda has provided an opportunity for countries to examine their trade facilitation environment as negotiations towards a possible agreement move forward.

A greater role in enforcement

The theme for International Customs Day 2003 was *The role of Customs in the protection of society*.⁴ In Kenya, the day was celebrated through a number of activities based on that theme. To add a little drama to the event, seized counterfeit goods were destroyed in a ceremony covered by the print and electronic media. Customs officials marched through the streets of Nairobi carrying placards with various messages on the theme. At a workshop and mini-exhibition later that afternoon, members of the business and trade community expressed surprise that Customs had another role other than revenue collection.

In contrast to 2003, celebrations for the year 2007 on the theme *No to counterfeiting and piracy* did not raise eyebrows. Intellectual property rights holders joined Kenya Revenue Authority officials in a march

through the city. A workshop held on the theme saw the participation of various members of the diplomatic corps, senior government officials from the ministries responsible for trade and finance, chief executives of manufacturing organisations, and representatives of the Kenya Association of Manufacturers, Kenya International Freight & Warehousing Association, Music Copyright Society of Kenya, and Microsoft. There is now greater awareness of the role of Customs in enforcement generally, in response to the various threats to the security of nations and the world at large.

At the global level, the World Customs Organization Council adopted the *SAFE framework of standards to secure and facilitate global trade* in July 2005. As at February 2006, 42 African countries had signed the Letter of Intent to implement the Framework. Sixty diagnostic studies for implementation of the Framework have been conducted worldwide, including in 28 African countries.⁵ Recommendations from these studies most certainly include initiatives on strengthening Customs' enforcement capability in the face of various threats including the threat of global terrorism.

A number of countries have begun making investments in this area. For example, Kenya has already procured two X-ray container scanners, deployed at the port of Mombasa, and is in the process of procuring five more with funding from the Government. In addition, a tender for procurement of four motor boats has been awarded and delivery is expected before the end of 2007. Other countries that are currently using scanners include Ghana, Senegal, South Africa, Tanzania and Zimbabwe. Therefore, Customs in Africa will not continue with its revenue stance, it will be *revenue-plus*, that is, revenue plus enforcement, trade facilitation and environmental protection.

What will the future African Customs look like?

Given the structure of Africa's economies, revenue collection will still remain important as a key mandate of Customs for most countries for many years to come. There are 55 countries in Africa, with 34 designated as Least Developed Countries (LDC).⁶ The LDC account for 19% of the continent's exports and 21% of its imports.⁷ Africa's four largest exporters—South Africa, Algeria, Nigeria and Libya—account for over 57% of all exports, most of which is oil. Angola, the fifth largest exporter, provides only 8% of exports. Mining products (including oil) accounted for some 65% of Africa's exports and 14% of imports in 2005. Agricultural products represented 11% of exports and 14% of imports. Manufactures were worth 21% of exports and 70% of imports. If the figures for manufactures are disaggregated further, the picture changes: the high figure for manufactures is accounted for by South Africa and a few North African countries, as most countries in Africa rely almost solely on agricultural exports and sell virtually no manufactures overseas.

Table 1: Merchandise trade of Africa by region and by major product group, 2005

	Value (US \$b)	Share (%)	
	Exports	Exports	Imports
World	298	100.0	100.0
Region			
North America	60	20.2	7.3
South and Central America	8	2.8	2.4
Europe	128	42.9	46.6
CIS	1	0.3	2.1
Africa	26	8.9	11.0
Middle East	5	1.7	6.4
Asia	49	16.3	22.5
Product group			
Agricultural products	32	10.9	13.9
Fuels & mining products	194	65.2	13.8
Manufactures	63	21.2	70.2

Source: World Trade Organization 2006

As shown on Table 1, Western Europe is Africa's largest trading partner, accounting for about 43% and 47% of the continent's exports and imports respectively. In terms of exports, the other significant destination is North America (20% of the total) and Asia (16%). Intra-Africa trade is low, accounting for 9% of exports and 11% of imports. Manufactured goods attract high import duties in African countries and are a significant source of revenue.

Customs will be expected to play an important role in safeguarding the economic and trade interests of countries in the context of preferential trade agreements. While the development of trade policy is usually the responsibility of ministries responsible for trade, Customs has a role to play in administering tariffs, the valuation code and origin regulations. Through the Cotonou Partnership Agreement (CPA) of 2000, many African countries have been able to export to the European market on non-reciprocal duty-free basis. This situation will soon come to an end with the expected signing of Economic Partnership Agreements between groups of countries and the European Union. Another non-reciprocal arrangement is the *US African Growth and Opportunity Act (AGOA)*. In these cases, Customs must ensure that the goods being exported to the European Union and the United States of America under the respective arrangements qualify for such treatment.

In Africa itself, there are numerous regional economic blocs, sometimes with overlapping membership. Through such regional economic arrangements, countries are learning how to compete in this era of globalisation. For example, Kenya is one of the countries that joined the Common Market for Eastern and Southern Africa (COMESA) Free Trade Area in the year 2000. Customs is responsible for administering the COMESA Protocol on Rules of Origin. Any lapse could mean the duty free importation of non-admissible goods and consequent loss of revenue. Administration of a multiplicity of preferential trade arrangements in addition to the revenue collection and enforcement mandates means that customs administrations have to manage multiple reporting relationships.

Policy direction on revenue matters would be issued by the ministry responsible for finance, trade policy by the ministry of trade (or in some countries, ministry responsible for foreign affairs), and security policy by the ministry responsible for internal affairs. All have different expectations from Customs which must be fulfilled. The interplay between the different forces in government sometimes makes for vibrant, if unnecessary, public debates on what the core business of Customs should be.

The integrated revenue agency model will still be popular. In line with the expectation that import duties and taxes will provide an important source of government revenue for years to come, more and more countries that have not adopted the integrated revenue agency model are likely to move in that direction. The first revenue authorities in the world were established in the mid-1980s. Some have been established in more recent years such as the Mauritius Unified Revenue Authority (2004) and the Mozambique Revenue Authority (2007).

There is a perception amongst the existing revenue authorities that the model has significantly improved revenue administration, although this proposition has neither been proved nor disproved in an empirical sense (Kidd & Crandall 2006). In countries where governments have not undertaken public service reform, the model certainly helps kick-start reform, especially if it is given some level of autonomy to make decisions on human resource recruitment, remuneration, and operation of the governing board.

Technology will continue to be a significant driver of customs reform in the years to come. The traditional view of Customs as the gatekeeper to an impregnable fort is coming under increasing challenge, because the world has become more integrated and Customs has to embrace the concept of integrated supply chain management. How do we apply the power to technology to process great amounts of information quickly across large distances? Traders experience significant delays transporting goods from the hinterland to ports and vice versa, some of which are due to avoidable processing delays.

African countries will need to improve their information and communications technology (ICT) capability, as a trade facilitation measure, to compete in the global arena.⁸ In this regard, Egypt has

introduced a single window for trade documentation and merged 26 approvals into five;⁹ and electronic filing of customs documents has been introduced in Ghana, Kenya, Mauritius, Rwanda, and Uganda among other African countries.¹⁰ In Kenya, the *Simba 2005* IT system was introduced on 1 July 2005. Despite the expected initial hiccups of system stability, and acceptance by stakeholders, the new IT system has introduced a level of transparency that was previously unknown. In March 2006, document processing became centralised in a Document Processing Centre based in Nairobi, thus eliminating human contact between customs entry processing staff and the public. However, there are numerous remaining challenges in Africa including inadequate infrastructure, high cost of access to ICT facilities, and connectivity between and within African countries and the rest of the world.¹¹

Human resource transformation and stakeholder consultation issues are likely to be given greater focus. The people element is very important in implementation of any customs ICT project. The 'people' element includes providing training; sensitising and obtaining the buy-in of internal and external stakeholders; managing relationships with internal and external stakeholders; and conducting corporate communications and public affairs.¹²

Reformers like Kenya have already realised that reform is less about technology and more about people applying technology to improve the efficiency and effectiveness of procedures and processes. In its 2nd Corporate Plan (2003-04 to 2005-06), Kenya Revenue Authority put a lot of emphasis on revenue collection. This has changed in its 3rd Corporate Plan (2006-07 to 2008-09), which emphasises human resource transformation. We are therefore likely to see more expenditure on training and capacity building, including training undertaken in collaboration with education service providers outside Africa.¹³ Governments and the business community expect greater professionalism from Customs, in terms of technical competence, focus on corporate strategy, appreciation of the complexities of the international trading environment, and a client service orientation across all levels of management.

This emphasis on the people element can also be seen in regional approaches to address the challenge of corruption in Customs.¹⁴ While in the past corruption was essentially seen as a customs problem, it is now realised that it is important to develop a positive and effective partnership with the business community to address the problem.¹⁵

Anti-corruption is not the only area where consultation with business is vital. Consultation must be embedded in the design of the various customs reform and modernisation programs, otherwise the risks of possible disruption of activities is great.¹⁶

The time is up for the lone ranger. As has already been pointed out, customs administrations have in the past been mainly concerned about revenue collection due to the structure of our economies. Most enforcement activities were left to other law enforcement agencies, such as state security and police. All interveners in the cargo movement process including Standards bodies and phytosanitary agencies acted independently, thus leading to unnecessary delays.

A number of international organisations such as the World Customs Organization, the World Trade Organization and the United Nations Conference on Trade and Development (UNCTAD) have for some years now been working on a program for simplification and harmonisation of customs procedures. The international standard is the *Revised International Convention on the Simplification and Harmonization of Customs Procedures* (Kyoto Convention 1974, revised 1999).

An assessment for 'Kyoto-compliance'¹⁷ would certainly take account of ways in which delays occur due to separate inspections by Customs and other government agencies. It would also assess the extent to which joint border procedures have been introduced to ease processing of documents and goods at contiguous borders. Some of the joint border posts that have been set up include Malaba on the Kenya/Uganda border and Beit Bridge on the border between South Africa and Zimbabwe. In January 2006, the World Bank approved a credit for the construction of various joint border posts on the borders between Kenya and Uganda, Kenya and Tanzania, Tanzania and Uganda, Uganda and Rwanda and Tanzania and Rwanda.

Administrations will be expected to measure progress in the implementation of various programs. Although Customs is not an exact science, it is necessary to demonstrate results in the use of resources as a basis for budget-making and proposals for funding of reform and modernisation programs. Over the years following the achievement of political independence in the 1960s and 1970s, the performance of most African public service agencies consistently fell below public expectations, often due to excessive controls, frequent political interference, poor management and outright mismanagement. Partly as a response to citizen demands for transparency and accountability, activist parliaments and donor conditionality, many governments are now institutionalising a performance-orientated culture, linking reward and recognition to measurable performance, and strengthening and clarifying obligations required of the government and its employees to achieve agreed targets.

In addition to revenue collection, Customs will be expected to measure the progress they are making in facilitating international trade. The World Customs Organization and the World Trade Organization are some of the organisations that have promoted the use of the Time Release Study (TRS) as a measure of progress in trade facilitation. Kenya conducted its first TRS in the year 2004 when most customs operations were manual, before implementation of the new IT system (1 July 2005). A second TRS, expected to be completed by the end of March 2007, is now under way. Other countries that have conducted TRS include Malawi and Tanzania.

Conclusions

It is very difficult to predict what the future of Customs is going to be. One thing is certain – the future will be a challenging one, with change as the greatest constant.

In the 1990s, some governments toyed with the idea of ‘privatising’ Customs through contracts to pre-shipment inspection companies and private/public sector management companies. With the benefit of experience, many governments have come to the conclusion that the solution to inefficiencies in Customs does not necessarily lie in privatisation, but in reforming the administration to enable it to take on the challenges of operating in the modern trading environment.

In the future, we can expect to see tension between the revenue collection, trade facilitation and enforcement roles of Customs, and more and more adaptation to fulfil the demands of citizens and governments. Given the high number of countries that are reforming and modernising their customs administrations, and the scope of the various programs, future customs managers will be required to have a strategic grasp of the operating environment, and move in tandem with the changes taking place in the world of business. The future customs organisation will be agile, capable of adapting to changes in government and in business. It will be driven by technology, adopt more-or-less objective measures of success, and ensure a proper balance between its various mandates.

References

- Taliercio Jr, Robert 2004, *Designing performance: the Semi-autonomous Revenue Authority model in Africa and Latin America*, World Bank Policy Research Working Paper No. 3423, Washington, DC.
- Kidd, Maureen & Crandall, William 2006, *Revenue authorities: issues and problems in evaluating their success*, IMF Working Paper No. WP/06/240, International Monetary Fund, Washington, DC.
- Mann, Arthur J 2004, *Are Semi-autonomous Revenue Authorities the answer to tax administration problems in developing countries? A practical guide*, Development Alternatives Inc., in assoc. with the Georgia State University and the Boston Institute for Developing Economies for the ‘Fiscal Reform in Support of Trade Liberalisation Project’ of USAID.
- McTiernan, Andrew 2006, *Customs and business in Africa: a better way forward together*, Report prepared for Business Action for Improving Customs Administration in Africa.

Endnotes

- ¹ Translated in English as ‘The more things change, the more they stay the same’.
- ² In the same manner, Andrew McTiernan (2006) observes that many studies on customs reform in Africa are made by development agencies, and the perspective of the business community does not come out, in spite of the fact that business is both the main subject of customs regulations and the major source of customs revenues.
- ³ The study covered West Africa (Côte d’Ivoire, Ghana, Togo, Benin and Nigeria); Southern Africa (RSA, Mozambique, Botswana and Zambia); and East Africa (Tanzania, Kenya and Uganda).
- ⁴ International Customs Day is celebrated each year on 26 January, to commemorate the establishment in 1952 of the Customs Cooperation Council, the official name of the World Customs Organization.
- ⁵ Angola, Botswana, Burkina Faso, Cameroon, Congo (Brazzaville), Egypt, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Madagascar, Mali, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Swaziland, Tanzania, Togo, Uganda and Zimbabwe.
- ⁶ Algeria, Angola (LDC), Botswana, Burkina Faso (LDC), Burundi (LDC), Cameroon, Cape Verde (LDC), Central African Republic (LDC), Chad (LDC), Comoros (LDC), Congo, Democratic Republic of the Congo (LDC), Benin (LDC), Egypt, Equatorial Guinea (LDC), Ethiopia (LDC), Eritrea (LDC), Djibouti (LDC), Gabon, Gambia (LDC), Ghana, Guinea (LDC), Cote D’Ivoire, Kenya, Lesotho (LDC), Liberia (LDC), Libyan Arab Jamahiriya, Madagascar (LDC), Malawi (LDC), Mali (LDC), Mauritania (LDC), Mauritius, Morocco, Mozambique (LDC), Namibia, Niger (LDC), Nigeria, Guinea Bissau (LDC), Reunion, Rwanda (LDC), Sao Tome and Principe (LDC), Senegal (LDC), Seychelles, Sierra Leone (LDC), Somalia (LDC), South Africa, Sudan (LDC), Swaziland, Tanzania (LDC), Togo (LDC), Tunisia, Uganda (LDC), Western Sahara, Zambia (LDC) and Zimbabwe.
- ⁷ This section relies heavily on Patrick Low, Zainab Mchumo and Vonai Muyambo 2006, ‘Africa in the world trading system: prospects and challenges’, a paper prepared for the African Development Bank/Africa Economic Research Consortium International Conference on *Accelerating Africa’s development five years into the 21st century*, Tunis, 22-24 November.
- ⁸ According to a recent study by Simon Djankov, Caroline Freund and Cong Pham entitled *Trading on time* (2006), it takes 116 days to move an export container from the factory in Bangui (Central African Republic) to the nearest port and fulfil all the customs, administrative and port requirements to load the cargo onto a ship, while it takes 71 days to do so from Ouagadougou (Burkina Faso) and 87 days from N’djamena (Chad).
- ⁹ For case studies, see UNECE 2006, *Case studies on implementing a single window*, United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), available at www.unece.org/trade.
- ¹⁰ See World Bank 2006, *Doing business 2006*, for highlights of various reforms taking place in Africa to improve the ease of doing business.
- ¹¹ See Statement by H.E. Professor J Mwandosya, Minister for Communications and Transport, United Republic of Tanzania at the World Summit on the Information Society, Tunis, Tunisia, 16-18 November 2005.
- ¹² For an experience paper on this aspect, see C Buyonge 2005, *People and technology: preliminary lessons from Kenya’s implementation of a new customs information technology system*, Government of Mozambique/Commonwealth Secretariat Workshop on Best Practices in Information Technology and Trade Facilitation Systems, 17-18 August, Maputo, Mozambique, viewed 25 February 2007, http://www.alfandegas.gov.mz/WorkShop_mptisfc.htm.
- ¹³ A case in point is the Memorandum of Understanding signed in 2005 between KRA and the Centre for Customs & Excise Studies, University of Canberra for provision of university-level training to staff admitted to the KRA Training Institute, and short-term management development programs.
- ¹⁴ For example, Commissioners and Directors General of customs administrations from the WCO East and Southern Africa countries met in Nairobi, Kenya from 20 to 23 February 2007 and agreed on a *Nairobi resolution on integrity*. The officials, inter alia, resolved ‘to modernize systems, promote the application of modern technologies for customs clearance and control, based on international standards such as the Revised Kyoto Convention’ and ‘to develop and implement appropriate human resource management and development strategies, including training and motivation, aimed at strengthening and ensuring the highest standards of professional ethics and conduct’.
- ¹⁵ *Nairobi resolution on integrity 2007*.
- ¹⁶ See Buyonge (2005) for highlights of what went wrong in Kenya’s implementation of the new IT system in July 2005. There were public demonstrations, media wars, even court cases pressing for a return to the former system. It took almost two months for the cacophony to die down.
- ¹⁷ An agency is ‘Kyoto-compliant’ if it accepts a responsibility to construct its regulatory policies and practices in a manner that is consistent with the principles laid down in the Convention. On this subject, see APEC Secretariat 2003, *The Revised Kyoto Convention: a pathway to accession and implementation*, prepared by the Centre for Customs & Excise Studies, University of Canberra, for and on behalf of the APEC Sub-Committee on Customs Procedures (SCCP), Asia Pacific Economic Cooperation (APEC) Secretariat, Singapore.

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*Section 3
Reference
Material*

GUIDELINES FOR CONTRIBUTORS

The *World Customs Journal* invites authors to submit papers that relate to all aspects of customs activity, for example, law, policy, economics, administration, information and communications technologies. The Journal has a multi-dimensional focus on customs issues and the following broad categories should be used as a guide.

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The suggested length for articles about research and theory is approximately 5,000 words per article. Longer items will be accepted, however, publication of items of 10,000 or more words may be spread over more than one issue of the Journal.

Original research and theoretical papers submitted will be anonymously refereed. This process may result in delays in publication, especially where modifications to papers are suggested to the author/s by the referees. Authors submitting original items that relate to research and theory are asked to include the following details separately from the body of the article:

- title of the paper
- names, positions, organisations, and contact details of each author
- bionotes (no more than 50 words for each author) together with a recent photograph for possible publication in the Journal
- an abstract of no more than 100 words for papers up to 5,000 words, **or for longer papers**, a summary of up to 600 words depending on the length and complexity of the paper.

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These items are generally between 2,000 and 5,000 words per article. Authors of these items are asked to include bionotes (no more than 50 words for each author) together with a recent photograph for possible publication in the Journal. The Editorial Board will review articles that relate to practical applications.

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