

GLOBALISATION: CHALLENGES FOR CAPACITY BUILDING

Jean Acri

Abstract

The World Customs Organization (WCO) is devoting significant resources to increasing and developing capacity building for customs administrations thereby ensuring a more appropriate reaction to the challenges being faced by national administrations, international and regional organisations and by the private sector. The 20th century was the century of international multilateral conventions and agreements, particularly those which established international harmonised customs regimes and procedures to protect legitimate traders against illegal and fraudulent activities. However, with the recent trend towards bilateral arrangements, it is time to consider the slight adjustment that needs to be made to the Convention on International Transport of Goods under Cover of TIR Carnets (TIR Convention) in order to fully cover the WCO SAFE Framework of Standards to Secure and Facilitate Global Trade (WCO SAFE Framework of Standards). This would result in the immediate benefits of an internationally agreed implementation mechanism and mutual recognition of customs controls and authorisation processes.

Introduction

Capacity building has become one of the top priorities for customs authorities. The World Customs Organization (WCO) is devoting significant resources to increasing and developing capacity building for customs administrations thereby ensuring a more appropriate reaction to the challenges being faced by national administrations, international and regional organisations and by the private sector.

The missions entrusted to customs administrations have multiplied and undergone many radical changes over the years, keeping pace with world economic and social development, and rendering indispensable the development and improvement of capacity building measures.

However, if the 20th century was characterised by the drafting, approval and implementation of international multilateral conventions and agreements – more often than not aimed at facilitating trade and transport by harmonising customs and border-crossing procedures – it appears that the 21st century, despite the globalisation of the world economy, might, surprisingly, become the century of bilateralism.

How can capacity building take on these new challenges?

20th century: international community builds on international conventions

The 20th century has been the century of international multilateral conventions and agreements in all fields of activity. In particular this has been the case in the areas of trade and transport facilitation, therefore by definition, in the field of Customs.

It is well known that many of the trade and transport-related international conventions were drawn up and finalised during the period following the Second World War. By then, the international community had become acutely aware of the need to promote positive international relations through the newly created United Nations and, by doing so, ensuring peace.

Simultaneously, the devastation of Europe by the war had to be dealt with: Europe had to be rebuilt not only physically but economically and later, politically. However, this rebuilding faced enormous challenges. The goods necessary for the various rebuilding projects needed to be transported throughout Europe as rapidly and efficiently as possible.

On the one hand, Europe was in fact an agglomeration of relatively small states which meant that most international land transport involved multiple border crossings between the point of departure and the final destination. On the other hand, Europe was separated into two blocs requiring a minimum flow of traffic between each other. This presented a real challenge: the drawing-up of a legal framework to overcome the consequences of the geopolitical situation in Europe. Consequently, the need to develop globally agreed rules and procedures which would allow international and related land transport to expand became increasingly apparent.

The newly created United Nations Economic Commission for Europe (UNECE) (1947) was tasked with this challenge leading to the adoption and entry into force of more than 50 multilateral conventions and agreements, almost all of which had the potential for worldwide coverage. Efforts were made to create multilateral legal instruments in the areas of transport infrastructure, road traffic signs and signals and technical regulations for road vehicles.

Specific activities were also undertaken in the field of road transport to harmonise the conditions for competition in the fields of social regulations and the contractual relations between clients and transporters with the famous Convention on the Conduct for International Carriage of Goods by Road (CMR Convention).

Finally, considerable effort was devoted to facilitating border crossings through the development of various international conventions which established international harmonised customs regimes and procedures aimed, on the one hand, at providing customs authorities with appropriate control measures and, on the other hand, at ensuring financial security for the payment of taxes and duties regarding the goods being transported across borders.

The following conventions contributed in no small way to the expansion of international trade and land transport: the Convention on Temporary Importation of Private and Commercial Vehicles, the Convention on International Transport of Goods under Cover of TIR Carnets (TIR Convention), the Convention to Facilitate Crossing of Frontiers of Goods Carried by Rail, the Customs Convention on the ATA Carnet for the Temporary Admission of Goods (ATA Convention), the Convention on the Harmonization of Frontier Controls of Goods along with its all-important Annex 8 which recently entered into force, the Container Convention, etc.

All of the conventions mentioned above, managed by the UNECE or the WCO, have contributed significantly to the economic and social development of continental Europe, and maybe even more importantly have contributed to the development of new trade and transport trends between Europe, the Middle East, the Urals, the Caucasus and Central Asia, as well as with North Africa.

In the meantime, the role, functions and responsibilities of Customs have undergone profound changes. Immediately after the Second World War, Customs' missions were essentially connected to border-crossing controls. This static arrangement could not deal with the ever-increasing development of trade and the increased mobility of people. Gradually however, Customs' missions became more orientated towards economic and social protection issues and so Customs became almost a service provider protecting legitimate traders against illegal and fraudulent activities.

The tragic events of 11 September 2001 led world leaders of the G8 to entrust customs authorities with the additional task of ensuring security. This new dimension led the G8 to mandate the WCO to develop international tools capable of securing the global supply chain, with a particular emphasis on the detection and avoidance of terrorist activities.

Will the 21st century be the century of bilateralism?

The WCO SAFE Framework of Standards which, later on, included Authorised Economic Operator (AEO) Guidelines, were the internationally agreed-upon reply to this new challenging mandate. However, by as early as 2005, during the approval process of the Framework, it was already clear that the set of standards agreed upon did not provide for a mechanism to ensure its internationally harmonised implementation for all involved in world trade. In fact, more than 150 States signed a Letter of Intent to introduce the principles of the Framework into their national legislation.

The Framework does not provide for any mutual recognition mechanism for customs control or for the Customs-to-business programs, namely AEO. As anticipated, the countries leading the world's economy preferred to first adjust their internal legislation to implement the principles contained in the Framework. As well, they preferred to adhere to various bilateral agreements to ensure mutual recognition instead of using or adjusting the existing multilateral agreements which have demonstrated by their longevity their efficiency and ability to adjust to changing environments.

An interesting paradox now exists. On the one hand, we cannot read any economics journal or publication that does not deal with the globalisation of the world economy. On the other hand, the last decade has shown that interest in using the classic multilateral legal instruments to rationalise and organise relationships within the international community seems to be decreasing in favour of bilateral arrangements.

Following this path for the implementation of the Framework means that each individual State will have to arrange bilateral agreements with each of its commercial partners to ensure, for example, that its AEO will be recognised by its trade counterparts and vice-versa, and that controls and decisions taken by an administration can be recognised by others. Thousands of agreements will have to be negotiated the world over. If this is what lies ahead, one can only imagine the consequences in terms of capacity building and trade facilitation policies.

Pragmatism still pleads for global multilateral solutions

Decision-makers must consider the situation of a company with commercial partners and relationships on the five continents. In this new environment, the first challenge of such a company is to meet the conditions and criteria required for AEO status in its home country or region, for example, the European Union (EU).

Additionally, if the company trades with the United States (US), it must also meet American-specific conditions and criteria. Even if this process could be facilitated by future bilateral agreements between the EU and the US, it will not solve the dilemma of also having to meet specific conditions that could be imposed in Japan or China, Australia or India, Pakistan or the United Arab Emirates (UAE). There is no need to further illustrate the complexity of this situation for the trade community if it has no choice but to conclude a multitude of bilateral agreements. What would that mean for customs administrations and capacity building in terms of a multiplicity of systems, rules and the resulting increased costs?

Is there a way out?

It is now widely accepted that the growing volume of goods being moved in containers across oceans is more and more likely to be exposed to some form of terrorist attack. It is also acknowledged that no verifiable case of terrorist activities (for example, transport of weapons of mass destruction) involving

container traffic has been reported. However, it is self-evident that organised crime is using the transport of goods to commit fraud by circumventing Customs thereby avoiding the payment of taxes and duties or to smuggle illegal substances.

These problems have been addressed efficiently for decades by multilateral conventions and particularly by the TIR Convention to which 67 States are Contracting Parties.

Since 1959, that Convention had provided an internationally agreed mechanism for mutual recognition of customs controls. Through its various revisions in 1975 and later, the Convention has introduced the principle of an internationally agreed controlled access that entitles operators to use the TIR procedures through a specific authorisation process in the hands of and under the full control of the customs administrations. Nobody can seriously deny that, since the introduction of this authorisation process, on the basis of internationally agreed minimum conditions and criteria identical to the ones imposed on AEOs, abuses, irregularities and customs fraud have reduced radically.

This achievement is a direct result of both the conditions established by the TIR Convention and the mutual recognition of customs controls and customs authorisations provided by this multilateral Convention, complemented by appropriate risk-management procedures.

It is clear that bilateral trade between the EU and the US is not dependent on border-crossing facilities and transit arrangements. However, it should not be forgotten that emerging economies, land-locked countries and global trade are increasingly dependent on their goods being able to move fast, securely and efficiently across thousands of kilometres by land transport and through a multitude of border crossings. The re-opening of the Silk Road from China to the Middle East, Europe and the Commonwealth of Independent States (CIS) is the perfect illustration of this evident need for multilateral arrangements harmonising and facilitating movement of goods in transit, thanks to secure internationally agreed and mutually recognised procedures.

Without challenging the benefits of bilateral agreements, it is time to consider the slight adjustment that needs to be made to the TIR Convention in order to fully cover the WCO SAFE Framework of Standards with the resulting immediate benefits of an internationally agreed implementation mechanism and mutual recognition of customs controls and authorisation processes.

The US Chamber of Commerce recently published ‘A study evaluating International Agreements to implement the SAFE Framework of Standards’ which simply concludes that the TIR Convention is the best mechanism for facilitating the implementation of the Framework thereby ensuring the safe, secure and expeditious movement of goods. An enhanced TIR Convention would strike the right balance to ensure greater economic opportunities all over the world.

Let’s hope that pragmatism prevails and that the conclusion reached in the above-mentioned study is widely shared and that, in the coming months, concrete work will start within the TIR and UNECE competent bodies to achieve the correct balance between facilitation and security of trade. As a result, capacity building for customs administrations would be facilitated in these specific fields thanks to the existence of an internationally agreed appropriate mechanism beneficial to all stakeholders.

Jean Acri



Jean Acri is a lawyer and specialist in commercial and transport law having graduated from La Sorbonne University (Paris) and from Transports Superior School (EST Paris). He joined the International Road Transport Union (IRU) in Geneva in 1995 and in 2003, became Head of the TIR System which operates as an efficient international trade and transport facilitation instrument in 56 countries.