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WORLD CUSTOMS ORGANIZATION

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

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EDITORIAL

World Customs Day, 26 January 2010, witnessed the World Customs Organization's (WCO) formal recognition of the first academic programs to meet the standards it has set for the customs profession. At a ceremony at the WCO headquarters in Brussels, the Secretary General, Mr Kunio Mikuriya, awarded Certificates of Recognition to three universities: the University of Münster, Germany; Riga Technical University, Latvia; and the University of Canberra, Australia. Such recognition is a clear endorsement of the commitment shown by the universities over a period of many years to raise the academic standing of the customs profession. This is indeed a milestone worth celebrating!

The next step, in my view, is to further develop the standards to address the requirements of the broader range of professionals who manage the diverse facets of our borders. Indeed, truly effective border management is reliant upon the collaborative efforts of all who have a role to play in the cross-border movement of goods and people.

This concept of collaborative border management is examined in some detail in the two lead articles of this edition. Erich Kieck presents a well-argued case for international, rather than simply national coordination, and points to the potential economic and enforcement benefits of one-stop posts at shared border crossings. In doing so, he identifies the need to provide relevant agencies with the necessary capacity to implement the associated procedural reforms. In another discerning commentary, Tom Doyle suggests that effective collaborative border management relies on a positive professional relationship between the trading community and regulatory authorities. Key outcomes, he contends, include a reduction in operational costs resulting from more effective and efficient deployment of resources, and efficiencies in customer service.

Also included in this edition is an insightful article by Dr Rolf Rosenkranz, who addresses the emergence of the Arctic as an up and coming economic area and major traffic route. It is with deep regret that I must inform our readers that Dr Rosenkranz, a respected economic specialist and freelance journalist, passed away on 9 March 2010.

Articles in the next edition of the Journal will include papers presented at this year's PICARD conference (see the Special Report in Section 3), which will focus on customs-business partnerships, performance measurement, revenue collection, and the impact of climate change on international trade and customs management. The editorial group also welcomes other contributions that would be of interest to our readers. Once again, thank you for your ongoing support for the *World Customs Journal*.

David Widdowson
Editor-in-Chief

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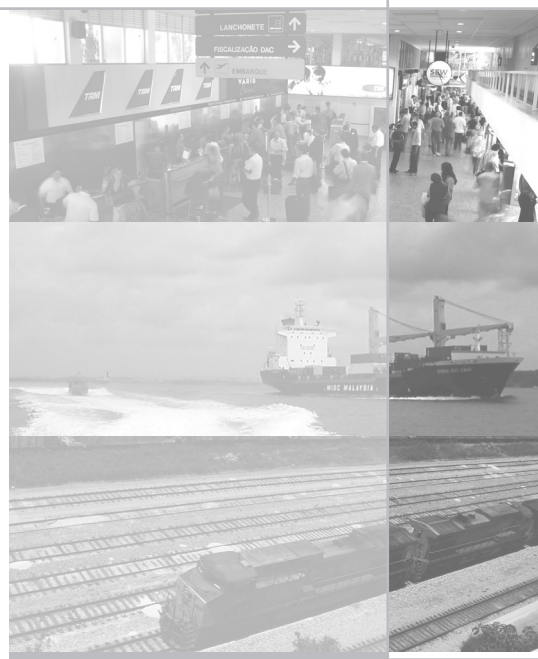

Section 1

Academic Contributions

Coordinated border management: unlocking trade opportunities through one stop border posts

Erich Kieck

Abstract

With the progress made in liberalising international trade through the reduction in tariff barriers, the focus is shifting increasingly to the removal of non-tariff barriers and the facilitation of legitimate trade. At the same time, border management is becoming more complex and this is compounded by the multiplicity of state agencies involved in that management. The World Customs Organization (WCO), the World Bank and other agencies have championed coordinated border management with the aim of reducing the costs of moving goods across borders. From an international coordinated border management perspective, one stop border posts have been introduced or are being considered as a mechanism to improve the movement of goods across shared borders. These arrangements have both economic and enforcement benefits. However, they need to be rooted in a sound policy and underpinned by an enabling legal framework and implementation strategy that have the support of all stakeholders.

International trade liberalisation

At the fifth World Trade Organization (WTO) Ministerial Conference in 2003, the following statement was released:

> Trade between nations is a vital driver of economic well-being and wealth creation. Customs administrations are a major component in the efficiency of international trade because they process every single consignment to ensure compliance with national regulatory requirements and international multilateral trading rules. While Customs administrations have to discharge this mission of revenue collection, protection of society and safeguarding security of the trade supply chain, they also have to strive for increased trade facilitation to promote investment and reduce poverty (WCO Council 2003).

Globalisation and international trade liberalisation initiatives have resulted in the rapid growth of the value and volume of goods moving across borders. The conclusion of various rounds of multilateral trade negotiations and the implementation of preferential trade arrangements such as customs unions and free trade areas have resulted in the reduction of tariff barriers. The gains of these initiatives have been immense. However, goods not only face duties and taxes when they move across borders. They are also subject to other regulatory controls. These controls are usually undertaken by national customs administrations on a transactional basis. As part of their mandates to control the cross-border movement of goods, national customs administrations also prevent and detect the smuggling of goods and combat commercial fraud where traders attempt to evade or minimise the payment of duties and taxes. Other agencies with either a presence at the frontier or with a responsibility for executing controls over the movement of goods include those with a responsibility for agriculture, food safety, health, immigration, policing and standards.[1] These controls are executed either by the agencies themselves or by other agencies on their behalf, such as Customs.

Compliance with regulatory requirements imposes costs on trading across borders, especially if this results in delays as a result of cumbersome procedures and requirements, corruption and weak administrative capacity. As a result, the attention of policy-makers has in recent years expanded from reducing tariff barriers to reducing non-tariff barriers. The aim of trade facilitation is to stimulate trade through a reduction of costs resulting from compliance costs, procedural delays, a lack of predictability and so on.

However, trade facilitation reforms are complex and it has been pointed out that 'trade facilitation and secure trade commitments impose significant adjustment burdens on regulatory authorities as a consequence of legislative and regulatory harmonization, systems and process re-engineering requirements as well as capacity building and administrative re-organization' (Feaver & Wilson 2007, p. 54). The latter two issues need to be emphasised. Current administrative or procedural impediments to international trade will not be removed by merely developing norms governing the simplification and harmonisation of customs procedures and documentation. Their removal is inextricably linked to the capacities of customs administrations to implement such norms. Developing new rules and procedures with the knowledge that most customs administrations are not in a position to implement these will result in yet again ignoring the real constraints.

Various instruments have been developed aimed at promoting the facilitation of legitimate trade across borders. These include provisions of the WTO Agreement and treaties of the WCO. In this regard, specific reference should be made to the revised Kyoto Convention that '… provides both the legal framework and a range of agreed standards to improve customs operations with a view toward standardizing and harmonizing customs policies and procedures worldwide' (World Bank 2005, p. xi). The main objective of the Convention is to facilitate legitimate trade by simplifying and harmonising customs procedures and practices. The WCO's SAFE Framework of Standards also aims, amongst others, to facilitate legitimate trade and introduced the concepts of 'Customs-to-Customs' and 'Customs-to-Business' partnerships.[2] As a result of these and other instruments, many customs administrations have introduced reforms such as the implementation of risk management to focus attention on high risk traders and goods, automation to enable traders and intermediaries to submit documentation electronically, sometimes in combination with single window systems, accreditation arrangements for trusted traders and other facilitation arrangements. Combined with initiatives to develop more professional, skilled and agile workforces, these developments have impacted positively on trade facilitation.

The traditional approach to trade facilitation focused on the performance of customs administrations. It is however now recognised that a comprehensive supply chain approach is required to address 'coordination failures' by border agencies (World Bank 2007, p. 1).

Coordinated border management

Defining borders

The notion of the 'border' is central to the concept of statehood and state sovereignty. The border demarcates the zone in which a state exercises jurisdiction and this includes the development, application and enforcement of policies and laws. It defines states in legal and geographical terms (Ladley & Simmonds 2007, pp. 6-11).

The border also connects countries with each other and the effectiveness and smooth operation of these connections are central to the economic and social development of countries. At the same time, the protection of the border is essential for the protection of the state and its people and economy. In the context of a developmental state, the border also has special significance. The border and flows of people and goods across that border connect the state to economic opportunities through trade, tourism and foreign investment. At the same time, these flows also present risks. It has been recognised that the real

difference with respect to success or failure in economic development is made by, amongst others, the creation of appropriate policy and legal frameworks that are enforced by a competent and effective state institutional infrastructure.[3] Central to the developmental agenda is the understanding that states are part of and dependent on the global society. In short, economic and social wellbeing depends to a great extent on the effectiveness and smooth operation of international links and border control is pivotal to achieving this.[4]

Towards the end of the 20th century, globalisation increased the complexity of managing borders not only through increased trade and travel and complex rules but through the emergence of new threats. In addition to terrorism, it is now being recognised that 'global criminal activities are transforming the international system' (Naim 2005, p. 5) and that 'borders create profit opportunities for smuggling networks and weaken nation-states by limiting their ability to curb the onslaughts of the global networks that hurt their economies, corrupt their politics, and undermine their institutions' (Naim 2005, p. 8). This is of concern to all states and especially to developing countries that require strong and effective state agencies to build their economies and deliver much-needed services to their communities.

The new operational environment requires a coordinated border management approach, providing optimal allocation of resources to one combined set of facilitation and control activities, and consolidating information from all sources to optimise risk management capabilities. Essentially, this entails simplifying and harmonising procedures, securing the supply chain and deploying modern technology and techniques. Some recent best practices in respect of border management include:

Simplification and harmonisation of all procedures. Very often, border procedures are outdated as they are complicated and based on the use of paper documents. Countries have started to review existing policies and procedures on the basis of international conventions (such as the WCO's Revised Kyoto Convention) and international best practice to ensure that procedures are simplified and incorporate modern techniques including the extensive use of risk management and information technology. Broad consideration of internationally accepted standards and best practice foresees:

- alignment with international and regional clearance and admissibility information requirements, including the WCO's Data Model[5]
- a 'single window' interface for advance information reporting for comprehensive government risk management and regulatory purposes
- use of advance information for goods, people and conveyances
- transnational tracking of people and goods through systems interconnectivity
- use of non-intrusive inspection of goods and travellers moving through ports of entry and exit.

Supply chain management. The 'supply chain' is the continuous linking of activities that take place for the systematic movement of goods from place of origin to the place of final destination. To facilitate international trade, the supply chain must first be secured. Securing the supply chain raises issues around the physical movement of goods between places and operators within the supply chain. Unless the consignment's onward movement can be satisfactorily monitored throughout its export or import transportation leg, no amount of advance information will provide any guarantee about its integrity.

Use of modern techniques and technology. Essentially, this entails adopting a risk-based approach and supporting technology, deploying enabling technology and tools and facilitating people and goods movements through appropriate accreditation.

Facilitation of legitimate trade and people movement. This is underpinned by a risk-based approach based on a comprehensive understanding of client activities and risk profiles. Internationally, accreditation schemes are available for both legitimate people and goods movement. Accreditation can be offered subject to meeting additional criteria that enable reduced risk rating in return for a package of benefits including simplified clearance and periodic accounting.

Emergence of new border management institutional arrangements. Internationally, a number of countries have or are in the process of reviewing their border management institutional arrangements to support their new operational imperatives. Recent examples include the establishment of the Bureau for Customs and Border Protection in the United States, the Canada Border Services Agency and the Border Agency in the United Kingdom (UK).

Defining coordinated border management

Coordinated border management is the organisation and supervision of border agency control activities to meet the common challenge of facilitating the movement of legitimate people and goods while maintaining secure borders and meeting national legal requirements (World Bank Group 2005).

According to the World Bank Group, coordinated border management requires a clear delineation of responsibilities for goods and people. The UK Government's 2007 border review, 'Security in a Global Hub' (Cabinet Office, UK 2007), groups border activities into Border Control – processing people and goods moving across the border, and Protective Security – protecting the people using and working at borders, border infrastructure and means of transport. In the case of border control, the processing of people is usually the responsibility of the immigration agency and takes place within immigration policies and laws. The processing of goods is usually the responsibility of the customs agency and takes place on the basis of policies and laws on international trade, revenue, and those applicable to the international trade in goods. Protective security is usually provided by the police and transport security agencies. In addition to these activities and role players, other bodies have an interest including the armed forces, health authorities, the trade ministry, and transportation authorities.

Increasingly, the attention is shifting to international 'coordination' of border activities, not only national coordination. These activities include the establishment of one stop border posts between neighbouring countries and 'virtual integration' where border agencies of countries engage in the advance electronic transmission of data or, to prevent duplication, undertake inspections on behalf of each other through mutual recognition arrangements.

One stop border posts

Overview

One stop and joint control arrangements have been applied in western Europe since the early 1960s. More recently, the Common Market of the Southern Cone (Mercosur) countries concluded the Recife Agreement on integrated controls for application at their shared borders. As part of this Agreement, consensus was reached on 16 border points where integrated controls should be applied. In the Southern African Customs Union (SACU), the establishment of one stop border posts was identified as one of the priority issues of trade facilitation. In the East African Community (EAC), progress has been made in establishing a one stop border post between Kenya and Uganda at Malabar. In Southern Africa, a one stop arrangement was recently introduced at the Chirundu border post between Zambia and Zimbabwe, and Mozambique and South Africa have signed a one stop border post agreement and are working towards implementation. The Andean Community aims to have single controls in place at all common border posts in terms of the Community Policy for Border Integration and Development and has implemented a pilot project for the single control of goods at the Pedro de Alvarado and La Hachadura border posts between Guatemala and El Salvador.

There is no single definition of what constitutes a one stop border post. International examples highlight the following principal features:

- offices of both states are relocated in close proximity, necessitating only 'one stop' for border crossings

- a control zone (or zones) is demarcated within which officers from both states conduct controls in terms of their respective laws
- the control zone comprises offices, inspection areas and related facilities and is usually located within the national territory of only one state
- immigration and import and export formalities are handled as a seamless transaction between the two countries
- inspections and searches of cargoes or vehicles are generally conducted in the presence of officers from both states.

The implementation of the one stop concept has proved challenging for several reasons. These controls are incorrectly perceived to reduce the efficacy of enforcement. A second reason is the concern that arises in respect of legal issues when Customs and other border officers work together in the territory of only one country or in a facility that straddles a border.

Rationale

The rationale for the establishment of one stop border posts is clear in terms of both enforcement and economic benefits. At the core of the one stop concept is the ability of border authorities from two countries to perform joint controls. This results in improved enforcement efficiencies through cooperation, the sharing of intelligence and better resource utilisation. In working side-by-side, cooperation is enhanced and communication is easier. The concept also provides for the sharing of ideas, information and experiences. By way of example, the one stop concept can be used to combat fraud by enabling the clearance of goods on the basis of a single customs declaration thereby preventing the substitution of one set of documents with another. The concept also enables the sharing of infrastructure and law enforcement assets, for example, by jointly using one scanner to examine containers. Cooperation with counterpart administrations, when implemented properly, does not weaken control rather it reinforces control. Over time, joint controls enable customs administrations to better utilise personnel and resources. As trust is built between customs administrations, it may be possible to reduce personnel and rely to a greater extent on the counterpart administration.

With respect to economic benefits, the one stop concept significantly reduces waiting times and costs by moving away from the current two stops that are required to cross the border and comply with the regulatory requirements of the two neighbouring countries. It reduces waiting times for commercial vehicles, thereby saving costs.[6] Long delays in processing commercial vehicles at border posts significantly increase the cost of consumer goods. High transport costs needlessly increase the price of imported goods and put exports at a competitive disadvantage in world markets.

The WCO is also emphasising the one stop concept as a facilitation measure, for example through the Revised Kyoto Convention. Chapter 3 of the General Annex to the Convention binds the parties to implement the following standards:

> **3.4 Transitional Standard**
>
> At common border crossings, the Customs administrations concerned shall, whenever possible, operate joint controls.
>
> **3.5 Transitional Standard**
>
> Where the Customs intend toestablish a new Customs office or to convert an existing office to a common border crossing, they shall, wherever possible, co-operate with the neighbouring Customs to establish a juxtaposed Customs office to facilitate joint controls (WCO 1999).

The WCO's guidelines on the interpretation of the General Annex further define the concept as follows:

- The Customs controls of the exporting administration are conducted at the same time as the Customs formalities of the importing administration (or near simultaneously) by officers from both Customs administrations; and
- The Customs controls are conducted within a common area where Customs offices of both administrations are established, whether in separate buildings or in a single facility (WCO 1999).

The *International Convention on the Harmonization of Frontier Controls of Goods, 1982*, contains more specific operational guidelines regarding facilitation measures that countries may introduce at common borders. Article 7 of the Convention contains its main provisions regarding cooperation at border posts between adjacent countries. It provides:

> Whenever a common inland frontier is crossed, the Contracting Parties concerned shall take appropriate measures, whenever possible, to facilitate the passage of the goods, and they shall, in particular:
>
> (a) endeavour to arrange for the joint control of goods and documents, through the provision of shared facilities;
>
> (b) endeavour to ensure that the following correspond:
>
> opening hours of frontier posts,
>
> the control services operating there,
>
> the categories of goods, the modes of transport and the international Customs transit procedures accepted or in use there (UNECE 1982, p. 4).

The issue has also been tabled for consideration at the WTO Negotiating Group on Trade Facilitation and it has been proposed that provision should be made for the 'development and sharing of common facilities' and the 'establishment of one stop border post control' (WTO 2010, TN/TF/W/165, Rev. 1, p. 20).

'Whole of government' approach

The multiplicity of state agencies with a responsibility for or interest in border matters demands that the establishment of one stop border posts should proceed with the active involvement of all role players. The starting point is for the agencies to converge on all the main underpinnings of the one stop border post concept such as the aims, legal issues, preferred model and mode of operation, process, people and systems issues. Some of these may need to be fine tuned or revisited as negotiations and more detailed work proceed. Very often these policy and strategy deliberations are managed by inter-agency border coordination structures. Given the sensitivity and complexity of the issues at hand, it is necessary to secure political support by providing regular updates to relevant ministers and requesting political guidance.

This approach should then be extended bilaterally to the two participating states. It is advisable that sufficient energy be invested upfront to develop a common understanding of the key issues to avoid later misunderstanding.

International experience demonstrates that the full benefits of the one stop concept require all border control functions to be relocated to a one stop facility. However, this approach need not be the starting point. There is no reason why two customs administrations could not agree to implement joint customs controls while other functions such as immigration continue in the two stop manner. At border posts processing large volumes of commercial traffic, even such limited cooperation may already translate into significant time saving and efficiency gains. A two track approach can, therefore, be followed whereby

Customs-to-Customs joint controls are implemented in the short term, pending the relocation of the remaining border functions in the longer term. This model also enables the participating states and agencies to test a model and learn lessons that could be applied when the one stop concept is extended to other functions. An interesting variation of the one stop arrangement is applied at border posts between Norway and Sweden where officers of one state are authorised to apply the controls on behalf of the other state in addition to their own controls. This requires a high degree of harmonisation and, especially, trust between the participants.

In addition to developing a common bilateral and national vision and strategy, there is a need to closely involve non-government stakeholders from the start. These include traders and their intermediaries such as clearing agents, regular border post users (travellers and transportation service providers), and communities in the proximity of the border post. This is not only essential to secure buy in but also enables stakeholders to contribute to and influence design as well as to prepare for implementation.

Legal basis

Public international law provides for the principles of sovereignty and territoriality. In terms of these principles, national states have the power to develop and apply laws for their respective territories.[7] The flipside of the coin is that these laws are not made for and cannot automatically be applied in other jurisdictions. The implementation of the one stop concept requires that a state agency should be able to apply that state's laws in the territory of another state. In other words, provision should be made for extra-territorial jurisdiction.

Once the traditional two stop border post concept is abandoned, functions such as customs controls are automatically placed closer together. In practice, customs officers from two bordering states relocate their working areas so that import and export procedures can take place in conveniently adjoining locations, such as adjacent offices or rooms. If a vehicle or goods are to be inspected, such inspections occur at one inspection facility in the presence of customs officers from both sides to avoid the need for a vehicle or load to be stopped and off-loaded a second time. Usually, adjacent customs offices are located in the national territory of only one state. This implies that foreign customs officers are given jurisdiction to implement their own laws within the national territory of another state, potentially touching on the sensitive issue of sovereignty. International experience has demonstrated that issues of sovereignty and jurisdiction are easily solved through a process of bilateral negotiation and national enactment.

The starting point is the bilateral agreement concluded between two governments that is usually submitted for ratification to national parliaments.[8] In a note prepared for the EAC, there is an indication of the issues to be provided for in agreements, including the principle of extra-territorial jurisdiction, identification of the area where the one stop arrangement will be applied, the scope of the arrangement (that is, all or only some border controls), the sequence in which control will be applied (that is, the completion of controls in the country of export/departure before those in the country of importation/destination), the powers of officers, jurisdiction in case of offences, and immunities of foreign officers.[9]

One stop agreements carefully define the application of extra-territorial jurisdiction. This is done by spelling out the official controls that may be undertaken outside the territory of the state in terms of whose laws such controls are carried out. In addition, the agreements will also limit the execution of these controls to designated control zones. Another key principle is that formalities of the exit country will be carried out before those of the country of entry. Once the exit controls have been completed, it is deemed that a border crossing has taken place. Provision should also be made for the transfer of revenue collected from a control zone in one country to another country as well as for transfer of detained and seized goods.

Operational and implementation considerations

A major preoccupation in the establishment of one stop border posts relates to infrastructure and traffic flow arrangements. These are critical issues in supporting the smooth operation of the border post but should be amplified by an integration of processes undertaken at the border post. In a paper prepared by Michel Zarnowiecki in support of the Lebombo – Ressano Garcia joint border crossing,[10] the following design and processing considerations and proposals are outlined:

- For passenger and driver processing, clearly demarcating the border line at the border station by, for example, a line on the ground and adequate sign-posting so that the border station effectively straddles the border. This would avoid many extra-territorial issues. The ideal solution is to establish the border line at the last point of control in the country of exit. This arrangement may not always be possible at a more comprehensive border station and the international agreement may need to define a new border or to extend the jurisdiction of a state (albeit for specific purposes and confined to a well defined area) into the territory of the neighbouring state, for example, by providing an enclave and access routes with extra-territorial status.
- Introduction of fast track arrangements such as 'fast lanes' where pre-identified drivers make a self-declaration by selecting the fast lane and pre-screening of regular users such as the arrangement that has been introduced between Canada and the United States of America (USA) or between European countries.
- Joint passenger processing notably through unique data capture such as passport readers and OCR technology for capturing number plates, and payment at one terminal including issues relating to data exchange and storage.
- Joint inspection for cargo processing is a goal but often the countries of exit and entry have diverging interests in the performance of controls. However, sharing of scanners and other inspection equipment is a feasible option. In addition, consideration should be given to creating a legal basis for sharing and using findings as official evidence.
- Staffing issues such as ensuring that officers working in joint control areas comply with high standards and display the highest level of professionalism and efficiency. A consideration in this regard is to incentivise officers by paying those that work in joint control areas with a bonus for representing the administration in another country or a special zone.
- Management of the one stop facility including all aspects of running, managing and maintaining such a facility, as well as involvement of the private sector.
- Establishment of a joint stakeholders or users committee that represents the public and private sectors of both countries. Specific mention is made of using such a committee to develop and monitor compliance with agreed service standards.

The benefits for border agencies and traders in establishing one stop border posts can be further enhanced by combining such arrangements with other international coordinated border management arrangements. These include the exchange of data and intelligence and the mutual recognition of Authorised Economic Operators (AEOs). In support of these arrangements, the cooperating countries should consider the connectivity of their respective systems or even use the same system, the development of a common risk management approach towards their shared border that includes joint risk analysis and profiling, the introduction of a common single administrative document, the exchange of transactional data including the option of undertaking import clearance on the basis of export data for all or selected traders, and the establishment of common standards and facilitation benefits for mutually recognised AEOs.

New high level agreed processes and other arrangements should also be articulated in very detailed standard operating procedures for all functions at the one stop border post. This would enable the parties to work out the details of the functioning of the border post, identify issues that require more detailed consideration and avoid any misunderstanding on roles and responsibilities and sequencing of activities and sub-activities. It has to be borne in mind that the establishment of a one stop border post significantly impacts on officers working at and away from border posts. Detailed standard operating procedures facilitate the training of officers to apply the new operating model and enable officers to undertake their duties with confidence. This should be supplemented with real and meaningful change management programs. Additional considerations include joint training of officers of neighbouring countries to ensure a common understanding and to build institutional trust.

In a number of one stop border post initiatives, the parties have agreed to use time release studies prior to and after implementation of the one stop initiative to measure savings in time and costs and to identify further improvements that may be required.

Finally, consideration should be given to some practical implementation issues. Very often these issues are neglected with the result that well intentioned initiatives experience delays or, even worse, founder. Project management best practice dictates that implementation strategies should be underpinned by clear actions and timeframes, and the allocation of responsibilities and resources. As mentioned, it is necessary to achieve both political and administrative buy in of the strategic framework and to provide institutional focus and support. From an accountability perspective, some of the measures that should be put in place include regular reporting to political heads and senior officials on progress made and challenges faced. Allocation of the necessary resources must be made to execute the task at hand. Another consideration is the support of international cooperating partners. A number of donor agencies have committed support with the establishment of one stop border posts, usually as part of a package of broader regional and bilateral trade facilitation measures. This could be supplemented with advisory support provided by the WCO Secretariat. Under its Columbus Programme, the WCO Capacity Building Directorate has entered into arrangements with the EAC and SACU to provide strategic and technical support with the design and implementation of new initiatives. In addition and in view of the interest in establishing one stop border posts, the WCO should, as part of its coordinated border management activities, undertake research and develop model agreements and legislation, guidelines and best practice on the establishment of such posts. This will contribute to the development of 'know how', encourage implementation by removing uncertainties. Time and costs will be saved by not having to re-invent the wheel and by avoiding implementation pitfalls.

Conclusions

The establishment of one stop border posts provides states with the opportunity to reduce the costs of doing business and improve enforcement at shared borders. Moving successfully from conceptualisation to implementation requires that these initiatives be properly planned and the emphasis placed on the involvement and buy in of stakeholders. It also needs to be recognised that the shift from two stops to one stop arrangements has a significant impact on officers of both states. Investments in change management and retraining are essential to ensure that the participating states reap the envisaged benefits. Finally, developments in the WCO and elsewhere on issues such as the mutual recognition of AEOs and other Customs-to-Customs arrangements provide states with the opportunity in moving beyond the traditional one stop arrangement.

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Endnotes

1 Interesting developments regarding 'integrated border management' include the establishment of the US Bureau for Customs and Border Protection and the Canada Border Services Agency.

2 The *SAFE Framework of standards to secure and facilitate global trade* was adopted by the WCO Council in June 2005.

3 See Fukuyama 2004.

4 See Cabinet Office, United Kingdom 2007.

5 Version 3 of the WCO Data Model was officially launched in 2010. This version was, amongst others things, aimed at supporting single window systems and the exchange of data between administrations.

6 Regional Trade Facilitation Programme n.d., 'Overview of one stop border posts', www.rtfp.org/overview_border.php.

7 Kenya Private Sector Alliance 2010, para. 2.4 to 2.6.

8 It should be noted that regionally-focused treaties could also be entered into where, for example, a customs union decides to develop a treaty that provides for the establishment of one stop border posts.

9 Kenya Private Sector Alliance 2010, para. 6.2.

10 Zarnowiecki 2007.

Erich Kieck

Erich Kieck is the Group Executive for Customs Strategy and Policy at the South African Revenue Service. He is a lawyer with experience in Customs, international trade and professional consulting. Erich has been actively involved in the activities of the WCO, the African Union and African regional economic communities. He holds the B.Iuris, LLB and LLM (*cum laude*) degrees and his academic focus areas are the multilateral trading system, preferential trade arrangements, international dispute settlement and developmental studies.

Collaborative border management

Tom Doyle

Abstract

Traditionally, the role of Customs and other border management agencies has been the 'gatekeeper of the border'. This article identifies that the collaborative border management (CBM) approach can, if properly designed, implemented and adequately resourced, deliver a range of benefits to government and the private sector. Agencies and the international community need to work together to achieve common aims that benefit all parties. CBM features the concept of a *'virtual border'* encompassing the entire transport and supply chain where goods and passengers can be assessed for admissibility and clearance in advance of arriving at the physical border. The key components of CBM are discussed: policy, process, people, technology infrastructure and facilities.

Introduction

The aim of this article is to present a new approach for the way in which border processing and clearance could operate in the future. While there are a number of concepts frequently discussed in border management literature, this article brings together the key elements of these into a holistic set of new approaches collectively known as Collaborative Border Management (CBM). The concept of CBM and its implementation considerations will be further explored in the context of a World Bank publication 'Border Management Modernization – A Practical Guide for Reformers' to be published in the near future.

Background

Traditionally, the role of Customs and other border management agencies has been the 'gatekeeper of the border'. Customs and other border management agencies are likely to continue to perform a vital community protection role in terms of preventing international terrorism, a fiscal role in terms of tax collection, and an environmental and social role in terms of protecting public health and cultural heritage. However, a strong shift in emphasis towards facilitation and competitiveness is likely.

The current Doha Round of World Trade Organization (WTO) negotiations and certain publications of the World Bank (*Doing business and connecting to compete: logistics performance index*) have also increased global awareness of the important contribution that improved border management procedures can make to economic development and poverty reduction. This is achieved by reducing unnecessary red tape and facilitating the cross border movement of goods.

Border management agencies are now working in an environment of increased expectations from the private sector. There is a heightened awareness of costs and this has generated political pressure for competitiveness as countries vie to attract trade and tourism. Against this background of cost and efficiency improvements there is still a need to maintain good governance and integrity and meet ever increasing policy and procedural requirements.

Customs and other border management agencies are now required to respond to these challenges and deliver a wider remit of services and improved efficiency, often against a backdrop of decreased funding. Customs' reforms alone will not address the challenges as it is only one of the border management agencies involved in clearing goods and passengers. Information is still typically collected and stored individually by each border agency involved in the clearance process and this information is rarely shared across the agencies. There is little direct interaction between border management agencies. The burden is placed on the customer to supply similar sets of information, frequently in a variety of electronic and paper based forms, to multiple agencies. The multiple agencies then individually process this data before regulatory requirements can be completed for admissibility and clearance.

The importance of achieving higher levels of export-led economic growth will continue to put customs and other border agencies under the 'spotlight'. This will create opportunities for these agencies to demonstrate their willingness and capability to contribute to this competitive environment.

A holistic 'end-to-end' approach to border management reform increases the likelihood of success in overcoming the range of political, institutional and operational problems that have to date proved extremely difficult to manage. Reform efforts extending beyond single organisational entities have to ensure that they are not hampered by narrow sectional interests. Allegiances to a single organisation should not overshadow the achievement of wider national objectives.

It is inevitable that the pace of reform by some of the major trading countries, as well as their onerous demands are likely to continue to stretch the administrative capacity of developing countries, particularly the Least Developed. In this regard, it is important to recognise the capacity constraints which often hinder effective cooperation within the network of Customs and border management agencies.

Agencies must deliver improved efficiency, defined outcomes, greater facilitation, increased regulatory control, enhanced security, improved data sharing – nationally and internationally – all against a backdrop of static or decreased funding.

Collaborative Border Management (CBM)

The Collaborative Border Management (CBM) concept is based on the premise that agencies and the international community need to work together to achieve common aims that benefit all parties. It features the concept of a *'virtual border'* encompassing the entire transport and supply chain where goods and passengers can be assessed for admissibility and clearance in advance of arriving at the physical border. CBM becomes increasingly effective as border management agencies gather, collate and share more data. This can be used to create a complete view of risks and opportunities, encouraging a knowledge sharing culture and a border management strategy built on proactive decision making.

The foundation stone for CBM is relationship management with the trading community, regulatory authorities and collaborative engagement with transport/supply chain partners. Through a combination of *'customer segmentation'* and *'intelligence driven risk management'*, the clearance (that is, admissibility processing) of goods and passengers can be carried out electronically in advance of physically reaching the border. Customer segmentation enables the border agencies to tailor information and services according to the specific needs of different customer groups. Intelligence driven risk management enables border agencies to accurately carry out pre-arrival/departure identity assurance and eligibility entitlements of trusted traders or passengers, and to carry out targeted intervention of others. A single common source of regulatory admissibility and pre-clearance information is made available to all relevant border management agencies, partners and customers through a collaborative information portal (for example, Single Window).

Within the CBM concept, *'trusted clients'* such as Authorised Economic Operators (AEO) and members of Trusted Traveler Programs are entitled to facilitated and streamlined border clearance facilities.

They may even be allowed to discharge their regulatory obligations in a differentiated way such as pre-arrival clearance processing through identity management systems or through third party compliance information verification systems.

CBM enables border management agencies to work in close collaboration with each other, forming an *'inter-agency approach'*. CBM can be achieved under the jurisdiction of a single border management agency. However, the creation of a single agency in itself is not necessarily the only or the best solution. Typically, an overarching governance body is created charged with facilitating the establishment of an overall border management vision and ensuring that all stakeholders are involved and are working together to achieve the common vision. Strong political will and commitment and the establishment of an appropriate incentives/disincentives framework to underpin and support progress are essential for the success of CBM. This structure preserves the independence and specific mandates of Customs and other agencies involved in border management. The successful implementation of CBM results in more appropriate treatment of traders and passengers as a result of more thorough and accurate data collection and analysis. There is reduced compliance verification documentation required at the point of border entry. CBM ultimately delivers lower costs and greater control to border management agencies.

CBM enables low risk persons and cargo to move uninterrupted across borders where there is a political will, an administrative capacity on the part of border agencies, and a culture of compliance and collaborative partnerships. At the same time, enforcement controls can focus on higher risk individuals and cargo, with much of the decision making happening at the *'virtual border'* stage. Each of the border management agencies benefits from adopting the *'customer-centric view'* that underpins the CBM concept. By collating previously distributed and perhaps individually incomplete information into one body of common inter-agency information, border management agencies can form a more complete and accurate view of a client or customer and their compliance history. This enables them to make better informed eligibility and compliance management decisions.

This collated information also benefits the customer. CBM harmonises border management procedures between Customs and other border management agencies. The holistic view of border management results in reduced administrative and compliance costs, as well as increased time savings and ultimately, a more efficient and favourable customer experience. Achieving this requires commitment and proactive collaboration between the border management agencies and a governance structure that effectively coordinates border operations, aligning each of the agency's roles and responsibilities and ensuring the successful implementation of the change process.

CBM makes possible a set of defined business outcomes. Distinctive border management agency operations can make a real difference to citizens, the business community and the country as a whole. It creates a more customer friendly and more responsive environment. Objective measures of performance can be set for all key result areas.

Key components of the CBM concept

The key components of CBM are discussed here under policy, process, people, technology infrastructure and facilities. Many of the practices highlighted are already being achieved in some countries through discrete reform initiatives. The difference with the CBM model is that it brings together these innovations and there is a major transformation achieved through the *'holistic and collaborative end-to-end'* approach.

Policy

CBM enables a shift of primary focus by border management agencies, from a balanced and weighted approach to control and facilitation, towards one of optimised trade cooperation and regulatory control. CBM recognises that the vast majority of travel and trade is legitimate. By establishing trusted partnership

arrangements, more effective customer service can be delivered. CBM enables more comprehensive compliance management which results in agency staff operating more efficiently, targeting high-risk passengers and consignments for intervention. They also benefit the competitiveness of the trusted customer by creating an environment in which visible and tangible benefits accrue to compliant customers. There are equally visible enforcement sanctions which discourage the less compliant.

The implementation of CBM demands improved ***intergovernmental and inter-agency networking arrangements.*** Networking arrangements allow border management agencies to cooperate effectively with a set of common and agreed standards. Information is centrally located and a single view of each customer is provided, while customer segmentation allows the agencies to deliver enhanced 'value added' services. There is a special emphasis on the sharing of value added compliance management information between countries rather than a reliance on individual transactions.

CBM takes advantage of the availability of information at the earliest point in the transport and supply chain at which border management agencies can become involved. This could be at a factory while goods are being packaged for shipment, the point of the departure from a port or airport, or indeed at any point before the physical destination border is reached. By ensuring compliance at the 'virtual border' stage, the length of time required for clearance at the physical border is minimised. Border management agencies can then focus their attention on surveillance and intelligence led targeted intervention of higher risk shipments and passengers.

Processes

CBM requires border management agencies to define 'outcome' based processes such as increased level of customer compliance, export competitiveness, etc., rather than focusing on 'output' based processes such as the volume of transactions for compliance verification. By looking at desired outcomes from both the agencies' and the customers' points of view, processes can be defined which satisfy both sets of needs. In addition, by looking at border management operations as a whole, certain common outcomes such as the fight against counterfeiting can be identified, creating opportunities for efficiency gains and more cost effective service delivery developments.

CBM enables a single view of the customer, allowing border management agencies to cooperatively analyse and assess information and make more informed and rigorous decisions. It streamlines and simplifies the interactions of customers that interact with multiple border management agencies. Services can be designed both to improve the customer experience across all interactions and to reduce duplication of effort across multiple agencies.

Intelligent analysis of data at a customer level also enables border management agencies to concentrate on auditing higher risk customers and shipments. Trusted customer relationships are developed and information is shared across the agencies. This allows greater efficiencies when, for instance, an individual or piece of cargo interacts with multiple border management agencies numerous times on a single voyage.

People

CBM demands that border management agency officials are well equipped with the skills, knowledge, and behaviour they need to manage the new processes correctly. The role of skilled, experienced and committed officials remains the driving force for addressing the challenges that border management agencies face in achieving their goals.

A comprehensive capability assessment can result in a set of recommended transformation actions. These could include, for example, the introduction of organisational change, such as the ***outsourcing*** of certain functions. It could result in the introduction of a business change management program. This

would enable border management agency staff, whose previous responsibilities may have become less essential as a result of CBM policy and processes, to operate in a more effective manner in their new areas of responsibility. Staff should be trained and designated to perform cross-agency tasks where appropriate, eliminating redundancy, reducing duplication and creating efficiencies in customer service.

Information technology

CBM promotes the technical development and interaction that is needed for more effectively sharing information and identifying risks. CBM implies significantly closer national, regional and international collaboration among other government agencies and the international travel and transport industries. This can be achieved through the use of technology and systems that share and link information. In addition, bilateral, regional and multilateral agreements that facilitate policies and strategies for collaborating, sharing information and developing interoperable systems may be required.

When information is integrated across the border management operations, border management agencies can become intelligence-driven. Existing technologies and working methods enable the rapid conversion of structured and unstructured data into the actionable intelligence needed to analyse potential threats and proactively communicate alerts to the staff engaged in enforcement activity.

The timely and effective processing of clearance and interoperability of border operations is difficult to achieve with traditional databases and database queries. It requires a vast amount of data to be analysed and executed within minutes. The range of available data may also be erroneous (for example, names misspelt or self supplied incomplete data), non-specific (for example, multiple common or similar names) and lack international standards (for example, what is required in one country may not be required in another).

'Fuzzy logic' can improve the identity and compliance management process by helping border agencies to differentiate based on characteristics that may also be non-precise, absent, or wrong. Matching with fuzzy logic is particularly useful for finding information that best fits diverse and complex conditions such as accessing large amounts of stored data in multiple data formats, for example, structured, unstructured, image and biometric coding. It returns a result of the percentage of a match made rather just returning exact matches. Close, but not exact matches, can be identified and prioritised. This greatly increases the chance of successful identity management and pre-clearance admissibility decisions prior to arrival at the physical border. It also improves the effectiveness of other compliance management functions such as surveillance and investigation.

Interoperable systems and business processes facilitate seamless operations across countries, organisations and other boundaries. By linking both structured and unstructured information across the border management agencies, individual agencies are able to overcome redundant processing and the inefficiencies inherent in standalone or *'stove-piped'* information silos.

Infrastructure and facilities

Infrastructures at points of entry often have designs that predate today's security, trade and travel demands and priorities. Such facilities often suffer from inadequate capacity and infrastructure. The upgrading of these facilities in collaboration with both other border management agencies and neighbouring countries is an important step in cost effectively improving regulatory control and trade facilitation.

CBM enables the creation of a *shared services* environment whereby a collaborative operating model and facilities could be created on the basis of industry *'leading edge'* practices. Significant economies of scale can be realised through participation. In a regional setting, a shared service environment could deliver cost savings in terms of (a) the agency specific development national costs, (b) the inter-agency development national costs and (c) the costs nationally and regionally of maintaining the support

technologies. A ***shared service*** approach must have a common vision and orientation towards delivery and service levels. There must be strong performance metrics and a culture of continuous improvement.

Such an approach would require some consensus on what is an efficient and effective operating model and agreement as to the common core processes to be managed under a shared services arrangement. A shared services approach would allow participating agencies to rapidly reach the capability level of the most efficient agency and reduce their operating costs. The advantage to the leading agency is that it gets to set the pace of modernisation. In reality, governments and their border agencies are typically at different stages on the 'transformation' journey. Modern day technologies and facilities have now matured to the point where shared service approaches could dramatically improve the lot of border agencies and the customers they serve. It is now more a question of the political will to look more seriously at this and other new ways of infrastructure and facilities management.

Outsourcing also provides a means to specialised services in a more cost effective manner that can best utilise resource availability. This could include the management of technology-intensive areas such as application outsourcing to control ICT development costs or technology infrastructure outsourcing where hardware and associated ICT services are contracted out. It allows border management agencies to concentrate on the improvement of core business strategies.

However, it important, as with any strategic delivery option of products or services, to understand the issues and risks associated with outsourcing. Once again, as with the shared services option, the principal barrier to the adoption of outsourcing is the understanding of border agencies about the value for money of this approach and their willingness to change their procurement policy.

A *public private partnership* (PPP) refers to a contractual agreement formed between a public agency and private sector entity that allows for greater private sector participation in the delivery of many types of projects. A Single Window development lends itself to a PPP operating model. Core functions are converged and streamlined to benefit all border management agencies using these services. As an example, a shared document management function could reduce the rate of growth of documentation stored by the border management agencies to more acceptable levels.

Conclusions

Government benefits from the CBM approach through a lower cost of the overall border management operation with more effective and efficient deployment of resources. There is improved trader and passenger compliance, with increased integrity and transparency. Security is enhanced with improved intelligence and more effective enforcement. The country is more competitive where legitimate trade and travel is facilitated and clearance procedures are more predictable and certain.

The private sector benefits from the CBM approach with faster and more predictable clearance and release timings and payments. Their resources can be deployed more effectively and efficiently as a result of the more predictable release times. There is also an increase in transparency.

Policy makers frequently believe that they have to make the choice between regulatory control and trade facilitation. However, CBM challenges this, creating a more transparent, industry-friendly regulatory framework which promotes competitiveness and growth while at the same time ensuring regulatory compliance – a genuine *'win-win'* situation.

The CBM approach can, if properly designed, implemented and adequately resourced, deliver a range of benefits to government and the private sector. There is an increased public awareness of the importance of maintaining good border management governance and integrity. This is coupled with clearly articulated policies and procedural requirements and commitments directly related to regional and international agreements. There is prompt and predictable clearance processing for compliant traders and passengers. There is transparency of costs and the country achieves a more competitive position for attracting foreign

investment. The more responsive border management operation has a central role in protecting society from a range of threats to national security.

For CBM to be effective, border management agencies should develop a *common vision and an inter-agency approach* to its delivery implementation. Even when regulatory control and facilitation activities are distributed across multiple agencies, all of the functions and organisations should be aligned around the *same mission*. They should work together to achieve the *same goals*, and should integrate their respective information seamlessly within the requirements of data protection and privacy legislation. Grouping these agencies into a Single Border Agency may provide an impetus for adopting the CBM approach and direction. However, the underlying coordination barriers will still need to be addressed. Success requires a *clearly defined strategy* across border management functions, the policies to support this strategy, and a *governance and leadership* structure that provides continual, clear direction. A comprehensive *collaborative business architecture* that 'defines the optimum capabilities, organisation structures, processes, competencies, technology and infrastructure' is required to support the accomplishment of the inter-agency missions.

The way ahead for CBM is to transform the way border management agencies do their business thorough *intergovernmental and inter-agency networking arrangements* and through *partnerships* with their customers. Networking arrangements allow border management agencies to cooperate effectively to a set of common and agreed standards. *Customer segmentation* allows the border management agencies to deliver enhanced services to compliant customers and focus their scarce resources on more *value added intelligence and risk driven interventions*. Countries will receive security and compliance management benefits from the creation of such arrangements, and opportunities will be provided for more developed countries to *share facilities*, knowledge and *capacity building* with those who are less developed. The developed nations also benefit from the increased sophistication and performance of their previously less developed partners. Unlike in the business or military world, where actors strive to gain a competitive advantage against their rivals, CBM creates a *'win-win'* situation whereby the strengthening of a partner's capacity reduces pressure on their own capacity.

Tom Doyle

Tom Doyle is currently working at the International Trade department of the World Bank as a Senior Border Management Specialist. He has spent 32 years working within the domain of Customs and Border Management where he has held a number of positions within the Irish Revenue Commissioners, the European Commission, the Cyprus Government, and with the international consultancy company Accenture. During this time he has worked extensively in all areas of customs policy and strategy but is best known for his work within the ICT environment where he has provided technical assistance and support to a number of countries in Asia, Africa and Europe as an official and as a consultant. He has also authored a number of papers including 'Customs 2020', 'Outsourcing as a strategic delivery option for Customs' and more recently, co-authored the World Bank's border management handbook, *A guide for reformers.*

The northern drift of the global economy: the Arctic as an economic area and major traffic route[1]

Rolf Rosenkranz

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With regret and sadness, we advise readers of Dr Rosenkranz's death on 9 March 2010.

The history of the world is a history of the battles led by sea powers against land powers and by land powers against sea powers.

Carl Schmitt, *Land und Meer*, Stuttgart 2001

Introduction

The two poles of our planet – the Arctic and the Antarctic – are opposites and not only because they are aligned on diametrically opposed points of the globe: their surrounding areas also display contrasting natural characteristics. Whereas the South Pole is located on a land mass whose features are almost completely encased in ice, the core of the North Pole is an ocean whose covering of ice is weakening and shrinking year by year. The land that encircles it at the continental margin leaves a route to the two greatest seas of the world – the Pacific and Atlantic. These waters flow into each other and circulate just like a system of interconnected vessels.

The waters of the Arctic themselves form a basin lined by underwater ridges between which run deep troughs. The most important ridges are the Lomonosov and the Mendeleev (the former named after the founder of the Russian Academy of Sciences, the latter after the discoverer of the natural system of chemical elements). Admittedly, these names only represent 'addendums' from a much later era. For many years, the Artic was a romping ground for seal hunters, fur traders, adventurers and explorers. Up until the mid 20th century, it had become the preserve of researchers and scientists; even in the 1930s (that is, before the era of aviation and satellite reconnaissance), the Arctic's covering of ice meant it resembled nothing more than a great white mass. The history of the Arctic is therefore characterised by exploration rather than conquest – not least because it is surrounded by only a few small islands (with the exception of Greenland, of course).

The strategic importance of the Arctic

Currently, the course of events reflects the prophecy that Seneca made almost 2000 years ago:

> A time will come in later years when the Ocean will unloose the bands of things, when the immeasurable earth will lie open, when seafarers will discover new countries and Thule will no longer be the extreme point among the islands.

There is a great – and growing interest – in the Arctic. First of all, the polar area is of strategic importance in reforming the power structures to reflect globalisation. Whereas the United States attaches great importance to the military possibilities, the Russian Federation is focusing on the commercial potential; both the Arctic and sub-Arctic regions represent a veritable treasure chest of important energy and mineral resources (natural oil, gas, nickel, diamonds and wood).

Russia's commercial interests

As a result, Russia has two options of future importance. On the one hand, climate change offers opportunities which reflect the unique characteristics of Siberian natural resources. On the other, the

Figure 1: Detailed geographical chart of the Arctic region (Pole, Arctic Circle, subpolar region) and its political structure (neighbouring states)

Source: http://lib.utexas.edu/maps/islands_ocean_polares/arctic_region_pol_2007.jpg.

thawing permafrost will uncover methane gas currently trapped in the frozen soil and the climatic effect will far exceed the Arctic region. Efforts will therefore be directed to harnessing the methane for energy purposes and storing carbon dioxide in subterranean caverns.

Hydrocarbons (primarily natural gas) constitute Siberia's main source of wealth. As this is a liquid gas, Russia will no longer be tied to the pipeline system and therefore be able to adopt a new energy strategy. Whereas gas prices currently depend on the distribution station and long term contracts, in the future it will be possible to trade gas on the world market at stock market prices. As a buoyant commodity, liquid gas can be traded freely and sold to the highest bidder.

Russia is aiming to corner a twenty per cent share of the world market by 2020. This is made possible by the gas fields which it has discovered and opened up in recent years. The most important field is the Shtokman in the coastal shelf of the Barents Sea whose reserves of natural gas are estimated at 3.8 billion cubic metres. From Shtokman, the gas is transported via the North Stream pipeline to Greifswald in

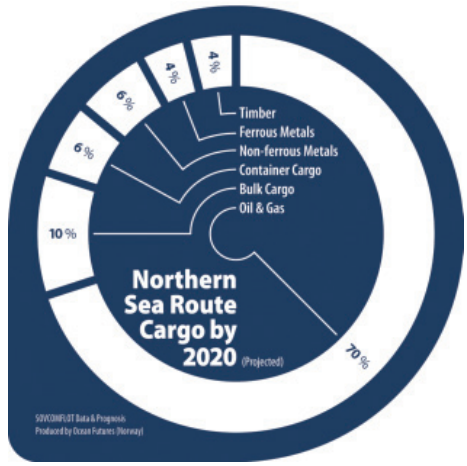
Germany, where it is distributed throughout Western Europe. The reserves on the Jamal Peninsula near the Ob estuary as well as storage facilities in the Siberian Far East in Vladivostok and Sakhalin Island are no less important and are used to supply the East Asian market (South Korea, Japan and North China).

In geopolitical terms, the most crucial change will be the potential transformation of the 'Gas OPEC' (that is, the Gas-Exporting Countries Forum (GEFC)) into an organ which regulates international gas prices and the maximum supply rate. Current trends in price formation are challenging the hegemony of the United States (US) dollar. In addition, the main importers of raw materials (China, in particular) are attempting to secure their procurement sources either by negotiating extremely long term contracts (up to 100 years!) or by acquiring a nation's entire resource of raw materials (for example, Australia). Both trends will considerably weaken the position of the United States of America (USA), whose monopolies obtain their supplies from commodity markets linked to the stock exchange.

Northern sea routes

Climate change will allow the Northern Sea Route to be used more extensively. This route connects the harbours of Western Europe and North East Asia, is shorter than the route through the Suez Canal and is also free from hurricanes and attacks by Somali pirates. Since Mikhail Gorbachev's 'Murmansk Declaration' in 1989, around 40 harbours (including Dikson, Tiksi, Cherskiy and Pevek) along the transit route have opened for international maritime traffic. In this context, it is also worth remembering that Siberia has an extensive network of waterways which connects to some of the longest rivers in the world (for example, Pechora, Ob, Yenisei, Lena). Accordingly, the Northern Sea Route also promises improved access to Siberia's industrial sites up to the Mongolian-Chinese border.

Figure 2: Estimated freight movements on the Northern Sea Route by 2020



Defining the 'Arctic'

There is no political or scientific definition of the Arctic; indeed, even the geographical pole is not a fixed point but moves in a circle according to the tilt of the earth's axis. An astronomical definition in terms of the northern polar circle (66° 33′ northern latitude) is not very informative in this context. Although Iceland is generally considered to form part of the Arctic, it lies to the south of it and the settlements of the indigenous population do not provide any assistance either: apart from a shared lifestyle, the population is in fact ethnically mixed and the name 'Eskimo' is nothing more than a collective noun used by the West.

The Arctic isotherm (10°C)

The expansion is being caused by climate-related atmospheric conditions (that is, the natural elements). The 10°C isotherm is relevant in this respect; it is an imaginary line connecting all locations where the average temperature in the polar summer months is below 10°C. It also serves as a biological dividing line insofar as it roughly correlates with the timber line, where the taiga merges into the tundra. As a consequence of climate change (especially by the melting ice in Greenland) the area of the Arctic Ocean will increase (that is, more land covered by water) whilst the warming of the Arctic region from the south will decline (that is, the 10°C isotherm will shift to the north).

The sector principle

The efforts to divide up the territory of the Arctic will also have political repercussions which deserve attention. The sector principle model was created in the 1920s and follows a simple strategy: it divides the Arctic territory into sectors by drawing a line from the coastal perimeter of the states neighbouring the Arctic Ocean to the North Pole. The resultant sectors become the national property of the state concerned and fall under its sovereignty. The early model of the sector principle drew very strict, straight border lines to the North Pole but the current model differs by taking into account the existing border agreements relating to the coastal areas.

UN Convention on the Law of the Sea

Under international law, it may be possible to shift territorial claims towards the North Pole using the United Nations (UN) Convention on the Law of the Sea as a basis.

In the 19th century, territorial claims over coastal waters were determined by the ‘freedom of the seas’ doctrine which limited state territories to the range of canon fire. As the range of both canons and claims increased, the sovereign territory of a state became limited to 3 or 12 nautical miles. After the Second World War, President Truman ordered a unilateral expansion of the US continental shelf (that is, the seabed which gradually recedes from the coastal line) to 200 nautical miles from the baseline. This precipitated an avalanche of similar claims by other coastal states. In 1982, the Convention on the Law of the Sea of 1982 legalised an ‘Exclusive Economic Zone’ of 200 m² which granted limited sovereign rights over maritime economic resources. Under the Convention, a claim of this nature does not require any documentation and/or international approval; rather, it constitutes an autonomous act of the state concerned.

In addition, a coastal state can extend its claims 350 m² from the baseline if it can prove, on the basis of geomorphological evidence, that the section of seabed in question is an extension of its land territory. Therefore, the Convention on the Law of the Sea established a geo-scientific organ specifically for this purpose, namely the Commission on the Limits of the Continental Shelf.

The subject of disputes between states is the Lomonosov Ridge which according to scientific evidence, freed itself from the Siberian plate over 50 million years ago and is now ‘swimming’ towards Greenland. Should the submission by the Russian Federation be recognised, it would expand its territory in the Arctic Ocean by 1.2 million m².

The Arctic Council

The coastal states of the world are attempting to extend their national territory (and thereby their sovereign rights) from the baseline outwards. In the Arctic Ocean, these efforts take on the character of a conquest. Both territorial strategies – the sector principle on the one hand and the 350 m² extended

legal area of the coastal states on the other – will subject the Arctic region to a completely new type of international legal regime. In the former case, the Arctic Ocean will be owned by a 'community' of coastal states and will thereby lose its status of 'international waters' completely. Instead, it will either resemble 'coastal waters' or (according to the renowned polar researcher Vilhjalmur Stefansson) will turn into a 'new Mediterranean'. The latter strategy would allow for a residual area, access to which would depend on the consent of neighbouring states.

The US will play a special role in these developments. It is the only super power and North Atlantic Treaty Organisation (NATO) member which does not belong to the 150 signatories of the UN Convention on the Law of the Sea. Since the US does not enjoy sufficient support from other countries at a plenary meeting of the UN and its right of veto in the Security Council is inadequate to shape international law, it will seek to achieve its aims by avoiding the UN and operating outside the international community.

It is against this background (and at the instigation of the US) that eight states formed the Arctic Council in 1996 with the aim of protecting their interests in the Arctic region. The various organisations representing the indigenous peoples were also incorporated as a member but not given the right to vote.

In May 2008, the five coastal states directly neighbouring the Arctic (Denmark, Canada, Norway, the Russian Federation as well as the US) met in Ilulissat (West Greenland) for the first Arctic Ocean Conference. This meeting took place in the strictest secrecy. The decision not to invite the representatives of the indigenous people of the north or the other Arctic states (Finland, Iceland and Sweden) was met with considerable criticism from these two groups. The Federal Republic of Germany has been granted observer status in the Arctic Council.

For a long time, the European Community's foreign policy has tended to neglect the Arctic region. It has formulated a policy on this subject (termed 'Northern Dimension') but this is, in fact, geared more towards the non-European Union (EU) states Norway, Iceland and North-West Russia. It was only in November 2008 that the EU issued its first Guideline to specifically deal with the Arctic region ('The EU and the Arctic'). Moreover, its application for observer status on the Arctic Council has not yet been granted owing to pressure by Canada.

Climate change looks set to release an economic potential which is capable of altering geopolitical power relations. In this connection, both the timescale and consequences of the change (ice coverage, properties of waters) are highly debated in the light of current scientific and pseudo-scientific arguments. According to current estimates, the Arctic could be free of summer ice from 2013 to 2040 or even later. Leaving aside the manipulations of climate data by the World Climate Council and NASA, one thing appears constant: the warming and melting of the ice is a dynamic process. Accordingly, even if there are colder intervening periods, the process as a whole is expected to accelerate.

Sources and additional references

The fact that there is no comparable work in terms of subject matter, investigative structure or the variety of aspects dealt with rules out reference to a specific body of materials. As a field of research, the Arctic is a stomping ground for all kinds of specialists from the most diverse disciplines. They include glaciologists, climate researchers, demographists, geomorphologists, marine biologists, ethnologists and this only refers to human science. However, economic and political experts are no less numerous: geopolitical scientists, geo-economists, military practitioners and strategists, experts in maritime and international law and, last but not least, the broad range of experts in shipbuilding, maritime transportation and seaport management.

The reason for this lies in the fact that science is losing the function of analysis; as the Nobel Laureate Galbraith has ironically stated, the political economy is especially prone to 'degenerating into description'. On the other hand, it also reflects the trend of splitting up the basic sciences into specialised disciplines.

Considering the hundreds of different sources evaluated, the best solution was to divide the bibliography into subject areas in order to include all references.

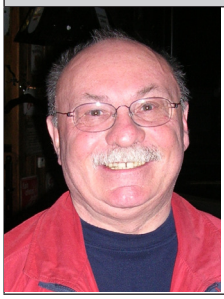
In view of the extensive source material and the amount of information (that is growing daily), the author has attempted to concentrate on the most important works (although discretion and chance have inevitably played a role in this process).

(The extensive bibliography referred to above by Dr Rosenkranz is available in AW-Prax, March 2010. Alternatively, please email editor@worldcustomsjournal.org for the list.)

Endnotes

1 This article has been translated from the German original by Dr Christopher Dallimore. The German original appeared in the AW-PRAX, Außenwirtschaftliche Praxis, March 2010.

Rolf Rosenkranz



Dr Rolf Rosenkranz was an economic specialist and freelance journalist in Berlin. He published many articles on the economic relations between the states of the former Soviet union and industrial states in the West.

Benchmarking Economic Corridors logistics performance: a GMS border crossing observation

Ruth Banomyong

Abstract

This paper introduces the Greater Mekong Subregion (GMS) cooperation program and its effort to facilitate the movement of goods, people and vehicles across borders to enhance economic integration between member countries. The GMS cooperation has focused on an economic corridor approach to development and a need to assess the logistics performance of these corridors was identified. Even though a regional agreement has been ratified to facilitate border crossings, an assessment observed that the weakest links in the various economic corridors remain the border crossings.

Introduction

The development of logistics services and communication technologies has revolutionised production and distribution processes and created a 'global' market. Shippers and consignees require efficient logistics services that can move their goods to the right place, at the right time, in the right condition, and at the right price.

The improvement of logistics in the Greater Mekong Subregion (GMS) can provide a foundation for further economic integration. For some countries in the subregion, inadequate transport infrastructure and high logistics service costs have constrained economic corridor development and integration. GMS countries are already investing in major infrastructure projects and more are planned.

Physical connectivity between neighbouring countries will be significantly improved on completion of these investments in infrastructure. Improved infrastructure, coupled with expanded cross-border cooperation among the GMS countries, can accelerate the process of integrating the subregion's economic corridors into the rest of the world and the global market.

The purpose of this paper is to introduce the GMS cooperation program and its effort to facilitate the movement of goods, people and vehicles across borders as well as to present an evaluation of the economic corridors' logistics performance. Improved border crossings play a key role in enhancing the logistics performance of the economic corridors under study.

Background

The GMS comprises Cambodia, Lao People's Democratic Republic, Myanmar, Thailand, and Viet Nam, as well as Yunnan Province and Guangxi Zhuang Autonomous Region of the People's Republic of China (PRC). In 1992, with the Asian Development Bank's (ADB) assistance, the six countries entered into a program of subregional economic cooperation, designed to enhance economic relations among the countries (ADB, www.adb.org/gms/).

The GMS cooperation program has contributed to the development of infrastructure to enable the development and sharing of the resource base, and promoted the freer flow of goods and people in the subregion. It has also led to the international recognition of the subregion as a growth area (ADB, www.adb.org/gms/).

The GMS countries adopted the economic corridor approach to development during the 8th GMS Ministerial Meeting held in Manila in 1998. This holistic strategy seeks to improve and enhance investments in transport, energy, and telecommunications in the subregion.

A highly efficient logistics system means goods and people move around the subregion without excessive cost or delay. This improvement promotes further economic growth and regional development, thus contributing to poverty reduction. According to the ADB, an Economic Corridor has the following characteristics:

- Covers smaller, defined geographic space, usually, straddling a central transport artery such as a road, rail line, or canal;
- Emphasizes bilateral rather than multilateral initiatives, focusing on strategic nodes particularly at border crossings between two countries;
- Highlights physical planning of the corridor and its surrounding area, to concentrate infrastructure development and achieve the most positive benefits (ADB, www.adb.org/GMS/Economic-Corridors/approach.asp).

In the GMS, it is of great importance therefore that linkages among neighbouring countries are strengthened to facilitate trade and develop logistics for better access to the global market. This is particularly true for the three agreed upon GMS economic corridors: the North-South Economic Corridor (NSEC), the East-West Economic Corridor (EWEC), and the Southern Economic Corridor (SEC).

The NSEC has three branches that link Kunming-Bangkok, Kunming-Hanoi-Haiphong, and Nanning-Hanoi, respectively. The Kunming-Bangkok corridor travels through either Myanmar or through the Lao People's Democratic Republic (Lao PDR) or along the Mekong River. Thailand does not share a land border with the People's Republic of China (PRC).

The EWEC stretches from Mawlamyine in Myanmar to Danang in Viet Nam through several cities in Myanmar, Thailand, Lao PDR and Viet Nam. The 1,110 kilometre route is currently utilised, albeit there are some missing links. Infrastructure was constructed to support the physical linkages within the EWEC such as the 2nd Lao-Thai friendship bridge between Mukdahan (Thailand)-Sawanakhet (Lao PDR) and the Hai Van tunnel in Danang, Viet Nam. Today, physical connections within the EWEC are almost complete with some links needing rehabilitation in Myanmar.

The SEC runs through southern Thailand, Cambodia, and southern Viet Nam. Originally, the SEC consisted of only one route, the Bangkok (Thailand)-Phnom Penh (Cambodia)-Ho Chi Minh City-Vung Tau corridor.

To develop economic corridors, enhanced cooperation and integration are needed among GMS member countries. With infrastructure and service integration, enhanced opportunities will exist for cooperation on matters such as cross-border trade, co-production, and overland tourism.

Successful economic corridor implementation requires strong political will and the appropriate infrastructure with streamlined competitive procedures that enable the facilitation of cross-border movement of goods and people.

However, even with such a cooperation program, it was observed that many non-physical barriers to the cross-border movement of goods, people and vehicles still existed. In 1992, the GMS member countries had inconsistent and difficult border crossing formalities and procedures. Restrictive visa requirements and restrictions on entry of motor vehicles were normal, coupled with different standards on vehicles and drivers across countries. Transit traffic was difficult and sometimes not allowed for some member countries.

Figure 1: GMS Economic Corridors

Source: Asian Development Bank

In response to these non-physical barriers to the cross-border movement of goods, people and vehicles, the GMS countries agreed to work on a regional agreement that would help facilitate border crossings.

> The GMS Cross-Border Transport Agreement (CBTA) is a compact and comprehensive multilateral instrument that covers all the relevant aspects of cross-border transport facilitation in one document. These include:
>
> - single-stop/single-window customs inspection
> - cross-border movement of persons (that is, visas for persons engaged in transport operations)
> - transit traffic regimes, including exemptions from physical customs inspection, bond deposit, escort, and agriculture and veterinary inspection
> - requirements that road vehicles will have to meet to be eligible for cross-border traffic
> - exchange of commercial traffic rights and
> - infrastructure including road and bridge design standards, road signs, and signals.
>
> The CBTA applies to selected and mutually agreed upon routes and points of entry and exit in the signatory countries. The CBTA includes a preamble and 10 parts, and has 20 annexes and protocols (www.adb.org/GMS/Cross-Border/annex.asp).

The CBTA entered into force with its ratification by all six GMS member countries in December 2003. Full implementation of the Agreement and its annexes and protocols was expected for 2009 but the deadline has passed with many GMS countries having difficulties in implementing the agreement.

Signing and ratifying such a regional agreement does not mean that all the signatories are able to implement the modalities of the CBTA as numerous national laws need to be changed to accommodate the procedures prescribed by the subregional agreement.

Methodology

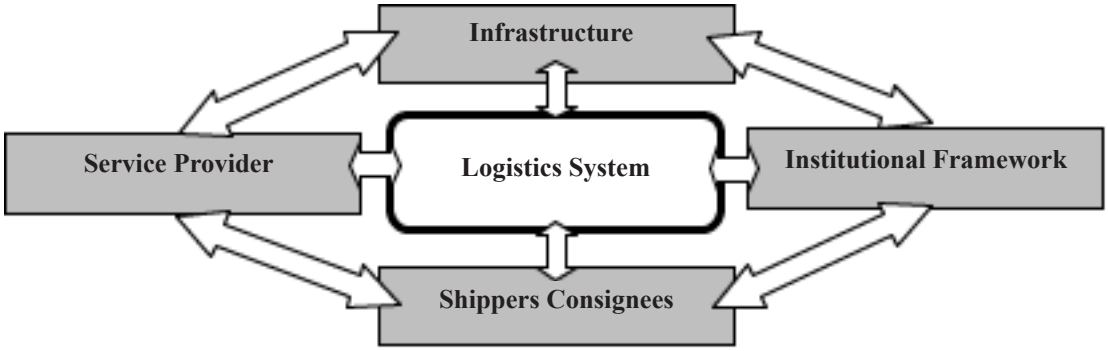
An evaluation model based on an in-depth understanding of the 'as is' situation of the logistics system of a geographical area is used as the measurement basis for four logistics related dimensions (Banomyong 2008). A 'snapshot' methodology to describe logistics activities in an economic corridor (Banomyong & Beresford 2001) is also used for an in-depth corridor understanding.

A regional or a macro logistics system comprises (1) shippers, traders, and consignees; (2) public, private sector logistics and transport service providers; (3) provincial and national institutions, policies, and rules; and (4) transport and communications infrastructure. These four logistics-related dimensions (see Figure 2) are inter-linked to determine the overall capability of the macro logistics system within the scope of the geographical area under scrutiny in terms of system capability and performance (Banomyong 2008).

GMS logistics development

Roads are still the dominant domestic mode of transport infrastructure in all GMS countries. Thailand possesses the most developed road network and facilities with China. The new national airport, Suvarnabhumi, and modern seaports, such as Laem Chabang, support the movement of international freight. Myanmar, Lao PDR and Cambodia, on the other hand, are comparatively less developed. Even though the various GMS Economic Corridors in Lao PDR are physically complete, supporting logistics and border crossing facilities are still limited. Viet Nam's infrastructure has been improved to cope with the new trade flow but maintenance issues will become critical in the near future.

Figure 2: Macro Logistics System



Source: Banomyong (2008)

In the GMS, trade and transport facilitation frameworks are in place but their implementation is still lacking. There is also a myriad of bilateral facilitation-related agreements that have coverage over different geographical areas. All GMS countries, except China, are parties to both the Cross Border Transport Agreement (CBTA) and the ASEAN Framework agreement for the facilitation of goods in transit (signed in 1998 in Hanoi).

There are also bilateral facilitation agreements for goods in transit between Thailand and Lao PDR as well as between Viet Nam and Lao PDR. The role of logistics service providers, the use of logistics outsourcing, and information technology in managing logistics, is relatively well developed in China and Thailand whereas these practices are still lacking in Cambodia, Lao PDR, Myanmar and Viet Nam. All GMS countries share a similar perspective on the fact that modern logistics practices have not been fully implemented yet.

GMS logistics service providers have developed rapidly and have played a strong supporting role to the manufacturing sectors. However, these companies are often small family-owned enterprises that cannot compete directly with multinational firms (for example, TNT, FedEx, and DHL). Logistics service providers in the GMS countries have different strengths and weaknesses. A common strength is their in-depth knowledge of the local market. Viet Nam is currently facing an acute shortage of qualified human resources, while the market in Lao PDR is still based on traditional logistics services such as customs brokerage and physical transportation. Thai and Chinese providers may seem to be more competitive but this is only true if the comparison is made with other GMS providers.

Logistics integration in the GMS is still mostly hindered by the institutional framework that is in place. A facilitating institutional framework (that is, the CBTA) is currently being implemented and details still need to be addressed, especially on how to apply all the various facilitation measures. This poses a challenge for all related agencies and stakeholders as new rules and regulations are being put in place with field operatives not knowing how to apply these new measures. This is particularly true at the various borders.

It can be said that Cambodia, Lao PDR and Myanmar is lagging far behind in terms of logistics developments when compared with China, Thailand and Viet Nam. Viet Nam, China and Thailand would still not be considered as 'world-class' but their respective national logistics system can be considered to be 'fair' (that is, more or less adequate). However, all GMS countries still require massive infrastructure and institutional development to meet the ever increasing international standard to sustain their competitiveness in the global market.

GMS corridor analysis

The corridor analysis based on the proposed development model will reveal the actual development status of existing economic corridors. This assessment is based on the assumption that there exist different economic corridor development stages. These stages or levels can be defined as in Table 1.

Table 1: Economic Corridor Development Stages

Stage	Type of corridor	Definition
1	Transport	Corridor that physically links an area or region.
2	Multimodal	Corridor that physically links an area or region through the integration of various modes of transport.
3	Logistics	Corridor that not only physically links an area or a region but also harmonises the corridor institutional framework to facilitate the efficient movement and storage of freight, people and related information.
4	Economic	Corridor that is able to attract investment and generate economic activities along the less developed area or region. Physical linkages and logistics facilitation must be in place in the corridor as a prerequisite.

Source: Banomyong (2008)

This framework is used to assess the existing development level of the EWEC and the NSEC. Analysis of the SEC is not included in this research due to a lack of empirical data. The approach is based on a segmented perspective where each individual leg/section in each country is identified and assessed. The following assessment of the EWEC and the NSEC is presented in Tables 2 and 3. The NSEC assessment is based on the main route that links Bangkok in Thailand to Kunming via Lao PDR or Myanmar. This particular economic corridor is sometimes referred to as Route No. 3. The economic corridor via Myanmar is referred to as Route No. 3W, and the one via Lao PDR is known as Route No. 3E. There also exists a Mekong river connection between Chiengsaen port in Thailand and Jinghong port in China.

Table 2: EWEC Corridor Assessment Level

EWEC Section	Corridor Level Assessed
Tak-Mukdahan (Thailand)	Logistics corridor
Mukdahan-Sawanakhet border crossing (Thai-Lao)	Transport corridor
Savannakhet-Dansavahn (Lao PDR)	Logistics corridor
Dansavanh-Lao Bao border crossing (Lao-Viet Nam)	Transport corridor
Lao Bao-Danang (Viet Nam)	Logistics corridor
OVERALL ASSESSMENT	**Transport Corridor**

Source: Banomyong (2008)

Table 3: NSEC Corridor Assessment Level

NSEC Section	To-From	Level
Route No. 3	Bangkok-Chiangrai (Thailand)	Logistics Corridor
Route No. 3W	Chiangrai-Mae Sai (Thailand)	Logistics Corridor
Route No. 3W	Mae Sai-Tachilek (Thai/Myanmar border)	Transport Corridor
Route No. 3W	Tachilek-Mongla (Myanmar)	Logistics Corridor
Route No. 3W	Mongla-Daluo (Myanmar-Chinese border)	Transport Corridor
Route No. 3W	Daluo-Kunming (China)	Logistics Corridor
Route No. 3	Chiangrai-Chiangsaen (Thailand)	Logistics Corridor
Mekong River	Chiangsaen port (Thailand)-Jinghong port (China)	Transport Corridor
Route No. 3	Jinhong-Kunming (China)	Logistics Corridor
Route No. 3E	Chiangrai-Chiangkhong (Thailand)	Logistics Corridor
Route No. 3E	Chiangkhong-Houey Xay (Thai-Lao border crossing)	Transport Corridor
Route No. 3E	Houey Xay-Boten (Lao PDR)	Logistics Corridor
Route No. 3E	Boten-Moharn (Lao-China border)	Transport Corridor
Route No. 3E	Moharn-Kunming (China)	Logistics Corridor
	NSEC OVERALL ASSESSMENT	**Transport Corridor**

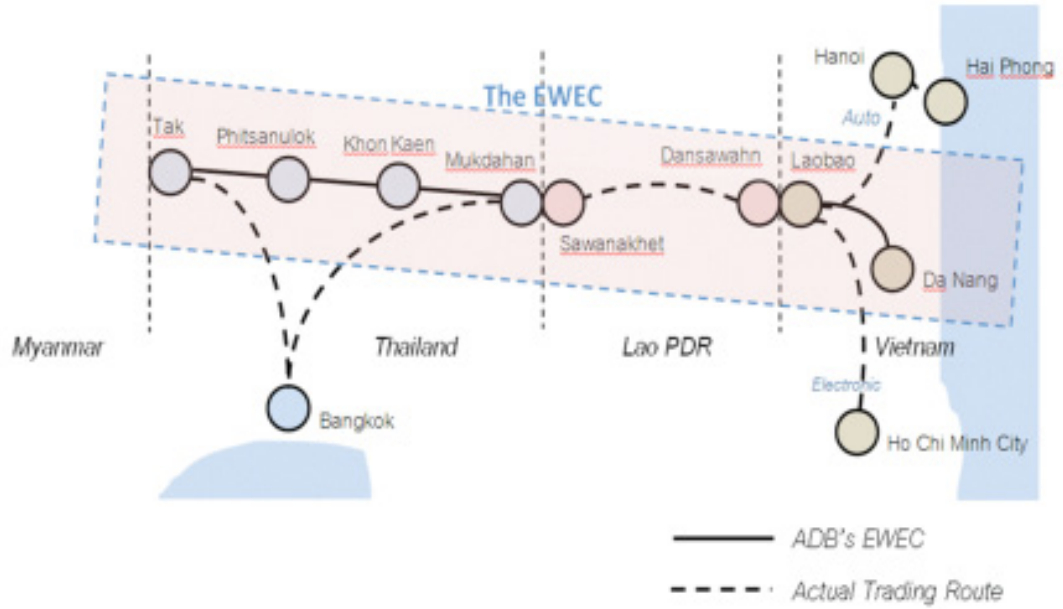
Source: Banomyong (2008)

The overall assessment level of the NSEC and the EWEC is based on the weakest link of the economic corridors. It must be noted that logistics corridors do exist but only within the boundary of a country and not at the NSEC, EWEC or cross-border level. The current status of NSEC and EWEC border crossings is still based solely on existing physical links as the institutional framework facilitating border crossing has not been totally implemented. This is why the overall logistics performance of both corridors is only assessed as transport corridors, as border crossings are the weakest link in integrating both economic corridors.

EWEC reality

There are two main veins that exist within the EWEC: (1) the route from Tak to Danang which is the original EWEC route, designated by ADB, and (2) the private sector EWEC route that is currently being used which includes Bangkok and its industrial estates, Hanoi, Hai Phong and Ho Chi Minh City in Viet Nam as its origin and destination points.

Figure 3: EWEC Network



Source: Banomyong & Sopadang (2009)

Currently, commodity flows on ADB's version of the EWEC are almost non-existent (Than, 2005)**.** The main existing product flows within EWEC are mostly from/to Bangkok/Laem Chabang of Thailand and from/to Hai Phong (automotive products) and Ho Chi Minh City (electronics products) of Viet Nam. Existing flows are illustrated by the dotted line in Figure 3. However, the scope of the paper is on the ADB's version of the EWEC which means that there is, in reality, no real flow of goods between Danang to Tak province at the border with Myanmar. A 'snapshot' of EWEC route based on information collected is discussed later in this paper. As seen in the model, transportation in itself is quite reliable as there is not much difference in terms of service time. The area which is less reliable from the graphical model is the border crossing and the entry into Viet Nam. This wide variation is based on a number of factors. The most common factor that increases the unreliability within the EWEC is the lack of appropriate import or transit documentation.

Based on the empirical evidence collected on the route between Danang and Tak, it is noticed that nearly half of the total 41.3 hours transit time (18 hours, equivalent to 43.5 per cent) is in fact taken at customs or border crossings based on each country's administrative formality. The non-synchronisation and complicated institutional framework are clearly hindering the smooth flow of goods across borders. From a cost perspective, 42.6 per cent of the door-to-door transport costs are collected at customs and border crossings. The amount is almost equivalent to the cost of physical transportation. This evidence is frightening and must be solved. The international institutional framework must be better arranged or implemented, if it has already been agreed upon.

In terms of reliability, it is noticed that Thailand and Viet Nam are slightly more reliable than Lao PDR in term of infrastructure, administrative and business operations. However, as an economic chain, the problem with the administrative process reliability is still evident in most of the EWEC area. There is little confidence in administrative processes. Reliability of local business operators is also considered to be limited compared to the multinational firms that are now entering the EWEC logistics market.

Comparisons between the NSEC and the EWEC

It must be noted that this comparison is for illustrative purposes only as both the NSEC and the EWEC are subject to different characteristics. The transit time for the NSEC is more than 70 hours for the 1,800 kilometre journey compared to the less than 24 hours transit time for the EWEC. Therefore, the following benchmarking exercise is preliminary. The information presented below must be interpreted with great care.

Table 4: NSEC/EWEC Cost Comparison

Route	Physical Transportation	Non transport activity
NSEC: R3W	42%	58%
NSEC: R3E	40%	60%
NSEC: Mekong River	Road 32% River 15%	53%
EWEC:	56%	44%

Source: Banomyong (2008)

Table 5: NSEC/EWEC Time Comparison

Route	Physical Transportation	Non transport activity
NSEC: R3W	80%	20%
NSEC: R3E	85%	15%
NSEC: Mekong River	Road 32% River 54%	14%
EWEC: Danang-Tak	57%	43%

Source: Banomyong (2008)

The results from the benchmark table indicate that even though the EWEC's distance is comparatively shorter, the time taken on administrative formality at borders is the highest while the transportation cost has a greater ratio than that of the NSEC. The direct transport cost ratio in the EWEC is higher than in the NSEC sub-corridors. The EWEC seems to be relatively more efficient than the NSEC with a shorter time required for loading/unloading, administrative and customs formalities. This should not come as a surprise as there is a CBTA pilot site on the EWEC. This pilot site is located on the border between Lao PDR and Viet Nam.

However, it cannot be said which route is better or more facilitative in terms of transportation. It does indicate though that the synchronisation and standardisation of GMS borders are still lacking as there are still large variations and complicated border procedures that behave as obstacles.

It was observed that the ease of border crossing along the GMS is correlated to the value of the transaction. The higher the value, the less time taken at the border crossing, and vice versa.

Conclusions

This paper has provided an overview of the logistics capability of key GMS Economic Corridors through the exploration of barriers to the free flow of freight, vehicles, people and information along each corridor. The physical route is currently completed but the supporting and administrative procedures are still lacking. Each GMS country is still at a relatively early stage in term of logistics development based on the four logistics dimensions. The GMS infrastructure is more or less completed but many of the border facilities are still insufficient and inefficient.

From the findings, trans-loading and border crossing still remain barriers to the seamless movement of freight, people and vehicles within the GMS. This is because ADB-led trade and transport facilitation measures have yet to be fully implemented by the member countries. The weakest link in the various economic corridors still remains the border crossing.

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Ruth Banomyong

Dr Ruth Banomyong is an Associate Professor in the Department of International Business, Logistics and Transport Management at the Faculty of Commerce and Accountancy, Thammasat University, Thailand. His primary research interests are in the fields of multimodal transport, international logistics, logistics policy development and supply chain performance measurements. Ruth holds a PhD from Cardiff University, Wales.

Thoughts on the 'first sale' rule

Danilo Desiderio and Frank J Desiderio

Abstract

The 'first sale' rule is a method used to arrive at the transaction value of merchandise which is the subject of multi-tiered sales. Because the first sale price is always lower than any subsequent resale price, the use of the first sale appraisement method results in substantial savings in duty. The main commercial blocks of the world – the European Union (EU), United States (US) and Japan – accept the first sale appraisement and in the US, this process has been validated through a series of court decisions. Recently, however, a move to 'last sale' appraisement has been proposed. This has prompted many substantial importers, trade groups and industry organisations to file comments and legal briefs in strong opposition to the proposal. This article considers the position being taken by the EU Commission, the likely result in a change to the World Trade Organization (WTO) Agreement on Customs Valuation, and concludes with the hope that customs administrators in the US and EU will heed the comments of the international trade community and continue the 'first sale' rule.

In modern cross border trade, goods are often subject to a series of sales before importation (for example, from a foreign factory to a middleman and then to a final buyer). At each level of sale the parties in the commercial chain include a mark up.

The 'first sale' rule is a special method used to arrive at the transaction value of merchandise which is the subject of these multi-tiered sales.

In the United States (US), current law allows importers, under certain conditions, to base the valuation of product entering the US on the first or earlier sale price in a series of transactions, rather than the last one. Because the first sale price is always lower than any subsequent resale price, the use of the first sale appraisement method results in substantial savings in duty. For example, if items produced in Italy were sold to a middleman in the United Kingdom (UK), and that middleman sold the items to an American buyer/importer, the US importer would normally pay duty based on the price paid to its UK vendor. On the other hand, if the sale qualifies under the first sale rule, the importer may import the product and pay duty based on the price paid by the UK middleman to the Italian vendor. The middleman's mark up would, therefore, be excluded from duty assessment thereby allowing the importer to achieve substantial savings in duty.

Presently, all the main commercial blocks of the world – the European Union (EU), US and Japan – accept the first sale appraisement. If the merchandise and transaction qualifies for first sale appraisement, the importer can reduce by as much as 50 per cent the amount of *ad valorem* customs duties paid.

In the US, the propriety of appraisement under the first sale method has been validated through a series of court decisions.[1] The US Bureau of Customs and Border Protection (CBP) generally accepts this methodology provided:

1. the transaction between the vendor and the middleman represents a *bona fide* sale of merchandise
2. the sale is an arm's length transaction[2]
3. the goods are clearly destined for export to the US without any contingency of diversion to other markets.

The US has been appraising merchandise on the first sale basis since 1994 but in January 2008, CBP proposed the elimination of first sale and proposed that the transaction value should be based on the 'last sale'. At that time, CBP provided the reasons for suppressing the rule, in particular, stating that its abolition will:

- assure components of value such as commissions, packing and assists (which may not be included when using the first sale) are properly included in the value
- reduce the amount of time and resources spent by the importer or CBP to verify the requirements of T.D. 96-87 (that should, therefore, also be revoked) have been met
- provide a straightforward rule for determining value in a series of sales
- reduce post-entry audit verification issues, including the need to review production of records
- reduce importer's burden for compliance in properly declaring the value 19 U.S.C. 1484.

The response of the American importing community to this proposal is best described as outrage. Many substantial importers, trade groups and industry organisations filed comments and legal briefs in strong opposition to the proposal. As a result of the controversy, Congress passed legislation requiring the CBP to collect data on the use of 'first sale' to evaluate the impact that the suppression of the rule could have on US importers and postpone any action on the first sale rule until January 2011.[3] To this end, the legislation also required the US International Trade Commission (ITC) to draft a report based on the data collected by CBP which would provide a specific analysis relating to the actual use of the rule in the US. As a result of this legislation, CBP formally withdrew its revocation proposal and implemented an interim rule entitled 'First Sale Declaration Requirement'[4] that obliged importers to comply with a new one year first sale data reporting requirement. The CBP began to enforce this requirement in September 2008.

Based on information collected by CBP, on 23 December 2009, the ITC submitted to the Congress a report titled 'Use of the First Sale Rule for Customs Valuation of US Imports'.[5] The observation period covered by the report concerns all the import transactions the subject of first sale appraisement between 1 September 2008 and 31 August 2009. The report revealed that during the period, a total of 23,520 importing entities, accounting for 8.5 per cent of all US importers, entered merchandise using the 'first sale rule.' Of the $1.63 trillion in total of US imports during the period, $38.5 billion was imported using the first sale rule, representing about 2.4 per cent by value of total US imports.

Finally, the ITC reported that, despite the fact that the main users of the first sale rule are high tariff rate importers (for example, textile apparel, leather goods and footwear companies), this method is also frequently used for duty free imports, that is, on transactions where no duties would ordinarily be paid (for example, for certain qualifying imports originating from Canada, Mexico and the US Virgin Islands, accounting for 21 per cent of all first sale imports).

Based on the data contained in the ITC report, most American companies felt confident that the revocation of first sale in the US was unlikely. At or about the same time that the US was examining the first sale rule, however, so was the European Commission (EC).

In the EU, the first sale rule is enshrined in Article 147, par. 1, of the Commission Regulation (EEC) No 2454/93[6] (IP-CCC). According to this provision, if goods are introduced into the EU through a 'chain of sales', operators can report as the customs value the selling price in an earlier transaction (that is, of *'a sale taking place before the last sale'*). This means that importers can declare a lower price (the

'first sale' price) for assigning a customs value to goods, provided that they can demonstrate, to the satisfaction of the customs authorities, that a *bona fide* 'sale for export' to the EU has taken place.

Examples of how this sale for export can be evidenced are contained in the document TAXUD/800/2002 issued on 8 October 2003 (Compendium of Customs Valuation texts of the Customs Code Committee – Customs Valuation Section[7]), which lists the following cases:

1. the goods are manufactured according to EC specifications, or are identified (according to the marks, etc. they bear) as having no other use or destination
2. the goods were manufactured or produced specifically for a buyer in the EC
3. specific goods are ordered from an intermediary who sources the goods from a manufacturer and the goods are shipped directly to the EC from that manufacturer.

The legal framework for the determination of the customs value of imported merchandise is contained in the Agreement on Implementation of Article VII of GATT (1994), also referred as the 'WTO Agreement on Customs Valuation.[8] This Agreement, whose rules have been transposed into legislation in the majority of World Trade Organization (WTO) member countries (including the US and the EU), provides, as the primary and preferred basis for determining the customs value of goods, the use of the so-called 'transaction value'[9] between buyer and seller (Art. 1), specifying alternative methods to be applied in sequential order for determining value when the transaction value cannot be applied.

Notwithstanding this attempt at achieving uniformity in customs appraisement in member countries, member country legislation implementing the customs valuation methodology contained in the WTO Valuation Agreement, leaves substantial room for differing interpretations. Accordingly, imports of the same goods in different countries can be appraised using different valuation methods. This lack of legal certainty makes the import and export planning processes particularly complex for companies.

To reduce such complexity, the World Customs Organization (WCO) recently tried to harmonise the interpretation of some of the customs valuation rules, namely those which relate to multi-tiered transactions. In April 2007, the WCO Technical Committee on Customs Valuation adopted Commentary 22.1,[10] with the aim of clarifying the meaning of the sentence *'sold for exportation to the country of importation'* referred to in Art. 1 of the WTO Valuation Agreement, in all those cases where multi-tiered sales exist.

Like the commentary accompanying CBP's effort to revoke first sale, the Technical Committee, we believe incorrectly, states (point 26 of the Commentary), that where multi-tiered sales transactions exist, customs administrators face considerable problems in verifying information (including accounting records), related to the first sale, especially when such information is held by the foreign intermediary or seller. Accordingly, the Committee has suggested that the price actually paid or payable for the imported goods when sold for export to the country of importation should correspond to the price paid in the **last sale** occurring prior to the introduction of the goods into the country of importation, to ensure consistency in the application of the Valuation Agreement and minimise difficulties for Customs.

We believe that the reasoning of the WCO Technical Committee is faulty in this matter.[11] All the WCO Member States require that the importer provide proper support for the application of the first sale rule. If the party claiming first sale appraisement is unable to satisfy Customs' criteria, first sale is disqualified. Accordingly, the customs authorities bear no greater burden in the first sale scenario than they would if 'last sale' rule were applied.

While the WCO Committee has merely an advisory function and its Commentaries have no binding effect,[12] Commentary 22.1 has been largely influential on both sides of the Atlantic. In Europe, the possibility for the importer to declare a 'first sale' value (currently foreseen in Article 147 IP-CCC, as indicated above), seems to be deleted from the new (provisional) draft of the implementing provisions to

the 'Modernized Community Customs Code' (MCCC).[13] The MCCC will likely be adopted in 2010 and put into effect in the beginning of 2011. Article 230-02 of the Draft Implementing Provisions of the EU Modernized Customs Code,[14] reflecting the content of the point 27 of the Commentary 22.1, states that:

1. …[T]he customs value is determined under the transaction value method if the goods have been the subject of a sale for export to the customs territory of the Union at the time of acceptance of the declaration for free circulation. [As a general rule the last sale in the commercial chain, before introduction of the goods into the customs territory, meets this requirement: …*to be completed*].
2. In the case of resale in the customs territory before release for free circulation, either the sale applicable under paragraph 1, or the last sale before the release of the goods for free circulation shall apply.

Even if the above provision is still incomplete, the EU Commission is clearly intentioned to replace the 'first sale' rule with a 'last sale' rule. It seems likely, however, that some exceptions will be introduced to the 'last sale' appraisal method and first sale opportunities will be further defined.

Discussions on the final version of this article in the customs code committee are still under way, but if enacted in its present form, the possibility of using the first sale appraisement would be substantially reduced and such a change would certainly raise import duties and negatively affect a large number of European companies enjoying the first sale benefit. Additionally, it could encourage the CBP to renew its effort to revoke first sale in the US.

Fortunately, however, in response to the pending draft, members of the Trade Contact Group (TCG) and other industry groups[15] provided comments which sharply criticised the possible elimination of the first sale valuation.

Although from the foregoing language it seems clear that the EU Commission initially intended to replace the 'first sale' rule with a 'last sale' rule, based upon the response of the TCG and other industry groups, we are hopeful that new language will be included which will provide opportunity for the continued application of the first sale concept in the EU. Discussions relating to the final version of this article in the Customs Code Committee are still under way.

The US rules and Article 230-02 IP-MCCC place the onus of establishing the propriety of applying the rule on the importer.[16] This implies that the latter can be interpreted differently by the customs authorities of each EU Member State. Moreover, not all the EU Member States apply the first sale rule in the same measure (Belgium, Germany, The Netherlands, France and the UK are the EU countries where this appraisal methodology is most used, while in the other Member States it is not used at all). Apart from these considerations, it cannot be denied that if the proposed draft is implemented without modification, duties will be raised forcing many European companies to restructure business protocols (documentation, inventory management, etc.) which were designed and implemented to qualify for the application of the first sale rule.

Significantly, any change in the EU approach could result in a change in the WTO Agreement on Customs Valuation or the interpretation thereof and provide an opportunity for US Customs authorities to revisit their previous attempt to revoke the application of the 'first sale' rule in the US. In fact, although the publication of the ITC report in December 2009 provided a measure of comfort to the American importing community that 'first sale' would continue to prevail, the EU initiative has caused an elevated level of concern. On 24 March 2010, representatives of the US importing community wrote to ranking members of the Senate 'Finance' Committee and House 'Ways and Means' Committee to express strong support for preservation of the 'First Sale Rule'.[17]

We are hopeful that the Customs administrators in the US and EU will heed the comments submitted by the international trade community and continue the 'first sale' rule. Any other conclusion would have a devastating impact on businesses and consumers throughout the world.

Endnotes

1 First Sale valuation was successfully litigated in a 1988 case *(E.C. McAfee Co. v. United States, 842 F.2d 314 (Fed. Cir. 1988)*. US Customs authorities limited the application of the decision to its specific facts (made-to-measure clothing) and 'first sale' only became widely accepted four (4) years after the decision in *Nissho Iwai America Corp. v. United States*, 982 F.2d 505 (Fed. Cir. 1992) when it was formally adopted by Customs in a Treasury Decision (T.D. 96-87).

2 Where the sale is between unrelated entities, it is presumed to be 'arm's length'. Where, however, the sale is between related parties, it must be established that the 'circumstances of sale' indicate that the price was not influenced by the relationship of the parties. Failing the 'circumstances of sale' test requires the importer to establish that the sale price closely approximates certain test values set forth in the US value statute 19 U.S.C. § 1401a(b)(2)(B).

3 *See* Food, Conservation, and Energy Act of 2008, Public Law 110-246 (2008).

4 First Sale Declaration Requirement, published in the Federal Register on 25 August 2008, vol. 73, no. 165, pp. 49939-499.

5 Publication 4421 in Investigation No. 332-505. www.usitc.gov/publications/332/pub4121.pdf.

6 Regulation (EEC) No. 2454/93 of 2 July 1993, laying down provisions for the implementation of Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code.

7 The Customs Code Committee is an advisory body to the EC. Its role is to provide assistance to the Commission with regard to the interpretation of customs legislation and to the adoption of amendments to customs implementing legislation.

8 The WTO Agreement on Customs Valuation, officially came into force on 1 January 1981. It establishes rules for the valuation of imported goods that must be applied by all member countries. It aims to determine a fair, uniform and neutral system for the valuation of goods for customs purposes on a global level and bans the use of arbitrary or fictitious customs values.

9 This value usually equates to the invoice price, adjusted in accordance with specific additions and deductions which are aimed to allow operators to determine correctly the taxable base on which customs duties must be applied. In the US, the commercial invoice price paid by the importer is calculated (on goods sold for export to the US) on an FOB (Free On Board) basis. In the EU, by contrast, the transaction value is the commercial invoice price paid by the importer on a CIF (Cost, Insurance and Freight) basis.

10 Annex C to Doc. VT0564E1a, VT/24/April 2007.

11 For an in-depth analysis of the most controversial aspects of the Commentary 22.1, see L Ruessmann & A Willems, 'Revisiting the first sale for export rule: an attempt to remove fairness in the interests of raising revenues, without improving legal certainty', *World Customs Journal,* vol. 3, no. 1, pp. 45-52.

12 Annex II, Par. 2(a) of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 establishes that the responsibilities of the Technical Committee include the examination of specific technical problems arising in the day-to-day administration of the customs value system of Members, and the provision of advisory opinions on appropriate solutions based upon the facts presented.

13 Regulation (EC) No. 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernized Customs Code). The aim of the modernisation process of the EU customs regulation is to replace the existing Community Customs Code (Regulation EEC No. 2913/1992 of 12 October 1992) and its implementing provisions (Regulation EEC No. 2454/93 of 2 July 1993) with new rules aimed to streamline customs procedures and lay the foundations for accessible, interoperable customs clearance systems at EU level.

14 TAXUD/1717/2008, Rev 1.3 of 6 January 2010, hereinafter 'IP-MCCC'.

15 The EC holds regular consultation with representatives from industry associations for developments of Customs policy. The TCG, in particular, provides a forum for a mutual exchange of views between economic operators and the Commission's services on all customs-related issues. Its members represent the main international associations involved in customs-related activities at the European level.

16 See T.D. 96-87 and 'Compendium of Customs Valuation texts of the Customs Code Committee' quoted above.

17 The list of signatories to the letter comprises important and high profile importers, industry groups and trade associations including: Eddie Bauer; Finlandia Cheese; Gap, Inc.; J.C. Penney Corporation; Levi Strauss; Walmart; Wine & Spirits Wholesalers of America; Alliance of Automobile Manufacturers; American Apparel & Footwear Association (AAFA); American Association of Exporters and Importers (AAEI); National Customs Brokers and Freight Forwarders Association of American (NCBFAA); National Retail Federation (NRF); Sporting Goods Manufacturers Association (SGMA); Toy Industry Association; Cheese Importers Association of America, etc.

Danilo Desiderio

Danilo Desiderio is an Italian attorney, a specialist in customs regulation and international trade, and adviser to the Centre for Study and Services of the Italian Council of Customs Brokers and the CONFIAD (Pan-European Association of Customs Brokers). He serves as a consultant to various institutions, organisations, governmental agencies and trade associations in Italy and at the European Community level, and is a member of the Strategic National Committee for Trade Facilitation at the Italian Ministry for Economic Development.

Frank J Desiderio

Frank J Desiderio is a founding partner of the New York based law firm, Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP, one of the largest US firms devoted exclusively to customs and international trade matters. Clients represented by the firm include American importers, retailers, manufacturers, buying agents, trading companies, trade associations, customshouse brokers, foreign governments and internationally known companies in the fashion, pharmaceutical, technology, automobile and food sectors. He has written and lectured widely on Customs and International Trade Regulation issues and serves as the adviser on Tariffs and Trade to the Italy America Chamber of Commerce.

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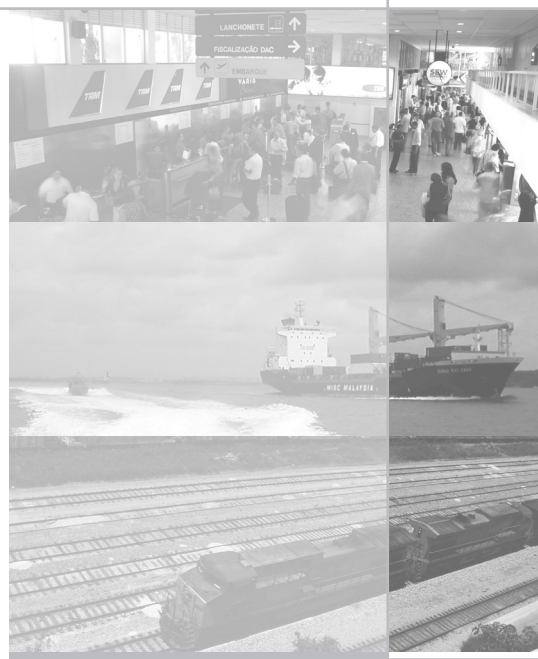


Section 2

Practitioner Contributions

Mutual recognition of Authorised Economic Operators and security measures

Susanne Aigner[1]

Abstract

For several years, customs administrations and international organisations like the World Customs Organization (WCO) have considered and promoted the idea and objective of achieving mutual recognition of Authorised Economic Operators (AEO) and security measures. The *WCO SAFE Framework of Standards to Secure and Facilitate Global Trade* encourages customs administrations to agree on the mutual recognition of AEO and security measures to enhance security of international supply chains while providing increased facilitation for secure and reliable economic operators. A number of AEO mutual recognition arrangements and agreements have been concluded or are being negotiated among customs administrations that have sufficient trust in each others' audit, control and authorisation procedures. This paper identifies some features as well as challenges of mutual recognition and aims to provide some clarification as to what different customs administrations understand under the term of 'mutual recognition'.

Introduction

Customs plays an important role in the fight against cross-border crime and terrorism. Customs expertise in controlling goods, backed up by the use of modern IT systems and an efficient risk assessment and border control management, is vital to detect illegal goods such as drugs, explosive materials or nuclear and chemical weapons.

The terrorist attacks on September 11, 2001 gave a new momentum to customs administrations, including in the European Union (EU), to combat terrorism and other cross-border crimes such as drug trafficking, human trafficking and financial fraud. Many administrations reacted to this tragic event with great determination with a view to promoting the broadest possible international cooperation for preventing terrorism. It was obvious that the global threats of terrorism and also of organised crime would better be addressed at the international level by joining efforts and knowledge to reply more efficiently to the increasingly globalised threats.

With this in mind, the global customs community developed the World Customs Organization's (WCO) *SAFE Framework of Standards to Secure and Facilitate Global Trade* (WCO 2007) which provides a model for administrations and governments wishing to develop security measures that aim to facilitate and secure global supply chains. The SAFE Framework was adopted by the WCO Council in June 2005 and completed by a chapter on Authorised Economic Operators (AEO)[2] in June 2006. Only a short while after its adoption in 2005, many WCO members signed the so-called 'Letters of intent' to implement the SAFE Framework. In the meantime, more than 160 WCO members have agreed to implement the SAFE Framework by adopting and implementing equivalent measures.

The SAFE Framework is not a binding instrument but a model for administrations to follow – on a voluntary basis – when developing measures to secure and facilitate trade. It promotes closer cooperation amongst customs authorities. It recognises the importance of agreeing mutual recognition of AEO and

security measures, including customs controls and control results in view of securing end-to-end supply chains. Closer cooperation among customs administrations will, without doubt, enhance security and facilitation. Administrations that merge their efforts and work towards mutual recognition will usually not only address mutual recognition of AEO or security measures as such but also strengthen their overall cooperation, including exchange of risk related and intelligence information.

Understanding the term 'mutual recognition'

The SAFE Framework does not provide for a very detailed definition but refers to the mutual recognition of AEO and customs controls as a means to increase security and facilitation.

The mutual recognition of AEOs is mentioned under 'Future Developments' in the AEO chapters where it states that:

> The standardized approach to AEO authorization provides a solid platform for development of international systems of mutual recognition of AEO status at bilateral, sub-regional, regional and, in the future, global levels. Such systems will involve a WCO Member Customs administration recognizing the AEO authorization system in another WCO Member with an operational AEO programme as being equivalent to its own. This will afford the AEO the same benefits and therefore improve predictability ad efficiency of operation in all countries applying the AEO standards (WCO SAFE Framework 2007, p. 52).

SAFE also contains a chapter on Mutual Recognition (WCO SAFE Framework 2007, pp. 54-56), which refers to the SAFE Resolution, calling on WCO members that have agreed to implement SAFE, to cooperate to develop mechanisms for mutual recognition of AEO validations and authorisations and Customs controls results and other mechanisms that may be needed to eliminate or reduce redundant or duplicated validation and authorisation efforts. Here too, mutual recognition is referred to as a broad concept whereby an action or decision taken by one administration is recognised and accepted by another customs administration.

SAFE also describes the challenges of mutual recognition and points, in particular, to the challenges linked to negotiating mutual recognition of controls as this makes the routine sharing of information and control results necessary.

Administrations that are negotiating the mutual recognition of AEO or security measures will have some room to manoeuvre to define what exactly is meant by mutual recognition within the arrangement or agreement they are negotiating. Generally (and in line with the WCO approach), mutual recognition of AEO is perceived as an arrangement or agreement between two or more customs administrations (or governments) that recognise each other's audits, controls and authorisations as equivalent and therefore provide reciprocal benefits to AEOs. In practice, this means that AEOs authorised by the partner country are recognised as being as secure and reliable as AEOs authorised by their own administration and will, therefore, receive benefits such as a reduced risk score and reduced controls when importing into the customs territory.

Contrary to customs administrations' approach, trade sometimes appears to prefer a different interpretation of AEO mutual recognition. Traders sometimes suggest that customs administrations should include a clause in mutual recognition agreements that a company which is an AEO in country 'x' does not have to become an AEO in country 'y' since the former country already recognises it as a secure partner.

Customs generally does not share this approach as the AEO status is always attributed to a specific legal entity. The company that has achieved AEO status in country 'x' will always be a different legal entity to the company established in country 'y', even if both belong to the same multinational company. It has also to be kept in mind that the majority of AEO programs are based on SAFE and will therefore require customs checks during authorisation and audit procedure to determine whether the management

and those responsible for customs matters are reliable, and have not committed customs infringements within a certain period prior to the application. Not only would Customs in country 'x' not be in a position to carry out the relevant checks on relevant persons in country 'y', but it would also not make sense to do so, as it would only increase the burden on the relevant companies. Another disadvantage would be that if the management in country 'y' was found to be unreliable, the company in country 'x' would not achieve AEO status, despite the fact that the management in country 'x' is different and therefore may well be reliable and fulfil all conditions for AEO status.

Features of mutual recognition arrangements/agreements

Recognition of authorisation and audit process

One of the main features of arrangements/agreements on mutual recognition is that 'mutual recognition' is based on the trust between the parties in agreeing to mutually recognise AEO and/or security measures. In general terms, only administrations/governments that have confidence in the control mechanisms of another administration will enter into negotiations on mutual recognition. One of the reasons is that once governments make it publicly known that they have confidence in the control mechanisms of another government, any event that would provide evidence that this confidence is not justified (such as a terrorist attack linked to the import of goods from the partner country or linked to a company that was authorised as AEO by the partner country) would have a disastrous effect on the credibility of that government or authority. Also, issues of data protection need to be taken into consideration because a lot of sensitive information will be exchanged or at least made accessible to the partner country's administration during the cooperation, ultimately leading to mutual recognition. No administration can afford this information being leaked – especially if it concerns sensitive or personal data.

This trust factor also makes it very difficult to move from bilateral to multilateral or global mutual recognition because mutual recognition necessitates that all parties have the same level of trust in each other's programs, controls, audits and authorisation procedure. While bilateral arrangements/agreements can at some stage certainly be merged to produce a trilateral arrangement/agreement, it seems very difficult to agree mutual recognition on a more global scale. As well, negotiations on mutual recognition between the EU (and its 27 Member States) and a third country often focus on the necessity for the EU and, in particular, the European Commission to prove that all 27 Member States are implementing the AEO and relevant risk management and controls in a uniform manner. Fortunately, the AEO and other security measures, including the Community Risk Management Framework are based on streamlined and uniform rules, introduced through the Community Customs Code and its Implementing Provisions which are applicable in all 27 Member States. The AEO Network and, in particular, the AEO database demonstrate how closely the 27 cooperate to ensure a level playing field among economic operators and ensure uniform implementation throughout the EU. The latter allows timely access to AEO applications in one Member State by all other Member States as well as an online consultation process among all 27 customs administrations. From May 2008 to February 2009, relevant monitoring carried out in all 27 Member States confirmed the uniform implementation of the AEO in all of those Member States.

Process leading to mutual recognition

Customs administrations that wish to agree mutual recognition of AEO and/or security measures will not want to trust 'blindly' but will insist on comparing legislation and rules and on verifying whether the practical implementation is equivalent. Usually, this will require audit and risk management methods ('joint audit/monitoring visits') to be compared, which might also include a visit to a company that has been authorised or is being audited in view of attaining AEO status. The programs and concepts do not need to be exactly the same but they have to achieve equivalent levels of security and control. The process is relatively time consuming: the paper-based comparison is normally followed by an in-depth

discussion to clarify any open questions (for example, definitions might often differ and clarification might be needed on terms such as 'audit' or 'validation').

The joint audit/monitoring visits are necessary to assess the uniformity of practical implementation. The on-site visits and discussions with auditors sometimes show that legislation which appears uniform on paper is in fact complemented by internal audit rules which provide for exemptions and specific rules and thus, have an impact on the practical implementation of AEO.

The joint audit/monitoring visits may be time consuming but they usually lead to fruitful discussions amongst the relevant experts – gaining insights and learning from the best practices of a partner country is certainly one of the advantages of the process leading to mutual recognition.

Benefits of mutual recognition

The main objective of arrangements/agreements on the mutual recognition of AEO and security measures is to increase security and trade facilitation.

Customs administrations expect closer cooperation with third country customs administrations, more information on supply chains and high risk consignments and, as they can focus their resources on the high risk, a better and more efficient use of scarce resources. Economic operators that have received AEO status or are applying for AEO status expect to get benefits in return for their efforts to comply with high security requirements (for example, in the form of reduced controls and priority treatment and potential further advantages). Many AEOs have indicated that they only applied for AEO status due to their expectation that mutual recognition of AEO among major trading partners would soon be more widespread and lead to benefits.

If the mutual recognition of controls and control results becomes a reality, Customs as well as trade will expect export declarations to serve as import declarations, and that the control at export to normally be accepted as sufficient by the importing customs administration (unless there is an indication that controls are needed on imports (for example, due to intelligence information or because intellectual property rights (IPR) are registered only in the importing country). While the mutual recognition of AEO has already become a reality owing to the number of arrangements/agreements which have been signed and implemented, ongoing cooperation and projects show that it is more difficult to recognise controls and control results.

The benefits stemming from mutual recognition of AEOs will primarily be import/export related and usually reciprocal. In many cases, the benefits will initially be limited to reduced risk scores and thus reduced controls on and priority treatment of AEOs. Discussions held between the EU and third countries' administrations have shown that it would be very difficult to grant benefits other than those applicable upon entry to third country AEOs. In addition, the traditional simplifications of customs rules (such as reduced guarantees or guarantee waivers for certain procedures) cannot be granted to third country AEOs since AEOs will usually not apply for such procedures in a third country. What also has to be borne in mind is that benefits should be granted on a reciprocal basis. As customs administrations outside the EU do not currently provide for reduced data sets for entry and exit summary declarations, this benefit will not be available to third country AEOs under the mutual recognition agreements the EU is currently negotiating.

The reduced risk scores and, therefore, reduced controls on AEOs are benefits which are granted under all existing mutual recognition of AEO arrangements/agreements and will significantly contribute to the facilitation of legitimate trade. The reduction of controls will lead to a quicker release of goods and more predictability for trade. Furthermore, a major benefit stemming from mutual recognition of the AEO will be that AEOs, including those in third countries, will primarily seek cooperation with other AEOs. This will lead to an increase in profit made by AEOs and raise their general and global reputation as reliable trading partners ('reputational and competitive advantage').

In its negotiations on mutual recognition, the EU is emphasising the need to develop further benefits under mutual recognition agreements. It therefore includes a clause in its agreements that both sides will work towards further benefits to be granted to AEOs.

Models for arrangements/agreements

It is expected that the WCO will play an important role in the promotion of mutual recognition arrangements and agreements (WCO SAFE Framework 2007, p. 56). For the time being, it seems as if there will be two parallel developments: on the one hand, the Memoranda of Understanding which the United States Customs and Border Protection (US CBP) has signed with a number of customs administrations (New Zealand, Jordan, Canada and Japan), which are non-legally binding arrangements aimed at developing the mutual recognition of AEO status and providing benefits to AEOs. On the other hand, there are the legally binding agreements which the EU is negotiating with a number of its trading partners, including the US and Japan. It is expected that some countries will follow the example set by the US while others may opt for the EU model of a legally binding agreement.

The WCO has already started to compile information on existing mutual recognition agreements and their basic features. One of the objectives is to avoid a proliferation of model agreements/arrangements with too divergent features because they could prove counterproductive: they would not make any contribution to trade facilitation and could operate as a trade barrier.

The EU chose to adopt legally binding Decisions by the Joint Customs Co-operation Committee as provided for by the Customs Co-operation Agreements which the EU has signed with its main trading partners. It would obviously also be possible to sign a fully fledged independent agreement but, according to legal experts, the form of decision is sufficient to agree the mutual recognition of AEO and reciprocal benefits.

Legal aspects

Questions relating to, for example, data protection and enabling legislation will play an important role. The EU customs security legislation (Customs Code and Implementing Provisions) provides for the possibility to conclude international agreements with third countries on the reciprocity and mutual recognition of security standards, control results and AEO concepts. As far as the EU is concerned, the necessary data protection is catered for since mutual recognition will usually be agreed under the umbrella of the Customs Co-operation Agreements which contain provisions to ensure that Contracting Parties respect equivalent data protection rules.

Challenges

Equivalence

One of the biggest challenges of mutual recognition is the need for interested countries to develop equivalent measures. The requirement of developing equivalent measures does not mean that the legislation/rules have to be identical but they must lead to equivalent control and security levels. When deciding whether or not measures are considered equivalent, administrations/governments will always take political and/or economic considerations into account. Specific risks, specific threats, geographical and geopolitical aspects as well as specific interests will be taken into consideration.

The role of SAFE as a model to be followed cannot be underestimated in this respect. Obviously, this makes it necessary to ensure that SAFE is always kept up-to-date in order to incorporate recent developments (for example, new standards, new technology). Also, the experience of WCO members that have implemented legislation based on SAFE and faced challenges when doing so (for example,

reliability of data elements required prior to entry and exit) or the experience of pilot testing SAFE (for example, the EC-China Smart and Secure Trade Lanes (SSTL) project which revealed the challenges of implementing technology like eSeals or of using Uniform Crime Reporting [UCR]) should be harnessed to keep the SAFE relevant as a model. For SAFE to keep its importance as a model, it is necessary that the WCO members who have agreed to implement SAFE avoid implementing unilateral measures or measures that are not in line with SAFE. Instead, they should seek approval from the WCO membership to introduce equivalent measures in SAFE. The relevant SAFE maintenance and review mechanism as well as the SAFE data requirements maintenance mechanism agreed by the WCO Council in 2008 and have to be followed by members that wish to amend SAFE.

Exchange of relevant AEO data

An important challenge is the need to ensure the timely exchange of relevant AEO data between administrations that have agreed the mutual recognition of AEO. This is necessary to ensure that Customs has the relevant data so that the risk analysis on both sides can take the AEO status into account with a view to granting AEOs the agreed benefits of reduced risk scores and thus reduced controls.

The EU is currently exploring which data will have to be exchanged. It is expected that at least the name of the AEO, the trader identification (in the EU, the so-called 'EORI' number under which any economic operator exporting from or importing to the EU is registered), the AEO certificate number and its validity will have to be exchanged regularly to ensure that recently authorised AEOs can benefit from mutual recognition as soon as possible after having received status and, also, that a company that loses AEO status (as not any longer complying with AEO criteria) cannot benefit from mutual recognition.

The EU is developing a secure and IT-supported system for the exchange of AEO data which can be used for all mutual recognition agreements. Discussions on the methods and frequency of AEO data exchange are currently being held with a number of partner countries. It is obvious that a global system or number of systems which basically have the same features and functionalities would facilitate the exchange of AEO data – again something that will have to be explored at WCO level.

One additional challenge is that so far all available advance cargo reporting systems identify primarily importers/exporters, consignors/consignees but not carriers, port operators, customs agents, warehouse keepers or manufacturers. Also, the EU advance data requirements are limited to information on importers, exporters, consignors, and consignees. The recently introduced Import and Export Control Systems (ICS and ECS) will have to be amended if further data identifying additional players in the supply chain have to be provided to be able to identify additional AEOs. As the development of these systems by the 27 Member States' customs authorities and of the relevant trader systems has been very costly for trade and authorities, any requirements to provide additional data and thus amendments to the systems would have to be justified.

While the overall objective should be to identify as many AEOs as possible, exploratory discussions have shown that administrations as well as traders appear opposed to any additional advance data requirements before the added value can be demonstrated through facts. It therefore appears better to wait and see whether the introduction of mutual recognition of AEO on a reciprocal basis will lead to tangible benefits for trade, and whether an obligation to provide further data to identify additional stakeholders can be justified. A unilateral introduction of further data requirements by the EU is certainly not justifiable as mutual recognition should lead to reciprocal benefits; it would also make no sense to do so as long as other administrations are not willing to require additional data on further stakeholders, and this is not reflected in SAFE.

Approach to controls, integrity, data protection, etc.

The need to ensure a necessary level of data protection has already been touched upon under the features of mutual recognition. A divergent approach to data protection can certainly be a stumbling block for countries/administrations seeking to agree mutual recognition. The same has to be said of a divergent approach to controls (for example, 100 per cent physical inspections or 100 per cent sealing of containers by Customs). In particular, the attitude towards integrity of Customs and other officials will have an impact as well. If the approach to integrity is different, the necessary trust between parties will not exist.

However, through negotiations between parties that might initially have had a slightly different view as regards controls, sealing or legal issues, the understanding on both sides might enable administrations to develop a more common approach and thus lead to a common understanding.

State of play of negotiations in the EU

While this article mainly describes the features and challenges of mutual recognition, it may also be interesting to mention the current position of the EU in its negotiations on mutual recognition.

The EU directs enhanced cooperation on security mainly under the umbrella of its customs cooperation agreements as these agreements form a sound legal basis for enhanced cooperation on customs procedures and customs policy.

Each agreement establishes a Joint Customs Co-operation Committee consisting of representatives of the customs authorities of the Contracting Parties, that is, representatives of the third party competent services (for example, US CBP), the European Commission and of the customs authorities of Member States. The Joint Customs Co-operation Committee ensures that the agreement is correctly applied and can adopt decisions and recommendations to strengthen cooperation and amend the agreement. The Contracting Parties may expand the scope of the Agreement by mutual consent in order to supplement the areas of cooperation on specific areas (for example, security). Unless both parties decide to sign a separate agreement, it will usually be up to the Joint Customs Co-operation Committee to take the decision to agree the mutual recognition of AEOs or security measures. Decisions by the Committee have the same legal value as the agreement itself since the Committee is authorised to take decisions to make progress in customs matters and further develop the agreement.

One example of the expansion of an existing customs cooperation agreement and bilateral cooperation on security and facilitation is the ongoing cooperation with the US. In April 2004, the European Community (EC) and US formally expanded the customs cooperation agreement to closely cooperate on security. The aims of the agreement are to improve security on a reciprocal basis for both the EU and US, ensure that general customs control of legitimate trade takes due account of security concerns, and create equal levels and standards of controls for US and EC operators.

The measures that are currently being implemented include minimum standards for controls by EC and US customs authorities for the control of high risk containers and the enhanced exchange of risk related information in addition to other minimum requirements applicable to all European ports willing to participate in the US Coalition of Service Industries (CSI). An important part is the cooperation towards mutual recognition of the US C-TPAT (Customs and Trade Partnership Against Terrorism) and EU AEO. The comparison of both systems was, in principle, finalised at the end of 2009 and both sides are currently evaluating whether both programs are indeed equivalent. Parallel to the more technical cooperation to compare both programs, a high level EU-US meeting at the end of October 2009 (TEC) agreed that the mutual recognition of AEO and C-TPAT should be achieved in 2010. Both sides are busy drafting texts to formalise the agreement on mutual recognition.

As far as cooperation with Japan is concerned, the comparison process (which included joint audit visits to Japan and EU Member States) was finalised in autumn 2009. Both sides established the equivalence of legislation and implementation of AEO. The agreement will be formalised in spring 2010 and will take the form of a Decision by the EU-Japan Joint Customs Co-operation Committee.

The cooperation on AEO with China started with a pilot project on SSTL with a view to testing how to facilitate and secure end-to-end supply chains between the EC and China. The pilot project tests the WCO SAFE Framework of Standards and aims to achieve the mutual recognition of AEOs (in 2010) and, at some stage, possibly security measures and control results as well. The exchange of information between customs allows the better targeting of illicit (including counterfeit and unsafe) products and wrongly declared waste. Following the launch of the project and cooperation on AEO matters, both sides carried out joint AEO monitoring actions to ascertain whether the programs are equivalent. It is expected that equivalence can be achieved and that negotiations towards mutual recognition of AEO can be launched during 2010. Enhanced cooperation on counterfeit and unsafe products continues under an Action Plan on IPR and within the EU-China SSTL which will continue after its evaluation, involving more ports and putting more emphasis on counterfeit goods and waste exports.

The cooperation is not limited to these countries: in the near future, close cooperation will start with Canada and other trading partners. It is obvious that the cooperation with third countries is work-intensive and, considering that all administrations are suffering from a lack of human resources, many may decide to start with a limited number of partner countries and sign standard form agreements which allow progress to be made more quickly with other like-minded administrations. The EU hopes to sign the first standard form agreements in early 2010 in order to make quicker progress with other partner countries which have shown interest in achieving mutual recognition with the EU. However, those countries that wish to sign mutual recognition agreements with only some EU Member States will be disappointed: owing to the legal structure of the EU, the mutual recognition of AEO and/or security measures can only be agreed at EU-level and not with individual Member States.

Endnotes

1 This article reflects the opinion of the author and does not bind the European Commission.

2 An Authorised Economic Operator (AEO) is defined in the *WCO SAFE Framework of Standards* as a party involved in the international movement of goods…complying with WCO or equivalent supply chain security standards. See World Customs Organization (WCO) 2007, *WCO SAFE Framework of standards to secure and facilitate global trade*, WCO, Brussels, p. 6, footnote 1, and also pp. 17 and 36 (definitions).

Susanne Aigner

At the time of preparing this paper, Dr Susanne Aigner was Acting Head of Unit Risk Management and Security in the European Commission's Directorate General for Customs and Taxation. At the time of publishing, Susanne had been appointed to the position of Deputy Director Compliance and Facilitation at the World Customs Organization.

What do we know about corruption (and anti-corruption) in Customs?

Bryane Michael and Nigel Moore

Abstract

This article discusses many of the lessons learned in the last decade about fighting corruption in Customs. A methodology for measuring corruption including the use of internal audit is suggested. The effectiveness of various treatment approaches is discussed including the criminalisation of corruption, the implementation of codes of conduct, internal inspectorates and the use of conflict of interest statements. The article concludes by suggesting potential areas for additional research.

Introduction

In the mid-1990s, anti-corruption became one of the most fashionable – and important – topics in public governance. International donors spent at least €5 billion in various projects aimed at helping customs administrations around the world deal with this issue. Researchers in academia and practice have spent countless hours studying – and writing about – the best ways to understand and fight corruption in Customs. As a new decade begins, we should pause to reflect on what we, as customs officials, have learned over the past decade about fighting corruption in Customs.

This article presents some of the salient research from practitioners, together with some specific case studies of anti-corruption approaches within particular customs administrations. Most anti-corruption experts in the field generally agree on the basics: that IT helps and that the 'public sector environment' (pay and performance) should provide customs officials with incentives not to take bribes. This article focuses on some of the more specific approaches being implemented to overcome corruption including codes of conduct on bribery and how levels of corruption can be measured in an effective and meaningful way. As developing countries tend to experience more widespread corruption (though not necessarily the largest in financial terms), the article pays particular attention to issues of relevance to them.[1]

Does criminalisation reduce corruption?

The trend in the last decade has been to criminalise corruption in all areas of public life, including in Customs. Figure 1 provides a brief overview of the major international conventions relating to anti-corruption which a customs agency should know about. Figure 1 also presents some issues raised by relevant conventions for customs agencies.[2] A detailed description of each convention is not proposed in this article.[3] However, in the literature, there is particular consensus on the effectiveness of these conventions. The Organisation for Economic Co-operation and Development (OECD) Convention has failed to live up to its expectations – with academic and non-government organisation (NGO) commentators alike noting its widespread violation. The United Nations (UN) Convention has also encountered widespread problems mainly because signatory states refuse to implement the Convention in practice.

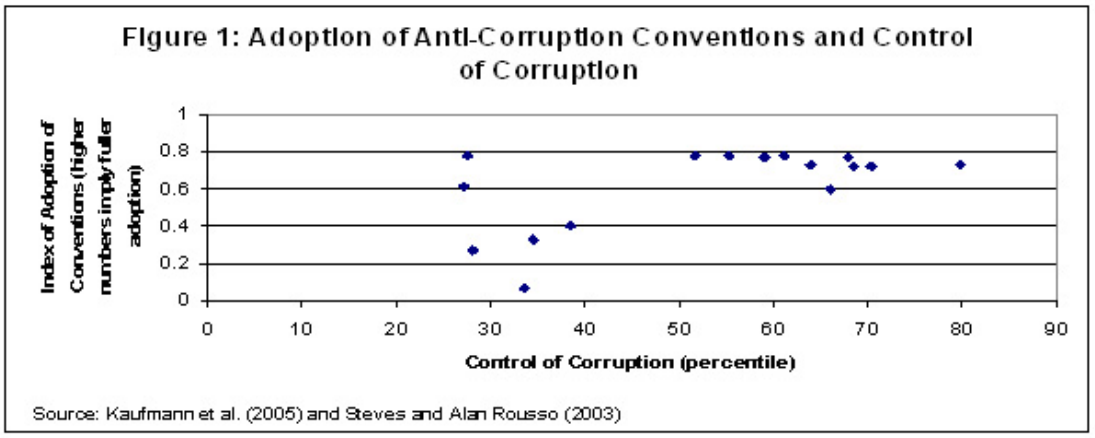
Figure 1: Fighting corruption in Customs involves more than customs law

Convention	Effect on Customs Agency
The UN Convention Against Corruption	Contains potentially powerful provisions related to the recovery of assets and the proceeds from corruption which internal affairs departments can use to recover losses from corruption (with the proper regulatory procedures and cooperative agreements with other agencies in place).
Council of Europe's (CoE) Criminal Law Convention	Criminalisation is not new. But being able to name-and-shame a country for non-compliance with a CoE convention serves a potentially useful function which customs agencies can use to encourage their neighbours to seriously investigate and prosecute suspected corruption.
Council of Europe's (CoE) Civil Law Convention	Potentially the most valuable of the anti-corruption conventions. Each corrupt act (particularly in Customs) carries with it large financial damages which customs agencies can (and should) recover through civil litigation.
OECD Convention on the Bribery of Foreign Officials in International Business Transactions	Customs agencies in Africa and Latin America think this convention does not apply to them. They are mistaken. A customs agency can do much to make sure their staff know that Germans and Mexicans who offer bribes anywhere in the world commit a crime in their own home countries.

Source: Michael & Moore 2009.

No formal empirical studies have established a strong correlation between the adoption of anti-corruption conventions and actual reductions in corruption. Figure 2 presents a scatter-plot showing the extent to which a number of countries worldwide have adopted the international conventions listed in Figure 1, and the extent to which corruption has fallen.[4] Indeed, according to these data (mostly from Central Europe and the former Soviet Union), countries with high levels of corruption tend to be associated with a wider adoption of anti-corruption laws.

Figure 2: Adopting anti-corruption laws has questionable impacts on fighting corruption



Thus, in the literature, the consensus appears to be that the adoption of anti-corruption laws provides policymakers – like directors of customs administrations – with a type of voucher or option. These policymakers can use the new provisions to pass internal regulations implementing them – or not. Unlike other types of laws, customs administrations cannot sit back and wait for the police, prosecutors, the prime minister's office or another agency to come and implement them. They, themselves, must take an active role in implementing the provisions.

How effective are codes of conduct and posters?

In the 1990s, large international donors – particularly United States (US) financed donors like USAID – spent enormous amounts of money paying for consultants to roam the world writing codes of conduct and create 'don't pay bribes' posters. No anti-corruption expert has yet been able to produce evidence that the results of these activities in reducing corruption have outweighed their cost.[5] Roughly 10 years and almost 75 projects worldwide have 'helped' customs agencies adopt codes of conduct. Yet, we do not know of one disciplinary case against a customs officer for violation of the code of conduct – their formulation is simply too abstract. Data from every anti-corruption survey consistently show that customs officers and importers know they should not be paying bribes – they don't need posters to tell them so.

So, why should heads of inspectorates in customs administrations write and distribute these codes of conduct? The answer should be that a well-written, considered code of conduct tackles the tough ethical choices customs officers need to take in their daily work. An incompetent code of conduct tells customs inspectors not to take bribes. A useful one tells customs officers when they should NOT blow the whistle on a colleague. In other words, a code of conduct clarifies – if not teaches – moral reasoning skills. The 1990s witnessed a move away from ineffective slide presentations covering each point of a code of conduct and towards thoughtful case studies showing the two sides of every ethical choice.

If the 2000s saw the apogee of anti-corruption advertising, the 2010s will see the wider use of anti-corruption marketing. Every MBA and/or MPA graduate knows the difference between advertising and marketing. Advertising raises awareness about a product, service or social issue. Marketing aims to identify social needs and provides a service which helps society. Figure 3 shows the difference between anti-corruption advertising and marketing. In the first example, the poster admonishes viewers not to pay bribes (something they knew already). The second poster however, focuses on the main reasons for bribery (lack of knowledge about import procedures). The poster designers spent time (and conducted surveys) to find out what importers did not know. They put information which the viewer could use immediately (phone numbers and practical information).

Figure 3: Anti-corruption advertising versus marketing

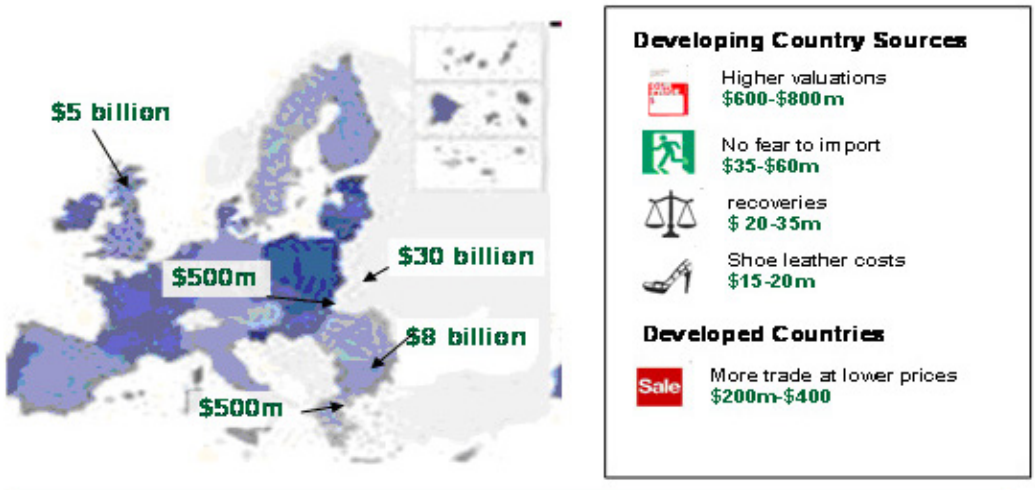
An advertisement lets viewers know about a product or social issue they didn't know about before.

Marketing identifies wants and needs, and satisfies them at a (social) profit. (Social) marketing provides useful information which benefits the reader.

Measuring and estimating corruption

Throughout the 2000s, a number of articles by researchers and practitioners presented a vast array of data showing the extent of corruption in various customs agencies worldwide. Figure 4 provides an overview of some of these results (often combined with the authors' estimates where public data are unreliable). The estimated harm from corruption worldwide is at least $700 billion – a small figure given that worldwide corruption in all services could easily be $10 trillion.[6] Corruption allows under-valuation and misclassification. Corruption allows smuggling. Corruption also costs business people money as they visit various officials, wait for documents and lose business.

Figure 4: $700 billion in customs corruption



Source: Michael 2009.

Perhaps the biggest leap forward in the authors' understanding about anti-corruption in the 2000s came from the so-called 'empirical revolution'.[7] As social scientists – and policymakers – we learned how to measure corruption, mostly with surveys. Almost all customs administrations sit back and wait for their national chapter of Transparency International to provide them with data. Such a (non)practice is a mistake. As shown in Figure 5, only a customs administration can engage in many of the techniques required to obtain reliable data. Customs administrations, particularly internal inspectorates, need to collect data before they can take decisions.

Figure 5: The three ways of getting data about corruption in Customs

1. *Ask companies*. Asking companies about the frequency and value of bribes they pay to customs inspectors constitutes the most popularly used way of measuring corruption. In smaller countries, they can also be used to measure conflict of interest. Data are becoming more unreliable as companies are getting 'corruption survey fatigue'.[8]
2. *Conduct internal audits*. Compliance audits, performance audits and, of course, fraud audits remain the gold standard for assessing the extent of corruption in various customs operations. Unfortunately, data cannot be compared across operations or between various customs agencies (and audit reports are almost never released publicly).
3. *Do integrity tests (bribe customs officers yourself!)*. The most reliable and effective method of measuring corruption involves going to a random sample of customs inspectors and offering them bribes. Because of serious legal problems, these results should be used only for data collection and not as part of a large prosecution campaign.

Source: Michael & Moore 2009. For critiques of each method, see Michael & Polner (2007).

As practitioners, we also know how to apply the same skills when we find customs offences in order to fight corruption. Whether working on a mobile team, as an inspector or as an intelligence officer, we all share the language of risk profiling. We collect data on large numbers of individuals and companies and we estimate the probability of them engaging in illegal activity. The 2000s saw the application of those same skills in identifying bribe-askers (and bribe-takers) in a customs service. We can now estimate the probability that a customs inspector is taking bribes in the same way we can estimate the probability that an importer is not correctly declaring their import values.

Do internal inspectorates work? A proposed model

Throughout the 2000s, customs agencies worldwide created internal inspectorates to fight corruption. These inspectorates – alternatively known as internal affairs departments or units for internal security – reflect the variety of approaches adopted by corruption fighters more generally. Figure 6 shows the three main approaches to inspectorate-design – the educational inspectorate, the consultative, and the 'repressive'.[9] Naturally, many inspectorates (or their equivalents) combine more than one of these functions as over 30 per cent of inspectorates in Central and Eastern Europe have repressive competencies (the ability to investigate) and roughly 60 per cent engage in some kind of consultative function.

Figure 6: The three types of corruption fighters in Customs

Type of agency	Functions
Educational	Mostly deals with public education and engages in making posters, giving speeches on ethics, and so on.
Consultative	Conducts studies on ways to reduce corruption – regards corruption as a larger problem with customs regulation(s). These inspectorates usually handle hotline calls or receive complaints from the public.
Repressive	Typical internal affairs model, conducts serious investigations and assists with prosecutions.

Source: Michael & Moore 2009.

Owing to serious design problems, it is still not known if these inspectorates succeed in reducing customs-related corruption. These inspectorates had a difficult start in the 2000s, usually being mandated by a national anti-corruption strategy or action plan. Waiting for the legislative changes which would allow them to actually go out and investigate corruption, many customs agencies used these inspectorates as a 'dumping ground' for intelligence officers and investigators. The staff of these inspectorates receive no financial or other reward for finding corruption – and can often be 'rewarded' by criminal groups with an early death! As such, most inspectorate staff spend their time checking documents and (more recently) watching video camera footage of inspectors working at clearing houses.

As we enter the 2010s, the initial evidence tends to suggest that inspectorates should inspect, that is, they should have law enforcement powers. Inspectorates should have powers of investigation and sue for quick administrative prosecution for non-criminal offences such as negligence. The inspectorate of the 2010s draws the best investigative talent from the intelligence and investigation teams and pays them for using that talent. Because of the elite work in internal affairs, intelligence officers and investigators have incentives to develop their skills early in their careers – skills useful across the customs administration.

The effectiveness of internal audit

Internal auditors are not (necessarily) bean-counting accountants. Internal customs auditors have the same skills as business consultants working for prestigious companies like Accenture or McKinsey. They collect data and they make recommendations according to a set of standards agreed the world over.[10] These standards – the International Framework for the Professional Practice of Internal Audit (IFPPIA) – are followed by auditors who satisfy extensive requirements for examination and professional experience. These auditors also work according to the same principles which we use as inspectors: they focus their work based on risk. Figure 7 shows the way that various types of audit help fight corruption in a customs administration.

Figure 7: Internal audit in Customs isn't what you think it is

Three types of internal audit can help detect – and prevent – corruption in a customs agency.

1. *Compliance*. Checks to see if customs officers follow the regulations in place. Auditors' recommendations reduce corruption because they suggest ways in which regulations can be rewritten to help encourage implementation. They also help to cut the red tape which gives both customs officers and importers incentives to pay bribes in the first place.
2. *Performance*. Poorly performing work units are often rife with corruption. Auditor's recommendations can help find ways of making sure specific anti-corruption programs work. They can also help eliminate the inefficiencies in overall operations which allow customs officers to collect rents.
3. *Fraud*. This is the audit which captures the popular imagination. Auditors swoop into a customs office, impound documents and computers and start heavy handed interrogations of staff. The fraud audit is rare and if real fraud were suspected, the customs agency would usually let the police deal with the case. Auditors don't (or at least, shouldn't) bully customs staff – they check, probe and advise.

Internal auditors can and do conduct financial audits. In these audits, they make sure that customs managers correctly report financial data (this is called 'assurance'). But an internal audit department (particularly in the developing world) will spend only a small amount of time providing such assurance, leaving such work to internal accounting departments or external auditors.

For all the benefits offered by an internal audit in preventing, finding and prosecuting corruption, it does have its limits. Internal audits cannot uncover widespread corruption as audits (or 'engagements' as the insiders call them) focus on very specific risks to customs revenue or traders' rights. Internal audit recommendations are voluntary. Auditors can serve as honest brokers to all areas of a customs service because customs officials know they will not be punished if they deal openly and honestly with their internal auditors. Internal auditors look for solutions to corruption instead of attempting to assign blame.

Do asset declarations and conflict of interest statements work?

Asset declarations and conflict of interest statements (and declarations) became the special customs projects of the 2000s. By now, almost every customs official (particularly in senior management) had had to declare their cars, immovable property, and often the property of spouses and family members. Customs officers must also – by law – update these declarations periodically and/or with changes in their 'material circumstances.' In the same way, these customs officers must notify someone –a special external commission, an internal inspectorate or their manager, depending on the law in their country – if they want to hire their brother, clear the goods of a relative or buy shares in the companies they inspect.

At the beginning of the 2010s, compliance with these schemes is seriously lacking. Almost no country in the entire Eastern European and former Soviet region can claim to randomly sample these declarations to find under-declarations. Few, if any, countries can claim to have discovered (without the help of a whistleblower) conflict of interest cases. Few countries have seized the real estate and bank accounts of customs officers known to have taken bribes.

Issues for future research

The second decade of this century will undoubtedly witness extensive research on a number of topics relating to anti-corruption in the customs field, some of which are described below.

Corruption as violation of the GATT. Solicitation of a bribe imposes an unfair tax on trade. In the 2010s, companies will find more innovative ways to sue customs administrations which fail to investigate and prosecute corruption on two grounds. First, customs bribes create an unfair tax. Second, customs bribes create serious damage. A two-week delay on a €10 million consignment can cost a company up to €100,000. The 2010s are likely to see increased legal action against corruption as a hindrance to trade.

Risks relating to the Authorised Economic Operators (AEO) program. The AEO program has greatly facilitated trade by reducing the amount of fraud audits conducted at border crossings. However, the program also creates different types of controls – and administrative discretion – within the customs administration. The 2010s will undoubtedly produce data on the correlation between the proportion of AEOs and the extent of corruption in different World Customs Organization (WCO) member states.

Freedom of information. All Director Generals talk about openness, freedom of information and the importance of research. Yet, no customs director would ever authorise the release of data from their administration (in any form). If Director Generals want to benefit from the research of others, they must be willing to join the openness revolution. The 2010s will serve as a litmus test to see if Director Generals practise what they preach about openness and transparency.

Cross-border investigation. A number of bilateral and multilateral agreements allow for cooperation in criminal matters. Examples include a number of Council of Europe (CoE) treaties on mutual legal assistance in criminal matters and of course, the Treaty of Lisbon (for European Union countries). Yet, few investigators fly from London to Kiev (or other places) to help with cross-border cases.

Dying for anti-corruption. Eastern Europe has its 'garden variety' customs corruption (with some exceptions). In Latin America, investigating and prosecuting corruption runs into organised crime and often into lethal force from organised crime. In the next decade, inspectorates will undoubtedly need to know how to protect their staff using programs such as witness protection programs and *qui tam* rewards (for individuals denouncing corruption related to organised crime).

Comparative studies on anti-corruption in Customs. Policymakers sorely lack comparative data on anti-corruption in various customs agencies worldwide. Agencies like the United Nations Development Programme (UNDP) and OECD have vigorously pushed (and financed) peer reviews and the monitoring of anti-corruption work, particularly of anti-corruption agencies.[11] The time has come for an organisation – like the WCO – to support such work aimed specifically at anti-corruption in Customs.

Conclusions

Over the last decade, customs administrations and academic-practitioners have learned a great deal about fighting corruption in Customs. Most customs experts agree on the basics of an anti-corruption reform in Customs: prevention, consultation and enforcement. We are now more able to estimate the magnitude of corruption and its harm to the customs agency. We roughly agree on the basics of setting up and running an internal inspectorate and handling internal investigations. We also agree on a certain global *'acquis'* in terms of anti-corruption law – criminalisation, the recovery of proceeds from crime and the ability to conduct international investigations. We also know, albeit in very rough terms, how to use computers to record data such as import times, inspectors' names (and so on) to create the paper trails needed to investigate corruption, domestically and internationally.

Beyond these things, we still have a lot to learn about fighting corruption in Customs. We don't really know what causes corruption in any particular customs agency, although we do know general causes. We do not know why some customs agencies have serious problems with corruption, while their neighbours in countries with exactly the same level of economic development (in GDP per capita terms) do not. We do not know why most countries continue to resist implementing the international anti-corruption conventions or why customs agencies do not take a more active role in creating regulations which prevent corruption. Such questions will undoubtedly pose interesting areas of research and work in the next decade.

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Endnotes

1 See Ferreira, Engelschalk & Mayville 2007. This chapter provides the quintessential overview of corruption in Customs and strongly reflects the issues addressed by the World Bank.

2 Ayres, Davis, Healy & Wrage (2007) provide a very competent overview of the conventions.

3 Heineman & Heimann (2006) provide an excellent overview of the problems of the international anti-corruption conventions.

4 Some of the data used in this analysis is provided in Steves & Rousso (2003). Their bibliography identifies useful sources. In the absence of other data and with some scepticism on the part of the authors of this paper about the numbers mentioned, see Kaufmann, Kraay & Mastruzzi (2005), an often cited paper, to consider the rhetorical question: 'How do you measure the immeasurable?'.

5 The *UN Anti-corruption toolkit* (2004) lists the major initiatives but is surprisingly unhelpful on implementation. It addresses in some depth the various methods of advertising, focus groups and other techniques for 'awareness-raising'.

6 See Sampford (2006), the *vade mecum* for measuring corruption.

7 See McLinden 2005. This book is highly recommended: real issues tackled by real customs officials.

8 See the References for articles about survey design and implementation.

9 The OECD (2008) discusses in some detail the various 'flavours' of anti-corruption work.

10 See Khan (2006), an important contribution to the discussion. Also recommended is the paper by Baltaci & Yilmaz (2006) which includes an excellent description of the use of internal audit to fight corruption in any government institution.

11 See OECD 2008. In the authors' view, anti-corruption agencies have become a popular, if ineffective, institutional response to corruption. Numerous studies, such as this OECD study, try to compare these agencies and understand how to make them more effective. Ironically, little work has been done on the potentially much more effective customs inspectorates and internal affairs departments. Professors de Sousa's work (2006) which provides statistical comparisons of anti-corruption agencies in Eastern Europe and the former Soviet Union remains a *tour de force* in the anti-corruption field. Researchers need similar data on customs inspectorates.

Bryane Michael

Bryane Michael has served as senior anti-corruption adviser to over 15 governments and customs agencies worldwide. A Harvard-trained economist, his almost 15-year career has taken him to the World Bank, Organisation for Economic Co-operation and Development (OECD), United Nations Development Programme (UNDP), European Union (EU), and five years teaching at Oxford University.

Nigel Moore

Nigel Moore has 35 years operational and management experience in the Customs and tax fields, including 10 years international experience of working as a senior adviser on reform projects. He has worked in five developing countries advising on, amongst other things, practical approaches to enhance ethical standards and internal controls.

Best practices model for licensing customs brokers

Carol West

Abstract

In some parts of the world, customs brokers have been offering advice and providing services to importers and exporters for hundreds of years. In some other regions, the customs broker is a nascent profession, while in other countries they do not exist as unique service providers. Where there are customs brokers, there has been a tendency to organise and work together to understand the customs function, enhance services offered to importers and exporters, and improve the environment in which trade is conducted within that country. Since 1990, customs brokers from around the world have been represented by the International Federation of Customs Brokers Associations (IFCBA), which, in May 2009, approved a best practices model for the licensing of qualified customs brokers. The IFCBA supports the establishment of transparent, accountable and consistent broker licensing regimes by relevant government agencies worldwide.

This paper reflects the principles developed and approved by the IFCBA in that best practices model.

Introduction

In some parts of the world, customs brokers have been offering advice and providing services to importers and exporters for hundreds of years. In some other regions, the customs broker is a nascent profession. And in yet other countries, the customs broker does not exist as a unique service provider leaving others to fill the knowledge gap as part of a broader service option.

Where there are customs brokers, there has been a tendency to organise and work together to better understand the customs function, enhance the services offered to importers and exporters and ultimately, improve the environment in which international trade is conducted within that country. In the late 1980s, several of those countries with longstanding customs broker communities began exploring how they could collaborate to their mutual benefit and that of their clients.

Since 1990, customs brokers from around the world have been represented by the International Federation of Customs Brokers Associations (IFCBA) which, in May 2009, approved a 'Best practices model for the licensing of customs brokers' following a three-year period of study, consultation and drafting. Based on a survey of, and consultation with, customs broker associations across five continents,[1] the end result has been enthusiastically received by both customs brokers and customs administrations around the world.

Best practices

The World Customs Organization's (WCO) understanding of best practices is 'Methods and techniques that have consistently shown results superior than those achieved with other means, and which are used as benchmarks to strive for'.[2]

This year's theme at the WCO highlights the Customs-Business Partnership, and the IFCBA 'Best Practices' document addresses what has been a major gap between customs administrations and the private sector on a matter of important mutual interest, the licensing of customs brokers.

The survey that marked the early stages of the 'Best Practices' project was undertaken to:

i. establish a database of existing practices concerning licensing of customs brokers in IFCBA member countries
ii. provide the basis for provision of submissions on customs broker licensing to the World Customs Organization/World Trade Organization in response to WTO initiatives on [the] use of customs brokers[3]
iii. create best practices recommendations on customs broker licensing for Customs administrations and related organizations (IFCBA 2009, p. 1).

The general principle of customs brokerage licensing is that such regulation is the responsibility of government. It is recognised that regulation may be for individuals and/or business entities (sole proprietors, partnerships or corporations).

IFCBA recommendations regarding customs brokers' scope of practice[4] include the following:

- Economic operators can use only customs brokers as third parties to transact business with Customs.
- Economic operators acting on their own behalf to transact business with Customs must meet the same knowledge standard as customs brokers.
- Licensed customs brokers may direct and supervise the work of employees performing the release and accounting functions.
- Customs brokers may wish to assume joint and several liability with their clients for the payment of duties and taxes (IFCBA 2009, p. 1).

The best practices model recommends that:

> an individual, or at least one partner of a partnership, or at least one officer of a corporation, applying for a customs brokerage license must
>
> - be a citizen or permanent resident where such legislation exists
> - have reached the legislated age of majority
> - provide records demonstrating
>   a) the minimum experience requirements, usually 3-5 years in a customs brokerage environment, or
>   b) the successful completion of a training program as required by legislation or regulation
> - have successfully completed a licensing examination or equivalent procedure
> - pass a credit history check
> - have no violations of a serious nature related to imports/exports (IFCBA 2009, p. 2).

It is also stated that business entities operating as customs brokers must provide evidence of financial stability (this could be past and current financial statements).

Additionally, 'in cases where payment is made on behalf of an economic operator, the customs broker must provide a financial guarantee or security deposit in accordance with legislated or regulated requirements' (IFCBA 2009, p. 2).

The IFCBA best practice model for licensing of customs brokers is not limited to regulation of entry into the profession. It is also recommended that, once licensed, the following principles should apply:

1. in order to protect the client's interests, customs brokers should establish standards of professional practice on [a] national basis.
2. the knowledge and skills required in customs brokerage are best acquired and developed through ongoing professional development within the industry, and can include courses, seminars and events provided by customs brokerage associations as well as corporate in-house training, informal on-the-job training activities, and tertiary education at recognized national educational institutions.
3. customs brokers must demonstrate continued financial stability.
4. customs brokers must demonstrate high levels of Customs compliance.
5. customs brokerage training, including e-learning opportunities, should be widely available.
6. suspension or cancellation of a customs broker license must be subject to appeal. Neither suspension nor cancellation should take place until finalization of the appeal process (IFCBA 2009, p. 2).

Conclusions

The IFCBA supports the establishment of transparent, accountable and consistent broker licensing regimes by relevant government agencies, worldwide. It is our conviction that failure to do so will negatively affect the customs process and the customs brokerage community, as well as the many thousands of importers and exporters who depend on a high standard of services from their customs brokers.

References

International Federation of Customs Brokers Associations (IFCBA) 2009, 'Best practices model for the licensing of customs brokers', May, Ottawa, ON, Canada, http://ifcba.org/UserFiles/File/BestPracticesModel_LicensingCustomsBrokers.pdf.

World Trade Organization (WTO) 2009, 'Draft consolidated negotiating text', Negotiating Group on Trade Facilitation, 14 December, WTO, Geneva, Switzerland.

Endnotes

1 Countries which responded to the survey are Angola, Australia, Canada, China, Hungary, India, Jamaica, Japan, Korea, Mauritius, Mexico, New Zealand, the Philippines, Poland, Portugal, Sri Lanka, Turkey, and the USA.

2 Businessdictionary.com.

3 World Trade Organization (WTO) document, TN/TF/W/165, 14 December 2009.

4 'Scope of practice' is defined as the activities of customs brokers which are regulated.

Carol West

Carol West is President of the Canadian Society of Customs Brokers (CSCB) and a founding director and now Secretary of the International Federation of Customs Brokers Associations (IFCBA). She was appointed to the World Customs Organization's (WCO) Private Sector Consultative Group (PSCG) when it was formed in 2006, and was elected its Chair in June 2008. She has contributed to the WCO's capacity building work on the *SAFE Framework of Standards*. In 2009, Carol was awarded the inaugural Canadian Awards of Trade in Imports and Exports (CATIE) award for Trade Leadership in Canada, and in early 2010, she was recognised by the WCO on International Customs Day for her service to the international customs community. She has also received a Certificate of Merit from the WCO for rendering exceptional service to the customs administration of the CBSA by strengthening partnerships between the Agency and the private sector.

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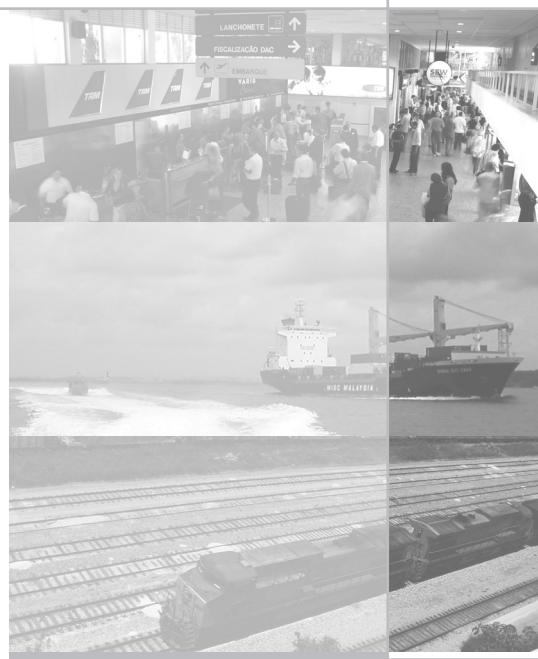

Section 3

Special Report

2010 PICARD Conference Abu Dhabi (UAE), 23-25 November

About the Conference and Call for Papers

The 2010 PICARD Conference will be organised jointly by the World Customs Organization (WCO) and the International Network of Customs Universities (INCU) and co-hosted by the Centre for Customs and Excise Studies of the University of Canberra and the Abu Dhabi University Knowledge Group.

About PICARD

The WCO PICARD (Partnership in Customs Academic Research and Development) program was launched in 2006 to provide a framework for cooperation between Customs and the academic world. In parallel, through PICARD, academic institutions have created the INCU and a rich vein of research in the field of Customs, generated through its flagship publication, the *World Customs Journal*.

Working together, the WCO and INCU have progressed a range of initiatives in the areas of educational programs, strategic management development, professional standards, and academic research and development.

In relation to standards, the WCO in partnership with the INCU has developed a set of *Professional Standards* necessary for operational and strategic Customs managers to meet the requirements of the new strategic environment. In addition, the WCO has established a process of assessing university curricula against the Standards.

This year's PICARD conference will build on the success of the previous conferences (Brussels 2006 and 2007, Shanghai 2008, and Costa Rica 2009) and will provide participants with an opportunity to interact with their government, commercial and academic counterparts from around the world.

Objectives

The WCO, in partnership with the INCU and others, aims to:

- encourage Academic Institutions and Customs Administrations to increase their cooperation in the field of customs education and research to raise the academic standing of the Customs profession
- support initiatives related to this collaboration by promoting the development of Customs-specific educational products and research activities, including the identification of research funding opportunities.

Focus of the 2010 PICARD Conference

The 2010 PICARD Conference will focus on the following specific issues:

- **Customs-Business partnerships** – examining the objectives and expectations of such partnerships, and ways to improve public and private sector performance through partnerships
- **Performance measurement** – with a view to identifying appropriate methods to measure and benchmark Customs performance

- **Customs and revenue collection** derived from Customs Duties, VAT, and other taxes on traded goods – with a focus on ways of mitigating revenue risks caused by misclassification and misdescription, under-valuation, over-valuation, origin fraud, informal trade, and corruption
- **The impact of climate change on international trade and customs management in the post-Copenhagen era** – the consequences of climate change policies on trade facilitation, revenue collection, and supply chain security with a focus on issues such as Border tax adjustments (BTAs), carbon leakage, VAT fraud on carbon credits, trade barriers to Clean Development Mechanisms (especially clean technologies).

In examining and analysing these issues, conference participants will be encouraged to identify a range of solutions to address identified concerns, with a particular emphasis on capacity building, improving performance and research opportunities to address identified needs.

A key aim of the Conference is to provide a truly global representation of the issues and consequently, it is intended to include presentations that represent diverse geographic views.

Key players

World Customs Organization

The WCO is the only intergovernmental organisation uniquely focused on Customs matters and is regarded as the voice of the international Customs community. Dedicated to enhancing the effectiveness and efficiency of its 176 Members across the globe, the WCO is particularly noted for its work in areas covering the development of global standards, the simplification and harmonization of customs procedures, the security of the trade supply chain, the facilitation of world trade, the combating of customs offences, anticounterfeiting and piracy initiatives, and sustainable global Customs capacity building programs. The WCO also maintains the international Harmonized System of goods nomenclature, and administers the technical aspects of the WTO Agreements on Customs Valuation and Rules of Origin. More information about the WCO can be found at www.wcoomd.org.

The International Network of Customs Universities

The INCU was established to provide the WCO and other organisations with a single point of contact with universities and research institutes active in the field of customs research, education and training. The INCU also provides a global resource for governments and the private sector, and an educational source for students wishing to further their knowledge in the field of customs management and administration, and international trade and logistics management. More information about the INCU can be found at www.incu.org.

The INCU produces the *World Customs Journal* (www.worldcustomsjournal.org) which is its flagship publication. The first edition of the Journal was launched at the WCO PICARD Conference in March 2007 and this is the seventh edition. The Journal includes contributions from both academics and customs practitioners.

The PICARD Advisory Group

Members of the PICARD Advisory Group are:

- Prof. Dr Aivars Krastiņš, Riga Technical University, Latvia
- Prof. Dr Hans-Michael Wolffgang, Universität Münster, Germany
- Prof. David Widdowson, Centre for Customs and Excise Studies, University of Canberra, Australia
- Mr Stéphane Lauwick, University of Le Havre, France
- Mr Juha Hintsa, Director, Cross-Border Research Association, Lausanne, Switzerland
- Prof. Jhon Fonseca, Universidad de Costa Rica.

CCES Abu Dhabi

The Centre for Customs and Excise Studies, University of Canberra (CCES) has established a campus in the United Arab Emirates (UAE) in collaboration with the Abu Dhabi University Knowledge Group (ADUKG).

CCES Abu Dhabi combines the global credibility of the CCES award-winning Customs training, education, research and consulting programs with ADUKG's comprehensive end-to-end series of education solutions, world-class educational facilities, and Abu Dhabi's convenient geographic location. CCES Abu Dhabi will be formally launched at the 2010 WCO PICARD Conference.

Participant profile – Who should attend?

The conference is intended for:

- Senior Customs executives responsible for:
  - Customs reform and modernisation strategies
  - Strategic management and planning
  - Trade Policy issues
- Universities and research institutions with an interest in customs-related research and education
- Trade executives and service providers
- Representatives from donor and other international organisations.

Registration

Registrations must be received by 29 October 2010. More detailed information is available in the online registration form, www.picard-abudhabi.com.

Venue

The conference will be held at the Beach Rotana Hotel & Towers, Abu Dhabi. Ideally located in the heart of Abu Dhabi's business and shopping districts, the Beach Rotana is set on its own stretch of pristine white beach in the Tourist Club Area, just 30 minutes away from the Abu Dhabi International Airport and 90 minutes from Dubai International Airport. Home to the prestigious Abu Dhabi Trade Centre complex, the hotel is directly linked by an exclusive passageway to the Abu Dhabi Mall, the city's most prestigious shopping mall.

Call for papers

Academics and practitioners are invited to submit proposals for papers that may be selected for presentation at the Conference and also for publication in the September edition of the *World Customs Journal*. Proposals are being sought for papers that address the specific issues identified above in 'Focus of the 2010 PICARD Conference'. Details will be posted on the WCO and INCU websites: www.wcoomd.org and www.incu.org.

To respond to this 'Call for papers', please forward the details on the next page by email to Ms Riitta Passi (riitta.passi@wcoomd.org) no later than 31 May 2010.

Authors will be notified via email by 26 June 2009 of acceptance or rejection of their papers for inclusion in the 2010 PICARD Conference. Accepted manuscripts must be submitted electronically to the WCO by 6 August 2010.

Note: All proposals, regardless of their acceptance for presentation at PICARD 2010, will be considered for publication in the September 2010 issue of the World Customs Journal.

About You:

Name and title:

Current position:

Organisation:

Email:

Telephone:

Mobile (GSM/Cell):

Brief Biography (*limit of 100 words*):

About the Research Paper:

Title of Paper

Abstract (*limit of 250 words*)

This Paper is (select one): (a) an original work, (b) a review

What key aspect(s) of the PICARD Conference themes does your research address? (dot point form)

What is the current status of your research? (progress, scheduled completion date).

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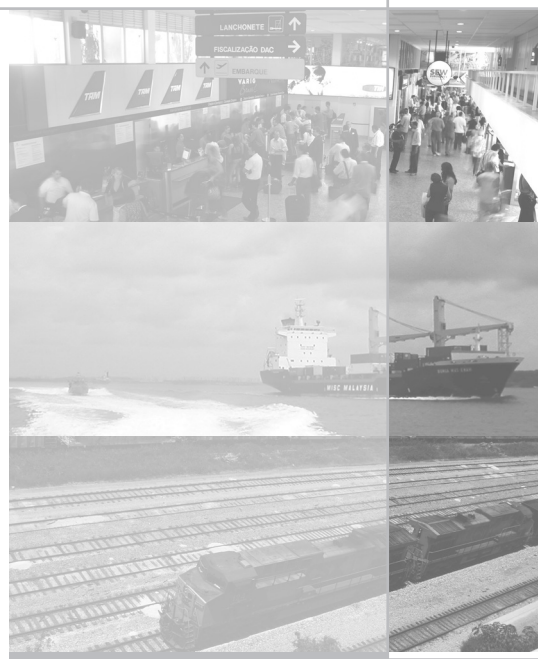

Section 4

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 reviewed using a 'double blind' or 'masked' process, that is, the identity of author/s and reviewer/s will not be made known to each other. This process may result in delays in publication, especially where modifications to papers are suggested to the author/s by the reviewer/s. 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, high resolution, colour 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, high resolution, colour 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.

Papers published elsewhere

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.

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.

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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