

Customs and Border Agency Best Practices

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Executive Summary:

Increasingly, a country's ability to compete in the international arena is its proven dependability and predictability to move goods, people and conveyances across its borders and through its seaports and airports in an efficient, facilitative and secure manner. In the modern global marketplace, emerging and developing economies can only flourish if their commercial enterprises are able to export their products to the world market and to import goods and services without burdensome regulations, procedures, costs and delays. Internationally, Customs and its partner border agencies are responsible for the safety and welfare of their citizenry by detecting unsafe foodstuffs, medicines, and cosmetics, animal and plant disease in imports and a myriad of other potentially dangerous goods including pesticides, chemicals and hazardous waste. Equally important is for the goods and people in international trade to move safely and that opportunities for the importation of contraband as well as exploitation by terrorists are eliminated or minimized.

This paper discusses the strengths and weaknesses of the agencies that regulate trade, enforce Customs and related laws and describes a series of best practices that are generally agreed to constitute the efficient and effective functioning of a modern Customs and border agency operation.

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Customs Legal Basis for the World Stage of International Trade

The three important intergovernmental organizations that develop and monitor international standards and best practices for trading across borders are the United Nations, the World Trade Organization (WTO), and the World Customs Organization (WCO). There are numerous other international organizations and agreements that regulate the movement of goods and passengers across borders as well. Among these are the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO). The agreements and instruments of all these organizations are globally recognized as critical for modern and efficient international trade.

In joining the WTO, Member States must implement and adhere to its conventions and rules for free and fair trade. One of the most important of these is GATT Valuation Agreement, as well as the Rules of Origin that have been under development for a number of years. Chief among its international conventions, standards and recommended practices are:

- The Harmonized System of Nomenclature, the International Convention on Temporary Admission (Istanbul Convention) and the Convention on Mutual Administrative Assistance (CMAA). These rules govern essential aspects of international trade:
 - standard best practices for efficient and simplified processing of goods and conveyances,
 - classification of goods for revenue collection using the Harmonized System,
 - standardized trade statistics,
 - cooperation and information exchange rules between Customs services of various countries,
 - and common facilitative treatment of goods that transit a country.

- Of particular note, the International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention). Countries involved in Customs modernization should consider acceding to the WTO's Revised Kyoto Convention (RKC). A gap analysis between the target countries Customs Law and related Customs business procedures with those of the RKC should be undertaken. This convention reflects the current economic and technological changes necessary for a modern Customs administration conforming to international standards and practices while also incorporates best practices of member administrations. The RKC is an excellent means for facilitating trade, ensuring economic growth, and improving the security of the

international trade system. Such an effort is now underway by the Bureau of Customs in the Philippines.¹

- The UN Economic Commission for Europe (UNECE) administers the Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention, 1975). This important instrument facilitates the movement of goods across as many borders as necessary for their transport, with limited intervention by Customs at intermediate borders. Transport operators use a commonly accepted Customs transit document, the TIR Carnet, which also serves as a guarantee for the customs duties and taxes of the goods in transit. The TIR system, which is available to countries worldwide, is most critical to road transport operations in Europe, Central Asia, and increasingly in the Middle East.

The key feature of these international conventions and standards is to harmonize the treatment of goods, conveyances and passengers and thereby provide both large and small traders and transporters predictability, cost-effectiveness and transparency in their international transactions.

Customs Laws in Individual States

A modern Customs service has to strive for transparency, predictability and fairness in its dealings with international trade community. For a truly facilitative environment, it is critical that the laws and regulations governing the import and export of materials and goods provide the following:

1. An adequate and coherent authority structure for the essential trade-related institutions.
2. Clearly stated regulations and procedures that form a basis for an adequate balance between facilitation and necessary controls essential for public health and welfare.
3. The means to legally employ modern risk management techniques utilizing selective inspections and post release audits to accomplish their respective missions.
4. A productive environment of cooperation and procedural coherence with the other government agencies with border control responsibilities.
5. A cooperative and consultative atmosphere of dialog between government agencies, the international trade community and the national legislature to accomplish goals and eliminate roadblocks.

Many times, in working with other Customs services, we find that their underlying legal basis (law, statutes, decrees, regulations, sub-regulations) are not consistent with GATT, poorly written and confusing, or conforming to GATT but patched into old law so as to be a hodgepodge (the U.S. Code for example) or just poorly drafted or incomplete. In extreme cases, even these flawed Customs laws are not even freely

¹ For complete details of the analysis, see <http://www.rkcphil.net/>

available or accessible leading to an aura of opacity and potential abuse by individual Customs officers. In some developing countries, traders are often uncertain which fees are legal and which fees constitute bribes!

Over the years, many authorities have used New Zealand's code² as a remedy and a basis for comparison. As stated previously, many Customs laws are a patchwork quilt of the original law and a series of changes often made over a series of years, decades and even centuries. New Zealand's law was completely rewritten in the late 90s and is a well done, consistent and well-organized code and stands as a great model for other countries desiring a transparent and understandable Customs law.

Now the E.U. has done provided a similar and well thought out Customs code for its member states (although brevity is not its strong point, it also provides an ideal model since it reflects the most modern practices and consistency with GATT and the other WTO provisions.)

For countries seeking transparency and acceptance into the world trade platform, it is an ideal means for international consistency and acceptance into global commerce.^{3,4}

The Will to Change and Modernize

The World Customs Organization in its Customs Reform and Modernization program advocates that any systemic and sustainable Customs reform must have commitment from the top levels of government if it is to be viable. This tenet cannot be over emphasized—for example, if a country has been trained numerous times in conducting modern post release audits but hasn't yet done one, or a new Customs system has been installed by UNDP with funding from the World Bank and none of the functionality has been deployed, or a risk management principles is not followed, then the question has

² <http://www.customs.govt.nz/library/Legislation/CE+Regulations+1996/default.htm>

³ PMorgan: "EU Introduces New Customs Code"

(Source: JPMorgan Global Trade Services Newsletter, August 2008, www.jpmorgan.com/trade)

The European Commission (EC) published a proposal for a new Community Customs Code or Modernized Customs Code (MCC) which will revise the code of 1992 with the intention of streamlining procedures and updating legal changes within the EC and rest of the world. MCC was expected to enter into force on June 24, however, some sections are not expected to be adopted until as late as 2009 due to the uncertainty around the availability of technology to support the new code.

In general, MCC is expected to reduce customs procedures, encourage use of technology to speed processing, centralize border clearance, and promote "single window" and "one-stop-shop" concepts where importers and exporters only have to provide documentation and information at one contact point (single window) even though different agencies need to perform different processes at the same time and place (one-stop-shop). The EU aims to save \$2.5 million each year due to the changes.

⁴ For the new E.U. Code see [<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:145:0001:0064:EN:PDF>]

to be why? Many times, there are underlying reasons but hardly ever will government personnel acknowledge them. Chief among the reasons are:

- Change is resisted and many of those expected to implement the changes are inadequate to the task.
- A lot of money is being made through corruption and reforms will greatly reduce the payments to the Customs officers and others. Most times, salaries are low and the illicit funds are needed for living expenses, which certainly complicates the matter.
- Intermediaries such as importers, clearing agents and Customs brokers are complicit and share in the bounty.
- The rest of the society is accustomed to endemic bribery and culturally bribery is viewed as a cost of doing business and entirely normal.

Many countries have appointed a corruption czar or prosecutor to pursue the pernicious aspects of bribery and made many high level convictions. Other officials have languished without staff or sufficient resources to be effective. Absolute support and dedication of the country's Chief Executive, Agency Heads and Ministers to these efforts will be necessary. The efforts need to be well thought out, sustained and supported without equivocation or faltering.

Automation is a Key Tool.

Automation is a key tool for Customs reform or modernization. In order for automation to be successful, business processes must also be changed to reach the full potential of the system. For developing and emerging countries, the Computer Off the Shelf Software (COTS) provides many opportunities for great productivity gains and reform. For example:

- Improving Customs administration's ability to increase revenues and meeting such requirements as control of contraband and criminal activity. Effective control and administration of duties, taxes on imports and other administrative obligations. Improvements to collections are possible using automation especially for the larger and more frequent payers. Accumulating payments for multiple entries into lump sums on daily or weekly basis instead of individual checks or payments per each declaration can ease the burden on the private sector, Customs' cashiers and cooperating banks when combined with an ACH payment feature. Additionally, a more sophisticated automated collections process could be used to ferret out bogus surety bonds and guarantees presented by unscrupulous traders.
- Expediting implementation of WTO and WCO modernization commitments through automation of the Harmonized Code and valuation processes.
- Facilitating trade and clearing processes in order to benefit the private sector as well as to stimulate foreign direct investment (FDI) opportunities.
- Providing an online real time decision support, business intelligence and financial statistics tool for economic and policy decision-making. The accuracy of national trade statistics that are derived from Customs data is enhanced. Edits and

complete matching between carrier and importer/exporter data are essential for a reliable and timely trade statistics. Validations and certifications are easier and more effective.

- Reducing direct and indirect transaction costs incurred by the private sector in relation to Customs clearance and related trade movements. Automated releases can be given to traders and port personnel easing port congestion and greatly improving throughput through the facilities thus stimulating overall economic activity in the country in addition to increasing the efficiency for the ports and stations.
- Improving Customs' ability to detect and to deter contraband, smuggled goods, money laundering and other criminal activity and addressing other high priority security related concerns.
- Preparing Customs' with a flexible platform capable of meeting future requirements including national Single Window efforts.
- Providing a timely and accurate data warehouse as an excellent source of data for monitoring and evaluating the performance of the port personnel: For example, it can be readily determined for a given time period the number of declarations that are designated for examination. This data can be analyzed and if the results/findings of the declarations are recorded, the efficacy of the physical examinations can be ascertained. The data can also be used for a variety of purposes such as targeting companies for post-release audit, analyzing trends, and measuring release times.

Automation alone cannot fulfill these expectations: Customs business practices or procedures must be changed to use the new functionality provided. If Customs persists with old procedures, logs and multiple forms then the automation will be little more than a very expensive Excel spreadsheet.

Risk Management

Risk Management is a systematic approach to making decisions under uncertain conditions by identifying, assessing, understanding, and planning and communicating risk issues. It forms the basis for selectivity and is the single most important facilitative measure that a Customs administration can take. For Customs and border agencies, it is means to move from an attempt to achieve total control of documents and goods for every

Risk management means the systematic identification of risk and the implementation of all measures necessary for limiting exposure to risk. This includes activities such as collecting data and information, analyzing and assessing risk, prescribing and taking action and regular monitoring and review of that process and its outcomes, based on international and national sources and strategies.

shipment as it arrives in the country to a rational, data driven process to select only high-risk cargo for document review or intensive physical examination. Most countries have adopted the risk management approach to facilitate the international movement of goods

from compliant importers while devoting their Customs and other control agency resources to goods that have the highest potential negative impact on revenue, the economy and especially the health and welfare of its citizens. Risk management deployment simply means that a large proportion of international shipments can cross the border quickly with no inspection and minimal formal requirements. As a result, opportunity for bribe solicitation and payment is reduced because of increased transparency and the removal of Customs officer's opportunity to hold cargo for bribe solicitation.

The move to capture transaction data in a modern automated system such as ASYCUDA World or its competitors provides the essentials for a risk management regime to a reforming Customs administration while utilizing the power of the internet for the collection of data and communication between Customs, the other border agencies and various members of international trade community.

The "Gold Card" an innovative risk management approach that has been used in countries such as Tanzania, Jordan, Sweden, Egypt⁵ and the United States is based upon the Company's compliance level rather than the transactions themselves. Importers who display excellence, and are competent and compliant, pose little risk to Customs. Compliant large importers are allowed and encouraged to speed their goods through Customs formalities. This allows allow their limited resources to greater focus on high-risk shipments while providing tangible benefits to legitimate businesses. Treating these companies as accounts, appointing Customs employed account managers and instituting a special set of compliance, risk criteria and post-release audit for select companies could allow many legitimate companies true "green line" or expedited service and separate their shipments from the flow of riskier imports. Consideration should also be given to adding a "problem resolution" capacity to any planned special Customs office for priority client coordination. An implementation of this program is now underway in El Salvador in Central America.

Post-Release Audit.

Post-Release Audit is an excellent tool to verify compliance and refine risk management techniques. A Customs Post-Release Audit is not viewed as a financial audit – rather, it serves to determine the level of compliance with all Customs laws and regulations applicable to importers and is an evaluation of company practices and records. It assists

⁵ A "Gold Card" Program is a euphemism for a program that gives a higher status and more benefits to an importer if deserved. Egypt was named the number 1 reformer in the World Bank Doing Business report in 2007 largely because of a 60-place jump in the Trading Across Borders measurement. This improvement was due in large part because of a "Gold Card" program implemented beginning in 2005 by the Egyptian Customs Authority called the "Account Management Service".

in judging the integrity of information supplied in the Customs declaration and the importer's level of compliance with Customs legislative requirements. Customs overall aim should be to achieve private sector compliance on a company-by company basis while assuring themselves that the company's import department is knowledgeable with Customs' laws and regulations. True compliance exists when systems and/or departments at importing companies are aware of and take steps to comply with Customs laws and decrees.⁶ This includes internal company audits and self-assessments.

Instead verifying the flow of goods across the border on an instance-by-instance basis in real time, Customs is able to move most of international shipments from compliant companies to the low-risk or GREEN lane in confidence after a successful audit. Additionally, declared values can be verified with purchase and financial records of the company obviating the need for general value listings or ranges making use of transaction value in a high risk environment.

Corruption

Customs administrations face three main areas of corruption:

1. **Facilitating payments:** Importers (or more likely the Customs broker or a representative) pay bribes to obtain a normal or trouble free release. Often considered innocuous, these payments can constitute a heavy drag on the economy because of the additional aggregate high cost of imported goods. Even foreign embassies unknowingly pay these bribes when they pay their broker bills.
2. **Customs complicit fraud:** Importers try to pay less duty, taxes and fees than competitors that are following the law or nothing or no tax at all by circumventing procedures. This can involve other control agency jurisdictions such as food purity and plant/animal quarantine strictures. Customs officers either "look the other way" or be actively involved in the fraud. Free riders then are able to sell goods in the marketplace at greater profit than their law-abiding competitors.
3. **Criminal corruption:** Operators pay bribes to permit a totally illegal, lucrative operation use Customs channels for illicit purposes (everything from drugs and other contraband to arms and munitions).

⁶ A good Customs website is very helpful in achieving volunteer compliance: Transparency and better public service would be enhanced by the addition of:

- Pertinent laws, regulations, and directives, either existing or approved
- Procedures for joining programs such as "Gold Card" Programs
- Contact information for problem resolution
- Customs tariff and classification guides
- Links to other Control Authority websites
- Links to International Customs websites
- Customs rulings
- Audit procedures
- Schedules of legitimate fees
- Clearing Agent/Broker's notices

Considering the perniciousness of corruption in many administrations, it is not surprising that even honest and determined attempts at limiting or eliminating corruption in Customs have been blunted, reforms rolled back or have not been sustained. When corruption is present and flourishing in a Customs administration, several factors are usually present that contribute to an entrenched system of illicit payments:

- A tacit acceptance of corruption by political and civil service employees
- A discretionary interface between Customs officers and private operators where value is realized by either the release of goods or the quick solving of problems, real or contrived
- Willing accomplices or a group of accomplices within the Customs organization and the trade community who may participate or facilitate the payments
- A lack of efficient controls, checks and balances and honest, motivated supervisory oversight
- A sense of entitlement since wages are usually low for the level of responsibility

To remedy this Customs needs to have the means and infrastructure readily at hand to begin to institutionally combat corruption: Post-Release Audit and a good computer system to do risk management/selective examinations which can greatly lower the amount of interface required for bribery between Customs officers and the trade. A separate force for investigating allegations, codes of conduct and enforced tables of discipline along with adequate pay are key parts of a reform program.⁷

Single Window

Additionally, as stated above, a properly implemented and functioning automated system can provide the foundation for the proposed Single Window concept where all the federal agencies with data, inspectional needs are served or the system is used to perform required selectivity functions. The system can also be used to receive electronic licenses, permits or certificates eliminating paper filings for the other control authorities. This will simplify import transactions and reduce costs for the trade.

Although Customs is the main implementing institution for the movement of goods, an efficient trading system relies on an interdependent process that includes other trade-related public sector institutions, trade service providers *and* the traders themselves—importers and exporters. Their capacities, honesty and performance can result in significant costs (or savings) within the trading system. Clearly optimized trade

⁷ For an excellent discussion of Customs Corruption and countermeasures please see: *OECD DEVELOPMENT CENTRE, Working Paper No. 175, (Formerly Technical Paper No. 175), FIGHTING CORRUPTION IN CUSTOMS ADMINISTRATION: WHAT CAN WE LEARN FROM RECENT EXPERIENCES?*, Irène Hors, Research programme on: *Developing Countries and the Millennium Round and Fighting Corruption in Developing Countries*, April 2001; <http://www.oecd.org/dataoecd/60/28/1899689.pdf>

facilitation depends on the supporting institutions active involvement. A Customs administration that is not supported by a compliant, automated and sophisticated private sector will not achieve a high degree of facilitation. Additionally, like Customs, the trade-related public agencies also need sound management, well-trained staff, modern equipment, modern facilitative procedures and active dialog with the trade community to respond timely and predictably to issues while guarding the public safety and security of the country. The private sector trade community also adds their expertise and familiarity with expert legal and logistical knowledge to the import/export process and as such is crucial to the efficiency and overall compliance of international trade movements.

Likewise, the other “border agencies” with responsibility for the health and safety of the population and other duties such as trade statistics, environment and endangered species must be receptive and be able to utilize increased Customs functionality through a sophisticated automated platform.

Conclusion

“I have never smuggled anything in my life. Why, then, do I feel an uneasy sense of guilt on approaching a customs barrier?”—John Steinbeck (1902-1968) American Writer

If John Steinbeck were alive today, we could assure him that his worries would have certainly abated over the years. The world’s Customs services are more rational, less arbitrary and through the use of modern tools are far more selective and reasonable than in past decades. The trend is continuing as world trade continues to burgeon.

Certainly the challenges remain, especially for the Customs authorities in developing and emerging countries. This article has discussed many of the innovations that are currently being employed to speed legitimate traffic through the “Customs barriers” of Mr. Steinbeck. I think the author would find today’s Customs environment far different than his days of travel with his famous dog Charlie!