

# **DESIGNING THE ULTIMATE INSTRUMENT OF MODERNISED CUSTOMS CONTROL:**

**Jack Dyer**

**Postgraduate Student: Unit for Maritime Studies; University of Kwa-Zulu Natal:**

**Accepted for the Economic Society of South Africa Annual 2013 Conference May 2013... Presented 25 -27 September 2013 University of Free State, Bloemfontein.**

## **ABSTRACT:**

In order to modernise global customs for the twenty first century; this paper will outline a World Customs Organisation Economic Competitive Package Protocol as the ultimate instrument containing the essential elements for customs modernisation in the 21st century incorporating and prioritising global standards to improve economic competitiveness and sustainability through trade facilitation policy instruments and transit efficiency. Additionally; it will incorporate measures to ensure the securitisation of the international supply chain management system against potential risks. The establishment of these objectives will include recommendations advanced by global standards of existing conventions (including the Revised Kyoto, Johannesburg and Nairobi Convention, the Security and Facilitation in a Global Environment Framework of Standards (SAFE), the Arusha Declaration, Integrated Supply Chain Management Guidelines and Convention on Facilitation of International Maritime Traffic); these will be assessed and prioritised in order of significance for the new Protocol; in order to address the main challenges of customs simultaneously facilitating trade; while ensuring global security through adequate risk assessment.

## **JEL CLASSIFICATION:**

JEL Codes:

K00 - Law and Economics: General

H19 - Structure and Scope of Government: Other

F60 - Globalization: General

## **KEYWORDS:**

customs law/ process modernisation; supply chain management; international trade facilitation;

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## **SECTION I: INTRODUCTION:**

Historically; the purpose of customs was to protect trade against foreign competitiveness; acquire revenue and facilitate legitimate commerce; while protecting society against potential security and other threats - alone. Now, customs modernisation; entails customs participating in a global cooperation network; through coordinating with all economic operators, to voluntarily self regulate –ensuring trade security and updating former manual procedures; using consistent risk management and strategic intelligence/ data and information sharing; utilising augmented technology to magnify trade flows and aid consumer sovereignty/ protection (Gordhan 2011); enhancing logistical efficiency via standardisation of data requirements and customs procedures. It does so to promote foreign investment by providing trade predictability and certainty throughout a globalised integrated supply chain management system, while assuring issues of customs integrity and good governance against increasing global threats. It now aims to synchronise the two objectives of trade and transit efficiency facilitation via eradicating trade barriers and integrating global supply chain economic operators; promoting economic competitiveness and resolving enhanced security challenges of organised transnational crime and terrorism; as advocated by this assignment's WCO Economic Competitive Package Protocol.

In order to modernise global customs for the twenty first century; this paper will outline a World Customs Organisation Economic Competitive Package Protocol as the ultimate instrument to ensure customs control and impact: incorporating and prioritising global standards to improve economic competitiveness and sustainability, through trade facilitation policy instruments and transit efficiency. Previous papers have ignored the need for information technology; security seals; extending customs power, jurisdictions and other potential instruments of control. Additionally; it will incorporate measures such as CT –PACT seal requirements to ensure the securitisation of the international supply chain management system against potential risks. The establishment of these objectives will include recommendations advanced by global standards of existing conventions (including the Revised Kyoto (abbreviated to RKC throughout), Johannesburg and Nairobi Convention, the Security and Facilitation in a Global Environment Framework of Standards (abbreviated to SAFE throughout), the Arusha Declaration, Integrated Supply Chain Management (ISCM) Guidelines and Convention on Facilitation of International Maritime Traffic (FAL); these will be assessed and prioritised in order of significance for the new Protocol; in order to address the main challenges of customs simultaneously facilitating trade; while ensuring global security through adequate risk assessment.

## **SECTION II: THE ULTIMATE CUSTOMS INSTRUMENT FOR TRADE FACILITATION: PART A GENERAL:**

The objective of this paper's advocated WCO Economic Competitive Package Protocol is to enable the ultimate customs modernisation instrument for the twenty first century; by first prioritising greater trade facilitation through the simplification and harmonisation of customs procedures; through minimal customs clearance requirements. These include assimilating Revised Kyoto Convention (RKC) Chapter 3 recommendations providing a uniform UN Goods declaration format based on the customs trilogy of origin, classification and value; electronically submitted and verified (RKC Standard 3.11) with supplementary documents if needed (3.18); specifying a sufficient time limit to improve trade flows (3.23). Including Standard 3.25; and ISCM Guidelines Standard 3.13 and 1.3 -1.33), would provide inspection and processing of the advance electronic export/ import/ transit cargo declaration with advanced notification of consignment arrival/ departure; including Standard 1.3.4 Vessel Stow Plan by 48 hours; prior to arrival; establishing a longer time period for greater risk assessment of cargo preclearance methods and Container Status messages (1.3.5); indicating terminal cargo movements/ changes in container status; for further security.

Adding RKC Standard 3.32 (establishing AEO's) would improve trade for AEO's –allowing them to have goods inspected by Customs officials at their premises. Superfluous delays expediting release and clearance procedures of cargo and persons; are eliminated under Standard 3.35; to ensure coordinated cargo examination; for multiple agencies when necessary. Including recommended minimal SAFE Standard 1.10 provides mutual customs to customs government cooperation – in declaration requirements aiding cross-country trade. Adding transitional standards 3.4 and 3.41 to the Protocol, ensures swift processing and instant cargo release (ISCM Guideline 1.9), avoiding trade disturbance costs; once all procedures are complied with; all duties assessed and paid and clearance “goods in free circulation” is granted; improving the integrated supply chain management process; as customs reduces barriers to potential trade by streamlining procedures and reducing pointless inspections. This promotes economic sustainability as investors divert trade to those countries with customs administrations who cooperate and simplify customs requirements (Goodger February –April 2013)

For the Protocol as ultimate instrument for customs modernisation, the global commercial flow is improvable by adopting Revised Kyoto Convention instrument Specific Annex A: Arrival Chapter 1 streamlining customs clearance procedures/ information – equalising across all countries; to that necessary for customs regulatory compliance including specifying the zone of customs control, transport and nature of goods (RKC Standard 1.8) to further coordinate trade and border management. Customs control would be facilitated by providing greater and more specific control of persons responsible, the content of the declaration; documents required and the submission/ notification, final delivery time and route limitations/ process –standardised for transit (2013 SA Customs Control Bill Chapter 11/ RKC Annex E1 ), transshipment ( Chapter 12/ RKC Annex E2), temporary admission process (Chapter 13 RKC Annex G – Standard 22 provides a list –ratified by the Istanbul Convention), processing procedures (inward Chapter 19/ RKC Annex F –exempt those repaired/ re-exported in specific time period), outward –Chapter 21) and home use (Chapter 20) the warehousing (Chapter 14/ RKC Annex D (standard 4 –grants Custom control –

one year max duration in warehouse storage –Standard 11) tax free (Chapter 15), stores (Chapter 16)), exports (Chapters 17/ 18 –RKC Annex C –defines outright exportation –goods in free circulation permanently leaving Customs) and customs procedures.

It could also adopt the Convention on the Facilitation of International Maritime Traffic (FAL)–reducing the number of necessary declarations, with a standard, specific general/ cargo declaration and list of restricted goods (FAL forms 1 -7); standardising needed ship documents for IMP General declaration, (including cargo, ship’s stores and crew’s effects declaration; passenger and crew lists and a list of dangerous goods; specifying information and number of copies (standard 2.1). Standard 1.19 provides for reasonable customs administration charges to cost of rendered services. Uniform FAL procedures such as these would enable commerce to flow freely and promptly; through establishing mutually beneficial government trade relations without interruption in accordance with SOLAS chapter XI-2 and the (ISPS) International Ship and Port Facility Security Code. Trade facilitation can also be attained through prioritising and implementing the customs to customs administration standards embodied within the SAFE Framework. These include Standard I: Integrated Supply Chain Management System (ISCM Guidelines) and Standard II: Establishment of a Cargo Inspection Authority. Customs to Business Standards including Standard VI: - facilitation of commerce and securitisation of the international supply chain would further stimulate economic competitiveness through mutual customs data sharing/ manifest, declarations and centralised processing –registration, risk, assessment and audit for greater customs security.

Less significant in priority but would enhance trade; includes adding the Revised Kyoto Convention Annex K Rules of Origin and the WTO (World Trade Organisation) Agreement on Rules of Origin Article 3: (Agreement after Transition Period); to a new WCO Economic Competitive Package Protocol; rationalizing the Customs Trilogy origin criteria (3a); administered unbiased for all countries equally (3d and 4e); not discriminating on country of origin (RKC Standard 1.2). synchronizing the classification of goods; to reduce transit and trade regulatory compliance costs; defining good origin (3b) according to the substantial transformation criterion–the origin is where the commodity is defined in its quintessential form); banning trade import/ export discrimination under 3c –both foreign and domestic are equally protected. Legal proceedings for independent appeals against determining the origin (3h) would reinforce this (3e) and (GATT 1994 Article X); assessing goods within 150 days; recommended under WTO Agreement of Origin under Article 3f. Customs valuation origin is further established and validated for the Protocol through express provision of documentary evidence of origin including the “certificate of origin” and “certified declaration of origin” further aiding customs in specifying criteria.

## **PART B: THE HARMONISED COMMODITY DESCRIPTION AND CODING SYSTEM**

Additionally; the WCO Economic Competitive Package Protocol could create uniform customs classification and information procedures for all goods through the International Convention on the Harmonised Commodity Description and Coding System (HS); to simplify trade; prescribe documents; improve information and statistics while reducing data transmission and other regulatory costs upgrading technology; as specified under Article 3 part 1 –Obligations of Contracting Parties for all commerce. Section B classifies all goods according to the Harmonised System using 6 digit codes for standardising

classification; origin and valuation procedures of cargo consignments -according to their base or raw materials for customs administrators; and requires exchanging information for smoother trade volume flows—provided it does not infringe upon the imperative of security. It could specify the HS system rules; to distinguish exceptions using Rule 2a –incomplete/ unfinished articles; 2b on articles presented unassembled or disassembled, Rule 3 –goods under 2 or more headings; Rule 4 –goods that cannot be classified by the previous and Rule 5 –Packaging (exempts packaging from a cargo declaration (RKC Chapter 2 Standard 10). Including Part IV: The Harmonisation of the Rules of Origin; would enable greater trade; through greater comprehension of the criteria (4c and 4f) and establish the principles and objectives under Article 9; processing/ manufacturing origin and other restrictions implemented through policy instruments (4d) and determine tariff assessment; whether ad valorem; specific or composite (4d). RKC Annex K Standard 2: Chapter 2 (validated by Chamber of Commerce/ Customs Authority) now provides for greater domestic protection of trade and duties from disruptive competition/ dumping –by ratifying the methods proposed at the WTO Rules of Origin Agreement. Prioritising these next by creating global uniform data requirements; could facilitate greater globalisation through uniform trade and customs procedures, averting trade disruption and enhancing productivity via abolishing cultural/ language/ trade barriers currently inhibiting commerce; while providing logistical security.

### **PART C: ESTABLISHING AUTHORISED ECONOMIC OPERATORS:**

To do so; The WCO Economic Competitive Package Protocol could further prioritise trade efficiency via global standards (i.e. ISCM Guideline 1.4 on AEO's and SAFE Customs to Customs standard III: Authorisation) establishing Authorised Economic Operators (South Africa –Preferred Trade Programme) which need to be created, to minimise inspections; transit time and inventory storage costs and expedite process efficiency and other advantages outlined in Section 5.3 SAFE –AEO Benefits in order to ensure securitisation –avoid an interconnected world commerce network vulnerable to security or trade disruption; as the AEO assumes cargo security responsibility from point of origin to destination; in partnership with Customs in contrast to the historic role of Customs assuming all legislative responsibility and control. Additionally; the WCO Protocol could incorporate SAFE Core Elements (1 -4), which recommends establishment of AEO's to reduce security costs and promote commerce especially with the extension of the electronic dashboard to incorporate customs fast tracking; via the Accredited Client Scheme and Manifest Acquittal System of an electronic cargo declaration system; (Lectures). Accreditation certification every three years and random post clearance audits would ensure regulatory compliance for customs (Standard 3.23). For AEO's the import declaration could duplicate/ replicate the goods export declaration using the provision of a Unique consignment number UCR (ISCM Standards 3.4 and 1.6) and ISPS code as cargo identifiers – link customs information and trade –with an individual, unique identity to each cargo consignment. The Protocol would establish cargo integrity and security through unique risk assessment and identification; facilitating trade simplification; while reducing bureaucracy that impedes the free carriage of goods. Therefore; creating this AEO concept would facilitate and homogenise global trade through guidelines to standardise mutual recognition of standards and cooperation via common quality validation and authorisation procedures under SAFE Standard 5.4; (registration for trade facilitation and commercial

security) –enabling customs to prioritise greater security risks and reducing customs enforcement costs; given larger/ more established AEO's are less likely to commit trade violations.

Under Section 5.6 voluntary self-regulation and reconciles the historic customs challenge to eradicate barriers to trade flows; while simultaneously ensuring the security of the international supply chain system linkages i.e. H –Conveyance security; I –Premise Security; J –personnel security; K –Trading partner Security and G –Cargo Security Measures –security policy manual. The formalised process would incorporate the following sections: definitions -Part 5.1; 5.2 Specified Conditions –A: Demonstrated Compliance with Customs Requirements; System for managing Commercial records; C –Financial Viability; Consultation; Cooperation and Communication –D; E –Education; Training/ Awareness; F –Information Exchange/ Access and Confidentiality and I: Crisis Management and Incident Recovery; 5.6. If the Protocol prioritised AEO's through fast tracking under SAFE Customs to Customs Standard I: partnership –self screening of AEO's according to pre-established trade security standards; it could further facilitate trade and end to end control from origin to destination (ISCM 1.7), throughout customs control areas via authorisation under Standard III and Security (Standard II:) –AEO's assimilate security measures to protect cargo/ buildings/ transport modes; extensive security screening and identification measures –badges/ keys etc.; IT security measures –e.g. user account passwords/ information backdated; data access restriction and data privacy. Assuring cargo protection at source would reduce customs interventions and inspections; promoting trade flows for the buyer and the seller; establishing greater shipment certainty/ avoiding delay costs through regulatory/ voluntary self compliance (SAFE 2.2/ 2.3)

## **SECTION IV: TRANSIT EFFICIENCY FACILITATION**

This WCO Economic Competitiveness Package Protocol next priority could endorse transit efficiency standards to promote overseas investment; by including GATT Article V. Section 1 defines “traffic in transit” for all transit goods under customs control—equalising documentary requirements including, production of supplier’s invoice and transport documents to establish complete freedom of goods within each contracting party’s area of Custom’s jurisdictional control (Section 2); (although cargo must appear at a designated place of entry/ exit); whilst in transit –consistent for all countries; free of any discrimination on the basis of country of ownership, origin or destination to enhance the free flow of global commerce from other countries. Section 5 assumes equivalent treatment and priorities to local and to transit. In addition; transit efficiency could be further guaranteed by including RKC Specific Annex E Chapter 1 procedures – where goods are exempt from duties (Standards 3 and 1.3 –GATT Article 1 Section 3) except for reasonable administrative costs equivalent to the value of service delivered (Section 4). It specifies responsibility (Standard 4) and authorised operators (5) and standardises a time limit (13) plus (20/ 21) facilitate commerce in allowing for inter-modal transport substitution. Standard 6; regulates the customs transit goods declaration; reducing bureaucracy and aiding commercial exchange; given that raising Customs compliance regulations only increases costs and prices; causing customs to undermine a country’s trade for all global supply chain stakeholders. These enable the proposed WCO Economic Competitive Package Protocol to attain economic and trade sustainability; through identifying and implementing standard guidelines universally applicable, reducing compliance costs; as investors divert trade to those customs administrations which enable them to swiftly fulfil the international contract of sale; for goods to freely move via minimal customs interference paralysing trade(Gordhan 2011. )

## **SECTION V: ENHANCING CUSTOMS CONTROL THROUGH IT MODERNISATION:**

Additional procedures to stimulate further commerce if adopted into the WCO Economic Competitiveness Package Protocol, include prioritising the Electronic Data Interchange; -to further promote national and economic trade sustainability through an automated (RKC Chapter 7 and ITC Guidelines (6.2); electronic process 24 hours long (FAL Recommended Practise and Lectures); establishing computerisation of customs clearance, assessment, collection and payment of customs duties for efficiency and accessibility (ratified internationally by Article IV Johannesburg Convention) and implementing SAFE Core Element 1/ Standard 3.1. Standard 6: Advance Electronic Information and ISCM Standard 1.8, across all transport mediums. This acts in contrast to the historic Customs manual procedures which impeded trade flows, (RKC Standard 6.1 and ISCM Guideline 4.13); now enhancing accurate, adequate, legitimate and compatible cross-border trade and security supervision. Aniszewski (November 2009) suggests the WCO Data Model simplifies advance electronic information requirements with a simplified cargo manifest – controlling imports, exports and transit cargo –for trade security and logistical efficiency. This enables customs to target greater threats with fewer staff/ resources. This Electronic Data Interchange and WCO Data Model would enable customs to gain further security through risk profiling and further control to address potential threats; minimising trade disruption costs. The Protocol could make information confidential –restricting access to authorised, legitimate personnel; government or the judiciary to ensure security under WTO Origin Agreement Article 3i. It also could aid trade efficaciousness, endorsing SAFE Customs to Customs Standard VI: Advanced Electronic Information SAFE Customs to Business Standard 6: Trade Facilitation; for trade/ transit efficiency; by integrating clearing agents and providing disintermediation –reducing the need for freight forwarders. Without these standards; there would be further trade barriers and undermining of economic sustainability as investors are deterred from complying with multiple, varying customs compliance –favouring high performance customs who reduce delay, processing and inventory costs.

## **SECTION VI: THE ULTIMATE INSTRUMENT FOR SECURITISATION: PART A GENERAL:**

Additionally; next prioritising this SAFE Core Element II: would specify means to provide a consistent risk management approach to identify threats to the international supply chain, via advanced customs warning systems prioritising threatening cargo and through electronic processes, via implementing the recommendations of the Customs Alert Network – on identified elements/ participants in the global supply chain –shippers; and the Databank for Advanced Technology, which distinguishes between Information Communication Technology and Inspection Enabling Technologies. With the WCO Data Model (ISCM standard 1.3.9 and RKC standard 6.5; the WCO Economic Competitive Protocol aims to further enhance the traditional Custom's purposes of global supply network protection. These include implementing Revised Kyoto Convention guidelines 6.6; RKC Standard 6.7, ISCM Guidelines 5.7 and 1.11 advocating ICT security techniques to exchange trade data and enable mutual recognition of digital signatures; to further identify and ensure legitimate trade across borders; 6.9 –Data privacy and data protection (ISCM Guideline 4.13)–protecting trade/ individual through confidentiality rights including other parties –transmission and disclosure; – allowing the right to access own data (ISCM 4.14) but legalising data mining to provide further IT security defences for customs border protection against transnational crime. These measures accede to RKC Chapter 6 recommendations on customs control –electronic methods (6.9) ratifies Articles 5 -7 for the provision of advanced information exchange electronically and 6.4 (risk analysis). This process is facilitated through self-assessment, AEO's and the provision of technological improvements (ISCM Guidelines Article 1.7).

Further security for the WCO Economic Competitive Package Protocol is established through endorsing Revised Kyoto Convention General Annex Chapter 7: Application of IT: under international standards 6.9, 7.1 and 7.3; improving trade efficiency; accountability and security through replacing manual Customs procedures with electronic alternatives under Standard 7.4. The WCO Data Model assimilates ISPS (International Ship and Port Facility Security) and FAL requirements; extends to transit procedures and adds cross border data streamlined from regulatory agency information standards on agriculture; food hygiene and hazardous waste disposal. The Cargo Community System (Chatelus 2012) would further facilitate trade through information exchange if adopted between major customs control areas –i.e. airports and seaports. The WCO Economic Competitiveness Protocol would further stimulate trade by encapsulating both the WCO Data Model consisting details and specific codes for the consignor and exporter names and addresses, the tariff code/ goods description; total invoice amount, currency and UNDG for dangerous goods (Mikuriya 2012), plus the Single Window Concept (SAFE Standard 1.3.10) as the next priority in reducing trade barriers uniting all government departments via electronic submission of a single harmonised inputted data set for Customs clearance/ trade promotion – between customs administrations with electronic notifications –arrival/ departure/ control for high risk consignments to complete registration avoiding duplication of customs controls. This addresses security through mutual information sharing and cooperation using GOVCBR –international standard codes for B2G (Business to Government), G2B (Government to Business) and G2G (Government to Government) joint cooperation; improving contact between customs and other regulatory agencies –diminishing operational and

administrative expenses; enhancing efficiency and reducing border control staff etc., while aiding trade by reducing compliance costs for commercial operators (Goodger 28 February 2013.)

Another fundamental priority is in customs responsibility in assuring the securitisation of the international supply chain management system improving Custom's historic mandate of overall trade security; ensuring uniform operational customs inspection procedures of all cargo and people (export and import) passing through Customs control areas. (SAFE Standard 2: Cargo Inspection Authority,) satisfying the consistent risk management (Second Core Element) and Risk Targeting (Third Core Element) of SAFE (utilising nonintrusive measures for greater trade security from identifying potential threats. The Protocol could specify this technology through RKC Customs to Customs Standard III: Modern Technology in Inspection Equipment e.g. X rays/radiation detection equipment; Automated selectivity systems (Standard 4.1, WCO Risk Management Guide 4.4; WCO Global Information and Intelligence Strategy with Standardised Risk Assessment Indicators for customs to coordinate global responses to terrorism/ other threats. The Protocol could prioritise these via SAFE Guidelines advocating consistent technological standards to use (Aniszewski 2009) –i.e., 3/4 for the purchase and deployment of scanning/ imaging equipment ; container scanners and defining; a general survey on scanning expertise; ROCB regional scanning workshops; - online product images/ integrated database; -product classification;; a databank requiring online registration –communication equipment; document readers/ verifiers; tools/ Safety Equipment; software and services; surveillance equipment; X ray and gamma ray equipment– as stationary, re-locatable; mobile methods; enabling customs to address greater threats with fewer resources.

Additionally; the Protocol could further aid customs security, by specifying guidelines (Aniszewski 2009) on test and radiation portal detection equipment –Radiological Disposal Devices –including personal radiation detectors PRD; fixed radiation portal monitors; field gamma ray spectrometers; hand held neutron search detectors NSD; portable radiation scanners PRS and hand held radionuclide identification devices (RID) – section 3.3. Section 3.4 –standardises fumigants; (3.5) drugs and explosives –using trace technology for screening humans; automated alarm material specific technology, container security devices (3.6) – mechanical seals and smart boxes –contain data on moving goods; electronic tagging and tracking; indicative seals; barrier and electronic seals; (3.7) track and trace system; (3.8) tax and document security. Surveillance methods to adopt include SAFE Framework 3.1 Standards 7/ 9 on targeting/ communication and security assessments. Instruments to detect poaching measures –formalising sniffer dogs/ rats for landmines/ CITIES infractions; modernising customs techniques for new trade procedures and law enforcement against transnational crimes for the WCO Economic Competitiveness Package Protocol.

## **PART B: INCORPORATING SAFE FRAMEWORK MEASURES:**

These trade procedures are secured by methods detailed under SAFE Customs to Business Standard IV: - Technology modernisation (Electronic Interchange/ Data Model above) and Standard V: - to continuously update security standards and supply chain protection measures. SAFE Customs to Customs Standard IV: Risk Management Systems ;Standard V: High Risk Cargo or Container requires a certified declaration of origin/ value/ certificate of origin; plus anomaly analysis to for authenticity and protection; Standard VII: Target and Communication –security incorporates 7.4 WCO Handbook for Customs Officers on Risk

Indicators incorporating 17 standards on intellectual property; 7.2 –WCO Standardised Risk Assessments document–common standards -7.3; WCO Global Information and Intelligence Strategy -7.1. Standard VIII: - Performance Measures; advocates statistical reports distinguishing surveillance means of inspection enabling technology utilised. Standard IX: Security Assessments are recommended to identify potential globalised commercial network security risks. Customs control for trade duty calculations and investigating potential security threats is aided through prioritising compulsory random sampling with formal conditions and methods –chemical, mechanical and technical under (RKC Standard 3.9) and Standard XI: Outbound Security Inspections randomly to deter threats. The 2012 SAFE Framework now incorporates these for coordinated border management; specifying trade continuity measures plus a new Annex defining high risk cargo more stringently; updated SAFE Scanning/ Trade Recovery guidelines; Air Cargo Advance screening; -for a world customs network( Chatelus 2012). Endorsing these recommendations under the WCO Economic Competitive Protocol would provide customs with strategic automated data and risk intelligence to modernise techniques (Gordhan 2011) while creating greater economic sustainability from investors reassured by greater commercial security; stability and regularity.

### **PART C: INCORPORATING THE JOHANNESBURG CONVENTION:**

The Johannesburg Convention provides custom control standards that could be assimilated into the WCO Economic Competitive Package Protocol to ensure greater security; via coordinated border management and control responsibility, through mutual administrative assistance) between customs administrations for joint trade security advantages. In contrast to the previous roles of separate customs controls/ legal jurisdiction; it simplifies law enforcement. Annex I: details cooperation on identifying key risks in customs security. Annex II provides for assistance in assessing import/ export taxes. Annex III –authenticate export/ import documents for customs compliance. Annex IV assistance relating to surveillance. 2013 South African Control Bill Chapter 3 Article 3 provides the Protocol with possible information and verification processes/ security measures necessary to enforce Customs legislation against risks; including information sharing (Article 6) and Article 7 for advanced data exchange connected to Customs offences (Article 5) and for customs duty assessment (Article 4) to promote trade. Article 8 provides for spontaneous assistance against substantial economic and other threats. Article 11 provides details on surveillance and information on request in averting offences. Article 13 provides mutual cooperation in summoning experts and witnesses. Article 15 legalises the “right of hot pursuit” to enforce jurisdiction into another customs control zone to prevent an offence –extended to the high seas. Article 16 establishes cross-country border surveillance. Chapter VI implements guidelines for communicating requests for assistance (Article 19) (with notification Article 9) –and details needed (Section 4) for recovery of customs claims (10). Article XXV provides for information confidentiality and personal data protection....These guidelines would aid the Protocol in facilitating global security through mutual administrative cooperation and information sharing across borders.

### **PART D: INCORPORATING ISCM GUIDELINES:**

The WCO Economic Competitive Package Protocol could prioritise security further by using standards accelerating mutual customs to customs cooperation implementing ISCM (Integrated Supply Chain

Management Guidelines 4.1; specifying the point of information transfer and nature of requested information to reduce duplication and administration (SAFE Framework 1.38 aiding customs coordinated border management (1.3.11) under RKC Standard (6.7); over enforcing customs legislation/ security restrictions and extends the range of jurisdiction to the point of export. Customs' capacity for control and risk assessment is improved with greater time, information and intelligence occurring from including these in the WCO Proposal: to ensure security as early as possible in the globalised commercial network. Common standards on AEO's; security best practises; and current penalty guidelines (CAMPS/ EAMPS); mutual recognition of customs controls, standards and joint quality control methods/ policies. Bilateral information and risk profile sharing could be published for greater regulatory compliance; facilitating trade flows by eliminating barriers and ambiguities; while aiding customs to ensure enhanced security satisfying: SAFE Cross-Country Responsibilities protecting commerce; defending consignments and facilitating authorised information between customs; in the Single Window concept and for mutual risk intelligence sharing while 1.12 synchronises customs security training with motivation.

#### **PART E: SPECIFYING CUSTOMS POWERS AND INFORMATION REQUIREMENTS:**

The Protocol could further provide greater customs integrity from arbitrary to specific guidelines and power limitations – (Chapter 33 Custom Control Bill); via RKC Annex H also provides for customs offences investigation/ powers (standards 5 -8, 11 -17). Standard 2 details the nature of customs offences; while Standard 3 specifies the responsible people; the procedure followed for discovered offences (Standards 9/ 10) including swift informing of potentially responsible parties (8) and Standard 4 the time period in prosecuting offences. Standard 5 regulates customs control powers to enhance security; restricts personal (6) and premise searches (7) for potential Customs crimes committed; restricts the power to seize transport (16) goods (11 and 13 –details receipt specifying the justification for confiscation; the manner of crime and the good's description) and release promptly (Standard 14) (transport Standard 15). if not needed. Standard 19 provides for means of appeal/ administrative penalties and other ways of resuming trade freely Endorsing the Nairobi Convention Chapter B annexes in the Protocol: would systemise customs offence procedures in order to promulgate greater protection of commerce and resolve crimes such as emphasizing greater assistance and pooling information (Annex IX) including a photograph/ sketch of crime) between customs to customs administrations on request under Chapter 2 Article II; (individually Annex I) on possible legal infractions and new methods/ offences over all aspects of cargo clearance/ transport modes intelligence has noted including counterfeiting, methods of concealment and falsification for all transport kinds/ security policies); in evaluating customs import and export duties (Annex II); controls (Annex III) authenticating documents and customs clearance permission for imports/ exports and transit; surveillance (Annex IV) over potential illicit traffic; enquires for another member (Annex V) facilitating trade via standardising and reducing further barriers.

This Protocol could specify standard information requirements for averting smuggling and other offences: including details on; (A) Natural persons -(a) Surname, (b) Forenames, (c) Maiden name (if applicable),(d) Nickname or alias (e) Occupation and (f) Address (present). It could include (g) Date and place of birth, (h) Citizenship/Nationality, (ij) Country of residence and countries visited during the past 12 months, (k) type and number of identity papers, including country and date of issue (l) Physical description. It could require

(1) Sex, (2) Height, (3) Weight, (4) Build, (5) Hair, (6) Eyes, (7) Complexion and (8) Distinctive marks or peculiarities plus (m) Brief particulars of offence (including particulars of type, quantity and origin of goods, involved in the offence, manufacturer, shipper and consignor) and circumstances which led to its detection; the (n) Nature and amount of penalty and/or sentence imposed; (o) Other observations, including languages spoken and (if available) any previous convictions recorded; (p) Contracting Party furnishing the information (including reference number). These would rectify potential threats occurring from the previous lack of joint security practises; information requirements and mutual cooperation; previously hindering customs administrations. It could involve companies (B) Legal persons (firms), (a) Name (b) Address (c) Names of principal officers or employees of the firm against whom legal action has been taken and, if appropriate, identifying data as indicated under Part (A), Items (a) - (1) (d) Related multinational company (e) Nature of business carried on. It could mention (f) Nature of offence (g). These measures could include listing conditions for the appearance in a foreign court (Annex VI), participation in investigations in other territories (Annexes VII and VIII) –extending offences to specify against the smuggling of narcotic drugs and psychotropic substances (Annex X) or works of art, antiques and other cultural property (Annex XI) specified under UNESCO Article I (A –K) (which on religious or secular grounds, is held to be of importance for archaeology, prehistory, history, literature, art or science), including information cooperation on means, methods, people; products and operations –even recovery of customs duties. This would enable further security; reducing enforcement costs; improving efficiency through Article 5: General Assistance Procedures specifying circumstances; information and documents for general customs cooperation in law enforcement (5a); with data protection conditions (5b).

## **SECTION F: INCORPORATING THE ARUSHA DECLARATION:**

Standards which could be adopted to ensure good governance and customs integrity, to promote market confidence in customs authorities and promote legitimate commerce/ regulatory compliance in addition to motivating the private sector to participate in the AEO programme, for the WCO Economic Competitive Package Protocol are enshrined in the Arusha Declaration: 1. Leadership and Commitment: –Customs Authority management should demonstrate decisive leadership and a personal example of probity to espouse according to the Code of Conduct expected of all officials (part 7) (punishments for infringements increasing proportionally to the offence’s magnitude); showing commitment to implementing integrity and good governance. Adopting Standard 2: Regulatory Framework would reduce customs procedures document requirements and data processes) to that necessary for protecting the global supply chain to minimise trade barriers in alignment with the Revised Kyoto Convention; Standard 3; Transparency would detail performance evaluation/ client service standards expected of customs; publicising standard regulations to resolve asymmetrical information issues and provide an appeal/ administrative appeal process to query any customs procedure. Standard 4: Automation could eliminate manual graft while computerisation enhances process efficaciousness; accuracy and accountability for security via a new Automated Cargo and Transit Management system (Mikuriya 2012) aiding customs traditional law enforcement against money laundering/ terrorist financing and other crimes. Proposing these additional standards with COPES –Compendium of Customs Operational Practises for Enforcement and Seizures provides practical guidelines to aid customs in legitimate trade compliance (Ndanganeni 2012)

Standard 5: Reform and Modernisation would modernise customs reducing chances from superfluous measures/ excess bureaucracy; to reduce this through reform measures implemented in the RKC and other conventions. Utilising Standard 8: Human Resource Management in the proposed Protocol would regulate recruitment; training; promotion and deployment processes (frequently revolving officials to reduce chances of embezzlement) to avert the incentive and the opportunity for graft; on the basis of merit and principles; establishing greater legitimate commerce through higher trust in customs administrations. Additionally; Customs officials should be encouraged to participate in formulating and implementing anti-corruption measures under Standard 9 –Moral and Organisational Culture –chance to advance if they cooperate and are responsible. Standard 10: linking it to the relationship with the private sector; would involve extending these customs integrity means including a Code of Conduct/ noncompliance penalties through voluntary Memoranda of Understanding; establishing mutual cooperation. Adding Standard 6: -independent homogeneous internal and external Audit/ inspection and Investigation methods; -with stringent incentives to cooperative/ penalties for regulatory noncompliance by involving the public informing on infringements of customs and other legislation along with potential security risks; SAFE Customs to Customs Standard 10.1: further regulates Employee Integrity/ Good Governance conditions and 10.2 homogenising training standards would establish greater trade security and protection; while minimising enforcement costs; for the WCO Economic Competitive Package Protocol.

### **SECTION G: SEAL INTEGRITY REQUIREMENTS AND OTHER MEASURES:**

Further security measures would be attained through ratifying the Integrated Supply Chain Management Guidelines for Protocol incorporation; include verification of consignment integrity, avoiding duplication of custom controls and security measures including a unique consignment reference number (SAFE Framework 1.2.4). The WCO Economic Competitive Package Protocol could establish a seal integrity programme as recommended by (ISCM Guidelines 1.4/ 1.5 extends this at key transport modal points for supply chain security and SAFE Standard 1.2.4). RKC Standards 6B, 8 -10 provides for general requirements and physical specification of sealing practises and identification marks–specifying conditions (12) and (17) for local and foreign equivalence. These enable greater securitisation and risk management through adding further WCO Protocol security measures e.g. targeting mechanical sealing under new South African Customs Control Bill Chapter 33) to include more sophisticated non-intrusive instrument techniques providing greater security against cross-country crime. Specific high security seal requirements for manufacturers; freight forwarders and customs administrations could be detailed; specifying cross party responsibility from point of manufacturing origin to point of delivery (ISO/ PSA 17712) guidelines, following those of C-TPAT (Customs –Trade Partnership Against Terrorism) -mandatory for further AEO qualification, creating security protection, ensuring cargo integrity from hazards and threats.

Seal Integrity responsibilities could ensure only legitimate, authorised customs officials, carriers and participant importers/ exporters and AEO's of the global trade network can affix seals and grant permission/ have controlled access with appropriate security awareness training and screening; to verifiable, secure goods storage and transport/ transfer facilities –including a log for recording incidents plus a procedure to resolve them. Seals need to be safely stored, tamper proof and conspicuous i.e. Mikuriya 2012 mentioned Article 8: Tracking and tracing –the protocol could use a diamond stamp with digital marking and

verification to identify genuinely permitted tobacco products – to protect legitimate commerce. Steps needed to register/ participate and withdrawal along with specifying maintenance and implementation guidelines would improve trade regulatory compliance –including inspecting facilities for potential weaknesses and suggesting necessary refinements in defences; in training and in data protection methods; involving all participants of the global supply chain.

The WCO Economic Competitive Package Protocol could establish the Revised Kyoto Convention Chapter 5 security standards to ensure securitisation of the integrated supply chain management process against potential threats, determining the necessary circumstances required (5.1); the quantity and detail of security (5.2) and customs control zone (Chapter 6 Standard 6.1). Using standard 6.4 creates standard risk analysis methods and compliance measurement strategy (6.5) including 6.6 –audit controls and enforces private sector trade compliance 6.10. Cooperation between customs officials is assured under 6.7 and 6.8; extending control against offences via coordinated border management. The WCO (Chatelus 2012) advocates addressing terrorism by inclusion of a protocol controlling weapons of mass destruction/ standardising restricted good materials compatible with the HS system of goods classification; via joint export control list standards plus Programme Global Shield –monitor 14 chemicals used in IED's – Incendiary Explosive Devices (Chatelus 2012) to simplify legitimate trade; reduce compliance costs via control duplication and avoid mercantile exchange of products that could disrupt the globalised commercial network.

## **SECTION VII: CONCLUSION**

In conclusion; the World Customs Organisation Economic Competitive Package Protocol could incorporate the aforementioned, through technology, and other electronic procedures for customs modernisation in the 21<sup>st</sup> century, these standards will simultaneously reconcile the main customs challenges of ensuring trade security and liberalisation via the 2 SAFE pillars of mutual customs to customs administrations and customs to business partnerships; prioritising simplifying procedures to promote world trade competitiveness and economic sustainability; through convention standards such as FAL; the Revised Kyoto Convention and SAFE Framework core elements for coordinated border management. They could establish these through the unique consignment reference number UCR; Authorised Economic Operators; computerisation of manual procedures through the Single Window and WCO Data Model. This package could also incorporate standards to ensure IT security (WCO Data Model, and ISCM Guidelines); mutual coordinated border security controls (Johannesburg Convention, SAFE and RKC) and information pooling in resolving customs offences (Nairobi Declaration); standardising threat detection equipment, protection methods. These measures would therefore enable good governance and customs integrities; (Arusha Declaration) to reduce potential threats, undermining the sustainability of the integrated globalised supply logistics management process.

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