



# THE EU CUSTOMS UNION @ 50

Concept to  
Continuum

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# Foreword

Stephen Quest  
Director-General for Taxation and Customs Union  
European Commission

*Mr Stephen Quest is the Director-General for Taxation and Customs Union at the European Commission. Stephen joined the European Commission in 1993. Since then he has held a number of positions across different policy areas, including Financial Programming and Budget of the European Union, Environment, and Employment and Social Affairs. Most recently he held the positions of Director-General for Informatics, the Commission's department providing digital solutions to enable European policies and support the Commission's internal administration; and Director of the Office that administers and pays the Individual financial entitlements of the staff of the European Commission. Prior to joining the European Commission, Stephen worked for the UK Department of Employment and the UK Permanent Representation to the European Union. He graduated in 1986 from the University of York, obtaining a degree in History.*

The European Union's Customs Union has just turned fifty. At the moment of its creation, it had six members. Today it has 28. It has laid the foundation for a Single Market of 500 million citizens and contributed to the stability and wealth of the EU. It is the most developed and advanced Customs Union in the world.

These are excellent reasons to celebrate. But there is no reason to be complacent.

We have come a long way: from a common customs tariff, we have moved to common customs rules and procedures laid down in subsequent versions of a consolidated Customs Code. The last version, the Union Customs Code, makes a quantum leap towards paperless customs. This is necessary and welcome, but it is not enough.

Current and future challenges are manifold: globalisation, protectionism and challenges to multilateral structures and processes; digitalisation, new technologies, and fundamental changes to business models and supply chains; security and safety threats; pressure on financial and human resources...

There is no simple response to such challenges. But any reply needs to take into account the following assumptions:

- **As businesses and supply chains become increasingly globalised, transparency and collaboration between customs administrations will be a must.** Not only between customs administrations -other actors in the supply chain, or at the border, also hold valuable information that can help to make risk management more effective and prevent or detect fraud. Goods do not commit fraud - people do. Sharing and exchange of information with other actors is therefore crucial.
- **Customs will need to be fast, agile, innovative and coordinated.** Successful organisations invest in the continuous development of the skills of their staff. Against a background of resource constraints it will be even more important to have the right person with the right skills and the right information at the right time to take real-time decisions.
- **Increasingly, customs work will not be about goods, but about data.** We need to step up efforts to obtain better data and we should continue to exchange, share and use that data to anticipate policy and trade trends as well as fraud patterns.

This book looks at customs policy and customs administrations from an international, an EU and a national perspective, from the perspective of academia and from the perspective of practitioners. It provides different visions and responses to today's and tomorrow's challenges, and opens the possibility for a comprehensive debate.

I thank the Maltese Customs Administration for their commitment to providing the different actors in the customs sphere with such a valuable tool, and am looking forward to the debate that it will surely inspire.



# Editorial Note

Ian Muscat  
Director International Affairs and Policy  
Customs Department - Malta

2017 was characterised by constant preparations in the run-up to the 50<sup>th</sup> Anniversary of the EU Customs Union. Throughout 2018 we celebrated this remarkable event. Come 2019 and all the hype associated with this anniversary will be over. What would have been achieved by these celebrations? What will be the future of the Customs Union from 2019 onwards? In all probability the Customs Union will continue with its unceasing search for excellence in the border control area as it has always done throughout its 50 year history.

Then, why compile this publication? Better still why did Malta Customs embark on doing this project with the European Commission in the first instance?

The Customs Department of Malta, albeit the smallest Customs authority within the European Customs Union, wanted to make its contribution to this anniversary. We at Malta Customs, felt the need to build more effective bridges and sustainable links so rather than keeping it locally, we decided to commemorate this event with something significant and meaningful that would look outwards and reach beyond our shores.

It is for this reason that the idea of a publication came about, the purpose of which being, to increase the visibility of the Customs Union, the responsibilities associated with it and its long-term benefits. The aim is to reach non-traditional audiences as much as possible.

This publication is a compilation of contributions from several stakeholders of the Customs Union, addressing various topics associated with it. It is not a policy document nor does it represent the strategic objectives of the European Union or what these EU stakeholders

want from it. It is simply a compilation of writings by people who have either lived the Customs Union or have, through their walk of life, come across it. When contacted, the editor refrained from giving any editorial guides so as to allow each contributor a free hand to express his or her own thoughts as long as they stuck to the areas to be treated. These opinions may not necessarily fall in line with the objectives of the institution, organisation or country they belong to.

The selection of the contributors was also made to provide an array of perspectives on the particular subject, thus providing an opinion as diverse and as objective as possible.

Through this publication, we aim to address the knowledge gap that prevails, particularly among those who are not in direct contact with the Customs Union. It is not intended to be an academic publication. It is aimed at providing light reading about a complex, yet interesting subject, that has a direct or indirect bearing on citizens' way of life, both inside and outside the EU.

While the publication must not be seen as a comprehensive study in itself, it may serve as a springboard for further studies on the Customs Union in the future. Ultimately, this publication is expected to provide contributions and substantial suggestions for future developments, opportunities and changes envisaged for the Custom Union for the benefit of society.

Long live the Customs Union!

# The Customs Union – from Strength to Strength

Hon. Prof Edward Scicluna  
Minister for Finance, Malta

For the last 50 years, the Customs Union has acted as the first line of defence of Europe's borders against illicit goods and harmful materials. In an era of growing challenges to both security and revenue collection, the Customs Union and European Customs officials are as important as they have been to the integrity of Europe's borders and the European project.

Being one of the countries on Europe's outer borders, Malta has a particularly important role to play for the European Customs Union, with Maltese Customs personnel being on the front line of trade to Europe, particularly sea-based shipping. Our Customs officers exercise considerable vigilance on trade entering Europe whilst utilising some of the cutting-edge technology, which is available to protect against fraud, terrorism activity, and the illicit trade of goods.

The role of Customs has changed considerably over the past decades, with their role shifting from focus on trade and commerce of all types, to now focusing their efforts on protecting the European Union's external borders. They also play a central role in ensuring that customs duties and other relevant taxes, such as excise and VAT are collected for applicable goods.

The EU Customs officials are also at the forefront of the fight against money laundering and the financing of terrorism. Through their cooperation with regional partners across Europe, the exchange of information has enhanced the efficiency of Customs operations to an extent that was previously unheard of. The hard work and results they have achieved in recent years is commendable.

Within the European Union, we have worked, and will to continue to work strenuously to empower our Customs authorities to have the freedom to be both dynamic and innovative in their operations, which has helped to create an operating environment in which they have been able to act quickly and efficiently to tackle the various situations that demand their attention.

To face the challenges of tomorrow, we must redouble our efforts to strengthen our surveillance capabilities using the latest technologies to ensure that the integrity of Europe's border remains intact, whilst minimising the impact on the speed of global supply chains upon which our economic growth is reliant. We must continue to strike the delicate balance between security and speed, which is the foundation upon which Europe's economy, is built upon.

The Customs Union has been one of the greatest achievements in Europe over the past century. We will continue to build upon the successful foundations laid by our forefathers and seek to build a more inclusive and efficient Customs Union which can withstand the challenges of the future.

# Customs in the Future

Joseph Chetcuti  
Director General, Customs Department, Malta

**W**e are living in an increasingly dynamic, alienating and digital world indeed, and the future, even quite shortly, will certainly not be like today.

Distributed Ledger Technologies such as Artificial Intelligence, Blockchain and Big Data, will definitely be offering (or, I must say that they are already offering) a diverse perspective to Customs facilitation and control measures and, hence, the challenges that these are exerting on the supply chain security call for a concerted global response.

This means that we need, first and foremost, to understand how evolving technologies are shaping our societies, where they present opportunities and, indeed, where they threaten to create harm. To this end, we need to thoroughly examine how innovative technologies are influencing people's lives and behaviour, how they are impacting on our trading partners and how they are affecting our organisations. In a nutshell, we need to identify steps that we can take to maximise benefits and stem any harm.

Essentially, what I am saying here is - we need to refine our cultural way of thinking in order to foster an intense discussion about the steps we can take to ascertain that emerging digital solutions are employed in ways that benefit and benefit our organisations.

If one delinks from reality and simply persists in the disassociation from it; if one chooses not to embrace change; if one associates change with the frightening thought of losing control; that would be the worst scenario. The reality is that change does not create problems. Change only uncovers, and brings to the fore, existing problems. Without implementing changes, problems are sure to persist, and probably they will multiply.

There are several actions that we one can take to help address this challenging future with greater confidence. Principally, I am referring to co-operation and collaboration. Battling fraud and illicit traffic of goods, without disrupting legal trade, requires not only the application of Customs procedures but also a high degree of universal co-operation and collaboration with other Tax and law enforcement agencies.

What does all of this mean? Nothing new... it primarily means that, as we are on the doorstep of encountering new world-wide challenges, we should continue with our persistence to build a sound co-operative relationship with both the Police and the Tax Authorities, to turn all the challenges into opportunities.

In the end, I would like to encourage all concerned to, positively and excitingly, look forward to the opportunities that the future has in store for us. These are going to offer us the once-in-a-lifetime lock combination to fulfil our ambitions.

# Customs Union – Timeline And Key Steps

## **1 July 1968**

All customs duties and restrictions lifted between the six member countries of the European Economic Community (EEC). A common customs tariff replaces national customs duties on products from the rest of the world. Trade between the countries multiplies and investment and economic growth increases.

## **1987**

One Single Administrative Document replaces hundreds of national customs declaration forms. At the same time, the common transit system is created.

## **1992**

EU adopts the Community Customs Code, creating a common rulebook for customs legislation. This milestone leads to much simpler guidance for traders and customs alike.

## **1993**

Free movement of goods become a reality: no more customs formalities at internal borders of the EU and no more long queues for lorries filled with goods to be checked at border crossings. For the first time, uniform customs legislation becomes directly applicable in all Member States of the EU.

## **1994**

Launch of the integrated tariff of the European Union in digital format (TARIC) with daily transmissions to the EU Member States. It replaced the first TARIC database with weekly transmissions since 1987.

## **1996**

EU-Turkey Customs Union enters into force.

## **2003**

A new computerised transit system becomes operational. It is the first European customs system that uses electronic declaration and processing.

#### **2004**

10 new countries join the EU and the EU Customs Union, marking the largest expansion of the EU Customs Union in its history.

#### **2005**

EU launches the Customs Risk Management system that connects more than 800 customs offices and provides a digital platform to exchange information about risks and irregularities. New security legislation is introduced providing for advance cargo information, risk-based controls and measures aimed at end-to-end supply chain security, including through use of technology.

#### **2008**

EU introduces the Authorised Economic Operator (AEO) status: an internationally-recognised quality mark indicating that a company's role in the international supply chain is secure, and that customs controls and procedures are efficient and compliant. It is voluntary and enables simplified customs procedures and in some cases the right to 'fast-track' shipments through some customs and safety and security procedures.

#### **2011**

Customs becomes a major actor for increased security in the EU. Common risk criteria for security and safety start to apply to all goods crossing the EU borders, ensuring equal protection of all EU citizens and member states.

#### **2016**

The Union Customs Code takes effect, further modernising and streamlining customs procedures throughout the EU. It also introduces a number of IT systems to support harmonised customs rules and to reduce the administrative burden for trade. Full implementation of IT systems is foreseen in steps, with the majority of systems being available by 31 December 2020, with further upgrades during the period up to 2025.

#### **2018**

The EU Customs Union celebrates 50 years of operation.







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# The Customs Union - A Dynamic Reality

# What makes the EU Customs Union unique?

Hans-Michael Wolfgang

*Dr. Hans- Michael Wolfgang is a Professor of Law; Director of the Institute of Customs and International Trade Law at the University of Münster, Germany; Vice President of the International Network of Customs Universities (INCU); Member of the editorial board of the World Customs Journal (WCJ).*

On the 1 July 1968, the Customs Union of the European Economic Community (EEC) came into effect. In time, the EEC developed into the European Union (EU) and the Customs Union counts as one of its first achievements. Today, it still represents an essential element of the free movement of goods and the internal market, which was completed on 1 January 1993. This year, we in the European Union are celebrating two round birthdays: 50 years of the Customs Union and 25 years of the internal market.

A Customs union consists of several countries which apply uniform tariffs to countries which do not form part of the union. In addition, member countries are not allowed to apply any Customs duties or measures having equivalent effect in respect of each other. Imported goods can be traded freely among the members of the Customs union. These core elements of the EU's Customs Union are enshrined in Art. 28 TFEU.

The Customs Union is an essential pillar of European unification and, over the years, its legal foundations have been laid down in numerous Directives and Regulations. Eventually, it became possible to create a Customs Code and Implementing Regulation, which were directly applicable in all Member States.

The Customs Code (CC) entered into force on 1 January 1994, at almost the same time that the internal market was realised. Owing to its uniform codification, the CC represented a modern, largely self-contained legal system for the foreign trade of the European Union. It provided a model, particularly for European States which had to adapt their Customs law in line with EU standards, either in preparation for accession to the EU or as a means of facilitating international cooperation. The new Union Customs Code (UCC) of the European Union looks set to perform a similar role.

The UCC is today the central legal instrument of European Customs law and is

complemented by implementing provisions issued by the Union and Member States (cf. Art. 5 no. 2 (a) UCC). Before the CC came into force, Customs provisions were scattered across a number of Community Regulations and Directives as well as the legislative measures of Member States. In time, it became necessary to consolidate this piecemeal regulation in the interests of the internal market, industry and administrations. The internal market goes far beyond the aims of the Customs union. It includes not only all the other rules for the free movement of goods, but also rules for the freedom of persons, services and capital (Art. 26 (2) TFEU). Today, the EU internal market is the largest common market in the world.

The need to modernise European Customs law from the ground up resulted from fundamental changes within the European Community itself. By the end of the 1990s and with the terrorist attacks of 9/11, changes in the economy, European law and the mission of Customs led to a demand for new regulations which could not be satisfied by tinkering with existing statutes. Therefore, on 24 June 2008, the Modernised Customs Code (MCC), entered into force. This was set to take effect in June 2013 following the issue of its implementing provisions. The MCC represented the new edition of the CC and was to apply throughout the territory of the Union. In the event, however, the implementing provisions could not be issued on time. By the time the Lisbon ‘Reform Treaty’ had entered into force, problems relating to procedural law as well as new conditions for implementing the MCC and MCC-IP had arisen. In addition, the Member States were not in a position to implement the MCC’s electronic procedures.

In some respects, the MCC was outdated before it took effect. Therefore, a new edition was needed in the interests of clarity and coherence (cf. recitals 1 and 2 of the UCC). The proposal of the European Parliament for a new edition of the MCC was accepted by the European Commission in February 2012. On 9 October 2013, the UCC was finally issued. It contains new rules applicable to both economic operators and Customs administrations which entail substantive changes and require processes to be adapted.

The Customs law of the EU, as codified in the UCC and its implementing provisions, is focused on security and procedural simplifications and reflects international standards. However, some problems in implementation are to be expected. Central Customs clearance has been widely welcomed but can only be realised if it also incorporates VAT and excise regulations. Furthermore, all the authorities involved in import and export operations must have interoperable systems (e.g. tax, police, veterinary and environmental authorities). Last but not least, the electronic systems must be able to exchange data with third party states. Export and import data can only be used simultaneously if standardised data sets are used.

The UCC supports the concept of economic Customs, which is to be welcomed. This means that import duties will only be collected if the goods enter into free circulation.

This is shown by the new criteria for extinguishing the Customs debt in Art. 124 UCC. However, this requires the introduction of uniform sanctions for the breach of duties throughout the EU. Member States must not enjoy too great a discretion in this respect because it could lead to competitive distortions within the EU.

Despite coming within the exclusive competence of the EU, the Customs Union is implemented by the national authorities of the Member States. Despite the fact that European Customs law has been harmonised, the EU still lacks a uniform EU Customs administration. The EU Commission does try to ensure that laws are applied uniformly by means of Regulations and guidelines. Nevertheless, companies which do business in various Member States are aware of the different practices used. The European Court of Auditors often complains of the lack of a uniform administration in its audit reports. This deficit is particularly noticeable in the implementation of the new UCC which is focused on electronic Customs clearance. The national IT systems are still unable to implement the legal criteria electronically. The EU Commission is attempting to achieve this by means of its multi-year plan. Progress is gradually being made but, realistically, implementation will not be completed until 2025.

The EU Member States owe their economic growth to the Customs Union and internal market. Free markets increase the volume of trade. The abolition of border formalities reduces costs. The harmonisation of standards lowers production costs, increases the quantity of goods produced and makes it easier to sell products in larger markets. Supply chains transcend national markets and enable the development of products and the more cost-effective acquisition of materials.

The United Kingdom's decision to leave the European Union clearly shows that, though the advantages of the Customs Union and internal market do not arise by coincidence, Nationalist tendencies in several Member States are still questioning the validity of the EU. Astonishingly, such tendencies can also be seen in various Member States, including some which have only been members for a few years. There may be the general perception that when everything else fails, the assertion that "Europe means peace" is the constant argument of those who staunchly defend the EU. In this regard, the European citizens and institutions have to do their utmost to promote the validity of European Unification.

The contribution made by European unification – first as the European Economic Community and then the European Union – to the promotion of peace and security should not be underestimated. Fifty years of the Customs Union and twenty-five years of the internal market have played a significant role in this respect. Despite all the weaknesses in conception and delays in implementation, they represent the foundations of a unified and peaceful Europe. We owe the initiators and developers of the European vision a great deal and must not allow their achievements to be sacrificed in the interests of nationalism. ■



# Supervision of Trade

Susanne Aigner

*Dr. Susanne Aigner is Head of Unit Customs Legislation in the European Commission Taxation and Customs Union Directorate General since 2014. From 2010 to 2014 she was Deputy Director Compliance and Facilitation at the World Customs Organisation, WCO, having joined WCO after having worked since 1995 in the European Institutions and since 1991 in the Austrian Ministry of Finance. She has a Doctorate in Law obtained in Austria.*

Customs has a primary responsibility for the supervision of all goods entering, crossing or leaving the EU. Customs also has to respond efficiently and effectively to the increasing need to support legitimate trade activities while also strengthening controls and ensuring the protection of the EU's financial interests. The tools laid down in the Union Customs Code (UCC) to balance controls and facilitation are full automation, streamlined and harmonised procedures and processes, modern methods of control and risk management, using modern technology to the fullest and targeting controls on high risk goods.

## Challenges

The Customs Union is one of the most successful examples of European integration. It has served as a stable foundation for economic integration and growth in Europe for fifty years. It needs to remain agile and adaptable to new challenges, in particular by ensuring that the 28 Member States apply equal levels of checks and controls and thus that there is a level playing field for legitimate trade throughout the EU. For many years, trade representatives have been properly consulted on new legal developments and are in many cases directly involved in discussions with Commission and Member States on the development, drafting and finalisation of legal proposals. Similarly, they are involved in discussions on the challenges of implementation of legislation so that their concerns are heard and taken into account.

The Customs Union has evolved considerably and Customs authorities successfully perform a wide variety of tasks at borders. Acting together, Member States' Customs authorities work to facilitate trade and reduce red tape, collect revenues for national and EU budgets and protect the public against terrorist, health, environmental and other threats. This is recognised in the EU Charter for Customs signed by the EU Ministers of Finance on 12 July 2018.

Given this broad mandate, Customs is effectively the lead authority for the control of goods at the EU's external borders. As a response to increasing threats, the EU in 2004 introduced an EU-wide deployment of common risk criteria in advance cargo risk analysis and a Common Risk Management Framework (CRMF) to help Customs to share operational risk information and results, supporting a rapid response to any crisis event in the supply chain.

Controls have to target high risks but at the same time should not hamper the competitiveness of legitimate trade, so the vast majority of trade flows should not be subject to systematic physical controls. This is particularly important in the current economic and political climate where the competitiveness of European companies might be reduced if physical controls are applied to all trade flows instead of just to the situations when and where they are needed.

### **Balancing facilitation, simplifications and controls**

Customs has the primary responsibility for the supervision and control of all goods entering, passing through or leaving the EU including, goods carried by persons. The first Biennial Report from the Commission to the European Parliament and Council (adopted by the Commission on 5 July 2018) on development of the Customs Union and its Governance, identifies the strengthening of controls and tackling fraud as one of the priority areas for Customs authorities. This is also supported by the Council Conclusions responding to the European Court of Auditors Special Report No 19 on the inefficiency of import procedures.

The UCC stipulates that controls have to be based on risk analysis, using electronic data processing techniques. Customs authorities should undertake risk management to differentiate between the levels of risk and to determine whether the goods should be subject to Customs controls, and if so, where and when. The risk-based controls should focus on areas of high risk; legitimate trade should not be burdened by systematic controls unless a high risk is identified requiring a control. Automated risk management is therefore not only a tool to better focus on controls but also a tool that allows the reduction of obstacles to legitimate trade.

On 31 May 2018, the Commission adopted an implementing decision on Financial Risk Criteria (FRC) and standards to ensure that risk-based Customs controls will be determined on the basis of an EU-wide, common approach. FRC amount to a set of rules to identify systematically and “electronically flag” in Member States’ Customs declaration systems the transactions considered as posing financial risks and requiring further scrutiny and/or control action. FRC address the Customs control aspects of, inter alia, undervaluation, antidumping, misclassification, incorrect origin and abuse of quotas, suspensions, simplified procedures or Customs procedure 42.

With the CRMF and the associated FRC governance structure, EU Customs is equipped with additional means and a structure to respond to existing and emerging risks and threats. Having a common framework to share and diffuse information regarding identified or potential risks, observations from visits, findings of investigations etc. will contribute to a common knowledge of the way financial risks are handled from an EU perspective. The full implementation of ICS2 (Import Control System) will contribute to responding even more effectively to threats, as well as to even better targeted controls ensuring smooth trade flows.

The UCC foresees also a number of Customs simplifications. Discussions continue as to how to provide tangible benefits to Entry in Declarant's Records (EIDR) authorisation holders while at the same time ensuring that appropriate controls may be carried out when and if necessary. The UCC also strengthens the links between Authorised Economic Operators (AEOs) and simplifications by linking authorisations to compliance with AEO criteria and, in some cases, linking the simplifications to being AEOs (e.g. Centralised Clearance, EIDR with Presentation Waiver, Self-Assessment).

An authorisation for AEO status and simplifications is based on an assessment by Customs of the risk associated with the economic operator's activities. For trade, the investments made to comply with the required criteria are compensated by cost reductions through a better performance of Customs operations and an increase of their competitiveness in global markets. The enhanced internal organisation within an AEO firm brought about by cooperation with Customs can also have positive effects, e.g. reduction of costs arising from theft and losses, delayed shipments and security and safety incidents. For Customs, the risk assessment of traders allows a better targeting of controls and resources to be focused on higher risk supply chains.

Efforts are being undertaken to further step up the overall management of the AEO regime and Customs simplifications and to ensure a uniform approach within the Customs Union; simplifications and controls can only be credible and effective if Member States ensure sound control, in particular by taking prompt action where difficulties or non-compliance are detected. The UCC IT Systems that enable exchange of information including on authorisations are key to allowing appropriate follow-up.

As regards a better balance of controls and simplifications, discussions need to continue on the system based approach (SBA) which might gain momentum once relevant UCC IT systems are operational. Using the full potential of UCC tools will enable Customs to manage the supervision and appropriate control of trade while not preventing tangible benefits to be provided to legitimate trade.



## Outlook

It is expected that the full benefits stemming from simplifications as well as automation will only materialise once all UCC IT systems are in place. These very sophisticated layers of systems will enable Customs to have a better level of information on each economic operator and supply chain, which will further improve risk management and allow a move from transactional to more system-based controls.

The evidence of the positive impact of 50 years of Customs Union is surely a good reason to continue to strive for faster progress, using the available tools to better balance controls and facilitation, and making full use of the opportunities offered by technology. ■



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# Supply Chain Management

Frank Heijmann

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## Setting the scene

Just over a decade ago, the World Customs Organisation (WCO) adopted the Framework of Standards to Secure and Facilitate Global Trade (SAFE), introducing concepts of supply chain supervision and authorised operator schemes, as a reply to those days' demands for increased security. Whereas the latter has been implemented in many countries, known as Authorised Economic Operator (AEO), Customs Trade Partnership Against Terrorism (CT-Pat) or Certified Enterprise, etc..., supply chain supervision still requires much exploration and development. This is not merely a Customs fault. Global supply chains still lack the transparency and capabilities to monitor security of the flow of goods, as trade has not kept pace with the increased needs to improve such transparency and security. This may be caused by failure to identify drivers for the business sector to enhance visibility and security in their goods' movements.

Moreover, since the introduction of the above-mentioned Framework, the world has kept changing in numerous aspects, many of which affect global trade and its supply chains, to mention just a few:

- Economies are volatile and driven by the need to constantly create growth;
- Countries and their regions compete to serve their (local) societies and the people within them, by playing a role in economic growth through the attraction of (international) trade and by serving SMEs with the required assistance in modernisation, innovation and investments to create employability;
- New technologies are implemented creating new industries. Merely a decade ago a few well-known players did set the tune in the global economy. Nowadays, well-respected and settled industries suddenly vanish and relatively unknown newcomers take over global business in the blink of an eye;
- International trade is shifting from large vested businesses to fast moving logistics

characterised by small packages that are often flown over the globe within a day;

- Trade blocks are formed focused on protection of local industry and economy, in a production world that is spread over the globe, as full manufacturing is split in parts that are moved from everywhere to almost everywhere. More than ever before the origin of a product is difficult to determine.

## The role of Customs

The question remains how Customs can and should respond to those changes. What is the way forward in the next decade? What are the challenges, hurdles, opportunities and needs for innovation?

To be clear up front, the days when goods appear at a border without prior notification are over. Documents have to be drawn up while commodities stand still. Customs deal with a declaration that is lodged by the carrier who usually happens to be the one in possession of the goods at the moment of crossing the border.

Customs nowadays is an important player in the logistics chain. It is much more than an enforcement authority. Customs organisations have developed an in-depth knowledge of all supply chain stakeholders and their respective interests. These business interests, by the way, often seem more conflicting than supporting each other. Most stakeholders work according to their own business strategy and interest, so why create full visibility when this can harm their own competitiveness?

Once Customs starts sharing its knowledge of the impact of Customs rules and formalities on logistics, as well as the roles in relation to the responsibilities of different commercial and governmental stakeholders, they can help to initiate and support changing and extending the often most commercially focused insights of traders on supply chains and related opportunities. This was done intensively during the past twelve years in European Supply Chain Research projects, such as IT-Aid, Integrity, Cassandra and, most recently, Core. These projects have proven to be very valuable for trade in optimising their flows. Concurrently, Customs gained new insights on global logistics flows, which help to build supply chain supervision mechanisms in the future.

Above all, it is a proven fact that a well-functioning Customs organisation contributes substantially to the growth of trade and national income of a country. The indicators of the global rankings, such as, the Global Competitive Index of the World Bank Group, The Trade Facilitation Index of the UN Economic Committees and the World Economic Forum's Global Competitiveness Index, contain many aspects of Customs and Border procedures. The crucial role of Customs becomes most visible in the findings of a study initiated by Dutch tri-partite cooperation (Government-Business-Academia) in the 'Topsector Logistics' in

2016. This identified that Customs' performance on the indicators innovation, Information and Communication (ICT) performance, inspections and reliance on self-regulation, have a significant impact on the growth of national trade and income.

### **The challenge**

So we know that Customs should focus more on building supervision mechanisms that take into consideration the reality of supply chains. Looking from a Customs perspective and taking into account that formalities must be completed, we now know that supply chains are not fully optimised. Moreover, we know that Customs can contribute to enhance efficiency in supply chains, which ultimately leads to economic growth. Yet, the proper response to all supply chain challenges remains unknown. All the goals of the SAFE Framework are yet to be fulfilled, and Customs still conduct too much work on the spot at the border, while too little supervision is focused on the supply chain.

This may be due to several reasons. On the one hand, as said, supply chains lack transparency, which leads to risks and unoptimised flows that most probably are caused by a lack of interest and insight in the risks associated with the movement of goods by the one who pays, i.e. the buyer. Depending on terms of delivery, the seller or buyer contracts an agent, forwarder or carrier to bring the goods from consignor to consignee, seemingly not really bothering who is doing what with their goods, neither knowing who is sharing information about their shipments with whom.

At the same time, Customs and other border agencies mainly focus on the person who presents the goods at the border, the carrier, an agent, a terminal operator etc... One of these has to provide detailed declaration data to the border agency to clear the goods. Somehow this seems strange, as, looking from a commercial aspect, these persons would be the last persons who need to know details of the content of the consignment. They are hired to move goods between two places and should take responsibility for the physical integrity and security of the cargo, that no goods be withdrawn from or added to the shipment. They are not the ones to have an in-depth knowledge of underlying contracts, price, Inco-terms, quality and product.

### **The role of the legislator (so far)**

In 2009 the European Union introduced the security rules, the requirement to lodge the Entry Summary Declaration (ENS). The onus to communicate to Customs the details of the cargo that is to be brought into the country, was placed on the carrier. This means that the legislation focuses on the one who just happens to hold the goods at the moment of border crossing, because of their role in the supply chain. This obligation, in fact, has led to internal conflicts for the carrier, as one's commercial liability is often limited as long as

one doesn't know what one is carrying. So Customs request cargo details from a person who doesn't need to know these details. After some years of working with the ENS, the EU noticed that the carrier did not provide sufficient data to conduct security risk assessments. As a response to this gap in the legislation, the revised Import Control System (ICS) in the EU will see the light somewhere in the coming years. More data is to be provided to Customs at entry. Different supply chain actors can lodge this data. A carrier who doesn't want or need to know certain details of the consignment they are carrying can therefore ask other stakeholders in the supply chain, for example the owner of the goods, to directly communicate these sensitive details to Customs. However, one minor problem remains. Once the owner doesn't provide what is being requested or want to communicate data to Customs at entry, the carrier is held liable. The only way for the carrier to overcome this liability problem is to put civil obligations on the owner to provide and share with them the necessary details. In all probability, Customs ask almost the impossible from the carrier. Some answers can only be provided by traders by creating new contracting rules and obligations, i.e. by implementing more and more administrative burdens. This doesn't seem to be the right way to implement supply chain supervision.

### **Another recent example ...**

Just have a look at the EU's response to Value Added Tax collection problems in Electronic Commerce Trade. There is a notable exponential increase in small parcel traffic and postal consignments, parcels that are often ordered by consumers via the Internet. The EU Member States are facing an indirect tax disturbance of their local consumer markets as small consignments up to a certain value can be imported with a VAT waiver. To make matters worse, parcels containing goods with a higher value are often undervalued, resulting in a substantial tax loss.

Now let's look at the EU's response, more specifically the VAT proposals for online market places that are similar to the current rules on electronically supplied services. What can be seen is the following - similar to the role of the carrier in the implementation of the EU's security rules at entry, it will be an intermediary, the internet platform that offers a connection between seller and buyer, who is to be held responsible for the import obligations. And equal to the carrier lodging the ENS, operators in this marketplace will most probably have no interest in completing the VAT formalities for online market places. Why? The answer is simple: because it is simply not their role in the supply chain. What will happen when these rules will be implemented? An additional administrative burden will be placed on trade, to be completed by a person who actually doesn't want to know what is being sold, bought and transported. The new system is based on the same principles: a VAT waiver at importation will be provided for goods that are sold via a registered marketplace, an intermediary between seller and buyer, and the EU VAT

representative of this non-EU marketplace must complete the VAT obligations periodically. Providing a simple registration number at import will waive VAT debt. Again, a number is to be provided by a carrier, an agent, or anyone else that just coincidentally happens to hold the goods at the moment of entry, and who, by taking into account their role in the supply chain, is not interested in the content of the shipments. What if these goods will not be declared afterwards at the tax office, and the platform denies being related to that shipment? As highlighted earlier on, what is most peculiar is putting tax responsibility on someone in the supply chain who is not dealing with the transactions, the goods, the quality or the Inco-terms.

### **The way forward**

Let's go back to the WCO SAFE Framework of Standards to Secure and Facilitate Global Trade, which dates back to early 2005, more specifically to one of its goals, i.e. "Establish standards that provide supply chain security and facilitation at a global level to promote certainty and predictability."

What we have seen till now is putting additional obligations to provide data at import on all types of stakeholders, while these stakeholders do not have a business role in the supply chain to hold this data. If we want to move to supply chain supervision, we need to respect roles and responsibilities of different stakeholders in the supply chain. This implies that when it comes to information on the content of the consignment, information regarding underlying contracts, price, Inco-terms, quality and product, we should move more upstream to the shipper, the one who packed the box, or to the buyer, as they know exactly what they ordered.

Having a greater hold on the buyer seems difficult! If one looks back at all previous attempts to collect more information of the incoming cargo, for declarations, security controls and tax collection, one can see that the legislator never placed a greater responsibility on the consignor. But one may ask, 'Is this really so difficult as one might think it is?'

Just consider increasing demands towards resellers to take more responsibility over their supply chains as of the pressure of consumers on more visibility and certainty about whereabouts of the goods they tend to buy. This means that this commercial reseller (the buyer at import), has an obligation to their final consumer to create visibility in their supply chain. Therefore, this same buyer can take full responsibility for all information that is to be provided at entry or import to Customs and other border agencies. Leave the carrier, terminal and agent in their respective roles in the supply chain, let them take care of physical security, and put obligations of entry and import declarations fully on the buyer, the importer, as this is the one who pays for the supply chain.



In case the buyer in a third country is a consumer, someone who bought a package via the Internet, we should move in exactly the same direction. The legislator should put the obligation to declare the goods on that consumer, not on an intermediary who happens to run an Internet platform. Each individual Internet e-commerce transaction starts with a contract between a seller and a buyer determining quantity, quality, price, Inco-terms, liabilities, etc... All the underlying agreements are being arranged by a few clicks in the Internet order page. Before anything is shipped, the buyer has to pay. The payment will always be the right amount, as the payment page is pre-completed from the order page on Internet. Just one more click and payment is complete. Customs can make life much easier for themselves and the buyer, at entry and at import, by building an international web portal in which the Internet buyer can click that they want to lodge a Customs declaration for import. Once this is done, immediately after buying the product, this declaration will be pre-completed automatically with the details from the sellers' web page and contract. The follow-up of that declaration will be an automated redirection to the competent Customs authorities' payment page. Following declaration and payment, the seller can ship the goods marked with a code of pre-declaration and pre-payment and undervaluation will be history, as the tax collection is based on the real transaction value. This is a much easier system to declare goods than the current border intervention system, and it is fully aligned with the transaction-based supply chain.

Supply chain supervision means respecting interests, roles and responsibilities of stakeholders in business, putting burdens on the right parties, simplifying procedures and reducing red tape, by reusing data from the source. Information on quality, quantity, Inco-terms and prices must be requested from the buyer, or the supplier in case there is no buyer at importation. Demands on physical security and the movements' integrity should be put on the logistic stakeholders in the supply chain. More knowledge of supply chain management, IT, business compliance, next to legislation and enforcement, as already defined in the EU Competency Framework for Customs professionals in the public and the private sector, are key investment requirements for the coming years to achieve supply chain supervision. By taking the lead in this initiative the EU will maintain its stance in safeguarding the global supply chain. ■

# New approaches to protecting revenue against fraud in the era of a digitalised world

Margarete Hofmann

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Since the establishment of the Customs Union 50 years ago, the Customs landscape has changed substantially. If the fundamental elements of the Customs Union have not changed, namely the abolition of Customs duties between Member States and the application of a common Customs tariff with regard to third countries, surely the tasks and means of Member States' Customs Administrations have changed dramatically. The tasks assigned to Customs Administrations are no longer confined to the collection of tariffs, but rather have had to adapt to new challenges and gradually cover more and more areas, such as the protection of the environment and the fight against terrorism. Customs Administrations, previously perceived primarily as law enforcement agencies, have also become administrations serving trade facilitation taking into account the steady increase in trade flows. This evolution has been accompanied by a rapid development of new means of communication and information that has profoundly changed the way Customs Administrations work.

The increasing digitalisation of Customs processes and the dematerialisation of physical Customs controls, through the development of Customs simplifications for the benefit of economic operators, have reduced opportunities for controls and made it more difficult to combat Customs fraud effectively. Customs fraud has taken advantage of these developments and has itself become increasingly delocalised and dematerialised. Fraudsters have been able to adapt, sometimes even anticipate, these profound changes. The 2017 Report of the European Anti-Fraud Office (OLAF) demonstrates this development with a dedicated focus chapter on revenue fraud.



Customs fraud remains above all a fraud to evade the payment of duties and taxes. It can entail huge losses for the European Union (EU) budget considering that Customs duties make up 14% of the EU budget, or about €20 billion annually. Apart from typical cases of smuggling goods (i.e. import or export without Customs declaration), the elements upon which Customs fraud is based are the same: the Customs value, the origin of the goods and the classification of the goods. These are the elements that determine the amount of duties and taxes to be paid. In terms of origin, the true origin of the goods may be concealed, notably in order to evade anti-dumping duties, by fraudulent transshipment in a country where they are temporarily stored before being shipped to the European Union (EU) with false documents. With respect to value, consignments below a certain threshold are exempt from Customs duties and it is tempting to abuse of this exemption for online purchased products which are then undervalued. Transit fraud, which often involves the smuggling of tobacco, is also a frequent fraud pattern; the container or lorry loaded with cigarettes leaves the EU, but the cigarettes are no longer inside the container or the lorry. In this case, cigarettes are illegally unloaded before reaching the exit point of the EU, sometimes also with the complicity of corrupt officials.

The increase in global trade combined with the multiplicity of trade channels, and the need to handle business operations swiftly and in a paperless manner, pose a huge challenge to Member States' Customs Administrations. Their work has become much more complex and they have been confronted with staff cuts in recent years, due to the pressure on Member States' budgets. Physical controls are only done when Customs Administrations have previously identified suspicious shipments on the basis of pre-established criteria. Random checks still occur but are infrequent.

These challenges have been highlighted by an investigation conducted by OLAF in recent years on imports to a Member State that revealed a massive fraud related to significantly undervalued textiles and footwear from China being cleared in that Member State and then flooding into Europe. A joint operation carried out with the support of OLAF in 2016 confirmed these findings and that this undervaluation fraud was compounded by the fact that VAT was often not paid in the Member States of destination. The value of the goods was reduced by a factor of up to 10 using false invoices. This fraud deprived the EU of nearly €2 billion in revenue in lost duties on Chinese merchandise over a three-year period. The highly sophisticated organised crime network also deprived other EU countries of substantial VAT income.

This type of massive fraud requires a more harmonised and coordinated approach to Customs controls at EU level to prevent fraudsters from choosing the Customs offices of import where the controls are the least intense. Better coordination in terms of risk analysis and targeting of controls is essential to stop revenue fraud.

The European Court of Auditors (ECA) has corroborated these findings in its recent Special Report No 19/2017. It found certain weaknesses and loopholes that indicate shortcomings in the legal framework, and the implementation of Customs controls on imports by the Member States is uneven and therefore ineffective. This situation undermines the financial interests of the EU, especially the traditional own resources, which are essentially composed of Customs duties.

In order to cope with this situation, EU Customs Administrations are aware that in a unitary Customs territory they need to act as one, as expressed in the Charter adopted in July 2018 by the EU Customs Administrations on the occasion of the 50th anniversary of the Customs Union. New control methods have been developed and innovative approaches have been adopted to detect fraud. The Commission has developed a Common Risk Management Framework (CRMF) to ensure a harmonised application of Customs controls in the Member States and thus establish an equivalent level of protection of Customs controls in the Member States for goods imported into or exported from the EU.

More specifically, in order to ensure effectiveness of the CRMF, the Commission adopted measures establishing common financial risk criteria and standards on 31 May 2018. For the first time, the Commission and Member States have agreed on a common EU-wide approach to address financial risks in the same manner. These financial risk criteria constitute a set of rules aimed at identifying systematically or electronically flagging in the Customs clearance systems of the Member States transactions considered to pose financial risks and requiring further scrutiny or control. These criteria apply to the main types of Customs fraud.

OLAF, the European Anti-Fraud Office, has taken an active part in the efforts to tackle Customs fraud more efficiently and effectively by preparing the update of the legal framework to fight Customs fraud. New analytical tools and databases (example, for the movement of containers or of goods transiting the EU) have been developed allowing Customs Administrations to increasingly use data analysis and targeting methods for antifraud purposes. These new databases, in addition to existing systems are effective tools for detecting potential fraud. Moreover, the analysis of trade flows and trends, together with data from available databases helps to generate signals for detecting cases of Customs fraud.

OLAF and the Commission's Joint Research Centre (JRC) are currently developing a project on Customs data analysis to enable Customs Administrations in the Member States to make the best use of the data and tools at their disposal and to strengthen their analytical capabilities for Customs antifraud purposes.

In addition to this technical support to national Customs investigators, OLAF itself investigates cases of Customs fraud, as illustrated above, and cooperates with Member States and third countries including on an operational level through the so-called joint Customs operations. For many years, the EU has developed a network of mutual administrative assistance agreements in Customs matters with its main trading partners (e.g. US, China, Japan, etc.) which enable OLAF and Customs Administrations of the Member States to obtain valuable information on the international movement of goods and to detect Customs fraud.

Customs fraud has evolved considerably over the last 50 years and the methods of combating this fraud have adapted. Today the fight against Customs fraud is mainly based on intelligence; on the exploitation of information that is collected from a wide range of sources, cross-checked and analysed to make it useful information for combating fraud. The potential of these working methods is not yet fully exploited, but we can expect widespread development of these methods at the level of Customs Administrations with the support of the EU.

On the other hand, as revealed by the above-mentioned undervaluation case and the findings of the ECA, better coordination of Customs controls and the fight against fraud at European level is necessary to ensure a level playing field within the Customs Union. In this respect, we will need to reflect whether the efforts deployed and the measures taken recently are sufficient, or whether there is a case, in order to make controls more efficient and more effective across Europe, to strengthen the functional coordination of the Union's Customs Administrations also in the operational and analytical fields, thus offering a well-equipped counterpart to Europol and the newly created European Public Prosecutor's Office ('EPPO').

The fight against revenue fraud will need to adapt to changing world trade, both at organisational level and with regard to substantive aspects. On the organisational level, the advent of the EPPO will be a game-changer in the antifraud landscape and will step up the fight against criminal activities both on the expenditure and revenue side of the European budget. Smooth and close cooperation between the different actors at EU level, notably the EPPO, OLAF and Europol, will be a key requirement. Similarly, the growing awareness that Customs administrations must act as one in operational matters should lead to better coordination of their actions at Union level. On substantive aspects, the use of IT tools for data analysis for antifraud purposes will accelerate the evolution of Customs towards modern and effective public administrations while ensuring appropriate coordination and interoperability between systems. ■

# 50 years of the Customs Union from a revenue point of view.

Tomas Kucirek

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The 50<sup>th</sup> Anniversary is a great moment in the history of the EU Customs Union. It is also an even bigger event for me because it coincides with my 50<sup>th</sup> anniversary. However, it is not the only reason. The fact is that since my first job in 1991 I have always been working in the field of Customs. This anniversary is also an opportunity to step aside, look back, and see everything we have achieved, what went well, but also what we could improve. And at the same time it is a perfect moment to look ahead into the future and the goals ahead of us.

The budget of the European Union and the role Customs duties play in this context has evolved over time: From 1958 until 1970 the European Economic Community's (EEC) budget was financed by direct contributions from Member States (MS). It was only in 1970, just after the creation of the Customs Union, that the system of own resources was introduced and progressively replaced the system of direct national contributions. Since 1975 the own resources allowed the EEC to be financed directly. These own resources included the Customs duties but also the agricultural levies and a Value-Added-Tax-based revenue. We also call the Customs duties "traditional own resources" (TOR). The chart below shows the historical development of own resources.

While the share of revenue covered by TOR reached a peak in the late seventies at around 40% of all resources, the amounts collected have since then decreased steadily to a level of relative stability in the last 30 years. This is mainly because from the late seventies there was also a rise in expenditure: larger amounts for the European Social Fund-ESF (since 1971), the European Regional Development Fund-ERDF (since 1975) and growing amounts for agriculture in European Agriculture Guidance and Guarantee Fund – EAGGF (since

1962) required additional funding and thus additional stable funding sources. For the year 2017, the Customs duties collected were Euro 25,57 billion and as such accounted for approximately 14% of own resources of the EU.

It has to be noted, however, that since 1971 Member States were allowed to retain a certain percentage of the Customs duties to cover the costs of collecting these duties (since 1971 the rate was 10% until 2000; from 2000 to 2013 it was 25% and from 2014 it is 20%). Recent years have, however, shown that the amounts retained are either unequally distributed across the Union and/or allocated to the general budget of Member States without necessarily reaching the Customs authorities. It can therefore be questioned whether there would be other and better ways to ensure that Customs authorities are well equipped.

### **Control of Traditional Own Resources in Member States**

With the fact that Customs duties feed the EU budget comes the need to ensure that the procedures implemented in the Member States comply with the EU law relating to the collection of traditional own resources. Inspections help to protect financial interests of the EU, but at the same time financial interest of the Member States as they today still retain a percentage of the Customs duties collected and Customs administrations also collect VAT on imports. Furthermore, if Customs duties are not collected correctly, Member States (usually the other Member States) have to pay more to the EU budget via the Gross national income (GNI) contribution. By correctly applying Customs rules the administrations are also supporting legitimate business and creating a level playing field across Customs Union and the Single Market.

Historically, the Customs fraud is turning around the following basic pillars – classification, origin, value and Customs procedure (as for example transit). Therefore, the European Commission's inspection work also turns around these areas.

Every year, due to a large number of potential topics to be inspected, the choice is made based on objective criteria. These criteria are based on an analysis of the inherent risks in Customs arrangements or accounting procedures regarded as potentially vulnerable in terms of the impact on traditional own resources.

As a way of example, the 2018 inspection plan has selected one general subject of inspection that represents the core of our activity: the keeping of the separate account and the corrections of the normal account (so called A and B accounts). In addition, the following two subjects were selected because they are likely to represent a risk for the timely and correct collection of TOR:

- The control strategy in the field of Customs value – one of the biggest problem nowadays in the area of Customs;

- The import of solar panels – subject to anti-dumping duties that could be circumvented.

At the end of each inspection a report is drafted, sent for comments to Member States, approved by a special committee and, if there are shortcomings with financial impact, Member States are asked to pay the amounts identified. Ensuring that the right amounts in Customs duties are paid is a pre-condition to allow the European Union to finance its agreed policy objectives – from Regional and Cohesion Policy to Research and Development.

The Customs Union achieved a lot. The level of IT connection and pan-European computerisation, as well as technological innovation is very advanced. At the same time one of its biggest challenges is to keep up with rapidly growing trade volumes, new technologies and globalisation. Needless to say that the organised crime and terrorism is exploiting new technologies and methods without legal borders usually faster than us. Therefore, the only way to keep up is modernisation, even better communication and coordination of our work. Effectively functioning risk management, including financial risk management, at EU level in real time is the key reply to growing challenges.

The traditional role of Customs (collection of Customs duty), has developed since 1970. Especially in the 21<sup>st</sup> century the security and safety role has increased, but the traditional fiscal part is still substantial despite the fact that by several rounds of WTO negotiations on one side and many free trade agreements on the other side, the actual average rate of Customs duties went significantly down. It is not only important for the money collected, but also for maintaining the level playing field for operators in all 28 Member States. This is the challenge for the EU Customs Union even for the next 50 years - to protect the financial interest of EU and its Member States, to ensure safety and security and, at the same time, to support legitimate trade by offering smooth Customs clearance based on effective and efficient risk analysis. The most important thing is, “to act as one” as much as possible! ■





“The Community shall be based upon a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.”

**Article 9 1 Maastricht treaty**



# Enhancing Security on E-Commerce and Small Consignments

Tomasz Michalak

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A handsome teenager, waiting at the bus stop in Brussels, is playing with his smartphone. Before the local bus arrives, he is ordering a new T-shirt via cross-border e-commerce online platform, with just one click. Beside him, an elderly man is reading a book he has just received via airmail from an overseas friend. Then, both board the same bus. They travel in the same direction.

Presumably, none of the two passengers is conscious that behind their smooth delivery of goods, there is an international supply chain mechanism, engaging tens of Customs and border control officials, logistics and other services providers, to mention but a few. They are like parts connected into a “local bus” in your computer, heading in the same direction. These parts are facilitation, safety, security and revenue. Customs and other agencies exchange data, transfer messages, refer to databases etc... They verify our goods against our purchase order, check their value and transaction, the safety of our purchase, its quality and, moreover, they do confirm that our product is not counterfeit or dangerous. All this work is expected to be done within minutes, with just a few clicks on the computer. This is the e-commerce era. This is today!

## **50 years of Customs modernisation in response to new business models**

E-commerce is definitely the new game changer, not only for buyers and sellers but also for all stakeholders active in global trade in general. This new phenomenon seems to be the increasingly critical factor for Customs and other border agencies. It is commonly referred

to as the “*tsunami*” of small consignments to be faced by border agencies. Customs, in cooperation with other border agencies, have to, and really are, adapting very actively to this new international trade business model.

To understand the scale of change over the last decades, let me just recall that for centuries Customs used to clear goods of the same kind (for example T-shirts or textiles), transported by one ship or lorry, with just one Customs declaration to be presented by the importer. Now, for the same ship or lorry with the same number of T-shirts packed individually for online shoppers, there might be tens of thousands of Customs declarations needed!

The first revolution came with the intermodal shipping containers. By sheer coincidence, the ISO standards for containers were published around 1968, the same year as the EU Customs Union establishment. Over the last 50 years, Customs had to adapt from clearing thousands of ships to clearing millions of containers. The containerisation revolution resulted in approximately 23 million containers nowadays being used, with over 700,000,000 container global port throughput per year. That revolution multiplied the number of Customs declarations enormously. The only way to cope with this high wave was to digitalise Customs and offer an electronic clearance. And it is done. The EU response is e-Customs and a paperless environment.

The second revolution is happening just now; the e-commerce revolution. There will no longer be the classic business-to-business (B2B) transactions dominating international trade. More direct business-to-consumer (B2C) - retail operations between economic operator and individual client - are expected in future. It is not easy to reach the figures on cross-border e-commerce, as the buyers (like our teenager at the bus stop) do not distinguish between goods that are purchased locally and those purchased from abroad. It transpires that every year retail e-commerce is growing by at least 10-25%, depending on the specific country. The 2016 Deloitte study, prepared for the European Commission, estimates that the volume of retail e-commerce packages (with the value of up to 150 euro), is at the level of 180 million parcels per year. Notwithstanding this, most Customs administrations disagree with this figure, stating that it is grossly underestimated. This means that the EU Customs need to add hundreds of millions of new Customs declarations to be processed in coming years. Just two figures to describe growing preferences in shopping. According to the <https://ecommerce-platforms.com>: ‘53% of global internet users made an online purchase in 2016. (US Department of Commerce, 2017), 67% of millennials prefer to shop online rather than in stores’. Indeed, the e-commerce revolution with a “*tsunami*” of small parcels is coming to the Customs points of clearance. New procedures and resources are required. The European Customs administrations are preparing for that, alerting other stakeholders of the international supply chain.

## E-commerce - Customs and Tax cooperation for revenue security

The new opportunities that come with e-commerce in the context of the world economy are primarily the easier access to the global markets, particularly for small and medium-sized businesses as well as facilitated and faster transactions' management. The threats stem from abuse of e-commerce with the hope of bypassing the law or misusing the legal provisions which are incompatible with modern business models. Consequently, we can observe increased risks affecting national revenues, companies' budgets and healthy competition. E-commerce will grow rapidly and thus we need new rules for the engagement of all affected stakeholders. Moreover, such rules must incorporate new Customs and Taxation procedures, as well as control of other prohibitions and restrictions, to be verified by border agencies.

On the 5 December 2017, the new VAT e-commerce package was agreed to at the Council of the European Union (EU). New arrangements are to be implemented from 1<sup>st</sup> January 2021, that will require VAT payment for all small consignments with the intrinsic value below 150 euro (currently imports of goods having a value up to 22 euro benefit from the *de-minimis* exemption whereby no duty or VAT is charged. By January 2021 this exemption will be abolished). To facilitate the flow of small consignments and Customs clearance, a simplification scheme has been offered. This simplification scheme is commonly referred to as the Import One Stop Shop (IOSS). This new solution is based on the Mini One Stop Shop (MOSS), which is a tested concept used for VAT collection in electronically supplied services. The IOSS is a very innovative approach (so called 'vendor model'), and provides for the VAT due on the goods purchased through cross-border e-commerce, to be paid by the vendor in the third country and charged back to the buyer upon purchase. The vendor is required to register with the tax authority of one of the EU Member States to which he is expected to transfer the VAT amounts collected from the relevant customers, accordingly. Customs, in close cooperation with Tax and using the appropriate IT solutions, will have to ensure that the VAT payment is correct.

Despite the agreement at EU level, the discussion regarding other potential solutions for Customs and Taxation is still being conducted on a global level - within the World Customs Organisation (WCO), United Nations Conference on Trade and Development (UNCTAD), the World Trade Organisation (WTO) and Organisation for Economic Co-operation and Development (OECD). Unfortunately, for the time being no single optimal solution seems to be emerging from the discussions in any of these fora. The buyer, intermediaries (like payment or logistic services providers) or vendor-based VAT collection models, have numbers of supporters and opponents alike in the public and professional debates. However, it is necessary to mention the Resolution of the Policy Commission of the WCO on the guiding principles for cross-border e-commerce as well as the adoption of the WCO cross-border e-commerce Framework of Standards only in

June 2018. As drafted by Customs in close cooperation with all e-commerce stakeholders and agreed at the global level by heads of Customs administrations during the annual Council session of the World Customs Organisation, the Framework of Standards creates the first universal and official instrument for all cross-border e-commerce activities.

### **E-commerce – Customs in cooperation with other stakeholders for safety and security.**

Collection of Customs duties and taxes is only one side of the coin. There are tens, if not hundreds, of legal prohibitions and restrictions, adopted at the global, EU or national level, that have to be verified at the border before the goods ordered via e-commerce online platform are released for free circulation in the Customs territory of EU. Objects of cultural value, waste products, certain categories of chemical products, explosive materials, pornography, weapons, drugs, licensed medicines, safety regimes for machines and equipment, animals and pets, wildlife animals or plants, drugs and cash are just a few examples of control areas worth mentioning.

With millions of small consignments presented to Customs daily by express courier services, postal service providers as well as in regular cargo, it is impossible to check or scan all e-commerce flows. However, admittedly, the risk exists. Joint Customs Operation (JCO) 'Postbox' has identified three main areas of illicit trafficking within goods in small parcels, namely counterfeit goods, pharmaceutical products and narcotics. Fraudulent senders and addressees are commonly used for illicit operations. The JCO 'Postbox' Report states that 'low value was a noticeable modus operandi and it seems to be a problem for the expanding e-commerce (especially for legal products) in Europe as well'. Other threats in cross-border e-commerce are abuse of *de-minimis* relief, mis-declaration, undervaluation, VAT avoidance and non-compliance with EU safety standards.

The key element for an effective and smooth border control is the Customs risk assessment, based on an electronic data that is available prior to import. This can only be obtained in close cooperation with other partners responsible for cross-border e-commerce services. The exchange of information, access to data and sharing of risk assessments are crucial. Risk management is recommended by the WCO in the Principle I (Advance Electronic Data and Risk Management) and Principle III (Safety and Security) of the Resolution.

Advanced electronic data is recognised as the highest priority element for optimal border control. From a Customs and security perspective, exchange of information should satisfy a number of key prerequisites: electronic form of data, standards for the exchange of data, high quality data originating from reliable sources, advanced data (prior to import/export), and data in the consolidated form with access to details (if necessary).

Enhancing cooperation should first and foremost encompass reliable electronic data provided by other stakeholders. Since the quality of data from several sources is uncertain, Customs should be able to gather and verify (through cross-checking) the same data from the different sources. There are many Customs partners in e-commerce: other national Customs administrations, national Tax administrations, border guards, sanitary and veterinary inspections, buyers, vendors, online platforms, international organisations including EU institutions and agencies, Customs brokers and agents, payment-services providers, transport and logistics operators, express couriers, postal service providers, port authorities, Intellectual Property Right holders, government enforcement agencies, web registers and internet providers. Online platforms are probably the most promising partners for Customs. However, one should remember that illegal online operations and dark-web users are not providing any data for regulatory agencies.

With so many partners, it is difficult to navigate between all sources of data. Therefore Customs is improving modern schemes such as the Single Window concept. All data available, related to the specific goods to be declared (or to the importer/exporter) is collected in one database which can be accessed by Customs and used for clearance, collection of duties and taxes, as well as for verification of prohibitions and restrictions. The Single Window concept is a relatively modern solution, however, there are other new, future oriented concepts tested.

### **E-commerce and Customs in future**

It is the author's personal conviction that Blockchain technology is the Customs future, not only in the context of e-commerce but in other areas as well. As a form of an open ledger (register, principal book of accounts) of transactions and activities, it is made available to relevant parties. Each participant fills the register with their activities and actions allowing all the users to verify the source of each operation, added participants etc... Undoubtedly, giving the Customs administration access to the transaction history would fully define seller, buyer, type of goods, as well as its value; practically any data required in the Customs declaration.

Currently, given the number of e-commerce transactions, Customs would not be able to trace and extract the register data for collection purposes. Yet, the active participation of the operator is needed - information must be passed to Customs. Nevertheless, the access to such data would be useful for at least the verification process.

It needs to be evaluated whether Blockchain could be a form of Customs declaration for the future. The developments in technology and the novel use of Blockchain by a number of leading logistics providers and production firms, oblige the administration to take a closer look into the development of this tool.

In the context of the ability to download and automatically process specific data from Blockchain by the IT systems of Customs administrations and the creation of registers directly by the administrations (prospective: e-commerce Customs Blockchain), the Blockchain types of solutions are most interesting. The potential has already been noticed at the WCO forum where, amongst others, the Permanent Technical Committee has analysed the topic. DG TAXUD has also initiated its analysis on the use of Blockchain technology for Customs purposes.

### **Before the “hovercraft-bus” comes...**

Blockchain seems to be an attractive and modern option, but it is still not obvious that it will be the optimal solution for future Customs. It is an accepted opinion that Customs will become increasingly virtual in the near future. Let's imagine the T-shirt is not ordered by the teenager at the bus stop but his smart-wardrobe is sending an order directly to the e-commerce online platform. The product is then delivered by drone from the fully automated fulfillment house where robots pack the T-shirt for the client. Simultaneously, the home computer sends the Customs declaration and arranges the return of goods should the client be unsatisfied with them. Long distance future? Not really! This is the internet of things, which is just round the corner. The legal issue of who is the declarant for Customs in this case is just a minor problem. The real question is: Will we need Customs officers in future or just a virtual Customs app? It is the author's firm opinion that we need both: virtual services to facilitate trade and regular enforcement officers to face smugglers and non-compliant operators. Customs has confirmed its necessity and crucial role for revenue, safety and security for much longer than the last 50 years. Customs' ability to adapt to new trends is formidable. We will stay on duty! ■

# A more entrepreneurial Customs Union - The future is already here

Lars Karlsson

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**F**or hundreds of years Customs agencies have managed and guarded our borders day and night while we live our lives.

We now live in the age of globalisation and over the course of the last decade we have learned how globalisation impacts the world, our borders and our trading systems.

We know that trade is one of the main drivers in the development of our societies. At the same time, international trade is going through its largest transformation ever. New global value chains and major changes to international supply chains are placing enormous pressure on the agencies guarding our borders. The border is also changing, from being our first line of defence to becoming our last line of protection. International cross-border crime has grown stronger and become more integrated by utilising the limitations of individual country responses.

All these changes demand a new way of Customs management and a new paradigm is required for Customs in the future. Customs needs to become faster, more entrepreneurial, agile, innovative and coordinated, as well as becoming even more international than it is today.

The bad news is that we need to change. The good news is that we can do it and all the necessary elements are already available to help us make this transformation.

What does this new paradigm for Customs mean? Customs was traditionally a rules-based national institution that governed our individual national borders. We now see new



types of borders emerging, such as the border between legitimate international trade and cross-border crime syndicates that use the dark web. Customs must improve its structures and processes at all levels; national regional and international, in cooperation with all stakeholders in the global trading ecosystem. We have found ways to meet challenges in the past by working together and nobody has done it better than the European Union.

What is the role of the largest and most advanced Customs Union in the world? The 50 years young EU Customs Union – our home, our fortress and our facilitator of international opportunities in the future. Our Customs Union is our main competitive advantage, but we also need to make it more flexible, faster and capable of managing change, whilst providing new solutions. We have a modern Customs legislation, the Union Customs Code (UCC), that many other countries copy as a best practice. However, we have not yet implemented all the potential benefits that the new code provides. We must also ensure that the UCC maintains its position as the most advanced Customs legislation in the world.

As the leading trading block in the world, the EU has a specific responsibility to lead the global Customs transformation. A Customs union with free internal movement of goods and strong, fast and efficient outer border management is clearly an advantage to the nations involved. However, the institution itself, with its common and slow decision making mechanisms and implementation times, can also become a barrier. In the world we live in today, and even more so tomorrow, we need to be flexible and develop new mechanisms for Customs innovation and entrepreneurship.

I believe we will need five things to be successful and more entrepreneurial in the future:

- An innovative platform for cooperation at national, regional and international levels
- The EU Customs Union provides a platform for innovative cooperation at a regional level. Innovative cooperation is not yet a reality at a national level or at an international level amongst different Customs administrations.
- The EU must drive change at an international level by increasing its contribution within international institutions. The aim should be to make these institutions more efficient and agile and to build platforms for operational cooperation on a much larger scale.
- At all levels, including within the EU Customs Union, we need to create mechanisms for designing, developing, testing and implementing new ways of applying international standards, best practices and innovations. One way forward could be to establish Customs Future Centres such as development laboratories at national (member state), regional (EU CU) and international (WCO) level. These centres should have a mandate to foster innovation and entrepreneurship and to implement structured pilot projects with the aim of making EU Customs the leading institution in a globalised world. Some of the centres could be dedicated to inter-agency coordination or for testing new models of international cooperation where national institutions from different countries operate seamlessly.



## **Innovative partnership models with all supply stakeholders**

To achieve Customs' future role in a new international landscape, our institutions must become more entrepreneurial and be closely integrated with all parties in the international supply chain.

We need to re-invent cooperation with the private sector by upgrading existing compliance management models such as Authorised Economic Operator (AEO) and Trusted Trader. New AEO 2.0, or even AEO 3.0, should become the basis for future partnerships with the private sector. These upgraded trusted trader programmes need to be integrated government programmes, led by Customs and including all other border agencies in a single and combined government AEO status. All public and private sector stakeholders should be included as part of these programmes to create the secure trusted trader lanes we need in the future.

The EU should take the lead and upgrade its legacy AEO programme. The upgraded programme will need to be a modern, best practice trusted trader programme that leads the way in developing a new international standard - SAFE 2.0.

In developing new and upgraded programmes, governments should aim to learn from the private sector and the private sector should have the opportunity to learn from government.

## **Innovative adoption and use of new technology**

Information management is the key to the future. Every Customs administration today works with risk management based control strategies to enhance safety and security while offering maximum trade facilitation. Successful risk management demands the right information at the right time for real-time decision making.

Technology is our friend. A new generation of technological advancements will revolutionise Customs over the next decade and blockchain models will give us secure data throughout the supply chain.

Technology will be a large part of the solution, but only if we make the structural reforms required to promote innovation and the flexible testing of new solutions. It will also require that business process engineering occurs before system solutions are built.

## **Improved exchange of risk management information**

To improve all steps of the information management process we use today, having the

right quality data at the right time will be critical. This will allow us to accelerate trade in a predictable way while at the same time fighting cross-border crime.

We need to become better in turning standardised data into information. The information needs to be captured as early as possible in the process and be transferred and exchanged securely to allow it to be analysed for use in profiling and targeting. This process will build the necessary competencies within Customs for pattern recognition and real-time IT-supported decision making. None of this is science fiction and most of the knowledge and technology to work in this way already exists. It is simply a matter of implementation.

We will soon see streamlined reporting through cloud solutions that will facilitate low-cost trade. These models will remove entire transaction costs while at the same time raising the quality of risk management as well as improving revenue and trade statistics' collection. Within a few years we will see artificial intelligence as an integrated part of Customs, leading to improved enforcement capacity. Existing cooperation mechanisms such as advanced trusted trader programmes for low risk operators will, through new technology solutions, make it possible to introduce real-time risk management based on commercial data. Biometric data systems will also change our borders and border crossings.

The only barrier to these developments is our own imagination and lack of will to make the decisions required to make it happen.

### **Potential to act operationally beyond our own borders**

We need to find ways to make Customs systems and models work beyond our own EU borders.

How can this happen and what are the ways to accomplish this? The answer is capacity building and the upgrading of our structures at a national, regional and international level to create modern, flexible and responsive institutions. These institutions must be strong and have mandates and operational capacity, particularly at an international level.

The movement of goods and people is also becoming increasingly integrated. Historically Customs handled the movement of goods, but in the future the flows of people and goods will be interwoven and Customs needs to be involved in the management of this transformation. After all, goods do not commit fraud, people do!

I am convinced that it is possible to achieve these goals, but there should be political will and leadership, as well as passion from the officers that will have to work on this transformation. The clock is ticking and time is scarce, but we can do it!

The future is bright for Customs and the EU Customs Union. In Europe we have the platform in place for advanced Customs cooperation, the single most important parameter for future success. However, this is not enough! We also need to be bold and forward thinking.

Let us now make use of the EU Customs Union, the best so far in the world, in new innovative ways to solve the challenges of a new global environment. I know that we can do this, nothing is impossible. Long live the Customs Union! See you at the 100 year celebrations! ■





2

# Trade Facilitation

# The WTO Agreement on trade facilitation - The Impact on Trade and Customs

Paolo Garzotti

*Mr Paolo Garzotti, was appointed Deputy Permanent Representative of the European Union Mission to the World Trade Organization in Geneva in September 2016. Following his studies at the Faculty of Law of the University of Trento (I) where he specialised in comparative, international and European law, he started his career in the European Commission in 1994 in the Directorate-General for Customs and Taxation. In 1998, Paolo moved to Directorate General for Trade. Before coming to Geneva, he was the Head of Unit dealing with multilateral affairs as well as of the one responsible for coordinating trade policy with the Council and the European Parliament.*

## How did trade facilitation come into the WTO?

Just a few years after the World Trade Organisation (WTO) was created, the Members of the organisation started looking into new rules that could have further lowered the costs of trade and provided a more certain legal environment for traders. Several European stakeholders quickly noted how trade amongst the Members of the, then, European Communities had dramatically increased and improved in the last twenty years. This was, of course, due to the creation of the Customs Union, which is turning 50 this year, but also to the creation of the Single Market and the adoption of the first European Customs Code in 1992. The next step was easy: if harmonisation and improvement in Customs procedures has provided so many benefits in Europe, why not try something similar at global level? Indeed, the EU conveyed this demand to other WTO Members and requested to put on the WTO agenda negotiations to improve and clarify the rules of the General Agreement on Tariffs and Trade (GATT), dealing with import, export and transit procedures (i.e. Article V, VIII and X of the GATT). A key factor in favour of a Trade Facilitation Agreement (TFA) was that it didn't call for new concessions in terms of market opening, but simply for less costly and more rational Customs procedures that would apply regardless of the level of protection of a given market.

With the EU almost alone in promoting a trade facilitation agenda and growing tensions in the organisation, it took time before negotiations could be launched. While the EU promoted the idea since 1996 at the WTO Ministerial Conference held in Singapore, in 2001, when launching the Doha Round of negotiations, Members could only find consensus on starting analysing the issue. It was only in 2004 that Members eventually agreed to launch full-fledged negotiations to clarify and improve the relevant GATT articles and identify the trade facilitation needs and priorities of WTO Members.

Multilateral agreements are the ones bringing most benefits, but not the easiest or most rapid to negotiate. Negotiations on the trade facilitation agreement were no exception. After a few years of intense discussions, in 2009 a first draft agreement was on the table, but it was only in 2013 that the rush towards a final consensus took place, just before the 9th WTO Ministerial Conference in Bali (Indonesia). The conclusion of this agreement was a historic step as it was the first new comprehensive agreement to be added to the WTO rulebook. After some further ups and downs, the protocol to amend the WTO Agreement by including the Trade Facilitation Agreement (TFA) was adopted in November 2014. Eventually, on the 22 February 2017, as the 118th ratification instrument was received by the WTO, the threshold of 2/3 of the Membership was crossed and the TFA entered into force.

### **The rules**

The rules established by the TFA may look quite basic if one compares them, for example, with the EU Customs Code. Still they constitute an effective blue print for reforms in jurisdictions where Customs regulations are not as developed as in most Organisation for Economic Co-operation and Development (OECD) members.

Let's just give some examples of what the TFA provides for:

- it grants better access to information for traders and stakeholders (Article 1) by establishing that Customs regulations shall be published on the internet;
- it improves regulatory processes as stakeholders must be consulted before new Customs rules are put in place (Article 2);
- it establishes an obligation for Customs administrations to provide advance rulings, so that operators can know in advance (for example), how their goods will be classified (Article 3);
- it obliges all WTO Members to allow traders to appeal against a Customs decision (Article 4);
- it provides principles on how fees and penalties have to be established, thus avoiding arbitrary and discriminatory decisions (Article 6);
- most importantly, it establishes the rule according to which goods shall be released if the duties or a guarantee are paid. This means that, in all WTO members, goods will

not be stuck at the border simply waiting for a decision on their origin or classification (Article 7);

- it creates an obligation to base Customs controls on risk management processes (Article 7).

These are just a few examples. In certain WTO Members, most of these procedures are already today's reality. However, this was not the case even in some EU countries, a few years ago. Advance rulings, for example, were only introduced in the EU in the early nineties and the EU does not yet have advance rulings on value, as it is the case in some other WTO Members.

In less advanced developing members, effectively implementing the TFA is already generating dramatic savings in costs for trade. At a recent seminar, a delegate from Rwanda noted that the creation of a single window (Article 10.4 of the TFA) has spared 10 million USD in costs to the country's traders. Indeed, the OECD estimated that savings could easily reach 15% of the whole transaction costs in certain developing members, i.e. much more than what traders from these countries pay on average in tariffs when exporting to more profitable and developed markets.

These benefits do, however, entail some initial costs, for instance to draft the legislation and set up the necessary administrative procedures. This is where the TFA has its most innovative dimension as Members agreed to link international commitments to the actual capacity of individual developing countries to implement them.

### **A new model**

For the first time in the WTO, the so-called Special and Differential Treatment for developing members is not based on a horizontal softening of the rules applicable to all members declaring themselves as developing. There is no one-size-fits-all but a case-by-case decision.

Firstly, WTO Members have agreed that every single Member will, sooner or later, fully implement the TFA. Everyone agreed that the TFA was good for its own development.

Secondly, each developing member has gone through a "needs assessment" to verify which provisions could be implemented before the entry into force of the agreement. The commitments for which it would need more time, and those commitments for which not only time but also technical assistance would be required.

Thirdly, each member notified the WTO its own specific schedule of commitments.



This meant that China, a developed member as far as Customs administration is concerned, but which still declares itself as developing, committed to implement basically all of the agreement from its entry into force<sup>1</sup>. Other less advanced members (e.g. some South-Saharan African Members) have committed to a less ambitious path, which involves longer timeframes and assistance from other Members as well as international institutions<sup>2</sup>.

### Future developments

The TFA is a new and innovative piece of international law but one could see it as just the beginning, the basis from which to move further in two respects:

- First, there is still plenty of room to improve the set of rules contained in the TFA. Customs are called to operate always in a delicate balance between the obligation to protect citizens and ensure budget revenues, while not creating unnecessary obstacles to trade. As the EU has seen in the process that led to the adoption of the new Customs Code, modern technologies allow performing this unique role in an increasingly effective manner. Members should pursue monitoring the implementation of the TFA and be ready to refine, upgrade and broaden the scope of its rules as needed and appropriate.
- Secondly, the TFA has opened the door for a new model of international agreement, a kind of “variable geometry” environment that could be used in other fields. Currently, several WTO Members are in the process of looking into new rules. A flexible “TFA-like” agreement that allows Members commitment, based on their development need and their role in global trade, could be explored.

The EU led the way in the negotiations of the Trade Facilitation Agreement – and it will continue to deploy its leadership and support for preserving a strong rule-based multilateral trading system. ■

<sup>1</sup>With the exception of the Article on customs cooperation for which it requested a short transitional period

<sup>2</sup>The EU provides technical assistance by means of its national and regional development projects.

International organizations, for example, the World Bank and the World Customs Organisation are active in providing assistance to developing members to implement the TFA.

# Globalisation, Trade Facilitation and Economic Growth – Insights from a non-EU Customs Authority

Enrique Canon

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In this current scenario of old protectionist ideas that are trying to revive, mixed with trade war strategies and lack of solidarity, it is my great pleasure to contribute to the 50th Anniversary of the EU Customs Union through this article. I am motivated to this contribution by the association of the EU with the principles of liberty, democracy and respect for human rights.

Trade facilitation complements free trade, and sustainable economic growth and inclusiveness are its best socio-economic consequences. These consequences represent the reverse side of the aforementioned current tendencies, which are the opposite of what the EU stands for.

During the last decades, millions of people have come out of poverty, thanks to the right economic policies, investment, growth and free trade.

On the other hand, the world's economy has experienced a huge economic concentration, resulting in a scenario where the richest 1% of the world population accumulates more wealth than the remaining 99%.

Automation and globalisation led to disaggregation and internationalisation of the value chain. Information and Communication Technologies (ICTs) have made outsourcing

possible, allowing knowledge transfer and the coordination of activities carried out simultaneously in different locations.

The winners of this globalisation process are skilled workers from the Group of Seven countries (G7) and factory workers globally. The losers are unskilled workers from the same G7 countries, which have seen their wages reduced at the expense of the new Asian middle class. These losers, however, have embraced the ideas of neo-protectionism and neo-populism.

Putting the blame on trade and globalisation and taking the path of isolationism does not seem the right thing to do. Instead, inclusive development is the goal to be achieved. As the 1999 Economics Nobel Prize winner, Robert Mundell, has pointed out, increasing tariffs is not going to solve the problem either. Promising to improve the balance of payments position of importing countries (decreasing imports) strengthens the national currency. However, by doing so, these countries lose competitiveness and become expensive. This leads to a reduction in Gross Domestic Product (GDP), employment reduction and ends up deepening the trade deficit.

### **Why trade facilitation?**

Nowadays, when production is spread across countries and merchandises cross borders many times, trade facilitation means lower costs for trade. Facilitation allows more firms to trade, particularly Micro, Small and Medium Enterprises (MSMEs) as well as consumers, to benefit from quality, lower prices and a greater range of goods. Excessive border procedures add disproportionate costs to MSMEs, considering the low value of their exports. Trade facilitation aims to lower costs by simplifying procedures at and behind the border.

### **Speed and efficiency**

Managing inventory and rapid response to changes in consumer preferences do not match with delays at borders. Furthermore, consumers and importers are more willing to pay for goods delivered soon or ‘in time’.

### **Good governance**

Transparency, predictability and simplification of trade procedures can also help to remove incentives for corruption, thus supporting good governance.

### **Reduced shipping losses**

Losses and costs associated with inefficiencies or inventory holding can be modelled following the “iceberg trade cost approach”. The “iceberg” model compares the way in which trade costs reduce the value of goods, both for exporters and importers, with the way an iceberg melts as it advances through the ocean. Trade facilitation lowers the iceberg costs – meaning that for the same amount of imports sent, a higher amount will arrive at their destination than prior to the reforms.

### **Efficiency gains**

Productivity related to imported intermediates can be raised both by the use of a greater variety of (potentially lower-priced) products, as well as technology transfers ‘embodied’ in foreign intermediates. This could enable them to access new markets. Importation helps firms to remain competitive in the domestic economy as well, given that sectors benefit from lower costs for domestically produced intermediates.

### **Production increases**

If inputs’ costs decrease, output prices diminish, thus generating greater domestic and foreign demand and stimulating production.

### **Salaries**

Over the long term, labour markets adjust to changing production needs through more flexible wages, thus influencing employment levels.

### **Resource allocation**

Trade facilitation encourages specialisation and reallocation of resources towards activities in which countries benefit from comparative advantages. Efficiency intensifies domestic competition, leading to a more efficient allocation of resources.

### **Higher incomes**

Trade facilitation would also translate into rising incomes for all skilled and unskilled labour categories in developing and emerging economies.

## **TFA's current situation**

The WTO Trade Facilitation Agreement (TFA) entered into force on 22 February 2017, and since then, according to the OECD publication “Trade Facilitation and the Global Economy”, the following has happened: “6 developing and least-developed WTO Members have committed to implementing the entire TFA as of the date of its entry into force, while another 10 have committed to fully applying over 90% of the Agreement as of that date.

The most challenging area for implementation is co-operation of border agencies, both within a country and across the border.

Measures such as risk management or Single Window feature heavily among the provisions that WTO developing and least-developed country Members have designated for implementation after a transitional period, and for which technical assistance and support for capacity building would be required (Category C provisions).

Low income countries face particular challenges in consultations with concerned stakeholders, advance ruling mechanisms and the availability and operation of appeal procedures.”

## **The Current World Economy, technology and future Customs**

Forecasts for the world economy's growth for 2018 and 2019 have been updated to 3.9%. The causes of this rapid trade growth are: openness policies plus falling trade costs and technology. The positive and negative consequences of the use of technology, and those of the link between technology and trade, can be observed in two areas: trade facilitation and Customs controls. Due to technological achievements such as digital technologies and 3D printing, we now face the challenge of 100% digital cross-border trade, which will require drastic changes in Customs procedures and control mechanisms.

On the other hand, Customs Administrations are benefiting from technological advances such as Single Window, digital records of international trade operators, digital certificates and online payments of duties and taxes, among others.

In the near future, we will also benefit from other technological advances that will represent major changes in the way we work. Some of these are: the Internet of Things, Cloud Computing, Blockchain, Artificial Intelligence and Augmented Reality.

## Transnational Crime Organisations

The aforementioned economic upswing has also set the conditions to act on matters that are relevant to all Customs Administrations, such as strengthening the multilateral trading system, and cooperation on international tax policies, including the fight against trade laundering and terrorism.

Trade facilitation can and will release resources that Customs could redirect to combating transnational crime.

National States are falling behind in combating International Crime Organisations. These organisations operate with relative success in the context of globalization within and from the gaps between national law enforcement jurisdictions. The capacity of control of both national and international law enforcement agencies is being seriously questioned.

Internal and external Integrated Border Management is required. In this regard, Customs Administrations and the WCO have an important role to play. Data exchange and cooperation among national Customs, International Customs Authorities, other government agencies, the WCO and other international organisations, are of vital importance.

Lastly, for a successful Integrated Border Management, the WCO could take the lead, with the help of the EU Customs Union and set an example for the regions to follow suit. ■

# Trade Facilitation at a Cost?

Mario Brincat

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Concluded at the World Trade Organisation's (WTO) 2013 Ministerial Conference in Bali, the Trade Facilitation Agreement (TFA) officially entered into force on 22 February, 2017, having reached the organisation's ratification threshold of two-thirds of its membership. Perhaps it would be more accurate to say that the agreement *started* to enter into force: the TFA is now officially in force in the countries that have ratified it, but it will be several years before all provisions are practically implemented in all signatories, particularly as regards developing and least developed members. To date, 136 WTO Members have domestically ratified a Protocol of Amendment and notified the WTO of their acceptance of this Protocol. The agreement covers Customs procedures, clarifying and extending Article V (Freedom of Transit), Article VIII (Fees and Formalities connected with Importation and Exportation) and Article X (Publication and Administration of Trade Regulations) of the General Agreement on Tariffs and Trade (GATT 1947). Broadly speaking, the TFA seeks to simplify and reduce the number of Customs procedures and controls and introduce greater transparency in their implementation. It also seeks to harmonise and standardise such controls across borders, partly by facilitating the adoption of 'best practices' that have been tried and tested in the more advanced economies.

The WTO considers trade facilitation to be critical to the reduction of the costs of international trade. Although successive rounds of multilateral trade negotiations - most recently in the Uruguay Round that was concluded in 1994 - succeeded in significantly reducing tariff and non-tariff barriers to international trade, the costs of engaging in international trade remain high, especially in low-income countries, despite the vast improvement in logistics and in information and communication technology. This is partly due to administrative burdens faced by traders and to inefficient Customs procedures. The Trade Facilitation Agreement's supporters hold that it has the potential to significantly reduce costs of trade, thus helping both global trade and output to grow. The EU which ratified the WTO TFA in 2015 was an early supporter and includes trade facilitation in its Aid for Trade strategy, pledging EURO 400 million in assistance. This is to be allocated over a period of five years in response to assistance requests from developing countries and least developed countries (LDCs) to help with the necessary adjustments.



The attraction of more foreign direct investment, better collection of government revenues (partly by reducing smuggling) and reduced corruption, are also said to be among the other benefits arising from trade facilitation. By reducing the costs of exporting (including those associated with the importation of raw materials and components), trade facilitation also helps existing exporters to increase their foreign sales, while lowering the barriers to entry for non-exporters, thus encouraging them to take their first steps into foreign markets. The WTO also points to growing evidence that trade facilitation boosts participation by small and medium-sized enterprises (SMEs) in international trade. Trade facilitation is particularly important for trade of time-sensitive goods, and to supply chains operating on 'just-in-time' principles.

If Trade Facilitation is so good for traders and their clients, shouldn't they be willing to pay for it? Should Customs administrations charge their users for certain facilitations, e.g. for faster clearance, or for access to 24x7 services? After all, express courier services and postal administrations regularly charge different rates for different classes of service; the latter did so even when most of them were still monopolies (which Customs administrations continue to be). Commercial banks charge their clients for the right to use electronic portals while generally reducing the number of physical branches, practically the equivalent of charging clients simply for entering a shop. Article 52 of the European Union's Customs Code (UCC), paragraph 1, allows Customs authorities to impose charges for services rendered outside the official opening hours of their competent Customs offices. They also allow the levying of charges or the recovery of costs where specific services are rendered. These include attendance, at clients' request, by Customs staff outside official office hours or at premises other than Customs premises; analyses or expert reports on goods; postal fees for the return of goods to an applicant, particularly in respect of decisions relating to binding information (Article 33) or requests to the Customs authorities for the provision of information (Article 14(1)); the examination or sampling of goods for verification purposes, or the destruction of goods, where costs other than the cost of using Customs staff are involved; exceptional control measures, where these are necessary due to the nature of the goods or to a potential risk.

The TFA's wording is more restrictive than that used in the UCC, particularly in not referring to official opening hours and by allowing charges that "are not required to be linked to a specific import or export operation provided they are levied for services that are closely connected to the Customs processing of goods." This looser wording of the Free Trade Agreement (FTA) (which must be read in conjunction with Article VIII of the GATT), would seem to allow charging for access to a Customs electronic system, for example, much like banks charge for use of electronic portals; the UCC's wording would seem to preclude it. The TFA also appears to allow charging for services rendered during normal office hours. Such charges could be calculated on a marginal cost basis, possibly with the addition of a charge to cover overheads such as capital investment required for

the Customs services in question to be delivered (*ad valorem* charges are prohibited). The prohibition against using Customs charges to indirectly protect domestic products or as a means of taxation for fiscal purposes remains, reflecting the widely held view that fair international trade is beneficial to all parties and should not be hindered.

The basic premise, or ‘ideology’, expressed by the wording of the UCC seems to be that Customs administrations are part of a nation’s infrastructure for international trade, with implications for public finance, safety, health and security, with Customs administrations increasingly being required to enforce non-Customs legislation at the border. Thus, the benefits of an efficient Customs set-up accrue, not simply to the actual traders, but also to their clients and through them to society in general. As such, it is not unreasonable to expect that a significant proportion, indeed the majority of the cost of creating and maintaining a Customs administration should be paid out of general revenue, even though we have become much more open to private investment in infrastructure and provision by public contractors of services that used to be exclusively delivered by public authorities. However, this model occupies only part of the spectrum of solutions theoretically allowed by TFA, which can even include forms of public-private partnership, and it would be short-sighted to think that current arrangements cannot be replaced by something better. Change should not be done for the sake of changing, but in order to better serve our clients and society in general.

For example, going back to the UCC model, does the concept of ‘normal office hours’ still retain relevance? Clearly, Customs officials have as much right to humane working hours as anybody else, while shift-working and overtime are potentially very expensive, but ICT and flexible working can reduce the need to rely on traditional solutions of this kind. Reasonably matching the working hours of Customs officials to those of trade and industry (a 100% overlap is not essential), is now much more feasible than hitherto, and to a large extent could be achieved by increasing automation and making Customs electronic systems available round the clock.

When all is said and done, the ways in which states choose to deliver services to their citizens and to pay for them reflects a political-economic balance that is rooted in the history of each individual polity, a balance that is not set in stone but is bound to change with the evolution of society in general, in the EU and elsewhere. The Customs Union, and Customs administrations have served the EU well over the past fifty years; if the same is to happen over the coming fifty years, Customs must not be afraid of moving with the times. ■



# Trade Facilitation - Perceptions from a non-EU Customs Authority

Francisco Gil-Leyva

*Mr. Gil-Leyva was appointed by the President, and confirmed by the Mexican Senate as Administrator General of Customs in January 2018. In this capacity, Mr. Gil-Leyva leads a 7,500 personnel division comprised of agents, officers, administrative personnel, and high-level officials, distributed throughout 49 ports of entry, more than 200 checkpoints and at its Headquarters in Mexico City. Previously, Mr. Gil-Leyva served as the TAS Chief Financial Officer, and as the TAS Representative to the World Customs Organisation and in Mexico's Mission to the European Union. Francisco Gil-Leyva holds a degree in Business Administration and a Master's degree in Science. He also earned a Diploma in Management.*

**D**uring the past two decades, the world has experienced a rapidly increasing economic integration, boosting the trading in goods across borders in an exponential manner. From 1993 to 2014, foreign trade increased almost 8 times, growing from \$2.8 Tr.USD to \$20.9 Tr.USD.

Information and Communications Technologies (ICT) and Logistics, undoubtedly, have had a major impact in triggering the globalisation effect of trade, making the world seem smaller and the consumer eager to seek products abroad, as they become easier and faster to obtain.

As easy as this may seem, globalisation has increased the number of transactions of goods and hence the complexity of processing those operations, at the Ports of Entry (POEs) with limited economic and human resources. Economic integration along with the growth in commerce has compelled Customs Authorities to shift their preponderant role from a revenue collection oriented authority to a key player in facilitating trade, promoting competitiveness and ensuring national security.

Along the following lines, I will try to briefly describe the evolution of the Customs role in Mexico, and how the economic integration models help us define the vocation in our Customs.

## The Evolution of Customs' Role in Mexico

Mexico redefined its economic policy, opting for an open economy in 1986 with the signing of the General Agreement on Tariffs and Trade (GATT). Transitioning from a national policy of import substitutions, Mexico began eliminating barriers to trade, betting on international trade as the future of the country's economic model. In December 1993, the Presidents of Canada, Mexico and the United States signed the North American Free Trade Agreement (NAFTA), and from that moment on, Mexico continued its efforts to open trade, becoming one of the countries with most Free Trade Agreements in the world. Back in the 1980s before the paradigm shift in the Mexican economic model, Customs and tariff policies were defined to protect national industry and stimulate national production and the internal market. Therefore, Customs were merely focused on revenue collection, and their primary concern was related to declared value and the adequate calculation of taxes and duties.

In the 1990s, following the paradigm shift, the Free Trade Agreement's (FTA) network construction commenced, and thus the role of the Mexican Customs evolved even further to an open-to-trade role. This change in role necessitated a legal reform to modernise the Customs system, through the simplification of processes, in order to drive competitiveness at a global level.

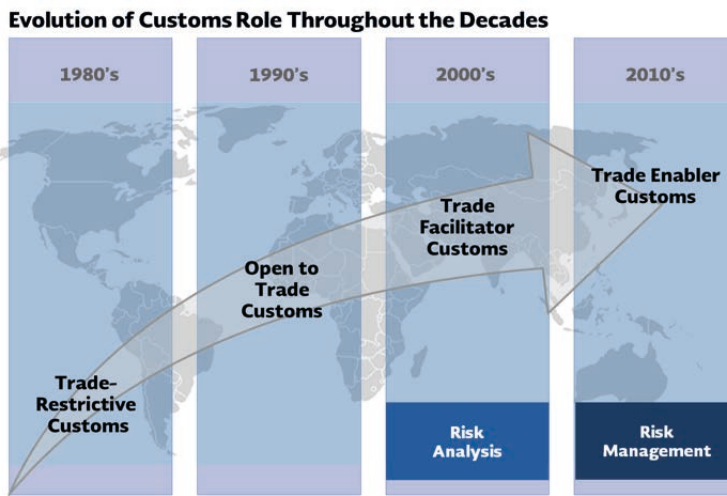
Over the course of the 2000s decade, the trade openness and FTAs network continued to grow, with the signing, by the end of the decade, of 8 FTAs gaining and granting access to 27 markets. This demanded yet again a change in the role of the Mexican Customs to one of trade facilitator. In this decade, one important element was introduced to Customs procedures: i.e. the use of Risk Analysis to assess cargo consignments.

The terrorist attacks in New York on 11 September 2001 changed the world and international trade forever. Those atrocious events showed the Customs Authorities the importance of not just being the window to the world for all our traders, but to be the doorkeeper of our homes to resist the proliferation of threats from around the globe.

With a pressing context to protect borders and assure a resilient international trade flow, but also with a growing demand from producers and consumers to facilitate trade, countries around the globe had to figure out a way to break the preconception that control and facilitation stand at the opposite extremes of the spectrum, shooting at each other in a Mexican standoff.

Hence, the concept of risk management was further introduced to Customs, developing instruments and tools, aided by the ICTs and other technologies, to allow the Customs authorities to exchange and process electronic information, such as the Single Window

environment, and also introducing concepts to get to know closely trustworthy stakeholders such as the Authorised Economic Operator (AEO), among others. Through the intensive use of technology and the enhancement in the accuracy of risk management, Customs are finding the balance between facilitation and control.



### Customs' Role in the Diverse Economic Integration Models

The different levels of economic integration have also had an important impact on globalisation, ranging from bilateral trade within the framework of the WTO standards, to a Customs Union with economic and political integration such as the European Union, the largest and most complete Customs Union in the world.

Unlike other regional integrations today, the EU has successfully placed the proper policies to eliminate Customs formalities within the Union, optimising its officers by focusing only on cargo from outside the EU. This was attained by establishing a general tariff treatment to non-member countries, allowing full freedom of transit of goods and people, and creating a single European market with seamless trade among its members.

In contrast to a Customs Union, Mexico has neither created common Customs provisions with other countries, nor common tariffs to trade. Nevertheless, under NAFTA, Mexico has eliminated tariffs and created innovative procedures to break down the idea of Customs as barriers to trade. If not allowing the elimination of Customs per se, these procedures are bringing together the two authorities, i.e. Mexico and the US, sharing common facilities, carrying out joint inspections, exchanging information, and sharing intelligence to assess risks jointly with its NAFTA partners.



Back in the beginning of 2000, Mexico and the US began exchanging information systematically, increasing the bilateral knowledge of trade operations and procedures on both sides of the border. Since then, several projects have been developed to enhance bilateral border management. Nowadays, Mexico and the US have a vast cooperation, achieving joint clearance procedures and the harmonisation of cargo manifests, while working towards a trilateral Single Window.

Through the Unified Cargo Processing (UCP) Programme, Customs officers from Mexico and the US jointly perform inspections of imports and exports, reducing the time to conclude Customs clearance from five hours to around 15 to 45 minutes, while simultaneously both authorities safeguard national security.

One milestone in many of the bilateral initiatives aiming to facilitate trade and secure our common borders is the exchange of information, which is enabled through the Customs Mutual Assistance Arrangement (CMAA). Thus, throughout the years Mexican Customs has been strengthening its CMAA's network with its main partners, having in place today 22 arrangements, 6 pending entry into force, and currently engaged in 20 other negotiations. This network allows Mexico to have a robust legal cooperation basis in Customs matters with the pertinent countries.

With respect to the EU, under the Annex of Mutual Administrative Assistance Customs Matters, pursuant to Article 17 (3) of Decision No. 2/2000, of the EU – Mexico Joint Council of the Economic Partnership, Political Coordination and Cooperation Agreement, Mexico has worked closely with the EU Member States, exchanging information to facilitate and assure legal trade between the parties.

Even though an economic integration or Customs union with Europe may presently not seem achievable, it is in Mexico's best interest to strengthen the ties with the EU members' Customs Authorities as with many other strategic trading partners around the world. Who knows, through innovation in Customs processes, we may be developing different types of integration across countries without sharing a border.

As trade continues to evolve over time, Customs will have to reinvent themselves at the same pace to face upcoming challenges. International trade will undoubtedly continue to push for leaner borders, increasing its connectivity through cooperation and exchange of information. In this regard and from the perspective of a third country, we are certain that the EU Customs Union will not only continue to be a model for other regions for what it has demonstrated to the world since its inception to date, but for what it can become in the upcoming years. ■





3

# Safety, Security and Cooperation

# Strategic Trade Controls

Wim J. Boer

*Mr. Wim Boer is a criminal investigator at the Fiscal Information and Investigation Service (FIOD), the investigation service of the Ministry of Finance of the Netherlands. Over the past 16 years Wim has conducted several criminal investigations in the field of strategic trade controls, sanction legislation and terrorist financing.*

The Second World War ended in August 1945 when two nuclear bombs were dropped on Hiroshima and Nagasaki, thus casting a long shadow over international relations for years to come. The end of the war marked the beginning of the Nuclear Age. For four years, the United States had the monopoly on nuclear weapons till 1949, when the former Soviet Union tested its first nuclear bomb. In the following years the world witnessed the nuclear arms race.

During the Cold War period, many attempts were made to stop the nuclear arms race. After many years of negotiating the Nuclear Proliferation Treaty (NPT), it entered into force in 1970. The objective of the NPT is to prevent the spread of nuclear weapons and weapons' technology while achieving nuclear disarmament with the aim of reaching complete disarmament. Other initiatives to prevent the spread of all sorts of weapons of mass destruction are four multilateral export control regimes, namely; the Nuclear Suppliers Group (NSG), the Australia Group (AG), Missile Technology Control Regime (MTCR) and the Wassenaar Arrangement (WA). These regimes can be regarded as international bodies used by states to organise their national export control systems.

The NSG had its first meeting in 1974 but only came into full force in 1991. The NSG is a group of nuclear supplier countries that seek to prevent nuclear proliferation by controlling the export of materials, equipment and technology that can be used to manufacture nuclear weapons. The AG was founded in 1985 with the aim to prevent the spread of chemical and biological weapons and to help member countries to identify related exports. The MTCR was established in 1987 with the objective to prevent the proliferation of missiles and unmanned aerial vehicles with a range of more than 300 kilometres and a possible payload of 500 kilograms or more. The WA came in place in 1995 with the objective to contribute to international security and stability by promoting transparency and greater responsibility in transfers of conventional weapons and dual-use goods and technologies.

## The Customs Union

In Europe, the Second World War ended on 8 May 1945, leaving most European countries in ruins. The European economy had collapsed and much of the European industrial infrastructure had been destroyed. But Europe recovered remarkably well and one of the significant results of this recovery was the birth of the European Customs Union on 1 July 1968.

After first abolishing the Customs duties levied at the borders among the members of the European Community, it became a single trading area where goods could circulate freely. It is the task of Customs to ensure that duties are paid on goods entering the European Union (EU) and that the financial interests of the EU and the Member States are protected. Another task is to prevent products from entering the EU that pose a risk to the safety and health of its citizens. In other words, Customs must stop goods that have been trafficked and smuggled into the EU, goods that present a danger to the environment or goods which undermine the financial interests of the EU and its Member States. The main focus for Customs is therefore on imports into the EU. But what about export and export controls?

## Strategic Trade Controls and Sanctions

Export control can be seen as a set of laws, policies and regulations that govern the export of sensitive and/or listed goods in order to prevent individuals or companies from assisting proliferation. This more traditional term relates solely to the export of physical goods. Nowadays, the term 'export control' is replaced, mostly by practitioners, by the term 'strategic trade controls' (STC) which includes not only the export of listed and/or controlled goods but also transit and transshipment controls. Strategic trade controls also include technical assistance in relation to these goods, brokering of listed goods and controls related to the transfers of intangible technology (ITT).

In the EU, one of the cornerstones of strategic trade controls legislation is Regulation (EC) 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. Regulation 428/2009 includes, amongst others, a common EU list of dual-use items and provisions setting up a network of competent authorities supporting the exchange of information as well as the consistent implementation and enforcement of controls throughout the EU. The list of dual-use items is, in fact, a consolidation of all sensitive goods and items identified by the aforementioned multilateral export control regimes NSG, AG, MTCR, and WA.

In international relations, sanctions can be used as political trade tools to change the behaviour of a country or regime. Sanctions vary in their objectives and type. Some of them, like the sanctions on Iran and North Korea, have a close relationship with strategic

trade control. Others may focus more on the financial aspect or extend to complete trade embargoes. The changing political landscape can result in new sanctions which need to be implemented in national legislation and require an effective enforcement.

In most EU Member States, Customs is involved in the implementation, enforcement, and exchange of information of their national strategic trade controls and sanctions. This can be seen in the Netherlands where Customs is responsible for licensing (Customs Central Licensing Office), enforcement (Customs Team POSS), and border controls. In other Member States the role of Customs can differ because the enforcement of strategic trade controls and sanctions is still a national matter.

### **The Changing Role of Customs**

The fact that Customs has become an important player in the enforcement of strategic trade controls and sanctions over the past decades meant that the more traditional role of Customs, the focus on incoming goods, had to be extended to a focus on outgoing goods as well. In order to implement strategic trade controls and (inter)national sanctions into their workload, Customs needed to invest in a new area where knowledge of goods and legislation became crucial and where cooperation with other relevant authorities in the national infrastructure and with international authorities is a must.

Each day huge volumes of goods are exported out of the EU or go through one of the European hubs. It is impossible to control all of these goods individually, so smart controls need to be in place. These smart controls are based on results of risk management systems filled with all kinds of relevant signals, data and information. These systems must be complemented with highly trained Customs officers with a knowledge of goods (commodity training) and regulations. Preferably Customs must have the possibility, like for example in the Netherlands and Germany, to conduct company audits so that not only strategic trade controls regulation can be enforced efficiently but also awareness can be raised within industry.

These are just some of the examples of the many requirements needed by Customs to enforce strategic trade controls and sanctions. One of the most important requirements remains the ability to communicate with all other national and international authorities and to coordinate actions when needed.

### **The Future**

Based on my own experience as a criminal investigator with many years of work and cooperation with Dutch Customs and the Customs authorities of other Member States, I have noticed that there are differences among the Member States' Customs authorities with

regard to the level of enforcement in strategic trade controls. This makes sense because, for example, the industries of Member States vary. In order to gain or maintain a high standard in strategic trade controls, it is important that all Customs authorities keep investing in training personnel, increase and even enlarge existing risk management systems, and above all, invest in all kinds of cooperation with national and international authorities and parties, including the industry and academia. There are some valid reasons for further cooperation with industry and academia who are more than willing to contribute to international security. Cooperation will increase awareness to understand proliferation mechanisms and the ways to counter them. But, more importantly, cooperation between Customs, industry and academia can lead to concentration on the real risks and illicit trafficking, while facilitating positive and constructive commercial trade.

There is no doubt that the role of Customs will change in the next 50 years, but cooperation remains crucial. The important lesson I've learned over the years is that cooperation, information sharing and knowledge remain key factors for effective strategic trade controls. ■

# The role of the EUIPO in IPR protection and cooperation with the Customs authorities of the European Union

Christian Archambeau

*Mr Christian Archambeau, a Belgian national, was appointed as Executive Director of the European Union Intellectual Property Office by the Council of the European Union and took office on 1 October 2018. He has been part of the EUIPO's top management team since 1 December 2010, as Deputy Executive Director. Christian is a graduate in civil engineering from Université libre de Bruxelles. He has worked in construction in the Middle East before moving to the European Space Agency in facility management. Prior to joining the EUIPO (formerly known as OHIM), he held a number of senior positions in the European Patent Office in Infrastructure, Administration and Human Resources.*

There is a long-standing tradition connecting the wellbeing and security of EU citizens with the work of the Customs authorities, both at Europe's external borders and inland. This ongoing process, in which the people of Europe have come to enjoy the creation of a common space of freedom, security and economic welfare, was kicked off by the Customs Union and has been 50 years in the making.

In the European Union, Customs authorities have been assigned new tasks to achieve some of the treaties' most treasured objectives, including that of contributing to build and safeguard a balanced and competitive market.

Ensuring market competitiveness and guaranteeing transparent trade for consumers also entails protecting and supporting creativity for those who produce value-added goods and services. All intellectual property rights (IPR), including those regarding trademarks, designs and patents, are key assets in the Union's economy and an important factor for growth and development. The value of IPR is growing constantly in Europe, as well as its contribution to the economy and employment.

The European Union Intellectual Property Office (EUIPO), through its European Observatory on Infringements of Intellectual Property Rights (Observatory), supports businesses and law enforcement authorities in combating counterfeiting, starting from the collection and analysis of evidence-based data on the value of IPR and the economic impact of infringement.

According to recent studies by the Observatory, IPR-intensive industry contributes 42% of the EU's GDP and 28% of employment. In general terms, innovation triggers productivity and efficiency in enterprises whose products are protected as unique, and they benefit from a competitive advantage in both national and foreign markets. IPR also contributes to general welfare, insofar as employee remuneration at IPR-intensive companies is 29% higher on average.

Unfortunately, the global marketplace provides tremendous opportunities for counterfeiters. Although domestic production of illegal goods is an emerging phenomenon, the manufacture and sale of fakes is still the speciality of regions outside Europe, namely Far Eastern Asia, Eurasian countries, the Middle East and non-EU Balkan countries.

The Observatory, in cooperation with partner institutions, has analysed the economic consequences of IPR infringement on general trade and per key product sector. The picture that emerged is alarming. Counterfeit and pirated products represent up to 5% of all EU imports, worth up to Euro 85 billion. Every year, the presence of fake goods in the EU marketplace costs Euro 59 billion and 745,000 jobs (lost) in key sectors.

Counterfeiting also has a social impact, which includes government revenue loss (estimated at Euro 14.6 billion per year), consumer safety (fake products are in most cases manufactured at a very low cost and far below recognised quality and safety standards) and citizens' security, as trade in fakes attracts trans-border organised criminal organisations.

Understanding the flow of fakes in international trade is important. The Observatory also sheds light on the routes followed by counterfeiters and focuses on 'producer economies' and transit hubs.

The Observatory provides support to Customs authorities and other enforcers on the one hand, and brand owners on the other. It is, in fact, a network which brings together all the stakeholders involved in the protection of IPR (industry, enforcers and public agencies), offering fora for discussion and sharing best practices, as well as technical tools specifically designed to provide concrete assistance for enforcement.

Actions against the import of counterfeits are harmonised, with all Customs authorities operating under a single legal and administrative procedure, which allows all businesses



an equivalent level of potential protection across the EU. The system has proven to be efficient, with more than 41 million articles seized at EU borders in 2016: toys, medicines, shoes, clothing and electronics head up the list. Customs authorities act upon a request for protection submitted by the legitimate owner of a trademark or other IPR. This application provides Customs authorities with all they need to know to assess the risk of possible incoming shipments of fakes, to contact the trademark's proprietor and, if necessary, to block and destroy the products.

In these actions, Customs authorities can count on databases developed by the EUIPO for effective circulation of structured information. The Enforcement Database (EDB), the EUIPO's flagship tool, is a free and secure platform where brand owners and enforcers can share key information for the detection of fakes and make immediate contact in suspect cases. Data is also provided by the brand owner to complement risk analysis, such as their legal supply chain, transport routes and regular logistics, while alerts can be exchanged in case of suspicious incoming shipments or known new trends. Lastly, the database can send Customs authorities an electronic application for action - a paperless and fast procedure.

Through the European Commission, the European Union oversees the actions of Customs authorities against counterfeiting, establishing legal provisions and fine-tuning enforcement policies in collaboration with the Member States. The Commission has devised and periodically renews a specific action plan for Customs authorities on IPR, where targets are identified and specific initiatives undertaken. The EUIPO and the Observatory are also involved in joint activities under the plan, enhancing the exchange of information, use of tools and data analysis on seizures.

Both the Commission, through its Antifraud Office, and the Member States, under the Council of the EU, have launched large-scale targeted Joint Customs Operations on IPR. Examples include Operation 'Ermis' in 2013, leading to the seizure of 70,000 units of fake products, Operation 'Bitterpills' in 2014, on tobacco and medicines in West Balkan states, and, more recently, Operation 'Wafers', on fake semiconductors in small consignments, and Operation 'Postbox', on the online trade of fake products and illicit goods. These are planned and structured operations, where a sensitive sector is selected based on threat assessment and statistics, with EU Customs authorities concentrating their actions for a limited period of time. The EUIPO recently started supporting joint operations at EU level with tools and specialised training, in an effort to provide a more concrete contribution to enforcement.

Despite commitments by EU Customs authorities and the support of the EUIPO and other agencies, the fight against fake goods still faces several obstacles, not least a persistent lack of resources, limiting the amount of checks that can be carried out on incoming goods. This is a serious problem, worsened by booming online trade and uncontrolled illegal

marketplaces selling fake products which are then shipped in millions of small packages all over the world. To face the threat, Customs authorities' controls must be made more effective through robust risk analysis based on shared information, profiles and criteria.

From a political perspective, IPR crime must recover its place as a priority in law enforcement policies at EU level. Other forms of crime such as terrorism, drugs and human trafficking, as well as money laundering, have gained the attention of policy makers. IP crime is a global issue, and there is now strong evidence of its close links with other serious crimes.

The EUIPO and the Observatory's network are strongly committed towards ensuring closer coordination between Customs authorities and other EU law enforcement agencies, connecting them with industry and policy makers to fight against fakes and to reinforce the Customs Union, which has served in many ways to secure markets and competition, as well as protect its citizens. ■

# Customs as the Gatekeeper of the Union's External Borders to Guarantee Safety and Security

Catherine De Bolle

*Ms. Catherine De Bolle is Europol's Executive Director. She has held the post since May 2018. From 2012, she served as General Commissioner of the Belgian Federal Police. Prior to her appointment as Belgian Police Commissioner, Catherine was Chief of Police in Ninove. In January 2015 she has received the title of Public Manager of the year and since November 2015 she is a member of the Executive Committee of Interpol. Catherine studied law at Ghent University and then went on to graduate from the Royal Gendarmerie Academy in Belgium.*

The value and necessity of offering the citizens of the EU Member States a safe and secure environment is becoming increasingly clear to EU political leaders, who have converted this conclusion already into considerable action.

A High-Level Expert Group (HLEG) has been established to propose measures to improve interoperability. The recommendations the Group produced have subsequently been converted into the proposal for an Interoperability Regulation, accompanied by several other related legislative measures, such as recast proposals for the Schengen Information System (SIS) and new legal instruments, like the Entry-Exit System (EES) and the European Travel Information and Authorisation System (ETIAS). The EU Directive on the processing of Passenger Name Records (PNR) has also been given the green light and is in the process of being implemented by most Member States.

These measures essentially aim to improve the identification of persons, among others, by means of making better use of biometrics and offering easier access to EU systems that are of relevance to border management. The emphasis has been put on strengthening border management in regard to persons. Yet, another important opportunity that was also touched upon in the context of the HLEG, is to look at improving the use of information on the movement of goods. That is where the relationship with Customs services is particularly essential.

## Combining relevant data sources

The movements of goods that relate to cross-border crime and forms of terrorism do not exist in isolation. Transportation is part of a plan or a scheme. They relate to communication among individuals or companies and possibly also to financial transactions.

While Customs will have possibilities to receive information on goods, means of transport and the persons involved in the transactions and movements, the other ingredients to criminal schemes are less likely to be available to them. However, for other law enforcement services that are responsible for the investigation of cross-border crimes and terrorism, there is the active pursuit of tracing the criminal financial transactions and the communication between suspects, but they often lack access to the logistics involved in the crimes they investigate.

Obviously, combining the two dimensions will offer benefits to the effectiveness of both Customs services and other law enforcement authorities. Finding links between the suspicious movements of persons and goods can serve as a first concrete example of combining relevant data sets or granting mutual access to data.

An important instrument used in the context of border management is the composition of watch lists. Known foreign terrorist fighters and other potentially dangerous persons, for instance, are recorded in SIS and other tools to ensure that their movements trigger alerts and appropriate action can be taken.

In the context of monitoring suspicious cargo, the use of such data on potentially dangerous suspects, including their contact details, could very well be of interest to Customs services. These can check those details against advance cargo information and potentially intercept any shipments and establish where and when possible encounters with such individuals can be expected in relation to the delivery of the goods concerned.

Also in the context of the growing threat of online trade in criminal commodities, including weapons, explosives and precursors, on so-called Dark Markets, it is worth stepping up the sharing of intelligence and information. This can include data on financial transactions, among them the use of cryptocurrencies, the online communication related to the trade and the logistical trails of transmitted parcels and other deliveries. Fighting these modern forms of criminal markets is quite challenging, yet it helps to connect the dots from different angles to get a better picture. The link with Customs is indispensable, as while online identities and crypto-wallets may all be virtual and intangible, the goods that are delivered are the element that connects suspicious trade with physical commodities and a real-world destination.

## Leveraging Customs' experience and expertise

Further to connecting the suspicious flows of persons and goods as mentioned in the previous paragraph, it is worth strengthening the cooperation also at a more tactical and strategic level.

The increasing availability of PNR and other travel-related data enables border guards and other law enforcement services involved to look at suspicious travellers by using targeting rules. Such rules can be based on operational insights derived from previous criminal investigations.

The successful detection of patterns and formulation of targeting rules will, however, not just require the sharing of operational insights and other relevant intelligence, but also benefit from practical experience and training in the application of targeting techniques.

Customs services have built up considerable experience in this domain for the risk management related to, and the screening of, huge quantities of cargo that are shipped every day, year after year. Their experience and expertise could be very welcome to build capacity among border forces, future targeting centres and other law enforcement services involved.

Moreover, there is also, in regard to targeting, a potential benefit in the sharing and exchange of operational insights between Customs and other law enforcement services. This can help all partners get a better and complete overview of the criminal methods, routes and techniques that enable the crime and terrorism-related movements of persons and goods. It might perhaps even prove worth assessing the added value of defining targeting rules that combine elements of the movements of persons with the transportation of cargo.

Europol promotes a multi-agency approach to tackle serious and organised crime and terrorism, serving as a broad law enforcement platform.

Europol has raised awareness on the need to enhance cooperation with Customs authorities by presenting the Strategic Review endorsed by the Management Board in 2015. Europol has also actively participated in a number of events organised by or with Customs authorities, including high-level meetings with Directors General of Customs and the World Customs Organisation, continuously promoting inter-agency cooperation and the services that the organisation delivers to all competent authorities, including Customs.

In practice, the increased cooperation and exchange of operational and strategic information could be incentivised by the further expansion of the presence of Customs

administrations represented in the Liaison Bureau and Europol National Unit. This could also be incentivised by the further deployment of SIENA access on Member States' territory, in respect of legal obligation related to the exchange of risk management between Member States as established by the UCC<sup>1</sup>.

### **Application in practice**

The reported developments in the strengthening of interoperability have placed Europol further to the forefront of border management. As an EU hub for the sharing and exchange of information related to cross-border organised crime and terrorism, it is ideally placed to contribute to better border management by the collective efforts of Member States, EU Agencies and other partners. That includes its possibilities of interconnecting the traveller aspect to that of the suspicious movements of goods and offering an integrated cooperation framework for Customs services, border guards, criminal investigation departments and many other relevant competent authorities.

With particular reference to the possibilities for closer cooperation with Customs services, Europol is actively developing its ideas, some of which were also outlined in previous paragraphs. The Agency will continue to proactively seek the communication and engagement of national Customs services of the Member States, as well as the Commission services such as TAXUD and OLAF and relevant services of non-EU countries, with a view to testing these and hopefully jointly turning them into reality in the exciting years ahead. ■

<sup>1</sup> Regulation. (EU) No. 952/2013

# Customs and Border Guards – A partnership for the safety and security of EU’s external borders

Fabrice Leggeri

*Mr. Fabrice Leggeri has served as the Executive Director of Frontex since January 2015. During his term, the agency secured a new mandate with additional powers and responsibilities, becoming the European Border and Coast Guard Agency. During Mr. Leggeri’s time in office, Frontex has seen a significant increase in its budget and the number of employees, which nearly doubled to well above 500. The agency has become a cornerstone of the EU’s area of freedom, security and justice and has taken on new tasks to combat cross-border crime.*

The area of freedom, security and justice is a cornerstone of the European Union. In recent years, new and complex threats to the internal security of the Union have emerged, becoming increasingly cross-border and cross-sectoral, highlighting the need for closer cooperation at all levels. Frontex, the European Border and Coast Guard Agency, supports EU Member States and Schengen Associated Countries in the management of EU’s external borders and addressing potential threats at the external borders related to serious crimes with a cross-border dimension, thereby contributing to a high level of internal security within the Union.

The agency is a centre of excellence for border control activities at the EU’s external borders, sharing intelligence and expertise with all EU Member States, as well as neighbouring non-EU countries affected by migratory challenges and cross-border crime. Among its many tasks, the agency coordinates the deployment of border and coast guard officers, along with boats, airplanes, patrol cars and other equipment, to EU countries facing exceptional pressure at their external borders.

In this light, a consolidated and comprehensive concept of cooperation with Customs is required to fulfil the expectation of political leaders and citizens of the European Union regarding the protection of the external borders and the provision of stability and internal security.



In October 2016, Frontex was reinforced and received an expanded mandate, becoming the European Border and Coast Guard Agency. The regulation not only strengthened the agency's role in managing the EU's external borders, but it also offered a number of opportunities to deepen the cooperation between border guard and Customs. It provided the European Border and Coast Guard Agency with a consolidated mandate in the area of border and migration management, assigning the implementation of a European integrated border management as a shared responsibility of the agency and of the national authorities of the Member States responsible for border management.

One of its core components should be inter-agency cooperation between border guards and Customs. To better cope with the current challenges to the EU's security, the time has come for the two to work together in a systematic way to enhance the Union's internal security.

This partnership is central in fighting illegal activities while facilitating legitimate trade and safeguarding the free movement of people and goods. Customs authorities play a crucial role in maintaining the Union's internal security through the detection and prevention of crime and terrorist threats involving the movement of goods across external borders.

Frontex already cooperates with Customs in the fields of coast guard functions, combatting cross-border crime in joint operational and training activities.

There are joint controls at the borders to facilitate cross-border cooperation, sharing of information and intelligence for more efficient risk analysis, as well as coordination of inspections and controls procedures.

### **Cooperation in coast guard functions**

Frontex supports the cooperation of law enforcement authorities, EU agencies and Customs at maritime borders, which is closely related to Customs control and general law enforcement at maritime borders. Boats and planes deployed in its operations also collect and share information relevant to fisheries control, detection of pollution and compliance with maritime regulations.

In multi-purpose operations, vessels and aircraft deployed by Frontex cooperate with the European Maritime Safety Agency (EMSA) to spot sea pollution and other possible violations of maritime conventions. Alongside the European Fisheries Control Agency (EFCA), Frontex collects and shares information to be used to detect illegal fishing.

## Operations

The agency is also engaged in tackling serious and organised crime under the umbrella of the European Multidisciplinary Platform against Criminal Threats (EMPACT) as part of the EU Policy Cycle agreed by the Council. It brings together law enforcement authorities of EU Member States, European agencies and international organisations to jointly strengthen Europe's borders and internal security. Customs authorities are increasingly integrated into the various operational actions within EMPACT.

In June 2018, Frontex led an international action against serious and organised cross-border crime at EU's borders with Western Balkan countries, Southeast Europe and selected border-crossing points at the Eastern land border. For the first time, such action was co-led by Customs authorities. In less than two weeks, the joint efforts led to the arrests of 23 migrant smugglers, recovery of 31 stolen cars, seizure of 330,000 illegal cigarettes, seizure of 0.5 tonnes of drugs and the detection of more than 60 cases of document fraud. In addition, nearly 12 tonnes of tobacco were seized thanks to the support of the Slovak Customs authorities. Frontex officers also detected more than 2,160 irregular migrants and 580 persons staying in the European Union illegally.

The operation, known as Joint Action Day 'Danube 3', targeted cross-border crime especially related to migrant smuggling, excise goods trafficking and document fraud, but also stolen cars, drugs and counterfeit goods smuggling. The action was co-led by Bulgaria and Lithuania with the overall objective to dismantle the criminal networks behind cross-border crime and to bridge border police, criminal police and Customs authorities with the Coordination Centre set up in Sofia where officers from various authorities and Member States were deployed to facilitate the exchange of intelligence.

Such operational activities enhance the use of intelligence in operations and improve cooperation among different national authorities involved in the fight against cross-border crime. Next year, Frontex will coordinate at least three such Action Days, which will possibly involve cooperation with Customs.

The agency is also supporting Joint Police Customs Operations (JPCOs), as mandated by the Customs Cooperation Working Party, such as operation 'Magnum II' organised by Estonian Customs at the EU's Eastern external border aiming at combatting illegal cigarette smuggling.

## Training

Frontex develops common training standards for border authorities, to harmonise border and coast guard education in EU and Schengen Associated Countries. During such

training, border and coast guard officers also learn how to cooperate with other services, to make the joint operations even more effective.

An example of such an activity is the joint training organised by Frontex and the Customs Eastern and South-Eastern Land Border Expert Team (CELBET). It aims at improving the cooperation between Customs and border guard authorities at border crossing points at EU's external land borders. Under EMPACT, Frontex also organised a special awareness session on the appliance of the agency's resources (Eurosur Fusion Services) for Customs and other authorities involved in combatting excise fraud, to strengthen the response to the smuggling of tobacco, fuel and alcohol by sea.

Another example of cooperation worth noting is the Eastern Partnership (EaP) Integrated Border Management Capacity Building Project. The overall objective of the project, particularly targeting border guard, police and Customs authorities, is to facilitate the movement of persons and goods in the region, while maintaining secure borders through strong interagency and international cooperation. It is implemented by Frontex in cooperation with the World Customs Organisation (WCO) and other partners and supports the implementation of Integrated Border Management across the six Eastern Partnership countries (Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine) in line with European best practices.

### **Policies and future developments**

Operational cooperation is underpinned by policies at EU level that increasingly recognise the importance of cooperation between Customs and border guards.

One platform for such discussions is the Council's Customs Cooperation Working Party. Frontex's representatives regularly attend these discussions in order to outline the agency's perspective and plan joint activities of Customs and border guard authorities. This has led to a joint pilot project between the Customs Cooperation Working Party, Frontex, Europol, Spain, Portugal, the Netherlands and several other EU Member States, called operation 'Columbus', and linked to EMPACT Firearms Priority. The operation aims to improve the detection of vessels that might be involved in cross-border crime, particularly firearms smuggling.

It is worth mentioning that this autumn, Customs including CELBET, will support the Frontex-led Joint Action Day 'Mobile' focused on detecting stolen vehicles, document fraud and other cross-border crime.

These are only some examples of how Customs and border guards can work together. We are currently looking into further steps in this direction, such as the involvement of Customs officers in Frontex joint operations.

The key to an efficient integrated border management, ensuring quick and easy legitimate transport of people and goods, at the same time counteracting illegal cross-border activities, lies in national and international cooperation. Frontex is ready to facilitate cooperation between Customs and border guards in the border management remit. I am convinced that developing joint training for border guards and Customs in areas of common interest, regular and structured exchange of risk analysis, as well as sharing experiences and best practices, is a good basis for a well-structured collaboration between border guard and Customs.

In particular, this cooperation should focus on detecting and counteracting cross-border crime, such as migrant smuggling and trafficking of human beings (THB), trafficking of drugs, firearms and explosives, excise goods as well as addressing terrorism-related threats, to jointly develop a partnership for the safety and security of EU's external borders. ■

# Securing the Supply Chain through Cooperation with the Transportation Sector

Ian Muscat

*Mr. Ian Muscat is the Director responsible for International Affairs and Policy at Malta Customs. He was formerly the Assistant Director Processing Services and Head of the Department's Non-Proliferation Unit. Ian has also worked within the Intelligence Unit, as well as the Department's Enforcement Unit. He was the Head of the Customs Presidency Team for the 2017 Maltese Presidency of the Council of the European Union. Ian holds a Masters Degree in Business Management.*

Mark was over the moon when his Managing Director offered him the post of Regional Logistics Manager at one of VCTS's main transshipment hubs. Mark works for VCTS, a container transportation and shipping company, which saw its business grow tenfold since the early 80s. VCTS has its head office in Vega, an EU Member State. Mark accepted the new post and relocated himself and his family to Alpha, another EU Member State with a very busy container transshipment hub.

A couple of months into the new job, Mark received a notification from the Alpha Customs authority, informing him that the contents of a particular container required a transit authorisation (licence). The contents were 400 bags of sodium cyanide which originated from the Far East and were destined to Central America. Mark was mildly baffled by this notification from Customs. He had never received anything similar when working at his former post in Vega. Given this rather unusual request from Customs, he decided to contact the Customs office covering operations at the port. He was greeted by John, the senior official who had signed the notification to VCTS. John invited Mark for a meeting.

Throughout the ensuing meeting, John explained that sodium cyanide is a controlled dual-use commodity that is normally used in the mining industry, but can also be used in developing lethal gases for chemical warfare. A full list of controlled commodities (more commonly known as strategic goods) can be found in Annex 1 of EU Regulation 428 of 2009, which regulates the export of such commodities. John also highlighted that this is a trade-oriented Regulation. He further explained that, although focusing mainly

on exports, this regulation also regulates the intra-EU movement of the most sensitive commodities under Annex 4 of the same Regulation. Controls are conducted to curb the illicit trafficking of nuclear material and equipment, and to safeguard the security of the supply chain as much as possible. They are usually part of a collective effort to ensure regional and global stability. John also underlined the fact that certain EU Member States and some other third countries extend their strategic trade controls over goods in transit and transshipment. Alpha, as an EU Member State, extends the remit of this Regulation through national legislation.

Mark was somewhat puzzled by his conversation with John. This was the first time that he had encountered this type of legislation and he found it strange that he needed to apply with Alpha's Trade Authority for a transit licence for the cargo in question on behalf of the original exporter. As a matter of fact, he was slightly irritated by the situation as, throughout his studies in Economics and Management, he had always understood that, in order to prosper, modern economies relied heavily on the facilitation of trade and the expediting of passenger flows. In order to flourish, the trading environment needed to be secure. He told John that he saw this unexpected development as a barrier to legitimate trade. Mark understood that the developments in trade and the trade environment associated with globalisation and various free-trade agreements have also provided opportunities for unscrupulous traders and would-be proliferators to circumvent international controls, however, he couldn't really comprehend why this was not applied in a uniform way (at least) across all the EU Member States.

In his reaction, John explained that developments that could be exploited by proliferators included:

- (a) the increase in the number and quality of international suppliers of dual-use goods;
- (b) the increase in consolidation and competition in the arms industry;
- (c) the generation of armament technologies by civilian research sectors;
- (d) the ease of transfer of intangible technology;
- (e) the acceleration in recent years of the pace of technological advances; and
- (f) the availability of sophisticated technology that is not subject to any control regime.

John added that discussions on strategic trade controls are ongoing on the International scene as successful counter-proliferation efforts depend on a range of commitments at the international, regional and national levels. A key component of the efforts to prevent the supply of materials and technology for the development of weapons of mass destruction and their delivery systems is an effective export control enforcement regime. These efforts present a challenge for both Customs agencies and legitimate traders worldwide. In addition, many authorities are trying to address proliferation-related issues in parallel with a programme of radical internal changes.

Mark listened attentively and decided not to interrupt as he noticed that John was rather passionate and enthusiastic about strategic trade controls, when the latter went on to explain that it is worth noting that those who seek to proliferate weapons of mass destruction are constantly improvising new methods to evade export control regulations and processes. As a result, export controls of strategic goods are continually revised in order to maintain their efficacy vis-a-vis proliferators' strategies. These developments in the international situation, the continuing changes in the worldwide business environment and to states' related obligations and commitments within it, have radically changed the frame of reference of Customs officials. While revenue collection and safeguarding remain the main pillars of many border control agencies, Customs work must be seen from a wider perspective. Customs agencies are part of a global network, working in tandem with other law enforcement and government agencies to ensure the security and safety of all. Thus, their actions may affect countries that are not necessarily in their immediate neighbourhood.

The potential intervening role of Customs authorities in trade flows lies at the heart of the international supply chain. Customs intervention makes a unique and effective contribution to creating a secure trade environment by preventing the proliferation of weapons of mass destruction or their components, and detecting any violations of rules, regulations and sanctions. While attempting to prevent illicit activity, Customs authorities also conduct investigations for possible prosecutions. They cannot succeed alone. Cooperation with other relevant stakeholders is vital. Potential partners in the counter-proliferation network include licensing authorities, foreign Customs authorities, other law enforcement agencies, other Ministries, technical experts and industry. Proliferation and sanctions circumvention cases tend to be complicated, thus rendering such cooperation crucial.

John further highlighted that Customs authorities must, as much as possible, balance their responsibility to facilitate legitimate trade against a host of challenging factors. For example, Customs authorities must also deal with regular reductions in their human resources, and while it would be desirable to check each document and consignment, it is acknowledged that this is not feasible. Customs authorities must therefore concentrate their human resources and equipment on the areas of highest risk. However, the overriding challenge remains to detect and intercept the one consignment that really matters. In such a scenario, effectiveness depends on intelligence and the accuracy of the information available.

The enforcement of strategic trade controls at the border is carried out to ensure that borders are not being abused by proliferators and that prohibited goods are not being shipped to sanctioned countries, companies and individuals. Enforcing strategic trade controls at the border is complementary to and an extension of the export licensing



process. While the licensing process is usually based on documentation and research, the border control aspect is more operational and can support the licensing process through the physical verification of the goods being transported.

Furthermore, John emphasised that in order to better execute their remit in enforcing strategic trade controls at the borders, and to fulfil the obligations of a robust export control regime, Customs authorities must consider stakeholders within the private sector to be key partners in their work to identify illicit consignments. Such stakeholders include industry in general, trade associations, shipping agents and freight forwarders. It is generally a question of building rapport through information sharing and awareness-raising initiatives. The latter might take the form of industry outreach activities, during which the main provisions of the strategic trade or export control Regulations, including sanctions and restrictive measures, would be explained along with their associated obligations. The objectives would be to develop and improve cooperation and cultivate a better appreciation of each other's obligations towards their respective stakeholders and clients, as well as to create channels of communication and establish working practices and procedures. The overriding aim would be to ensure compliance as much as possible in a win-win working relationship. In actual fact, with his detailed explanation on how strategic trade controls work, John took the opportunity of this meeting to transform it into an outreach activity with a stakeholder (i.e. Mark on behalf of VCTS)

Mark listened attentively to John's explanation on enforcement of strategic trade controls, both for export and in transshipment. Sipping the coffee offered by John, he felt compelled to ask, "Why don't Customs authorities within the European Union (EU) embark on a process to ensure equivalence of results of controls for all their operations? This would facilitate stakeholders' approach when dealing with all aspects related to Customs authorities, at least at EU level!"

John replied that this year marked the 50<sup>th</sup> Anniversary of the European Customs Union. The Customs Union had come a long way since its inception and one cannot but recognise its important contribution towards trade facilitation across the EU, the fostering of internal trade, as well as ensuring security and safety primarily for its citizens. John admitted that even though much had been achieved in the past 50 years, more had to be done in the future. The area of strategic trade controls was possibly one of them.

Mark smirked and spontaneously urged John, as a senior Customs official, to try to contribute something in this regard by way of a communication or publication commemorating this event.

John paused, contemplating Mark's suggestion. He replied that he would think it over and give it due consideration as he reckoned that it was a truly good idea! ■



# Customs and the law enforcement community - an ever closer Union

Raoul Ueberecken

*Mr. Raoul Ueberecken is Director for Home Affairs at the General Secretariat of the Council of the EU. After graduating in law and in political studies, he joined the Luxembourg Ministry of Justice where he was in charge of European affairs. From 2001 to 2005, and from 2006 to 2016, Raoul was posted to the Luxembourg Permanent Representation to the EU as Justice and Home Affairs counsellor and later head of the JHA Team. In 2005-2006, he served as adviser for European affairs to the Luxembourg Minister of Justice and from 2005 to 2009 also as his country's representative on the Management Board of the European Border and Coast Guard Agency (Frontex). In 2014, Raoul Ueberecken briefly joined the European Commission as Deputy Head of Cabinet to the Commissioner for Justice, Fundamental Rights and Citizenship.*

One of the objectives of the European Union (EU) is to offer its citizens an area of freedom, security and justice. In recent years, new and complex threats to the internal security of the EU have emerged, becoming increasingly cross-border and cross-sectoral in nature, and highlighting the need for further synergies and closer cooperation between different authorities at all levels. Customs play an important role in contributing to internal security and the fight against serious and organised crime.

Where Customs controls are concerned, the common tools and processes of the Customs Union can contribute significantly to the internal security of the EU. As the leading authority for controlling the movement of goods across the external borders, Customs provide very important insights especially into goods-related crime. The potential of border checks on goods and persons can be further maximised as a means of combating terrorism and crime. However, strengthening security through border management and supply chain supervision requires better coordination of the different players at national level, such as Customs, border guards and Police forces, and enhanced coordination at EU level.

For those reasons, the Bulgarian Presidency, during the first semester of 2018, launched a strategic discussion at the Standing Committee on Operational Cooperation on Internal Security (COSI) and identified a number of measures aiming at enhancing the contribution of Customs to a high level of internal security in the EU. The measures were grouped in three categories: institutional cooperation, operational cooperation, as well as exchange of information and interoperability.

### **Institutional cooperation**

Discussions in COSI showed a large agreement by EU Member States and the Commission on the fact that it is urgent for Customs, border guards and Police to work more closely by sharing technical resources, expertise and data in specific situations and under certain conditions. The discussion equally highlighted the added value that Europol and Frontex, within the limits of their respective mandates, could provide to different Customs activities. COSI will continue to be a driving force in encouraging a multi-agency approach to tackle serious and organised crime and terrorism.

This is echoed by Europol which serves as a broad law enforcement platform of which Customs is an integral part. It facilitates the exchange of information and multi-disciplinary, multi-agency joint operations and supports comprehensive cross-cutting initiatives like the EU Policy Cycle/EMPACT. Around half of the Member States already take advantage of the possibility of posting Customs liaison officers in their liaison bureaux at Europol and, in some Member States, the Europol National Units comprise Customs officers. Within the framework of the European Police Chiefs Convention, Europol organises an annual meeting of Member States' Customs Directors General, having held a first joint session in September 2018

The cooperation of Customs as authority with law enforcement competences with Europol is of great importance given the role, tasks and technical, human and financial means available at Europol to fight organised crime.

Regulation 2016/1624 provides the European Border and Coast Guard with a consolidated mandate in the area of border and migration management assigning the implementation of a European integrated border management (EU IBM) as a shared responsibility of the Agency and of the national authorities of the Member States responsible for border management. The need to engage in cooperation with Customs in this context is specifically outlined.

Under the European Union Agency for Law Enforcement Training (CEPOL) Regulation, Customs officers are part of CEPOL's target group. There is a growing training offer by CEPOL for Customs authorities, as well as an increase in terms of participation of Customs officers in CEPOL's activities.

As regards financial support, it is to be noted that the Commission, in the context of the Multi-Annual Financial Framework for the period 2021-2027, proposed an instrument for financial support for Customs control equipment, as part of the Integrated Border Management Fund (IBMF), together with an instrument for financial support for border management and visa.

### **Operational cooperation**

At EU level, a major development in the last few years has been the progressive involvement of the Customs authorities in the different activities which take place under the EU Policy Cycle to combat organised and serious international crime.

It is essential to continue the efforts to involve Customs authorities in the EU Policy Cycle/EMPACT and avoid possible overlaps and duplication. For this, Customs authorities need to be consulted in time at national level, from the start of the process when the European Union Serious and Organised Crime Threat Assessment (EU SOCTA) is prepared by Europol with the assistance of national authorities. Another key question is to make funds available so that Customs authorities can attend all relevant preparatory meetings and participate in the activities organised. It will be important to address this in the negotiations on the future Internal Security Fund.

The participation of the Customs authorities has proved to be very useful in certain operational activities, such as drugs trafficking, or when bringing on board Customs authorities' expertise regarding excise fraud. In 2018, for instance, two Joint Customs and Police Operations regarding the trafficking of firearms (JCPOs ARMSTRONG IV and JCPO COLUMBUS [pilot project]) proved to be successful thanks to a mandatory intelligence component, with intelligence provided by Customs, border guards and Police in the planning and execution phases which led to higher-quality of the risk analysis and better operational results.

A strong cooperation of Customs with the European Commission (TAXUD, OLAF), Europol, Frontex and Police is a key factor to ensure the successful implementation of the current 9th Action Plan of the Council's Customs Cooperation Working Party (CCWP) for the period 2018-2019. The CCWP Action Plan identifies seven specific actions: "Fight against excise fraud", "Smuggling of chemicals and precursors for explosives", "Customs against internet crime", "Fight against illicit cash movements", "Fight against IPR infringements", "Central coordination units" and "Better integration of Customs in EU SOCTA".

A number of activities under the 9th Action Plan relate to operational actions under the EU Policy Cycle/EMPACT priorities. These links are continuously identified and



coordinated to strengthen synergies between the two initiatives and avoid overlapping and duplication of efforts. Furthermore, to maximise efficiency, it was decided to integrate as much as possible into the EU Policy Cycle some priority actions relating to excise fraud (alcohol, cigarette smuggling, misuse of Customs procedures), the smuggling of firearms and accessories, drug smuggling and environmental crime.

Another means of cooperation is the setting up of Police-Customs Cooperation Centres (PCCCs). There are currently 59 PCCCs. The centres are located at the external border or in inner border regions. However, the composition of PCCCs varies greatly from one centre to another as only around half of them include Customs authorities and only nine of them are using the Secure Information Exchange Network Application (SIENA) to exchange information with Europol.

### **Exchange of information and interoperability**

One of the recurrent problems for the exchange of information between Customs and other law enforcement authorities is the lack of access for specific purposes to each other's relevant IT systems.

In particular, at European level, less than half of the Customs administrations in the Member States are directly connected to Europol's SIENA. Access to SIENA is crucial as it constitutes the most widely used secure platform for sharing information on operations and cases and all documents related to them, as well as classified documentation and reports.

Customs authorities in Member States may, under certain conditions, have access to different IT systems and data in the area of Justice and Home Affairs, such as Schengen Information System (SIS), Visa Information System (VIS), intranet False and Authentic Documents Online (iFADO) and Europol data. Access to the relevant data and use of these databases by Customs authorities varies from one Member State to another, and very often depends on the competences of the respective Customs authority. Access can also be hindered for technical or financial reasons.

In its conclusions adopted in June 2017, the Council recalled that interoperability of EU information systems is a priority at the highest political level. The Council also stated that the increased sharing of information and the implementation of interoperability solutions will require technical and human resources, as well as financial means at the EU level and within Member States. The Council invited the Commission to 'further explore the technical, operational and legal aspects of interoperability of the security and border management systems with Customs systems' and to present its findings by the end of 2018.

'Breaking the silos' are fashionable words in the Brussels bubble and beyond. When working to provide the best possible security, those are more than words - they are a necessity and, thankfully, an ever increasing reality. Be it on institutional cooperation, on operational cooperation or on information exchange, we are only at the beginning of a process aimed at bringing Customs closer to other parts of the law enforcement community. This will need determination and open minds. ■







# 4

## Exploiting Technology

# Union of Customs Now. Union's Customs in Future? A true union

Dmitri Jegorov

*Mr. Dmitri Jegorov is the undersecretary for Tax and Customs Policy at the Estonian Finance Ministry. He chaired the EU Council high-level working parties on Tax and on Customs during Estonia's presidency in the 2nd semester of 2017. Previously, for nearly a decade, he served at the Tax and Customs board occupying positions from division chief to deputy DG and leading the work on both Tax and Customs administration issues.*

As we celebrate the 50<sup>th</sup> Anniversary of Europe's Customs Union, it is easy to confirm that this union is a true success story from many angles. But just as with other walks of life, and because neither economic nor technological progress will stop, we need to move forward with the way we provide Customs services in our European Union (EU). We need to strive to offer better and more efficient service to our businesses and citizens.

One particular question that comes to mind today as we look at the state of the Customs Union, is that of semantics, which we attach to this very concept, the Customs Union. The manner in which our Customs operate nowadays deserves to be labelled as a union of Customs. This is a more accurate depiction of the current state of affairs, because due to the divided competences' setup we have in the EU, it is the 28 Customs authorities that are responsible for day-to-day implementation of the Union's Customs policy. But perhaps it is high time to discuss if we need to start a transition from Union of Customs to Union's Customs.

There are many areas, some more and some less political, where a deeper integration within the EU is often debated. In all of these, we as public officials have to set our focus first and foremost on the needs and wants of our citizens and businesses and not on our own preferred *modi operandi*. In the area of Customs, it would be hard, if not impossible, to find a nation that would value anything other than efficient Customs processes, guaranteed safety and security, the least possible intrusion in business processes, and seamless cross-border operations. It is for this reason that I believe we have immense opportunities for a much deeper Customs integration in the EU. And since the centralised

decision-making process is already up and running, the next successful steps will lie in the area of technology and technology-based operations.

### **A paradox**

It is an integral part of our Customs success story that officials and policymakers from 28 Member States come together in Brussels to design a single set of rules applicable across the entire EU. In this respect, the Customs Union sets an example for the whole world and even exerts significant influence on international standards. But it is somewhat paradoxical that when we are done for the day in Brussels, we take this one set of rules with us to our capitals and start producing software for the paperless Customs we and all our customers value. For every component under national competence, we do this 28 times, basing it on the same set of rules, which means we deliver 28 separate software packages designed to perform the same function. Not only that, but we also try to connect and integrate these 28 packages with one another.

### **Is it a problem?**

We may ask if this choice of technique to implement the rules is problematic. All signs so far indicate that it is indeed. During the Estonian Presidency of the Council of the EU, in the second semester of 2017, we tried to evaluate the cost of development of IT systems for all EU Customs authorities and, based on the replies from nearly half of the Member States, the final figure was close to Euro 2 billion. This figure is, of course, debatable and depends on whether our projections and interpolations for the missing data are correct. But what counts is that, in reality, this figure is even larger, because it does not include the costs that businesses incur. And especially when we think of the sums of money that some of the larger operators invest if they are present in every single Member State, then we could surely do better than to ask them to harmonise their one business system with our 28 different Customs systems.

Among other problems, we have different timetables across the countries and, as a consequence, frequent failures to meet agreed implementation deadlines. Some changes take years to introduce and when that finally happens, they may already be outdated. This is what happened with safety and security measures, after eight years elapsed between their adoption and their full implementation. One also wonders if the multiple implementation of the same rules creates loopholes for some dishonest operators and robs the Union and the Member States of the due duty and tax.

There may also be future problems if we continue to operate in the same fashion, because Customs will most probably continue to further integrate their services with other agencies that deal with goods standardisation and movement across the borders. Where

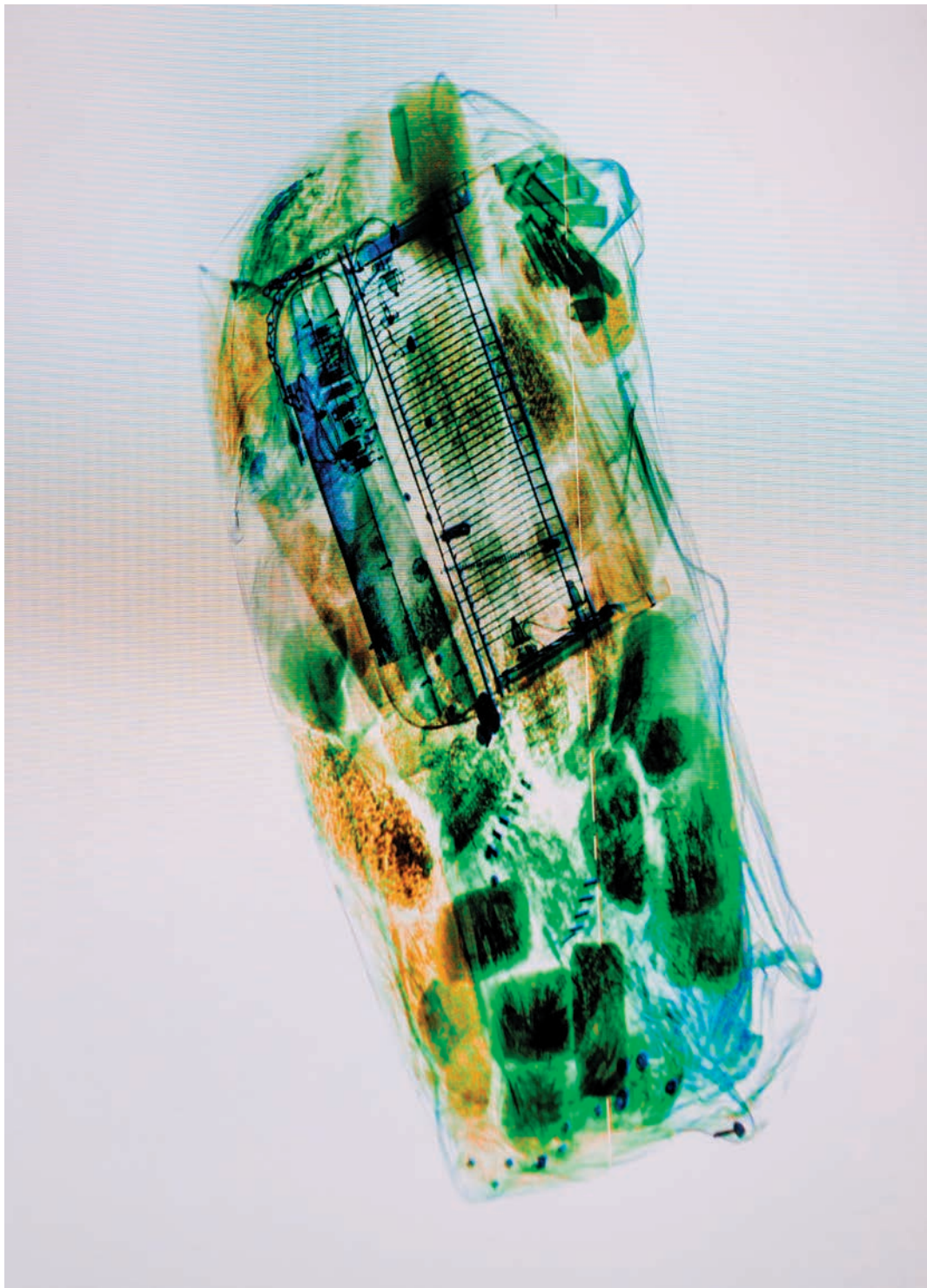
one common system has to be connected to another common system, there needs to be only one link. Where one common system connects with 28 different systems, the number of links is 28. The differences and the costs are tremendous.

## Solutions

When we evaluated the cost of the separate development of Customs IT systems, we also tried to get a glimpse of what could be the financial result of abandoning the practice of 28 versions of the same software and going for centralised IT development. We have to admit that other alternatives are possible too. Our rough estimates for the centralised development based on the most efficient developers among the Member States added up to Euro 1 billion in savings. Of course there may be difficulties with achieving these savings and it may also be complicated to make the relevant financing decisions. But one thing is clear - it does not matter whether the money spent on costly development practices comes from the common or from the national budgets. Both get their money from the same taxpayers and we need to spend it wisely. There will also be savings for the business community which wants things to be delivered on time and when it hears about a digital single market, it truly wants it to be single.

## How and when?

It is very important to underline that no revolution should interfere with the successful implementation of the Union Customs Code (UCC). While some experiments, including those by willing Member States, are already possible in the near future, the bulk of the UCC will be delivered in the old decentralised fashion. However, we all know that IT systems need replacement every so often – new regulations come into force, business practices change, technology offers us new opportunities. We must therefore engage immediately in strategic discussions on the way forward beyond 2025. As leaders and managers, we have heard about, and some of us have experienced, the burden of being preoccupied with day-to-day operations that leave no time for strategy planning. Customs have always been at the forefront of doing things together in the EU and it is high time we affirm our leadership position. For that, we need to set aside the necessary time and to redefine our strategic goals. One of them may well be that our union of many Customs becomes technologically a single union of Customs. ■



# Customs must become sexy... or it will disappear!

Kristian Vanderwaeren

*Mr. Kristian Vanderwaeren studied communication, international/European law, tax law in several universities and also graduated at the College of Europe. He started his career at the Chamber of Commerce, later as a tax director at EY. He joined Wolters Kluwer Belgium as business director of the tax and Accounting unit offering software, content and training products to customers, then switched to the accounting firm Moore Stephen. He joined Belgian Customs authorities as Director General since 2016. He is author of several books and articles on indirect taxation and lecturer at the Tax School in Brussels.*

## **Proud but unknown**

I am proud that this year we celebrate the 50<sup>th</sup> anniversary of the European Customs Union and that I was given the opportunity to write this article with my reflections on Customs' future and the role of new Information and Communications Technologies (ICT).

The European Customs Union is not perfect and it is not always easy to reach a compromise among Member States, but over these years it has brought prosperity, wealth and peace. More and more countries joined the Union, bringing economic growth for all members.

Customs played a crucial role in this growth, primarily by facilitating trade and combating unfair and illegal trade. Disappearance of Customs borders, reductions of Customs duties worldwide, trade facilitation measures and enhanced risk analysis have made it possible for Customs authorities to reduce the number of Customs agents, while maintaining professional services. Customs in the European Union (EU) disappeared from the public scene. In fact, nowadays, there are many people in the EU who don't really understand what Customs stand for.

## **In an uncertain world**

While we celebrate this anniversary, Customs authorities face a world of volatility, uncertainty, increased complexity and ambiguity. Trade volumes continue to rise, business operations are becoming more and more complex, trade war terminology entered the



international scene, new non-trade barriers are imposed, more complex regulations are conveyed on Customs, international terrorism is taking advantage of international trade, smuggling of illegal products is flourishing, narcotic cartels are doing great business, more and more endangered species disappear because of their lucrative trade...

Also, for the first time in history, a member state has decided to leave the EU.

### **Customs (re)discovered**

In this new world scenario, our fellow citizens are (re)discovering Customs authorities as the guardians of our society, when it comes to goods crossing those borders.

Why is this occurring? Probably due to the fact that our fellow citizens are better understanding the importance of border protection. As specified in Article 3 of the Union Customs Code, the role of Customs is crucial for our society by protecting the financial interests of the EU and its Member States, ensuring security and safety of the residents of the Union and its trade, and finally facilitating legitimate trade by offering outstanding services to their clients.

### **At the dawn of a new era**

It is my belief that today, Customs authorities are entering a new era. To meet the challenges we face, Customs authorities must reinvent themselves. Customs authorities will survive, not by doing their job as they have been doing for 50 years, but by showing the vitality, the force and the determination to change and to embrace new technologies.

In order to be future-proof, Customs must be innovative and technology-driven in culture and in strategy, because the wave of the future is Digital.

### **An era of international economic data exchange...**

The new era is a data driven one. The logistics supply chain is not about goods anymore. It is about data! Nowadays, digital information about the goods transported from factory by road and rail to consolidation and distribution centres, onward via road/rail to the port of loading onto the vessel to the transit port towards the port of discharge, to be finally transported to consolidation and distribution centres for the final customer, is available.

New technologies allow the monitoring of the digital information available even with growing trade volumes. Customs authorities should only capture electronic information available on community systems such as those of port and airport authorities.



**...which allows a multi-layered control and facilitation strategy...**

The monitoring of the entire supply chain, goods and movements will allow Customs authorities to deploy an effective multi-layered control and facilitation strategy, based on big data risk analysis management.

Control, intervention and facilitation, driven by digital information and risk management, can take place:

- at the pre-loading stage (immediate threats e.g. explosive devices concealed in cargo, spread of diseases) of the goods;
- during loading of the goods for international shipment (immediate threats not covered in the preceding bullet);
- during transport of the goods in vessels (immediate threats not covered by the previous two bullets;)
- at the first EU entry point (immediate threats not covered in the previous bullets);
- at the place of unloading (risk requiring control at the border e.g. prohibited or dangerous goods and illicit trade); and finally
- at the final destination (for issues not requiring control earlier e.g. product safety rules, financial audits, etc).

The realisation of a minimum intervention strategy in a logistics chain, that is subject to permanent scanning and screening, whereby Customs maximises the facilitation of legal trade by a minimum of delay at intervention/control points, is only possible through the use of advanced, reliable technology and an appropriate inspection strategy.

As far as technology is concerned, this requires a combined use of permanent sensing and monitoring systems, as well as non-intrusive inspection technology integrated into the logistics flow with an automated stop function.

As far as the inspection strategy is concerned, interventions should be risk based, whereby technology generated alarms or visualised anomalies are qualified on the basis of the 100% digitally available relevant information. Furthermore, on-the-spot inspection and coordinated action by all competent inspection authorities should reduce time and costs of the inspection or control.

**...and new technological challenges.**

In order to achieve this strategy, more advanced technology other than the one currently available, is needed.

A full, smart scan, non-intrusive inspection, not slowing down the logistic chain, should be integrated in the logistics flows of goods. Without disturbing the legal flow of goods,

it automatically stops any shipment with anomalies or takes it out of the logistics flow for further inspection. The technology must be able to indicate the precise location of the anomaly and should ideally be 100% reliable in order to avoid unnecessary physical intervention or safety problems and fraud.

High system performance, low inspection throughput times and 100% reliability should be achieved by minimising human intervention and leaving the first analysis to Artificial Intelligence (AI), supported by deep learning and machine learning.

### **What the future might look like...**

A possible example of such an integrated approach is scanning at terminals at the point of arrival of the cargo.

Scanning each consignment will trigger many images. The AI must be able to make use of high-performance imaging technology output in combination with big data-related risk assessment information. In other words, the combination of technology and operational data enables AI to qualify generated alarms and visualised anomalies better and faster than the human brain can. It can thus distinguish the real alarms and anomalies, from the false.

Big data concerns all goods-related information that is built up when the same goods move through the production and logistics chain and is made available to Customs. The goods carry an Automatic Identification System (AIS) that provides direct electronic secure access to the related big data. It also enables a 'track and trace, geo-fencing' application. The goods can only be transported once all the formalities have been completed, no illegal or prohibited goods are present and the shipments are released by bona fide operators.

Furthermore, an automatic build-up of the electronic Customs information through logistic big data platforms and an automatic integration of the e-bookkeeping of economic operators with Customs systems, will no longer require Customs declarations. A Single Window allows operators to lodge information on a permanent basis to all border authorities, no longer requiring export/import authorisations. The specific security need of the data means that in addition to the AI and Internet Of Things (IOT), secure ledger technology, such as Blockchain should be implemented.

Monitoring transport routes and means of transport can be achieved if the latest technologies are made available to Customs. The data from the alarms of this sensing and monitoring technology which trigger an audit trail, is used in the risk assessment and can give rise to a physical check at the next stop. Alternatively, it can lead to an administrative, accounting e-control, e-audit and/or IT audit of the economic operators involved. In all

probability, in the non-distant future, the majority (if not all) of container movements will be 'smart containers', meaning that these will be electronically sealed, thus allowing better, timely and effective monitoring and control by the stakeholders involved.

Moreover, we certainly cannot assume that goods that are the subject of illegal trade and smuggling will always follow the legal flow of goods or normal transport routes. The use of area-wide monitoring technology for covering these risks is required at loading and unloading points. To stop smuggling of illegal goods, Customs should work within an environment with 100% technically secured logistics infrastructure, complemented by a 100% safety screening of the personnel employed in that area.

### **Are Customs technologically focused?**

Are we, as Customs, sufficiently engaged with technological innovations? Do we adequately follow (startup) technological evolutions? Do we pay sufficient attention to prospection and research with the aim to implement technological innovations that improve our operations? Do we take sufficient initiative to guide or direct the development of technological innovations?

### **Are our Customs agents prepared?**

Data analytics will become more important than goods. This requires operational changes in Customs administrations and a shift in skills. From goods-driven skills and interventions to data-driven skills and interventions.

However, are we as Customs sufficiently engaged to embrace this cultural change? Do we adequately monitor the required competency changes of our staff? Do we take sufficient initiative to guide and direct our staff when it comes to technological innovations? Do we align sufficiently with other Customs authorities to acquire the competencies needed for our staff?

### **Are Customs willing to cooperate more?**

Monitoring the supply chain in Europe and beyond requires technological integration of Customs authorities' ICT systems and more cooperation with other border agencies.

The issues we face today will, ultimately, not be of a technological nature. In the end, the real issue we face is how to endorse European and International cooperation among Customs authorities. Both friends and foes of Customs authorities are already internationally organised, but Customs authorities seem to lag behind.

Do we, as Customs, sufficiently align ourselves with each other and with the world around

us? Can't we benefit more from more intensive collaboration than we do today? Do we get better results if we centralise or if we collaborate more intensively?

### **I have a dream...**

To those who say that today's new technologies are similar to the ones we faced in the past, I say: new technologies will be disruptive to Customs administrations unless these are embraced to obtain end-to-end insights in the logistics chain.

To those who say that these technologies will not make Customs capable to stop criminal organisations from entering massive quantities of narcotics into our harbours and into Europe, nor prevent terrorists from importing or exporting arms or precursors for committing brutal acts, I say: Customs authorities will push industry to develop technology to stop those goods. Tracing, tracking and screening of all goods shipped all over the globe will become standard and feasible for Customs authorities.

To those who say that European and International Customs authorities are not capable of taking up the challenges they face in this volatile new world we are living in, I say: do not underestimate the vitality of the European and International Customs family. Either Customs authorities are successful in taking up these challenges by embracing new technologies and cultural change or they will disappear. Either we will live or we will die.

### **Alea iacta est**

Customs authorities are facing the dawn of a new era. They have to take the decision whether to cross the Rubicon or not. Customs authorities will survive by showing the vitality, the force and the determination to change and to embrace new technologies.

Two thousand years ago, the Roman emperor Marcus Aurelius wrote: "What we do now in life, echoes in eternity." This year we celebrate 50 years of the Customs Union. Through this paper I hope to convey to the world the message that the European Customs Union and Customs authorities in general are preparing themselves for the next generation.

I express the hope that the ideas and the reflections of this publication will trigger discussions and debates among Customs administrations in the coming years, that will allow us to say: "What we did after celebrating 50 years of the Customs Union echoed in eternity." ■

# Future technologies

Giovanni Kessler

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The overall aim of an EU Customs Authority is to facilitate legitimate trade, whilst applying the level of controls necessary to guarantee the safety and security of citizens, the protection of public health, the environment, and the financial and economic interests of the relevant Member State, as well as of the EU in general.

Customs authorities retain a constant presence at the external borders and have extensive knowledge of both the goods being moved across the supply chain as well as the economic operators normally involved in transport. This places them among the primary administrations capable of detecting and preventing illicit and dangerous goods from entering and leaving the EU.

In view of the changes in the world scenario throughout the last few years, Customs activities were very strongly oriented towards the global mission of protecting society in general.

The flow of goods crossing borders is on the increase. Whilst concealing methods for dangerous materials and ways to traffic illegal goods are becoming more sophisticated, the detection of such goods should be facilitated by novel technologies and sensing strategies. These should, in turn, be characterised by risk-based protection and non-intrusive security checks that can be implemented without disrupting legitimate business.

Maximising the use of cutting-edge technology and sophisticated equipment is certainly paramount in enhancing effectiveness and efficiency of Customs controls. Such technology helps obtaining the needed balance between the depth and accuracy of inspections with acceptable clearance times.

In this context, a key role is played by inspection processes and procedures, surrounding Information and Communications Technology (ICT) and integration of the information chain.

Deploying appropriate technology solutions designed to meet today's acute threats and challenges is key for Customs, as a first line of defence. At the same time, it is useful to remember that a wide range of technological possibilities exist that enables border officials to bridge the gap between threats and their detection.

However, detection technology in itself should not be regarded as a means to an end in detecting the various categories of contraband or related threats. It is only when such technology is teamed with capable human resources that one can reap its benefits, thus rendering it an effective tool.

The development of modern technologies should primarily focus to address the following areas:

- Techniques for advanced and high speed data analysis;
- Techniques for ensuring cargo and container integrity (e.g. e-seals, Container Security Devices and Smart containers);
- Techniques for supervision and monitoring of container movements (track and trace);
- Non-intrusive inspection (NII) techniques and Radiation/Nuclear detection equipment;
- Monitoring of 'Research and Development' of emerging technologies and innovations to assess the benefits that Customs may reap from their deployment.

The use of modern technology for inspection equipment (NII and radiation equipment) is regarded as necessary for inspecting high risk containers or other cargo swiftly, without disrupting the flow of legitimate trade.

In this regard, state-of-the-art, non-intrusive Inspection (NII) and scanning technology is a critical aspect that Customs should deeply explore. The potential of the available inspection equipment, like X-Ray and Gamma Ray imaging systems, have to be evaluated in order to enhance the efficiency of Customs controls, as both have their strengths and weaknesses.

Scanning/NII equipment can increase the number of consignments which receive Customs attention without causing undue delay, simultaneously aiding the identification of illicit goods. Admittedly, the equipment generally requires a large capital outlay and the process of deploying it, from the original concept to actual operation, is quite laborious. This will eventually have a positive impact on both the control and intelligence sectors. To reap the maximum return on investment, it is necessary to ensure that scanning/NII equipment is used effectively and is fully integrated into the risk management process.

Recently, newer and more advanced technologies have been developed such as the Pulsed Photonuclear Assessment (PPA) Inspection Technology, the Muon Radiography, the Advanced Spectroscopic Portal and the Terahertz Scanning Technology, leading to future trends and evolutions in Customs operations. The above-mentioned technologies can be considered “emerging” technologies and potentially capable of enhancing the current level of NII.

A recent promising innovation is the electronic nose (e-nose) that is able to detect chemicals, different types of drugs/narcotics precursors and explosive substances, even in the presence of other odours commonly perceived as confusing canines. These systems are capable of performing rapid scanning (few seconds) and can also be installed to unattended ground vehicles (UGV), supporting automatic functions of the system without (or with minimum) human remote intervention.

Based on information deriving from scanning and sniffer tools, Automated Target Recognition features through Machine Learning techniques could be used. The objective is to improve scanning image interpretation ability of human operators (Customs officers), reducing examination time while improving the accuracy and effectiveness of the process.

In general, from a Customs perspective, the effective and smart use of available information is very critical for pre-emptive analysis of risks and threats. A modern Customs authority can play a strategic role in the supply chain that interconnects manufactures, distributors, shippers, international buyers etc... Being part of this network, Customs have access to an enormous amount of information, about consignments, their movement (transit or not), destinations, quality and quantities of goods, that allows more focused controls and at the same time smoother transit for legitimate goods.

Automation and integration of existing technologies for the purpose of identifying the largest amount possible of threat materials and ensuring the full supervision of the logistic flow of goods is the objective. This process requires exploiting information obtained through the analysis of cargo flow data available from open source and documentary control, intelligence gathering, risk management, as well as through physical detection or inspection of cargo in means of transport, luggage or carried by individuals.

Benefiting also from the wealth information that interconnected supply chains can provide, an integrated risk analysis approach can contribute to increased effectiveness in the advance identification of potential threats, like suspect fraudulent behaviour or illegal trafficking, vis-a-vis legitimate trade. It can support the strategy for separating compliant and legitimate businesses from potentially non-compliant traders, allowing Customs to better focus their controls on threats and potential risky transactions.



New technologies and the use of Big Data and Artificial Intelligence based systems for the decision-making support process, impact the modernisation of Customs Authorities, through the following improvements:

- New procedures consisting in sensor detection/identification, estimation and classification of situations, in order to support decisions and to undertake the necessary operational and tactical measures and activities;
- New operational and tactical measures as well as actions in Customs practices, in order to increase detection capabilities, efficiency and time reaction, in the fight against organised crime, corruption and illegal traffic;
- Possibility for cooperation among the entities involved in risk management and control activities, with the aim of establishing a unified control, a joint exchange of operational data and information, joint repressive and preventive measures according to a harmonised risk analysis and decisions, and therefore to effectively fight against all forms of cross-border crime and increase the level of security.
- For safety and security surveillance purposes, new technologies and models, according to Internet of Things (IoT), paradigm can also be effective for the supply chain supervision and monitoring, in order to ensure integrity and security of consignments while facilitating movement of traffic. To address these challenges, electronic tracking systems using technologies to monitor vehicles' and goods' movement based on e-seals, GPS to locate the position of trucks, and digital maps to follow truck movements could be used within a comprehensive and integrated approach, with a special focus on Trans-European network surveillance. ■

# The potential of Blockchain technology for the EU Customs Union

Zahouani Saadaoui

*Mr. Zahouani Saadaoui is a European electronic systems management expert, who has worked in the private sector for about a decade as an IT developer and solution architect before joining the European Commission DG TAXUD IT to work as the development manager for the Excise Movement and Control System (EMCS). With his team, he now focuses on the policy and business development of the EU Single Window environment for Customs and on the maintenance of the Multi-Annual Strategic Plan for Customs electronic systems (MASP-C). In that context, he is a member of the TAXUD Blockchain team and is focusing more specifically on Customs use cases.*

The international movement of goods and means of transport involves many actors in the supply chain who must exchange information among each other as well as comply with several pieces of EU legislation from different policy areas enforced at EU borders, including Customs, transport, environmental protection, safety and security. This renders the process of cross-border operations very complex.

Over the last 20 years, digital technologies have reshaped the landscape of global supply chains. While industries are being transformed through new technologies that are revolutionising traditional processes, practice shows that public authorities are also changing the way they provide services by grasping the opportunity arising from new technological developments, in order to contribute to society through modifications to mainstream policies in phase with leading market trends.

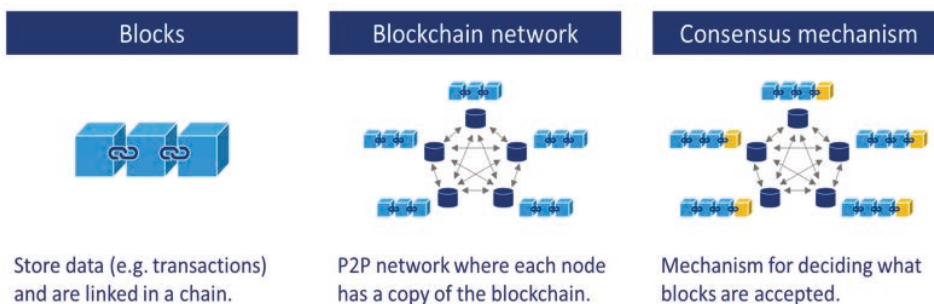
In the field of Customs, the efficiency, reliability and cost-effectiveness of cross-border operations has been closely linked to the ongoing process of digitalisation, which offers a large potential for the improvement of organisational processes in businesses and administrations alike. In this context, several ongoing sectoral initiatives at EU and national level, target the digitalisation of reporting procedures to facilitate information exchange and foster better cooperation among the competent authorities across different sectors. The Blockchain technology is a potential innovative solution that would develop

new paradigms for the supply chain digitalisation and open areas of potential change in the interactions among citizens, economic operators and public authorities.

The Blockchain technology was originally developed to share and store transactions of the cryptocurrency Bitcoin. Since its early beginnings, Blockchain has grown and evolved into a new method of storing data that allows digital information to be distributed but not copied or altered. Currently, the interest in applying this technology in potential use cases across a variety of domains is greatly on the rise. As such, initiatives are emerging to allow parties in supply chains to store and share shipping information using a Blockchain platform.

At its core, the Blockchain is a decentralised, distributed ledger that stores information in blocks which are linked in a secure manner and disseminated through peer to peer technology to all the nodes, each of which contains the full copy of the information. Blockchain transactions are validated through a mechanism known as a consensus protocol, which is used to determine the blocks of data or transactions that will be successively added to the end of the chain as agreed among the concerned stakeholders.

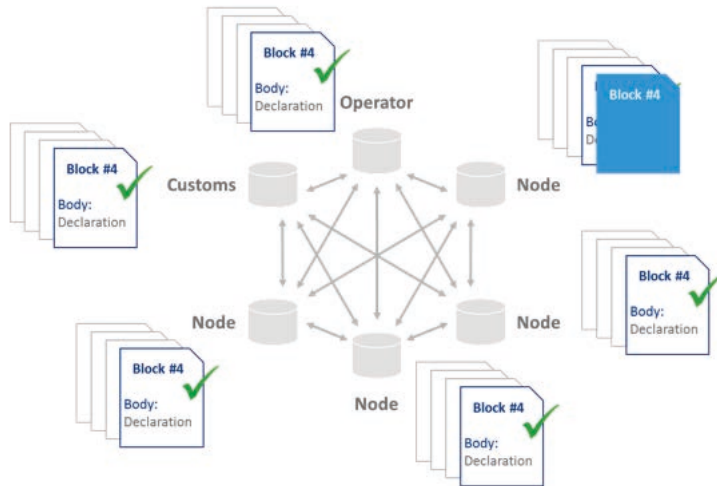
### Blockchain basis: Basic architectural components



Given its role in shaping policies and developing operational systems for the EU Customs Union in collaboration with the Member States, DG TAXUD has embarked on an exploratory activity since early 2017 to study the applicability of the Blockchain technology in both Customs and taxation domains. This is not surprising when looking back on a long tradition of harnessing the potential of new technologies, especially in the context of the 50<sup>th</sup> anniversary of the Customs Union. Over the span of five decades, Customs administrations across the EU have always been frontrunners in the adoption of new technologies to reach their targets for paperless processes. The result of these coordinated efforts was reflected in the successful operation of one of the first major trans-European systems in the area of Customs transit, the New Computerised Transit

System (NCTS). Since its entry into production more than 20 years ago, NCTS has seen a number of further developments in the area of digital Customs with an ambitious plan to achieve the implementation of full ‘digital Customs’ by 2024 under the Union Customs Code legislative framework.

### From messages exchanges to data sharing

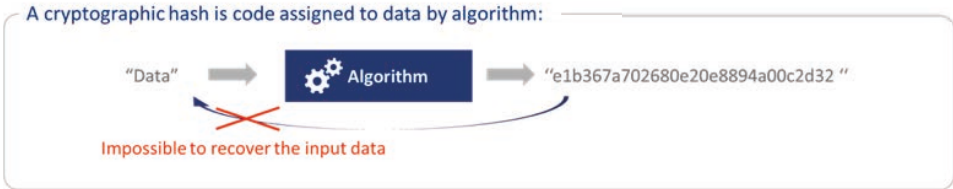


The exploration of Blockchain technology over the last 18 months has demonstrated that this platform has the potential to deliver on the next generation of trans-European systems. A recent proof-of-concept on the Excise Movement and Control System (EMCS), which has a similar architecture as many Customs systems, showed that EMCS can run on a Blockchain platform, thus bringing business benefits with a decrease in functional complexity.

This proof-of-concept demonstrates the potential of the Blockchain technology to change the trans-European systems architecture paradigm from messages exchanges to data sharing accessible in a secure manner on a need-to-know basis.

Another potential use of the technology is the so-called notarisation service where a Blockchain platform could be used as a third-party holder of the truth on the information generated by the stakeholders active in the supply chain. Such an approach entails that only a hash of the actual data is stored on the Blockchain, guaranteeing the true version of a document at any given time. In this context, the hash function is a fundamental part of Blockchain technologies, also known as the digital fingerprint of a document. Obtained by an algorithm which doesn't permit reverse engineering of the original document from the fingerprint, the hash ensures that even a single comma change in a document would result in a totally different fingerprint.

### Blockchain basis: Cryptographic hash



Different data have different hashes..

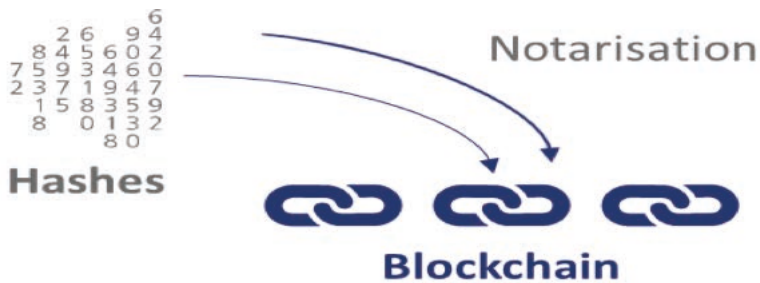
..which can be used to detect changes to data

"Data1" → "8a33f09340f7d52"

"Data2" → "ab2f490bd3849e"



At the heart of the supply chain complexity lies an inherent lack of trust between the supply chain participants (e.g. shipper, freight forwarder, importer, etc...) and public authorities. The Blockchain notarisation service could contribute towards achieving a proper balance of trade facilitation and border security by creating additional trust among the different stakeholders involved. In this context, the notarisation feature has the potential to offer a multitude of applications and DG TAXUD is just setting off on its exploratory journey of discovery. To this end, the EU Customs authorities are assessing the technology with a business mindset. Beyond the hype, studies are ongoing to assess practical cases where this technology can contribute to reduce complexity in the supply chain and improve business to government interactions for the benefit of economic operators, citizens and public authorities.



Given its core properties, the Blockchain technology has the potential to contribute to the following:

- Sharing of registry information (such as economic operators' identification) in a seamless way among Member States' authorities.
- Enabling the handling of supporting documents (e.g. certificates, licences, permits) when no central databases are available or no business case exists for a central database.

In this case, the technology can be a great enabler for the implementation of the EU Single Window environment for Customs and ultimately the establishment of Single Window services for cross-border operations.

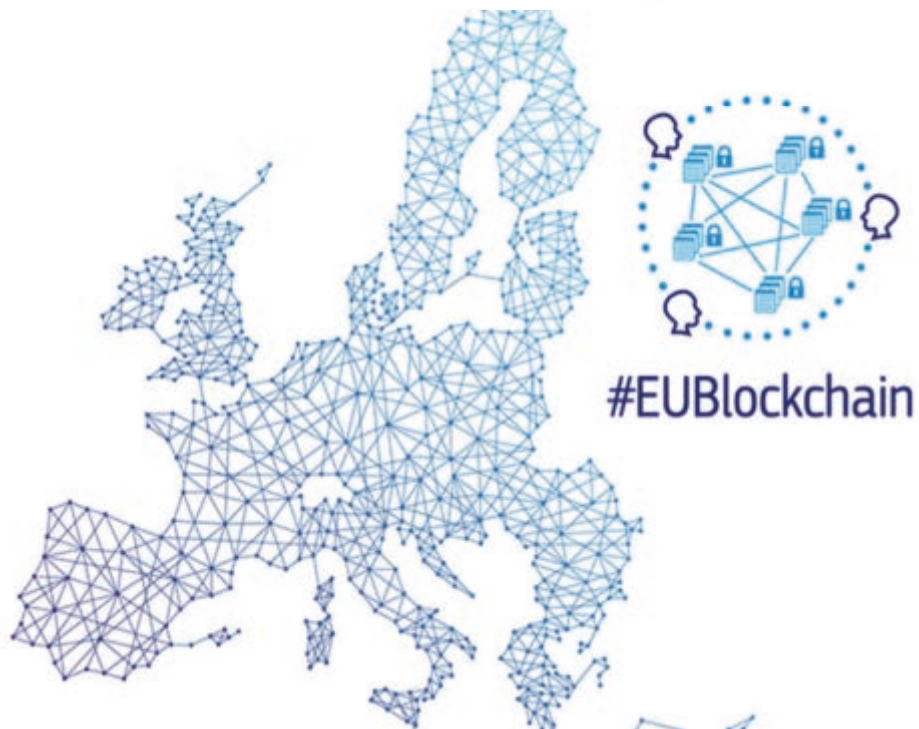
- Supporting the digitisation of paper procedures used internationally, such as the ATA carnets (Temporary Admission Customs procedure) by creating the necessary trust among worldwide stakeholders.
- Supporting the data pipeline concept, as defined in the research project CASSANDRA and its successor CORE, whereby supply chain actors would build the necessary trust to share information or fingerprint data to ensure a smoother flow of information exchange along the supply chain.

In its efforts to explore the Blockchain platform, DG TAXUD is continually collaborating with the EU Member States through various activities. The workshop on Blockchain for Customs and Taxation IT systems jointly organised with the Maltese authorities between the 29 and 30 May 2018, generated many interesting discussions illustrated by proof-of-concepts and presentations of operational services supported by Blockchain in some Member States. Likewise, the EU Member States have embarked on the Blockchain exploration which creates a very promising environment to harness the potential of this technology to further build the EU Customs Union digital agenda. The Member States participating at the Malta workshop assessed the technology's potential as a new tool for advancing the digitisation of the EU Customs Union. As stated by Mr. Paulo José Santos, Director of DG TAXUD's digital pole, "the blockchain is no panacea, no general solution. We should address the challenges that come with it in order to capitalise on its opportunities as they arise in the coming years. The Commission believes we should go through our learning curves together with the Member States."

In that spirit, DG TAXUD is committed to continuing the study activities on the benefits of Blockchain for the EU Customs Union in full partnership with the Member States and the different Commission services in view of fostering the creation of EU Blockchain services.

Beyond the proof-of-concepts achieved so far, 2019 and the years to come will be an opportunity to develop pilot solutions for operational use.

The EU Customs Union will undoubtedly strive to maintain its reputation as a frontrunner in the implementation of innovative technological solutions for the benefit of citizens and trade facilitation in the next 50 years. ■



1 Regulation (EU) No 952/2013 of the European Parliament and of the Council of 09/10/2013 laying down the Union Customs Code, OJ L 269, 10/10/2013, p. 1–101.

2 Detailed plans are documented in the publicly available Multi-Annual Strategic Plan for Customs ([https://ec.europa.eu/taxation\\_Customs/general-information-Customs/electronic-Customs\\_en](https://ec.europa.eu/taxation_Customs/general-information-Customs/electronic-Customs_en))



# The Impact of 'Megatrends' on the next 50 Years of the Customs Union

Michael Praschak

*Mr. Michael Praschak is Senior Advisor for Customs Policy and International Programs. Since 1978 he was working in different areas of Customs Administration. From 1982 onwards he worked in the Federal Ministry of Finance, e.g. building up the Austrian e-Customs System.*

The Customs Union has truly been a success story over the last 50 years. But while conditions were relatively stable during its beginnings, we are now living in an ever faster-changing world and environment. We constantly face new challenges and, as an administration, must react to these changes. In this context, it is of utmost importance to understand that Customs is an integral part of this changing world with more and more dynamic logistics rather than a separate unit.

Traditionally, the fiscal aspect of collecting revenues was the most important one, but its importance has changed over time from a trade and economic policy focus towards the protection of society, and now, to safety and security. In addition, we are currently witnessing a fresh rise of protectionism over liberalisation.

Looking back and learning from past experiences is essential. Nowadays, it is even more important to look forward and reflect on how we can respond to future developments, even beyond 2030.

In this regard, we need to explore the impact of the so called 'megatrends' on our future work and the changing roles and responsibilities of Customs administrations. I am fully convinced that the future will be completely different.

As Customs administrations, we should not attempt to develop our own 'megatrends', as they are already on the table and being analysed by different companies, institutions and 'future labs'. Our task will be to determine which of these trends will influence our Customs work, to recognise what the concrete influences will be and what drives them, and to find adequate solutions.

Let us begin with the ‘megatrend’ of migration, even though several Customs authorities have no or a limited role in the control of persons crossing the border. We have already been confronted with migration over the past years, but if we examine the drivers behind it, there is likely to be a significant change. While the drivers of the current situation are primarily wars, political conflicts and economic reasons, future key drivers will be water and food shortages along with climate change. Will water be the oil of the future and the reason for new wars? If so, then, this will lead to new and even bigger waves of migration than ever before, and we must think about their influence on our societies, or, will there be no impact at all? What will be the roles and responsibilities of Customs administrations in the area of controls, and will there even be a role?

Looking at the ‘megatrend’ of technology, we can see that it is a horizontal issue that relates to several other ‘megatrends’, such as the ageing population or the future of labour.

In a world of increasing automation, intelligent robots will take over a big part of human work. Less demand for manual work will lead to fundamental changes in the labour market, thus resulting in a need for new and different skills which, in turn, will require other types of vocational training as well as changes in education in general. It is expected that approximately 30% of all jobs will become obsolete while, on the other hand, completely new jobs will be created. That said and until now, we do not know what types of jobs will be created, or even in which fields. In a way, this was expressed by David Autor, professor at the Massachusetts Institute of Technology, who stated that: “as long as people invent new things, other people want to buy them, and this will create new jobs.” This seems to be a very optimistic approach indeed.

What is the link between technology and the ageing population? Health care will continue to improve, and people will live and work longer. Administrations will need to change their human resource policies and find a better way of balancing young and old people.

The current young generations, especially the generations Y and Z, expect new and modern solutions in an increasingly virtual world. Job profiles, as well as recruitment rules, will be changing and the importance of social media and predictive analytics (including in the area of selecting future employees) will continually increase.

Blockchain technology will dramatically change our processes and procedures, with Customs having to find its roles and responsibilities in new forms of supply chain and dynamic trade logistics.

In addition, crypto-currencies will entail new challenges for all authorities, even if they do not replace our existing currencies. Crypto-currencies are not transparent, existing only because people believe in them. If something happens and the majority no longer believes

in them, many people will lose their livelihoods.

3D printing and scanning will lead to a reduction in cross border traffic. Simultaneously, we will have to find new ways to conduct risk management and analysis, controls, checking prohibitions and restrictions, as well as adopting new taxation strategies.

Autonomous vehicles or hyperloop trains using new transport routes (also connected to climate change) will significantly reduce delivery times. Drones will be used to deliver goods, but they will also open up new paths for smuggling.

Public administrations will take over the IT infrastructure, acting as Internet providers and platform owners. This will be a double-edged sword: on the one hand, it will allow user behaviour on the Internet to be monitored (and rewarded or punished), but on the other hand, the same basic services will still need to be provided to everybody.

Virtual reality will necessitate new ways of training. Augmented reality will bring new possibilities of real-time information. Augmented virtuality, merging real world objects into virtual worlds, will be the future.

I must confess that I trust and appreciate all new technologies, but I have major concerns in regard to trusting the people who use them.

As we are living in the century of information, data and information are the new Capital, and this will become even more pronounced in the upcoming years. Available data will be used and analysed even more extensively and efficiently. Artificial intelligence and self-learning systems will lead to better analysis and new findings. Knowledge management and the handling of big data will thus be of greater importance.

Apart from data protection, data security will play an essential role as well. Administrations will have to grapple with the circumstance that they must follow rules that organised crime does not respect. Cybercrime will keep gaining importance and Customs will be seriously affected, for instance by stolen or fake digital identities. The Darknet offers organised crime the space to engage in hidden business. Finding the necessary number of cyber security specialists and implementing the required tools and structures, especially also for Customs, will not be easy.

But one essential question remains in this respect: are the IT applications currently being developed (especially in the Customs and Tax areas) the right ones or are we too slow for rapid developments? We will need to become much faster in our decisions and think much more along the lines of economic developments, if we intend to keep up with the technical revolution.

In order to master all these new challenges, we will need even closer cooperation than ever before within the Customs Union, not just cooperation among the various national agencies or administrations, but also with international organisations, universities and the private sector. Customs could play the role of interface among all the various involved stakeholders, tax administrations and border agencies.

In addition, we will need to develop reliable forecasts to react to new situations and develop new strategic objectives. Therefore, we need a forecast group and a think-tank not only for Customs but also concerning taxes, to identify all relevant prospective environmental drivers for Customs administrations. This will allow us to act proactively in the future instead of only reacting to already occurring changes.

Frankly, it is impossible to predict in detail what the future will hold, but by analysing the 'megatrends', using new and effective tools and evaluating various scenarios, we can indeed influence what it will look like.

In reply to the question asked by Greenpeace in one of their videos: "Should we create a new world or save our own?" I would dare say, "Let us do both!" And if we want to know which way to go, we will need to think outside the box and look beyond the pure Customs world. Ultimately, we need to 'think globally and act locally'.

Let us create the next 50 years of the Customs Union together based on our experience and continue its success story even in the coming different and new human civilisation. ■

### **We Protect Society, We Facilitate Trade, We Act As One!**



# Artificial Intelligence and the future of Customs

Jonathan Berte

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Since ancient times, man has made arrangements and trade agreements to organise the flow of goods in a more orderly and efficient manner, leading to detailed manifests and records of those agreements, goods and their tariffs.

In the old days, the different goods and products were limited in complexity, and oversight could be kept on paper and other information carriers.

As our society became more complex due to globalisation and digitalisation, so did trading. Information management went from paper to computer and being able to predict in a specific context became more and more important. What is in a container or cardboard box? Is the waybill describing the goods correct? The Customs services cannot open all boxes or containers making their way through the harbours, highways and airports of our nations.

The ability to predict accurately has already led to cost savings and operational advantages in many fields of application. For example, one can easily imagine that the accurate prediction of counterfeit products leads to a more level playing field for all stakeholders. The problem with Customs is that every year, the complexity rises. New ways to box and ship goods are invented, new kinds of products are being imported, new types of chemical substances and new counterfeit materials emerge as almost exact replicas of the original.

Customs services are increasingly looking towards technology to help them with the quest for more transparency and predictability in the flow of goods, services and people. As everything becomes more digitalised, this boils down to a big data quest, searching for the proverbial needle in the digital haystack. For one part, this data is coming from common sources and other state agencies. For the other part, it is originating from advanced sensing techniques (for instance X-ray scanners in harbours). The result is similar - an ever increasing influx of petabytes into the data centres of government agencies.

In order to further modernise our Customs services, it is of paramount importance to keep advancing the search and to continuously enhance the predictability in these huge stacks of data. Which container has to be scanned, which box has to be opened, which person has to be screened? For a long time, our government services have based their decision-making on decades of undocumented intuition of government employees. There is absolutely nothing wrong with intuition and experience embodied in our valued government employees, but we would be faced with operational inefficiencies should these officers and government workers suddenly become sick, or go out on long-term leave.

The needs are clear. We need a set of new powerful tools to handle these data flows. In the paragraphs hereunder we will put into context the current state of these tools. But first we have to answer this question: What is the true nature of intelligence, and how come we human beings are so good at predicting reality?

The growth of the neocortex in the human brain is strongly connected to the ability to abstract and model our environment. This makes us distinct from other similar mammals, such as apes. The ability to set up systems that transcend our own mortality have led to a culture that is increasingly sophisticated and self-organising, resulting in more efficient societies and increased global welfare.

Since the invention of the steam engine by James Watt at the end of the 18th century, Western society plunged into an industrial and technological revolution that caused a series of disruptions. It changed our societies profoundly and led to further democratisation. The steam engine provided us with cheaper availability of mechanical energy, democratising transport and resulting in improved mobility of people and ideas. Electricity further democratised energy, leading to more available time for the middle class to read, watch television and absorb knowledge.

The major disruptions of the last 100 years were caused by advances on two levels: energy and information technology. The advances in silicon technology gave us the broad connectivity of mankind and sped up the technological knowledge of our society.

The Internet democratised knowledge and profoundly changed the way we gain access to advanced ideas and technology. This phenomenon led to broad open source movements in the world, resulting in excellent operating systems like linux.

The cumulative effect of those past disruptions add up to the greatest disruption of them all: breakthroughs in automating intelligence and the democratisation of expertise. The latter is extremely important for our society. It detects cancer at an early stage, predicts large scale weather events, and can help Customs organisations worldwide.

For a long time, people constructed intelligence in a schematic way, either by modelling the underlying process or by manually constructing decision trees. These trees work in a dedicated, deterministic way, and do not become smarter when fed with more data.

As Moore's law (every 18 months the amount of transistors on a surface doubles, leading to faster computers) came under pressure, specialists started to look for more parallel processing architectures. This coincided with the rediscovery of an old technique some 15 years ago: neural networks and the blunt decision of some creative minds to use graphic cards (known for their highly parallel computational design) for something else other than what they were sold for (mostly gaming and CAD design). Together with broadly available datasets, Fei Fei Li started with a moonshot project in 2009, teaching an artificial brain a broad series of concepts from scratch. She used these Graphics Processing Units (GPU) cards to teach a deep stack of neurons concepts like airplanes, bananas, cats and cars. Deep learning was born and the world would never be the same again.

What this achievement set in motion cannot be underestimated. Software 2.0 was born, and organisations were no longer dependent on teams of software engineers to create profound new forms of intelligence. The approach always came down to the same core principles: connecting layers of artificial neurons with big amounts of data.

As such, society has gone back to nature to make critical advances in intelligence. Deep learning processes information in a very similar way to a biological brain. Leading neuroscientists are starting to take a deep look in this mysteriously successful reverse engineering of the brain and getting new ideas about how human intelligence might function.

The core difference with man-made intelligence is that humans no longer need to design rule sets because of the deep learning invention. The intelligence is now creating its own rules based on huge datasets. One type of organisation that will greatly benefit from this disruption is Customs.

With this new disruptive field of Artificial Intelligence (AI), (deep learning), that is moving faster at an ever-increasing pace, government organisations are faced with a dilemma: to incorporate this data-driven super-intelligence in their operational schemes, or rather to maintain a status quo. The status quo is the easy solution, only gradually moving towards advanced AI schemes. But the adversary is also moving towards data-driven schemes, possibly outpacing the more conservative integration speed of innovation at Customs.

When swiftly integrating deep learning and other advanced AI techniques via external contractors and companies, government services in our western democracies will face the obligation towards their citizens to explain the decisions they take. This may prove to be



an issue, as deep learning systems are incredibly efficient, but even with the current state of the art, they are often unable to explain the rationale behind certain decisions. There are already precedents in this regard, as technology companies are e.g. providing enforcement authorities in certain countries outside the EU with lists of people that have to be expelled from the country, basing themselves on often obscure AI techniques and possibly biased historical data.

It's the challenge that we face as Western democracies: Will the nation state prevail, or will it be replaced by a series of AI engines, with a team of technocrats at the steering wheel? Let's try to make our world a better place for our children. Let's make sure that Kafka's words: "It is not necessary to accept everything as true; one must only accept it as necessary." were not prophetic to this respect. In this case, it is clear that Customs have a solid and tangible responsibility to make right and balanced decisions. ■





5

# Capacity Building

# Enhancing the human resources' competencies for a more entrepreneurial Customs Union

Lawrence Zammit

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One of the fundamental tenets on which the European Union is founded is the Customs Union. It enables the free movement of goods within the European Union and the adoption of a common Customs tariff on imports from third countries. In turn, these two elements strengthen competition within the European Union and help to ensure an effective single market.

This year marks the 50<sup>th</sup> anniversary of the EU Customs Union. The Customs Union has been strengthened over the years through the adoption of various treaties and, more importantly, through the increased membership of the Union. In 1968, when the EU Customs Union was set up, there were six member states. Nowadays there are twenty-eight member states and four other countries that are members of the European Free Trade Association.

The theme chosen for this anniversary, "Since 1968 – Now and in the future", is indeed very appropriate as it looks not only at what we have achieved so far, but also looks ahead. It places Customs Administrations at the centre of the process of change in the European Union.

At a time when certain economies around the world are adopting more protectionist policies with regard to the international exchange of products, the European Union is sending out a clear message of increased promotion of free trade, mainly through the conclusion of agreements such as that with Japan.

In addition Customs Administrations in the European Union, like elsewhere, are facing big changes brought about by trends of the globalisation of society, evolving consumption patterns, increased integration resulting from technological innovation, facing up to the heightened threat of terrorism and organised crime, and increasing demands for service quality with reduced resources.

As such, any process of change aimed at meeting future challenges requires extensive investment in capacity building and development of human resources' competencies. The areas in which this capacity building is required are indicated by the same charter issued by the Customs Administrations of the EU member states to mark this 50<sup>th</sup> anniversary.

This charter speaks, among other things, about applying a modern legal framework, harmonising work methods, adapting procedures and processes to future challenges, pursuing common goals and operating with integrity.

Although, traditionally, Customs Administrations were essentially meant to serve as generators of revenue for governments, their role has now changed significantly. They are seen as essential safeguards of the single market within the European Union and effective contributors to safeguarding the competitive advantage of businesses operating within the European Union.

The points highlighted in the 50<sup>th</sup> anniversary charter, point to the need of capabilities of Customs Administrations to manage change, to promote teamwork, to manage risk and to act ethically. Customs Administrations have experienced and continue to experience a paradigm shift in their work. They are moving from an environment of command and control to an environment of empowerment and subsidiarity.

In order to manage this change, Customs Administrations within a Customs Union need to have a comprehensive understanding of the expectations of their stakeholders, which are becoming more and more diverse. They need to embed learning into their organisation culture so that it becomes a key way of doing things. They need to view learning as a creative process, and nurture learning as a means of transforming the organisation. Capacity building needs to go beyond a question of numbers and focus more on developing the human resources competencies of Customs officials.

The promotion of teamwork is essential for Customs Administrations within a Customs Union, to take on the challenges of the future. Traditionally Customs Administrations have been successful in protecting their area of responsibility because that was very much tied to safeguarding the interests of the nation state. Within a Customs Union, the responsibilities of Customs Administrations become transnational.

Moreover, as businesses become globalised, Customs Administrations of each EU member state must become more pan-European. This means that unless Customs Administrations within the EU collaborate with each other, they cannot work effectively. The stronger the collaboration is, the stronger their effectiveness.

With the exponential growth of the free movement of persons, capital and goods, Customs Administrations in a Customs Union require a different approach to their work. The disappearance of borders, thanks to the various agreements of the European Union, not least Schengen, no longer allows Customs Administrations the time or the facility to undertake detailed inspections for everything that passes through.

Their interventions are very much based on risk assessments. Both the business sector and consumers expect a reduction in regulation and bureaucracy in matters related to Customs. Thus Customs Administrations need to be less invasive in the normal course of events and more incisive where it counts most. The modern techniques of risk management need to be integrated into the daily work of Customs Administrations to enable staff to become more entrepreneurial in their approach.

Last is the need to act ethically. The responsibilities of good governance and good stewardship are greater within a Customs Union as, the concept of the common good within a Union such as the European Union is significantly more important. The responsibilities of Customs Administrations in a Customs Union are not only towards the state to which they belong but to the European Union as a whole. An infringement in one member state could have remarkable effects on another member state.

In this scenario, it needs to be recognised that a Customs Administration needs to be developed as a knowledge institution, in that the value added which it provides to the rest of the country is the knowledge it has and the way that knowledge is used. This means that continuous development and strategic investment in skills, competencies and resources are a must, as is making knowledge management part of the organisation's overall strategy.

This will require a culture change in many instances and enhancing human resources competencies will need to be enabled through such a culture change. Admittedly, investment in a technology infrastructure that supports capture of data, processing of data and use of data is a must. However, on its own, this does not guarantee the enhancement of human resource competencies. This needs to be supported by a total revamp of work processes and activities through intelligent business process re-engineering exercises, and by a change in the mindset, behaviour and attitude of employees.

An innovative and entrepreneurial approach needs to become the norm rather than the exception. As such, Customs Administrations may need to have a more flat organisation



structure and innovation becomes a way of life. Customs Organisations need to be adaptive organisations and not captive of their past legacies. They need to be both willing and able to change their organisation culture.

The European Union has developed the EU Customs Competency Framework as a key driver in the modernisation of Customs Administrations across Europe. This is a key tool that would ensure a harmonised approach towards providing Customs services of excellence across the EU. Even in this regard, as in other areas, cooperation and collaboration among member states will ensure a more entrepreneurial Customs Union managed by knowledge workers for the collective benefit of the citizens and business of the European Union. ■



# Human Competencies and Administrative Uniformity

David Widdowson

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## The EU Customs Union

The Customs role of managing border-related regulations is predicated on the concept of a Customs 'territory', whereby goods crossing the border of that territory are subject to tariffs or other regulations of commerce.

While the essential nature of border management has remained fairly constant over time, the relevant regulations and associated procedures are becoming increasingly complex. For this reason, the need to facilitate trade, particularly between major trading partners, is of growing importance. The paragon of trade facilitation is the formation of a Customs union in which the Customs territories of individual Member States are treated as a single Customs territory. This allows for the elimination of tariffs and other cross-border regulations among Member States and for trade with third parties to be regulated in a uniform manner. The European Union is the exemplification of a Customs union, providing for frictionless trade among its Member States through the removal of their internal borders (as a result of the internal market) and other regulatory obstacles to the free movement of goods.

## Uniformity of Practice

Uniformity and consistency of practice is critical to the effective functioning of a Customs union, and the achievement of such a state requires the fulfillment of three basic requirements, that is, a comprehensive regulatory framework, consistent interpretation of the framework and consistent application of the framework.

The European Union has emphatically achieved the first of these through its comprehensive Customs regulatory framework, now recast in the Union Customs Code (UCC), which entered into force in May 2016 following several years of development and refinement.

This regulatory framework incorporates the Delegated Act, Transitional Delegated Act and Implementing Act which support the second of these requirements - consistent interpretation across the EU Member States. These establish the detailed provisions necessary to provide Member States with uniform arrangements for the implementation of the provisions laid down in the UCC and, due to the comprehensive nature of this legislation, a reasonably high level of consistency in interpretation has been achieved.

This leaves us with the third of the three basic requirements, i.e. the consistent application of the framework. Unlike the previous requirements, consistency of application is heavily dependent upon the capacity of an administration and individuals within the administration to effectively apply the regulatory provisions. This is an aspect of implementation that is often ignored, and it is here that a number of stumbling blocks can be encountered.

In considering the need to develop and maintain the necessary human capacity required to effectively implement the UCC, the European Commission and member administrations, in consultation with the private sector, have meticulously examined the requisite knowledge, skills and behaviours required by Customs professionals. In doing so, they have developed EU Customs competency frameworks for both the public and private sectors. Both are comprehensive in scope and include reference to core values, professional, operational and management competencies, and proficiency levels.

Regrettably, in the case of the private sector, the good work that has been undertaken in this area appears to have been comprehensively undermined. The legislation provides that “practical standards of competence or professional qualifications” can be satisfied by demonstrating “a proven practical experience of a minimum of 3 years in customs matters”. While some will undoubtedly strive to achieve high levels of competence, the lowest common denominator of practical experience is set in law. The message sent by way of this provision is, in the author’s view, an unfortunate one.

Consistent application of the regulatory framework, however, relies on uniformity of practice across the Customs administrations of the various Member States. In this regard, the Customs competency framework for the public sector plays a key role, together with the work of several expert groups, published guidelines and official e-learning modules.

### **Administrative Discord**

In many countries of the world the phenomenon known as ‘port shopping’ is evident. It is based on observations by the international trading community that Customs practices differ among ports, airports, border crossings and other Customs offices. The purpose of port shopping is to obtain the most favourable treatment in terms of clearance times,

tariff and valuation decisions, concessional arrangements, documentary requirements and other aspects of Customs practice and procedure.

The practice of port shopping is essentially a manifestation of administrative discord, and while it is viewed by regulators as an undesirable practice, it is simply a symptom of their own failure to achieve an appropriate level of uniformity and consistency of practice. The mere fact that port shopping exists in many countries is testament to the fact that administrative uniformity is far from easy to achieve, and in the context of a Customs union, the degree of difficulty is multiplied by the number of its Member States. Indeed, a Customs union is not only faced with the task of eliminating port shopping, but also 'Member State shopping'.

Efforts to stamp out administrative discord often fail due to the fact that different offices, jurisdictions, provinces and Member States have their own values, cultures, traditions and attitudes that are often deeply entrenched. Consequently, while in principle a single Customs system may be said to operate across the Member States of a Customs union, the reality is often quite different. For example, the diverse methods of operation that are employed across the EU can and do influence commercial decisions such as where certain goods should be imported into or exported from the EU. Such decisions are not necessarily based on supply chain logic – they are often based on the relative level of administrative burden imposed by the various jurisdictions.

### **Addressing Inconsistency**

Returning to the Customs competency framework for the public sector, the need to ensure that Customs administrations across the EU have the necessary human competencies and capacity in terms of knowledge, skills and behaviours is of course essential to the effective functioning of the Customs Union. Of equal importance is the need to instil a universal understanding of the manner in which UCC provisions are to be administered in terms of EU, rather than national practices and procedures. This is necessary to avoid debates about why a certain approach is adopted in one Member State but not in another – the Customs stance usually being 'that's not the way we do things here'. In this regard, the private sector is well placed to assist in identifying such anomalies. One quite basic example that has recently come to light in the context of the current topic, relates to an administration's recognition of educational institutions for the purposes of practical standards of competence or professional qualifications. While some administrations are active in this area, others have no system for considering such applications.

The architects of the EU Customs competency framework note that the resultant schema should support the achievement of key business outcomes including better responsiveness to change. As has been noted, in the context of UCC implementation, the need to move

from a national administrative approach to the desired end-state of a uniform EU approach, appears to represent one of the more important challenges in this regard. And while the competency framework identifies ‘change management’ as one of the nineteen required management competencies, an EU-wide strategy to manage the process of change has yet to be developed. The absence of such a strategy might further contribute to the divergence of approaches across the EU.

The EU is an extremely successful example of a Customs union. Its comprehensive body of Customs law provides a solid regulatory base on which to operate. This, combined with the development of detailed supplementary regulations, has resulted in a fairly consistent interpretation of the legislation among its Member States. While these achievements are significant, the challenge that remains is to ensure a consistent application of the regulatory framework. This requires a review of Customs practices and procedures to identify those areas where divergence remains. Those best placed to assist in this process are the members of the international trading community whose commercial decisions are influenced by the divergent approaches of national administrations and the associated levels of administrative burden. ■

# Customs past, present and future – the role of the Structural Reform Support Service in supporting Customs administration reform

Maarten Verwey

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**B**uilding on the experience gained from the Task Force for Greece and the Support Group for Cyprus, the Structural Reform Support Service (SRSS) came into being in 2015 with the remit of providing tailored technical support, on request, to Member States for the design and implementation of growth-enhancing structural and administrative reforms, as well as coordinating the provision of technical assistance across the Commission. It has staff based in Athens, Nicosia and Brussels.

The unit with overarching responsibility for Customs reform within the SRSS is the Revenue Administration and Public Financial Management Unit. A range of interventions are used to provide technical support, including the SRSS' own resources, large international institutions such as the International Monetary Fund (IMF) and World Bank, top consulting firms, and Member-State expertise ranging from long to short term interventions.

Fifty years ago, the role of Customs Administrations in Europe was more aligned to the collection of Customs Duties and Value Added Tax (VAT) at the point of importation than it is today. The implementation of Single Market legislation in 1993 and the switch to importer declarations of intra-community trade, eliminated the revenue-gathering role of Customs agencies with regard to intra-community trade (which makes up 68% of all trade within the EU28). Yet Customs administrations still have a vital role to play in border

controls relating to non-fiscal tasks aimed at improving internal EU security, combatting the smuggling of prohibited and restricted goods, and countering the proliferation of counterfeit goods arriving from third countries. These activities not only call for national controls to be in place but must also recognise the full potential of closer cooperation between national Customs authorities and other law enforcement agencies. However, whilst giving due regard to these activities, Customs administrations must work in a way that facilitates trade and provides businesses with supply chain certainty.

Given the importance of Customs to Europe's economic wellbeing, it is a priority of the European Commission that, Customs administrations receive support to deal with increased trade and changing economic models. Increased training of Customs staff, common competency standards and enhanced IT systems capable of real time interfacing are all part of these priorities. In the period since its formation the SRSS has worked with Member States to enhance Customs procedures and control methods, ensuring consistency with the Union Customs Code (UCC) which entered into force on 1<sup>st</sup> May 2016. In this regard, it works collaboratively with DG TAXUD which holds the Customs policy remit of the European Commission to ensure consistency in the delivery of EU policy and strategy and makes use of the resources available under the CUSTOMS 2020 programme, in part, to deliver technical support.

The SRSS has provided support to Member States in the area of mapping of procedures relating to core functions such as Customs clearance, trade facilitation (including support to the implementation of Authorised Economic Operator schemes), the treatment of Customs offences and the orientation of Customs controls. Trade facilitation, with the dependence of many businesses on just-in-time logistics within the supply chain processes, has focused reform on paperless Customs clearance procedures, the implementation of the Single Window, process simplification, reductions in examination rates and risk-based post-importation controls. The SRSS has brought stakeholders together through conferences and exchange of expert knowledge to train Customs officials in the new working methods.

For some Member States, and in particular those with considerable Eastern land boundaries with non-EU states, smuggling remains a serious problem. Borders stretching hundreds, and in some cases thousands, of kilometres cannot be patrolled continuously. Technical support provided by the SRSS in one Member State was instrumental in providing an overarching anti-smuggling strategy and setting up a multi-agency coordination centre where a wide range of valuable intelligence sources have been brought together, essential for enhancing operational activity. To support this change, the SRSS, with the European Anti-Fraud Office (OLAF) and experts from Member States, delivered training to staff in the operational use of intelligence sources. In a few months, by harnessing the combined resources of all the partner agencies, the coordination centre provided information that

led to marked success in detecting and preventing both fuel and tobacco smuggling, culminating in the highest seizures of illicit tobacco products in Europe this year. The SRSS has also assisted in providing technical training for the introduction and use of new fuel marker systems, which has greatly reduced the incidence of abuse of rebated diesel throughout the EU.

It is worth noting that smuggled products often fail to meet the demanding safety and quality standards imposed by EU legislation. Consequently, the detection and seizure of illicit merchandise not only protects the revenue, but businesses and the broader society as well. This is also true where Customs administrations are also involved in the detection of illegal drugs and firearms. In this area, the SRSS has provided hands-on advice relating to tender specifications for scanners. This modern technology optimises clearance times whilst providing a credible deterrent effect.

Challenges for Customs administrations are manifold. One major change which has taken place, mainly in the last decade, is that many Customs administrations have been incorporated within national revenue administrations or authorities. This requires new working practices and means of sharing information. On the IT side, diverse databases which were being used by legacy Tax and Customs authorities need to be assessed with a view to find software solutions to provide a better identification of risk. Another area where support is being provided is in elaborating new key performance indicators in Customs institutions, which have merged with revenue agencies. Incorporating the unique Customs performance indicators, such as those relating to the seizure or detention of non-revenue goods, has to be measured within the overall tax performance framework and SRSS is providing advice in this area.

Looking to the future, the SRSS will help support the efficient implementation of Customs legislation. The uniform and effective application of the Union Customs Code requires comparable administrative capacity and convergence in the working methods applied by national Customs administrations. Core to this is a common understanding of how to implement EU Law, as well as the development of the human resource capacity of the circa 120,000 EU Customs staff currently in post in terms of ensuring an equivalent level of expertise and performance consistently across all Customs administrations and in the private sector with traders and their representatives. Furthermore, the functioning and interoperability of IT systems and new technology challenges of the 21<sup>st</sup> century (e.g. addressing the challenges of the e-commerce marketplace and testing the adaptability of Customs systems to future cutting-edge technologies and business solutions) require operational effort that a structural reform service can support. Together with DG TAXUD, which holds the Customs policy remit of the European Commission, the SRSS will in future continue its efforts in these areas together with Member States. In addition, the adoption of the Commission's proposal for a Reform Delivery Tool, which is part of the



package for the next Multi-Annual Financial Framework (MFF), would not only mean the potential for the provision of more technical support, but also the ability to deliver on meaningful structural and administrative reform. ■

The infographic features a teal background. In the top left corner is the European Union flag and the text 'EUROPEAN UNION'. On the left side, there are three brown cardboard boxes with white straps. In the center, a hand in a black suit sleeve is writing on a clipboard with a pen. The clipboard has a checklist with four blue checkmarks. To the right of the clipboard, the text reads 'Each year around 313 million customs declarations are handled'. At the bottom left, the hashtags '#CustomsUnion #50CU' are displayed.

EUROPEAN UNION

Each year around  
**313 million**  
customs declarations  
are handled

#CustomsUnion #50CU

# Enhancing the Customs Union's human resource competencies

Birgit Reiser

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## **There is no Customs modernisation, no capacity building, without people focus**

The European Customs Union depends on a highly competent, professionally and continuously trained work force, to transform its present, still partly traditionally built Customs administrations into efficient, flexible, transparent and attractive partner organisations, which are equipped to face economic players and trade partners with effective yet balanced control performance.

After 50 years of the European Customs Union, European Customs is today more than ever facing a rapidly changing environment characterised by evolving production and consumption patterns, increasing international trade, climate change and global threats such as financial crises, refugee waves towards the European Union, terrorism and organised crime.

This challenging context urges the European Customs Union and its individual national Customs administrations to transform and modernise, or in other words 'build capacity', to stay ahead of time and to effectively ensure the balance between protecting the interests of the European Union and its citizens and facilitating legitimate trade.

Under ever-increasing pressure on public spending and resource constraints, the European Customs Union and its national Customs administrations are bound to have a strong strategic vision of current and future requirements of Customs work together with a courageous rationale regarding the three capacity building areas of the Union's Customs administrations: its common legal frameworks (Union Customs Code), the infrastructural

settings (including equipment and IT) and its staff (Customs professionals).

Whilst it is rather evident that in this global context only cross-union consistent and continuous development and strategic investment in skills, competences and resources can maintain and improve Customs efficiency and effectiveness, the challenge lies with actually doing this within the parameters of the EU's unique and very particular realisation context, also referred to as 'governance of the European Customs Union'.

In simple terms, 'governance of the EU Customs Union' means that while the Customs Union is supported by a robust legal European framework that as such falls under the exclusive competence of the Union, the responsibility for the practical implementation of Customs legislation and the related application work of Customs processes and procedures is the job of the national Customs administrations and their staff.

To address this challenge effectively, support for cooperation among the national Customs administrations are needed in order to reach a deep operational integration among these administrations. Such deep operational cooperation is crucial to face the afore-mentioned global and trans-European challenges in an efficient way across Europe, as the Customs Union can only be as strong as its weakest link.

The focus of Human Competency Building (HCB) lies, in this context, on the 3rd cornerstone of administrative capacity building - the 'human capital', meaning the Customs professionals as the implementing, executing or complying arm of the Customs business.

For decades, the national Customs training and staff development landscape in both the private and public sector customs profession revealed an array of more or less excellent training provision examples from across the EU, in terms of initial and specialised Customs training programmes, courses and even entire training structures which were innovative and often very effective. But, in spite of some individual national excellence and the wealth of materials, experience and knowledge within training and staff development, various independent European studies run in 2011 - 2013 indicated, at the level of the **European Customs Union as a whole**, customs training and wider staff development measures vary between national organisations, that needs in strategic staff development areas remain and that there is an overreliance on traditional experientially-led internal training provision.

In order to provide for a consistent training, learning and competence development, an integrated strategic Customs staff development approach in the form of need- and competency-based training strategies and staff development programmes, is needed. Such an approach is designed to help modernise and increase the performance of Customs organisations.

With the increasing complexity of Customs work and the impact of technology - just think of online trading, multi-channelled internet transactions, and rapidly changing fraud patterns - the need for structured and targeted competence development of Customs staff, of our Customs Union's workforce, has become even more vital.

To this end, competency-based human resource (HR) management can be seen as a powerful holistic solution for improving Customs performance (both at public and private sector level) and further provides a modern common framework for learning and continuous development of the Customs profession.

National Customs administrations and Commission services across the Union are more than ever committed to join forces and work together towards further optimisation of Customs staff performance. This cooperation is expected to result in the availability of more and better structured common Customs training programmes, common performance standards and support to deepen skills and knowledge of Customs professionals in the European Union in the long run.

This cooperation can build on a sound common basis, the European Union Customs Competency Framework (EU Customs CFW), being jointly put in place by the European Commission and the national Customs administrations since 2014.

The EU Customs CFW defines a comprehensive Customs staff development reference standard for the European Customs Union. It also allows for the assessment of staff against established standards, and further supports the raising of Customs performance standards. The development of this framework focused on building a deep understanding of the skills, knowledge and abilities of optimal Customs job performance, aiming to support targeted, fit-for-purpose training and competency building and to provide a foundation for individual and organisational performance improvement.

In a nutshell, the EU CFW acts as a modernisation and performance-raising tool for Customs administrations, to both the development of national and common training and the streamlining of a range of Human Resource tasks, such as workforce management, performance building and training. It is specifically designed to support the European Customs profession to pool capabilities and to create a staff development environment which is greater than the sum of its parts, whilst of course fully respecting existing individual national training and staff development initiatives and the diversity of national organisational structures and needs across the European Customs Union.

Tangible benefits at national and Customs Union level can be attained in the following areas:

- **Strategic HR management and workforce planning:**

The EU CFW acts as a modernisation and performance-raising tool for Customs administrations to both the development of national and common training and to the streamlining of a range of Human Resource tasks (workforce management, performance building and training).

- **Performance Management:**

The CFW supports a smooth and objective performance assessment of staff. At an individual level, all employees holding similar roles can be assessed using the same framework and competencies.

- **Identification of competence gaps:**

The CFW enables the identification of current and future competence gaps (knowledge, skills, behaviour) in an administration. Based upon this information, training can be developed, offered and delivered in a highly targeted manner to those in need.

- **Financial Benefits:**

The CFW reveals the potential to unlock financial benefits through the improvement of both operational and HR processes and activities. Employees at all levels can be put into even more effective teams, based upon their actual competencies (“right person at the right place” principle). HR processes, such as training, can be tailored to actual requirements and be fully aligned to the trainees’ competence-building requirements, both of which can lead to considerable cost reductions for training and/or allow for more cross-country resource sharing.

Today, the EU Customs CFW takes the form of a ‘toolbox’ for national use by public or private Customs organisations across the European Customs Union.

The EU Customs Competency Framework today is understood to be one of the main drivers in the modernisation of the Human Resource (HR) development measures in Customs administrations across the European Customs Union. Whilst its full use potential is by far not exploited yet, as we celebrate the 50th Anniversary of the European Customs Union, the ‘tools’ have proven their suitability to help build a high-performing, connected, agile and future-proof European community of Customs professionals, well equipped to face the rapid changes occurring within their work environment.



\* Publicly available in 22 EU languages under:  
[https://ec.europa.eu/taxation\\_Customs/eu-training/eu-Customs-competency-framework\\_en](https://ec.europa.eu/taxation_Customs/eu-training/eu-Customs-competency-framework_en)

By continuing to support the integration of competence-based HR management in European Customs administrations, the European Commission and the national Customs administrations emphasise the importance of Human Capital development and the supporting organisational processes. They take the necessary steps together to ensure that the Customs Union continues delivering world-leading Customs services throughout the EU, now and in the future. ■



# 6

## The Customs Union and Beyond



# Customs Union and Beyond

Pilar Jurado Borrego

*Ms. Pilar Jurado Borrego is, currently the Director General of the Spanish Customs and Excise Department of the Central Agency for Tax Administration (AEAT). She has held this post since 2012. She joined the AEAT as National Finances Inspector in 1992 and has developed her professional career from different positions within in the area of Customs and Excise, both at central and regional level. She has a wide experience in the international environment, having participated in many international and EU meetings.*

The EU Customs Union is an example of successful integration within Europe. It paved the way for the establishment of the single market, through the abolishment of internal borders as well as setting the foundations for economic integration and stable growth.

The single market, a unique achievement in the world, has two main effects. Primarily, from an internal point of view, it allows established EU businesses not only to trade goods but also to invest around the Union without any internal border. Secondly, from an external point of view, the EU accounts for 15% of world trade, which makes it the largest trading block in the world.

The Customs Union and the single market go hand-in-hand as the single market would just not be possible without the abolition of tariffs, which is precisely what the Customs Union provides.

Customs authorities are the public authorities responsible for the supervision of goods which enter through the external borders of the Union. Once released for free circulation, these goods can freely move through the whole Customs territory.

Given their privileged position, the role of Customs has evolved significantly since 1968. Their traditional tasks, related to revenue collection and the fight against fraud, have multiplied and nowadays Customs perform an array of tasks in fields such as trade facilitation, intellectual property rights, environmental issues, product safety and the protection of citizens.

The world we face today differs widely from that of the 1960s, not just within the EU but also beyond it. Internally, the Union has grown significantly so that it now has 28 members who share the same values and principles of peace and prosperity. Externally, in a context

of growing disparities and in terms of development, Europe is perceived as a haven of prosperity and welfare. In addition to this, there are countries around the world that still suffer the drama of war. These disparities and worldwide conflicts have consequences that significantly impact our borders. One such impact is the continuous flow of migrants coming from troubled regions risking their lives through the Mediterranean sea and calling at our doors.

### **Challenges ahead**

We can dare state that the Customs Union is a ‘very successful story’. However, the challenges ahead, not only for the Customs Union but for the whole of the EU, call for deep reflections. Brexit, the move towards nationalism, the progressive dissatisfaction of citizens towards the Union, the threats to security, the fight against transnational crime, the new trends and technologies, and the constantly growing volumes of e-commerce are, among others, the main challenges we need to address.

### **The Customs Union after Brexit**

The possible withdrawal of the United Kingdom from the European Union will potentially change trade relations between the UK and the rest of the EU. It will have a significant impact on Customs processes to which the Member States must adapt.

### **New business models**

Customs authorities need to embrace and manage the digital economy and to stand up to the challenges posed by e-commerce for the security and protection of citizens, and for the effective collection of revenue.

In a constantly evolving business environment, the need for a quick response and the demands of the stakeholders require close coordination between Customs and economic operators to support and facilitate legitimate trade and to develop efficient strategies taking into account their business models.

E-commerce for goods has an impressive impact on logistics and Customs processes. In this context, Customs have to use the information obtained from the different participants in the online sale to ensure a correct Customs and Tax authorities’ control.

We need to react quickly by trying to source the information required for the fulfilment of Customs processes as early as possible. We also need to adapt these processes in a new way of doing things and in a new way of communicating with final importers and other stakeholders.

## Implementation of Customs legislation

According to article 3 of the Treaty on the Functioning of the EU, the competence of the European Union in the Customs Union is of an exclusive nature. As a consequence, Customs legislation is adopted at EU level while its implementation is left to the Member States. In order to achieve a successful Customs Union, a common implementation of the EU legislation is essential.

Although significant progress has been made through the drafting of guidelines and the development of training support materials, there is room for further improvement, especially to ensure equal control measures and the results emanating therefrom.

## Strengthening the role of Customs

The wide variety of tasks Customs perform is clearly stated in article 3 of the Union Customs Code under the heading 'Mission of Customs Authorities'. Customs are not only the guardians of the EU external border for goods, but also protect citizens against terrorism and against threats to health and to the environment, among others, applying more than 60 non-Customs legislations relating to dual-use goods, firearms, drug precursors, movement of cash, cultural goods, IPR and product safety, among others.

Success in the performance of these tasks requires an appropriate funding in terms of equipment and the provision of human resources. Customs must increase their visibility at political level (nationally and within the EU) to obtain the resources needed to perform their activities. At EU level we cannot but welcome and support the inclusion of a proposal for a specific Customs Control Equipment fund in the Multiannual Financial Framework 2020-2027.

Customs' success also calls for real and effective cooperation between them and other authorities at the border. Article 47 of the UCC calls for such coordination and introduces a concept that will be essential in the future, that is the Single Window concept. Along the same lines, article 10.4 of the Trade Facilitation Agreement asks members to endeavour in its establishment.

## Common IT systems

Customs administrations must play their role as supervising authorities while simultaneously facilitating trade. In a rapidly changing and globalised trade environment, Customs must operate in a fully digital environment. The UCC sets the basis for this approach and we must double our efforts towards this objective in view of its financial impact and considering the resources available.

## The Future of the EU Customs Union

In May 1950 Robert Schuman said, 'Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a *de facto* solidarity.'

After 50 years of existence, we can say that one of those concrete achievements is, undoubtedly, the Customs Union. Even though the Customs Union is sound and stable, the challenges ahead should make us reflect on its future. In such a reflection, one of the issues is to determine the instruments and elements to face the aforementioned challenges.

On the occasion of the 50<sup>th</sup> anniversary of our Customs Union, the success of a forward-looking Customs Union depends, in my opinion, on the following:

More coordination and better cooperation with other border management and security authorities. The implementation of an effective Single Window can be a good instrument.

More political will. We must raise awareness on the importance of the tasks Customs perform and on the resources needed. We need to review our governance procedures to ensure a more coherent overall management, transparency, efficiency, innovation and flexibility.

Customs administrations themselves should have a wider vision. The general public needs to fully understand the implications of the tasks we perform. Our tasks have grown and we need to act accordingly. A more comprehensive long-term strategy for the development and maintenance of Customs electronic systems is also essential.

Long live the Customs Union! ■

# Customs prepares for the future by advocating cooperation, dialogue and new technologies

Kunio Mikuriya

*Dr. Kunio Mikuriya is the Secretary General of the World Customs Organization (WCO). He has held this position since 1 January 2009. Before taking up this position and following his appointment by the WCO Council in June 2008, Kunio spent 7 years as the Organization's Deputy Secretary General. In this position he led efforts to co-ordinate the work of the WCO Secretariat with other international organizations such as the WTO, the World Bank, and the IMF, and with the private sector. Prior to joining the WCO, he has worked for Japan's Ministry of Finance for 25 years. During his career with the Ministry of Finance, Kunio occupied a variety of senior posts, which have given him broad experience in Customs, trade development, budget, and financial policies.*

On behalf of the Customs community, I would like to express my sincere congratulations to the European Union (EU) and its Member States on the 50<sup>th</sup> Anniversary of its Customs Union. I also wish to share my appreciation for the EU's active participation in the work of the World Customs Organisation (WCO) since the WCO Council's acceptance of the EU's request to join the Organisation as of 1 July 2007.

That decision granted the EU rights and obligations on an interim basis, akin to those enjoyed by full WCO Members. At that time, the European Customs Union had already eliminated internal Customs duties and introduced a common external tariff, bolstered through the establishment of the Internal Market, thus setting an example for ambitious regional integration projects around the globe.

This enabled, and continues to enable, the EU and its Member States to significantly contribute to the work of the WCO in areas such as trade facilitation and enforcement as well as the ever changing role of Customs. The recent Union Customs Code (UCC), whose legal package entered into force in 2016, demonstrates the EU's continuous efforts in improving Customs procedures and gradually transitioning to electronic systems.

## Changing role of Customs

Since the establishment of the EU Customs Union in 1968, the geopolitical, economic and security landscape has evolved massively and continues to change: Customs administrations are now the 'first line of defence' at the border, i.e. the external border in the case of a Customs Union, and have to address the challenges arising from these developments.

These developments have led to a change in the traditional role of Customs. From being a government border agency responsible for collecting revenue, mainly in the form of import taxes as well as looking out for smugglers, Customs' role has broadly expanded into being:

- a partner of the trading community and an important facilitator of trade;
- a guardian to protect economies against fraudulent and illicit trade patterns, including counterfeit goods;
- a promoter of measures to ensure supply chain security;
- a strong defender against trafficking in drugs, weapons, endangered species, strategic goods and other illicit material across borders, all of which endanger the health and safety of countries' citizens;
- an advocate of coordinated border management through collaboration with other government agencies and international organisations; and
- a reliable partner for the United Nations (UN) System in implementing UN Security Council Resolutions and the UN Sustainable Development Goals.

In addressing the aforementioned challenges, the WCO provides a forum to discuss and endorse strategies, guidelines and tools enabling its Members to implement appropriate measures. These discussions regularly involve constructive dialogue with Customs' trade and transport partners to develop suitable mechanisms for tackling the cross-border movement of illicit goods, while ensuring a minimum negative impact on the flow of legitimate passengers and goods.

The WCO's compliance and enforcement projects and programmes provide specific training and implementation assistance to Customs administrations seeking to improve their competence in modern risk management, covering the full range of topics from the development of intelligence, to risk profiling, to the successful presentation of evidence in court and the conviction of perpetrators.

## Cooperation, dialogue and assistance to jointly address Customs challenges

Since its establishment, as the Customs Co-operation Council, in 1952, the WCO has focused on developing standards, sharing information and best practices, as well as providing technical assistance and capacity building to support Customs administrations in addressing challenges emanating from the changing role of Customs.

Eleven of the 17 founding Members of the WCO are also Members of what we now know as the EU. This explains why the goals of the WCO and the EU, including the latter's Member States, are aligned, with very similar objectives and a shared vision.

The WCO is continually working with its Members to ensure growth by securing and promoting economic competitiveness. Trade security and facilitation are key factors for the economic development of nations as they are closely tied to national agendas on social wellbeing, poverty reduction and economic development.

At this juncture, I would like to expand a little on three important WCO activities that contribute to effective trade management while enhancing trade security.

Firstly, the WCO provides a forum for the development of instruments and tools to simplify and harmonise Customs procedures.

One of the WCO's flagship instruments is the International Convention on the Harmonised Description and Coding System, also known as the Harmonised System or HS Convention, which celebrated its 30<sup>th</sup> anniversary this year. It is the universal language for trade, serving as the basic instrument used by Customs to facilitate and secure global trade by providing an international goods nomenclature.

The WCO's International Convention on the Simplification and Harmonisation of Customs Procedures, updated in 1999 and commonly known as the Revised Kyoto Convention (RKC), promotes trade facilitation and effective controls through its legal provisions that detail the application of simple yet efficient procedures. Its standards are a perfect match for implementing the World Trade Organisation's Trade Facilitation Agreement that entered into force on 22 February 2017. The RKC is also considered to be the blueprint for modern and efficient Customs procedures.

Another major trade facilitation and security tool developed by the WCO is the SAFE Framework of Standards to Secure and Facilitate Global Trade. In response to the terrorist attacks on the United States in 2001, the WCO Council adopted the SAFE Framework in 2005 with the aim of addressing security along the entire supply chain. The Framework acts as a deterrent to international terrorism, secures revenue collection and promotes trade



facilitation worldwide. Core elements of the Framework are advance cargo information, automated risk management, the use of modern inspection technology and enhanced trade facilitation for Authorised Economic Operators (AEO).

Secondly, promoting the exchange of information and best practices has long been a cornerstone of the WCO's activities, with the aim of helping its Members to implement WCO standards. In this era of information and communication technology, data management and data analytics have become all the more important for modern Customs operations in processing the movement of goods, people and even money.

This, of course, requires access to, and the exchange of, data from business, other government agencies and partner Customs administrations. While the use of technology is an exchange of information enabler, the development of a governance structure that includes appropriate data protection measures has become indispensable for jointly tackling security and safety threats to global trading and transport systems.

Thirdly, technical assistance and capacity building support is an important tool that greatly benefits the international Customs community by ensuring connectivity around the world. It supports the implementation of global standards and helps to expand global cooperation mechanisms.

In all these three areas of WCO key activities, the contributions of the EU and its Member States are, and always will be, highly appreciated. Indeed, I would further encourage the EU and its Member States to continue adding enormous value to the work of the WCO, thereby assisting the entire global Customs community.

### **Future technologies to enhance Customs operations**

We are living in interesting times, driven by transformative technologies that are evolving exponentially and converging rapidly. Every walk of life is being impacted by the rapid rollout of user-friendly technologies; the ever-increasing penetration of the Internet, Net neutrality, the Internet of Things and the use of smartphones.

Coupled with this, a whole range of new and emerging technologies such as Artificial Intelligence, Machine Learning, Big Data, Cloud Computing, Augmented Reality (AR) and Virtual Reality (VR), Unmanned Aircraft Vehicles (Drones), Blockchain, 3-D Printing and Industry 4.0 are cruising ahead from prototype to mainstream, further redefining manufacturing, trading, consumption, travel, financial flows and related services. All these technologies have a direct bearing on Customs and border regulatory processes.

It is well known that technology often leapfrogs ahead of existing regulatory frameworks and operational systems, leaving governments to play catch-up. In order to stay ahead of the curve, governments need to understand how new technologies are shaping societies and economies, what opportunities they present to make people's lives safer and better, and the challenges they pose.

With current global security concerns, the growing impetus towards trade facilitation and the emergence of new channels of trade driven by E-Commerce, it is essential to find a balance between trade facilitation and control in order to facilitate and secure the international supply chain and aid the fight against cross-border crime and other forms of illicit trade. To that end, modern technologies can help make Customs processes simpler and more efficient, while improving compliance and strengthening risk targeting.

The growing digital economy and information society have made data a significant business asset. Data Analytics' techniques coupled with Artificial Intelligence and Machine Learning are augmenting human capabilities. These technologies can enable Customs to harness the latent power of data for effective risk targeting and well-informed policy-making, thus facilitating legitimate cross-border flows of goods and passengers.

Blockchain is another technology for the future, comprising several important features that could be leveraged by Customs and other relevant government agencies for improving their business processes and effectively tackling fraud and crime. It can potentially be used in Customs business processes to validate transactions/actions of different parties in the international supply chain based on real-time immutable data from the primary source, thus enhancing supply chain security and facilitation.

### **Ensuring Customs is ready for the future**

In conclusion, the environment in which Customs administrations operate is in a constant state of flux, requiring them to be nimble on their feet in order to meet multiple, and sometimes contradictory, societal demands. While new developments pose challenges, they also offer opportunities for Customs to achieve their long-standing goals by applying innovative measures that are geared towards the future.

I am confident that the 50<sup>th</sup> Anniversary of the European Customs Union provides the EU and its Member States with an excellent opportunity to look back with pride at what has been achieved since its creation in relation to the global Customs community, and to look ahead to what they expect from, and wish to contribute to, the WCO in the future. Indeed, the WCO stands ready to partner with all its strategic stakeholders as we move towards an exciting, albeit somewhat challenging, future trade landscape. ■

# Making the European Customs Union more appealing to foreign direct investment.

Mario Vella

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Foreign Direct Investment (FDI) is said to occur when an investor residing in one jurisdiction acquires significant, direct influence on the management of an enterprise based in a different jurisdiction (the host country), normally by gaining 10% or more of the voting power on the board of directors. Clearly, any decision to invest abroad is in one way or another related to the investor's profitability, but in practice transnational corporations engage in FDI for a range of strategic reasons. For example, they may use foreign subsidiaries to gain access to, or exploit, new technologies or resources; to absorb or destroy competitors or, very often, to grow market share, perhaps by reducing operational costs and/or circumventing tariff and non-tariff barriers (particularly rules of origin). This desire to open up markets in the EU is probably the most direct link between FDI and the internal market and, through it, to the Customs Union.

Besides increasing output and employment in the host country, FDI often generates a variety of beneficial externalities, or spillover effects, partly by influencing host country companies. These may want to either compete with foreign-owned firms or to cooperate with them (sometimes both). For instance, FDI companies may foster efficiency by forcing host country firms to square up to competition, or by harnessing them to their supply chains through forward and backward linkages. Additionally, FDI often leads to the introduction of more efficient technologies and work practices, opens up new markets, and encourages upgrading of the host country's workforce, possibly increasing productivity and wages in the process. The nature and extent of investment outcomes

will partly be a function of the host country's policies *vis-à-vis* FDI, but in the case of EU Member States the impact appears to have been positive overall. In fact, it can be argued that a major trading bloc like the EU cannot be but open to both inward and outward FDI, if it wants to retain its position within global value chains.

Although FDI takes place in all sectors of the economy (services included), it is clear that the Customs Union is of greater concern to FDI in manufacturing and related services. These sectors continue to be fundamental to the balanced economic and social evolution of advanced economies in spite of the overwhelming importance of services in GDP data. By removing border formalities, the Customs Union significantly lowers operational costs for multinational businesses, selling or servicing physical goods on EU-wide markets and allows them to fine tune their supply chains to an extreme degree, as the recent debates on the UK's post-Brexit relationship with the Customs Union have made clear. By striking down non-tariff barriers of various kinds, Single Market legislation considerably assists this process. The resulting ability to reap economies of scale by supplying or servicing the entire EU from a small number of plants (often just one) placed at the centre of a web of EU-wide supply chains, the entire complex being sheltered behind the Common External Tariff, protected from imported unfair competition and free from rules of origin, is clearly attractive to incoming FDI. This applies not just to FDI that goes into the Member States, but also to investment attracted by neighbouring countries enjoying preferential access to the internal market. In fact, export-oriented investment of this kind has played an important part in the economic development of several locations outside the EU.

Historically, the EU and its Member States have been very welcoming to incoming FDI, and they continue to be among the most open to it. Unfortunately, this has not prevented the combined share of EU Member States in global incoming FDI from contracting significantly in recent years, from an average of approximately 43% between 2000 and 2007 down to around 27% between 2008 and 2016. In contrast, the share taken by other advanced economies remained fairly stable at 24-25%, while emerging market economies expanded their share from approximately 33% to some 48%. However, the decline in FDI, both incoming and outgoing, has been less marked for the Euro area than for non-Euro countries. The former has continued to attract significant inward FDI flows, mainly from other advanced economies outside of the EU.

It is not yet clear how the United Kingdom's departure from the EU (BREXIT) would influence these figures. Clearly, the steep decline in the EU's share of incoming FDI cannot be attributed to defects in the Customs Union, which has remained relatively stable over the years in question, irrespective of whether investment inflows were rising or falling. The Customs Union may be necessary for the EU to retain its position as a major destination for FDI, but it is certainly not sufficient. However, the recent EPSON Report remarks that the ability of the remaining EU Member States to further harmonise and remove barriers

to trade and investments within the Single Market, can impact the attractiveness of the remaining Member States.

Although it is likely that other factors, such as the evolution of state aid regimes and attitudes to FDI flows into 'sensitive' areas, may influence FDI-related policy making in the next few years, the proper and smooth functioning of the Customs Union, as a major pillar of the Single Market, will continue to be important to those foreign direct investors who wish to sell their wares in the EU, or whose supply chains cross the common external border, whether on the way into the EU or out of it. In the latter case, this would also include exporters and others that use outward processing. In this regard, all moves over the past several years towards speedier and simpler Customs processes, such as the adoption of risk-based controls and the creation of a paperless Customs environment, are to be commended, as is the Authorised Economic Operator scheme.

Customs administrations must be forward-looking and grasp all the opportunities for simplification opened up by the Union Customs Code, so that through the correct and consistent application of the large number of controls for which Customs is responsible, ranging from the collection of Customs duties to the protection of health and safety, the environment and intellectual property, the Customs Union continues to promote an investor-friendly business environment. ■

# Can Dreams Come True? The EU Customs Union and its Future Governance

Carsten Pillath - Director General  
Philippe Lefebure - Political Administrator

*Mr. Carsten Pillath is a graduate from the University of Köln, Germany with a Ph.D in Economics. During his career he worked at the International Monetary Fund (IMF) as an advisor, held several positions at the German Federal Ministry of Finance and at the Federal Chancellery. In 2005, at the Ministry of Finance he became Head of the Directorate-General for European Affairs. Since 2008 he has worked at the General Secretariat of the Council, as Director-General for Economic Affairs and Competitiveness.*

*Mr. Philippe Lefébure is a Belgian national, born in 1959. He joined the European Institutions in 1996 and worked successively in the European Commission and in the EU Council of Ministers. Since 2005, he has been the desk officer on Customs matters in the EU Council, assisting the rotating Presidencies in handling the Working party on Customs Union.*

Karl stretched his legs under the desk and looked at the computer screen. His daily report was completed and ready to be sent to the Agency. It had been a long day at the Customs Station. The land border crossing check point under his responsibility was usually a hive of activity, but today it had been exceptionally frantic. This morning Rodriguez and Virtanen, the two officers operating the heavy-duty load scanners, had identified no less than four very suspicious shipments. Following close inspection, two shipments had ended up classified as “false positives”. Rodriguez hit payload on the two others, a large bag of “cheap whites” and a box of counterfeit medicines. The truck drivers were interviewed by the cops, but Karl had asked De Vries, one of his most experienced officers, to assist the police. Who knows, De Vries might be able to grab some precious piece of information that the Head Agency could use in other cases. Karl knew of a couple of famous cases of illegal traffic that had been dismantled that way. Startled by a knock on the glass door of his office, he signalled Rodriguez to come in. Elena Rodriguez was the latest and, at 25, the youngest recruit at the station. Very bright girl: her degree from the EU Customs Academy had been awarded with high honours.

“Congratulations, Elena, well done! Have you seen the lab report? The cheap whites you spotted this morning have a level of tar and nicotine almost three times higher than the maximum limit. As to the blue pills, the report says here that what they contain is only...”

“Baking soda,” interrupted Elena, smiling. “Yes, we were lucky! I sent you a note on the two false positives; we will need some technical adjustment there. Look, I just wanted to check out; it is late, I am going home”.

She left and Karl piled the papers on his desk. Time to call it a day, he thought. He put on his coat, ready to walk away, but stopped to straighten a frame on the wall. The faded 2018 framed poster commemorated the 50 years of the EU Customs Union 19 years ago.

Karl remembered that time. He had just joined his national Customs administration. Despite all the rage and celebration, the EU had organised for the occasion, Customs was still very much a national affair. Each Member State had its Customs administration, usually dependent on the Ministry of Finance. The Customs laws were indeed adopted by the EU, but it was up to the Member States to apply them. This situation, which was described by some as the “implementation challenge”, had made it very difficult for the national Customs authorities to achieve results that could be considered equivalent across the Union. The EU intended to establish a level playing field, but ensuring that laws were applied the same way everywhere in the Union was a daunting task.

For starters, the implementation of Customs control was a national responsibility. Inevitably, controls varied a lot and that had led to the perception of unfair diversion of trade towards Member States with a reputation for leniency. Sanctions for Customs infringements were also applied in accordance with national law. The result was that a similar infringement could be sanctioned lightly in one Member State and get a heavy judicial penalty in another. Many had suspected that criminals had undertaken “sanction shopping”, and adapted their modus operandi and logistics to the opportunities offered by the divergence between national legislations.

Karl thought of the financial resources. Import duties collected by Customs were own resources of the EU, but Member States were allowed to retain the “collection costs” that represented 20% of the amount of duty. This system was poor and unbalanced. Only a handful of Member States with the largest ports were reaping the lion share of the collection costs. Even worse, the collection costs were not earmarked for Customs, and were transferred to the general budget of the Member States. Customs were then left to face huge costs and a load of tasks. Everybody looked at them for trade policy and tariffs, but also for security and the fight against terrorism, for product safety, health, intellectual property, environmental and market protection, dual-use goods, drug precursors and firearms, yet Customs were deprived of the necessary money.



About the same time, the EU Customs legislation had imposed a complete shift from paper to electronic communication between the Customs administration and trade. The national administrations were not keen to bear the responsibility for the change in IT systems, and found themselves unable to foot the bill either. This state of affairs had delayed the implementation of the Customs laws. Business was furious and the credibility of the EU undermined.

The financing of the border security equipment was another fish to fry. It was obviously unfair to leave only the Member States with external borders to bear the weight of border security, but it proved equally difficult to convince all the Member States to offer additional funds to the EU to pay for the necessary equipment.

The Commission had tried to grab the bull by the horns, and proposed a number of solutions for a rational action for Customs. However, the Commission failed to propose a model for governance which would have enabled a fast track for these solutions. The Commission once again had relied on its classic model for governance whereby the policy coordination of various bodies in charge of sectorial aspects of the Customs Union was under the remit of a group of high-level Member States experts, the Customs Policy Group, and chaired by the Commission. This established structure was somehow at odds with a competing one in the Council where three Working Parties, the High-Level Working Party of Directors General of Customs, the Customs Union Working Party, and the Customs Cooperation Working Party, were also responsible for policy development. The line taken by the Customs Policy Group was very often opposed to or severely amended by the Council. Overall, the governance model of the Customs Union advocated by the Commission seemed to be the result of a complicated and unfit compromise, where power was shared between the major stakeholders at the expense of the efficiency of the whole system.

Karl vividly remembered the events that had paved the way for a complete rebranding of the Customs Union's governance. Following an investigation by the EU Antifraud Office, a huge criminal network had been dismantled. It had operated across the EU for twenty years and had specialised in money laundering, counterfeiting, VAT fraud and tobacco smuggling. The losses for the EU and the national budgets over that period were estimated at €350 billion. In the wake of the scandal, the European Parliament came forward with a scathing report, blaming the Commission and the Member States for their failure to confront the problems of the Customs Union. Parliament then urged the Commission to propose the establishment of an EU Customs Agency and to bring together under the same new roof people and institutions in charge of the Customs Union.

The Commission had delivered the proposal, and in 2030 the EU Customs Agency was born. Like all the other national Customs officers, Karl had been invited to join the corps of the EU Customs Agency. Thanks to the harmonisation of procedures, a more rigorous use of new technologies and a better training for the staff by the EU Customs Academy, the Agency had achieved substantial economies of scale. The EU Customs laws were applied in the same manner everywhere in the Union, taking into account geographical or local specifics. Customs controls and sanctions had been harmonised. The EU fully funded the Customs border security equipment and spread it according to needs. The IT development was centralised at EU level. The Agency, under the control of the EU legislator, defined the Customs policy and established the work programme. Overall...

Karl woke up suddenly from his thoughts and memories. He smiled at the old poster, switched on the alarm and left the office. He needed to rest. The next morning, he had to wear a nice tie and travel to Brussels. The Commission wanted to discuss the approaching 70<sup>th</sup> anniversary of the Customs Union. ■

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# The future of the Customs Union, including Customs Union Performance

Philip Kermode

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**T**he EU Customs Union has, over the last 50 years, developed far beyond the basic concept of a Customs union to become the structure we see today.

The Common External Tariff, common commercial policy, and the absence of duties and quotas on movements between EU countries, have created a foundation on which further EU policies have been developed. In particular, the Customs Union created the conditions under which the Single Market could be put in place. Thus the four freedoms relating to free movement of persons, capital, goods and services are exercised within the EU in the framework of the protection given by the rules and procedures of the Customs Union.

Previous articles in this publication have set out the changing role of Customs and the current challenges in managing the Customs Union in the interest of all its stakeholders. Customs' traditional fiscal role at the frontiers of the Union (not forgetting its role in controls within the territory itself, such as in post-clearance audits) has been built upon and Customs are now a crucial part of a more complex control and facilitation environment involving many actors, both direct and indirect. This activity has become more important as more EU policies involve common rules across the EU and, consequently, controls at the external frontiers.

## So what is the future for the EU Customs Union?

What is almost certain is that the Customs Union will continue to be a foundation of the European project. Recent papers produced by the European Commission set out a range of possible scenarios for the future development of the EU. Irrespective of which way the EU develops, the Customs Union is likely to stay because its importance and value is clear to all.

The development of the Customs Union to date has been consistently in the direction of ensuring a more efficient and effective regulatory environment with all Member States' Customs authorities acting as one in applying the common rules. This general approach is likely to continue. But there are challenges ahead which come in different forms.

First, the increase in volumes of international trade, as well as the changes in the make-up, origins and destinations of this trade, are impacting on the world of Customs. In addition, the rising tensions in the international community around the concept of fair trade, the changes in business models, such as those driven by e-commerce, and technological advances such as 3D printing, require agility in the management of the Customs Union.

To address these challenges there will have to be an increased reliance on data flows and on trusted traders providing guarantees of compliance in return for benefiting from trade facilitation measures. There will also have to be even greater alignment between those policy areas that depend on Customs intervention, in order to ensure that goods entering and leaving the EU respect the common rules and EU citizens and businesses are adequately protected. It will be necessary to have a much more joined-up approach to regulatory control and high levels of cooperation within and between Member States. Modern and effective IT tools are also crucial.

The Union Customs Code (UCC) has established a clear and modern legal framework, supported by an IT work programme, which is designed to knit Member States' Customs administrations together in a tight web of cooperation built on common processes while facilitating trade flows, including by streamlining and modernising many Customs processes. This framework needs to evolve to deal with challenges as they arise and the IT work programme must be completed on schedule.

In organisational terms there still remain questions as to the most cost effective and acceptable way of enabling Customs administrations to optimise their performance across the EU. These issues will have to be teased out in the coming years as the need for more integrated and cooperative control processes involving different regulatory actors becomes increasingly clear. The issue of financing, constructing and maintaining the IT tools and systems underpinning the Customs Union remains live and the Commission

and Member States must work together to arrive at clear cost-effective long-term solutions in this regard. This work could build on the analysis carried out by the Commission and published in a report in 2018. The EU Customs 2020 Programme, and its successor, should also help to improve the performance of EU Customs, in particular by facilitating innovative forms of cooperation. For example, the Customs Eastern and Southern Eastern European Land Border Expert Team (CELBET) expert team of eleven Member States on the eastern land border of the EU has achieved some promising results in terms of solutions to common problems.

Managing the Customs Union of the future will also require up to date information on performance in the many areas of Customs activity. The groundwork for a meaningful performance measurement system has been put in place over recent years in a collaborative project between the Commission and the Member States under the title Customs Union Performance (CUP). A system for monitoring performance must be put in place if the Customs Union is to respond effectively and swiftly to present and future challenges.

Already we can see from the CUP work that Customs deal with trade values of approximately €1.86 trillion for imports and €1.88 trillion for exports (2017 figures) and are faced with growing trade and control responsibilities with constant pressure on human resources. This is the case even though import and export declarations and processing times are rapid, even where no simplifications are used (approximately 93% are cleared within one hour). The CUP exercise is vital to enable Customs authorities to understand how traders utilise options available to them under Customs rules and to understand the effectiveness of controls carried out by one or several Member States.

In its Communication of 21 December 2016 on governance in the Customs Union and in its follow up report of July 2018, the Commission emphasised the need for cooperation between Member States and the Commission so that the Customs Union can function properly. This partnership needs to take CUP evidence as a basis for an approach that continuously analyses the effectiveness of rules and relevant decisions in operational activities. Innovative methods of working together may need to be considered in this regard.

The EU is, and is likely to continue to be, very focused on trade. Customs has a vital function in balancing trade facilitation with effective controls. In the context of the challenges that we are facing or are likely to face, Customs work within the EU has to be complemented by cooperation activities with the EU's trading partners. The future surely requires greater exchanges of information and cooperation particularly in a world where the reliance on data flows and sophisticated risk analysis are the new norms. This involves not only bilateral arrangements between the EU and individual third countries, but also standard setting and cooperation at multilateral level, most notably in the World Customs Organisation.

The EU Customs Union is a genuine success story. It has evolved not only in response to developments in the world at large but also to the development of common policies within the EU. The Single Market is heavily dependent on the protective role of the Customs Union, and therefore it is vital that Customs Union control processes and procedures remain relevant and effective. At the same time trade into and out of the EU must be facilitated by Customs rules that are adapted to today's trade realities. All of this calls for modern control processes, pro-active administrations and close working relations between Customs administrations, regulatory authorities including security, law enforcement and tax authorities, and the trade community. Speed and innovation are now key concepts for Customs administrations. While we cannot tell exactly what the future will bring, we can see that the effectiveness of the Customs Union will depend above all on our common values and on continuing close cooperation between the main stakeholders of the Customs Union. ■





Malta Customs House







“Europe will not be made all at once,  
or according to a single plan. It will be  
built through concrete achievements  
which first create a de facto solidarity.”

Robert Schuman - 9 May 1950



D W A N A

