World Customs Journal

WORLD CUSTOMS ORGANIZATION

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INTERNATIONAL NETWORK OF CUSTOMS UNIVERSITIES

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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Guidelines for Contributors are included at the end of each issue. More detailed guidance about style is available on the Journal's website.

Correspondence and all items submitted for publication should be sent in Microsoft Word or RTF, as email attachments, to the Editor-in-Chief: editor@worldcustomsjournal.org.

Contents

EDITORIAL

Firstly, I would like to congratulate Mr Kunio Mikuriya on his election to the position of Secretary General of the World Customs Organization. Mr Mikuriya has been a great supporter of the *World Customs Journal*, and we look forward to his continuing support as he prepares to take up his new post. I would also like to thank Mr Michel Danet for his ongoing support and encouragement during his term as Secretary General, and wish him all the very best in his retirement.

The theme of this edition of the Journal is *capacity building*, and we have delayed its publication slightly to enable the inclusion of commentary from the recent WCO Global Dialogue on Capacity Building, which gives a clear indication of the importance placed on the topic by the WCO and its new Secretary General.

In this edition, Jhon Fonseca, the first of our academic contributors, examines the potential of the INCU as an instrument for effective capacity building. In doing so, he highlights the need to apply the knowledge and skills acquired academically to real-life situations and problems. Continuing the theme, Stephen Holloway discusses critical factors in achieving effective and sustainable capacity building outcomes, Creck Buyonge analyses various organisational constructs for customs administrations in Sub-Saharan Africa, and I examine the role of capacity building in achieving consistent application of international instruments.

The academic section includes a well-researched article by Achim Rogmann and Bernd Stadtler, who discuss the importance of learning lessons from history in the context of the impending liberalisation of the trade in textiles from China. And, in the first of a two-part article, Jan Jansson examines the theory and practice of change management in the context of customs reform.

Our practitioner contributions provide further insights into a range of practical examples of capacity building in the customs context. In this section, Takashi Matsumoto discusses the WCO's regional approach to capacity building, and Jean Acri argues that a regulator's capacity to effectively manage borders in a globalised economy is facilitated by the adoption of internationally agreed mechanisms. Using Papua New Guinea as an example, Chris Wall highlights the need for capacity building initiatives to be well integrated and based on sound analysis in order to achieve relevant and more sustainable modernisation outcomes. Finally, Norbert Conchin provides an insight into the way in which e-learning can be used to meet the contemporary development needs of the customs and trade communities.

I trust that you enjoy the articles presented in this edition of the Journal, and I invite you to consider contributing to our next edition which will focus on the use of Information and Communication Technology in the cross-border environment.

David Widdowson
Editor-in-Chief

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Special Reports

WCO PICARD CONFERENCE 2008

The World Customs Organization (WCO) 2008 PICARD (Partnership in Customs Academic Research and Development) Conference was held in Shanghai, People's Republic of China, 14-16 May 2008.

The main aim of the International Network of Customs Universities (INCU) is to promote the academic standing of the Customs profession. The WCO PICARD program provided an ideal opportunity to interact with members of the WCO and the donor community, and to make significant progress towards the achievement of that objective.

The Conference addressed the following themes, aimed at assisting WCO members to achieve their strategic and policy objectives:

- pilot projects for the PICARD Professional Standards
- current and planned Customs-specific academic educational programs
- research needs, activities and capabilities
- ways in which identified research needs can be progressed between the WCO and INCU with the support of the donor community.

The following needs, current activities and future actions were identified:

- global strategies for Customs capacity building in response to developing countries' overwhelming call for assistance in relation political and strategic advice, and fundamental reform
- the future development of Customs managers to enable them to lead and manage in our constantly changing global environment
- empirical research to support decision making within the WCO and among its members, and more importantly, to support policy decision-making within national governments
- initiatives for providing a single forum for the numerous training academies and institutes of Customs administrations, and how such a forum would provide an opportunity for the INCU to interact with its partners in the WCO
- options to proactively advance empirical research in areas that have been highlighted by the WCO as being critical to supporting the strategic decisions that are confronting its members.

In addition, significant progress was made in relation to the PICARD Professional Standards, including the development of a set of draft guidelines that establish a process by which universities meeting the requirements of the Standards may attain WCO recognition of their academic programs.

Full details of the conference and its outcomes can be found at: http://www.wcoomd.org/home_wco_topics_cboverviewboxes_cbnews_cbpicardnews.htm.

WCO GLOBAL DIALOGUE ON CAPACITY BUILDING

The following are the opening remarks by Mr Mike Eland, Director General, UK Customs and Mr Kunio Mikuriya, WCO Secretary General elect, at the WCO Global Dialogue on Capacity Building held in London, UK, on 2 October 2008. The objective of the conference was to generate concrete actions in sustainable customs reform leading to closer donor cooperation.

Opening remarks by Mike Eland, Director General, UK Customs

I am very pleased to have this opportunity to address the WCO's Global Dialogue on Customs Capacity Building. With the world facing a global economic and banking crisis the demands on customs administrations have never been greater and we must all share our knowledge and experience to develop and implement the best way ahead.

I am delighted and encouraged to see so many of you from Customs, Trade, Development Agencies and Donor groups here today and I am especially pleased to welcome Martyn Dunne, the new Chairperson of the WCO Council, Kunio Mikuriya, the WCO Secretary General elect, and Pravin Gordhan, the Commissioner of the South African Revenue Service. I am sure that their contributions will help to focus our minds and generate much needed meaningful discussion.

Capacity building is about delivery. It is no good us concluding instruments in international meetings if we are then unable to implement them effectively.

HM Revenue and Customs and its predecessor, HM Customs and Excise have been actively involved in providing hands-on customs and tax expertise to a considerable number of capacity building initiatives for more than ten years on behalf of the WCO, and on behalf of other international development organisations.

We have also made positive contributions to the development of the Capacity Building Strategy adopted by the WCO in 2004, and we have participated with the WCO on the development of the Framework of Standards to Secure and Facilitate Global Trade. HM Revenue and Customs is a strong and proactive supporter of the WCO Columbus Programme and in partnership with other WCO Members, have played an active role in the delivery of Columbus projects. We are pleased with the progressive implementation of the WCO SAFE program which has raised the profile of customs administrations in the crucial need to improve border security.

The United Kingdom (UK) fully supports and endorses the partnership agreement between the WCO and the World Trade Organization, which brings together development and expertise concerning improved trade facilitation, supply chain security and the enhancement of capacity within customs administrations. Our officers have visited Geneva to receive briefing and training on the purpose and strategy of this new partnership. Closer understanding and cooperation between intergovernmental organisations is essential if we are to avoid duplication of efforts and maximise the impact of development support.

Throughout all of our capacity building activities we seek to cover all aspects of customs and tax work including the revenue raising areas of direct and indirect taxation. We, and the major international development agencies and financial institutions, recognise the increasingly important and essential roles that both customs and revenue administrations play in assisting governments achieve their national and international objectives. A well run customs and revenue administration contributes enormously to a country's financial wellbeing and their ability to facilitate legitimate trade and attract new inward investment. Views about the efficiency and effectiveness of a customs administration often shape the perceptions of key individuals and organisations involved in making important and far reaching trade

and foreign investment decisions. But above all customs and revenue administrations provide the much needed financial resource required by all governments to help achieve policies and to provide for their people. There is too much smuggling and tax fraud in the world. We must work together to ensure that the revenue due to governments is properly collected.

Whilst there is no doubt that capacity building initiatives can and do make a difference; they cannot be successful on their own. The UK's considerable involvement and experience with capacity building has demonstrated to us the importance of the partnership approach between providers and recipients. Capacity building projects are major undertakings requiring not just commitment from the experts involved but, more importantly, the political will of the beneficiary country and the long-term and sustained commitment of the recipient organisation's top level management.

Capacity building is certainly not a quick fix. It is a long-term solution focusing on the provision of sustainable development through reform and modernisation. By its very nature it requires stamina from those involved; commitment beyond the norm and a will to accept and facilitate change at both the customs administrations and governmental levels. The rewards are great: increased revenue, a safer society, progress in the fight against drug smuggling, counterfeiting and money laundering, improved trade facilitation for imports and exports, inward investment opportunities and security of the international supply chain, to name but a few.

Capacity building must support strategic objectives. The WCO and its Members under the wise guidance of Pravin Gordhan, are to be commended for producing an excellent document 'Customs in the 21st century'. This gives a vision and a road map of what is required for Customs over the years ahead. Global capacity building initiatives in the area of Customs must use this paper to give strategic direction to individual projects.

The 21st century is producing a new set of issues for Customs with the increased focus on border security, the need for better integrated border management arrangements and the further development of revenue authorities. The need to share experiences and to work together has never been greater. The UK looks to the WCO to give leadership to customs developments at the global level. I am confident we will get that leadership from Martyn Dunne and Kunio Mikurya and we look to them to re-invigorate and re-energise WCO membership participation to help drive forward change.

Without doubt capacity building has a crucial role to play to assist WCO Members to attain the highest professional standards and to take advantage of new technology and ways of working. It is a partnership arrangement of many players: customs, trade, national and international organisations and, of course, donors. Everybody seeks and demands success and this is why the WCO must ensure its assistance program is carefully coordinated with all the other parties with an interest in the customs area. Let me repeat an earlier message: HM Revenue and Customs remains committed to assist the WCO and its members carry out the necessary developmental changes required to take Customs forward. This will require the ongoing support, commitment and participation of all the organisations represented in this room.

Let me close by thanking you all for attending today. Let us build on the productive discussions at the first Global Dialogue in Johannesburg last year to raise cooperation on customs capacity building to a new level.

Opening remarks by Kunio Mikuriya, WCO Secretary General elect

Good morning.

I would like to join Mr Mike Eland, Director General of UK Customs, in welcoming the Global Dialogue participants to the headquarters of the International Coffee Organization, which reminds us of the great tradition and history of international trade. I should also like to express my sincere thanks to UK Customs, especially to Mr Doug Tweddle and his team for preparing this forum in close cooperation with WCO staff. This is a significant event in the life of the WCO as capacity building remains a top priority for the Organization's new management. The presence of WCO Council Chairperson, Martyn Dunne, and representatives of all WCO Vice-Chairs and WCO Regional Offices for Capacity Building as well as numerous heads of customs administrations shows the importance of this meeting.

We are currently experiencing a credit crisis of an extraordinary scale which risks destabilising the global financial system. If we learn from history, we have to be mindful of another infrastructure of world economic activity, namely the international trading system where Customs plays an essential role in securing and facilitating the smooth flow of legitimate trade. We know that in 1930, following the Wall Street crash, the US Congress passed the Smooth-Hawley Tariff Act, significantly exacerbating the Great Depression with a trade barrier. Recent failure to reach a deal for the Doha Development Round sent a worrisome message although many people, including myself, remain hopeful for a final deal to be achieved in due course.

Despite this somewhat gloomy landscape, the customs community continues to make every effort to move forward with a new vision for the 21st Century. Customs administrations all over the world envision themselves operating as an international network, in close coordination with other border agencies and in close cooperation with the business community. This endeavour requires the use of risk management and other modern working methods as well as technology based on internationally accepted standards and best practice, which the customs community developed and maintain through the WCO.

In order to move towards realising this vision and to implement these standards, many customs administrations are engaged in capacity building, embracing a professional and service-orientated culture and ensuring the value of integrity. However, we recognise the deficiency in understanding and support at the political level for customs' role and contribution to revenue collection, economic development through the promotion of trade and investment, protection of society, and providing security. We also recognise the gap inside customs administrations at both management and technical levels. In addressing this deficiency and gap, the WCO launched the Columbus Programme to undertake diagnostic missions; in the past two and a half years, over one hundred customs administrations have been visited and a snapshot taken of each administration in order to analyse the gap and formulate recommendations, because accurate diagnosis is the basis of capacity building activities. The WCO will continue this work and move on to enhance advocacy of customs by providing research-based knowledge, success stories and lessons learned, as well as technical and capacity building assistance for customs management and officers.

We identified that one of the key issues for sustainable delivery of capacity building is the promotion of ownership and leadership where the WCO provides the necessary tools, support and research. In this connection, we also encourage a regional approach by supporting Regional Offices for Capacity Building and other regional structures. Another key issue for sustainable delivery is partnership with other international organisations, lending institutions, donors and the private sector. These partnerships will provide us with political, financial and knowledge support. Obviously this conference is of great relevance to these two key components.

Today we are fortunate to have prominent speakers to kick off the discussion. At the first session we will hear the views of donors. Whereas we share the same goal of poverty reduction and sound economic and social development, each donor has its own agenda, strength and priority, driven by its taxpayers. The

customs community should understand this reality and jointly explore ways to find a linkage between customs needs and funding resources. In the second half of the morning session we will listen to examples of partnerships with lending institutions at the regional level and reflect on the way forward for developing the delivery mode. In the afternoon we will listen to the experience of customs administrations on their reform initiatives and donor support. Finally, we will hear the views of the private sector and an example of coordinated border management where other border agencies are involved.

I welcome participation from the floor especially the exchange and development of ideas, which will be reported to the WCO Policy Commission at its December 2008 meeting. They will enrich the WCO's current debate on Customs in the 21st Century and set the next steps for capacity building in Customs. At the same time, I hope that this forum will offer excellent networking opportunities for Customs, donors, business and other partners alike.

Thank you for your attention and I wish you a fruitful deliberation.

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Section 1

Academic Contributions

THE INCU AS A TOOL FOR CAPACITY BUILDING

Jhon Fonseca

Abstract

This paper examines and furthers theories, concepts and trends in the development of skills as a starting point for capacity building. It aims to identify and develop the most relevant criteria of a 'network society', stressing the importance of incorporating this concept in the framework of the INCU which can thereby function as a tool for adequate capacity building on the basis of regional standards predefined by the nations involved. The paper provides a systematic analysis of the main points raised in the 'Tuning Educational Structures in Europe' (Tuning Project). That project is widely regarded as representing the major axis of a common educational approach in the European Union (EU). It is argued that the Tuning Project contains some interesting elements that could be used to enhance the PICARD Standards in the future.

1. Introduction

The traditional approach of education and training is based on so-called 'transmission-receiving skills' and those skills, as a rule, are based on memorising concepts. They therefore stress the utilisation of memory in resolving problems and carrying out highly regulated, practical activities.

What we now call the 'information society' poses a series of challenges to this traditional model of education. The sheer quantity of information and the speed at which it is transmitted and updated have combined to render the memory-based approach obsolete.

Countries have gradually become aware of this problem and begun to search for new alternatives that meet the challenges posed by the information age. The Bologna Declaration (1999) and the Communiqué of Prague (2001) may be seen as responses to globalisation, multilateralism and the 'networked society' that support efforts to create educational models that reflect contemporary needs. These models are based on the development of competences and capacity building.

The conditions for adequate capacity building are currently being analysed and discussed by the various stakeholders. In particular, institutions of higher education with links to the customs sector are concerned not only with the difficulties caused by implementing new curricular designs or teaching the skills necessary to understand complex or multidimensional phenomena. They also perceive a need to redefine the content of social values, norms and attitudes transmitted to members of the customs profession in both the public and private sectors.

It is therefore very important to distinguish two aspects of the challenge facing higher education in the modern age. On the one hand, we are faced with a technical and educational aspect, where the protagonists are the professionals in higher education as a whole. On the other hand, however, we are faced with a social and political issue that must be addressed by all stakeholders and in which higher educational establishments have a very important role to play.

Countries also have different ideas of the role that Customs should play in society. In some cases, Customs is primarily responsible for ensuring national security; in others, for collecting taxes or ensuring trade facilitation. However, as a general rule, each country seeks to balance these roles taking into account their national characteristics. This makes it difficult to reach a consensus on the subject, scope and form of capacity building.

In view of this discord, the World Customs Organization (WCO) has established the PICARD program as a means of collaborating with customs universities around the world in order to raise global standards and provide guidance to the various centres of capacity building in training the customs professionals of the 21st century. This collaboration is firmly based on international standards and aims to reflect the requirements of contemporary society.

2. Skills development for customs capacity building

This paper will first attempt to identify the scope of capacity building as well as the form it should take in relation to Customs, then, to investigate and further theories, concepts and trends relating to skills development as a starting point for capacity building.

Perrenoud (1999, p. 7) defines competence as 'an ability to act more effectively in a defined type of situation that rests on knowledge, but is not limited to them'.

Etienne and Lerouge (1997, p. 67) explain the creation of competences as follows:

> The creation of a competence depends on an adequate dose [*sic*] between the isolated work of its various components and the integration of these elements in a state of operability. The teaching difficulty lies in dialectically handling these two approaches. But believing that the sequential learning of knowledge provokes spontaneously its operational integration in a competence, is a utopia. (Trans. from French)

Constructivists argue that an individual's cognitive structures interact with their environment and thereby facilitate learning. 'Learning' is the activity that individuals develop in order to lend meaning to the reality that surrounds them. Examples include developing the ability to observe, experiment, interpret results or graphics, mathematical and statistical data, conduct research, identify, understand or solve a problem in some context or communicate, argue or express ideas or results from a scientific approach. These are all examples of skills that integrate and mobilise knowledge, however, they do not constitute knowledge itself.

Competence therefore means the ability to respond to a complex requirement or carry out an activity or task successfully. It is the requirement, activity or task that defines the substance of a competence, including the attitudes, values, knowledge and skills that, taken as a whole, constitute effective action. In other words, it is not possible to reduce competences to their cognitive components (Rychen & Salganick 2001).

According to Catalano, Avolio de Cols and Sladogna (2004) competence does not refer to timely performance. Rather, it is the ability to mobilise knowledge and techniques and reflect on the action in question. It also refers to the ability to construct referential frameworks of action or models of performance that enable diagnosis or productive problem solving not foreseen or prescribed.

Unlike a skill that is capable of being applied in isolation, competences utilise various resources and are used in more complex contexts. The term 'resources' refers to skills, experiences, interests and learning as well as various external elements such as peers, teachers, documents, etc. Finally, the need to effectively mobilise and use resources suggests that behaviour associated with a competence does not simply constitute an automatic response. Rather, it implies that students strive to realise a clearly defined objective and use skills as well as intellectual and social concepts judiciously in order to devise an effective response or solution to a problem.

Competence is necessarily linked to an activity (either vocational or educational) whose meaning depends on its applicability to a given situation or family of situations. As a result, competence exists within a specific context. Bastien (1997, p. 32) argues that experts are competent because (a) they manage most common situations efficiently and confidently as well as more complex situations that may suddenly arise, (b) are able, through reflection, to rapidly coordinate and differentiate their action plans and their knowledge in order to cope with new situations.

The use of diagrams indicates that the practical application of the subject of investigation is limited to the schematic portrayal of real situations (Carretero 1993). Diagrams should be regarded as tools that can be used to resolve certain problem situations and are representative of past experiences, perceptions, appraisals and actions. They allow tasks to be performed and problems to be solved that correlate to the schematic portrayal in question.

Knowledge and competence are human constructions rather than direct reflections of reality (Carretero 1993). Construction is based on existing views on the subject or activity (internal or external) to be developed. The constructivist perspective is closely related to skills acquired during action and considers learning to be an active process of constructing meaning.

In this sense, a curriculum that aims to develop skills requires its educational activities to be planned for that purpose. It is therefore necessary to identify the appropriate material and gear activities towards the acquisition of those skills. At the same time, the nature of cultural knowledge suggests that the activities individuals are required to carry out in the workplace on a daily basis cannot be performed in isolation.

The primary objective of capacity building in relation to Customs should therefore be to train students (that is, future civil servants) how to cope in a world characterised by scientific and technological advances, adopt responsible attitudes, make informed decisions and solve everyday problems whilst respecting the needs of others, the environment and future generations.

3. Academic networks as instruments for building regional capacities

Having addressed the main elements of capacity building in terms of the development of skills, it is time to examine the criteria for a 'network society' (which is a highly relevant topic) using service providers as an example. The importance is stressed of incorporating this concept in the framework of the International Network of Customs Universities (INCU) which its members can use as a regional instrument for capacity building on the basis of predefined standards.

It is important to clarify at the outset that education, development and training appear to be no different from other forms of services. The provision of such services can be the responsibility of the state or form the subject of a commercial transaction between a service provider and a third party. There is no reason why services relating to capacity building should not be provided in the same way as other services.

Castells (1998) correctly asserts that globalisation encourages regionalisation. He argues that social networks make an important contribution to consolidating innovation and dynamism in the service industry – thereby ensuring the communication of ideas, movement of labour, cross-fertilisation of technological innovation and an entrepreneurial spirit.

Some researchers argue that the modern system of commerce is neither global nor local but rather 'a new articulation of global and local dynamics' (Gordon 1985). In this sense, Gordon (1985) using the evolution of the Silicon Valley Company as an example, demonstrates the importance of extra-regional relationships for regional services. He argues that:

> In this new global context, the crowding at a site, far from being an alternative to spatial dispersion, becomes the principal basis for participation in a global network of regional economies ... In reality, regions and networks are interdependent poles inside the new space mosaic of global innovation.

In this context, globalization does not mean the leveling impact of universal processes but, rather, the sum calculated for cultural diversity in the form of logic and ability to innovate differentiated regions.

Gordon appears to suggest that the answer to the various global problems that confront us today lies in developing cognitive resources, competences and capabilities. The fact that neither these assets nor global problems are limited by geographical boundaries means that a centralised approach is bound to prove inadequate. By forming a network, members acquire an opportunity to pool their assets and thereby develop solutions that are more in tune with their specific circumstances.

Cooke and Simmie (2007) in their studies on European regions in the 1990s, suggest that the growing internationalisation of economic activities across Europe has exposed regions to the effects of international developments. Accordingly, driven by their governments and business elites, they have been restructured to compete in the global economy and, as a result, cooperative networks between regional institutions and companies have sprung up. Regions and localities now form part of international networks that connect their most dynamic sectors.

The passage of time has validated Cooke's and Simmie's arguments. The stability of the European structure is based on regionalisation and capacity building networks in various dynamic sectors. The education sector – directly linked to capacity building – is no exception to these trends. The draft document 'Tuning Educational Structures in Europe' has effectively raised regional standards and promoted the formation of academic networks as a tool for their implementation.

4. Synthesis of the model 'Tuning Educational Structures in Europe'

Having stressed the importance of forming networks and the potential of the INCU as an instrument for effective capacity building, the main points addressed by the document 'Tuning Educational Structures in Europe' (Tuning Project) are now analysed. The Tuning Project is widely viewed as a cornerstone of a pan-European educational approach and contains some interesting elements that could be used to enhance the PICARD standards in future. The following describes the project in general terms, and for further details, readers are referred to the original document published by the University of Deusto and Groningen (Gonzalez & Wagenaar 2003).

The draft uses the gerund 'tuning' to indicate that the project is and always will be in a state of flux because (in the words of the draft document) 'education must be in dialogue with social needs and this is an open and dynamic process'. In this respect, it is also worth pointing out that the verb 'to tune' also means to tune a musical instrument, prepare or exercise.

The Tuning Project seeks to attune educational structures to the challenges outlined in the Bologna Declaration and the Communiqué of Prague. The aim is to contribute to the creation of the European Higher Education Area and improve the quality of programs at European universities.

The project promotes an educational paradigm focused on learning as opposed to teaching. This serves to highlight the importance of the student *acquiring* rather than *receiving* skills, abilities, competences and values. This approach reflects the goal of the Tuning Project to place students in a position to update knowledge throughout their lives. More specifically, this approach reflects not so much the importance of knowledge acquisition in the educational process as the importance of acquiring the framework skills that permit knowledge to be updated in the first place. The growing awareness of the heightened transience of our social circumstances against the backdrop of the demands made on the individual by modern society justifies this shift of emphasis from an educational model that so far has been heavily weighted towards teaching content to one that is primarily geared towards the learning (that is, acquisition) of skill.

The concept of competence emphasises the outcome of learning skills, that is, on what students are able to do at the end of the educational process that places them in a position to continue their learning

activities autonomously throughout their lives for personal and professional purposes. The Tuning Project recognises this and considers the results of learning to be a set of competences including knowledge, understanding and skills that students are expected to master, understand and demonstrate after completing a short or extended process of learning. Competences are divided into generic (that is, independent of the subject of study) and subject-specific skills. They are to be acquired in different study modules or units.

The competences and learning outcomes should be those that one expects to find in a modern course of studies. The curriculum should also be flexible, encourage independent learning and provide performance indicators that can be used on the international labour market.

5. Methodology of the Tuning Project

The methodology of the Tuning Project was based on a questionnaire listing a set of competences that sought to ascertain the opinions of three stakeholders in higher education whose support was considered essential to achieving the aims of the Tuning Project: (1) post-graduates who had completed their studies in the previous three to five years; (2) private sector employers, and (3) university scholars.

In order to prepare the questionnaire for graduates and employers, some twenty studies took place in relation to generic skills and competences. The authors drew up a list of 85 different competences and skills considered relevant by private companies and institutions of higher education. They were subject to careful analysis in order to reduce them to a manageable number and avoid overlaps and duplications.

The final result was a list of thirty competences that were structured as follows:

Instrumental competences:

• Capacity of analysis and synthesis
• Ability to organise and plan
• General base knowledge
• Basic knowledge of the profession
• Oral and written communication in one's own language
• Knowledge of a second language
• Basic skills in handling computers
• Information management skills
• Problem solving
• Decision-making

Interpersonal competences:

• Capacity of criticism and self-criticism
• Teamwork
• Interpersonal skills
• Ability to work in an interdisciplinary team
• Ability to communicate with experts from other areas
• Appreciation of diversity and multiculturalism
• Ability to work in an international context
• Ethical commitment

Systemic competences:

- Ability to apply knowledge in practice
- Research skills
- Ability to learn
- Ability to adapt to new situations
- Ability to generate new ideas (creativity)
- Leadership
- Knowledge of cultures and customs of other peoples
- Ability to work independently
- Design and project management
- Initiative and entrepreneurship
- Concerns over quality
- Grounds achievement.

6. Systematic analysis of competences

The classification made by the authors of the Tuning Project was altered although the following investigation still largely reflects its competences and instrumental aspects. Accordingly, the competences have been ranked according to basic, intervention and personal competences:

Diagram 1: Classification of competences according to their basic character
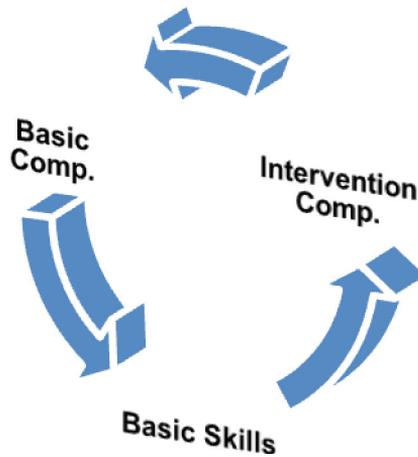
Source: 'Tuning Educational Structures in Europe' Project

6.1.   Basic competences

According to Bajo and others (2007), competence is classified as 'basic' if it forms part of other, more complex competences. Basic competences sometimes refer to cognitive abilities whereas others refer to motivational aspects and values. Therefore, basic competences have been divided into (1) values and motivations and (2) cognitive capacities, as shown below:

Diagram 2: Sub-classification of basic competences
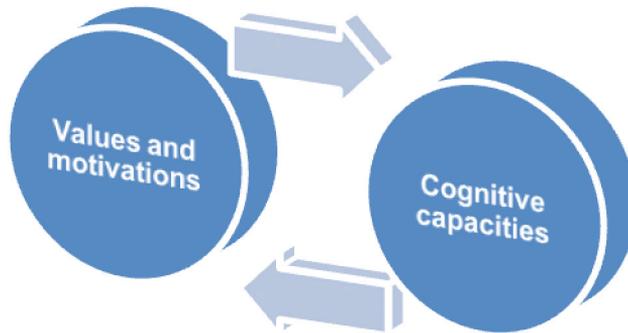
Source: 'Tuning Educational Structures in Europe' Project

6.1.1.   Cognitive capacities

As explained above, basic competences are divided into two categories: on the one hand, cognitive capacities (basic and specific knowledge, analysis and synthesis, organising and planning, problem solving, decision making and ability to learn) and, on the other, values and motivations that will be examined later.

Diagram 3: Sub-classification of competences that utilise basic competences
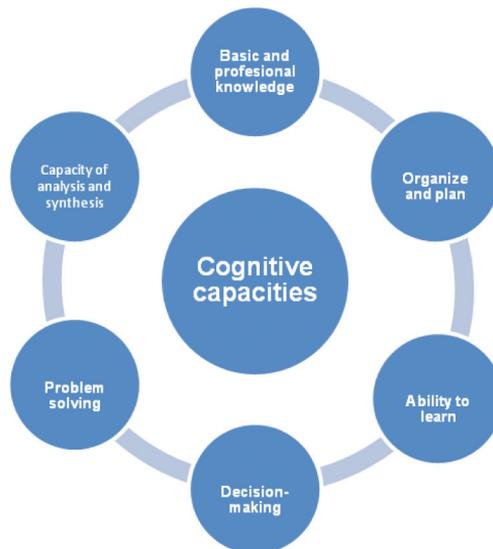
Source: 'Tuning Educational Structures in Europe' Project

Basic general knowledge and professional knowledge. Whereas the planning of study emphasises skills rather than content, knowledge is a basic skill that must be acquired in any event and provides the basis for many other skills such as the analysis of situations, problem-solving, decision-making and continuous-learning. Therefore, knowledge acquired during academic studies should be interconnected and include the general principles of professionalism.

Capacity of analysis and synthesis. Analysis refers to a process of separating things (ideas, substances, machinery, etc.) into their most basic components. Synthesis represents the opposite process and is concerned with creating a new thing from different elements by joining, merging or organising the available building blocks in different combinations.

Both processes are used to perform everyday tasks or academic exercises: they allow us to construct new knowledge from existing information, simplify problems or identify their relationships and characteristics.

Owing to the fact that it is often possible to divide or create things in different ways, the capacity of analysis and synthesis also requires a plan or at least an idea of what the end-result should be. Therefore, this competence is linked to cognitive competences such as problem-solving, decision-making and planning.

Ability to organise and plan. Planning includes envisaging and implementing a sequence of events in order to reach a goal. More specifically, a plan must be devised that divides the various activities into phases.

Organisation refers to the process of arranging different components in order to create the desired structure. This competence takes into account the components' characteristics and groups together those that are similar, that is, those that serve the same purpose or have the same structure.

Problem-solving. A situation is deemed to be a problem when it is initially unclear how to progress from that particular situation to the desired result. It is this lack of clarity that distinguishes the ability to solve problems from other competences. A problem consists of an initial state, a final statement and set of operators or processes that convert the initial state into the desired outcome (Newel & Simon 1972).

Everyday problems tend to be ill-defined and either lack components or offer a variety of different solutions. Many academic activities can be conceived as being problem-solving as they incorporate the basic elements of a problem. Indeed, tasks that involve planning or decision-making may represent problems if the objective can be achieved in a number of different ways.

Problems can be solved using structured methods such as algorithms or heuristics. However, only the algorithmic method ensures that a single solution to a problem will be found: an algorithm carries out a systematic search of all possible alternatives in accordance with pre-defined parameters. However, if the problem contains too many variables or offers too many variations it may not be possible to find a solution within an acceptable timeframe. Even in the case of simple problems, both laypeople and experts prefer to implement heuristic methods (that is, elementary rules), despite the fact that they do not guarantee a quick and easy solution.

One example of heuristics is the means-end strategy (Anderson 1993) in which a person attempts to reduce the gap between the initial state and desired result by creating an effective intermediate state (that is, a situation that approximates the goal).

Decision-making. Decision-making consists of selecting one or more course of actions from a broad set of alternatives. In order to make a choice, the individual must first establish what represents a good choice (that is, formulate criteria), identify the required characteristics and the extent to which they must be present in the preferred option. Furthermore, managing and making a selection from the available alternatives requires the individual to take into account the significance of their respective features (Garnham & Oakhill 1996).

The most important aspect of decision-making is the assessment of each alternative, their respective characteristics and their influence on the outcome. Decision-making tasks also differ according to the variety of options and features. The complexity of some tasks may make it necessary to utilise other competences such as organisation and planning.

Capacity to learn. In general, the capacity to learn utilises some of the instrumental skills that have already been discussed (that is, analysis, use of general and specific knowledge, search for relevant information, ability to solve problems, decision-making, etc.). However, this capacity to learn is also characterised by the utilisation of several meta-cognitive skills.

A student's capacity to learn is reflected in their ability to construct awareness in an active way (Mayer 2002). In cognitive terms, this means creating a logical, mental representation in text or speech. Students must proactively construct what they learn by selecting information and organising it into consistent structures that link up with existing knowledge stored in memory. For example, a student must judge whether the paragraph makes sense and whether it supports or contradicts previous statements or existing knowledge. Monitoring strategies require students to self-check, re-read the material, identify inconsistencies and paraphrase content.

6.1.2 Motivations and values

As with basic skills, motivations and values can be broken down into four sub-categories: motivation to achieve, initiative and enterprising spirit, concern about quality, and ethical commitment. Diagram 4 illustrates their arrangement.

Diagram 4: Sub-classification of competences based on basic competences
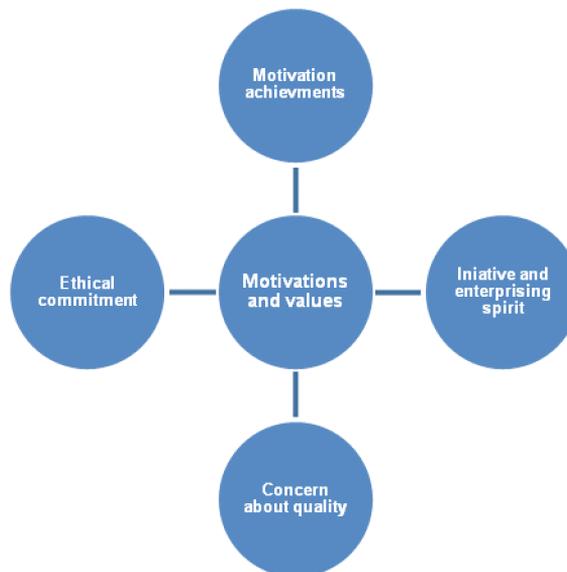
Source: 'Tuning Educational Structures in Europe' Project

Motivation to achieve. The motivation or need to achieve refers to the tendency or desire to do things as quickly and/or as effectively as possible. Originally, the motivation to achieve was conceived as a stable inner psychic feature of individuals, although social variables (such as the economic system or predominant religion) were also thought to influence its development. Later on, achievement became viewed as reflecting the specific role that an individual plays in decision-making, which depends both on the value that the individual attaches to the goal as well as the subjective assessment of the chances of success.

Thus, it was discovered that an individual's motivation to succeed was at its highest level when tackling moderately difficult rather than very difficult tasks (where chances of success are almost non-existent). Nowadays, it is generally believed that achievement depends on certain cognitive processes, as evidenced by an individual's explanations or assessment in response to success or failure.

Initiative and enterprising spirit. This sub-category of values and motivations can be regarded as the ability to set goals for oneself or others, to take decisions in situations of uncertainty, and articulate the means by which the goal can be achieved. In situations where there are no clear goals or recommendable courses of action, the exercise of initiative depends on the ability to solve problems in uncertain situations, especially the ability to consider the situation from different perspectives and identify possible alternatives. In situations of uncertainty, where various alternatives are clear but their consequences are not, enterprise depends on the ability to assess the probability of success of each option. If objectives are clear, the situation requires alignment between means and ends and therefore resembles a typical problem-solving situation.

Concern about quality. The concern about quality is more than a competence; rather, it represents a goal to achieve and a value that must be incorporated in the student's motivational system. As with all learned motivations, this can only be achieved through a delicate process of interaction between an individual's level of aspiration and the actual result reached as a result of their conduct.

Ethical commitment. This competence lends itself to different interpretations. On the one hand, it can be understood in terms of a value system that should permeate education within the European Union (EU). On the other hand, a more restrictive interpretation argues that ethical commitment simply emphasises the acceptance of rules governing interactions on the labour market and that are usually contained in codes of professional conduct.

6.2. Competences of intervention

Competences of intervention combine one or more basic components and are applied to one's physical and social environment or one's own thinking (see Diagram 5).

Diagram 5: Sub-classification of competences from the competences of intervention
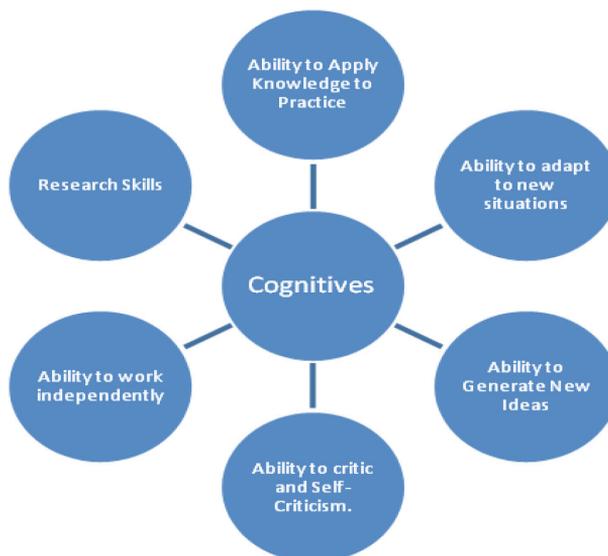
Source: 'Tuning Educational Structures in Europe' Project

Competences of cognitive intervention include the ability to apply knowledge to practice, to adapt to new situations, generate new ideas, criticise and self-criticise, to work independently and carry out research.

Ability to apply knowledge to practice. The application of knowledge acquired into practice can only occur if the necessary transfer processes are in place. The transfer of knowledge or skill acquired is defined as the use of knowledge acquired in a particular situation in order to perform a task that is new to the individual.

In this context, competence refers to the application of knowledge and skills acquired academically to real-life situations and problems. This process is termed 'remote transfer' because it involves the ability to apply knowledge to tasks and situations that are quite different from those involving learned knowledge ('transfer' in this case refers to the application of knowledge between very similar tasks).

The transfer of knowledge does not occur automatically but requires effort and training. It depends on the individual identifying the similarity between new and familiar problems. In turn, the recognition of similarities depends on an individual's experience. As a rule, experts only regard problems as similar if they can be solved using common principles whereas students consider problems to be similar on the basis of common, superficial characteristics (Kimball & Holyak 2000).

Ability to adapt to new situations. Studies show that experts use their knowledge flexibly by tailoring it to specific characteristics and context of a problem. They do this because they are able to identify organisational aspects in a more general way. The ability to adapt to new situations largely depends on meta-cognitive skills, the relationship between the self-assessment and self-awareness of one's own abilities. This ability also forms part of so-called 'practical thinking' (Sternberg & Ben-Zeev 2001).

Ability to generate new ideas (creativity). From a cognitive standpoint, creativity involves a series of processes that leads to the discovery of a problem and the formulation and implementation of innovative and appropriate solutions (Urban 2003). In this context, 'problem' is defined broadly. Accordingly, composing a piece of music or designing a piece of clothing can be considered problems.

Capacity of criticism and self-criticism. Recent research on critical thinking (Halpern 1998) has highlighted the complexity of this competence: it consists of cognitive abilities and important motivational aspects related to motivation. In defining 'critical thinking', it is important to distinguish the following elements:

- components of grounds and attitude
- components of skill
- transfer from one context to another (explained above)
- meta-cognitive oversight.

Ability to work independently. The ability to work independently may be regarded as a by-product of the competences just examined, namely the capacity for criticism and self-criticism as well as the ability to generate new ideas. Both represent necessary components of the ability to work independently but, at the same time, they are not sufficient to generate autonomous working conditions. This competence also requires initiative and enterprise as well as the basic skills of information management.

Research skills. Research represents a form of creative competence and involves carrying out a series of investigations with the aim of identifying a problem or phenomenon and then searching for and evaluating the available explanations. Research ability therefore draws on a range of more basic skills such as analysis and synthesis, activation of specific knowledge, ability of inductive and deductive reasoning, and divergent thinking. However, it is characterised by the sequence of processes instigated by the researcher.

6.3 Social competences

The competences of intervention in a social context include interpersonal skills, leadership and teamwork (see Diagram 6).

Diagram 6: Sub-classification of competences based on social competences
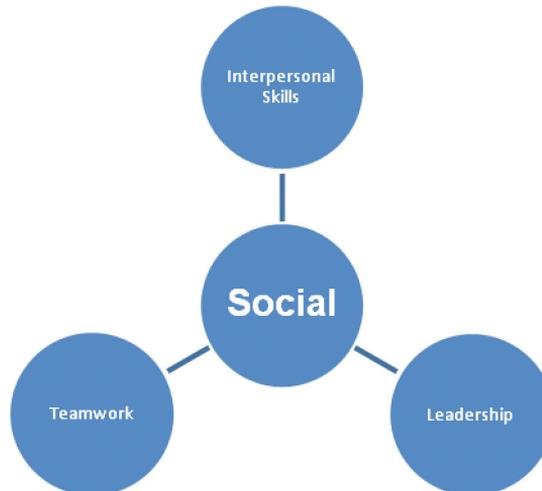
Source: 'Tuning Educational Structures in Europe' Project

Interpersonal skills. The proper interpersonal functioning (how we behave with others, our social behaviour and social skills) is a prerequisite for developing a satisfactory personal and professional life. Social competence is not a single, continuous and linear trait but rather a set of different skills used for different purposes.

Thus, a student may be able to relate to others well in everyday life but lack skills for a successful job interview. Interpersonal skills also depend on the situation: familiarity with the interlocutor, gender, the purpose of the conversation or meeting, and so on. This element is closely linked to the personality of the individual.

Leadership. For many people, to be a leader is to hold a series of characteristics that are found in very few individuals and for this reason, they are unique. That said, leadership is generally based on the mutual influence between a leader and their followers. The defining characteristic of leaders is the ability to influence others to a greater degree than they are influenced by themselves. Arguably, any person has certain leadership qualities and, as a result, leadership constitutes a relevant general competence.

The ability to influence others may come from different sources of power, for example, occupying a certain position (legitimate power), having the capacity to mediate punishments (coercive power), the ability to provide rewards or achieve valuable results (power of reward), possession of valuable expertise (expert power), or identification with the leader (referential power). A single person can perform a leadership role by virtue of owning one or more of these power sources. It is also obvious that the kind of leadership depends on the source(s) of power over subordinates.

Teamwork. Some elements to consider for teamwork and the ability to work as part of an interdisciplinary team are:

- Communication: this refers, in particular, to the ability to evaluate the arguments of others from their point of view as well as the ability to express one's own opinions and feelings clearly and honestly.

- Different ability of team members: it is crucial to recognise that each member of a team contributes to its success and performance according to their own abilities and characteristics. The differing ability of team members is one of the potentialities of teamwork.
- Clearly defined goals and objectives.

Team achievements should be assessed in terms of attaining the relevant goals. Therefore, it is important that the goals be clearly defined at the outset and at the same time, any elements that may prevent or hinder these goals from being achieved must be analysed as well as strategies devised to eliminate such obstacles. Clear targets allow the inevitable conflicts that arise in the team to be solved more easily (as the members think about the goals they are trying to achieve).

6.4 Cultural competences

It is also necessary to examine the cultural capacity to appreciate diversity, knowledge of cultures, and intercultural work (see Diagram 7).

Diagram 7: Sub-classification of competences based on social competences

Source: 'Tuning Educational Structures in Europe' Project

Appreciation of diversity and multiculturalism. Countries throughout the world are increasingly characterised by multiculturalism and diversity. University education must be sensitive to this reality, take it into account and seek to profit from it. Fostering diversity requires the following groups to be taken into account: ethnic minorities, women, disabled people, people of different sexual orientation, different age groups, and so on.

The multicultural perspective on education can be understood in many ways. Some believe that change must be reflected in the curriculum by including new materials and perspectives that take into account the needs of the groups traditionally under-represented (as above).

Others regard it as something more diffuse that is reflected in teaching styles or the classroom environment, which favours members of certain groups and disadvantages others. A third group goes further, considering the multicultural approach to be something institutional and systemic and as such, that it should be reflected in tests and standardised assignments, scholarship policy, admission systems, etc. It is even possible to envisage multiculturalism and diversity as offering an alternative approach to education that challenges the foundations of society and system of education itself (in terms of the supremacy of a single social class and the capitalist system, the exploitation of certain groups, etc.). In this sense, the formation of networks and promotion of cooperative agreements make it easier to exchange students, teachers, literature, etc., thereby enabling familiarisation with the cultures and ideologies of different nations.

Ability to work in an international context; acquiring knowledge of the cultures and customs of other countries. The world is involved in a construction process that involves many nations, communities, cultures and languages. This process is based on the equal exchange of ideas and traditions as well as the mutual acceptance of people with different histories. In the case of the EU, this will involve more than 450 million people in the near future. It is therefore important to ensure that students acquire the skills to understand and communicate with others.

One of the early steps towards acquiring this skill is to learn a foreign language. According to the EU, each citizen should be able to communicate effectively in at least two languages other than their mother tongue. This may well be an ambitious goal but the progress made in some countries shows that it is perfectly feasible. University education should contribute to this goal by including into their programs students with different origins. Customs is no exception in this respect, considering that it is an area inextricably linked to international affairs, and must include this element as one of its pillars.

6.5 Specific skills

Finally, specific skills concern the ability to perform a series of specific tasks and, as such, tend to be instrumental. Diagram 8 illustrates the relationship between these skills.

Diagram 8: Sub-classification of competences based on specific skills
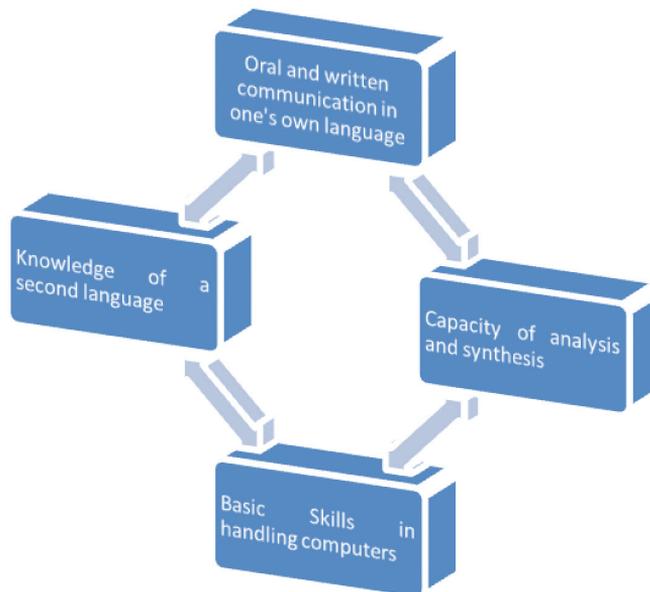
Source: 'Tuning Educational Structures in Europe' Project

6.5.1 Oral and written communication in one's own language

Good oral and written communication skills facilitate the achievement of many goals both in the academic environment and in the workplace. The results of learning and problem-solving processes are usually communicated to teachers, peers, directors and heads by means of written and/or oral presentations.

Although the techniques and strategies that make up good communication skills should form part of the fundamentals that students should acquire at the outset of their education, activities undertaken within each subject should also practise and improve these skills. This is why it is necessary to understand the processes that form the basis of communication.

6.5.2 Knowledge of a second language

Typically this competence refers to the four basic skills previously discussed and that students also use in their native language:

- reading comprehension
- oral comprehension
- spoken communication
- written communication.

6.5.3 Skills of information management

The ability to manage information consists of a group of skills that can be grouped into different phases:

1. Search phase: Students need to be familiar with the structure and organisation of the library or libraries to be used. They must know how to search for information using dictionaries, encyclopedias, magazines and books. They must also be familiar with the major web pages and databases related to their discipline and how to navigate them. Ideally students should also know the main web pages related to their field of study.
2. Selection phase: The sheer amount of online information makes it impossible to consult all sources in their entirety. At this stage of the management process it is very important that the researcher knows the quality and relevance of the information accessed. For example, the quality of journal articles should be assessed on the basis of the impact factor and frequency with which they are cited. The assessment of relevance requires a distinction to be drawn between the journals that publish articles and theorists who specialise in empirical research or review articles or methodological issues. It is important to be familiar with the major journals that deal with the subject of interest or problem to be solved.
3. Storage phase: This refers to the ability to summarise the relevant information in the form of tags or files stored on a computer. It also includes the ability to create and organise files on certain issues or present data derived from a scientific investigation in the form of a spreadsheet.
4. Phase of retrieving information for later use: This is linked to the former phase because good organisation enables the individual to create keys that facilitate the recovery of all information related to a concept or a particular topic.

6.5.4 Basic IT skills

Graduates should have a working knowledge of the following IT applications:

- standard operating systems
- word processing
- databases
- spreadsheets
- statistical packages
- internet research tools.

7. Conclusions

Despite the complexity of competences and skills, it is obvious that skills development should be used as a basis for capacity building, and in that process, it should be recognised that capacity building is a service and the entities associated with it are service providers.

From the above examination of competences (both generic and subject-specific), it is apparent that they should play a central role in the design of educational programs. As well, the creation of standards should be based on cognitive elements agreed upon by INCU members.

Conducting a comparative analysis of the competences and skills that feature in the PICARD Standards and that are addressed in the Tuning Educational Structures in Europe Project would help to identify opportunities for curriculum development. It is suggested that the results of the Tuning Project should be widely disseminated and, if possible, explained in detail and depth by all those responsible for and interested in the topic of higher education.

Convergence must be achieved whilst fully respecting diversity. This can encourage further reflection and thereby improve the quality of higher education. Thus, it is my view that the INCU is an ideal forum for effective capacity building.

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IS FREE TRADE WITH CHINA IN PERIL?

Achim Rogmann and Bernd Stadtler

Abstract

The 3-year-period for textile-specific safeguards adopted on the basis of the Textile Specific Safeguard Clause (TSSC) following China's accession to the World Trade Organization will expire on 31 December 2008. Therefore, textiles and clothing from China will be granted access to the United States of America and European Union markets free from quota restrictions or supervision. Or will they? A similar scenario existed in 2004. The planned liberalisation of trade in textiles in 2005 (following a 10-year transition period) was suspended due to the successful lobbying of protectionist groups in Brussels and Washington. The result was legal chaos (especially within the European Union), and the economic fallout for importers was enormous. This paper describes the economic situation and legal steps taken in 2004 in order to warn against a repetition of these events in or after 2008.

I. Introduction

On 6 December 2006, the European Commission adopted a Green Paper[1] for public consultation on Europe's trade defence instruments in a changing global economy. Many European companies nowadays produce goods outside the European Union (EU) for import into the EU, or operate supply chains that stretch beyond the European market. These changes challenge familiar understanding of what constitutes EU production and the EU's economic interests. The challenge is always to find the difficult balance between retailer, importer, producer and consumer interests. Trade defence instruments which were thought to protect EU companies may be more harmful to EU companies and consumers than an effective response to unfair trading practices.

A good example of how disastrous the consequences of trade defence instruments can be was provided in the summer of 2005 when the EU adopted new quantitative restrictions for the imports of textiles and clothing originating in China. From July 2005, more than 80 million pieces of clothing which had been bought and paid for by the European importers were left stranded in European harbours. Importers were faced with considerable costs, and had difficulties in fulfilling the contracts agreed with their customers.

II. Quantitative restrictions in the textiles and clothing trade

Cross-border trade in textiles and clothing has traditionally been subject to exceptionally restrictive trading rules. This is largely due to early globalisation trends in the clothing industry caused by outsourcing labour-intensive activities.

In addition to exceptionally high customs duties, quantitative restrictions (contingents, which are allocated in quotas) were employed on a particularly large scale in order to regulate commodity flows. According to the Organisation for Economic Co-operation and Development (OECD), textiles and clothing are the only commodities regularly subject to import quotas in the interests of safeguarding local industry. The first specific international rules were already in existence in 1961 (GATT Cotton Arrangement). The

'Multifibre Arrangement', the predecessor to the WTO Agreement on Textiles and Clothing (ATC) of 1995, has been in existence since 1974. The object of these quota systems was the quantitative restriction of market access in industrial countries of the EU, the USA and Canada for textile and clothing products originating in developing and emerging countries, the main focus being on Asia and Eastern Europe.

The intention of the ATC was to abolish the specific rules for textiles and clothing and integrate such products into the normal WTO rules. This was to be accomplished via a gradual liberalisation of the restricted textile categories in a 10-year plan.

The following procedure was defined for the liberalisation:

1.1.1995   Liberalisation of 16% of the total import volume

1.1.1998   Liberalisation of a further 17% of the total import volume

1.1.2002   Liberalisation of a further 18% of the total import value

1.1.2005   Full liberalisation.

During these phases, provision was made for a safeguard clause which permitted the reintroduction of quotas should domestic industry come under threat. Although the United States (US) invoked this rule in 2003 in respect of three product categories, the EU has never done so.

The allocation and administration of quotas is based on so-called 'textile categories' which combine customs tariff numbers for commodities within a specific textile or clothing product group. Unfortunately, the EU and the USA have adopted different approaches in this respect. Whereas the EU combines identical commodities of different material composition[2] (for example, men's or boys' and women's or girls' woven trousers made of wool, cotton or man-made fibres belong to EU category 6), the US textile categories do not refer to either material or gender (for example, the categories for trousers are 347 (M/B, cotton), 348 (W/G, cotton), 447 (M/B, wool), 448 (W/G, wool), 647 (M/B, man-made fibres) and 648 (W/G, man-made fibres).

III. Effect of quota decisions relating to production and procurement

The effects of the quota systems on production and location decisions, as well as on the procurement strategies of European and American importers, were enormous. Exceptionally affected was clothing manufacture, which, due to the low automation level and resulting high wage and salary costs, is particularly predestined for relocation to low-wage countries. The very capital-intensive textile production was less affected by relocations.

Quantitative restrictions also hindered procurement from traditionally prolific manufacturing countries such as China or India. In addition to a sufficiently low-cost and well-qualified workforce, these countries also possessed the necessary textile precursor materials such as yarn or fabric. The quota system caused the available quantity to run short, but it also particularly led to an artificial increase in the price of the commodities, as a lucrative official and unofficial quota trade quickly established itself. The additional costs for this 'right to export' sometimes reached as much as 50% of the price: for T-shirts in EU textile category 4 at times approximately USD 1 per item, and cashmere pullovers (EU category 5C) up to USD 20 per item. Based on these effects, quotas lead to a relocation of production to less competitive countries. In addition, the quota costs sometimes lead to a considerable increase in export prices.

This situation led to the creation of a clothing industry in low-wage countries which were not subject to any quantitative restrictions. Prime examples of this are Bangladesh and Cambodia which, in addition to exemption from quotas, also enjoy complete exemption from customs duties as part of the scheme of preferences for developing countries.

The result of this trade policy was the international fragmentation of clothing production. In the absence of available precursor materials in the production countries, such materials had to be provided partially

by Europe, and partially by Asia. Semi-finished clothing products were sent from restricted countries to non-quota countries in order to receive their finishing touches there, justifying their 'origin' and allowing non-quota import into the EU and the USA. In order to reduce the risk, importers were compelled to distribute their procurement sources among several countries. Suppliers were not selected for purely business or product-specific reasons; instead selection was essentially dependent on the exporter's available quotas. The results of such structures are higher production costs, longer throughput times, and extremely high administrative expenses.

Thus, not only was product know-how and market knowledge vital to a clothing importer's commercial success, but also the ability to deal professionally with the extensive trade restrictions. '… [S]kill at navigating the bureaucracy and using the levels of political influence became prerequisites for survival. … Simply put, the rules are nuts, as even the people who made them easily agree. … Trade policy for textiles and apparel took the seemingly irreversible step to a complexity that left it unintelligible to all but a few.'[3]

Import contingencies can also be criticised from an economic perspective. For example, Sauernheimer argues that 'Import contingencies benefit domestic producers and the owners of import licences, but are detrimental to domestic consumers. … Contingencies have a greater trade-restricting and welfare-reducing effect than any customs duty. … Import restrictions reduce domestic competitive intensity, thus contributing towards excessive prices and minimal demand for innovation. They have a structure-preserving effect. … The distribution of income becomes politicised and politics are left open to blackmail'.[4]

IV. Developments arising from the expiry of the ATC

a. The situation regarding trade policy

The first three liberalisation stages, in 1995, 1998 and 2002, almost exclusively liberated textile categories of subordinate significance due to product procurement and business volumes. Particularly critical clothing products such as T-shirts, trousers and blouses were not liberalised until 2005. In retrospect, this procedure has to be designated as an error as the ATC's effect was not fully felt until then. Companies in the textile and clothing industry within the EU, particularly in still relatively high-production countries such as Italy, Spain and Portugal, remained unaffected, and thus adapted too late, or failed to adapt at all to the extensive changes to be expected on 1 January 2005.

Researchers and politicians (as well as industrial lobbies) failed to seriously consider the impact of the impending changes until the ATC had entered its final phase. A number of extensive studies and publications on the effects of quota liberalisation were published in 2003 and 2004,[5] all of which reached the following conclusions:

- China and India would be among the most notable major winners.
- The ATC would disadvantage countries or customs territories which had previously benefited from the restrictions, including Bangladesh or Macao, whose exports had enjoyed preferential market access to industrialised countries on the basis of preferential agreements, as well as safeguard operations within the EU.

Some studies also refer to possible advantages for the consumer who, due to more cost-effective procurement options, is able to purchase at lower prices or receive higher quality commodities for the same price. Canada was the only market previously safeguarded by quotas to unswervingly implement quota liberalisation on 1 January 2005. There, in addition to the liberalisation for WTO member states, the still existing autonomous restrictions vis-à-vis non-WTO members were also abolished.

b. Economic situation

Quota liberalisation is not the only significant change that companies face at the beginning of the 21st century. Market demands, as well as organisational structures in industry and trade, are currently experiencing serious upheaval.

On the one hand, the business world is moving at an ever-increasing pace. Two annual fashion collections a year are history; at least four collections, together with additional trend programs, are the reality. Development, procurement and sales cycles are being progressively reduced. At the same time, the traditional division of tasks between industry (production development and production) and trade is increasingly disappearing. Vertical integration, which involves process-control ranging from product development through procurement and culminating in sales, is progressing rapidly. The traditional retail market, which continues to revolve around department and chain stores, procures commodities on its own initiative, while the industrial sector counters this by promoting its own sales. Discounters also exert pressure: in 2005, Aldi, Tchibo and Lidl occupied the 8th, 9th and 10th places in the annual rankings of major German textile retailers.[6] Complete knowledge and control of internal procurement structures are becoming more important owing to more stringent labour and social standards as well as added security requirements. As a result, the importance of intermediate traders or agents has plummeted.

As far as production and procurement decisions are concerned, there is a need for faster throughput times and a concentration on fewer suppliers. Companies have to maintain a balance between speed (that is, more expensive production versus greater market proximity) and costs (that is, low-cost production in Asia versus longer delivery times).

V. China's accession to the WTO: reactions in Europe

The People's Republic of China (PRC) became a member of the WTO on 11 December 2001. This automatically meant China's integration in the ATC. By then, the changes that liberalisation would bring on 1 January 2005 must have been clear to all involved. Strategically thinking importers in the USA and the EU re-thought their procurement strategies and prepared to intensify their business relationships with China. For its part, China also improved its export capability by massively investing in the most recent textile technology. Parallel to the capacity expansion, the quality of many Chinese producers also considerably improved.

As of that date, at the latest, all the companies and industrial lobbies involved must have appreciated how imports would relocate towards China as of 2005. Yet, it took associations in the EU and the USA until 2003 or 2004 to address this topic, in order to then vehemently demand that existing trade restrictions be extended, or new ones introduced.

As expected, imports from China increased sharply in the first six months of 2005; parallel to this phenomenon, import prices fell. This was largely due to the abolition of quota costs. The USA and EU satisfied the requirements for applying the safeguard clause for textiles provided in the ATC in relation to important categories of imports from China. In Europe, the situation escalated to a ban on imports lasting for weeks, which affected approximately 80 million shipments, and assumed existence-threatening proportions for many importers. A significant reason for this was the Commission's Directorate General for Trade's lack of transparency in reintroducing safeguard measures.

In mid-2005, imports of specific categories into the EU were reallocated, initially until 31 December 2007. In the USA, the statutory limit for safeguard measures will expire on 31 December 2008.

VI. The legal basis for the reintroduction of trade restrictions

The ATC imposed an obligation on the EU to abolish the remaining quantitative restrictions for 210 categories of textile and clothing products. However, the euphoria that greeted the quota-free access to the EU market was short-lived because the EU applied the emergency brake no later than spring 2005. Following demands by textile manufacturers in the EU, the Commission requested consultations with the Chinese Government which led to the re-introduction of trade restrictions for textiles and clothing products within a matter of days.

The reintroduction of trade restrictions was justified on the grounds that, when it joined the WTO, China had granted specific safeguard measures for textiles and clothing products to all WTO members at that time, which departed from WTO rules and entitled them to apply unilateral measures for a transitional period of twelve years (which is due to expire on 11 December 2013). The legal provision at the root of the renewed quota dispute was Paragraph 242 of the Working Party Report (WPR) of the Accession of the PRC to the WTO[7] which contained the Textile Specific Safeguard Clause (TSSC). This specific safeguard mechanism has been restricted to a period of seven years, and is due to expire on 31 December 2008.[8]

The TSSC contained in Paragraph 242 WPR can be applied 'where a WTO Member believed that imports of Chinese origin of textiles were, due to market disruption, threatening to impede the orderly development of trade in these products'. China accepted that, just on the basis of a request for consultations and as long as the consultations were pending, it would restrict its shipments of textiles and clothing products to the Member in question to an agreed amount. This resulted in an automatic and voluntary – although temporary – self-restraint for textile exports to the EU, which can better be seen as unilateral import restrictions imposed by EU.

VII. The compatibility of the TSSC with WTO law

The TSSC automatically raises the question of whether it stands in accordance with WTO rules. The question of WTO conformity must be assessed taking into account the multilateral principles of WTO law which are binding on all Members.

Evidence suggests that the quantitative restrictions of the TSSC breach the principle of tariffication (X:1)[9] and that specific defences (especially Art. XI:2 of the GATT) do not apply. Moreover, the Safeguard Clause contravenes the principle of non-discrimination enshrined in Art. XIII:1 of the GATT[10] even if all WTO Members can invoke the clause (and the USA has already done so), its application is restricted to a small number of trading partners and does not reflect the formula for allocating quotas contained in Art. XIII:2 of the GATT. The TSSC also leads to so-called 'voluntary' self-restraints[11] which belong to the grey-zone measures prohibited by Article 11.1(b) of the Agreement on Safeguards.[12] These voluntary self restraints are anything but voluntary, because China would have been facing much more intense measures such as in the area of the exchange rate of the Renminbi, if it was not willing to yield to the pressure from Europe and the USA related to trade in textiles. Finally, self restraints effectively circumvent Art. XIX of the GATT as well as Art. 8 of the agreement on safeguards that would entitle exporting Members who would be affected by such a measure, to claim for compensation for the adverse effects of the measure on their trade.[13] Moreover in the case of applying Art. XIX GATT, the MFN treatment obligation of Art. I:1 of the GATT must also be respected.[14] The measures based on the safeguard clause undermine China's right to claim compensation, and are only applicable to imports from China but not from other textile exporting nations.

But also economic reasons stand against the TSSC: self restraint agreements create an insecure and unreliable trading climate. Grey zone measures, in particular, are macro-economically inefficient as the profit gain of importing competitors and of the exporters who have enhanced market access cannot

compensate the losses of the consumers who face increased prices. During the political debate for the introduction of new quantitative restrictions, 455 million consumers did not have a real lobby.

Measures which are not in accordance with WTO obligations may be justified under the specific situation of a new Member accessing the WTO. The accession of a country to the WTO applies fundamentally to all multilateral agreements of the WTO package (Art. XII:1 s. 2 of the WTO Agreement). In addition, Art. XIII of the WTO Agreement creates the possibility for a Member to prevent specific WTO rules from applying to its trade relations with another Member.[15] This 'opt-out' clause has to be invoked at the time that the Member State in question joins the WTO. On the accession of a country to the WTO, existing Members do see the possibility to waive the application of individual parts of the multilateral agreements on a transitional basis (phase in or phase out).[16] This kind of treatment of WTO obligations is, without any doubt, a breach of the single package approach.[17] Even if it looks quite strange, the basis for such a waiver in international law may be found in Paragraph 242 WPR which forms, together with Paragraph 342 WPR and No. 1.2 of the protocol of accession, an integral and legally binding part of China's obligations.[18]

VIII. The application of the TSSC

Specific questions arise if one looks at the handling of the TSSC by the EC. When questioning the lawfulness of the EC's measures, a distinction must be drawn between the implementation and application of the safeguard clause in Community law.

a. Transposition into Community law

The Community legislator has literally transposed the TSSC contained in Paragraph 242 WPR by Regulation (EC) No. 138/2003[19] which inserted a new Article 10a into Regulation (EEC) No. 3030/93.[20] On 6 April 2005, the Commission adopted indicative guidelines on the application of Article 10a of Regulation (EEC) No. 3030/93 concerning a textiles-specific safeguard clause (the Guidelines). The Guidelines describe how the Commission intends to handle the TSSC, and were published no earlier than 27 April 2005.[21] In particular, the Guidelines stipulate the 'alert levels', clarifying that measures will not be taken into account if import levels are below those indicated in the alert levels. The Commission points out that the purpose of the Guidelines is to inform interested parties and not to create legally binding standards. Considering the *numerus clausus* of legally binding acts given by the Community (regulation, directive and decision pursuant to Art. 249 EC-Treaty), this fact should be seen as obvious. Despite this announcement, the Guidelines will have a de facto binding character, as they demonstrate how the external relations between Commission and economic operators will be configured. The Commission itself sees the TSSC as a 'particularly vaguely worded provision which can be applied with a relatively wide margin of discretion', and only in conjunction with the Guidelines any economic operator in the EU will get an indication of the way the Commission intends to apply the TSSC giving, at least, some reliable basis for further business with China.

b. Application in spring/summer 2005

On 29 April 2005, the Commission published the Notice of Initiation of a safeguard investigation concerning imports of certain textile products originating in the People's Republic of China.[22] The information on imports collected by the Commission through the import monitoring system contained, in the view of the Commission, indications that imports of specific product categories may threaten to impede the orderly development of trade. In particular, imports of those product categories had clearly exceeded the indicative thresholds laid down in the Guidelines during the first quarter of 2005. This Notice of Initiation concerned imports of nine different product categories (4-7, 12, 15, 31, 115, 117) listed in the Annex[23] to the announcement.

The Commission had therefore decided to initiate an investigation to determine whether the application of textile specific safeguard measures in relation to those product categories is warranted. The Commission stated that it would reach its decision on the basis of the information available at the end of the investigation, and the decision had to been taken whether or not it would request formal consultations with China on the basis of Article 10a of Council Regulation (EEC) No. 3030/93. As it turned out, the investigation was completed rather swiftly and concluded that the imports of two product categories (4 and 115) could disrupt the market and thereby impede the orderly development of trade. In this respect, the Commission took advantage of the procedural steps and decisions provided by No. 5(e) of the Guidelines, which serve to expedite its procedures in cases of particular urgency.

On 27 May 2005, the Commission requested formal consultations with China for both categories of products – T-shirts (ex category 4) and flax or ramie yarn (category 115). In accordance with the TSSC, China was forced, purely from the receipt of the requests for consultations, to introduce self-restrictions in the exports. Pursuant to No. 5(d) of the Guidelines and No. 6 of the Notice of Initiation of a safeguard investigation, the determination and the reasons for the decision to request consultations were to be published in a notice in the Official Journal of the European Union. However, no such publication in the Official Journal appeared. The investigation into seven additional product categories, and also two categories covered by the expedited procedures, was initially carried forward. For other product categories with import growth close to the alert level, the Commission applied close surveillance.

Consultations were concluded on 10 June 2005 and led to the European Commission and Ministry of Commerce of the PRC signing a Memorandum of Understanding (MoU) on the export of certain Chinese textile and clothing products to the EU. The MoU covers ten import categories: 2 (cotton fabrics), 4 (T-shirts), 5 (pullovers), 6 (trousers), 7 (blouses), 20 (bed linen), 26 (dresses), 31 (brassieres), 39 (table and kitchen linen) and 115 (flax or ramie yarn). The EU and China agreed to restrict the growth of import levels for these products up to a value between 8% and 12.5%. In addition, the MoU stipulated a time limit for the measures of 31 December 2007. Only five of these ten product categories had been subject of the previous Notice of Initiation of a safeguard investigation. The EU granted China, as consideration for signing the MoU, the termination of its safeguard investigations for the product categories covered by the MoU, and agreed not to introduce any new measures under Paragraph 242 WPR for products not covered by the MoU.[24] Like the determination and the reasons for the decision to request consultations, the MoU has not been published in the Official Journal.

The MoU was transposed into Community legislation by Commission Regulation (EC) No. 1084/2005 of 8 July 2005[25] which amended Annexes II, III and V to Council Regulation (EEC) No. 3030/93 (having regard to Regulation (EEC) No. 3030/93 and in particular Article 19 thereof). Recital (6) in the preamble to the Regulation expressly refers to consultations with the PRC in the framework of Paragraph 242 of the WPR and Article 10a of Regulation (EEC) No. 3030/93, which had led to the conclusion of the MoU.

The Commission believed that the imports of Chinese origin of the affected categories, due to the existence or threat of market disruption, threatened to impede the orderly development of trade within the meaning of Paragraph 242 WPR and Article 10a of Regulation (EEC) No. 3030/93 for a number of reasons which are given in the recitals in the preamble to Regulation (EC) No. 1084/2005.

The proof of market disruption is essentially dependent on statistical data. During the course of the procedure, however, hardly any plausible import statistics could be presented. In some respects, the import data provided by EUROSTAT deviated considerably from that provided by the General Directorate Trade and TAXUD. At the beginning of 2006, six Member States were still unable to provide the required data.[26]

Another core argument for a market disruption was the decline in import prices.[27] However, not taken into account at any time was the fact that the abolition of the quota costs alone,[28] which artificially

increased import prices prior to 2005, would automatically result in a price decline, which would have to be removed from the calculation to obtain an objective assessment.

IX. Compliance of the MoU of 10 June 2005 with Community legislation

Simply the fact that Paragraph 242 WPR (and thereby Article 10a of Regulation (EEC) No. 3030/93) cannot be challenged under WTO law, does not automatically lead to the conclusion that the implementation of the safeguard measures in question were in compliance with community legislation. Moreover, the EC has to obey its own standards which it created in transposing of Paragraph 242 WPR.

Due to the principle of limited powers specified in Article 5 of the EC Treaty, the EC needs a legal basis to conclude agreements with China on restricting the export of goods. Unlike Article 10(8) of Regulation (EEC) No. 3030/93, the specific provision in Article 10a of that Regulation does not contain any power to conclude such an agreement. However, Paragraph 242(b) WPR demands that every effort would be made to reach agreement on a mutually satisfactory solution. Based on the principle that Community legislation shall be interpreted this way, that it is in compliance with international obligations of the Community, the Commission was entitled to seek a settlement by way of consultation rather than just by unilateral measures. This result is also in compliance with the WTO principle of encouraging its Members to settle their differences by way of consultation.

a. Procedures and timetable for safeguard proceedings

First of all, the fact that only five of the total ten product categories covered by the MoU were subject to the safeguard investigation deserves attention. In the Notice of Initiation of a safeguard investigation,[29] any interested party may apply for an oral hearing by the Commission. The Commission promises to grant an oral hearing to any interested party who applies in writing within 21 days of the date of publication of the Notice in the Official Journal, showing that they are actually likely to be affected by the outcome of the investigation, and that there are special reasons for them to be heard orally. Importers of goods not covered by the safeguard investigation were barred from the option to present and prove any reasons for opposing the implementation of safeguard measures. Thus importers of bed linens (category 20) did not participate in the safeguard proceedings as this product category did not form part of the Notice of Initiation of a safeguard investigation dated 29 April 2005. Despite this, precisely this product category falls under the MoU as transposed into Community legislation by Commission Regulation (EC) No. 1084/2005 which introduces quantitative restrictions for the import of textiles.

The date on which the Notice of Initiation was published is also important because the quantitative limits imposed under this measure did not apply to products which had already been dispatched to the Community if they had been shipped from the supplier country of origin for export to the Community prior to the date of notification of the request for consultations.[30] The import restrictions based on the MoU did not draw a distinction between the product categories which had formed the subject of the request for consultations and those which had not. In addition, the decision to request consultations was not published in the Official Journal. Taking these facts into consideration, it is doubtful whether notification was made at all. Another point to consider is that the MoU was not published in the Official Journal either. The consequences of the MoU were only made public by Commission Regulation (EC) No. 1084/2005 which was published in the Official Journal on 9 July 2005.[31] It is therefore unclear exactly when Article 10a(2) of the Council Regulation (EEC) No. 3030/93 was implemented.

The Community legislation is characterised by the principle of transparency which is laid down in Art. 1 EC Treaty. The Commission defined this principle in its TSSC Guidelines, stipulating that it attaches great importance to the transparency in the handling of its trade instruments, and that procedures

had to be conducted in a way that allowed all interested parties to be heard, properly motivated, and communicated to both the interested parties and the general public. The Commission also stressed that 'such transparency should result in greater predictability and certainty for trade and business, and ensure that decisions were taken in the best possible knowledge of all relevant factors and after having heard all relevant arguments'.[32] In practice, however, the Commission did not publish its decision for requesting consultations or its reasons for doing so in the Official Journal. This leads to the conclusion that the Commission failed to apply its own self-defined standards for implementing the transparency principle. The option that the Commission may decide to expedite its procedures involving a shortening of the deadlines or a simplified and accelerated process does not bring any relief from these standards. The simple fact that decisions can be made faster does not mean that a publication of these decisions is not feasible. Decisions will not be decelerated only by publishing them properly.

Examining the commencement of proceedings also reveals several inconsistencies. According to Paragraph 1 of the MoU, the Commission was to terminate all ongoing investigations into products covered by the MoU. However, Article 10a No. 1(b) of the Regulation (EEC) No. 3030/93 states that 'consultations with China shall be continued during the term of the quantitative limit set up under this provision'. In the event, the consultations with China did not fail but were terminated once the parties had reached an understanding. This practice is in breach of Paragraph 242 WPR and Article 10a No. 1(b) of the Regulation (EEC) No. 3030/93. The reason for the given standard is that quantitative restrictions cannot remain in force indefinitely but are to be subjected to constant scrutiny by both parties as to whether they should continue to be applied. If the negotiating parties reach a voluntarily agreement on the basis of frank and friendly consultations to a conclusion *a fortiori,* this obligation must be obeyed, even if it is quite unclear which grade of voluntariness the Chinese delegation could enjoy.

b. Substantive legal aspects of the MoU

The MoU can be challenged on substantive as well as procedural grounds. Accordingly, the quantitative limits to be imposed must correspond to the levels of Chinese imports that existed when China received the Community's request for consultations.[33] Owing to the principle of proportionality, the MoU should not fall below these minimum quantities. It can be expected that China will accept a negotiated result which will be more favourable than the potential unilateral measures that the EU can impose based on Paragraph 242 WPR.

Consultations with China concentrated on two product categories which were the subject of the Notice of Initiation of the safeguard investigation dated 29 April 2005. The final MoU with its scope of 10 product categories, however, contained no less than 5 categories, for which the interested parties were excluded from presenting evidence that the invocation of the TSSC would have an important and tangible negative impact on their economic interest. Furthermore, three more product categories which formed part of the initial Notice of Initiation of a safeguard investigation, but did not fall under the expedited procedure, became the subject of quantitative import restrictions. In case of extreme urgency, consultations with China can be requested without an investigation having been instigated, or before investigations are completed.[34] Without good cause, the Commission deviated from its autonomous established standards regulating the conduct of investigations, and compromised the legal right of economic operators to trade in the relevant goods without carrying out a proper investigation.

The MoU provides for limiting the annual growth of imports of the relevant product categories covered by the understanding by between 8% and 12.5% during the period from 2005 to 2007. This means that the quantitative limit agreed was actually greater than the lower limit of 7.5% pursuant to Paragraph 242 WPR. However, the reference period used as a basis for the MoU and that for Paragraph 242 WPR were not identical. Whereas Paragraph 242 WPR takes into account the first 12 of the most recent 14 months preceding the date on which consultations with China were requested (that is, May 2005), the MoU refers to the period from March 2004 to February 2005 (categories 4 and 115), and April 2004 to

March 2005 (all other categories). It is not unproven that the different reference periods might create an erroneous basis for calculation causing a breach of Paragraph 242 WPR by agreeing on too low growth rates. Moreover, for five product categories, no formal request for consultations was made at all.

In addition, Paragraph 242(f) WPR (and thereby Article 10a No. 1(c) of Regulation (EEC) No. 3030/93) stipulates that no action taken under these provisions would remain in effect beyond one year. By contrast, the MoU has introduced quantitative restrictions for a period of more than 30 months.[35] It is true that Paragraph 242(f) WPR and Article 10a No. 1(c) of Regulation (EEC) No. 3030/93 allow the EC and China to extend this period by mutual agreement. However, this rule seems to open the door for extending the application of measures at the end of a 12-month period, rather than to extend it at the beginning of its application. Again, China and the interested parties are deprived of a proper procedure for questioning the need for ongoing import restrictions.

Commission Regulation (EC) No. 1084/2005 amended the Annexes to Council Regulation (EEC) No. 3030/93. Due to this amendment, imports into the Community of products which were shipped before 11 June 2005, but presented for free circulation on or after that date, were not to be subject to quantitative limits. Import authorisations for goods shipped between 11 June 2005 and 12 July 2005 were granted automatically, and could not be denied on the grounds that there were no quantities available within the 2005 quantitative limits. However, the imports of all products shipped from 11 June 2005 have been counted against the 2005 quantitative limits.[36] This effective date was kept unchanged in the later Commission Regulation (EC) No. 1478/2005.[37] Effectively, therefore, the race for import quotas had already commenced on 11 June 2005, a fact which was communicated in the Official Journal not earlier than 9 July 2005. This approach does not offer an acceptable degree of transparency and predictability to keep a reliable and sustainable basis for international trade and economic operators.

X. Conclusions

Despite the fact that the TSSC represents a flexible instrument for adopting safeguard measures on imports of textiles and clothing originating in China, the procedures applied to re-introduce quantitative restrictions leads to the impression that speed prevailed over legal compliance. Behind closed doors, grey-zone measures which have been abolished under WTO were concluded. Furthermore, the TSSC was not intended to be treated as carte blanche by the Community for imposing trade restrictions. The statistical data upon which its decision was based was anything but reliable. Rather elusive stays the fact that certain product categories were subject to quantitative restrictions without being subject to investigations beforehand and without the affected parties being properly involved in the decision-making process. In addition, the Community has ignored its own standards of transparency and predictability given by its members and transposed into precisely worded rules. The trust in the reliability of the Community's foreign trade rules was damaged considerably at the expense of the European consumers.

The phase-out of the TSSC at the end of this year does not automatically mean the end of textile quotas restricting specific categories of Chinese textile and clothing exports to the EU. Council Regulation (EC) No. 427/2003[38] transposed a product-specific safeguard mechanism which was agreed in Part I, No. 16 of the Protocol on the Accession of the People's Republic of China.[39] In cases where products of Chinese origin are being imported into the Community in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the Community industry, a safeguard measure may be imposed under this regulation.[40] Any measures taken under this Regulation may be applied until 11 December 2013.

Even after expiration of Council Regulation (EC) No. 427/2003, the EU can make use of the option to restrict imports of a product on the basis of Article XIX of the GATT temporarily if its domestic industry is injured, or threatened with injury caused by a surge in imports.

Keeping in mind the economic effects and the intransparent application of EU provisions, full liberalisation of the textiles and clothing trade can be the only way to find a fair balance between retailer, importer, producer and consumer interests after giving EU producers more transitional time to cope with the changes in world trade caused by China's accession to the WTO. It is to be hoped that lessons have been learned.

Endnotes

1 COM (2006) 763 final.

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3 Pietra Rivoli 2005, *The travels of a T-shirt in the global economy: an economist examines the markets, power, and politics of world trade,* Wiley & Sons, Hoboken, NJ, ISBN 0-471-64849-3.

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5 Studies related to Quota Liberalisation:

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6 See 'The biggest German textiles retailers' (Annual Rankings) at: www.TWNetwork.de.

7 Document WT/MIN(01)/3 of 10 November 2001.

8 For more details on the TSSC refer to MT Bender 2005, 'Der Schild gegen den Drachen – zweiter Teil', *Recht der Internationalen Wirtschaft* (RIW)*,* vol. 51, no. 6, pp. 416-421; Falke 2005, 'Unbeschränkte Einfuhr chinesischer Waren in die EU?', *AW-Prax,* pp. 150-151.

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10 Beise, Oppermann & Sander, *Grauzonen im Welthandel,* p. 107; Petersmann, *Principle of non-discrimination,* pp. 113-115.

11 aka 'voluntary export restraints' (VER), see van den Bossche 2005, p. 449.

12 R Senti, GATT, pp. 427-428; Beise, Oppermann & Sander, *Grauzonen im Welthandel,* p. 132.

13 Beise, Oppermann, Sander, *Grauzonen im Welthandel,* p. 80.

14 Beise, Oppermann, Sander, *Grauzonen im Welthandel,* pp. 108-117.

15 Peter van den Bossche 2005, *The law and policy of the WTO*, p. 118.

16 Hilf in Hilf &Oeter, WTO-Recht, p. 159.

17 Hilf in Hilf &Oeter, WTO-Recht, p. 159.

18 MT Bender 2005, 'Der Schild gegen den Drachen', RIW, vol. 51, no. 6, p. 416.

19 OJ L 23, 28.1.2003, p. 1.

20 OJ L 275, 8.11.1993, p. 3. Regulation as last amended by Commission Regulation (EC) No. 139/2008 of 15 February 2008, OJ L 42, 16.2.2008, p. 11 by Commission Regulation (EC) No. 930/2005 (OJ L 162, 23.6.2005, p. 1).

21 OJ C 101, 27.4.2005, p. 2.

22 OJ C 104, 29.4.2005, p. 21.

23 See OJ C 104, 29.4.2005, p. 23.

24 Figure VI of the MoU.

25 OJ L 177, 9.7.2005, p. 19.

26 See, for instance, the statistic 'China: real imports' of the DG Trade, 23 March 2005, at: http://trade.ec.europa.eu/doclib/docs/2005/april/tradoc_122157.pdf.

27 See recitals (9) to (17) in the preamble to Regulation (EC) No. 1084/2005.

28 See III. above.

29 See No. 4.2 of the Notice, OJ C 104, 29.4.2005, p. 22.

30 Article 10a(2) Council Regulation (EEC) No. 3030/93 as amended by Council Regulation (EC) No. 1084/2005, OJ L 177, 9.7.2005, p. 19.

31 OJ L 177, 9.7.2005, p. 19.

32 See No. 5 Paragraph 1 of the Notice on the application of Article 10a of Council Regulation (EEC) No. 3030/93.

33 Paragraph 242(d) WPR and Article 10a No. 1(b) of the Regulation (EEC) No. 3030/93.

34 See No. 5(e) of the Guidelines.

35 11 June 2005 until 31 December 2007.

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THE IMPORTANCE OF CHANGE MANAGEMENT IN REFORMING CUSTOMS

Jan-Erland Jansson

This is the first of a two-part article based on research which formed part of Jan Jansson's Masters thesis.

Abstract

Customs organisations operate in a complex environment of constant change. They are required to respond to the promotion of economic development and to comply with regional, national and international obligations. To accommodate changes in these areas, it is important to determine 'a certain management type' to implement change processes. As well, it is critical to identify the most significant characteristics of change management theory, which in this article are demonstrated by describing the methods used by Latvian Customs as a practical example. In defining change management, the three constituents identified by Nickols (2004) – the task of managing change, an area of practical practice, and a body of knowledge – are regarded as being the most relevant to this particular investigation. The Nickols' strategies also highlight certain characteristics of human behaviour that affect change management. The Latvian Customs State Revenue Service presents a striking example of a complex organisation where many factors are to be considered in order to effectively manage change.

Introduction

Today, customs operates in an environment of constant change. It implements national requirements relating to the promotion of economic development and compliance with regional and international obligations. Customs also plays a vital role in attracting trade and people to a country. In this respect, the effective management of goods and people entering and leaving the customs jurisdiction is a complex issue in an ever-changing trading environment.

After 25 years of supervising reorganisation and developing reforms in the public sector, I consider it is vital that customs managers properly identify a specific management method in order to effectively manage comprehensive change in a customs organisation. Experience has brought home to me that the choice of method to implement desired changes in any organisation is of the most critical importance, not least because it involves two related issues. First, any organisation is nothing more than the sum total of its employees. As a result, the selected management method must seek to influence and encourage employees to participate in the change process and thereby 'change' themselves. To this end, a change manager needs to have good knowledge of human behaviour – and ways of influencing it. Second, it is important to realise that the choice of a specific strategy will also influence the choice of other tools (methods, techniques and knowledge) used to achieve the strategic changes in question.

In order to manage the process of change, customs organisations require effective tools. There are plenty of different theories, methods and principles that provide guidance in organising a public agency. However, not all of them pay sufficient attention to the specific conditions of change. Theories like

risk management, innovation management, business process re-engineering and succession management all handle elements of change in some perspective. Nevertheless, the most distinctive attention to the process of change is provided by the theory and methods of change management.

The aim of this article is twofold. First, it highlights the importance of deciding on 'a certain management type' in order to implement large change processes. Second, it provides an overview of the most significant characteristics of change management theory and methods using Latvian Customs as a practical example.

Change management theory is based on experience gained from the results of change processes in both public and private sector companies. It takes a holistic view of what persons involved in or exposed to big changes need to know and understand about themselves and others to ensure that desired changes are sustainable. The methods are simple to understand but not that easy to implement. If managers choose to reform their working environments using this method, they must also be prepared to examine and change themselves, even if it is much easier to tell others what needs to be changed. This observation reflects the fact that the leader's role in the process of change cannot be underestimated. I believe that leaders must set an example in the interests of winning support for the change process and making its results sustainable.

The choice of change management theory should reflect awareness of the complexity of a customs administration. It is a law enforcement agency that must meet different governmental demands, for example, to ensure compliance with trade, combat and arrest smugglers, protect and prevent public security, and administer customs declarations. All these duties are very different from each other and the skills required to perform them effectively differ greatly. In fact, one could describe Customs as a 'supermarket of competencies' – the aim of customs managers being to hold this supermarket together as a single unit. For this purpose, they not only need special skills but must also realise that such diverse tasks require a variety of management techniques. For example, in order to administer customs declarations, the officer must examine the declaration and decide whether all the requirements have been fulfilled and the applicable duties paid. Such a task can be planned in advance. However, other functions (for example, customs physical controls) arise unexpectedly and must be managed accordingly.

The second subject of investigation – Latvian Customs – is an interesting example of an organisation in change. Re-established on 3 July 1990, it has passed through many comprehensive changes, particularly in relation to legislation and organisation. The primary tasks for Latvian Customs have been outlined in the two business strategies adopted by the State Revenue Service (SRS) in respect of the customs service. The first document was adopted on 14 July 1999 and its main aims attained just two years later. On 5 December, 2001, the SRS adopted the second strategy document that established the following primary tasks for customs: trade facilitation, the administration of custom duties and customs control.[1]

Latvia's accession to the European Union (EU) on 1 May 2004 (and various pre-accession activities) had a tremendous impact on the organisation of Latvian Customs. Not only did it have to implement completely new customs legislation (that is, the Customs Code of the European Community) but it had the added responsibility of controlling the EU's external border. Once the main elements of the Operational Strategy of the Latvian Customs Service for 2002-2005 had been implemented, a new customs strategy for 2005-2009 (the Customs Business Strategy) was adopted in March 2005. This strategy outlines new directions for strategic development for immediate and future implementation.

This article draws on my extensive experience in Latvian Customs and my appreciation of the importance of change management methods in reforming a customs organisation. Change management theory reflects a holistic approach to examining the needs for change, preparing change goals and implementing change itself. These three aspects represent the foundations upon which Latvian Customs has based its change processes. This article also draws on the results of a questionnaire distributed among the 'change agents' (that is, customs officers responsible for implementing the various tasks described in the new

Customs Strategy) in order to ascertain whether managers in charge of implementation are operating under conditions conducive to achieving the desired results.

The scope of this investigation into the management of change processes at the Latvian National Customs Board (LNCB) is limited to certain aspects of the implementation of the new Customs Business Strategy 2005-2009. The Latvian SRS has defined the following strategic goals for customs:

1. protecting society, the economy, and environment through the prevention and detection of criminal offences and other violations of customs regulations

2. creating a better environment for international trade and accurately calculating and collecting customs debts

3. ensuring the efficient operation of the customs service by:

    3.1. applying efficient, modern methods of work, equipment, and up-to-date information technology in the work of the customs service
    3.2. ensuring that the organisational structure of the customs service is functional and efficient
    3.3. ensuring that the customs service operates within a modern working environment and promotes morale: motivated and loyal employees, supported in their individual growth.[2]

In this connection, the SRS has set 13 targets to ensure the achievement of its strategic goals. These targets are very different in character. Some relate to maximising the effectiveness of each organisational unit, while others relate to the public (for example, to protect society more effectively). Some relate to modern IT-systems and others define the need to develop better working methods. Last but not least, some targets relate to legislation.

Examining the implementation method for the new Customs Business Strategy reveals that the report only explains **how** implementation is to be carried out. The answers to the questionnaire mentioned above say much about the attitude of the respondents. It was therefore recommended that an attitude study be carried out in order to ascertain whether managers were satisfied with their allotted tasks or not. This, in turn, could reveal whether any aspects of the change process had been overlooked or whether further elements should be included in order to ensure the success of the new Customs Business Strategy.[3]

Defining change management

Management studies suggest that 'change management' is an umbrella term comprising a wide range of elements. It is important to define the term 'change management' here in order to identify these constituent elements and define its scope. Later, these elements will be analysed in greater detail. Four attempts at defining change management are now examined.

Webster's Ninth New Collegiate Dictionary deals with change management in terms of process and tools. On the one hand, it defines change management as a 'structured process' that will:

   1. … cause proposed changes to be reviewed for technical and business readiness in a consistent manner that can be relaxed or tightened to adjust to business needs and experiences.

   3. … communicate the status and existence of changes to all affected parties.[4]

On the other hand, Webster's definition also refers to the tools that can be used (for example, database and inventory systems) to ensure an overview of the process:

   2. [It] … [c]ould involve a database to help staff make better decisions about future changes based on historical data such as success or failure of similar changes. … [or] … yield an inventory system that indicates what and when actions were taken that affected status of key resources, as an aid in problem determination or resource management.[5]

In his definition, Oliver Recklies[6] refers to the hierarchy of activities required to implement change:

> Change management means to plan, initiate, realize, control, and finally stabilize change processes on both corporate and personal levels. Change may cover such diverse problems as, for example, strategic direction or personal development programs for staff.[7]

It is significant how Recklies chooses to characterise the nature of change processes in a contemporary world: '[C]hange is not the exception but a steady ongoing process'.[8] Thereby, he implies that messy transitional periods are far more indicative of everyday reality than those relatively short periods when everything runs smoothly. Change management comprises both revolutionary one-off projects and evolutionary transformations.

Two other change management experts, researchers Jeff Hiatt and Tim Creasey,[9] characterise change management as a mixture of ideas derived from the fields of engineering, business and psychology.

In his definition, Recklies refers to the 'corporate and personal level'; Creasey and Hiatt develop this concept further by concisely describing it as a convergence of two 'predominant fields of thought: an engineer's approach to improving business performance and a psychologist's approach to managing the human-side of change'.[10] This idea is visualised in Figure 1 below.

Figure 1: Convergence of ideas in change management
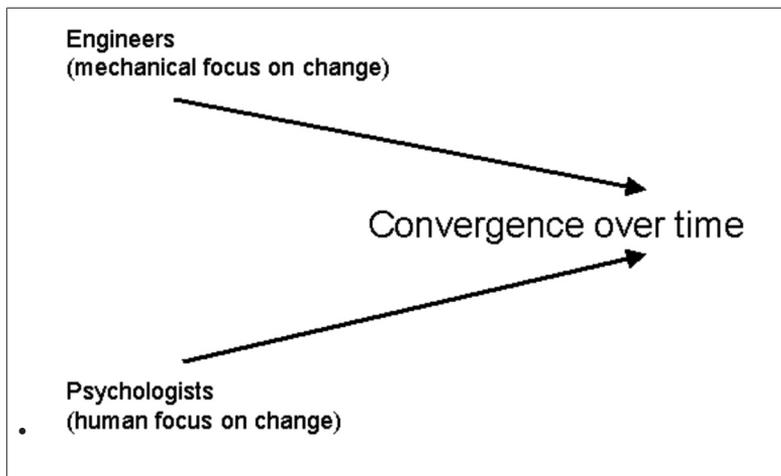
The diagram demonstrates that only a convergence of both aspects will provide the key to sustainable change in business. This viewpoint is also reflected in the definition of change management formulated by Creasey and Hiatt:

> While many techniques can be employed to design the solution to a business problem or opportunity (i.e., the business change), change management is the process, tools and techniques to manage the people-side of that business change to achieve the most successful business outcome, and to realize that change effectively within the social infrastructure of the workplace.[11]

This definition emphasises the psychological aspect of change far more than Recklies does. I tend to support this viewpoint because experience has taught me that the human factor plays an important role in reform efforts.

Fred Nickols, an acknowledged authority in the field of change management,[12] identifies four basic constituents of change management, three of which will be addressed in this article:

- the task of managing change

- an area of professional practice
- a body of knowledge.[13]

Concerning the task of managing change, Nickols highlights two aspects. First, he emphasises '… the making of changes in a planned and managed or systematic fashion'.[14] In other words, the aim of change activities should be the successful, effective implementation of new methods and systems in an ongoing organisation, with those changes initiated by the organisation itself and controlled internally.[15] Three examples illustrate this:

1. A customs organisation can recruit persons more highly educated than its current employees and who have a background that can inspire new working methods. The new skills brought into the organisation can be harnessed to achieve the desired changes. In the Latvian customs administration, for example, the number of employees with an academic qualification has increased annually and today the majority of the customs officers have a bachelor's degree or higher education certificate.

2. In-house training, consisting of practical and theoretical education, can be used as a tool to evaluate the existing organisation and recommend changes.

3. A customs organisation is often exposed to the financial demands of its ministry (that is, to achieve certain aims within a smaller budget) that can result in rationalisation and other internal changes.

Second, Nickols asserts that the changes can be triggered by various processes and events outside the organisation and this leads to the second aspect of the definition, that is, that managing change is 'the response to changes over which the organization exercises little or no control.'[16] Examples of legislative, social and political factors that affect processes inside Customs are readily available: the EU and other regional free trade agreements can compel a customs organisation to adopt changes in customs legislation and sometimes impose new obligations that require new sets of skills. Global express cargo companies and their clients depend on efficient customs clearance and demand that customs organisations introduce simplified procedures in order to facilitate faster border crossings. According to an Airports Council International *World report* published in December 2006, '[t]otal freight carried worldwide currently equals 75 million tonnes, increasing to 214 million by 2025'.[17] Such figures give a better idea of the speed at which air cargo is developing and the huge volume of freight that customs must cope with. It is hardly surprising, therefore, that customs administrations are under pressure to make changes, for example, simplified procedures with a pre-clearance system often require a computer system that can examine and process customs declarations.

International agreements of relevance to Customs, such as the Revised Kyoto Convention,[18] the Washington Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)[19] and the Arusha Declaration of the Customs Co-operation Council concerning Integrity in Customs[20] are all examples of external influences on the customs organisation. Security requirements are also examples of influences from the international community, as illustrated by the following recommendation to the United Nations Security Council:

> Customs services are central in implementation and they may benefit from international cooperation … Lessons can be drawn from efforts to combat drug trade and trafficking. The WCO and Eurocustoms should be consulted when target trade sanctions are used for lessons from past experience.[21]

This and other recommendations were elaborated during the so-called 'Stockholm Process' that aimed to develop Guidelines for the Implementation of UN Policy Options in which I participated in joint working group meetings as chairman of Eurocustoms.

Turning now to the second Nickols' constituent where change management is referred to as 'an area of professional practice', there are many consultancies (both large and small) that offer the planning and managing of change processes for their clients as a professional service. There are even practitioners who call themselves 'professional change agents' or 'change management experts.'

The third constituent asserts that change management is a body of knowledge. It reflects the content or subject matter of change management as a professional practice and comprises 'models, methods and techniques, tools, skills and other forms of knowledge'[22] that constitute the basis of any practice. This definition acknowledges that the content comprises elements from many disciplines such as 'psychology, sociology, business administration, economics, industrial engineering, systems engineering and the study of human and organizational behavior,'[23] all united under the umbrella of change management. Nickols also notes that this large body of knowledge is somewhat 'eclectic' in nature and that its application varies considerably.[24]

It is necessary to consider these three definitions when leading processes that are motivated by the need or willingness to start a change process.

A large number of institutes, universities and consultancy firms around the world are researching and studying change management. A closer study of a range of definitions and descriptions of the subject leads me to conclude that they are all broadly similar. Most researchers focus on private companies and, consequently, their concepts and methods of implementation are not directly transferable to a customs authority; others adopt a more general approach.

After considering the various definitions and their application in practice, I regard Nickols' definition as being the most relevant to this particular investigation. My opinion is based on the fact that it describes the whole process of change management most precisely and illuminates a systematic mode of procedure. As far as I am concerned, this definition can be effectively applied in practice and outlines the overall picture of comprehensive change efforts in an understandable manner. It also attributes equal importance to changes in tasks and the influence on people's behaviour and attitudes. Consequently, those who follow this theory in practice must be aware of both the professional matters in the respective branch and how people are influenced by the process of change. I take the view that an understanding of both elements is absolutely necessary.

Pre-conditions for change

Change management is being applied to a whole range of organisations and companies that differ in every conceivable way (for example, organisational schemes, ownership, business, traditions, culture, etc.). Indeed, one would be hard pressed to find two organisations that are exactly alike. As a consequence, a new question arises: what factors influence the way that change is implemented? Taking into account the differences mentioned, it is logical to assume that the modes of procedure adopted will depend on the business activity pursued by the organisation. When planning and implementing changes, a detailed needs analysis must be carried out before the most appropriate measures can be selected. For example, the number of customs declarations, rejections and reasons for them must be measured using a different method than that used, for example, to evaluate the results of physical controls. The implementation plan must include a strategy of how to measure the different elements of the change process.

In spite of the differences that have been pointed out, the process of change in these various organisations can also be viewed in more general terms. For example, are there any common characteristics or fundamental similarities between the various change processes? Upon deeper reflection it appears that, in general terms, the change problem has both a content and process dimension,[25] irrespective of the desired end-result. Change management literature describes a wide range of change models that mostly focus on the private sector. However, these models cannot always be applied to the public sector because their pre-conditions are so different. For example, if a customs administration were to adopt a process-orientated organisational structure, problems would immediately arise owing to the considerable differences in carrying out customs controls and processing customs declarations. The declaration system follows a certain procedure that resembles a process whereas controls are determined by rapidly changing conditions.

In order to recognise the conditions for a change process, it is necessary to have a clear view of the conditions under which the organisation operates and how they can influence the change process. In general, conditions can be divided into two groups: external and internal. The external international environment (for example, World Trade Organization [WTO], WCO, EU and international treaties/conventions) of a customs organisation influences customs law, procedures and regulations on a daily basis. The flow of trade and national regulations (for example, the *Public Service Act*) also influence conditions such as staff numbers, the salary system and bureaucracy. Internal conditions for a change process include staff education levels, the working environment, human resource management and routines relating to the delegation of power or reorganisation.

In the following, I list the most important internal conditions in a customs organisation that can influence whether the change process is successful and sustainable:

- political will and support as a long term commitment
- funding for the change program over and above normal operational costs
- political and organisational stability: the DG should be contracted for the duration of the change process in the interests of continuity
- skills in strategic planning and management that reflect the aims, conditions and leadership requirements of the change process
- an appropriate 'business' culture with the applicable law, procedures and administrative routines in good order and the capability to achieve a high level of compliance
- an effective change management strategy that is communicated to key stakeholders
- a human resource management strategy as a part of the wider strategy of change
- an appropriate organisational structure to communicate business objectives at operational levels
- effective routines for change process, if necessary
- effective planning and performance measurement for the change process in all sectors that reflect a quality approach
- analysis of technical innovation: the automation and migration of 'old' systems and procedures as well as the development of new ones, if necessary
- a transparent management information system in order to collect and spread the information relating to the change process
- identification of strategic partnerships (particularly with stakeholders) and preparedness to reach agreements that adopt a customer-based approach
- voluntary, informed compliance with traders and other stakeholders
- transparency and integrity as foundations for the change process
- effective dispute resolution mechanisms.

Those most directly involved in the design and implementation of change management strategies must be aware of these internal conditions and take account of their inherent limitations and opportunities. Capacity building in Customs, for example, depends on these conditions.[26]

Change management strategies

The preparation for change must begin with a familiarisation with the conditions referred to above. Consequently, the top management in any organisation must carry out a preparatory analysis. Nickols provides a brief summary of four basic change management strategies that highlight certain characteristics of human behaviour and these are outlined in the following table.[27]

Table 1: Basic change management strategies

Strategy	Description
Empirical–Rational	People are rational and will follow their self-interest — once it is revealed to them. Change is based on the communication of information and the proffering of incentives.
Normative–Reeducative	People are social beings and will adhere to cultural norms and values. Change is based on redefining and reinterpreting existing norms and values, and developing commitments to new ones.
Power–Coercive	People are basically compliant and will generally do what they are told or can be made to do. Change is based on the exercise of authority and the imposition of sanctions.
Environmental–Adaptive	People oppose loss and disruption but they adapt readily to new circumstances. Change is based on building a new organization and gradually transferring people from the old one to the new one.

Nickols also points out that over 30 years of experience in working with organisational development has taught him that successful change efforts inevitably involve a combination of these change strategies. This leads to the next important question, that is, what are the factors that determine the choice of change strategy?

An analysis of the existing situation demands consideration of a number of aspects relating to staff (for example, their competence, willingness or resistance to change) and conditions for the change process. In particular, the following factors must be considered.

Degree of resistance

If staff demonstrate strong resistance to change, it is recommended that a combination of power-coercive and environmental-adaptive strategies be adopted. By the same token, weak resistance or support suggests combining the empirical-rational and normative-reeducative strategies.

Concerning Latvian SRS/Customs, the degree of resistance is due in part to historical experience of the administrative culture of the communist system. At that time, the bureaucratic control system meant that it was impossible to develop the organisation without first obtaining the permission of the politburo. It was very difficult to initiate changes and still survive in that system and, as a result, it bred passivity, stagnation and bureaucracy. Today, the Public Service Act and other national regulations (such as the decision-making procedures of the SRS) can also generate resistance to change because it is sometimes necessary to amend legislation before a change process can be initiated.

As I stated earlier, the needs for change are increasingly triggered by external factors, for example, international standards and requirements. As a result, it becomes even more important to communicate these requirements at all bureaucratic levels in order to raise awareness of reform process since bureaucracy represents one pillar of resistance. Organisations that struggle with a formidable internal bureaucracy must first of all ascertain the extent to which their own bureaucracy impedes progress.

To summarise, change agents should not ignore existing circumstances and pre-conditions but deliver a clear message of what can and cannot be changed. The question of the best way to deal with resistance that is nearly always present in all organisations, can only be answered once the pre-conditions for the changes in question have been understood. As a rule, resistance can be addressed and reduced by a combination of the right approach and comprehensive information.

Target population

In the case of a large target group, it is advisable to combine all four strategies. This approach ensures that the change strategy will take account of all interests at stake in some way.

The approach to change must be designed with the respective target group in mind. A number of aspects, for example, people's competence, human factors, legal power, cultural background and traditions, may influence people's perception of the strategy. Accordingly, it must also be presented in an understandable, adaptive manner, for example, taking into consideration people's educational background. It is also worth noting a person's position within the organisation: customs officers who perform specific or narrowly-defined tasks in the lower echelons of the hierarchy will need more time and information to perceive and understand the needs for change than those employed at a more central level.

Stakes at issue

When the stakes are high, every effort must be made to implement the changes in question. Therefore, a combination of all four strategies is recommended.

As mentioned above in the pre-conditions for change, change can be initiated by external factors, for example, new legislation, procedures, IT systems and new requirements affecting customs control. A typical example of high stakes was Latvia's accession to the EU. The implementation of EU legislation was an obligatory requirement and not simply optional or motivational. Similarly, Customs is powerless to regulate the flow of trade: the organisation can only adjust its resources depending on where the trade goes. Moreover, the failure of a customs administration to adapt to changing circumstances may inflict a heavy cost in terms of trade efficiency.

Timeframe

Change that must be implemented within a short timeframe should adopt a power-coercive strategy. If the timeframes are longer, a combination of empirical-rational, normative-reeducative, and environmental-adaptive strategies is recommended.

Change efforts must comply with the timeframes required to implement various parts of the change process. It takes years to develop a new IT system for customs declarations whereas it is possible to change control methods within a couple of months.

Expertise

Depending on whether the organisation has sufficient expertise in change processes, it is advisable to combine these strategies. However, if the organisation lacks the necessary expertise it should select the power-coercive strategy and rely on the strategy designed by its managers.

The choice of strategy also depends on what must be changed and who is to manage the change process. The available skills within the organisation should be assessed in order to establish whether change managers will require the services of external experts in some areas of change.

Dependency

Dependency refers to the mutual relationship between an organisation and its staff. If the organisation is dependent on its people, management will have limited ability to command or demand. Conversely, if people are dependent upon the organisation, their ability to oppose or resist will be limited (mutual dependency almost always signals a requirement for some level of negotiation).

Dependency also influences motivation for change and begs the question: what will be the respective benefits for the employee and employer? A change process offers the opportunity to balance or match the needs of both parties by means of negotiation before a decision is taken to appoint a change leader. Usually, it will not be difficult to incorporate the employer's desired changes into the change strategy. On the other hand, the implementation of changes and their effect on the persons involved is a more complicated issue. Issues such as the need for new skills in relation to leadership, change management methods, knowledge of new tasks, and partnership with clients, should all be taken into consideration when appointing change leaders and other key persons. The cost-benefit analysis proves that the value resulting from such investments is often very high.

Conclusions

The more complex the organisation, the greater the number of factors to be considered when starting a change process. The SRS presents a striking example of a complex organisation where many factors are to be considered in order to adjust the changes to the existing conditions. All six factors are worthy of consideration before commencing a large-scale change project. Success will depend on choosing the right change strategies.

This concludes the first part of this contribution on change management. The second instalment will examine the practical application of change management and provide a number of recommendations for an effective change process.

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Endnotes

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27 Nickols 2004, p. 9.

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ORGANISATIONAL DESIGN OF CUSTOMS IN SUB-SAHARAN AFRICA: A CRITICAL EVALUATION

Creck Buyonge

Abstract

Customs services in Sub-Saharan Africa may be categorised into (a) those that are part of the mainstream civil service (b) those that have been given a measure of autonomy and (c) those that have been integrated with tax departments in revenue authorities. The current organisational design features and functions of Customs are related to the new public administration paradigm that started in the 1980s, which in the case of Customs and tax administration, led to the emergence of integrated semi-autonomous revenue agencies. On the basis of organisational autonomy in this new paradigm, a few customs services in Africa (such as Ethiopia and Ghana) have been granted autonomy from the mainstream civil service, while others have been merged with tax administrations in revenue authorities. In both cases, Customs is required to carry out its mandate, which goes beyond revenue collection, in an environment that emphasises the revenue function over any other function. In other countries, mainly in Francophone Sub-Saharan Africa, Customs still operates as part of the mainstream civil service. The extent to which Customs keeps a proper balance between the competing interests will determine its ability to carry out its mandate in line with the demands of the 21st century.

A. Introduction

The current organisational design features for customs services in Africa can be traced back to the structural adjustment reforms initiated in the mid-1980s with the support and leadership of the international financial institutions and donors. These reforms introduced a new public administration paradigm that emphasised the reduction of the role of the state in service delivery, encouraged the deregulation of public enterprises and sought to reduce the scope and cost of government (Economic Commission for Africa 2003). The impact of these reforms on Customs has ranged from:

- temporary outsourcing of functions to a private sector company in Angola and Mozambique (Moïsé 2005)
- awarding of contracts to pre-shipment inspection (PSI) companies to verify the price, quantity and quality of imported goods for the purpose of preventing capital flight, commercial fraud and duty evasion, which had been implemented in 30 countries[1] (WTO 1996)
- transformation of the organisation into a semi-autonomous government agency outside the civil service as happened in Ghana in 1986 (Kusi 1998) and Ethiopia in 1997 (Ethiopian Customs Authority 2008)

- placement of Customs in semi-autonomous revenue agencies, as has happened in Botswana, Gambia, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Rwanda, Sierra Leone, South Africa, Swaziland[2], Tanzania, Uganda, Zambia and Zimbabwe
- transformation of Customs within government, as has happened in Senegal.

There is considerable analysis on the outsourcing of Customs operational management in Mozambique. One assessment[3] projects it as a unique innovation that helped raise revenue by 350% in spite of a reduction in tariffs, significantly reduced fraud and corruption, updated legislation, automated customs procedures and reduced clearance times in line with international standards. Overall, the evaluation has been positive, although the management contract had to be extended twice and at the end, there were still issues that had to be addressed. These included the upgrading of border infrastructure (communications and staff accommodation), waning staff morale and discipline as well as ensuring a smooth handover to nationals (Mwangi 2004).

PSI companies have gradually moved away from direct intervention in customs operations towards participating in partnerships with government for destination inspection of imports (for example, in Tanzania), provision of container scanning technology and services (Ghana and Senegal) and pre-shipment verification of conformity to standards (Kenya). PSI work in valuation, tariff classification and origin determination considerably weakened the capacity of Customs to perform such core customs business, and the high inspection costs added to the cost of doing business. This defeated the objective of reducing corruption as importers began colluding with both Customs and PSI staff to reduce their duty obligations.

A number of countries (mainly in Francophone Africa but including Lusophone Angola and Cape Verde, and Anglophone Liberia, Namibia, Nigeria, and Seychelles) have retained the customs administration within the civil service. Even within the civil service, the customs administrations have been organised and re-organised in different ways at different times in their history. For example, the present paramilitary Nigeria Customs Service is a successor to the colonial Direct General of Customs who was appointed in 1891 to collect inland revenue in the Niger Coast Protectorate (Nigeria Customs Service 2008). Decree No. 14 of 11 January 1986 abolished the Board of Customs and Excise and the service was removed from the Federal Ministry of Finance to Internal Affairs to be managed by the Customs, Immigration and Prisons Services Board (Nigeria Customs Service 2008). The Department of Customs and Excise was transferred back to Finance in 1992, when it was also recognised as a paramilitary force with salary grade levels harmonised with those of the Nigerian Police Force.[4]

It is important to note that customs reform is possible within the civil service. Liberia, a post-conflict country, has rationalised clearance from 47 steps to 9, and is re-examining the PSI contract (Ghana Customs 2008a). The Senegalese Customs administration has carried out far-reaching reforms involving a review of customs procedures and processes, automation of procedures and partnerships with the private sector (United Nations Economic Commission for Europe 2006).

This paper examines the organisational design of customs services operating as semi-autonomous government agencies and those operating within semi-autonomous revenue agencies, demonstrating the dynamic nature of both customs policy and administration in Sub-Saharan Africa.

B. Customs *as* a semi-autonomous agency

Customs has been established as a semi-autonomous government agency in Ghana and Ethiopia. Established in 1839, Ghana's Customs, Excise and Preventive Service (CEPS) was transformed under PNDC Law 144 into a semi-autonomous government agency outside the civil service in 1986 (Kusi 1998; Ghana Customs 2008b). The first customs law was passed under colonial rule in 1855 (Terkper 1995). The mission of CEPS is to collect, account for and protect customs, excise and other assigned

indirect tax revenues in a timely manner while facilitating trade, investment and the movement of people and goods across and within the borders of Ghana (Ghana Customs 2008b).

The Ethiopian Customs Authority (ECuA) traces its origins to 1889 when it was established by the government to administer and enforce tariff and other related laws (ECuA 2008). It operated under the Ministry of Finance and Treasury from 1889 to 1923, and then from 1941 to 1996 under the Ministry of Trade. In 1997, it was re-established under Proclamation No. 60/1997 as a Federal Government Organ with its own juridical personality, accountable to the Federal Government Revenue Board (FGRB). It has three objectives:

- collection of duties and taxes on imported and exported goods
- implementation of laws and international conventions related to its objectives
- control of the importation or exportation of prohibited or restricted goods (Government of Ethiopia 1997).

In 2002, the Ethiopian Government established the Ministry of Revenue (MOR) under Proclamation No. 256/1994. The Proclamation fully transferred the aims, powers, and duties of the FGRB to the MOR. In addition, the MOR was given the responsibility for revenue sector reform as well as the supervision and direction of the Ethiopian Customs Authority, the Federal Inland Revenue Authority and the National Lottery Authority. Although it is a government ministry, its mission reads like the mission of a revenue authority: 'to enable government revenue to be collected by performing revenue sector reform programme continuously, laying down modern government revenue collection and administration; raising the awareness of the public and executing revenue laws without discrimination and giving transparent, efficient, fair and effective service delivery' (ECuA MOR 2008).

Has the enhanced autonomy led to achievement of the missions of these two organisations? Manasan (2003) and Kidd and Crandall (2006) doubt that it is possible to attribute organisational design per se as a contributor to the effectiveness and efficiency of semi-autonomous government agencies in meeting their objectives. This is due to various methodological difficulties, including difficulties in obtaining reliable data; isolating the impact of exogenous factors such as the quality of national statistics, the economy and economic policy, oil prices and political commitment on revenue performance and isolating the impact of a particular governance model on performance (Kidd & Crandall 2006). Manasan (2003) has pointed to various examples where the tax effort improves significantly after establishment of the new organisation, then stagnates or falls to levels almost equal to the pre-reform period. This has been seen in Argentina, Colombia, Venezuela, Mexico, Tanzania and Rwanda.

In the case of Ghana, it was reported that revenue performance began to stagnate in 1992 after a change in political leadership (Atta-Mills 2002). The financial autonomy of CEPS was assured after the *Revenue Agencies (Retention of Part of Revenue) Act 2002* was passed.[5] Management supervision is now provided by the Revenue Agencies Governing Board (RAGB).[6] The RAGB is responsible for CEPS, Internal Revenue Service and VAT instead of having separate boards for each of these services. A key element in the modernisation of Ghana Customs was the introduction of the Ghana Community Network (GCNet). GCNet is an electronic documentation network, modelled after Singapore's TradeNet, that enables the exchange of data among all players in the import process including Customs, Ministry of Trade, Bank of Ghana, shipping lines, freight forwarders, and banks. This has resulted in the reduction of clearance times from 24 hours to 10 minutes (Walsh 2006). Therefore, continuing political leadership and periodic performance review vis-à-vis organisational objectives is important to avoid lapses.[7]

The Ethiopian Customs Authority has had a measure of success in enhancing revenue collection, establishing and maintaining partnerships with the private sector and automating procedures. It now has a website (http://www.mor.gov.et/ecaweb) hosted by the Ministry of Revenue. The site provides information relevant to various stakeholders including the trading community, travellers and customs

clearing agents such as rates of duty, valuation data, statistical reports, government proclamations, and customs regulations and procedures.

The United Nations Economic Commission for Africa (UNECA) has provided technical assistance in training officials in computer hardware support, operating systems and networking; building skills in web, database and application development technologies and project management and use of Geographic Information Systems tools for better tracking of goods (UNECA 2006).

Revenue collection has also improved although, in some instances, below government expectations. The target for the year ending June 2007 was surpassed and it was reported in August 2008 that there were plans to merge the Ethiopian Customs Authority, the Federal Inland Revenue Authority and the Ministry of Revenue into one entity to be known as the Ethiopia Customs and Revenue Authority. The reason for the anticipated policy shift is because the revenue raised by all the agencies under the Ministry of Revenue (including the National Lottery Administration) as a percentage of the Gross Domestic Product (GDP) was 12.8% against the Sub-Saharan Africa average of 23.4% (Anberbir 2008). If this happens, the organisational design of Customs will have moved to what is the virtual norm in East and Southern Africa.

C. Customs *in* a semi-autonomous revenue agency

In a study prepared for the UK Department for International Development (DFID), Delay, Devas and Hubbard (1998) drew attention to a paradox of the new revenue authority (RA) model that had been created in a number of countries in Africa since the early 1990s: RA was a double-edged sword which could cut both ways. On the positive side, RA was expected to maximise revenue collection; minimise costs of collection; minimise the cost of compliance to taxpayers; enforce limitations on imports and exports; appropriately administer tax law and policies as well as administer the law equitably. On the negative side, RAs saw revenue collection as the be-all and end-all of their existence and ended up hurting taxpayers with over-eager enforcement; corruption still remained an issue; and there were tensions between the RA and the Ministry of Finance. Worse still, the RA design did not shield the agency from political interference. Boards were dominated by government nominees, and members were wont to interfere with the day-to-day running of the agency. Therefore, RAs had organisational autonomy in theory and lacked independence in practice.

The RA was seen as a solution to poor revenue performance, low rates of compliance, ineffective staff and corruption (Kidd & Crandall 2006). Initially, most RAs met with considerable success with improved professionalism in tax collection, reduction in corruption and increased revenue. Has this success been sustainable? Five years after the Delay, Devas and Hubbard (1998) study, Fjelstad, Kolstad and Lange (2003) pronounced a negative verdict in the case of Uganda Revenue Authority (established 1991) and Tanzania Revenue Authority (established 1996):

> In Uganda, the reforms appeared to be a success in URA's first six years of existence. Reported tax revenue increased sharply – from 7% of GDP in FY 1991 to more than 10% in 1997. Corruption seemed to be declining too. But since then, the tax-to-GDP ratio has stagnated. There are also clear indications that corruption is on the rise again. The Tanzania Revenue Authority has experienced a similar development, though the decline in the tax-to-GDP ratio and rise in corruption came faster compared to the URA: reported revenue increased in TRA's first year of existence from about 10% of GDP in 1996 to almost 11% in 1997. Thereafter, the tax-to-GDP ratio has declined.

RAs were established using the executive agency (EA) model. EAs are given relative autonomy from control by the central government in terms of day-to-day operations, budget and human resource management policies including determination of reward systems. In Tanzania, the operations of executive agencies are governed by the *Executive Agencies Act, 1997*. The Act sets out the framework for 'the

establishment and operation of semi-autonomous executive agencies within the ambit of Government Ministries for the purpose of providing public services in selected areas in a more efficient and effective manner and for related matters'.

EAs may be established by one department in a ministry, or by a combination of two or more departments.[8] Therefore in the case of most revenue authorities, the EA combines the operations of the Customs and Excise Department, Income Tax Department and Value Added Tax Department. Section 3(2) of the Tanzanian Act requires the Minister to use the following criteria to determine whether establishing the EA will achieve the following objectives, namely to:

• improve the delivery of public services
• create an environment conducive to efficient and effective management
• improve the quality of the services hitherto offered by the department concerned
• promote the potential for continuous improvement of the services provided by the Executive Agency.

While the *raison d'être* for revenue authorities is assumed to be revenue collection, the study by Kidd and Crandall (2006, p. 44) found that '… customs organizations within an RA tend to remain separate from the tax administration'. Why is this so? According to Kidd and Crandall (2006, p. 44):

> This is likely because of the inherent "real-time" nature of customs operations compared to tax administration, and because customs must carry out its operations where it has physical control over its transaction environment (border crossings, international airports, secure warehouses, and so on). Furthermore, there appears to be a widening non-fiscal role for customs (security-related) that will tend to keep it apart. These different features of customs operations tend to preclude the true integration of business processes and client services with tax operations and, thus, reduce the scope for effectiveness and efficiency gains, such as are possible with the integration of direct and indirect tax operations.

Due to the real-time nature of customs operations, Customs laws allow greater discretion to the frontline officer. In passenger clearance, no person is allowed to remove any baggage from the baggage hall unless the proper officer authorises such removal (*East African Community Customs Management Act 2004* [EACCMA] s. 45(3)), the form of the declaration is at the discretion of the proper officer (EACCMA s. 46(1)) and the duty free allowance for passengers' baggage and personal effects is to a certain extent made at the discretion of the proper officer (Fifth Schedule Part B Item 5 (1) and (7)).

The exercise of discretion is fraught with the danger of abuse and leads to perceived and real corruption in Customs even within a revenue authority model. In this regard, Taliercio Jr. (2004) reports of the Kenya Revenue Authority that 'significant corruption exists, especially in customs'. While the situation may have changed since this was written, there are still frequent reports of Customs staff dismissals on allegations of corruption.

Compared to the tax departments, there are a greater number of sources of customs law and (in the case of East African Community Partner States) these include the relevant provisions of the Treaty establishing the East African Community (EAC), the EAC Protocol and Annexes, Regulations and Directives made by the Council of Ministers, applicable decisions by the Court, Acts of the Community enacted by the Legislative Assembly (such as the East African Community Customs Management Act) and 'relevant principles of international law' (Art. 39 (f) of the EAC Customs Union Protocol).[9]

The fact that Customs operates at the border donates to it enforcement powers that are broader than powers that are exercised within the borders of a country. Therefore, Customs has powers to intercept people, goods and means of transport that may have violated laws that go beyond the provisions of the basic law. This is expressly provided for in the Customs legislation, for example in the EACCMA:

- coordination of the administration of Customs within the Partner States is placed under the EAC Directorate of Customs
- prohibited goods include '(1) All goods the importation of which is for the time being prohibited under this Act, or *by any written law for the time being in force in the Partner State'* [emphasis added]; and '(8) Hazardous wastes and their disposal as provided for under the base conventions'[10]
- restricted goods include '(19) Ozone Depleting Substances under the Montreal Protocol (1987) and the Vienna Convention (1985)' and '(22) Endangered Species of World Flora and Fauna and their products in accordance with CITES March 1973 and amendments thereof'.[11]

Historically, entry to Customs was not based on any specific educational or professional qualifications.[12] Therefore, with the onset of the revenue authority and its emphasis on a minimum of a first degree for specified posts, many customs officers with many years' experience found themselves at a disadvantage when it came to getting promoted into the higher ranks. It didn't help matters that Customs' procedures (including its multiple legal sources) were little understood within the revenue authorities. Besides, the role of Customs in controlling the entry of various prohibited and restricted goods that could pose a threat to the safety and security of the nation could not be directly correlated to revenue collection.

For the foregoing reasons, Customs in revenue authorities find themselves with a number of challenges, including but not limited to:

- how to carry out the full mandate of Customs (revenue plus other responsibilities) within an organisation whose appellation, vision and mission emphasises its revenue function over other functions
- seeking and obtaining funding for procurement of human resources and technology for its non-fiscal functions
- inducting new officers (and developing serving officers) with the skills, knowledge and attitudes to work in Customs, yet with the flexibility to work in other areas of the revenue authority including the tax departments
- how to operate in a fast-changing regulatory environment (shifting government policies and regional/ international legal and regulatory environment)
- measuring its performance in non-fiscal functions while ensuring optimum (not maximum) revenue collection.

D. Conclusions

Regardless of organisational design, customs services are inextricably linked to the state. Therefore, the public sector reform programs that began in the 1980s with emphasis on a new way of managing public affairs have had a greater impact on Customs than on the administration of VAT and Income Tax. Some of the extreme cases that have been witnessed include the temporary outsourcing of customs services to a private company under a management contract (in Angola and Mozambique) to the handing over of the core customs technical functions of valuation, tariff classification and origin determination to PSI companies. Beginning with Ghana Customs in 1986, many Customs Services in Africa have been either given greater autonomy or merged with other revenue departments as semi-autonomous government entities.

In spite of the complexities of customs operations in a revenue authority environment, it is not anticipated that any customs administration in Sub-Saharan Africa will be de-linked soon from a Revenue Authority. In fact, we are likely to see more customs administrations that directly report to Ministries of Finance hitched with tax departments in revenue authorities. If Ethiopia decides to integrate the functions of Customs and tax in a new semi-autonomous revenue entity under the Ministry of Finance, Ghana's organisational design will be the exception. We have seen that many Francophone countries have

resisted the temptation to go the revenue authority way. However, it was reported recently that there were plans in the pipeline to set up a revenue authority in Burundi.[13] Burundi may therefore become the first Francophone country in Africa, and it remains to be seen whether other countries will follow. Burundi's membership of the East African Community would motivate it to adopt the same organisational design for revenue, given that all the other EAC members (Kenya, Rwanda, Tanzania and Uganda) have revenue authorities.

The location of Customs in a revenue authority is fraught with both opportunities and risks. Opportunities include the ability to exchange information with the tax department leading to higher rates of offence detection, transfer of such skills as tax auditing and upward mobility by applying for vacant positions in the revenue support departments where the core skills of Customs may be required (for example, Investigations and Intelligence). On the negative side, customs officers may be disadvantaged if they do not make efforts to improve their skills and knowledge in the workings of the revenue authority beyond the specific skills and knowledge required to work in Customs. As well, it is expected that the tension between the emphasis on revenue collection and the requirement for Customs to carry out important non-fiscal functions will continue. How to keep a proper balance will determine the contours of Customs in the 21st century.

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Endnotes

1   The 30 countries included Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Comoros, Côte d'Ivoire, Democratic Republic of Congo, Ghana, Guinea, Kenya, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Tanzania, Togo and Uganda.

2   The Swazi Revenue Authority Bill establishing the Swazi Revenue Authority was passed by both Houses of Parliament in 2007. See Hlengiwe Ndlovu, 2008, 'Revenue Authority Commissioner General not yet recruited – Majozi', *The Swazi Observer*, http://www.observer.org.sz/main.php?id=46049&section=Business.

3   By Crown Agents, 2006.

4   In comparison, the Canadian Border Services Agency was created in 2003 as a new agency under the Prime Minister's Office, Ministry of Public Security and Emergency Preparedness, merging the functions previously carried out by Customs (from the former Canada Customs & Revenue Agency), Immigration Canada and the Food Standards & Inspection Agency.

5   Section I of the Act reads as follows: 'Each of the following institutions:

   Internal Revenue Service

   Customs, Excise and Preventive Service

   Value Added Tax Service

   shall for the carrying out of its functions and for the payment of salaries, allowances, operational and administrative expenses and other expenditure, retain an amount as may be determined by the Minister not exceeding 3 per cent of the total annual revenue it collects'.

6   *Revenue Authorities (Governing) Board Act, 1998,* Act 558 of Ghana.

7   For example, in August 2008 a number of importers made serious allegations of corruption and extortion against CEPS and Police officers at a public forum organised by the Ministry of Finance and Economic Planning under the Financial Literacy Programme contained in the 2008 Budget Statement. See 'Importers accuse CEPS, cops of bribery', *Daily Graphic,* 2 August 2008, viewed 30 August 2008, http://news.myjoyonline.com/business/200808/18959.asp.

8   In Ethiopia, the Ministry of Revenue supervises three semi-autonomous agencies: Ethiopian Customs Authority, the Federal Inland Revenue Administration and the National Lottery Administration.

9   The example from the East African Community Partner States is for illustrative purposes. Any customs service is expected to enforce laws related to regional trade including preferential trade schemes, international conventions and bilateral/multilateral laws and agreements in addition to the basic domestic law.

10 *East African Community Customs Management Act 2004,* Second Schedule, ss. 18, 19, and 20, Part A – Prohibited Goods, (1) and (8), p. 156.

11 *East African Community Customs Management Act 2004,* Second Schedule, ss. 18, 19, and 20, Part B – Restricted Goods, (19) and (22), p. 158.

12 Thus, in the case of the Nigerian Customs Service, Comptrollers Generals of Customs have included a former veterinary doctor in the Sokoto Public Service, Dr Bello Harilu Mohammed (1988-92) and a military engineer, Major General Song Ango (1992-99). See Musa 2008.

13 During the 23 Meeting of the East African Revenue Authorities Commissioners General held in Kigali, Rwanda in December 2007, Burundi's Director General of Customs, Mr Ezechiel Nibigira, said that Burundi loses a lot of revenue because it does not have a national tax body and reported that Burundi would have a revenue authority by July 2008 (Hitimana 2007).

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ACHIEVING SUSTAINABILITY IN CUSTOMS CAPACITY BUILDING

Stephen Holloway

Abstract

The importance of customs reform and modernisation to improve the efficiency and effectiveness of international trade is recognised in the World Trade Organization's Doha Round negotiations on trade facilitation. Capacity building in support of such reform and modernisation is an important aspect of trade facilitation and its requirement for technical assistance for developing and least-developed countries. Achieving success and sustainability of capacity building outcomes is an issue that has confronted many international and donor organisations and it is possible to discern some key elements directly relevant to the success and sustainability of capacity building programs. These key elements have been identified and incorporated in the World Customs Organization's Columbus Programme for customs capacity building and if applied strategically and correctly, will provide lasting benefit to government and business.

Customs modernisation as a component of trade facilitation

Before discussing the issues surrounding capacity building and the role that sustainability plays in relation to capacity building in Customs, it is worthwhile considering why the efficiency and effectiveness of customs processes are important to international trade.

In 2004 trade facilitation was included as part of the World Trade Organization's (WTO) Doha Round of multilateral trade negotiations. The inclusion of trade facilitation reflected the realisation among members of the WTO that while the average level of import tariffs has been progressively falling since the inception of the General Agreement on Tariffs and Trade (GATT) in 1948, so-called non-tariff barriers have assumed a correspondingly greater importance in their potential to create trade distortion and inequity.

The inclusion of trade facilitation addresses some of the non-tariff barriers, particularly the processes involved in the movement of goods across borders including customs and other border management agency processes. There are considerable costs associated with these processes which have been well analysed in recent times through publications such as the World Bank's 'Doing Business' series and 'The Global Enabling Trade Report 2008' released by the World Economic Forum. For example, while OECD countries require on average about five documents and clear goods in an average of 10 days at an average cost of approximately US$950 per container, in sub-Saharan Africa almost double the number of documents is required and goods take from 35 days (for exports) to clear and up to 44 days (for imports) at an average cost of US$1,660 and US$1,986 respectively.[1]

That example not only highlights the costs involved in moving goods across national borders, it also highlights the potential to improve competitiveness through reducing 'red tape' and making the clearance process more efficient. This potential can be realised primarily through a focus on procedures at the border, which means Customs, both directly in terms of its function and processes and less directly in terms of the role it plays within government alongside other border management agencies.

The mandate for the WTO negotiations on trade facilitation is couched in language that does not mention customs reform and modernisation per se. Rather it states that there are three objectives:

- to clarify and improve GATT rules on the movement, release, and clearance of goods, including goods in transit, with the aim of reducing the transaction costs of trade
- to develop special provisions for developing countries and least-developed countries and provide them with technical assistance and capacity-building support that will help them to implement better trade facilitation policies and practices
- to improve communication and cooperation between the customs authorities of WTO members.

The actual mechanism for achieving that mandate has been defined around the available provisions within GATT as it presently stands, that is, through the improvement of three GATT articles:

- Article V – facilitating transit trade
- Article VIII – border fees and formalities
- Article X – transparency of trade regulations.

While not explicit, each of these GATT articles involves customs procedures. Customs reform and modernisation to achieve efficiency and effectiveness is therefore not only a legitimate focus in terms of the potential benefits that it can deliver, there is a WTO mandate to do so in the context of the current Doha Round.

However, to embark on customs reform and modernisation requires consideration of what is sought to be achieved and how to achieve it. This leads naturally to a discussion of capacity building both generally and in the context of Customs. Much has been written on what leads to a successful capacity building outcome and in the context of Customs, this has been captured by the World Customs Organization (WCO) in the Columbus Programme which I discuss below. It is, however, worthwhile distilling those features of capacity building that have been considered by other organisations to be preconditions for success and comparing them to the Columbus Programme. When this is done, the importance of sustainability as both an ingredient and an outcome of capacity building comes through strongly.

Features of successful capacity building

Any international or donor organisation that has been involved in a project to deliver technical assistance has confronted the issue of how to achieve a successful outcome for that project. As well, much has been written about what constitutes the key elements of successful capacity building. This paper does not attempt to capture all that has been written in that regard but it is possible to discern some common threads.

1. Coordination

This refers to the coordination of stakeholders such as government agencies and businesses that have an interest in the outcome of the capacity building as well as to coordination between the international and donor organisations themselves to take advantage of synergies that exist between respective programs. Without such coordination, problems of duplication and waste can arise.

Proper coordination 'ensures that programmes are based on agreed best practices, designed to suit the specific needs of individual countries and are not a short-term measure, but are instead aimed at producing sustainable benefits…'[2] Proper coordination also recognises that 'there is also a complex partnership between donors and various government agencies with different priorities, operating arrangements, timeframes and resources. A delicate balance must be established between the donor's own trade policy agenda and the developing country's needs and priorities'.[3]

2. Commitment

There must be political commitment to the reform process since without such commitment, funding the necessary reforms becomes problematic at best. There must also be a commitment to success from all of the stakeholders within the public and private sectors otherwise the capacity building will be fraught with difficulty and any benefits will tend to be short-term. In other words, sustainability won't be achieved.

3. Ownership – adapting to specific needs

It is axiomatic that every country has its own particular socio-economic context and its own particular needs in relation to capacity building. It is therefore critical that projects do not adopt a 'one size fits all' approach. Such an approach to capacity building does not work and furthermore tends to alienate local stakeholders and is counter-intuitive to the achievement of sustainability.

Due regard must be given to the actual circumstances, relevant infrastructure and needs of the particular administration undertaking the reforms. This 'context-setting' should be established early in the start-up phase of any capacity building project. This is not to say that common or internationally recognised standards are ignored (see 6. below) but those standards may need to be 'tailored' or adapted to the specific country context.

An opportunity exists at this time to obtain 'buy-in' from those who will be affected either directly or indirectly by the proposed reforms. If 'ownership' of the reforms can be achieved early in the project and subsequently maintained, there is much greater likelihood of success and sustainability of the reforms. Stakeholders will feel that their opinions are valued if a process that encourages their ongoing involvement (discussion forums and public communication mechanisms) is put in place to help build confidence in the overall reform process. This approach serves to build strong institutions and enhance existing ones and contributes to sustainability of the capacity building effort. It represents best practice change management and is core to this element of successful capacity building.

4. Needs assessment

An early step in any capacity building program, along with the context-setting mentioned above, is to assess the particular needs of the individual country or countries in question and analyse those needs against the stated objectives of the program. This may involve undertaking a diagnostic check, benchmarking and a gap analysis to establish a baseline against which success will later be measured. Each of these steps is directed toward establishing the specific reforms that may be required for the particular country in order for it to meet its stated objectives with respect to capacity building.

In a very real sense this process is about getting 'value for money'. A decision to embark on capacity building is a decision to make a significant investment and it is crucial to have a clear understanding of the objectives to be achieved and how success or otherwise will be measured. (The importance of measurement is discussed in 8. below). It may seem self-evident but all too often administrations are led along by well-meaning donor organisations and their consultants who offer a standard or even 'off-the-shelf' solution that may have worked somewhere else. But that doesn't guarantee success on this occasion. The specific needs and objectives of the particular country or countries must be accurately assessed and articulated into specific programs for those seeking capacity building assistance.

5. Improving management capacity

Improving management capacity is directly related to sustainability in two respects: firstly, if 'local' skills are developed to manage the organisational change that is inherent in many capacity building programs, the 'ownership' that was referred to previously will be enhanced. Secondly, improving management capacity will contribute to the ongoing durability and maintenance of the reforms achieved

by the program because the reforms and the manner in which they were achieved will be well understood by management. If further changes or refinements are necessary they can be undertaken locally, without the expense of contracting external advisers and/or consultants to undertake those tasks.

6. Use of common standards

As mentioned previously, it is critical that the specific needs and objectives of the country or countries seeking capacity building assistance are addressed but this should not be at the expense of utilising common or international standards where relevant.

This element is pertinent to customs capacity building because the WCO has established just such international standards and best practice with respect to customs procedures in its Revised Kyoto Convention and the Framework of Standards to Secure and Facilitate Global Trade. Having reference to such standards and best practices when undertaking a capacity building program achieves coherence and ensures interoperability with other customs administrations thereby reducing overall costs at both strategic and transaction levels. This also adds to the sustainability of the capacity building.

Any training that is conducted as part of capacity building should reinforce such standards and best practices rather than simply focus on national or regional variations of the standards, although it is still important to take those variations into account in the context of emphasising best practice. This is where international organisations can add considerable value to capacity building because the harmonisation of rules and standards is often a significant part of their raison d'être.

7. Adopt a holistic approach

This element recognises that capacity building can cut across a range of different government departments and has the potential to impact on a diverse range of public and private sector interests. A holistic approach is closely related to the elements of coordination and ownership discussed above and again, is particularly relevant to customs capacity building because any program that seeks to reform and modernise border management processes must acknowledge that border management involves a multitude of tasks and activities, some related to facilitation and others to control. In many countries border management involves several government agencies each of which has its own specific responsibilities and powers to exercise at the border.

Anything less than a holistic approach will create imbalances in the reforms and lead to inefficiencies. For example, it is possible to reduce clearance costs to government and business by rationalising the number of agencies that are allowed to intervene at the border but successful rationalisation relies on trust between different agencies and a robust communication and service delivery mechanism. A holistic approach to capacity building in this regard can support a successful and sustainable outcome; a piecemeal or ad hoc approach will emphasise differences and weaknesses.

8. Measurement – monitoring and evaluation

As mentioned earlier when the issue of needs assessment was discussed, it is important to identify and articulate the objectives of the capacity building program. But how is the success of the capacity building program to be measured? What are the desired metrics that will be measured to provide the government and the donor organisation with an objective view of whether or not the investment in reform has been worthwhile?

Agreement on measurement including key project benchmarks and a monitoring and evaluation process lends transparency to the capacity building program and should be settled very early in the project initiation phase. Taking a needs assessment early provide a baseline against which improvements can be measured: if performed accurately, it provides the donor organisation and the donee government

with an indication of the likely viability of a capacity building program before a large amount of funds has been disbursed. Of course, a needs assessment also serves to identify the critical components of the proposed capacity building and how they might be prioritised. These become the key benchmarks that are monitored and evaluated through the project life cycle and at its conclusion.

Summary

If all of these elements are taken into account and applied correctly and appropriately the result should be *sustainable* capacity building that brings with it long-term benefits to both government and business.

What is customs capacity building?

The WCO defines capacity building in the context of Customs as: 'activities which strengthen the knowledge, abilities, skills and behaviour of individuals and improve institutional structures and processes such that the organization can efficiently meet its mission and goals in a *sustainable* way'[4] (emphasis added).

The WCO definition acknowledges the perspective of customs administrations as an arm of government but it is equally important to acknowledge the perspective of business. Effective customs capacity building that improves the efficiency of clearance processes reduces the cost to business of importing goods into or exporting goods from a country.

> Many countries are concerned that difficulties related to the lack of trade facilitation disciplines (such as delays at borders, complicated and unnecessary documentation requirements, and the lack of automated processing) lead to business losses that often exceed the costs of tariffs.[5]

Any delay in getting goods across a national border affects the competitiveness of individuals and companies through the need to maintain additional inventory or through loss of business opportunities, so a reduction in clearance times either directly or through reduced paperwork reduces those costs. In other words, effective customs capacity building can benefit both government (maximising revenue collection and greater attraction of investment) and business (lower costs and improved competitiveness). Sustaining such reforms over time rather than as a one-off concession has obvious attractions to government and business.

> Capacity building should improve the efficiency of the supply chain, enabling cost effective control and revenue collection, lower inventory levels, and ensure a predictable and secure supply.[6]

The WCO's flagship capacity building program is the 'Columbus Programme', which was initiated in January 2006 to 'foster sustainable Customs modernisation and implementation of the WCO Framework of Standards to Secure and Facilitate Global Trade, the WCO Revised Kyoto Convention, and other trade facilitation standards and best practices'.[7]

The WCO's capacity building strategy identifies six key principles for a successful reform and modernisation outcome:[8]

1. Accurate diagnosis of capacity building needs and the development of country-specific responses.
2. Sustained high-level political will and commitment.
3. Enhanced cooperation and coherence.
4. Greater ownership by and participation of Customs personnel.
5. Realistic government and donor expectations.
6. Adequate human and financial resources devoted to capacity building initiatives.

It should be noted that these six principles align closely with the key elements discussed above in relation to capacity building generally.

The WCO's Columbus Programme

As previously highlighted, the Columbus Programme is the key means by which the WCO seeks to build capacity within and across customs administrations. It applies three phases, consistent with capacity building best practice, to achieve customs modernisation: needs assessment, implementation and monitoring.

In relation to the needs assessment phase the WCO uses a 'Diagnostic Framework' to assess the current capacity of the customs administration requesting assistance and to further identify any gaps between that capacity and the modernisation objective to be achieved. The diagnostic process references ten areas to determine the capacity of the relevant customs administration:

1. Leadership and strategic planning
2. Customs systems and procedures
3. Organisational and institutional framework
4. Legal framework
5. Resources (human, financial and physical)
6. Information technology
7. External cooperation and partnership
8. Change management and continuous improvement
9. Governance
10. Management information and statistics.

The WCO has consciously involved other international organisations, customs administrations and the private sector in the design and implementation of the Columbus Programme, including participation in diagnostic missions.

'Sustainability' as a component of customs capacity building

Sustainability is something that donor organisations should be seeking to achieve in every project whether customs-related or otherwise. As stated in an OECD Working Paper on trade capacity building in relation to the trade policy process: 'Supporting the structuring and the sustainability of such a process – in countries where it is inefficient or close to non existent – is what donors should aim at'.[9]

Sustainable outcomes should equally be a key objective for customs capacity building both as a concept and as part of the mechanism for implementing customs reform and modernisation. There can be no question that positive and sustainable reform is preferable to short-term gains. There are any number of examples of donor-funded projects where an offer of technical assistance is gratefully accepted by the recipient administration, the technical assistance is duly provided in relation to a specific project that either does not take account of other related projects or has not been designed strategically, and the funds are applied inefficiently and ineffectively at best or at worst are completely wasted. More often than not the same type of technical assistance is offered by other donor organisations at a different time and again, gratefully accepted but ultimately, with the same outcome, and so the cycle continues.

Where might customs administrations focus their attention to achieve sustainable reform? Some guidance is provided by the WCO itself as distilled from diagnostic missions:

> Customs need assistance in putting theory and awareness into action. In particular, they are asking for support to develop the business skills, such as strategic planning, contracting, information and communications technology usage, and project management, sequencing of development. There is inadequate application of modern Customs controls to support a secure and facilitated approach.[10]

And:

> To make trade facilitation improvements sustainable and to improve facilitation further, it is essential to develop Customs compliance management skills and to implement modern and effective compliance and control systems.[11]

Perhaps the most sustainable reform of all for customs administrations is skills development for management and staff with respect to modern customs theory and practice. This creates a long-term knowledge asset for the customs administration, reduces reliance on costly external advice and allows more effective participation in trade policy processes.

Ultimately, successful capacity building of any kind, including customs capacity building, requires a strategic approach with continual benchmarking to sustainability utilising the key elements discussed above and incorporated within the Columbus Programme. It is important that customs administrations considering a capacity building program be committed to long-term improvement of their border processes not just short-term solutions to deal with the issue of the moment. A long-term focus provides the foundation for sustainability and provides equivalent benefits to government and business that make the country itself more attractive for trade and investment.

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1 World Economic Forum 2008, ch. 1.2, p. 36.
2 Boksburg Group 2005, p. 2.
3 APEC WTO Capacity Building Group 2005, p. 10.
4 WCO June 2003; see also WCO June 2007.
5 APEC WTO Capacity Building Group 2005, p. 4.
6 ICC 2007, p. 4.
7 Available at www.wcoomd.org; see also www.gfptt.org.
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THE ROLE OF CAPACITY BUILDING IN ACHIEVING CONSISTENT APPLICATION OF INTERNATIONAL INSTRUMENTS

David Widdowson

Abstract

The international customs community is placing increasing importance on global cooperation, harmonisation and mutual recognition of regulatory compliance assessment. For such strategies to be effective, three basic requirements must be fulfilled: the need for a comprehensive international regulatory framework; the need for consistent interpretation of the framework; and the need for consistent application of the framework. Numerous examples of international regulatory frameworks exist in the form of conventions, agreements, guidelines and the like, which seek to establish global standards in their particular area of relevance. In many but not all cases, member states achieve a reasonably high level of consistency in interpretation, as reflected in their national legislation. Consistency of application, on the other hand, is heavily dependent upon the capacity of an administration and individuals within the administration to effectively apply the regulatory provisions. This paper examines global responses to this issue.

Background

The international customs community is placing increasing importance on global cooperation, harmonisation and mutual recognition of regulatory compliance assessment. For such strategies to be effective, three basic requirements must be fulfilled: the need for a comprehensive international regulatory framework; the need for consistent interpretation of the framework; and the need for a consistent application of the framework.

At the recent World Customs Organization (WCO) Asia Pacific Regional Heads of Administrations Conference in New Delhi (WCO 2008a), the significance of these three basic requirements was raised in the context of the WCO Framework of Standards (WCO 2006), where it was noted that consistent interpretation and application of the Framework represented critical elements in the achievement of mutual recognition of the concept of Authorised Economic Operator (AEO).

Such consistency is a fundamental requirement of the international trading community, which is seeking certainty, clarity, flexibility and timeliness in its dealings with government.[1] This proposition has recently been reinforced by the World Economic Forum (2008, pp. 54-55) which comments: 'professionals view the friendliness of border processes primarily in terms of the transparency and the predictability of clearance procedures'. De Wulf and Sokol (2005, p. 8) make the point rather more bluntly when commenting on the role played by Customs in meeting an economy's international obligations, commenting that 'travellers, businesses, and international air, sea, and land carriers expect services that are uniform, predictable, easy to use, and consistent with international standards and conventions'.

International frameworks

The International Organization for Standardization (2008) describes the concept of international standards in the following manner:

> When the large majority of products or services in a particular business or industry sector conform to International Standards, a state of industry-wide standardization exists. The economic stakeholders concerned agree on specifications and criteria to be applied consistently in the classification of materials, in the manufacture and supply of products, in testing and analysis, in terminology and in the provision of services. In this way, International Standards provide a reference framework, or a common technological language, between suppliers and their customers. This facilitates trade and the transfer of technology.

In a similar vein, cross-border regulatory standards emerge when economies reach agreement on the policies and procedures to be applied consistently to the regulation of international trade, transport and travel. Numerous examples of international regulatory frameworks, both binding and non-binding, exist in the form of conventions, agreements, guidelines and the like, which seek to establish global standards in their particular area of relevance, including those established by the World Trade Organization (WTO), WCO, the UN Conference on Trade and Development (UNCTAD) and the UN Economic Commission for Europe (UNECE).

The WCO Framework of Standards, referred to earlier, is one such agreement. The Framework is quite explicit in identifying the need for an internationally consistent approach to cross-border regulatory requirements, stating that 'Customs administrations should not burden the international trade community with different sets of requirements to secure and facilitate commerce, and there should be recognition of other international standards. There should be one set of international Customs standards developed by the WCO that do not duplicate or contradict other intergovernmental requirements' (WCO 2006, p. 2).

The importance of international standards in the context of world trade can also be demonstrated by reference to the work of the International Maritime Organization (IMO). According to the IMO, it 'has made it a practice to pursue the universality of regulation in shipping without detracting from regional practices. As ships move between different waters and jurisdictions, it is imperative that they are governed by uniform standards, applied to and recognised by all…international standards – developed, agreed, implemented and enforced universally – are the only effective way to regulate such a diverse and truly international industry as shipping' (United Nations 2008).

There are literally hundreds of examples of regulatory frameworks that have been developed in an effort to simplify, harmonise and standardise the cross-border movement of people, goods and modes of transportation, and one would expect the effective global implementation of such frameworks to result in the policy outcomes that have been negotiated and agreed. As previously noted, however, this is unlikely to occur in the absence of a consistent interpretation and application of those agreements.

Consistent interpretation

In many but not all cases, the establishment of international regulatory standards results in a reasonably high level of consistency of interpretation among the relevant member states, as reflected in their national legislation. In the context of Customs, this is most evident in relation to national adoption of the international standards for issues of a more technical nature, such as tariff nomenclature[2] and customs valuation[3].

In other areas, however, significant inconsistencies are apparent. Again using the WCO Framework of Standards as an example, some members of the WCO have chosen to interpret the concept of Authorised Economic Operator (AEO) quite broadly, by requiring an AEO to demonstrate high levels of regulatory

compliance as well as appropriate security and safety standards. Other members, on the other hand, have approached the issue from the sole perspective of supply chain security.

The AEO pilot which was conducted in Australia last year, and the scheme adopted by Singapore[4], for example, have a specific focus on supply chain safety and security, recognising that, while potential non-compliance such as under-valuation may impact on the revenue, it is not a relevant factor when determining whether a consignment may or may not pose a security risk. In stark contrast, the administrations of the European Union require an AEO to demonstrate:

- an appropriate record of compliance with customs requirements
- a satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls
- where appropriate, proven financial solvency
- where applicable, appropriate security and safety standards.[5]

Without wishing to argue the relative merits of the two opposing interpretations in the current paper, the relevant point here is that an unfortunate casualty of this failure to agree on the basic AEO criteria is the goal of *mutual recognition* which, according to the WCO, is 'a broad concept whereby an action or decision taken or an authorisation that has been properly granted by one Customs administration is recognised and accepted by another Customs administration' (WCO 2006, p. 54). If one administration requires a company to demonstrate levels of both general compliance and security compliance before being granted AEO status, and another grants AEO status solely on the basis of security compliance, the achievement of mutual recognition is unlikely. This scenario serves to highlight the potential impact of inconsistent national interpretation on international policy objectives.

Consistent application

Recognising however that, in the main, consistent interpretation of international standards at the regional and national level is achieved or achievable, the challenge is to ensure consistency of application. The achievement of such consistency is heavily dependent upon the capacity of an administration and individuals within the administration to effectively apply the relevant regulatory provisions, and this is an aspect of implementation that is often ignored. Eland (2008) puts this succinctly when he says 'Capacity building is about delivery. It is no good us concluding instruments in international meetings if we are then unable to implement them effectively'.

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 trade facilitation agenda is heavily reliant on the ability of customs administrations to achieve an appropriate balance between international trade facilitation and regulatory intervention, particularly in the current climate of heightened international security concerns. Of particular note is the WTO's formal recognition that this cannot be achieved without significant technical assistance and support for capacity building, particularly in respect of developing and least developed countries.[6]

The WTO, WCO, World Bank and many other international organisations (as well as individual developed countries) have pledged their commitment to providing technical assistance and support for such capacity building, recognising that developing countries comprise the majority of WTO membership, with over three-quarters of WTO members identifying themselves as such.[7] The extent of the required assistance to achieve widespread reform is therefore significant, and should not be underestimated. The agreed modalities for negotiations on trade facilitation highlight this point:

> As an integral part of the negotiations, Members shall seek to identify their trade facilitation needs and priorities, particularly those of developing and least-developed countries, and shall also address

the concerns of developing and least-developed countries related to cost implications of proposed measures.

It is recognized that the provision of technical assistance and support for capacity building is vital for developing and least-developed countries to enable them to fully participate in and benefit from the negotiations. Members, in particular developed countries, therefore commit themselves to adequately ensure such support and assistance during the negotiations.[8]

Despite some uncertainty about significant aspects of the WTO negotiations, those relating to trade facilitation appear to remain on track, with capacity building considerations remaining firmly on the agenda. In this regard, an economy's ability to comply with the trade facilitation proposals is seen to fall into three basic categories: those which can be implemented immediately; those requiring time to implement; and those for which both time and capacity building support are required.

Turning again to the WCO Framework of Standards as a further example, it is pertinent to note that considerable effort has been made by the WCO and its members to ensure that individual administrations, particularly those from developing and least-developed nations, are assisted in developing the necessary capacity to effectively implement the Framework. In this regard, the WCO views implementation of the Framework as a fundamental capacity building issue:

The SAFE Framework also considers the critical elements of capacity building and requisite legislative authority. While certain aspects of this instrument can be implemented without capacity building, it is recognized that many administrations will need assistance to implement the standards. The SAFE Framework contemplates appropriate assistance with capacity building for those Customs administrations that adopt it (WCO 2006, p. 2).

Following the adoption of the Framework of Standards, the WCO initiated what it has called the Columbus Programme which is specifically designed to assist members to effectively implement the Framework and related international obligations. The significance of the Columbus Programme lies in the sheer size and extent of its application. The Programme is comprised of three distinct phases: a comprehensive diagnostic needs assessment of the current state of play within the customs administration; implementation; and monitoring. At the time of writing, over 100 diagnostic needs assessments had been undertaken or were scheduled, and the implementation phase had commenced in over 60 administrations (WCO 2008b, p. 5).

Due to the broad scope of activities undertaken across some 100 countries, the Columbus Programme provides a wealth of data from which conclusions can be drawn concerning actual and potential impediments to effective national implementation of global policy initiatives. The WCO analysis of the results of Phase 1 of the Columbus Programme has revealed a broad range of developmental needs among its members, ranging from those economies with minimal developmental needs and no requirement for external capacity building support, through to those requiring comprehensive technical assistance and capacity building support. Falling between these two extremes are economies which have already established the underlying infrastructure requirements, but require specific training and technical assistance, some of which also require assistance with policy development and change management support.

The fact that such comprehensive and, in some instances, quite basic developmental requirements have been identified in relation to this particular international regulatory framework is significant. These findings point not only to the need for extensive capacity building support requirements to implement the WCO Framework of Standards, but also to a potential inability of many economies to effectively implement the hundreds of conventions, agreements and guidelines to which they have made an international commitment without first being provided with significant capacity building support. The following conclusions of the WCO are of equal significance as they indicate the need for a different approach to capacity building assistance in the future (WCO 2006, p. 64):

The support that is needed will change. The WCO will have to put more resources into planning, recruitment of experts, donor matchmaking, the development of management skills and skills to handle modernization (like e.g. project management, reform management, tendering/contracts, monitoring, ICT and technical specifications, etc.).

In this regard, Mikuriya (2008), comments: 'While the technical area of procedures, infrastructure and technology remain important, sustainable capacity building also requires change management … including a change in culture'.

Working closely with the academic community, the WCO has already advanced a number of these initiatives through its Partnership in Customs Academic Research and Development (PICARD) program. In particular, the development of management skills has been addressed in a way which seeks to establish internationally consistent development standards that are designed to maintain and raise the academic standing of the customs profession. According to the WCO (2008c), the primary objective in developing such standards is to 'establish benchmarks which can be developed into job profiles for the purposes of customs recruitment; against which the in-house training of member administrations may be measured; and against which academic development can be designed or procured'. A further use to which the standards should be applied is performance assessment, whereby a determination may be made as to whether employees are meeting the knowledge, skill and competency requirements of their position.

The resultant standards (WCO 2008d), are now being used by a number of universities to develop educational programs which provide internationally recognised professional qualifications for customs professionals from both the public and private sectors. They focus specifically on the senior and middle manager, and support the WCO's contention that 'The role of Customs in the 21st century, as it faces the challenges posed by globalisation, trade facilitation initiatives, and security concerns necessitates a renewed professional approach to the management and operations of Customs administrations across the globe' (WCO 2008d, p. 9).

Conclusions

While considerable progress has been made by the international community in relation to the establishment and agreement of standards, there is a long way to go in ensuring that individual economies have the necessary capacity to translate the theory into practice. The exercise conducted by the WCO suggests that consistent global application of existing and future conventions, agreements and guidelines relating to border management is unlikely in the absence of significant capacity building support. Further, there is no reason to suggest that such findings are limited to cross-border matters. Indeed, they are likely to apply equally to international frameworks concerning other areas of government regulation.

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2   The World Customs Organization's International Convention on the Harmonized Commodity Description and Coding System 1983, as amended, generally referred to as the 'Harmonized System' or simply 'HS'.

3   The World Trade Organization's Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (GATT) 1994, generally referred to as the 'WTO Valuation Agreement'.

4   The Singapore program, launched in May 2007, is referred to as the Secure Trade Partnership (STP).

5   See European Commission 2007, 'Authorised Economic Operators: guidelines', Working Document TAXUD/2006/1450, EU, Brussels.

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8   Annex D of the WTO General Council Agreement of 31 July 2004 (known as the 'July Package'), paragraphs 4 and 5.

David Widdowson

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Section 2

*Practitioner
Contributions*

WCO REGIONAL APPROACH TO CAPACITY BUILDING

Takashi Matsumoto

Abstract

A core aspect of the World Customs Organization (WCO) Customs Capacity Building Strategy involves the 'Regional Approach to Capacity Building'. Capacity building includes institutional development, the development of effective legal frameworks, the enhancement of staff capability, the application of modern techniques and the provision of suitable equipment. In order to implement the Strategy, the Regional Office for Capacity Building (ROCB) Asia Pacific has set four priority areas (pillars) to ensure smooth implementation of the ROCB Strategic Plan. The four pillars and their concrete actions are: to support the implementation of the WCO SAFE Framework of Standards; to further develop partnerships with donor institutions; to enhance the provision of better technical and management assistance; and to develop communication and coordination with Members including sharing regional best practices.

Introduction

In order to provide enhanced and improved capacity building activities to Members, the World Customs Organization (WCO) discussed the new 'Customs Capacity Building Strategy' at the Policy Commission in June 2003. The Strategy was subsequently approved by the 101st/102nd WCO Council Session. A core aspect of this Strategy involves the 'Regional Approach to Capacity Building', the objective of which is to provide better capacity building in the region by proper identification of regional needs through a comprehensive diagnosis process, to allocate limited capacity building resources effectively, to enhance coordination with donors, and to promote the sharing of regional countries' best practices.

One of the important components of the Regional Approach to Capacity Building is the establishment of a Regional Office for Capacity Building (ROCB) to facilitate capacity building at that level which, in turn, increases the effectiveness of the WCO's capacity building activities.

Establishment of the ROCB in the Asia Pacific Region

Following the decision of the WCO Council Session, in April 2004 the WCO Asia Pacific Region developed a Capacity Building Strategy for the Region aimed at ensuring a sustainable long-term approach. This approach included the establishment of the ROCB in Bangkok, Thailand.

The ROCB Asia Pacific was formally opened in September 2004 following the endorsement of the 103rd/104th WCO Council Session and the approval of the Thai Government. The ROCB is located at the headquarters of the Thai Customs Department in Bangkok. As of June 2008, six full-time officers from member customs administrations work at the ROCB. The officers are from China Customs, Japan Customs (two officers, including the Head of the ROCB), Korean Customs and Thai Customs (two officers). Additionally, two Customs attachés in Bangkok (from the Australian Customs Service and New Zealand Customs Service) assist the ROCB.

Activities of the ROCB in the Asia Pacific Region

Capacity building is not equivalent to technical assistance and training although both are among its most important components. Capacity building includes institutional development, the development of effective legal frameworks, the enhancement of staff capability, the application of modern techniques, and the provision of suitable equipment. In reality, capacity building is a modernisation process.

To meet this broad objective of capacity building, the ROCB Asia Pacific developed an ROCB Strategic Plan in accordance with the WCO Strategic Plan and the WCO Asia Pacific Regional Strategic Plan (RSP). The RSP was determined by the Asia Pacific Heads of Customs Administration Meeting which is the highest level decision making mechanism in the WCO Asia Pacific Region.

In order to implement the Strategy, the ROCB Asia Pacific has set four priority areas (pillars) to ensure smooth implementation of the ROCB Strategic Plan. The four pillars and their concrete actions are:

Pillar 1: To support the implementation of the WCO SAFE Framework

The WCO Council Session adopted the SAFE Framework of Standards to secure and facilitate global trade in June 2005. To implement the SAFE Framework, in January 2006 the WCO started the Columbus Programme, the largest ever WCO capacity building program. As the first step to implement the SAFE Framework, the ROCB in cooperation with the WCO Secretariat, organised four Diagnostic Framework workshops to foster diagnostic experts. More than 30 customs officials are certified by the Secretariat as diagnostic experts. Next, the ROCB sent its staff and regional experts, trained and certified by the Secretariat, to undertake diagnostic missions as experts or leaders of missions. Regional experts joined 10 of the 17 missions conducted in the Asia Pacific Region by the Secretariat under the auspices of the Columbus Programme.

As the third step, the ROCB organised six national workshops on the Columbus Programme Phase II Action Plan Development to assist Members to develop their own action plans based on the WCO diagnostic mission's recommendations. The ROCB also encouraged members to submit the SAFE Framework follow-up matrix to the Secretariat to assist with the monitoring of implementation, a Phase III activity of the Columbus Programme.

Pillar 2: To further develop partnerships with donor institutions

Recognising that many of the challenges faced by customs administrations can be met without a substantial amount of funding and that the WCO is not a donor institution, the ROCB set a pillar to enhance cooperation with donors to assist Members in the Asia Pacific Region to find funding. It was acknowledged that for some time donor countries and institutions have conducted and funded many customs-related capacity building initiatives in the region.

As the ROCB is a very new and small regional institution, its first step was to develop partnerships with donors by making the ROCB's activities visible to donors and members. In this regard, the ROCB positively participated in seminars and meetings organised by donors in order to demonstrate the existence, expertise and capability of the ROCB. Through these activities, the ROCB gained a certain level of recognition from international, regional and national donor institutions such as the Asian Development Bank (ADB), World Bank, United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), United Nations Environment Program (UNEP), United Nations Development Program (UNDP), the Commonwealth Secretariat, Japan International Cooperation Agency (JICA), AusAID (the Australian Government's overseas aid program), European Community (EC) and United States Agency for International Development (USAID).

The level of partnerships between the ROCB and donors has been deepened by the positive participation of the ROCB in the donors' activities. One good example is the facilitation of the Greater Mekong Sub-region (GMS)[1] border control supported by the ADB, which has assisted with GMS economic cooperation since 1992. One of the development areas is transport improvement including the facilitation of border control. The reform and modernisation of customs procedures at the border is an important element in the facilitation of transportation. As a consequence, the ROCB and ADB organised a GMS Heads of Customs meeting which was financed by the ADB and aimed at providing a proper consultation mechanism for the Director Generals of Customs to ensure the development of a consistent direction. The Director Generals agreed to facilitate the accession of the Revised Kyoto Convention and to the implementation of the SAFE Framework as well as implementation of the ADB Cross Border Transport Agreement, which includes a one-stop service by government agencies at the border.

The other example is the Revised Kyoto Convention seminar held in the Lao People's Democratic Republic (Lao PDR) and financed by the World Bank. Lao PDR is a new WCO member and requested that the ROCB provide support to enhance awareness and knowledge of the WCO tools, particularly the Revised Kyoto Convention. In response to the request, the ROCB asked the World Bank to provide financial support and requested Thai Customs to provide resource persons to share Thai experiences as well as provide information about the contents of the Convention. Even though it was a small event, it was a good example of capacity building coordination using regional expertise and donor funding.

Pillar 3: To enhance the provision of better technical and management assistance

Supported by the Customs Cooperation Fund (CCF)[2] Japan, the ROCB in cooperation with the WCO and member customs administrations organises some 10 technical assistance activities every year in the Asia Pacific region. Themes of the seminars and workshops are diverse and range from traditional core customs areas such as the Harmonized System and Valuation to recent priority areas such as the SAFE Framework and Intellectual Property Rights. To support the implementation of the SAFE Framework, the ROCB organised an 'X-ray container scanner image analysis workshop' and an 'Authorised Economic Operator (AEO) implementation workshop' in 2008 – the first regional seminars of this type in the world. Members were highly appreciative of the opportunity to discuss such new ideas and initiatives.

In order to provide further improved technical assistance and training, the ROCB has been organising a Heads of the WCO Regional Training Centres (RTC) meeting every year. Heads of the five RTCs (China, Hong Kong China, Japan, India and Malaysia) have developed a compendium of the RTCs and the best practice of customs training centres. Maximising the use of regional resources for customs training has also been discussed.

Pillar 4: To develop communication and coordination with Members including sharing regional best practices

To enhance the study and research function of the ROCB, a new initiative, the study of regional best practice was started in 2007. So far, the ROCB has distributed the following reports:

• No. 1: Time Release Study case of Japan, Korea and China
• No. 2: AEO Best Practice case of New Zealand and Korea
• No. 3: AEO Best Practice case of Australia and China
• No. 4: AEO Best Practice case of Japan.

The way forward

Following the success of the ROCB in the Asia Pacific region, four additional ROCBs were established by June 2008 and a further ROCB is under consideration to cover all six WCO regions:

- ROCB East and Southern Africa: Nairobi, Kenya
- ROCB North Africa and Middle East: Dubai, United Arab Emirates
- ROCB Americas and Caribbean: Buenos Aires, Argentina
- ROCB West and Central Africa: Abidjan, Cote d'lvoire
- ROCB Europe: under consideration.

This newly established ROCB network will become a core component of the WCO capacity building effort and will work to:

- gain more accurate diagnosis and analysis of capacity building needs in each region
- develop effective partnerships with international, regional and national donor institutions
- provide more effective technical assistance using regional and WCO resources
- develop effective capacity building plans for each region.

The ROCB Asia Pacific would like to be central to this new movement for capacity building.

Endnotes

1 The Greater Mekong Sub-region (GMS) consists of Cambodia, the People's Republic of China (PRC), Lao People's Democratic Republic (Lao PDR), Myanmar, Thailand and Viet Nam. GMS countries launched the GMS Economic Cooperation Program to strengthen economic linkage among them in 1992.

2 The Customs Cooperation Fund (CCF), established in the WCO, receives voluntary contributions from members to support technical assistance of the WCO.

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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.

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PAPUA NEW GUINEA CUSTOMS: A COMPREHENSIVE AND INTEGRATED APPROACH TO CAPACITY BUILDING

Chris Wall

Abstract

Papua New Guinea (PNG) is the largest developing country within the Pacific region with a population of approximately 6.1 million. It is also rich in natural resources and is experiencing increases in GDP, trade and passenger volumes, investment, and major infrastructure development. PNG has over six hundred islands and shares maritime borders with the Solomon Islands and Australia, and a land border with Indonesia resulting in complex and dynamic border management challenges. In response to these key strategic economic and security drivers, and increasing Government and community expectations, PNG Customs has in recent years developed a range of reform strategies and integrated them into an ambitious and comprehensive program of modernisation and reform both from within the administration and in partnership with the Australian Government and other major donors.

Introduction

The Papua New Guinea (PNG) economy has been growing since 2003 following several years of contraction. The economy grew at 5.2 per cent in 2007, and PNG Treasury projects growth of 6.6 per cent for 2008. Other macroeconomic indicators have also improved, with inflation rates and interest rates remaining low, foreign reserves at historic levels, and employment in the formal sector growing. In 2008, the PNG Government has forecast inflation to reach 5.2 per cent.

The PNG Government has projected a budget surplus of Kina 202.3 million, or 1.1 per cent of GDP, for 2008. The surplus will be used to reduce external borrowings and PNG's total public outstanding debt is forecast to reduce to 31.8 per cent of its GDP by the end of 2008.[1] Trade is central to the PNG economy and is a vital link to prosperity and survival. While the volume of imports and exports is not significant by world standards, comparatively, the flow of goods is quite positive as a percentage of GDP.[2]

PNG Customs merged with Tax in 1993 to establish the Internal Revenue Commission (IRC). The IRC has a total of nearly seven hundred staff of which Customs has nearly three hundred officers located in twenty-one ports around PNG. At the time of the merger, revenue collection became the highest priority for Customs. But with changes in recent years to both the economic outlook and global-regional security priorities, Customs has significantly increased its focus on building overall capacity with a particular emphasis on improving trade facilitation and border security outcomes. PNG Customs is a member of the World Customs Organization (WCO), World Trade Organization (WTO), Oceania Customs Organisation (OCO) and the Asia-Pacific Economic Cooperation (APEC).

A comprehensive and integrated approach to capacity building

Over the last five years the IRC-PNG Customs, in partnership with the Australian Customs Service (ACS) and the Australian Agency for International Development (AusAID), has developed a comprehensive and integrated approach to building its capacity to respond more effectively and efficiently to the current and emerging challenges it faces in all aspects of Customs business.

The PNG Customs modernisation and reform program has been developed using a range of strategies including initiatives from within PNG Customs, assistance from AusAID programs, Customs-Customs bilateral initiatives, WCO technical support, and broader IRC reform initiatives. Experience demonstrates that while each strategy can be developed and implemented as a stand-alone initiative, there is a greater chance of achieving better and more sustainable modernisation outcomes by ensuring all programs are both complementary and well integrated. Ensuring that the overall program of reform is based on sound analysis to determine gaps in capacity and capability is also a crucial element of building relevant and sustainable reform outcomes.

In 2004 a comprehensive six-month diagnostic assessment was completed in-country by Australian Customs, in partnership with PNG Customs, to identify an initial program of support and the reform priorities for the next four years. In mid-2007, an independent WCO SAFE Framework of Standards diagnostic assessment was carried out and, with the assistance of the WCO Regional Office of Capacity Building (ROCB), an action plan was developed under the WCO Columbus Programme to address the diagnostic recommendations. The WCO diagnostic was followed in March 2008 by an independent and comprehensive Revenue Gap & Business Analysis by the Centre for Customs & Excise Studies (CCES), University of Canberra.

These various assessments have been very helpful to PNG Customs in terms of gathering baseline data, establishing the strategic direction and priorities for reforms, verifying program content and priorities over time, identifying new and emerging reform requirements, acknowledging achievements made, and aligning reform efforts to internationally recognised standards.

Against this background, the following programs represent the overall framework for modernisation and reform in PNG Customs.

Customs Modernisation Management Team (CMMT)

The Customs Modernisation Management Team (CMMT) is a PNG Customs initiative. It was established in 2004 as a part-time multi-disciplined working group to provide a focus for driving Customs modernisation programs and change management strategies. The initial priority for the CMMT was to review and update legislation and procedures to meet the requirements for accession to the General Annex of the Revised Kyoto Convention on the harmonisation and simplification of Customs procedures, and to subsequently work on the related chapters to the Convention. Following the successful passage of revised legislation in 2007, PNG Customs has received endorsement from the PNG National Executive Council (Cabinet) to accede to the General Annex and is expected to formally accede in the near future.

While continuing its work on the Convention chapters, the CMMT recently produced a Strategic Action Plan 2008-2011 to reflect outcomes and priorities from the various diagnostic assessments and to identify sources of Treasury and partner support to undertake the reforms. Since its inception, the CMMT has established a constructive working relationship with the PNG Treasury, and through business cases, planning, regular reporting, and a transparent approach to its activities, has been successful in receiving ongoing Treasury funding to support its reform activities in areas that complement existing external donor support.

In response to the need to develop closer partnerships with industry, an example of the CMMT approach was the establishment of a National Customs Consultation Forum (NCCF) in late 2006. The NCCF meets annually to discuss issues and developments of mutual interest with a view to resolving issues and promoting awareness between the annual meetings. This is a significant step forward in PNG Customs-Industry relations and receives funding support from the Treasury in recognition of its contribution to more effective trade facilitation outcomes.

'Strongim Gavman Program' (SGP) or 'Strengthening Government Program'

Originally established as the Australia-PNG Enhanced Cooperation Program (ECP) in 2004, a comprehensive joint Australia-PNG review was carried out in late 2007. The program was renamed 'Strongim Gavman Program' (SGP) at the 18th Meeting of the Australia-PNG Ministerial Forum in Madang on 23 April 2008. Under the SGP, around forty senior Australian officials are working closely with their PNG counterparts to progress reform in the areas of economic and public sector governance, border management and transport safety and security, and law and justice. AusAid funds and supports the SGP with officials drawn from a wide range of Australian agencies.

Australian officials are focused on providing strategic and policy advice and on building capacity in the PNG public service, including through mentoring to improve the knowledge and skills of PNG staff. The renewed focus on SGP will also see an increased emphasis on whole-of-government joint monitoring and evaluation for participating agencies and partnership contracts between Australian and PNG officials directly involved in the SGP to ensure both institutional and individual capacity are developed.

Australian Customs has a team of four SGP officials working within PNG Customs as advisers. Based on the original 2004 gap analysis, Australian Customs officials initially focused on building capacity in areas including Passenger Processing, Revenue, Post Clearance Audit, and Intelligence and Executive Management. Currently the Customs SGP Team includes the Deputy Commissioner Customs (SGP) – Executive Management, and three Customs Advisers covering Border Security, Investigations, and Cargo Management. Currently a joint Australia-PNG process is reviewing all SGP roles and terms of reference to ensure the ongoing relevance of the program to PNG's development priorities.

Under this arrangement, mutually beneficial outcomes include building closer relationships, sharing knowledge and information, and conducting joint operations. Apart from the specific roles assigned to Customs SGP officials, each official also provides assistance to a wide range of IRC and Customs-specific corporate governance and support activities.

In addition to these core responsibilities, the Customs SGP team, in partnership with PNG Customs colleagues, provides direct in-country support to facilitate the delivery of several Australian-PNG Customs bilateral programs that complement both the CMMT and SGP reform work. These programs include the PNG-Australian Customs Twinning Scheme (PACTS), the Australia-PNG Border Security Project (BSP), and the Australia-PNG Joint Cross Border Patrols (JCBP). Each of these programs is described in more detail below.

PNG-Australian Customs Twinning Scheme (PACTS)

While the SGP generally operates at the strategic and policy level, the PACTS is designed to enhance this work at the operational level and is based on targeted exchanges of personnel between both Australian Customs and PNG Customs. PACTS is managed by Australian Customs, is funded by AusAID, and is used in several other PNG agencies to complement the policy, legislative and procedural reforms generally supported through the SGP. In Customs, the exchanges can either be used to develop individual

officers to build their capacity and, later, to transfer these skills to others, or as an opportunity to provide operational training and awareness in specific areas of Customs.

To date PACTS placements have included exchanges of officers in areas such as: Intelligence, Post Clearance Audit, International Relations, Ship Search, Cargo Control and Accounting, and Passenger Processing. It is anticipated that the PACTS program for this year will include placements and/or training in areas such as investigations, profiling, aircraft search, and industry partnerships.

Both Australian and PNG Customs gain benefit from these exchanges and agree that the SGP/PACTS approach provides a very effective platform for the delivery of assistance.

Australia-PNG Border Security Project (BSP)

In May 2007, the Australian Government announced a $7.7 million package of assistance to enhance PNG Customs border security capabilities over a four-year period from 2007-2011. The BSP included initial consultation with PNG Customs and was designed to take account of both the SGP and PACTS programs, with a focus on the delivery and implementation of equipment, facilities refurbishment, specialist skilling, gap analysis, and operational support funding currently outside the scope of the SGP and PACTS, but complementary to both programs.

The BSP is managed through a joint Australian-PNG Customs Steering Committee that sets and reviews priorities and progress, with overall project management by Australian Customs. In partnership with PNG Customs, the Customs SGP Team provides significant in-country facilitation assistance to establish and implement the key elements of the BSP.

Key achievements during the first year of the BSP include:

- establishment and operation of Customs-led inter-agency maritime surveillance patrols, using existing PNG Defence Force maritime assets
- completion of an independent comprehensive PNG Customs 'Revenue Gap & Business Analysis', drawing on input from a wide range of government and business stakeholders
- establishment and implementation of an electronic Case Management & Intelligence System (CMIS), including a secure e-mail function.

Future measures through to mid-2011 include a range of specialised enforcement training and equipment, refurbishment of key Customs border facilities, and ongoing development of a maritime surveillance capability. The BSP essentially provides the hardware to implement and sustain many of the CMMT, SGP and PACTS reforms, and is designed to gradually transfer responsibility for all aspects of the project, including funding beyond 2011, to PNG Customs.

Australia-PNG Joint Cross Border Patrols (JCBP)

The focus for the JCBP is to provide a regular opportunity for both Australia and PNG to manage strategic border risks to both countries in the Torres Strait area by working together across each other's maritime borders to gather intelligence, build remote area community relationships, and to conduct joint operations where appropriate. The Torres Strait is characterised by Australia's close proximity to the PNG mainland, regular and authorised traditional movement of people between both sides of the border, remoteness, lack of accurate navigational data, and relatively close proximity to Indonesia. Joint operations in this area are sensitive and logistically difficult, and require close cooperation to be effective.

Australian Customs provides a patrol boat and crew, and may use other assets to support joint operations. PNG provides two Customs officials and two police from the Royal PNG Constabulary to provide intelligence and operational support for each of the anticipated four annual patrols.

Together the JCBP and the BSP-funded Customs-led inter-agency maritime surveillance patrols form the basis of a framework for a cost effective PNG whole-of-government civil maritime surveillance strategy and capability that complements existing PNG Defence Force and PNG National Fisheries Authority activities in this area.

Conclusions

The approach taken to modernisation and reform in PNG Customs is clearly comprehensive and based on a range on independent assessments and analyses. Integration of the various capacity building strategies and initiatives is still a relatively new development with outcomes from the various assessments and key elements from the assistance programs being arranged along thematic lines and prioritised both within the CMMT Strategic Action Plan 2008-2011 and the Customs SGP work-plan 2008-2009. This has led to greater cohesion between the various programs and a clearer view of what needs to be done and when. Consultation, collaboration, communication, and mutual respect are fundamental guiding principles that characterise the partnership between PNG Customs and Australian Customs.

Finding the right balance for the pace and scale of reform continues to be a key challenge. There is a real risk of developing administrations suffering both donor and reform overload if the overall program is not well managed and coordinated within existing capacity. Going forward, it is anticipated that PNG Customs reform activities will become embedded in the broader IRC corporate planning process and Customs divisional plans, and will use a risk-based approach to manage the priorities for reform within the resources and capacity available. Following the last two years of significant reform and the establishment of new programs, a period of consolidation is essential in the short to medium term if sustainable progress and outcomes are to be achieved.

While PNG Customs still has considerable work to do to fully meet its international and domestic obligations, it has achieved a great deal. It is now positioning itself well to meet the challenges it faces in achieving its expected trade facilitation, border integrity, community protection and revenue collection outcomes.

Endnotes

1   Department of Foreign Affairs and Trade 2008, 'Papua New Guinea country brief: June 2008', Australian Government, Canberra, pp. 1, 6-8.

2   Centre for Customs & Excise Studies 2008, 'Papua New Guinea revenue gap and business analysis March 2008', University of Canberra, ACT, p. 22.

Chris Wall

Chris Wall is Deputy Commissioner (SGP), Papua New Guinea (PNG) Internal Revenue Commission (Customs) in the role of senior Customs adviser to PNG Customs, under the Australia-PNG 'Strongim Gavman Program' (SGP). Prior to this he was responsible for establishing Australian Customs capacity building programs in South East Asia and was formerly based in Tokyo, Japan responsible for Australian Customs interests in the North Asia region. Chris has worked with the Australian Customs Service for 26 years in a wide range of policy, corporate and operational roles. Chris has a Bachelor of Business (with Distinction) in Public Administration from the Queensland University of Technology and an Advanced Diploma in Quality Management.

THE WORLD CUSTOMS ORGANIZATION'S E-LEARNING PROGRAM

Norbert Conchin

Abstract

In 2003 the World Customs Organization (WCO) introduced an e-learning program as an essential element of its training strategy to improve the quality and quantity of training in customs administration worldwide. Two years ago, the WCO engaged Premia Airtime Ltd as the official distributor of its training products to disseminate this training tool to the private sector with the clear objective of providing trade operators the same appreciation of international customs rules and tools as customs administrations receive through the WCO. The WCO e-learning program is a comprehensive, ground-breaking training tool which offers an integrated learning environment designed to facilitate easy and effective training to cover the broad scope of the international trade environment. With the positive application of the WCO e-learning program, the competency levels of customs and trade administration, a key issue for the 21st century, should be systematically improved.

Introduction

Over the last ten years online training, or e-learning, has been forced upon the world of education. After an initial fashionable impact, the e-learning process was increasingly adopted as a consequence of the ease of access and demonstrably effective training processes. Whether designed for students in educational institutions or for vocational training, nobody would contest the pertinence of online learning. But how can we make it achieve its maximum potential?

One of the missions of the World Customs Organization (WCO) is to improve customs service among its 172 member countries. As part of this mission, in 2003 the WCO introduced an e-learning program as an essential element of its training strategy to improve the quality and quantity of training in customs administration worldwide. The project was also designed to strengthen the links with its institutional partners and the trade community. After five years of development, the WCO's e-learning program now provides more than 250 training hours online and is accessible to more than 30,000 customs officers in 130 countries.

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So, where are we now? How can e-learning help human resources departments achieve their objectives in organisational management while adapting to the realities of the world market. How can e-learning guarantee companies or administrations access to the capacities, competencies and organisational strategies they need to develop efficiency and effectiveness? And, how can e-learning assist staff adapt to new rules and changes in techniques and processes?

E-learning: new technology for information and training

'E-learning is a distance learning system that makes use of modern multimedia resources and allows one or more individuals to train using their computers. The multimedia supports used can combine text, 2 or 3D graphics, sound, images, animation and even video. These media revolutionise the teaching approach, using more games-oriented techniques where interactivity plays a major role, diversifying tools used, adjusting more closely to the student's learning process as the student takes control of his training. The latter can train at his own pace according to his needs and availability. This is particularly important at a time where lifelong training becomes the norm'[1] and the mobility of the worker is increasing significantly.

The saying 'Learn what you need, where you are and when you want' is true but no longer sustainable without a strategy which accords with the goals and priorities of the organisation that provides the training. The acceleration of mutation and discontinuity of strategies and rules in the modern world provoke enormous alignment problems. Each time an organisation wants to change rules, policy or strategy, it will communicate the changes to management who, in turn, transfer them to the staff to adjust and adapt to these new rules, policies or strategies, recognising that these knowledge workers are numerous, dispersed and international.

Another problem to consider is the imminent loss of specialised knowledge with the retirement of a significant number of qualified workers in the next decade. For example, in a number of Japanese organisations or companies up to 50% of the workforce will leave the job market before 2015. That creates an obligation to educate thousands of employees in a more complex and unstable environment, mostly with the challenge of distance.

It might be difficult to imagine the development of intellectually competent workers, or the adaptation of worker teams or cadres to new strategies or standards without a massive increase of access to training and specific knowledge outcomes. This access rate, however, is still insignificant despite efforts that have been provided to overcome the problem.

In France, the European country whose training is the most widespread, 25% of employed workers attend face-to-face training each year as do 54% of the cadres. But if employees attend training programs of two or three days per year, this represents less than 1% of their total work commitment. In order to improve staff training, both by numbers and frequency, it is essential that access to education and training programs be increased.

There is no comparison between the training rate of cadres based in France and their equivalents in emerging countries. Any increase in face-to-face training is difficult in the planning process and can negatively affect profitability. However, an increase in the number of training courses and the flexibility in their delivery could assist human resources meet their commitment to providing increased competence and knowledge levels in the operational departments of their organisations.

Reaction and reordering on a large scale are inevitable in a modern organisation. Apprenticeship objectives are on two poles: 'Learn for today and learn for tomorrow'. This approach is necessary for all those employees who need to change their job positions several times in their careers.

As the question of profitability is important for the management of every organisation, human resources departments should be committed to developing personal capabilities in both competence and synchronisation. An American survey (Human Resources Competency study) has shown that human resources practices have an impact of 10% on the financial performance of the organisation: twice that of five years earlier. Consequently, it is necessary to demonstrate the quality and to measure the quantity of training to show management what kind of return on investment they can expect.

E-learning in the customs and trade communities

The WCO is an independent inter-governmental organisation one of whose missions is to enhance the effectiveness and efficiency of customs administrations. The WCO devises quality technical assistance and training programs aimed at improving member administrations' human resources management and development capacities.

There are enormous challenges facing customs administrations due to increasing volumes and globalisation of trade as well as regional integration. Knowing this and recognising that the dissemination of information and the provision of training are indispensable to the uniform implementation of key customs-related international conventions, recommendations and other standards, the WCO e-learning program responds to the ever-increasing demand for training. The program is a comprehensive, ground-breaking tool which offers an integrated learning environment designed to facilitate easy and effective training. It is an interactive multimedia facility available to members and educational establishments for both initial and ongoing training and has been designed to offer a global structure which is modular and can be fully personalised to suit the specific needs of each audience.

The first e-learning course on customs controls, risk assessment, profiling and selectivity was offered in June 2003. This was followed in June 2004 by the course on customs valuation and post-clearance controls. Comprehensive programs on the Harmonized Commodity Description and Coding System, the Istanbul Convention on Temporary Admission, Integrity, Counterfeit Goods and Intellectual Property Rights have been available since September 2005. E-learning courses on the Customs Data Model, Supply Chain Security, the SAFE Framework of Standards, Transfer Pricing, Wild Fauna and Flora have been developed in the last year. The Rules of Origin was the latest addition to this list. The Revised Kyoto Convention will be the next course to see the light of day.

Customs administrations by their size, number and distribution of officials, and because of their hierarchic organisation, resemble multinational companies. The WCO e-learning program is adapted to accommodate the constraints this type of structure can encounter when building a training strategy. As well, the WCO organises specialised training seminars to strengthen the skills and competencies of customs professionals and trade operators. For greater efficiency, e-learning is provided before these seminars to raise and equate the knowledge levels of participants, to learn the standards and acquire the necessary glossary and terminology.

The experience of the past five years demonstrates a need for coordinators and tutors to make full use of this e-learning tool. Best practice includes requiring team managers to follow the progress of students and to apply learned material in daily activities. For this reason, the proximity of team managers to students is essential to ensure the right use of the tool and a profitable return on investment.

The future advantage in common training

In the modern international trade context, cooperation between the two communities, the customs administrations and trade operators, is increasingly required. New technologies and activities such as electronic customs clearance, the complexity of the logistics process, the fight against fraud, piracy and counterfeiting, and the emergence of concepts like the Authorised Economic Operator (AEO) complicate the task. How would the situation be if a common language and knowledge were not available and hence, contribute to misunderstanding? It seems unavoidable that trade operators have to manage the international customs rules with assurance and, as a matter of fact, lighten the customs administration for better targeted control. Irrespective of location, such as having a customs officer in Siberia or a trade operator in South America, they should be able to understand each other well if they have completed an equivalent WCO e-learning course.

Conclusions

The WCO e-learning program provides the opportunity to develop customs administration training beyond its current regular format and existing limitations in numbers in both Customs and the trade community. The online training procedures, through their availability and flexibility, provide human resources directorates with new tools which contribute to new organisational goals.

The competency levels of customs and trade administrations, a key issue for the 21st century, could be systematically developed and their outcomes in the international trade environment assessed. With a commitment to using the WCO e-learning program, the strategic objectives of both parties could be more rapidly implemented and supported, and have the additional benefit of fostering learning across borders and cultures.

Endnote

1   See http://www.premierairtime.com/index.asp?ID=8.

Norbert Conchin

Norbert Conchin holds a Graduate Diploma in Economics and Marketing (Paris). He has 25 years experience in international business and trade, information management and training. Norbert is Managing Director of Premia Airtime Ltd, the company responsible for the international distribution of the WCO e-learning program and the promotion and organisation of WCO seminars to the private sector on international customs rules.

Section 3

Letters to the Editor

Dear Sir

I have recently received three issues of your publication and have enjoyed the content although I haven't yet finished reading all the items.

I am currently attending a management course in an international environment with representatives from 15 countries. A major topic of our course is strategic management and leadership. I would like to request, if I may, that a future issue of the Journal includes an article on this subject. To me, this appears to be an increasingly important topic in our customs environments and will be at the forefront of our thinking for future changes in our services.

Thanks, in advance!

Craig Chitty

New Zealand Customs Service

Dear Sir

As well as congratulating you and your contributors on an excellent professional journal for the international customs community, I would like to ask you to consider a section for those interested in the history of customs organisations. In addition to the excellent work being undertaken by individual amateur and professional historians in many customs services, I would like to draw your attention to the project undertaken by the University of Bristol in the United Kingdom into the Chinese Maritime Customs.

The Chinese Maritime Customs was unusual in that it was an expatriate-managed customs service operating in the Treaty Ports of China between 1854 and 1949. The People's Republic of China has preserved in commendable conditions (principally at the 2nd Historical Archive of China in Nanjing) the records of the service during that period. The majority of the collection is in English and includes a wide range of material of interest to customs, social, economic and family historians. The staff of the Chinese Maritime Customs included nationals of China, the United Kingdom, Japan, USA, Sweden, France, Germany, Denmark, Sweden, Russia, and other nations.

Links to staff and other records together with a large archive of photographs are to be found at the University of Bristol website: http://www.bristol.ac.uk/history/customs/.

Should any of your readers have any questions relating to using the site or wish to exchange information on the Chinese Maritime Customs I would be very happy to try and be of assistance to them.

Best wishes

Jim Williams

Editor's note: Interested readers may contact Mr Williams at: jimwcw@msn.com

Dear Sir

An investigative report of six articles from the Center for Public Integrity (CPI) was released on 20 October 2008 on the illicit trafficking of tobacco. One article of particular interest reveals at least US$1 billion worth of Russian cigarettes – created solely for smuggling – are flooding Europe. The report on Jin Ling cigarettes helps demonstrate the massive global problem of the illicit tobacco trade, which undermines efforts to reduce tobacco use and save lives, helps fund organised crime and terrorist organisations, and costs governments billions in revenue.

The report is being released by CPI as more than 600 delegates from 160 countries meet in Geneva, Switzerland to continue negotiations on an international treaty to combat the illicit trade in tobacco products.

A Campaign for Tobacco-Free Kids' statement on the new CPI reports is available (http://tobaccofreecenter. org/resources/illicit_trade_smuggling/), as well as a comprehensive backgrounder on the illicit tobacco trade (http://www.tobaccofreecenter.org/files/pdfs/ILL-Overview-oct08-v4.pdf).

Thank you.

Marina Carter
Campaign for Tobacco-Free Kids

Editor's note: Ms Carter can be contacted at: MCarter@TobaccoFreeKids.org

Section 4

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.

Research and theory

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.

Please note that previously refereed papers will not be refereed by the *World Customs Journal*.

Practical applications, including case studies, issues and solutions

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.

Reviews of books, publications, systems and practices

The suggested length is between 350 and 800 words per review. The Editorial Board will review these items submitted for publication.

Letters to the Editor

We invite Letters to the Editor that address items previously published in the Journal as well as topics related to all aspects of customs activity. Authors of letters are asked to include their name and address (or a pseudonym) for publication in the Journal. As well, authors are asked to provide full contact details so that, should the need arise, the Editor-in-Chief can contact them.

Authors of papers previously published should provide full citations of the publication/s in which their paper/s appeared. Where appropriate, authors are asked to obtain permission from the previous publishers to re-publish these items in the *World Customs Journal*, which will acknowledge these source/s. Copies of permissions obtained should accompany the article submitted for publication in the *World Customs Journal*.

Authors intending to offer their papers for publication elsewhere—in English and/or another language—are asked to advise the Editor-in-Chief of the names of those publications.

Where necessary and appropriate, and to ensure consistency in style, the editors will make any necessary changes in items submitted and accepted for publication, except where those items have been refereed and published elsewhere. Guidance on the editors' approach to style and referencing is available on the Journal's website.

All items should be submitted in Microsoft Word or RTF, as email attachments, to the Editor-in-Chief: **editor@worldcustomsjournal.org**

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Elaine Eccleston, BA, MA, developed the Information and Knowledge Management subjects taught at the University of Canberra. She was Manager, Information and Knowledge Management at the Australian Trade Commission, and has worked in these fields for the Australian Taxation Office, the Department of Foreign Affairs & Trade, and as Manager, Information & Records Management, BP Oil UK. She is Editor, *World Customs Journal* at the Centre for Customs & Excise Studies, University of Canberra.

Christopher Dallimore

Christopher Dallimore obtained an Honours degree in Law and German at Cardiff University and a Magister Legum at Trier University. He was Course Co-ordinator of the Master of Customs Administration postgraduate program at the University of Münster, Germany, for a number of years and currently works for the Trusted Trade Alliance Europe GmbH. Chris has recently submitted his doctoral thesis, 'Navigating uncharted waters: Does the Container Security Initiative comply with WTO law?'. He is also a translator of legal texts, many of which have been published.