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# WCO news

**The Harmonized System  
from every angle**



World Customs Organization

# Harmonized System

2017 Sixth Edition

## Nomenclature and Classification of Goods



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HS 2017

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- ✓ HS Classification Handbook
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- ✓ Compendium of Classification Opinions + Updates
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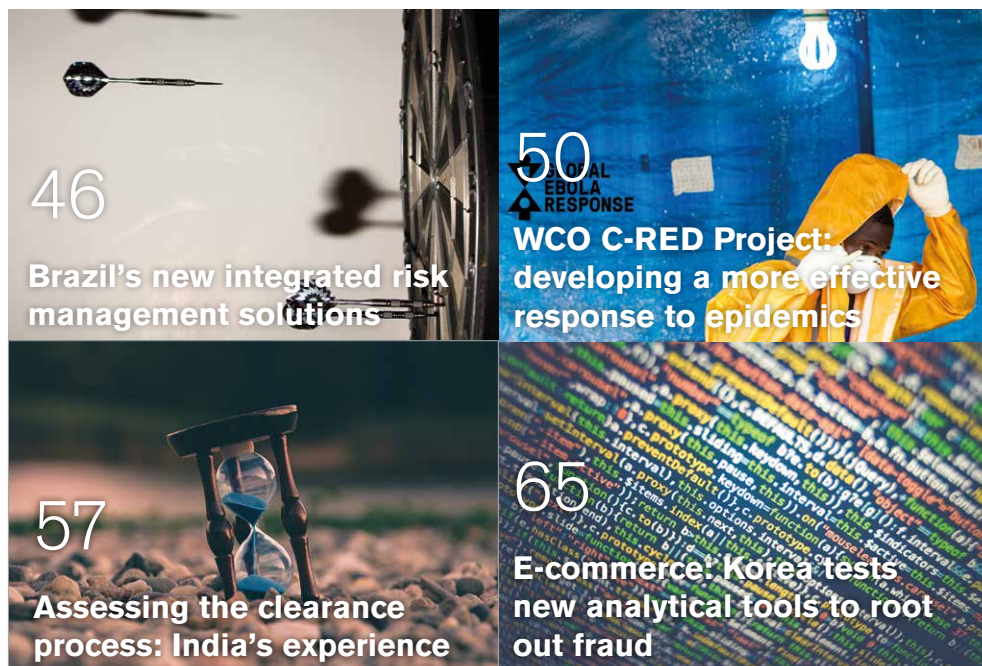


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# More WCO tools to assist revenue collection to be launched soon

THE WCO'S REVENUE PACKAGE (RP) is nearing the completion of its third phase, which will see the launch in June 2018 of a number of new tools and material for Customs administrations.

The motto of the RP is "fair and efficient revenue collection," the objective being to strengthen the capacity of Customs administrations to identify and collect all revenue that is legally due. This requires Customs, and the business community, to have deep technical knowledge of the building blocks for establishing duty liability – namely, Customs valuation, classification, and preferential origin. These classic Customs work areas should be supported by dynamic risk management and post-clearance audit programmes.

## About the Revenue Package

The Revenue Package was initiated in 2009 as a response to WCO Members' concerns over declining revenue returns in the context of the global financial crisis of 2008, and falling duty rates in general. In Phases I and II (finalized in 2012 and 2015 respectively), a series of tools and material was developed on a full range of revenue-related topics. All the material is available to Customs administrations via the WCO website (Phase III material will be released following the meeting of the WCO Policy Commission in June 2018).

An understanding of trade facilitation measures is also a key consideration. Facilitating the trade of compliant businesses is in fact compatible with the goal of effective revenue collection. By using risk management techniques to determine the compliance levels of individual businesses, Customs is able to allocate its resources more effectively to targeting low compliant operators and reducing checks on those with a high compliance record, thus facilitating legitimate trade.

In respect of Customs valuation, emphasis is placed on developing control programmes and strengthening infrastructure. One new document – Practical Implementation of the WTO Valuation Agreement: A Brief Guide for Least Developed Countries (LDCs) – provides advice to LDCs which typically face particular challenges in implementing the WTO Valuation Agreement. Examples are also provided of the control programmes of national administrations, including those which utilize a valuation database, such as the system developed by UNCTAD to be used in conjunction with ASYCUDAWorld. A valuation database can be a very useful tool for developing countries who have yet to fully develop their post-clearance audit function. However, it is essential that the database is used in line with WCO recommendations, which stress that database prices are to be used only for comparison and risk assessment purposes – they may not be used as substitute Customs values.

New origin tools have been developed, including the Practical Guide to the 2015 Nairobi Ministerial Decision on Rules of Origin for LDCs, which will contribute to facilitating preferential market access for these countries. The Guide provides practical information



on how to qualify for preferential treatment and detailed explanations of the elements in the Decision. In addition, five new e-learning modules have been developed on the topics of certification, cumulation, origin criteria, direct transportation, and verification.

In the area of classification, the Customs Laboratories Guide has been updated. A new appendix adds contact information for the Regional Customs Laboratories (RCLs) and links to relevant information. RCLs play a vital role in enhancing regional capabilities by providing information and training. Appendix V



also contains the “Procedures and Requirements for Establishing a Regional Customs Laboratory,” which is intended to assist WCO Members that are considering whether they are in a position to join the network of RCLs.

Last but not least, a number of tools developed under earlier phases of the RP have been updated under Phase III and supplemented by new country case studies.

#### **More information**

[valuation@wcoomd.org](mailto:valuation@wcoomd.org)

## Global Montreal Protocol Award

APPLICATIONS FOR THE Global Montreal Protocol Award are now being accepted.

Eligible nominees include Customs and enforcement officers or their respective organizations.

Nominees must have successfully prevented illegal or unwanted trade in hydrochlorofluorocarbons (HCFCs) and hydrofluorocarbons (HFCs) as well as equipment or products containing or relying on the use of these chemicals.

Both groups of chemicals are widely used as refrigerants and foam blowing agents:

- HCFCs contribute to ozone layer depletion and global warming. They will gradually be phased out by 2030, and are already banned in the European Union (EU). Traders in HCFCs are subject to annual import/export quotas and

require import/export licences for HCFC shipments;

- HFCs contribute to global warming. They will be controlled and gradually phased down by the Parties to the Montreal Protocol once the Kigali Amendment enters into force for them. National legislation might already require import/export licences for HFC shipments, which are already restricted in the EU.

Deadline for applications: 31 December 2018.

Visit the UN Environment OzonAction website for more details on the award and the application process.

#### **More information**

<http://web.unep.org/ozonaction/news/launch-global-montreal-protocol-award-customs-and-enforcement-officers>

## Save the date!

### **WCO PICARD Conference**

Malatya, Turkey  
9 to 11 October 2018

A Call for Papers was disseminated in February 2018 inviting practitioners, academics and anyone with a keen interest in Customs to submit any research that has been done on one of the following topics: securing the business environment; data analysis; trade facilitation; cross-border e-commerce; connectivity in Customs; and Customs and the fourth industrial revolution. The research work selected by the WCO will be presented at the Conference.

#### **More information**

<http://etouches.com/picard2018>

# WCO steps up efforts to promote gender equality and diversity

**By Johanna Törnström,**

PROJECT COORDINATOR, CAPACITY BUILDING  
DIRECTORATE, WCO

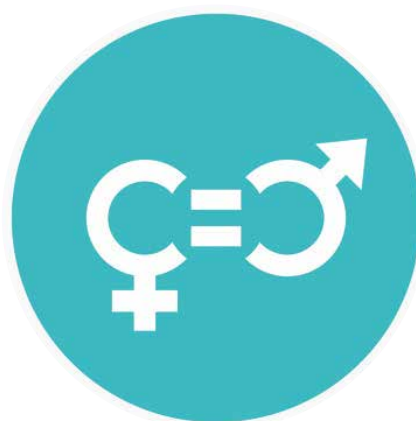
ACCORDING TO A WCO survey from 2016, gathering approximately 60 responses from WCO Members, on average around 36% of officers employed by Customs administrations are women, with figures varying from 8% to 60% depending on the country. Moreover, the statistics showed that on average around 30% of senior management positions are held by women. These figures indicate that in terms of equal representation in Customs administrations, there is still room for improvement.

Promoting gender equality and diversity within Customs is not just a question of fundamental rights, but also a prerequisite for achieving efficient administrations adaptable to the fast-moving challenges that globalization and modern society bring. The WCO recognizes this and has stepped up its efforts to promote gender equality and diversity among its Members by launching various initiatives in 2017.

## Gender equality within administrations

To encourage gender equality, Customs can play an active role, for instance, by promoting equal opportunities in recruitment, in career development and by improving work-life balance through offering more flexible working hours. Although many administrations have already made significant progress in achieving a more balanced representation, women still tend to work more frequently in certain professional roles, such as administrative support or office based work, while men are more frequently employed in management positions and in functions related to enforcement and field-based work.

This situation can be improved by assessing the recruitment process and working conditions from a gender perspective, looking, for instance, at how



job advertisements are formulated, at the facilities provided, and the requirements set for different positions. However, promoting gender equality goes beyond the issue of equal representation. To enable sustainable change, organizations need to proactively and continuously engage in such matters to ensure that gender equality is considered in everyday policies, from communication to human resources and in relations with external stakeholders.

To promote deeper engagement, the WCO launched, in 2017, the Virtual Working Group on Gender Equality and Diversity, which is currently composed of representatives from around 20 Customs administrations. Using the WCO CLiKC! Platform, members of the Working Group share experiences, documents and presentations, and gather examples of good practices. They also discuss how to use and implement the WCO Gender Equality Organizational Assessment Tool (GEOAT), which was launched in 2013 and provides guidance on how to assess policies and practices from a gender perspective. The meetings organized so far have provided an opportunity for WCO Members to tackle topics related to the GEOAT, including human resource issues, career development, work-life balance, and stakeholder relations.

To further strengthen its efforts, the WCO Secretariat has started gathering examples of good practices from several Customs administrations with the long-term objective of developing a compendium that will complement the GEOAT. These practices touch on developing Gender Equality and Diversity Action Plans (Finland, Sweden, United States), establishing Women's rights and gender equality through focused committees or departments (Ethiopia, Vietnam), recruiting dedicated gender equality officers (Germany, Guatemala), and on specific measures such as preventing sexual harassment (India, Swaziland) or promoting work-life balance (Indonesia).

In addition, the Secretariat has started developing a training package for WCO Members, which is structured into two tracks: the first is a one week workshop targeting middle and senior managers, and focuses on how to implement gender equality in overall management; and the second is an e-learning module targeting all Customs officers, and focuses on raising general awareness on gender equality and how to integrate the gender perspective into everyday practices. The development of the training package is funded under the Finland East and Southern Africa (ESA) Programme II, primarily targeting countries in that region. However, once fully developed, the training package will be available to all Members while the e-learning module will be accessible via the CLiKC! Platform.

## Maximizing the potential of women traders

According to a report by the International Trade Centre (ITC) from 2015, based on data from 20 developing countries, women-owned businesses are more likely to face different kinds of barriers to trade. The challenges include a lack of access to finance, to formal business networks and to market information, as well as the higher probability of

being exposed to non-tariff measures<sup>1</sup>. Another report from the World Bank from 2011, presenting survey results from the Great Lakes region in Africa, shows that women traders more frequently lack information about their rights, as well as information on trade regulations and procedures. Moreover, they often face additional difficulties: for example, having to deal with corruption and sexual harassment<sup>2</sup>.

It is also worth noting that, in December 2017, a Joint Declaration on Trade and Women's Economic Empowerment was endorsed by 118 member states of the World Trade Organization (WTO). This WTO Declaration acknowledges the importance of adopting gender sensitive and inclusive trade policies as a means to achieve sustainable development. In addition, it addresses the importance of promoting female entrepreneurship and

trade, and to remove trade barriers for women.

Customs can play an important role in supporting women's economic empowerment, thereby generating a positive impact on the economy as a whole. By consulting with a broad range of external stakeholders including women's business associations, taking their needs related to safety, for instance, into particular consideration – and by providing clear and transparent information on Customs procedures, administrations can constructively facilitate women's involvement in international trade.

This issue is also addressed in the GEOAT, which provides concrete examples of how Customs can improve their procedures, paying particular consideration to the needs of women traders. In this regard, the WCO's

increased focus on gender equality echoes its theme for 2018, "A secure business environment for economic development," which encourages WCO Members to build an environment for traders that is enabling, safe, fair and sustainable, all wrapped into one.

### Join the discussion

When the WCO Secretariat presented its latest initiatives on gender equality and diversity at the WCO Capacity Building Committee in March 2018, participants showed a big interest in this issue. The Secretariat would, therefore, like to encourage administrations to implement the GEOAT and to closely follow or participate in the work of the Virtual Working Group on Gender Equality and Diversity.

### More information

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1 [http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/women\\_in\\_trade\\_web\(1\).pdf](http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/women_in_trade_web(1).pdf)

2 <http://documents.worldbank.org/curated/en/358501468192868232/pdf/629920ESW0P1180a10Report0210June011.pdf>

## WCO launches its online academy for the trade community



THE BRAND NEW WCO e-learning portal aimed at building the Customs skills of trade professionals is now live.

Courses currently address the following topics:

- Harmonized System (five sector specific courses)
  - Agriculture & Agrifood
  - Chemicals
  - Industry & Construction
  - Textiles
  - Art & Jewellery
- WCO Data Model (two courses)
  - Managers
  - Practitioners

- Customs Valuation (two courses)
  - Valuation concepts and transaction value
  - Advanced valuation methods

More courses will be added in the coming months. Even though the courses are currently available in English and French only, more languages will be available in the future.

Learners can either take standalone online courses, or purchase complete solutions (bundles), which include access to the online courses on their topics of interest, the purchase of corresponding publications, and access to online tools such as the Harmonized System Database.

Moreover, companies wishing to upskill the knowledge of more than one of their workers, or Universities wishing to offer access to the courses to their students, can benefit from customized solutions.

Last but not least, professionals interested in contributing to the development of the courses by providing feedback can join the WCO Academy's Test Group. They will be given free access to courses now under development and discount coupons for future purchases.

### More information

[academy@wcoomd.org](mailto:academy@wcoomd.org)

# **Dossier: The Harmonized System from every angle**



# The Harmonized System, 30 years old and still going strong!

**By Kunio Mikuriya,**  
SECRETARY GENERAL, WCO

THE HARMONIZED COMMODITY Description and Coding System, generally referred to as "Harmonized System" or simply the "HS", is seldom mentioned in the pages of this magazine. It is, however, one of the WCO's flagship instruments. One can even say that it is the backbone of the WCO. Being a nomenclature of transportable goods, it has become over the years a universal language for identifying and coding merchandise being traded internationally, with almost all the world's economies using it as a basis for their Customs tariffs and for the collection of trade statistics.

Governments use it to assess duties and taxes, and for the application of Customs laws and regulations. Businesses use it to manage their trade regulatory obligations, and to oversee their supply chains. Trade negotiators use it when formulating multilateral and regional trade agreements. International organizations working on topics as diverse as food security, environmental protection, and even world security depend on HS coded data to report progress in achieving goals or to monitor trade in goods that are regulated or prohibited.

Although the HS is a technical subject that readers may find difficult to grasp at first, it is a fascinating one. As the HS celebrates its 30<sup>th</sup> anniversary this year, we decided to gather together a number of articles explaining how the HS is managed and used, and questioning

how it can be improved and whether a structural revision is now necessary. In this article, I briefly introduce the history of the HS, as well as its maintenance system, achievements, and challenges, which I hope will be enlightening.

## History

The concept of a nomenclature for goods is the outcome of a long process rooted in the ancient world. According to Professor Hironori Asakura of Japan, the first Customs tariff known to us was established by the Customs authorities of the Roman Empire. Roman senators in the oasis city of Palmyra in the Syrian desert invented a system of Customs tariffication, which listed different merchandise with different rates of duty, known as the Customs tariff of Palmyra.

In his book, *World History of the Customs and Tariff*, Professor Asakura says that, "although Customs duties had certainly existed before the time of Rome, for example, in ancient Egypt and ancient Greece, they had generally been levied at a single rate applied across the board to all kinds of merchandise." Where a single rate is applied, there is no need for a Customs tariff in which different kinds of merchandise are assigned different rates of duty.

The Customs tariff of Palmyra as well as almost all the nomenclatures in the West that were drawn up before the 18<sup>th</sup> Century were alphabetical. But in the 19<sup>th</sup> Century, some countries switched to a nomenclature based on systematic classification. The French Customs

tariff of 1822, for example, grouped goods mainly according to their nature (live animals, flours, stone, earth and other minerals, etc.). Thus, the basis of the international Customs tariff nomenclature, developed at a later date, was born.

The post-World War I period marked the opening of the age of international cooperation in respect of Customs and tariffs. A need for the simplification and unification of tariff nomenclatures was seen as essential to improve revenue collection, facilitate trade, and improve trade statistics. The first international Customs tariff nomenclature, known as the Geneva Nomenclature, was developed under the League of Nations, and incorporated the structure of certain 19<sup>th</sup> Century tariffs, including, in particular, the French tariff.

Later, the drive for economic reconstruction and the desire for greater freedom of trade following World War II created favourable conditions for the standardization of Customs tariffs, and the need for an internationally recognized common goods nomenclature. This resulted in the adoption of the Convention on Nomenclature for the Classification of Goods in Customs Tariffs in 1950, which was strongly influenced by the basic structure of the French tariff and that would also shape various other tariff and/or statistical nomenclatures, such as the United Nation's Standard International Trade Classification, as well as those that would follow.

Finally entering into force in 1959, the text of the 1950 Convention was initially known as the Brussels Tariff Nomenclature (BTN), but later renamed the Customs Co-operation Council Nomenclature (CCCN). The CCCN

gave a set of four-digit headings for international use, but the need for more granularity led many actors to go beyond the four digits in light of the fact that, in some instances, a commodity could be designated up to 17 times in the course of a single trade transaction from the moment it left the manufacturer to its arrival at the importer's destination. The HS, which defined goods at six-digit level, solved this problem.

### Birth of the HS

Early in 1970, it was agreed internationally that the Customs Co-operation Council (now known as the WCO) should conduct exploratory studies around the issue of a new nomenclature. The preparatory work carried out since 1973 resulted, some 13 years later, in the completion of the HS, and the establishment of a new international convention for its implementation. The WCO Council, the Organization's highest decision-making body, adopted the HS Convention in June 1983, and its Explanatory Notes in June 1985.

On 22 September 1987, 26 countries participated in the signing ceremony, including the European Economic Community (EEC), the forerunner to today's European Union (EU). The HS finally came into force on 1 January 1988 with 37 Contracting Parties. The number of countries using the HS has continued to grow. Today, it counts 157 Contracting Parties and, if we add the countries and Customs and/or economic unions using the HS while not having ratified the Convention, one can with certainty say that it truly is an instrument of global application.

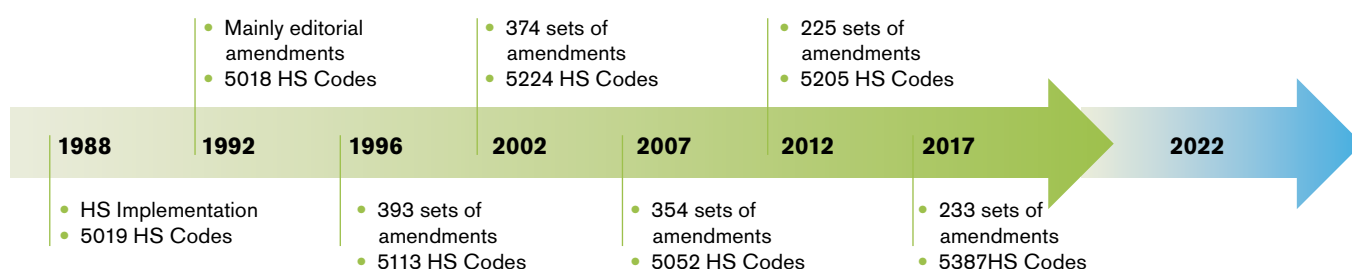
### Maintenance and updates

When a nomenclature remains unchanged, i.e. not taking into

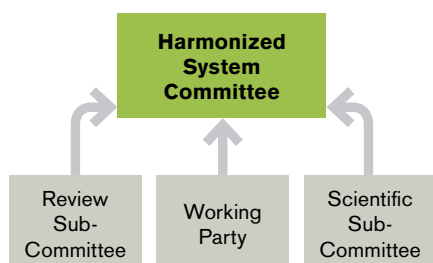
account the evolution of technology and changes in consumer habits, there is a serious risk of having difficulties, if not disputes, when classifying products. Only Contracting Parties can take part in the administration and maintenance of the HS and its related materials and propose amendments to the nomenclature. Let me quickly explain how this is done.

To ensure the relevancy of the HS, since 2002 it has been revised every five years to take into account changes in technology and in patterns of international trade. This has served the WCO well, and HS users even more so. Headings and subheadings for which there is a low trade volume would generally be deleted (Gramophones are just one example), but exceptions do occur (records seemed to be on their way out, but the tide seems to be turning as consumers find a new interest in collecting them once again). In addition, newly developed products that cannot be identified in the structured nomenclature are also added, as their trade has to be monitored too.

After being amended six times, the seventh amendment of the HS is currently underway, and will enter into force on 1 January 2022. In this regard, the WCO is extremely busy with its preparations for HS 2022, preparations that not only include a revised nomenclature, but also the revision of all its "help" instruments such as the Explanatory Notes among others. This is no easy task, but I am proud to say that the WCO soldiers on in its usual focused fashion with a view to producing a nomenclature that can serve international trade until the next revision cycle.



Having accurate HS codes means having reliable information on what is traded internationally. Not only do they inform policy areas as diverse as economics, security, health and wellbeing, political stability and environment and resource management, they are also crucial to risk management.



### Achievements

A lot of work has been done over the past 30 years within the different committees involved in managing this global tool. The undermentioned statistics don't only speak for itself, they clearly demonstrate the amount of work that goes into maintaining and reviewing the HS:

- 61 meetings of the HS Committee (HSC) and of its preparatory body the HS Working Party have been held (each of a two-week length, which is a record high for an international meeting), 4,224 agenda items discussed, 10 WCO Council Recommendations on the application of the HS Convention produced, 2,555 classification

decisions made, and 906 Classification Opinions adopted to ensure uniform application of goods classification at a global level.

- 54 meetings of the Review Sub-Committee (RSC) have contributed to maintaining and updating the HS to keep it responsive and relevant to current needs.
- 33 meetings of the Scientific Sub-Committee (SSC) supported HS work mainly in the chemistry area and in Customs laboratory work.

Moreover, tools and instruments have been developed to assist Customs administrations and traders with the classification of commodities in the HS. Another body of work that demonstrates the complexities of the HS and what is needed to make it continuously work successfully:

- The Explanatory Notes contain technical descriptions of goods and practical indications for the classification and identification of products.

- The Compendium of Classification Opinions includes a list of the most significant and/or difficult classification decisions taken by the HSC and adopted by the WCO Council.
- The Alphabetical Index lists all the products cited in the Nomenclature and the Explanatory Notes in alphabetical order, and includes the legal notes to the section, chapter or subheading in which the product is cited, and the relevant pages of the Explanatory Notes where the product is mentioned.

An online HS Database groups all these tools, and allows users to access information contained therein in an easy and "friendly" way, thereby assisting the classification of goods tremendously.

### Joining the conversation

During meetings of the various HS committees, delegates represent their countries and advocate their countries' views, but I would like to share a remark that one former delegate made to me recently. He said that the committees

were also a place to get ideas, and that it was important not only to share one's thoughts, but also to learn, listen, sit back and try to understand how others think. He mentioned that good conversations that took place during these meetings helped one to become better at what one did, which in turn made one a better asset back home. Indeed, sometimes it even made one change one's point of view.

Delegations attending the HSC range from those that are active to those that are far less active. Some delegates may feel that they do not have enough expertise to take the floor. To build their capacity, the WCO provides technical assistance to countries, while encouraging them to attend the HSC and actively participate in its deliberations. A sense of pride is instilled when delegates who have benefited from WCO training activities take the floor and express their views with confidence. So while they would have generally remained "silent" prior to the training, now they feel better equipped and more knowledgeable to take part in the conversation at the committee level.

### Cooperation

Representatives of intergovernmental or other international organizations and experts from the business world whose participation is considered desirable can attend meetings of the HSC as observers. These stakeholders have helped us to take the HS forward, ensuring that it remains useful and relevant, and that it meets the needs and expectations of the broader Customs and trade community.

Security considerations also recently led to changes in the HS. For example, new subheadings for specific chemicals controlled under the Chemical Weapons Convention (CWC) in order to facilitate the collection and comparison of data on the international movement of these substances were introduced into HS 2017 at the request of the Organisation for the Prohibition of Chemical Weapons (OPCW).

In addition, with environmental issues now being of major global concern, HS 2017 provides new codes for

hazardous chemicals controlled under the Rotterdam Convention and for certain persistent organic pollutants (POPs) controlled under the Stockholm Convention.

Furthermore, at the request of the International Narcotics Control Board (INCB), new subheadings have been introduced for the monitoring and control of pharmaceutical preparations containing ephedrine, pseudoephedrine or norephedrine, and for alpha-phenylacetoacetonitrile (APAAN), a pre-precursor for drugs.

Most of the recent changes have been broached by the Food and Agriculture Organization of the United Nations (FAO), and the HS now covers more fish and fishery products as well as forestry products in more detail, enabling the FAO to monitor developments in the area of food security and the sustainability of forest exploitation for example. I invite you to read the article by the FAO on the important role that the HS plays for the organization.

The International Chamber of Commerce (ICC) and the International Federation of Customs Brokers Associations also contributed to this edition, highlighting the challenges emanating from the uniform application of the HS, best practices to enhance compliance, and the way industry can engage on classification matters at the WCO. Let me stress here that HSC decisions are based on technical information, including crucial information provided by manufacturers, but that commercial interest is not taken into consideration.

### Challenges and perspectives

The HS is a "living" document. Unlike many international instruments, it has a clear and relatively simple process for amendment to keep it up-to-date and relevant. This type of incremental improvement will, of course, continue. Yet, the expectations of the international trading community remain high for a speedier decision-making process and binding HS decisions to give answers and certainty to business. These two points were examined by the HS Contracting Parties through the High-Level Working

Group on HS Matters, but the meetings of the Group yielded no fruitful results.

With a view to speeding up the decision-making process for the HSC by limiting the number of reservations in respect of its decisions, the WCO Council adopted, in July 2017, a Recommendation concerning the amendment of Article 8 of the HS Convention. One WCO Member, however, entered a reservation and discussions in this regard are continuing. If accepted, this Recommendation will go a long way in facilitating the work of the Committee.

Another issue is the consideration of whether the structure of the HS could be simplified and rendered more user-friendly for the business community. On this, I invite you to read the article by the WCO Secretariat that is included in this dossier. It looks at the structure of the HS, its changing uses, whether it is still a sufficient solution, how it can be improved, and whether a structural revision is now necessary.

Ensuring compliance when it comes to the HS is equally important. Having a modern classification infrastructure and accurate HS codes means having reliable information on what is traded internationally. Not only do they inform policy areas as diverse as economics, security, health and wellbeing, political stability and environment and resource management, they are also crucial to risk management.

Moreover, with the help of information technology (IT), we should be able to analyse and use data and information with a scope and sophistication that has never before been matched. And yet the usefulness of that information is dependent on the quantity and quality of data we feed into the process.

One of the key measures for a modern Customs administration is to implement a programme for binding pre-entry classification information to enable the administration to issue advance rulings. Advance rulings are used to enhance the predictability and transparency of the Customs clearance process, and are instrumental in the success of an

effective, informed Customs compliance programme.

Through advance rulings, the trader benefits from greater certainty with respect to Customs requirements and any duty liabilities, as well as a greater chance of less Customs intervention. Customs, on the other hand, receives advance information of anticipated transactions that can be fed into its risk management engine.

While advance rulings have been on the WCO's agenda for many years, the World Trade Organization's (WTO's) Agreement on Trade Facilitation (ATF) puts a new emphasis on the procedure by introducing an obligation on its Members to issue binding advance rulings on the classification of goods.

In wrapping up, I would like to sincerely thank all the contributors to this dossier, as well as all the other contributors to the magazine who took the time to share with us their experiences on various Customs and trade related issues. It has been our pleasure to produce another edition of the WCO's magazine, and we trust that you will enjoy reading all the insightful articles.

## Nuts and bolts of the HS

The HS is a structured nomenclature comprising a series of four-digit headings, most of which are further subdivided into five- and six-digit subheadings. It was developed as a core system so that countries and organizations adopting it could make further national subdivisions according to their particular needs.

The HS provides a legal and logical structure within which, in terms of the 2017 version, a total of 1,222 4-digit headings, subdivided into 5,387 6-digit subheadings, are grouped into 97 chapters, the latter themselves arranged in 21 sections.

Each heading of the system is identified by a four-digit heading code, the first two digits of which indicate the chapter wherein the heading appears, while the latter two digits indicate the position of the heading in the chapter. The following examples illustrate the logical structure of the HS:

- the HS code for natural honey is 0409.00, which indicates that heading 04.09 has not been subdivided (fifth and sixth digits = 0);
- the HS code for buckwheat is 1008.10, which means that it is included in the first one-dash subheading (fifth digit = 1) of heading 10.08 and that this subheading has not been further subdivided (sixth digit = 0);
- the HS code for potato starch is 1108.13, which means that it falls in the third two-dash subheading (sixth digit = 3) of the first one-dash subheading (fifth digit = 1) of heading 11.08.

# An HS expert shares some personal reflections

By Jørn Hindsdal,

DENMARK

WHILE THE HARMONIZED System, or HS, celebrates its 30<sup>th</sup> anniversary this year, it is, in fact, much older because it was developed over several years starting in the 1970s. Having worked on HS matters for at least 40 years, both within Danish Customs and at the WCO Secretariat, I have been in the fortunate position to have closely followed its development, implementation, maintenance and use for a long time, up until my official retirement in 2017. This article provides me with an opportunity to share some personal reflections on the HS.

## Development of the HS

The HS Nomenclature replaced the Customs Co-operation Council Nomenclature (CCCN) in 1988. This previous nomenclature as well as several national Customs tariffs served as the starting point for the work of the many Customs administrations who gathered in Brussels over the course of numerous meetings to comment on proposed texts or to assist in the drafting of alternative texts, with the support of the WCO Secretariat.

Once the HS Nomenclature was finalized, several years were then spent on the development of its corresponding Explanatory Notes, a tedious, but very important task. The thousands of pages that are stored in the WCO Secretariat's Documentation Centre testify to the fact that an enormous body of work lay behind the development of the HS. All those pages were prepared using typewriters and, ironically, heading 84.69 for "typewriters" disappeared from the HS with effect from 1 January 2017!

## The HS at national level

The HS forms the basis for Customs tariffs and statistical nomenclatures around the world. This means that in most countries the HS is, more likely than not, unknown because traders apply the national Customs tariff and



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statistical nomenclature of the countries where they import and export goods. The European Union (EU), which up until 1988 applied a separate Customs nomenclature (the Common Customs Tariff) and a separate statistical nomenclature (NIMEXE), merged the two into one single instrument, called the "Combined Nomenclature" (CN).

At the time, I was attending joint Customs and statistical meetings in Luxembourg, where EU Member States had to decide which statistical subdivisions should be retained in the CN from 1 January 1988. One of my battles, together with my Danish statistical colleague, was to ensure that the subdivision for "Christmas trees," which was important to Denmark, was retained; this we managed to do, and it still appears in the CN today.

In the lead up to implementation, I also conducted, together with a colleague, several HS training sessions in Denmark for my Customs colleagues, as well as for our traders and Customs brokers. Switching to the HS was not too complicated, although our information technology (IT) systems had to be

updated. During the training sessions, I often told the audience that the HS was "old wine in new bottles; perhaps magnum bottles."

In some countries the implementation of the HS Nomenclature was more complicated. One of those countries was the former Soviet Union, where I had the pleasure of being part of an EU team that assisted the Soviet's with the implementation of the HS. This assistance enabled us to travel to several parts of this vast country, culminating in a three-hour prime time presentation on state television. It must have been a nightmare for television viewers!

## Work of the HS Committee

The HS Committee (HSC) plays an important role in interpreting the HS legal texts to secure the uniform classification of goods, including the settlement of classification disputes between Contracting Parties to the HS Convention. To that end, the HSC has classified more than 1,000 specific commodities since 1988 and, together with the WCO Scientific Sub-Committee, has determined the classification of several thousand

international nonproprietary names (INN) for pharmaceuticals linked to the Agreement on Trade in Pharmaceutical Products (concluded by the World Trade Organization) and the Programme on INN for Pharmaceutical Substances (administered by the World Health Organization). Based on proposals by Customs administrations or the WCO Secretariat, the Committee also amends the HS Explanatory Notes to facilitate the interpretation of the legal texts.

I had the pleasure of attending more than 50 sessions of the HSC, four of which as Chairperson. In general, there has always been a very good working spirit in the Committee. Since one of its tasks is to settle disputes between two or more Contracting Parties, delegates often have to argue their different viewpoints strongly, sometimes resulting in proceedings becoming somewhat tense before voting takes place. Fortunately, most of Committee's decisions are followed by administrations; if not, a reservation will be filed. In fact, I clearly remember a case many years ago, where a country "lost" the vote and the delegate immediately stated that his administration would enter a reservation – some delegates did not appreciate this action, and as an outcome, it was later agreed that reservations should not be entered before the meeting had been concluded.

At the end of each meeting, HSC delegates "read" the draft report of the meeting before approving it and, in most cases, this is a smooth process, mainly resulting in minor changes to statements by various delegations. However, I can recall a situation when I was chairing my first HSC meeting. The reading went well at the beginning, but on a specific issue there were suddenly different views on the statements made by some delegations. After some discussion, I had to call a break and after 45 minutes of "negotiations" with the involved

delegations, we managed to come to an "agreement." After that incident, I considered handing over the reading of the report to the Vice-Chairperson at the next meeting if discussions went on too long, but this did not happen and from then on readings went smoothly.

### Classification issues

HS classifications are governed by General Interpretative Rules (GIRs) 1 to 6, but, before classifying a product, it is important to apply what I call GIR 0, that is the "what is it" or the "wii" rule. To provide some perspective, here is an example from real life where a consignment was accompanied by three documents, each of which described the product in question slightly differently:

- Document 1 – "Labels".
- Document 2 – "Printed labels".
- Document 3 – "RFID bag tag labels".

When examining the consignment, it turned out to be labels ("tags") used in a "radio-frequency identification" (RFID) system. Based on the descriptions in Documents 1 and 2, classification could easily have ended up in heading 48.21 (paper or paperboard labels of all kinds, whether or not printed), instead of heading 85.23 (discs, tapes, solid-state non-volatile storage devices, "smart cards" and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37), as correctly indicated by the exporter in Document 3.

The HSC has classified many different products and, in my view, some of the products have been rather peculiar. Below are a small selection of some of the more peculiar products:

- a "domestic barbecue" of stainless steel, operating by means of steel mirrors and using only solar energy

for cooking – not a best-seller in rainy Denmark! In this case, the HSC had to apply GIR 4 ("most akin"), and it subsequently decided to amend the HS Nomenclature to facilitate the classification of "solar barbecues" - heading 73.21;

- "Roller shoes" with uppers of leather and outer soles of rubber, incorporating two permanently attached, retractable wheels that fit into special cavities in the outer sole, thus providing the option of using the footwear as in-line skates (roller blades) when the wheels are pulled out - heading 95.06;
- a "chemical product," consisting of a solution of glycerine and flavouring substances, saturated within the pores of natural mineral stones ("Shisha-Steam-Stones") via a pressure injection method. The product is free of nicotine, and the stones are used in a water pipe, which heats the stones and boils the solution to produce a vapour steam that is inhaled by the user of the water pipe - heading 38.24;
- a "rug made of a whole grizzly bear fur skin, with head, tail and paws," fixed to an underlay of textile materials. The head is taxidermy mounted, and its eyes and tongue had been replaced by artificial ones - heading 43.03;
- a "woman's shoe, with a textile upper and an outer sole of plastic, a portion of which is covered with flocking." The surface area of the outer sole in contact with the ground (excluding the separately attached heel) is approximately 67.5 percent textile material and 32.5 percent plastics. However, the textile material was considered to be an accessory or reinforcement and was therefore not taken into account in determining the constituent material of the outer

sole having the greatest surface area in contact with the ground - heading 64.05;

- a “motorcycle, specially modified and equipped with fire-fighting equipment,” such as two interconnected 25 litre tanks for premixed water and foam, a 6.8 litre tank filled to 300 bars pressure for delivering compressed air, a 30 metre hose, a hose reel, nozzles and a lance attachment, and emergency lights and sirens - heading 87.11;
- a “laundry ball,” with a diameter of approximately 10 cm, consisting of two perforated casings of plastics which are joined together and containing two magnets and four types of small ceramic “pellets” (beads), intended to be used in a washing machine of the household-type to clean clothes by a physical process - heading 69.12;
- a “non-woven adhesive article,” cut to a specific shape and intended to be stuck onto the skin after removal of a protective piece of paper, to fit perfectly round the lower part of the breast like the cup of a brassiere - heading 63.07.

At the national level, I have also come across many interesting products. One in particular was “flour made of crickets” (an insect) to be used as protein enrichment in various food preparations. Could it be regarded as edible flour of meat? Danish Customs came to the conclusion that “crickets” did not have any “meat” and ruled out heading 02.10 (meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal). Instead, we opted to classify it in heading 04.14 (edible products of animal origin, not elsewhere classified or included).

Another interesting product was “bang sticks,” classified under heading 39.26 as per an EU decision. These are inflatable sticks of plastic sheeting of various lengths, for example 60 cm, incorporating a plastic straw to inflate the sticks. They may be printed with

There are no duty rates in the HS, but they do appear in national Customs tariffs. Of course, traders, in particular importers, are always interested in paying a low duty rate and, as a result, may classify goods incorrectly or adjust the goods to that end.

various motifs, such as the name of a sports club, logos, slogans (“Go team!” or “Goal!”) and advertisements. The sticks are normally used at sporting events, where the spectators use them for waving or bang them together to make a noise.

### Tariff engineering

There are no duty rates in the HS, but they do appear in national Customs tariffs. Of course, traders, in particular importers, are always interested in paying a low duty rate and, as a result, may classify goods incorrectly or adjust the goods to that end. While incorrect classification by an importer could sometimes occur, wilful misclassification should be regarded as an attempt to commit fraud.

Motor vehicles for the transport of more than 10 persons are classified in heading 87.02 and usually attract lower Customs duty rates, including, more often than not, other specific taxes such as registration and road taxes among others, compared to passenger vehicles. To avoid paying such costs, in some countries a “normal” passenger vehicle is modified before importation to appear as if it is able to accommodate 10 persons or more, and is then later transformed back into a passenger vehicle after importation and payment of taxes! Fortunately, the HSC has developed guidelines to deal with such issues, which are set out in the HS Explanatory Notes to Chapter 87.

Some years ago, I had a meeting with an importer who was importing adjustable

stands for office desks mounted with an actuator (lifting/lowering mechanism). The stands were imported without the table tops, which were purchased from a local company. Customs did not agree with the importer’s decision to classify the goods as “parts for furniture” because they could be used for a number of purposes, as imported. After the classification rules had been explained, including GIR 2, which motivated the decision of Customs, the importer started importing the stands together with a similar number of “cheap” table tops, declaring the product as “unassembled office desks” that attracted a “zero” duty rate. After importation, the “cheap” table tops were replaced by those manufactured locally.

### The future

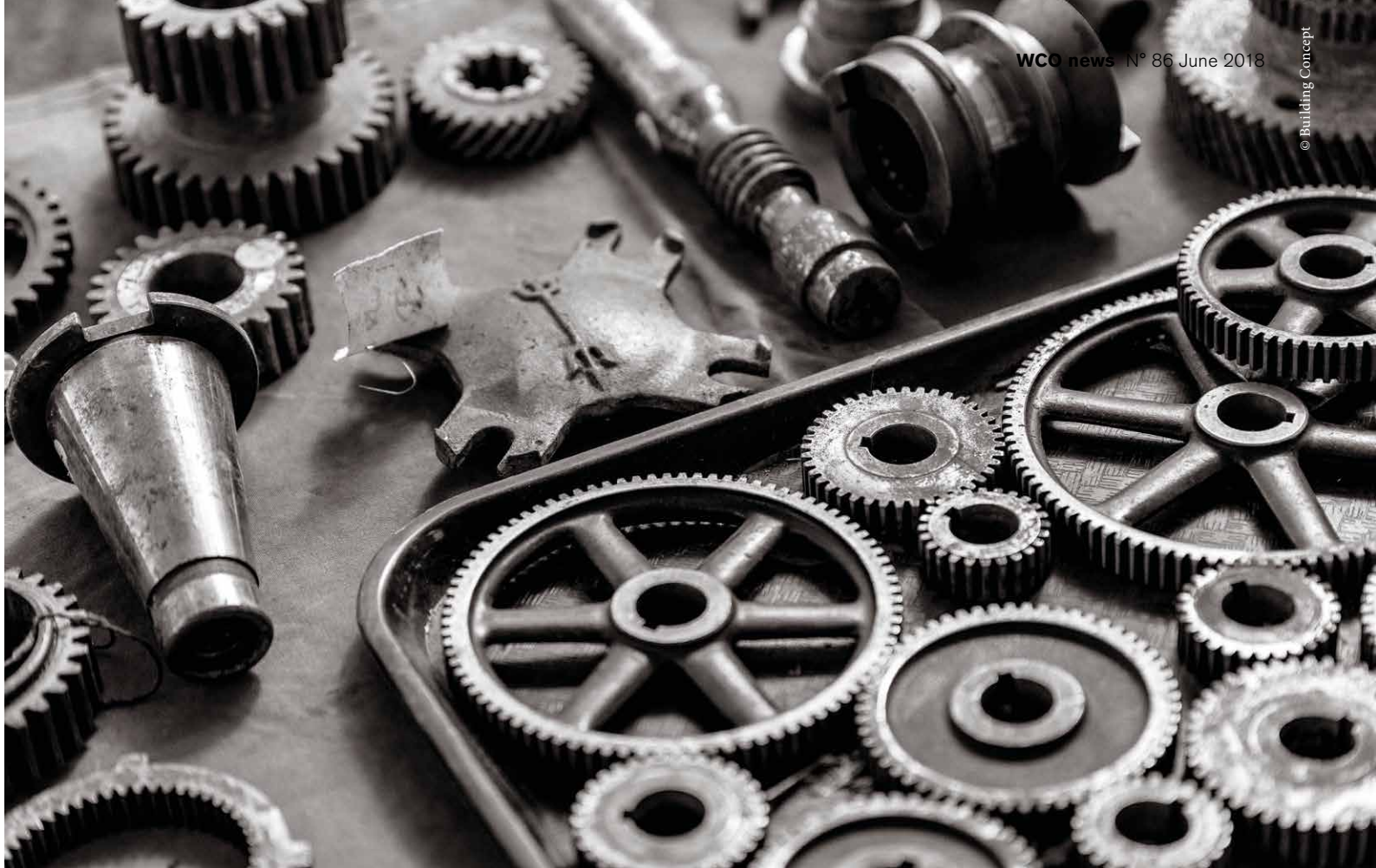
The HS is still relatively young. Although it has been challenged every now and then, it has always “survived.” Customs and traders are now familiar with the system and want to retain it. Of course, updating the HS is crucial, and this is an ongoing task that falls mainly on the shoulders of the HS Review Sub-Committee (RSC). The Sub-Committee is currently busy finalizing the 2022 edition’s amendments, and has to deal with a whole host of topics.

Many classification issues arise from multi-function machines/apparatus, and the development of such products is on the increase all over the world. I firmly believe that it might be a good idea to create new headings or subheadings for such products, e.g., products used in the IT area. In addition, the classification of novelty food products (e.g., “functional foods” and “veggie” preparations), prepared meals, and food supplements is also often disputed, so clarification around these products would definitely be desirable.

With these reflections, I wish the HS all the best in the future and hope that it will continue to serve the Customs and trade community according to their expectations.

### More information

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# Is the HS still fit for purpose?

**By Gael Grooby,**

DEPUTY DIRECTOR, TARIFF AND TRADE AFFAIRS DIRECTORATE, WCO

As the WCO celebrates the 30<sup>th</sup> anniversary, in 2018, of the Harmonized Commodity Description and Coding System, more popularly known as the Harmonized System or the HS, the question may be asked whether the time has come to contemplate a major overhaul of the system. This article looks at the structure of the HS, its changing uses, whether it is still a sufficient solution, how it can be improved, and whether a structural revision is now necessary.

## What is the HS

The HS is a list of duties, right? Wrong! In many people's minds, the HS is so closely tied to duties that it colours their perception of what is the fundamental

purpose of the HS. In reality, the HS is a taxonomic system for goods: it provides a taxonomic hierarchy (the arrangement of various categories in successive levels of classification) and a nomenclature

under which goods can be classified. So, what does this mean?

The group of 'things that are traded' is vast and chaotic – treated as individual items and given common names they would overwhelm our ability to know what goods are crossing national borders, or how they should be treated. Is a crown something that goes on your head or on your tooth? Or, maybe it is a part for a hat, or an old British coin?

As a taxonomic hierarchy, the HS creates an ordered system for the classification of goods, where more general classes of goods contain more specific classes of goods. Let's look at a pair of 30 denier (a unit of measurement used to identify the fibre thickness of individual threads in cloth) nylon pantyhose. The hierarchy of classes for these goods in the HS is as follows:

- Articles of apparel and clothing accessories, knitted or crocheted

- Pantyhose, tights, stockings, socks and other hosiery, including graduated compression hosiery (for example, stockings for varicose veins) and footwear without applied soles, knitted or crocheted
- Other pantyhose and tights (i.e. other than graduated compression hosiery)
- Of synthetic fibres, measuring per single yarn less than 67 decitex

To specify the group of the descriptive words above would make for very long reports. So, the 'nomenclature' part comes into play and the above-mentioned categories are given numbers as names:

- Chapter 61
  - 61.15
  - 6115.2
  - 6115.21

The HS classified the commodity into a group and gave it a name. A product named '6115.21,' assuming correct classification, will be pantyhose or tights, not being graduated compression hosiery, which are made of synthetic fibres with a yarn weight less than 67 decitex.

### The changing uses of the HS

The HS causes individual goods to be put into classes so that administrations can decide what to do about these goods as a group: charge a particular rate of duty, require an import permit, check for insect contamination, or whatever else is appropriate. It also provides a range of data on the trade in these groups, which can be turned into highly useful information. The uses of the HS stem from these two outcomes.

The first outcome, the actual grouping (i.e. the classification of goods), allows for differential treatment, and is particularly used for:

- revenue collection – the assigning of duties and taxes;
- support measures – allowing certain needed inputs, essential supplies or other goods to come in without the usual duties or taxes, or with a facilitated clearance;
- restrictions – putting controls or requirements on goods, including health and safety, security and environmental controls;
- trade protection – the application of dumping or countervailing duties, quotas or other measures to protect domestic industry;
- trade agreements – agreed favourable treatment of goods of particular classifications;
- trade sanctions – preventing the movement of certain classes of goods to or from a particular place;
- assessing the level of transformation of a good as it changes classification – this is a common method of determining the origin of a good.

The second outcome, the collection of data, is just as important. For those countries with low levels of revenue collection, it can be even more important.

Trade data is used by governmental agencies, non-government organizations, intergovernmental organizations, businesses, journalists, academics, researchers, the media, politicians, and anyone else who has an interest in trade. It is used as an input into the compilation of balance of payments statistics and national accounts, and in the formation of trade and economic policy (including fiscal, monetary, structural and sectoral policies) as well as in multilateral and bilateral negotiations.

Such data is also used for other purposes such as modelling and forecasting, price indices, business cycle analysis, market identification, export performance, commodity performance, market share calculations, and the identification of trade patterns that might indicate illicit activity such as duty evasion, money laundering and the importation of illegal goods. To list the full range of uses that trade data can be put to is beyond the scope of this article. However, its numerous uses need accurate data on what is being traded – i.e. accurate classification. This is what the HS was designed to deliver.

### Is the current HS still a sufficient solution?

This is a complex question to answer. The HS works. This is demonstrated by its success. It is used in more than 200 economies and has provided a level of knowledge of trade that has enabled good outcomes for Customs administrations and sophisticated trade analysis. As such, the HS is truly invaluable.

However, there are two principal aspects which indicate that its current format should be deeply revised. One is the ability to achieve consistency of decisions, and the other is adaptability to changing needs. In fact, the HS is a difficult system under which to achieve consistent classification, particularly with the increasing complexity of products. Thomas Reuters and KPMG International have undertaken annual surveys of trade professionals for the last three years. In their 2016 survey, 91% of their respondents found classification a challenge, and this remained true in 2017 too.<sup>1</sup>

Misclassification undermines the effectiveness of border controls, reduces the reliability of statistics, and often results in incorrect duty and tax payments. This is a problem that is not restricted to under resourced developing countries: misclassification has been a challenging problem to address globally.

<sup>1</sup> Managing Global Trade: A Look Beyond the Surface, retrieved on 22 February 2018 from the online version at <https://assets.kpmg.com/content/dam/kpmg/xx/pdf/2018/02/trade-survey-02132018.pdf>

For example, in 2010, the Auditor General of Canada reported that “According to studies undertaken since 2005, it is estimated that importers (...) have misclassified between 17 and 30 percent of releases.”<sup>2</sup> By the 2017 report, the Auditor General reported that “Over the last 15 years, the [Canada Border Services] Agency’s compliance verifications on specific goods revealed that importers misclassified imported goods more than 20 percent of the time.”<sup>3</sup> Audit results show it can be substantially higher for problematic classifications, and it appears that this is similar to results in other countries.

This problem is partly unavoidable, given the range and complexity of the world’s products. Yet it is worsened by the HS’s chain of development from the Geneva Nomenclature, itself derived from national tariffs, through to the Brussels Nomenclature, and into the current HS. At each step, most of the previously existing product definitions, grouping, structure and set-up were inherited.

For simplicity and consistency, a classification system would ideally have clear criteria for deciding on the membership of a group that resolves down to, as far as possible, yes/no questions on easily observable characteristics. This is particularly so for a system, like the HS, that is used by a vast number of private users, with different languages, backgrounds, and capabilities.

Instead, the HS relies heavily on classification by name, type or similarity. It adds another layer of definition and direction through legally binding Notes, and then wraps it in a set of General Interpretive Rules (GIRs) that use subjective considerations such as specificity and essential character. But, what does this mean? Take the example of heading 73.10: “Tanks, casks, drums, cans, boxes and similar containers, for

Misclassification undermines the effectiveness of border controls, reduces the reliability of statistics, and often results in incorrect duty and tax payments. This is a problem that is not restricted to under resourced developing countries: misclassification has been a challenging problem to address globally.

any material (other than compressed or liquefied gas), of iron or steel, of a capacity not exceeding 300 l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment.”

The terms “of iron or steel” and “of a capacity not exceeding 300 l” are simple yes/no criteria, while the terms “for any material (other than compressed or liquefied gas)” and “whether or not lined or heat-insulated” clarify scope in a simple manner. The terms “Tanks, casks, drums, cans, boxes and similar containers” and “but not fitted with mechanical or thermal equipment” however, require identification against a name, or the assessment of similarity. While this type of requirement is not unusual for complex, real world goods classification, it does reduce the ability to ensure that the same decision will always be made. So, for example, questions like “is a biscuit tin a similar container” or “is a tap considered mechanical equipment” may be answered differently by different people.

The HS also mixes types of criteria. So, faced with the classification of an imported “container,” one has multiple headings to consider each based on different factors or combinations of factors: constituent material, capacity, function, fitted equipment, sphere of use (e.g., household or not), associated industry/activity, ability to be fitted to different types of vehicles, ornamentation, status as a part or accessory, and so on. Some of these choices are resolved by the HS Notes, others are guided by the applicable GIRs, but many require outside help from extrinsic aids.

Systems like this tend to rely heavily on extrinsic aids and previous decisions. In the case of the HS, this includes its Explanatory Notes and its Compendium of Classification Opinions compiled by the WCO, various other explanatory materials and rulings from national administrations, and review or judicial rulings from tribunals and courts. The end result of complex criteria and the heavy reliance on explanatory material is that the level of accuracy and consistency achieved in classification tends to be relatively low.

In terms of product definitions/groupings, many were developed during the first half of the last century. This leaves us with dated terminology (e.g., “automatic data processing machines” rather than “computers”), and a slant towards basic commodities and finished manufactured products. This makes it difficult to integrate both intermediate manufactures and multifunctional, composite goods that have become increasingly important in world trade over the last 20 years.

Goods such as ready prepared meals, medicalized foods (e.g., spreads with added cholesterol lowering phytosterols), wearable electronics, sub assemblies for global value chain manufacturing, and electronic devices such as smartphones,

2 Auditor General of Canada 2010, ‘Report of the Auditor General of Canada – Fall 2010: Chapter 8, Facilitating the Flow of Imported Commercial Goods – Canada Border Services Agency’

3 Auditor General of Canada 2017, ‘2017 Spring Reports of the Auditor General of Canada to the Parliament of Canada: Report 2—Customs Duties’

which combine multiple functions are all examples of goods that do not fit easily into the old headings. Developing good structures for such complex goods will always be difficult. Fitting new groupings for these types of goods into the existing structure greatly increases that difficulty. Not only must the grouping be defined, it must also be differentiated from existing groupings that work on the basis of different criteria.

### Can we improve the HS?

Yes. After 30 years of negotiating harmonization and working to adapt the HS for different uses, we have a far clearer idea of where the system is under pressure. In the intervening years between the launch of the HS and today, there have been other attempts

to develop a better classification system by both international statistical bodies and national governments. Thus, we have new models to study, which can give new insights into different ways of seeking to solve the same problem: categorizing trade.

It is possible to revise the structure and some design elements of the HS while still retaining the value and integrity of the system. The current HS is like a penny farthing bicycle, one can argue it has a certain elegance, but it is still not the ideal solution for the cycling commuter today. A modern bicycle may look different from the penny farthing, but the important design revolutions, such as a seat, wheels, peddles and handlebars, are still all there: it simply

improves its operation. In the same way, we can modernize the HS by making it simpler to use, and able to better handle the changing trade environment.

### Should we consider a structural revision of the HS?

The current HS has been in place for three decades. Simply because it has flaws does not automatically mean that it is necessary, or even desirable, to undertake major changes. It is deeply embedded into systems and procedures globally. The work in changing laws, software, documentation, databases, and training would be immense and disruptive.

Think of the replacement of imperial measurements with the metric system. Few would disagree that it is simpler to



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use a standard decimal system across all measurements than having, for example, 1,760 yards to the mile and 16 ounces to the pound. But, while simpler, changing is difficult and expensive, and requires people to 'relearn' parts of their basic skill set. In fact, it is so difficult that seven countries have not yet officially switched to the metric system.

The situation is similar for product classification. While there may be better ways to categorize electric toothbrushes than as "Electro-mechanical domestic appliances, with self-contained electric motor, other than vacuum cleaners of heading 85.08: Other," that category is in our laws, in our databases, and in the memories of classifiers: current classification terminology is entrenched. Therefore, the question of whether the gains would be sufficient for the global community to accept the cost and disruption is not an easy one.

It is also important to remember that while a revised system may be an improvement, no system is perfect and it would not suit everyone or solve all problems. Under the HS Convention, changes require acceptance by all Contracting Parties to the Convention, so to make major changes would not be an easy path. Close cooperation between Customs administrations, other users and the WCO Secretariat would be vital to achieving an acceptable outcome. Based on past experience, the possibility is high that after much work, acceptance would still not be gained for the whole package.

Despite all of this, we should give serious consideration to initiating such a project. The world has had the HS for 30 years and yet, it remains difficult to use and the source of continued contention for traders, administrations, courts and countries. A deep and innovative revision that succeeded in making a generational change to the HS would

be one of the most important global reforms to trade in decades. As it affects the everyday reality for traders and Customs administrations globally, increased ease of use of the HS would have a major impact on their operations.

To achieve major reform would require input from user groups. While the WCO's HS Review Sub-Committee and HS Committee are excellent at looking at issues around specific classifications or products, they only meet twice a year respectively, and are not a forum in which a major holistic review can be realistically undertaken. Such an undertaking would require a working group, with varied representation, to examine the fundamentals of the system. This was the approach with the original development of the structure and content of the HS.

One potentially valuable starting point would be the consideration of commodity groups or HS areas where the resolution of classification disagreements between Contracting Parties is frequently prolonged or requires legal changes. Chapter 29 of the HS is an example of this. There are over seven million organic compounds to classify, and a compound can have multiple plausible classifications. The current structure of the chemical chapters uses diverse methods on which to base headings, such as:

- common functional groups;
- constituents or chemical classes;
- carbon range numbers;
- chain-length categories;
- common precursors and/or breakdown products, via physical or biological processes (e.g., acid/ester/salt);
- the activity/function of a compound.

So, a single compound may fit into the terms of different headings based on different aspects of its identity and the

general rules of specificity or essential character often have little meaning in this context. Over the various revisions of the HS, 'add-on' changes have been made to prioritize one heading over others for various specific chemicals or groups of chemicals, but it still causes confusion for the trading community.

The underlying assumptions about the role of parts and accessories is also worthy of re-examination. In the context of global supply chains and multi-use components, a lot of work and effort goes into determining the future goods something may be part of, or used with, rather than what it is when actually crossing the border.

There is also the future question of goods whose value and identity is in the embedded information, and how to provide parity of treatment between virtual and physical delivery. Does a novel have a truly different identity depending on whether it is presented as a printed copy or an electronic copy? What about the difference between an imported sculpture and the same piece downloaded as a single use file and 3D printed by the buyer?

We know the difficulties that people face with the HS and believe that we would be able to make it more user-friendly. Changes ranging from the simple, such as grouping notes that have nomenclature wide application, to the fundamental, such as a glossary with agreed language translations for terminology along the lines of the International Electrotechnical Commission's 'Electropedia' could be considered.

It is time to consider adapting the HS for the 21<sup>st</sup> Century.

#### **More information**

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# Building a classification infrastructure: the Ghanaian experience

**By Ena Blege,**

HEAD OF CLASSIFICATION, TECHNICAL SERVICES BUREAU, GHANA CUSTOMS

In January 2018, the Ghanaian government notified the WCO Secretariat that it had accepted seven Harmonized System (HS)-related WCO Council Recommendations, testimony to its strong commitment to implement objective, predictable and transparent classification practices as well as facilitate the collection of international trade statistics and the monitoring of global trade. This article presents the path that the Customs Division of the Ghana Revenue Authority has charted over the years in its quest to create a functional and workable classification infrastructure, touching on, among others, advance rulings, training challenges and capacity building needs, and more education to enhance the appeals process.



From 1970 to 2000, Ghana used a 'pre-shipment inspection (PSI)' regime for goods being imported into the country. Classification was done primarily by accredited testing agencies in the country of export before the goods arrived in Ghana. However, problems related to PSI activities became more and more pronounced over the years, forcing the authorities to begin licensing local companies from the year 2000 to undertake a 'destination inspection (DI)' regime instead. These companies were mandated to classify all goods that arrived in the country.

Teams of Customs officers were subsequently assigned to these DI companies on a regular basis to offer them technical assistance. However, the DI system also had its drawbacks. Therefore, in compliance with WCO Council Recommendations, Ghana Customs decided in September 2015 to set up a Harmonized System (HS) Unit to take over the work of these DI companies and assume the task of classification itself. This decision was preceded by a WCO National Workshop in Accra, Ghana in June 2015 during which HS experts from the WCO Secretariat were subsequently tasked to:

- review Customs' current classification infrastructure;
- evaluate the local classification environment;
- evaluate the totality of Customs and its processes;
- help Customs develop a strategic plan with a view to executing the planned transition from the DI companies to a fully Customs-controlled operation;
- compare Customs' classification methods with international best practice;
- quantify the expected gains or benefits that will arise from Customs assuming full responsibility for its classification processes;

Key among the recommendations proposed by the WCO experts was the need to implement a programme for binding pre-entry classification information. Since tariff classification is quite technical in nature and required a fair amount of time to be spent in analysing technical literature, including asking for inputs from the Customs laboratory where necessary, it is important to be able to issue advance rulings.

- assess the risks that Customs may face in executing the takeover from the DI companies.

At the time of the effective takeover in September 2015, a new facility that would subsequently be known as the Customs Technical Services Bureau was already in place at Customs Headquarters, and, within it, a National Classification Centre. There was also a pool of experienced officers to man this classification unit. The aims and objectives of officers working at the Centre were to:

- ensure the implementation and correct application of the HS;
- establish and manage classification policy to ensure the uniform classification of all goods being imported;
- issue classification rulings for uniform application throughout the country;
- examine classification questions referred by regional and local Customs offices;

- periodically update the Common External Tariff (CET) of the Economic Community of West African States (ECOWAS), of which Ghana is a member country;
- publish binding tariff information for use by the trading community;
- serve as a link between the WCO and its HS Committee, and implement the Committee's decisions;
- discuss classification issues with the Central Customs Laboratory, which also maintains a system of mobile laboratories;
- coordinate HS activities with Customs' Training Branch.

#### Advance rulings

The objective of the WCO experts who supported Ghana Customs during that period was also to raise the awareness of the administration of the need for a modern classification infrastructure as the bedrock for an efficient and effective Customs administration. Such an infrastructure would enable the accurate collection of revenue, facilitate trade, assist in the combating of fraud and malfeasance, and make the accurate compilation of trade statistics possible.

Key among the recommendations proposed by the WCO experts was the need for Ghana Customs to implement a programme for binding pre-entry classification information. They made it clear that since tariff classification was quite technical in nature and required a fair amount of time to be spent in analysing technical literature, including asking for inputs from the Customs laboratory where necessary, it was important to adopt the WCO Recommendation on Advanced Tariff Rulings in order to minimize delays and facilitate international trade and investment. Thus, an effective pre-binding classification programme would help Ghana Customs to:

- ensure the uniform classification of goods;

- minimize revenue loss;
- coordinate all classification decisions within the administration;
- reduce Customs clearance delays;
- minimize classification disputes;
- reduce unnecessary costs in doing business.

Fortunately for Ghana, work had already started, in 2013, on laying the foundation of the legislative framework for the institution of a programme for binding pre-entry classification information. The new law (Act No. 891) was assented to on 18 May 2015. Excerpts on Customs advance rulings from Section 12 of the Act appear below:

- (1) The Commissioner General may issue a written ruling applying the Customs law to a particular set of facts submitted by an interested party.
- (2) An interested party in this section includes a person, or authorized agent of a person, who has a demonstrable interest in the questions presented in the request, and an importer or exporter [...].
- (5) The request for a Customs ruling shall be in writing and include a statement of all relevant facts, the names and addresses of interested parties, the name of the port where the goods are expected to arrive or depart, and a description of the transaction in sufficient detail to allow the application of the Customs laws [...].
- (9) A Customs advance ruling is binding until the ruling is overturned by the Commissioner General [...].
- (12) An interested party may request a review of the Customs advance ruling by the Commissioner General within thirty days of the publication or notification of the ruling; or a judicial review of the Customs advance ruling made by the Commissioner General within thirty days.
- (13) The Commissioner General shall treat information submitted under

this section as confidential, unless the parties agree otherwise.

It is interesting to note that the law does not give a timeline on binding tariff rulings. Section 12 (Subsection 9) of the Act specifies that such pre-binding classification rulings may be overturned at any time by the Commissioner General.

The law enjoins the Commissioner General to "treat information submitted under this section [Section 12 (Subsection 13) of the Act] as confidential, unless the parties agree otherwise." So, although Ghana Customs could publish binding tariff information, no trader has yet given it permission to do so. However, Customs is actively encouraging local traders to allow such information to be published.

Moreover, it is worth mentioning that classification rulings are discussed with the regions in order to ensure that there is conformity with the work that is done at the National Classification Centre. Issues related to classification that emanate from the regions are relayed to the Centre for resolution as well.

### Training challenges and capacity building needs

Ghana Customs has undertaken several training and capacity building activities for its officers over the years. They have undergone training on ECOWAS' CET, the structure of the HS, and the principles of classification.

Experts from the WCO have also helped Ghana Customs to tackle and resolve various issues relating to

the HS. Such issues include how to improve classification infrastructure, the role of the Customs laboratory and its relationship with classification work, and the use of various WCO tools (i.e. publications and Council Recommendations) that are related to capacity building and classification.

A Tariff and Classification Committee has been set up at Headquarters level. It meets once a week to review the work that is done at the National Classification Centre. However, Ghana Customs still encounters difficulties in trying to achieve a good classification work model. Key among these challenges is the lack of optimum resources required for Customs' capacity building efforts. Not having enough competent personnel who are well schooled in the HS has been a perennial problem.

Not enough resources have been committed to enable officers to be trained in undertaking detailed analysis of all chapters of the HS and the CET, in developing case studies on classification, in taking on board HS Committee decisions, and in managing classification rulings as well as in identifying possible areas of classification fraud. Also, not enough specialized training on the HS has been organized for officers to address specific sections that are of importance to Ghana, such as the machinery and chemical chapters.

Another challenge facing Ghana Customs is the slow pace of work on the implementation of the programme for binding pre-entry classification information. The administration is still at the beginning of a national



A view of Ghana's National Classification Centre

sensitization effort, aimed at educating the public and the officer corps about this very important instrument. So, as is to be expected, not many traders have been able to avail themselves of this dispensation thus far.

### More education to enhance the appeals process

The appeal process has also not been as effective as Ghana Customs would want it to be. But, as indicated earlier, the law governing advanced tariff rulings allows any trader the right of appeal against any classification decision by the administration. At present, a trader is provided with the reasons for the administration's decision in the shortest possible time. The decision is communicated during a formal meeting between the Appeal Committee and the trader.

However, the problem facing Ghana Customs is that the volume of disputes with traders is way too high. There has been a gradual attempt to raise awareness among traders and other stakeholders on the importance of classification and how it impacts their business activities. In addition, Ghana Customs has engaged its stakeholders, traders and clearing agents in various sensitization programmes at the start of every HS review cycle. However, more education is needed on the part of Customs to school traders on the rules governing classification in order to minimize disputes.

### Conclusion

The Ghanaian experience is an indicator of the likely pitfalls and difficulties that could be encountered by a Customs administration that has resolved to revamp and restructure its classification infrastructure. Therefore, with the HS celebrating its 30<sup>th</sup> anniversary this year, Ghana Customs hopes that its experience will help other administrations that may be considering assessing their capacity, while inspiring them to reform their process if needed.

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# Role of the HS in the United Nations' 2030 Agenda for Sustainable Development

## By the Food and Agriculture Organization of the United Nations\*

APPROPRIATE POLICIES AND sound legal and regulatory frameworks are necessary conditions to make international trade a virtuous engine to eradicate poverty and hunger, and to promote prosperity and sustainable development.

On 25 September 2015, the 193 Member States of the United Nations (UN) adopted the 2030 Agenda for Sustainable Development<sup>1</sup> that includes 17 Sustainable Development Goals (SDGs), 169 targets, and 232<sup>2</sup> indicators. The 2030

Agenda is fully owned by countries, and provides a comprehensive framework tackling all the multiple challenges faced by our planet, promoting a global and long term vision of sustainable development that encompasses, among all, the ending of poverty, hunger and malnutrition, climate change, inclusive growth, building resilient communities, and sustainable management of resources. Data on the monitoring of the 2030 Agenda and progress towards the SDGs is disseminated by the UN through the SDG Indicators Global Database<sup>3</sup>.

The Food and Agriculture Organization (FAO) is fully engaged in this process as the specialized agency of the UN that leads international efforts to defeat hunger and malnutrition, ensuring the sustainable use of natural resources, and as the custodian agency for 21 SDG indicators<sup>4</sup>.

The SDG framework encompasses a wide range of actions for more inclusive and sustainable trade across 10 goals and 21 targets that include increasing the quantity and quality of exports in all countries<sup>5</sup>; widening the positive impact of natural resource exports<sup>6</sup>;

\* Authors and contributors: FAO Office of the Chief Statistician: Valentina Ramaschiello and Pietro Gennari (Chief Statistician); FAO Fisheries and Aquaculture Department: Stefania Vannuccini; FAO Forestry Department: Arvydas Lebedys, Simona Sorrenti and Giulia Muir.

1 <https://www.un.org/sustainabledevelopment/sustainable-development-goals>.

2 As of today, 50 organizations are responsible for the 232 indicators that compose the SDGs global indicator framework, which is coordinated by the Inter-agency and Expert Group on SDG Indicators (IAEG-SDGs) that was created at the 46<sup>th</sup> Session of the United Nations Statistical Commission (UNSC).

3 <https://unstats.un.org/sdgs/indicators/database>.

4 <http://www.fao.org/sustainable-development-goals/indicators/en>.

5 3.b, 8.a, 9.1, 10.a, 17.1, 17.3, 17.10, 17.11, 17.12.

6 2.b, 2.c, 9.b, 14.4, 14.6, 14.b.



exporting high-value locally made goods and services and promoting sustainable tourism<sup>7</sup>; and addressing illegal and informal trade<sup>8</sup>.

Concerning food and agriculture, five FAO indicators heavily rely on international trade data in food and agriculture commodities for their calculation. These indicators are aimed at monitoring hunger<sup>9</sup>, price volatility<sup>10</sup>, illegal, unreported and unregulated fishing (IUU)<sup>11</sup>, the value-add of sustainable fisheries<sup>12</sup>, and access rights for small-scale fisheries<sup>13</sup>. An additional indicator related to agriculture and international trade is coordinated by the World Trade Organization (WTO) and concerns agricultural export subsidies<sup>14</sup>.

Quantitative data is key to measuring and reporting the progress made by countries against the Sustainable Development Goals framework. Without quality trade data, it is not possible to monitor trade flows worldwide, and to support international trade policies for sustainable development. Not only data in terms of value (monetary terms) is important in this framework: data on quantities also – and sometimes mainly – provides critical information. However, challenges remain, particularly when it comes to detailed data on goods that are traded in the international market.

Therefore, a vital role has to be played in the 2030 Agenda by the WCO's Harmonized System (HS) – as the backbone of international trade statistics – and by Customs administrations – as the key HS users and data providers on international trade in goods worldwide.

The FAO and the WCO have a long established partnership in the review of the HS. Over the past 10 years, the FAO has contributed to the revision of the HS with the aim of improving the coverage

of the agricultural sector in HS 2012, HS 2017, and more recently HS 2022 – currently underway. This has resulted in a substantial increase in the number of sub-headings in the HS for agriculture, and fisheries and forestry, which has translated into significant improvements in the availability and quality of detailed trade data since 2012.

Statistics are a core function of the FAO, with statistics on trade in food and agriculture, and on fisheries and forest products being disseminated for over 50 years in 245 countries, regions and territories, and on over 2000 commodities. The increased detail in HS 2012 and HS 2017 has allowed the FAO to improve monitoring in the following SDGs-related areas work:

- Food security, by way of producing better estimates of food available for consumption at country, region and global level, and to calculate their related nutritional intake thanks to a better correspondence between production (by species and product forms) and its trade. These figures are produced by the FAO through Food Balance Sheets<sup>15</sup> (FBS), which are based on quantity data compiled at single commodity level. The FBS are then used as a source for the calculation of the SDG indicators for hunger monitoring under SDG 2.
- Endangered species, thanks to the more accurate identification of animals, fish, tree species and derived products, including those that are at risk of overexploitation and the object of illegal trade.
- Sustainability of fish stocks, allowed by the more precise identification of detailed species traded as live, and in the form of processed commodities. Fish are among the most traded

The FAO is the custodian agency of 21 SDG indicators that measure: the prevalence of undernourishment and the state of food insecurity (2.1.1, 2.1.2), income and productivity of small-scale food producers (2.3.1, 2.3.2), the sustainability of agricultural production (2.4.1), the biodiversity of plants and animals (2.5.1, 2.5.2), investment in agriculture (2.a.1), food price volatility (2.c.1), women's access to agricultural land ownership (5.a.1, 5.a.2), water use efficiency and water stress (6.4.1, 6.4.2), food loss and waste (12.3.1), fish stocks, sustainable fisheries, illegal fishing and access rights for small-scale fishers (14.4.1, 14.6.1, 14.7.1, 14.b.1), and sustainable forests and mountains (15.1.1, 15.2.1 and 15.4.2).

food commodity worldwide with developing countries representing more than half of the global fish trade. The increased detail in the HS on fish species supports, with data evidence, the effective management of fisheries resources, and also guides actions for the recovery of overexploited or depleted resources.

- Sustainability of forest exploitation, through the improved representation of wood and non-wood forest products. The review of HS 2017 and the current review of HS 2022 has – and will even more in the future – improve the analysis of forest exploitation impacts on ecosystems, and of the effects of trade on deforestation and habitats; a more accurate calculation of the economic value generated from forests, and improved estimates of wood energy balances and carbon sinks/emissions.

7 8.9, 12.b, 14.7, 14.b, 15.c.

8 15.7, 15.c, 16.4.

9 2.1.1 Prevalence of undernourishment.

10 2.c.1 Indicator of food price anomalies.

11 14.6.1 Progress by countries in the degree of implementation of international instruments aiming to combat illegal, unreported and unregulated fishing.

12 14.7.1 Sustainable fisheries as a proportion of GDP in Small Island developing states, least developed countries, and all countries.

13 14.b.1 Progress by countries in the degree of application of a legal/regulatory/policy/institutional framework, which recognizes and protects access rights for small-scale fisheries.

14 2.b.1 Agricultural export subsidies.

15 <http://www.fao.org/faostat/en/#data/FBS>.

- Value chain analysis, detail in the HS according to the different degree of processing, supports statistical and economic analysis on how much agricultural, forestry and fisheries commodities are traded in the form of raw materials, processed or semi-processed products, or as by-products. For this reason, and even if trade volumes may be lower than the set threshold of 50 million US dollars, the FAO recommends the retention of these codes as they are used in the Organization as an important source of information that risks being lost otherwise.
- Prices, and in particular the monitoring of commodity prices and trade distortion, including export subsidies and price anomalies.

Additional considerations concern the role of the HS in the context of international statistical classifications. Indeed, because it provides the backbone of international trade statistics, the HS stands at the centre of the international classification system, and cannot be considered as a standalone standard.

Also of particular importance to international statistics is the UN Central Product Classification (CPC Ver.2 and Ver.2.1<sup>16</sup>), whose primary purpose is to classify the goods and services that are the result of production in any economy, and the UN Classification of Individual Consumption According to Purpose (COICOP 2018<sup>17</sup>), which aims to classify and analyse individual consumption expenditures incurred by households, non-profit institutions serving households and general government according to their purpose.

For this reason, besides collaborating with the WCO in the review of the HS, the FAO has been working intensively with the UN – as the coordinator of international classification work – to review the classifications of products and of individual expenditures in the field of food and agriculture, including fisheries and forestry. This effort has now

resulted in improved data reconciliation across international trade, production and consumption statistics.

Some practical implications of this important achievement are experienced again in the compilation of the FBS, where the three dimensions – international trade, production and consumption – are integrated into a single framework. The current versions of the three classifications allow for more balanced data – thus more accurate estimation of the food that is produced, traded and eventually available at country level for food consumption.

Despite all these significant improvement, however, challenges are still being faced. As already mentioned, quantity data along with monetary values are of great importance for the work of the FAO, as the basis of food statistics and the compilation of physical accounts. Yet availability and quality of data remain an issue for many commodities in many countries, thus hampering the compilation of international trade statistics. In addition, the harmonization of the HS beyond six digits is a critical challenge to the work of statisticians compiling international trade data, as significant differences exist in national nomenclatures beyond the six-digit level, which imply substantial efforts from statisticians to map codes across national versions.

As a final remark, National Statistical Offices (NSOs) are key institutions at the national level in compiling and disseminating trade statistics and the coordinator body of data reporting on SDGs. It is, therefore, imperative to emphasize the need for continued and strengthened cooperation between Custom administrations and NSOs as crucial partners in the maintenance of the HS, and in the production of quality trade data for the monitoring of SDGs.

#### More information

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Quantitative data is key to measuring and reporting the progress made by countries against the Sustainable Development Goals framework. Without quality trade data, it is not possible to monitor trade flows worldwide, and to support international trade policies for sustainable development.

<sup>16</sup> <https://unstats.un.org/unsd/cr/registry/cpc-21.asp>.

<sup>17</sup> Endorsed at the UN Statistical Commission in March 2018, <https://unstats.un.org/unsd/statcom/49th-session/documents/#documentation>.

# The importance of the HS to tariff classification: thoughts from the IFCBA

**By the International Federation of Customs Brokers Associations**

THE WCO WEBSITE tells us that tariff classification using the Harmonized System (HS) Nomenclature “allows a world of many languages to speak with one.” As we mark the 30<sup>th</sup> anniversary of the official adoption of the HS in 1988, few could argue against the value of this universal language that has brought great clarity to the world of trade. With 157 Contracting Parties to the HS Convention basing their domestic Customs tariffs on the HS, and dozens more using it despite not being signatories, the HS truly is the language of international trade. It is currently used by more than 200 countries that comprise approximately 98% of world trade.

Since its implementation 30 years ago, the HS has become not only the basis for identifying goods, assessing duties and taxes, and compiling trade statistics, but is also used by other government agencies, international organizations and the private sector for a variety of purposes. This logical, systematic, universal language is used for developing trade policies, monitoring controlled goods, developing specific rules of origin, determining freight rates, analysing transportation statistics, monitoring pricing and controlling quotas, as well as for general economic research and analysis.

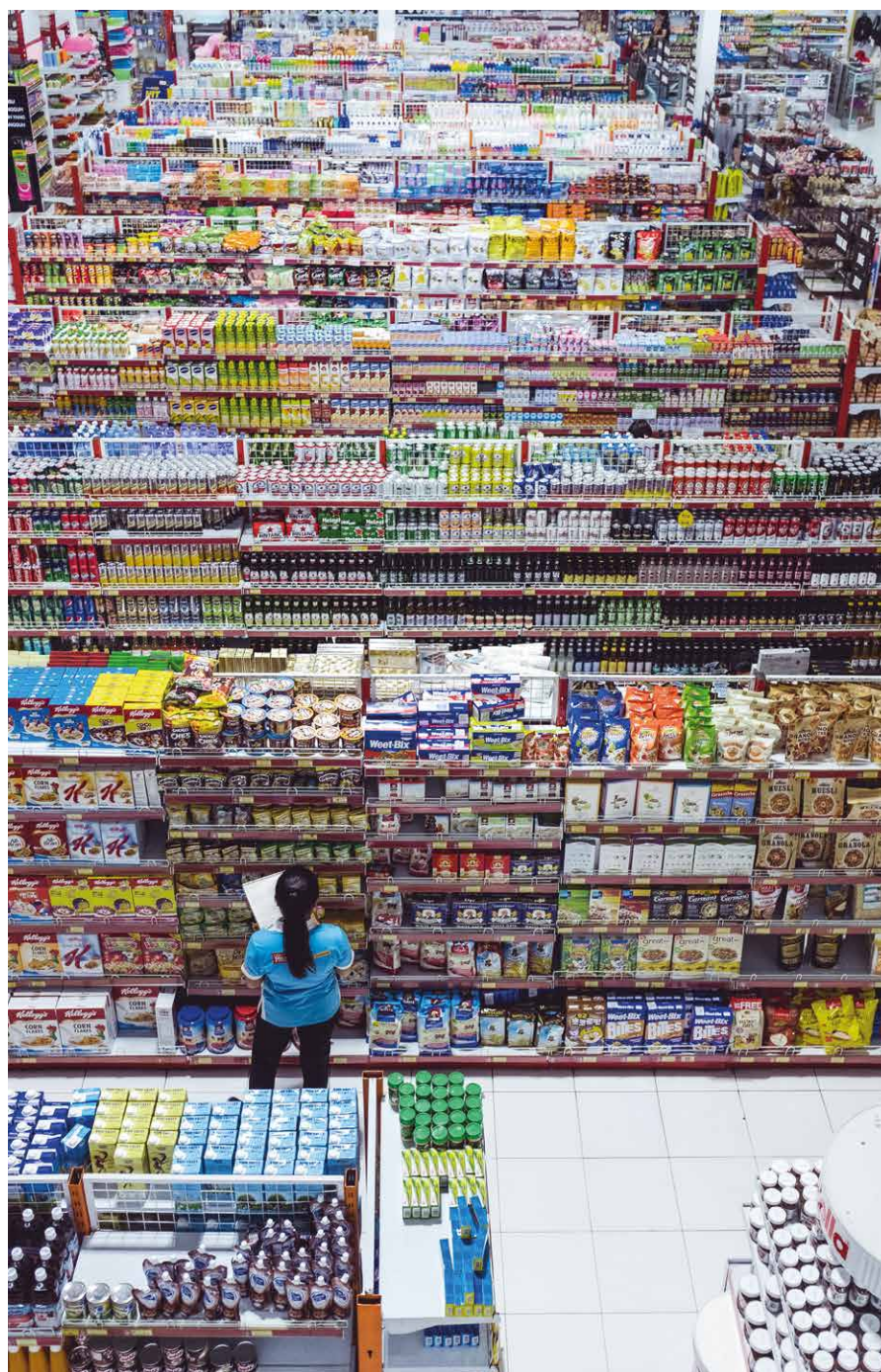
We know that the intention of this universal language is to bring clarity, but what happens when language between countries has national variations such as differences in the application of the HS? It is true that we have tools such as the General Interpretive Rules (GIRs) for the HS (perhaps we can consider these as grammar rules), but what happens when Customs administrations, importers, Customs brokers, and lawyers share the same language, but their interpretation is different?

## Interpretation challenges

We know that there can be differences of opinion about tariff classification not only internationally, but at the national level too. There are numerous examples of legal cases where the different interpretation of the HS nationally led to interesting appeals of the HS classification.

Given the complexities involved with HS classification and the potential

impact on compliance and revenue collection, governments around the globe have introduced various ways to provide guidance on the interpretation of the HS. The WCO itself established Standard 9.9 of the General Annex to the Revised Kyoto Convention on the simplification and harmonization of Customs procedures, providing for advance rulings, so that importers have confidence in the tariff classification of goods prior to their importation.



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Some Customs administrations also issue directives on the classification of certain goods, and others publish a list of items that will be subject to post-clearance audit or compliance verification, highlighting issues of common misclassification. By publishing this list, importers are provided with a means to support their own compliance and, if required, make a correction before an audit occurs. Awareness of this list of audit priorities can initiate a conversation between the importer, the Customs broker and the Customs administration about enhanced overall compliance, contributing to fairness and transparency.

In addition, the WCO publishes the Explanatory Notes that provide users with the official WCO interpretation of the HS. Although the Explanatory Notes are not binding in all countries, they are widely and practically used to enhance the uniform understanding and application of the HS worldwide.

We can't forget the Legal Notes, which are legally binding. Without these, how would one know that the expression "babies' garments and clothing accessories" means articles for young children of a body height not exceeding 86 cm (heading 61.11), or that Chapter 10 does not cover grains, which have been hulled or otherwise worked, but that rice, husked, milled, polished, glazed, parboiled or broken remains classified in heading 10.06?

The WCO's HS Committee (and the HS Review Sub-Committee), in addition to overseeing the five-year cycle of changes to update the HS, is tasked with the settling of interpretation disputes and providing classification opinions for the Compendium of Classification Opinions. It also provides classification opinions and recommendations on new technologies, such as 3D printers and drones.

### Penalty regimes

Implementation of the HS by national Customs administrations is often accompanied by a comprehensive penalty

regime for incorrect tariff classification. From a private sector perspective, when there is a penalty regime in place, there must be clear parameters to ensure that requirements and obligations are clearly understood, and that there is a redress or appeal procedure in place. For instance, did the importer or the Customs broker know that an incorrect HS code was used? Did they ignore a ruling? Penalties can be devastating, considering the penalty amount assessed, plus possible additional duties and taxes, which can result in an additional payment that the importer did not consider when pricing the imported goods for sale. All of their profits, and more, may be lost.

It is critical to measure the impact of a penalty system on classification compliance. It is reasonable to suggest that if one is penalized financially for making an error in tariff classification, the same error is not likely to recur. However, it is also reasonable to suggest that Customs administrations issue penalties for incorrect tariff classification only after careful scrutiny, within clear parameters, and that the mechanism to appeal a penalty should be simple and timely, with input from all parties. Penalties should not be seen as the only way to promote compliance and deter non-compliance: countries should constantly strive to find the best possible mechanisms to resolve differences of opinion and to educate all who have responsibility for HS classification, both inside and outside Customs administrations.

### Managing the HS review

The HS has not remained static and it must continue to evolve. What happens when changes are made to the HS, and what are the impacts for business and for national Customs administrations? We have just completed a review cycle, with the next one scheduled for 2022. Changes to the HS affect trade agreements, requirements of other government agencies, sourcing decisions by business, and changes to education programmes, information technology (IT) systems, and communication tools and websites.

Conversion is a significant cost for governments and the private sector alike. A single change to the HS can result in thousands of changes to product databases, especially for Customs brokers with hundreds of clients importing a wide variety of products. One tariff item may be split into two or more new tariff items, requiring the manual reclassification of all products from the old to the new. Our experience is that most changes are from one HS number to three or four, but there is at least one example where a single tariff item in 2016 expanded to ten in 2017!

Looking ahead to 2022 and the implementation of the next set of HS changes, we encourage WCO Members to be responsive to the needs of business as they adapt the WCO's changes to national priorities, and finalize national tariff schedules. We need adequate time to convert existing databases.

We also need Customs administrations and other related government departments to leverage technology in order to enable seamless automated downloads of information. For example, if HS codes can be downloaded into a Customs brokers' database, goods subject to anti-dumping duty or to another government department's regulations can be easily identified on a timely basis.

In addition, we need to respect sensitive commercial information and be clear about commitments to trade compliance in both government and the private sector. Even though information about their clients' goods might be sensitive or proprietary, Customs brokers must make it clear to importers that, in order to be compliant, certain information must be provided in order to determine the correct HS code.

### Alternative nomenclatures

In this time of 'big data' and data analytics, what is the future of the HS? There are ideas around the HS itself, including broad access to readily available and reliable country-specific information, and the use of generic

HS categories for the classification of goods for revenue collection. There are also discussions about alternative nomenclature systems that could supplement or replace the HS by providing additional information about goods to various parties. For example, we know of one country that is considering the use of GS1 standards in order to enhance the HS code to better identify imported goods. Watching all of these developments, we must guard against increased costs, unnecessary complexity, possible duplication, and the potential for errors.

### Positive reflections

As the global trade community reflects on the first 30 years of the HS, we

must congratulate the WCO on this universal language that has contributed to better efficiencies, improved revenue management, and provided greater clarity for business and related service providers. We acknowledge the outstanding contribution of HS experts at the WCO's Headquarters in Brussels and the tariff specialists in WCO Member administrations in making the HS the success that it is, and we look forward to celebrating the next HS milestone.

### More information

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The International Federation of Customs Brokers Associations (IFCBA) works to promote the value and use of Customs brokers worldwide, bringing about improvements in Customs policies and practices on a global basis that benefit both Customs brokers and their clients, as well as keeping them at the centre of the international trading system.



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# The HS lights the way for traders

**By Beth Junior,**

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CUSTOMS AND BORDER PROTECTION

As industry continues to innovate, the work on amending the Harmonized System is never complete. This article looks at the origin and evolution of LED products to illustrate how the System can adapt to product developments over time, lighting the way for traders and guaranteeing the flow of legitimate trade across international borders.

The international Harmonized Commodity Description and Coding System, also known as the Harmonized System or HS, is a powerful instrument of trade. Every five years after the conclusion of the WCO's review cycle, each Contracting Party to the HS Convention implements amendments to the System. These amendments are the result of meetings of both the WCO's HS Committee and the HS Review Subcommittee. HS Contracting Parties may submit a draft amendment for consideration to these two working bodies. Proposals to amend the HS often arise when the domestic industry raises an issue with its home Customs administration. The industry representatives may specifically request an amendment to the HS Nomenclature

to solve a specific problem, or may request a tariff classification decision which ultimately reveals a challenge best addressed by amending the legal text.

At the beginning of every HS review cycle, the U.S. International Trade Commission (USITC), which is charged with maintaining updates to the Harmonized Tariff Schedule of the United States, publishes a request for amendment proposals in the Federal Register. The Federal Register is a daily publication of proposed and final administrative regulations of U.S. federal agencies. In addition, U.S. Customs and Border Protection (CBP) publishes its own weekly bulletin, which contains agency rulings, domestic court decisions on trade, and the agenda for the HS Committee. This is one of the ways in which the U.S. Administration communicates with its domestic industry about particular agenda items before the WCO working bodies, or identifies areas where the HS may be improved.

## Developments and history

The U.S. lighting industry reached out to CBP and USITC when light emitting diode (LED) products appeared on the HS Committee agenda in 2012. Over the course of the next several years, we had regular meetings with representatives of the lighting industry to further our understanding of the development of LED technology, which informed our approach to these products in the context of the upcoming HS amendments. The origin and evolution of LED products provide the perfect example of how the HS can adapt to product developments over time.

In order to understand LED products, it is helpful to understand the history and evolution of electric lights. On 14 October 1878, American inventor Thomas Edison filed his first patent application for an electric filament lamp, or light bulb. By 1880, Edison's company was selling its

lamps to the public. In 1892, the Edison General Electric Company merged with its main competitor, the Thomas-Houston Company, to form the General Electric Company. The companies' directors agreed that they could advance lighting technology faster if they worked together. By 1904, engineers at General Electric had developed a tungsten filament lamp, which lasted longer and shone brighter than the original carbon filament lamps.

In 1939, engineers from General Electric and Westinghouse introduced fluorescent lamps at both the New York World's Fair and the Golden Gate Exposition in San Francisco. The need for efficient lighting in World War II factories resulted in the rapid expansion of fluorescent technology. In 1962, researchers at General Electric invented the first visible-spectrum LED in the form of red diodes. LEDs are semiconductor devices which emit light when electric current passes through them. Pale yellow and green diodes were invented next. As companies continued to improve red diodes and their manufacturing, they began appearing as indicator lights and calculator displays in the 1970s.

As the lighting industry expanded its development of LED products, their applications remained limited. Before the advent of the blue LED, manufacturers were unable to produce white light. In the early 1990s, approximately 100 years after Edison's patent, Professors Isamu Akasaki and Hiroshi Amano of Nagoya University, and Shuji Nakamura of Nichia Corporation, concurrently discovered that gallium nitride was the key ingredient in producing blue LEDs. Now, blue LEDs are easily altered to provide white light. These three Japanese scientists won the 2014 Nobel Prize in Physics for their discovery.

The invention of blue LEDs led to an explosion in breakthroughs using



LED technology. Blue, red and green LEDs can now be combined to make any colour of light. This has led to the development of screens for cell phones, computers, televisions, tablets, and many other electronic devices in today's world.

In addition to coloured light advancements, LEDs are also more energy efficient than traditional lighting. A modern white LED lamp converts more than 50% of the electricity it uses into light. By contrast, a traditional filament lamp only has a 4% conversion rate. LED lamps last up to 100,000 hours, compared to 10,000 hours for fluorescent lights and 1,000 hours for filament lamps. As consumers switch to LED lamps, global consumption of electricity and materials for lighting will reduce dramatically.

### Classification journey

As technology advanced, the HS also progressed through the hard work of WCO Members. For the 49<sup>th</sup> Session of the HS Committee in March 2012, the European Union (EU) submitted a request for the Committee to classify certain LED lamps, which in the U.S. are referred to as "light bulbs." They also introduced a draft amendment

pertaining to these products. The EU delegate noted that lamps were generally classified under heading 85.39, which provided for "Electric filament or discharge lamps, including sealed beam lamp units and ultraviolet or infra-red lamps; arc lamps."

The EU delegate pointed out that the text of heading 85.39 did not cover lamps incorporating LED technology. Consequently, most WCO Members were classifying LED lamps under heading 85.43, a basket provision, which provides for "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter."

Given the growing use of LED lamps, the EU delegate stated that it would be useful to classify them together with the other lamps covered by heading 85.39. The lamps of heading 85.39 were being replaced by LED lamps at an astonishing pace. Indeed, the manufacture and sale of filament lamps were reduced substantially in the EU following the coming into force of legislation that was applicable throughout the European Community. Finally, the delegate noted that LED

lamps were of paramount economic and ecological importance.

Noting the short time frame left to finalize amendments for the 2017 version of the HS (the HS Committee needed to finalize these amendments by March 2014), the majority of the delegates expressed the view that LED lamps should be provided for in the Nomenclature as soon as possible. Therefore, the Committee decided to send the draft amendment to the HS Review Subcommittee for discussion while the Committee continued to examine the classification of the LED lamps under the 2012 HS text.

At the 43<sup>rd</sup> Session of the HS Review Subcommittee in April 2012, the Subcommittee examined two proposals for LED lamps. The EU proposal involved adding the term "semiconductor lamps, including light-emitting diode (LED) lamps," to heading 85.39, as well as subheadings for "LED lamps" and "other" semiconductor lamps. The proposal submitted by Korea was to add the term "light-emitting diode (LED) lamps" to heading 85.39, and to add one new subheading, which provided for the same.

The EU delegate explained that their proposal was worded broadly in order to cover products such as organic light-emitting diodes (OLED), or phosphorescent organic light-emitting diodes (PHOLED), which may not be covered by the term “LED lamps.” Some delegates agreed with the EU delegate’s observation. The delegate of Korea stated that the term “LED lamps” could be read broadly to cover goods such as OLED and PHOLED products. Several delegates agreed with this interpretation.

At the 44<sup>th</sup> Session of the HS Review Subcommittee in November 2012, the Subcommittee agreed to proceed with Korea’s proposal. Several delegates noted that the HS Explanatory Notes could clarify that the term “LED lamps” also covers similar LED technologies such as OLED and PHOLED. The Explanatory Notes are the official interpretation of the HS. The Review Subcommittee sent the proposal to the HS Committee, which provisionally adopted the amendment for inclusion in the 2017 version of the HS.

### Continuing innovation and the future

However, as industry continues to innovate, the work on amending the HS is never complete. Given that LED products are manufactured in a wide array of configurations, the HS Review Subcommittee is working on additional amendments to clarify their classification for the 2022 version of the HS. In consultation with their domestic lighting industries, the U.S., the EU and Japan have all submitted draft amendments to the HS Nomenclature. These amendments cover the following products: LED modules, or lamps equipped with electrical connectors other than a cap, of heading 85.39, assemblies of individual light-emitting diodes of heading 85.41, and luminaires and lighting fittings designed for sole use with LEDs of heading 94.05.

This illustrates the beauty and challenge of the HS review cycle. Very soon, these new LED technologies will have a home in the text of the HS Nomenclature. As a living, breathing document, Contracting Parties to the HS can continuously update the nomenclature to cover new products and advancements in technology. And the global Customs and trade community can rely upon its text to guarantee that legitimate trade continues to flow across international borders.

### More information

[www.cbp.gov](http://www.cbp.gov)

# How industry at the WCO

**By the International Chamber of Commerce**

How does a specific product become the subject of a global classification decision at the WCO? What information is considered when amendments are made to the Harmonized System (HS) nomenclature? And how can a company or industry sector engage at the WCO to support classification decisions and HS amendments?

Involvement and information from industry is critical in making classification decisions for complex commodities and keeping the HS up to date with technological developments and changes in trade flows. Because it moves parts and finished goods around the globe, the private sector has a vested interest in the global classification decisions made by the WCO’s Harmonized System Committee (HSC).

The HSC is composed of Customs officials of Contracting Parties to the HS Convention, who provide much needed stability and predictability in Customs classification. Committee decisions, often accompanied by a classification opinion, provide guidance to Customs administrations as well as importers and exporters.

# engages on classification matters



A commodity gets identified for classification when a new product starts being traded globally and is not clearly identified in the HS, if there is a classification dispute between countries, or if there are cases of a lack of uniformity in the classification. Amendments to the legal text of the HS nomenclature take place during five-year review cycles. The 2017 edition of the nomenclature is currently in effect with the next edition scheduled for implementation in January 2022.

## Options for industry engagement

There are two primary methods for industry to support the classification of commodities and amendments to the HS nomenclature:

- The first option is for a company or industry organization to directly engage their home Customs administration on the classification matter. A list of HS officials in national administrations can be found on the WCO website. Technical and reference information can be provided to the Customs officials for inclusion in the working documents that support the classification decision. In addition,

the Customs officials may invite technical representatives from industry to the HSC meeting to answer questions and/or give a brief presentation.

- The second option is for industry to contact the International Chamber of Commerce (ICC) either directly or through an ICC national committee. Through a Memorandum of Understanding (MOU) with the WCO, ICC participates as an observer during meetings of the HSC and its Review Sub-Committee. ICC provides reference information and non-papers in response to requests from the WCO Secretariat, and also coordinates presentations and demonstrations to support the classification of goods or amendments to the nomenclature.

ICC recently provided a non-paper on additive manufacturing (3D printing), which was the basis for an HS amendment proposal for this new technology. In addition, ICC has coordinated presentations and demonstrations for classification issues involving smartphones, smartwatches, drones, large screen monitors,

multicomponent integrated circuits and tablet computers, among others.

## Collaborative approach

Thus, the private sector has two established ways to express its views and be part of a collaborative approach to a successful outcome on classification matters, a collaborative approach which is vigorously championed by both the WCO and ICC, and one that has benefitted industry and Customs administrations alike.

## More information

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# Serbia's valiant efforts to protect cultural heritage

## By Serbian Customs

IT IS A known fact that sites across Serbia are being dug over and destroyed by treasure hunters and antique traders, and that valuable cultural artefacts are ending up in auctions or antique fairs in the West, where they sell for amounts which, although very high, far reflect their actual cultural value and significance. This phenomenon is not limited to Serbia. Smuggling of artworks and antiques is estimated to be among the most lucrative forms of smuggling, and seizures of cultural goods are growing all over the world, which could indicate an increase in this phenomenon.

Given the importance of cultural heritage to societies and the economies of countries, as well as the fact that a portion of the proceeds obtained illegally through the trafficking of stolen and smuggled artworks and antiques is often used to finance international organized crime and even terrorism, the Customs Administration of Serbia is putting up a strong fight against this criminally-linked phenomenon. Serbia's efforts in this regard are particularly relevant in 2018, being the European Year of Cultural Heritage. The European Union, who chooses every year to address a subject in order to encourage debate and dialogue within and between member states, wish to encourage more people to discover and engage with Europe's cultural heritage, and to reinforce a sense of belonging to a common European space.

## Capacity building

Serbia is either the country of origin of smuggled cultural property, arts and antiques, or a transit country, but generally not the final destination. Indeed, art smugglers are constantly looking for passages and routes to specific European countries, where they can find a market for these sorts of goods.

Serbia Customs started building its capacity to protect cultural property a while back. In 2006, it developed "Guidelines for Identifying and Assessing Antiques and Rarities," a publication which contains detailed content and rich photographic material. This handbook offers basic guidelines for establishing the approximate values of antiques and rarities, and describes several methods used to move them illegally across borders. It covers paper antiques, old books, engravings, geographic antiques, antique furniture, jewellery and precious decorative objects, gemstones, clocks and watches, coins, paintings, antique icons, and various other antiques.

Moreover, Serbian Customs officers regularly participate in training exercises and workshops on a variety of topics related to the fight against the illicit trafficking of cultural property, as well as on issues such as the restitution or return of cultural objects, preventative measures, and risk mitigation. In November 2017, such a workshop was organized by the United Nations Educational, Scientific and Cultural Organization's (UNESCO)

Regional Bureau for Science and Culture in Europe, as well as by the Italian police.

## Cooperation

At the national level, the Customs Administration of Serbia cooperates with the Ministry of Culture and Information, the Institute for the Protection of Cultural Monuments, the National Library, as well as with several services within the Ministry of the Interior, especially the Service for Combating Organized Crime. Through the Ministry of the Interior, Serbia Customs also maintains good cooperation with the Public Prosecutor's Office and the Special Prosecutor for Organized Crime, as well as with the European Police Office (EUROPOL) and INTERPOL.

The Customs Administration has also established cooperation mechanisms with other Customs authorities, which are implemented on the basis of signed agreements. As part of Serbia Customs' cooperation agenda, it has also actively participated in regional or international operations targeting cultural goods, such as ODYSSEUS, AUREUS and PANDORA.

In terms of regular international data exchange, a substantial amount of information is received from INTERPOL on objects of significance to cultural heritage. Along with basic information on the items, the Customs Administration also receives photos of the objects, which allows for easier identification. Such information is

received by the Customs Intelligence Department and then passed on to all Customs offices, including the Administration's Anti-Smuggling Department.

Last but not least, information on seizures of cultural goods is shared with other Customs services through the ARCHEO platform, the WCO's real-time communication tool for the exchange of information and cooperation in the protection of cultural heritage. Information reported on the platform enables enforcement officers to learn about new smuggling methods, and cases seen as most interesting are shared with all Customs employees. It is, therefore, of utmost importance that all Customs authorities share such information via the platform in order to enhance their risk analysis capabilities.

### Results

Based on information to hand, it can be said that smugglers mostly use their own vehicles for smuggling artworks and antiques, with such vehicles often converted and modified to meet the smugglers' needs. They also use bus

drivers, giving them goods to be transported, or persons travelling frequently to Western European countries.

For instance, in 2017, two gospel books from the XVII and XVIII century were found in the luggage of a bus passenger (picture 1), and earlier this year, Customs officers at Gradina border crossing point found coins and parchment scrolls in Arabic script while scanning the spare tyre of a vehicle (picture 2).

More antique coins packed in old newspaper and plastic bags, as well as a bronze bust of a Roman legionnaire and a metal-cast figurine of a bull, were also found hidden under the driver's seat, in the armrest, and behind the backseat of the vehicle (picture 3) in a car at the Batrovci border crossing point.

There were also attempts at smuggling icons of particular significance to the Eastern Orthodox Church. For instance, at Gradina border crossing point in early 2015, Customs officers uncovered two Orthodox icons (picture 4) hidden among luggage in the trailer of a vehicle

en route to Western Europe, thus preventing these precious religious objects from being lost to these lands and the communities that treasure them.

### Challenges

The Customs Administration of Serbia is the last line of defence against this drain of precious cultural heritage, and has become a mighty obstacle for smugglers of all sorts, including those trying to profit from smuggling antiques. However, to further enhance Serbia Customs' capacity to protect cultural heritage, the Administration has determined that there is a need to:

- establish a common action mechanism detailing the role and procedures of all authorities and institutions (Ministry of Culture and Information, Ministry of the Interior, Ministry of Finance – Customs Administration, Ministry of Justice and the Public Prosecutor's office) on all levels (local, regional, national and international), as well as the information-exchange scheme and contact points within each of these services;
- establish permanent inter-sectoral government working groups that would discuss and propose efficient solutions on issues of relevance to the protection of cultural heritage (from drafting an action plan, through amendments to legal regulations and the introduction of a database, to coordination and assistance in cases of theft, counterfeiting, illicit traffic, damage and destruction of cultural property);
- establish departments dedicated to national cultural heritage within the Ministry of Culture and Information, and, within those, inspection services for the protection of national cultural heritage with all the necessary competencies;



Picture 1



Picture 2

© Serbian Customs

© Serbian Customs

- develop a digital national cultural property database and to digitally catalogue church-owned cultural property (in addition to data on the item and its digital photographs, detailed information on how and where the items are kept should be provided);
- develop a digital field map, with geographic coordinates of sites and detailed data on the distribution and concentration of immovable and movable cultural heritage, which could be available to the public, to a certain extent – such a map would have multiple benefits, especially in assessing the risks of natural disasters and other incidents, and in creating plans for the evacuation of cultural property in such situations;
- authorize museum employees to offer expert assistance to Customs and police officers at border crossing points for identifying and assessing items suspected of being the subject of illicit trafficking of cultural property.

### Continuing action

Given the fact that cultural heritage has a universal value for all, whether as individuals, communities or societies, and in recognizing the importance of preserving this heritage for future generations, the Customs Administration of Serbia is determined to continue acting as a strong barrier to smugglers.

Its continuing enforcement action, complemented by other national efforts to protect cultural property, will surely result in further successes in denting this illicit trade.

### More information

[ocucs@carina.rs](mailto:ocucs@carina.rs)



Picture 3



Picture 4

# Rethinking training: a visit to the Netherlands Customs National Training Centre

NOWADAYS, MOST CUSTOMS administrations have a school which teaches Customs staff. Some have a training centre devoted to the continuous practical training of officers throughout their careers. And it is one of these centres and its crucial role that is examined in this article, the purpose of which is to provide food for thought about training and the future prospects offered by technology.

The courses run by the Customs school make it possible to acquire the knowledge required to exercise the profession and to explore the theoretical aspects of various subjects to be mastered. However, their practical and operational aspects can be explored to only a very limited degree.

According to Kees Visscher, the Manager of the Netherlands Customs National Training Centre responsible for the maritime and land sector, there is a real challenge when it comes to building skills, that is to say the ability to act effectively in a defined situation, an ability which draws on knowledge, but is not reduced to it.

Kees speaks from experience. Before taking over the Rotterdam training centre, he had held various managerial posts, including being responsible for training and coaching management staff working at the port. The years spent training staff led him to conclude that Customs officers in the Netherlands display very varied levels of skill. Whilst some exhibit great abilities, others lack know-how, which clearly affects the quality of their daily work.

## Beginnings

Early on, Kees came up with the idea of setting up a training centre which would make it possible to transfer operational know-how and assess officers' skills and conduct. In 2004, a colleague returning from a visit to the Halifax training centre in Canada described the centre and its

facilities. Kees realized that his dream of creating such a body in Rotterdam could become reality. The Directorate General subscribed to the idea, and the Rotterdam Regional Training Centre was established in 2006.

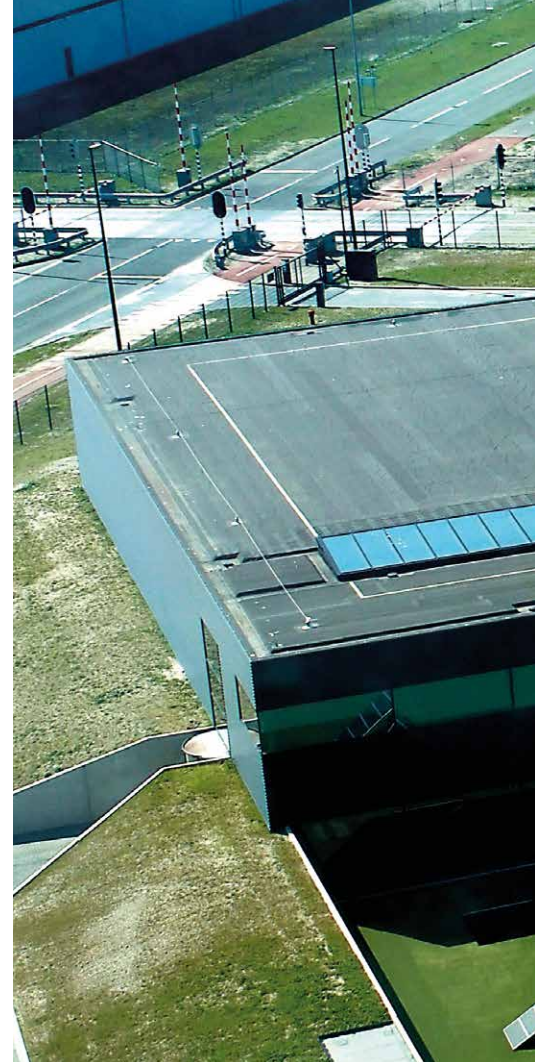
Trainers are recruited from serving Customs officers according to their motivation and ability to communicate and to use their imagination and innovate, as well as qualities such as their dynamism, common sense, and consideration for others. Playing out real-life situations is an essential part of the training, and trainers have to develop role-plays and practical exercises in which they themselves take part.

The recently established centre has a computer training area. Outside, a row of containers is used for various exercises, but the climate is harsh in the Netherlands. Kees is, therefore, starting to think about building a new structure which would make it possible not only to train Customs officers whatever the weather conditions, day or night, but also to school them in an environment which reproduces real working conditions as closely as possible. They could also be filmed during the exercises developed by the team of trainers to make the post-training evaluation sessions more interesting and effective.

A detailed analysis of the plan has been drawn up and submitted to the Directorate General. Work begins in 2014 and, although there is a little left to be done, the first training programmes have been under way since the end of 2017.

## A unique centre

The centre is a large building of 2,000 square metres divided into several areas. The section dedicated to the training of Customs officers in the strict sense includes:



- a 850 square metre area replicating a container park where all kinds of training take place, from port checks and the physical inspection of containers and their contents to fumigation exercises;
- a warehouse which makes it possible to test the ability of Customs officers to check inventories and identify suspect goods, non-regulation packaging, etc.;
- a 500 square metre area dedicated to the searching of vehicles which has a store of cars of all ranges and sizes, to which a bus will soon be added;
- an entire space which reproduces the various "rooms" of a vessel: crew quarters, a Customs store, a captain's meeting room, and an engine room.

The various rooms are equipped with video cameras and a sound system, which make it possible to create a realistic sound atmosphere. In the engine room, in addition to the engine noises, the temperature can rise to 30 degrees. The cameras make it possible to follow the training from the control room, study the behaviour of the participants



as closely as possible and, once the exercise is over, show them the images, if necessary, during the debriefing.

The trainers, who must constantly keep up to date with methods of concealment and operating procedures in order to develop credible scenarios, have a workshop where the equipment necessary for the training is made: hiding places, labels, and reproductions of objects or at least their shape. A 3D printer is amongst the recent purchases. It will make it possible to reproduce objects that are difficult to obtain, such as, for example, the skull of an endangered species of monkey which could be placed in the crew quarters.

Part of the building is reserved for the Dog Handling Training Centre, which has a huge outdoor area as well as an indoor area for substance detection training, and a room reproducing the inside of a house to teach the dogs how to move around in such an environment.

#### New recruits

The departure of the United Kingdom from the European Union will have effects on the Customs activities of the Netherlands. It is estimated that

Customs declarations for exports to Britain will increase by 4.2 million and import declarations by 752,000. Netherlands Customs intends to recruit and train new officers, some of which will pass through the training centre in the coming months.

In addition to these new recruits, all the Customs field officers and technical experts working in a port environment will have to undergo four days of training at the centre every year. The centre will also be able to welcome foreign delegations and continue to collaborate with the WCO, as part of the Container Control Programme jointly run by the United Nations Office on Drugs and Crime (UNODC) and the WCO, for example.

#### Virtual and augmented reality

Kees is now considering using virtual reality and augmented reality. These two technologies are different. Whilst virtual reality creates total-immersion simulation, augmented reality superimposes on the real world 3D images, captions and other elements which improve the user's perception of his/her environment.

The various rooms are equipped with video cameras and a sound system, which make it possible to create a realistic sound atmosphere. In the engine room, in addition to the engine noises, the temperature can rise to 30 degrees.



Virtual reality technology has proved to be a major asset for certain industries such as the health and oil industries. Oil companies have started to use this technology to train their employees to operate on oil rigs. Hospitals use this technology to guide practitioners in procedures such as cardiopulmonary resuscitation or the insertion of Foley catheters.

A computer, some sensors and a helmet would be enough to be transported to a warehouse or a port terminal, or even to Madagascar to discover the flora and fauna there. To demonstrate the relevance of the idea, Kees organized some defensive gun training for a group of Customs officers responsible for

carrying out house searches with the aid of a 360 degree simulation developed by a private company in collaboration with the Netherlands Ministry of Defence and the Netherlands Organization for Applied Scientific Research.

The Customs officers found the training very effective and very realistic. Although they are already properly trained, they felt rushes of adrenaline during the exercise. The technology offers the possibility of viewing the images again for analysis, replaying them as often as desired, and developing a multitude of scenarios and environments. Moreover, in the case of gun training, no safety issues arise, and there is no need to buy any bullets.

One of the obstacles to this technology is its cost. Virtual reality devices are still relatively expensive and require the use and installation of computers with powerful graphic cards. What is more, developing a virtual reality training system is expensive in itself. There are also other concerns. The technology still faces the difficulty of reproducing the sense of touch and force feedback, and the devices can disorientate users who may feel slightly nauseous after using virtual reality devices.

As regards augmented reality, it is possible to train officers for certain tasks, such as vehicle inspection, more easily. Each part of the vehicle can be visualized from all angles and removed with a hand gesture.

### Training of the future

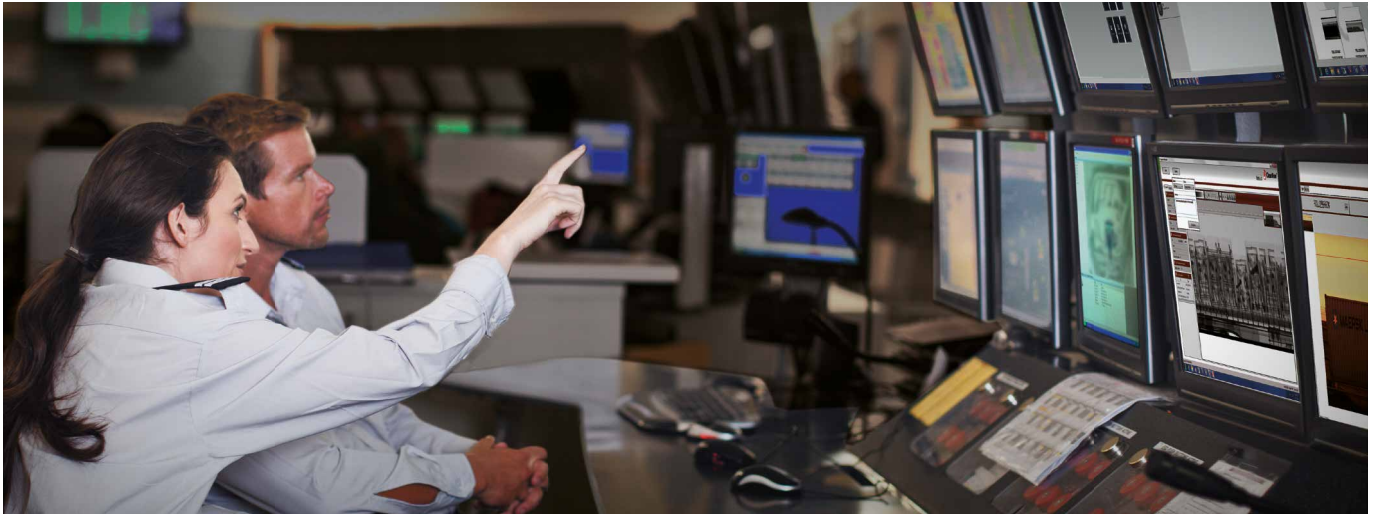
Like many people, Kees is persuaded that the technologies of virtual reality and augmented reality will play a major role in the training of tomorrow. He is currently working on putting together a business case to find the funds necessary to develop a small virtual reality game that would serve as a pilot. Any administration or organization interested in participating in his endeavours is strongly urged to contact him.

### More information

[communication@wcoomd.org](mailto:communication@wcoomd.org)

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Participants attending the Workshop on Small Arms and Light Weapons visit the Australian Border Force's international mail clearance facility in Melbourne

## WCO Asia Pacific Security Project: activity update

IN LIGHT OF the spate of terror attacks in various regions around the world, on 10 December 2015, the WCO Policy Commission issued the Punta Cana Resolution, which emphasizes the key role that Customs administrations play in tackling illicit cross-border movements of goods that could ultimately support terrorism and terrorist financing.

The WCO Resolution, which was closely aligned with other international declarations issued by the G20 Group and the United Nations Security Council condemning terrorist attacks, urged Members of the WCO to re-concentrate their efforts to prevent such attacks.

### WCO Security Programme in a nutshell

Besides raising awareness among Customs administrations on the issue, the WCO then developed a Security Programme to support those of its Members who needed assistance in building or enhancing their border security capacity. The programme is divided into five streams of work:

- Programme Global Shield (PGS), an initiative to monitor the trade in 14 chemicals that could be diverted for use in the illegal manufacture of improvised explosive devices (IEDs) as well as in the trade of detonators and transmitters;
- the Small Arms and Light Weapons (SALW) Project, which is aimed at countering arms smuggling;
- the utilization of advance passenger information (API) and passenger name record (PNR) data to enhance passenger controls;
- the Strategic Trade Controls Enforcement (STCE) Programme, which aims at building the capacity of Customs administrations in dealing with strategic goods, which are defined as weapons of mass destruction (WMD) and conventional weapons and related items involved in the development, production or use of such weapons and their delivery systems;
- the fight against terrorist financing and illicit trade flows in general.

### WCO Asia Pacific Security Project in action

Thanks to financial support from the Government of Japan, a specific project was developed for Customs administrations in South East Asia and the Pacific Islands to strengthen their capacity in three of the five areas of the WCO Security Programme: items monitored under the PGS, SALW, and passenger controls through the use API and PNR.

To manage the project, a dedicated team has been established at the WCO's Headquarters. Moreover, experts with technical expertise in the three areas of work that the project focuses on were hired. They work from Thailand thanks to the generous support provided by Thai Customs to facilitate the delivery of training in the region.

### Awareness-raising

The official project launch event was held in Bangkok, Thailand in March 2017. This was followed by several other events including an "Introductory Workshop on the WCO Security Project" in Jakarta, Indonesia in April 2017, and a "WCO Asia/Pacific Regional Workshop

As with other projects, a train-the-trainer approach was adopted to ensure that administrations are equipped with skills and knowledge to conduct their own national training, guaranteeing the sustainability of the project.

on SALW” in Melbourne, Australia in July 2017.

A further awareness-raising event was held in Bangkok in October 2017 focusing on the threat posed by IEDs in the region, the benefits of PGS, and strengthened passenger controls to mitigate the threat of cross-border movement of foreign terrorist fighters.

#### **Scoping missions**

Scoping missions were conducted to determine the needs of Customs administrations in the region. The project team has completed missions to Bangladesh, Cambodia, Indonesia, the Lao People's Democratic Republic, the Maldives, Myanmar, the Philippines, Thailand and Vietnam in order to further discuss national needs for technical assistance and capacity building, as well as to gain an understanding of country-specific security threats and circumstances.

#### **Training material**

The training material already developed as part of PGS was updated and training material on passenger controls has been completed. As for the development of material related to SALW, it is still ongoing with a number of Customs administrations and a range of stakeholders, including INTERPOL and

the United Nations Office on Drugs and Crime (UNODC) being consulted.

#### **Capacity building activities**

As with other projects, a train-the-trainer approach was adopted to ensure that administrations are equipped with skills and knowledge to conduct their own national training, guaranteeing the sustainability of the project. Train-the-trainer courses gather representative from all participating countries. The first training event took place in March 2018 in the Philippines as part of PGS, where participants deemed to have potential were identified.

These identified officials will have to take part in a capacity building mission with an expert, during which their training skills will be evaluated once more. Participants from Bangladesh have already delivered training on PGS related matters to their peers in Dhaka in April 2018 with the assistance of the project's PGS expert. A train-the-trainer event on SALW will be held in Cambodia soon.

When it comes to passenger controls, workshops will be organized in the coming months for Customs and other border agencies as well as stakeholders in the region to discuss effective risk assessment and targeting techniques through the use of, among other things, pre-arrival risk assessment based on API and PNR, as well as the dissemination of WCO guidance on building API and PNR systems, and information on other relevant WCO tools and instruments aimed at enhancing risk assessment capacities.

In addition, national workshops focusing more in depth on risk assessment related practices and inspection techniques on air passengers will be held. Each of these events will be customized, according to the needs of each country and to the prevailing situation as regards the level of risk and the type of illicit trade confronting it.

#### **Operational activities and equipment**

Organizing enforcement operations is planned in the near future, and coordination groups are to be established to facilitate communication

among Customs administrations in the region. An operation targeting products monitored under PGS and another focusing on SALW is scheduled to be held.

To support PGS related operations, the WCO will make its Global Shield Application available – the application is a secure communications platform dedicated to PGS. Moreover, to further enhance the capability of Customs administrations in the region, field officers will be provided with modern portable inspection devices for the detection and identification of explosives and related items, together with training in their use.

The deployment of a standardized API and PNR system in one administration as a pilot test is ongoing. The API-PNR system will collect passenger data and have a number of search, targeting and sorting functionalities designed to identify persons representing a risk from pre-tested standard profiles. It will also compare passenger data collected with data from national or international processing systems concerning people who are known or wanted, and stolen or lost documents.

#### **Developments**

In view of the progress achieved as part of the WCO Asia Pacific Security Project, the Government of Japan decided to fund a similar programme for countries in West and Central Africa. This new security initiative was launched in Guinea in April 2018. During the launch, the heads of Customs administrations in the region discussed ways to strengthen border control as a means of enhancing security and safety, and fully welcomed the new project.

To learn more about these initiatives and to discuss what Customs administrations have done to address security threats and what more should be done, three years on from the Punta Cana Resolution, you are invited to attend the WCO Global Security Conference that is scheduled to be held at WCO's Headquarters in Brussels from 2 to 4 October 2018.

#### **More information**

[securityproject@wcoomd.org](mailto:securityproject@wcoomd.org)

# Brazil's new integrated risk management solutions

By **Gustavo Lacerda Coutinho,**

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IN 1993, THE Department of Federal Revenue of Brazil (RFB), which has under its umbrella both the Customs service and the internal revenue service, launched Brazil's Integrated International Trade System (Siscomex) as part of its efforts to implement computer-based procedures and controls. The System, which allows economic operators to register merchandise transactions at import and export, feeds a huge database.

Before Siscomex was put into place, not having data in electronic format was a problem. Today's challenge, however, is the fact that data sets which are now collected are too large and spread across many systems. To assist its officers in extracting knowledge from the data in a timely manner and enable them to take appropriate action, the RFB recently developed three intelligence tools that work together harmoniously: a tool based on machine learning, a desktop information gatherer software, and a real time risk monitoring system.

## Machine learning

The artificial intelligence (AI) tool is called SISAM, a Portuguese acronym

for "Customs Selection System through Machine Learning" in English. This computerized tool has been in use since August 2014 to evaluate the risk posed by importations. It runs 24/7 in one of the Brazilian government's data centres. The AI tool "learns" from the history of import declarations, both through supervised and unsupervised learning – two ways in which machines (algorithms) can be set loose on a data set and expected to learn something useful from it.

With supervised learning, the expected output of the algorithm is already known and the algorithm is "taught" from a training data set that contains all the correct answers. For this "training," import declarations that have been inspected by Customs officers are used to identify direct correlations between the presence or absence of errors and the patterns composed by the attributes of the declaration, such as:

- the importer's identifier;
- the importer's national economic activity classification (the code

that defines the production activity of a company);

- the nomenclature codes of the goods being imported;
- the countries involved in the production;
- the commercialization and transportation of the goods;
- the Customs broker that registered the declaration;
- a tariff concession request;
- the manufacturers and suppliers of the goods.

Import declarations that were cleared without being inspected are used for unsupervised learning, and lead to the identification of typical patterns and atypical ones. The main example of this outlier detection process involves incompatibilities among the natural language description of goods and their declared nomenclature codes. Goods that are "unexpected" for a company with a certain economic activity code and goods that are bought from suppliers or manufacturers that do not usually sell the same goods to other Brazilian importers also call attention.



SISAM's supervised and unsupervised learning capabilities are not actually separated. They both emerge from the same probabilistic models and share the same knowledge base, which contains data associated with 8.5 billion different patterns. For the data related to an individual product (item) of every registered import declaration, SISAM estimates the probability of about 30 types of errors.

These errors include false descriptions of goods, errors in the nomenclature codes, errors in the declared countries of origin, missing import licences, non-applicable tax regimes, wrong preferential tariff and "ex-tariff" claims (a scheme that enables Brazilian companies to reduce their tax burden when importing machinery, equipment or parts where domestic production is unable to replace them), and simply the use of wrong rates for the calculation of import duty, the tax on manufactured products, social contributions and anti-dumping duties.

For every attribute value that could be wrong on an item, SISAM estimates the probability of all alternative values,

and evaluates the consequences of these values for taxes and administrative requirements. With this, SISAM calculates the return expectation of every possible inspection during the Customs clearance process. These expectations are later used to "feed" the decision and game theories, both of which support SISAM's selection mechanism.

SISAM has the ability to explain, in "natural language" (the name used to refer to human language in the AI field), the reasons behind the selection of a cargo consignment, and provide details on how it calculated the risk probabilities. These explanations enable Customs officers to assess the system analysis and either ignore its recommendation or follow through on it. Although officers take the final decision to inspect or not, they benefit from the system's capacity to find infractions that would certainly be lost among the thousands of import declarations.

In addition, SISAM's knowledge base can be updated incrementally, allowing it to learn from new import declarations every day without being retrained. The learning process can also be distributed to several machines, and the resulting knowledge bases can all be added together later. SISAM's knowledge base even allows information to be split from other information: for example, the evaluation of an importer's behaviour against all information in the base except for information provided by the importer itself. In this way, SISAM

avoids being induced by an importer to the conclusion that a certain behaviour is correct just because it is recurrent.

Moreover, SISAM has the resources to handle "mutant classes," i.e. target classes whose definitions can change, which is atypical for supervised learning systems, but is necessary since the rules for the classification of goods are often changed. If, for example, one nomenclature code is split into two, for some time, data on the newly created codes will be scarce. SISAM can use the old and plentiful data to separate two new nomenclature codes from the other 10,000 codes in the nomenclature table, and use much less data to separate the two codes from each other, thereby achieving good performance faster.

When analysing any import declaration that has just been registered, SISAM considers the fact that behaviour patterns change with time. The system is also often required to analyse old import declarations, since they can be reviewed after Customs clearance. Any import declaration analysis is done with consideration being given to the tendencies that were prevalent on its exact registration date.

During the first presentations of SISAM to Customs officers, which took place when the system was still under development, they raised more resistance than excitement although the tests that were conducted had already proved its efficiency. But, the attitude

of officers changed once they started receiving feedback from the system, explaining the reasoning behind its selection suggestions.

After being given suitable training, officers welcomed the system, and today their decision to check a transaction is based on SISAM's suggestions 30% of the time. More detailed descriptions of the technical innovations that enabled SISAM's development, including statistical results demonstrating the accuracy of its predictions and examples of the natural language explanations it generates, are available online<sup>1,2</sup>.

### Leveraging officers' knowledge

Not all the knowledge of Brazilian Customs officers can be inferred automatically from Siscomex databases. Several other databases can affect officers' decisions to various degrees of relevance. These professionals accumulate knowledge by seeing, touching and even smelling goods, as well as by mentally associating their observations to electronically available data. They also speak to importers, read detailed documentation and technical reports about goods, and search the internet regularly to obtain extra information.

However, as there is no way to directly access the human brain in order to guarantee that all this knowledge will be available when and where it is required, Brazil developed a system that tries to approach the idea. This software is called ANIITA, a Portuguese acronym for "Intelligent and Integrated Customs Transactions Analyzer" in English.

The development of ANIITA started in 2011 at the Uruguiana border checkpoint. By that time, to assess the

risk of an import declaration, Customs officers had to access at least seven different systems, including Siscomex. Each of these systems provided different data: for example, companies' licences to trade internationally, their trade history, their internal revenue profile (containing measures such as gross income and number of employees), and information provided by foreign Customs administrations.

What ANIITA does is to extract data from multiple systems and show the most important information for the Customs clearance and risk assessment process on a single screen. It also offers user-friendly navigation from its central frame to detailed screens where all data usually necessary for clearance and risk assessment is available. This saves users a lot of time, as they do not have to manually browse many systems.

ANIITA can also process data and identify inconsistencies and known threats by crossing data from different databases and applying heuristic methods to the data. It also allows users to create rules based on their own knowledge of risks, and thus became an "expert system." Officers can enter new rules according to the risk profiles of companies, people, goods, and a complex combination of attributes. ANIITA is a desktop application, but the database where the data and the rules to be applied are stored is centralized. This enables the data and rules to be shared across the organization, and an individual's knowledge can be spread throughout the entire Customs risk management community.

Moreover, ANIITA makes use of the data available in the Indira system, which provides MERCOSUR countries

with electronic access to data for all exports and imports among them, cross-checking the data from each foreign export declaration against the Brazilian import declaration. ANIITA is, therefore, able to find inconsistencies in the declarations: for example, it can find that the classification of goods declared at export does not match the classification of goods declared at import. Taking a step aside, this is a concrete example of how Brazil implemented the Globally Networked Customs (GNC) concept that was developed by the WCO.

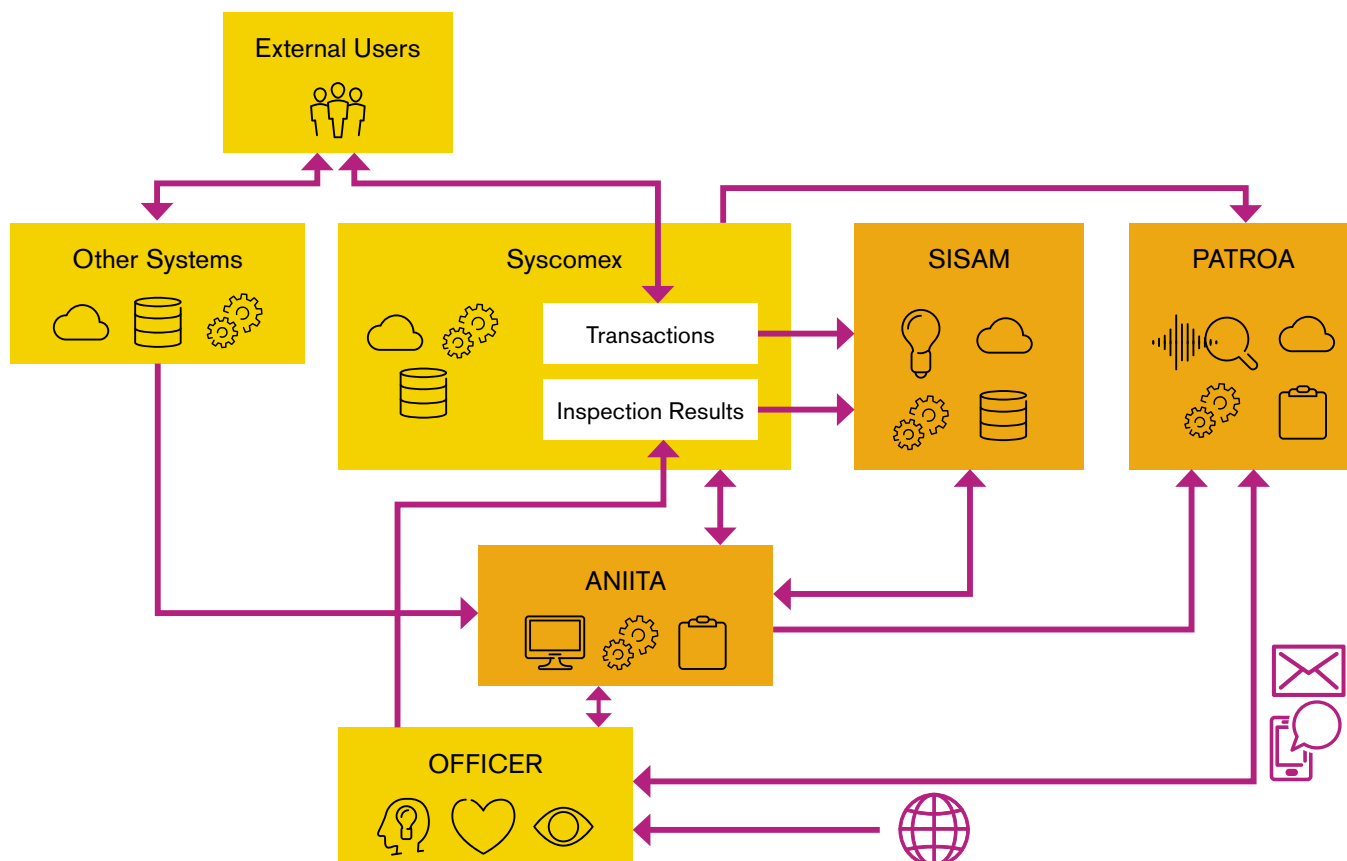
ANIITA spread to almost all Customs units in Brazil by spontaneous adoption, and eventually became a corporate system, the use of which became mandatory for all officers with responsibility for deciding which goods need to be inspected. It was primarily designed to deal with import declarations, but, with its agile development structure, was soon expanded to handle express couriers, postal consignments, and export declarations. ANIITA now also offers different levels of privilege to users, allowing some of them to create rules that have to be nationally applied immediately.

### Additional monitoring system

PATROA stands for "Real Time Customs Operations Monitoring System" and was launched in December 2017, completing the current Brazilian information technology (IT) ecosystem dedicated to Customs risk management. Just like ANIITA, it accepts human created rules, but instead of acting only under user demand, PATROA runs server side and applies the rules to transactions as soon as they are registered, thereby identifying risk profiles in real time.

1 Jambeiro Filho, Jorge. Artificial Intelligence in the Customs Selection System through Machine Learning (SISAM). Prêmio de Criatividade e Inovação da RFB, 2015.

2 Jambeiro Filho, Jorge; Jacques Wainer. HPB: A model for handling BN nodes with high cardinality parents. Journal of Machine Learning Research (JMLR), 9:2141–2170, 2008.



In addition, PATROA can invoke ANIITA and SISAM to get their detailed analysis of a transaction, and then decide if an officer should be emailed or receive an instant message on his or her cell phone. The officer can respond and stop the transaction right away if convenient. PATROA can also decide not to call an officer immediately, but to start saving extra information about connected transactions, and produce a report that is only sent later to a human. These reports can, for example, describe non-complying behaviour from an authorized economic operator (AEO).

### Conclusion

This article described three online Customs systems developed by the RFB, and how they interact and complement each other to provide a robust risk management solution for the country. All three are in constant evolution to gain precision and handle more types of transactions and infractions. They

interface well with internal revenue intelligence systems, which are also mainly developed internally and whose development teams work closely with Customs teams.

The RFB also applies data mining techniques to offline data regularly, and is investing in a huge data lake solution to consolidate all information related to both the Customs and internal revenue services, two services that already share the same IT environment. In this way, the RFB is advancing toward a highly technological and integrated national risk management environment within which the three presented systems play an important role. They will be even more critical should the world-wide systems of Customs administrations become more integrated and connected.

### More information

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## WCO C-RED Project: unprecedented cooperation between Customs administrations and humanitarian organizations to develop a more effective response to epidemics

**By Eve Gerard,**  
WCO C-RED PROJECT MANAGER

DURING A NATURAL catastrophe or epidemic, it is essential for Customs administrations to facilitate or even speed up the delivery of relief consignments to victims, thereby helping to reduce the number of possible deaths. In fact, it would be unacceptable should this number increase as a result of 'red tape.'

In practice, when a humanitarian emergency is declared, Customs administrations are often ill-prepared to process relief consignments which arrive en masse in a very short period of time. Import formalities are frequently too lengthy, particularly if another administration is involved in the Customs clearance, such as when a certificate or authorization is required, for example.

The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) believes that climate change will increase the risks of droughts, flooding, storms and related phenomena such as outbreaks of epidemic diseases. It is, therefore, more urgent than ever for Customs and their partners to be prepared to respond to these tragic events so as to minimize the associated human and economic costs.

In 2011, when submitting the 'Resolution on the Role of Customs in Natural Disaster Relief'<sup>1</sup> for approval by its Members, the WCO Secretariat wished to encourage them to take adequate measures, allowing effective border procedures to be put in place.

The Resolution particularly advocates the implementation of the measures set out in Chapter 5 of Specific Annex J to the WCO Revised Kyoto Convention

(RKC) and, where applicable, urges countries to sign the Model Agreement to expedite the import of relief consignments and possessions of relief personnel in the event of disasters and emergencies – a document drawn up jointly by the WCO and OCHA, which lists all the measures set out in various international instruments, or in instruments recognized as effective in practice.

Following the adoption of the Resolution, the WCO Secretariat co-organized four regional seminars with OCHA and the International Federation of Red Cross and Red Crescent Societies (IFRC). These regional seminars brought together representatives of Customs administrations and humanitarian organizations to share experiences and perspectives on the future needs and constraints facing Customs when managing natural disasters.

<sup>1</sup> [http://www.wcoomd.org/-/media/wco/public/fr/pdf/about-us/legal-instruments/resolutions/resolution\\_f.pdf](http://www.wcoomd.org/-/media/wco/public/fr/pdf/about-us/legal-instruments/resolutions/resolution_f.pdf).

### C-RED Project

Technical assistance gained new momentum in 2016 when a capacity building project was launched for Customs administrations in West African countries that had been affected by the Ebola epidemic, which broke out in south-east Guinea in December 2013. According to William Vannier, Supply Chain Director with Médecins Sans Frontières, “the Ebola response was not primarily a medical response, but more about logistics and supplies. Doctors were not the main need in Liberia during its peak.”

Once the humanitarian response had been set in motion, problems arose, in particular, with respect to the importation of relief consignments: warehouse space at ports and airports was inadequate, inventory capabilities were chaotic, and the contents of containers were not specified or were indicated in an unknown foreign language.

Equipped with the findings of the analysis of shortcomings during the crisis, the WCO and the Dutch Ministry of Foreign Affairs took the initiative to launch an innovative project on the role of Customs in natural disaster relief, under the title **C-RED** – an acronym for ‘Customs for Relief of Epidemic Diseases.’ Six Customs administrations in West African countries that had been directly affected by the Ebola crisis – Guinea, Liberia, Mali, Niger<sup>2</sup>, Senegal and Sierra Leone – are the beneficiaries. The aim is to ensure that they are better prepared to combat the consequences of epidemic diseases and natural disasters in their country or region. To do this, the project seeks to:

- ensure that administrations provide border authority staff in Guinea, Liberia and Sierra Leone with self-protection equipment – this equipment, which is ready to be distributed in the event of new risks of epidemics, will allow staff to protect themselves against the risks of transmitting the virus, while remaining operational during the period of the crisis.

The first component of the project involves the provision of self-protection equipment to the most seriously affected Customs administrations. The WCO has also published 1,000 brochures (in English and French), which detail how to use this equipment correctly in the event of a crisis.

- optimize procedures for releasing relief consignments based on international best practices and ensure that they are understood and implemented on the ground – such support is individualized according to the needs of countries and existing facilitation procedures.

The WCO is cooperating closely with OCHA to implement this project. Both organizations also continue to further their cooperation with other international organizations, such as the World Food Programme (WFP), the IFRC, and the World Health Organization (WHO). The combined participation of this network of international organizations makes it possible to channel efforts and boost the effectiveness of action taken in the countries concerned.

### Self-protection equipment

The first component of the project involves the provision of self-protection equipment to the most seriously affected Customs administrations. This equipment, which was selected and delivered by the WCO’s partner, the United Nations Humanitarian Response Depot (UNHRD), is now stored in the UNHRD centre in Accra, awaiting delivery to the three beneficiary countries: Guinea, Liberia and Sierra Leone. The WCO has also published 1,000 brochures (in English and French), which detail how to use this equipment correctly in the event of a crisis.

### National support

With respect to the second component of the project, the WCO offers support to each country as follows:

- support for the development or updating of standard operating procedures (SOPs) relating to the delivery of relief goods in the event of an emergency;
- support for the implementation of these SOPs, particularly through the production of training material and the provision of assistance to Customs in carrying out simulation exercises;
- the strengthening or development of cooperation between bodies present at borders to ensure coordinated border management.

More notably, the WCO has provided very active support within a limited period of time to five out of the six target countries: Nigeria, Guinea, Mali, Sierra Leone, and Liberia.

### Nigeria

Three WCO/OCHA missions were carried out in Nigeria between July 2017 and March 2018. These missions enabled bottlenecks during the Customs clearance of relief goods to be identified and SOPs to be developed in response. Recommendations regarding the Customs clearance of relief goods will represent a roadmap for future action.

The WCO hopes to ensure that SOPs will soon be validated at governmental level, and that the recommendations will be followed up within the time limits established by the Nigerian authorities. The Nigeria Customs Service has reiterated the need for all stakeholders involved in the Customs clearance procedure to take part in **C-RED** meetings to ensure effective border coordination with other supply chain stakeholders and other government agencies.

### Guinea

Two missions were organized in Guinea in July and October 2017, when meetings

2 [https://successfulties.princeton.edu/sites/successfulties/files/DP\\_Supplies\\_Final\\_April%202017\\_0.pdf](https://successfulties.princeton.edu/sites/successfulties/files/DP_Supplies_Final_April%202017_0.pdf).



Participants in the May 2018 regional workshop

were held between public and private stakeholders, in parallel with talks on the difficulties that arose during the Ebola crisis and the bottlenecks that had been identified by humanitarian aid workers.

The Customs administration gave a presentation to other authorities on its crucial role in controlling passengers and baggage at borders, highlighting occasions when cumbersome administrative procedures can lead to blockages that slow down the entry and distribution of relief goods. Lack of regulation will, in contrast, lead to poor quality action and uncoordinated efforts.

The WCO missions resulted in the drafting of a national guide that humanitarian aid stakeholders and the various Customs administrations concerned can refer to. As in Nigeria, SOPs and recommendations were also drawn up with the various agencies and their implementation was monitored in 2018.

### **Mali**

In Mali, which had hosted a diagnostic mission in September 2017, the Customs administration decided to enhance its SOPs on its own initiative, and to ensure that they were approved by all the relevant parties. The WCO subsequently funded the organization of a seminar bringing those involved in the diagnostic

mission together, and now monitors the adoption and implementation of the recommendations.

### **Sierra Leone**

The first diagnostic mission took place in Sierra Leone in late October 2017, and the project to draw up SOPs was begun, with recommendations to improve current national procedures having already been drafted.

### **Liberia**

A diagnostic mission was held very recently in Liberia in May 2018, when the SOPs in force in this country were revised. The project will conclude in October 2018. During its final months, efforts will focus on training the managerial personnel of Customs and other ministries to enable them to pass on the knowledge they have acquired to their staff and to representatives of humanitarian organizations so that all parties are familiar with the SOPs.

### **Regional dimension**

Workshops are organized on a regional basis to bring together all the representatives of various government agencies of beneficiary countries and regional partners, such as the WCO Regional Office for Capacity Building for West and Central Africa (ROCB WCA) and the Secretariat of the Economic Community of West African States (ECOWAS).

The first workshop in Freetown, Sierra Leone was held in November 2016 and focused on the creation of a regional network of contact points and the identification of each beneficiary country's specific needs. The second workshop, held in Senegal in May 2018, brought together more participants (over 60 people), where they consolidated the lessons learned and examined the follow-up to this innovative project. A third workshop is planned to be held in Guinea before the end of the project.

### **Conclusion**

Customs administrations, other border management agencies and humanitarian aid stakeholders had already worked together on other capacity building projects led by the WCO and its partners. The C-RED project, however, established an unprecedented and exceptional new level of cooperation, allowing the joint drafting of procedures which take the constraints and regulations of the various government stakeholders into account. A new synergy has arisen in the target countries that will allow them to ensure a more effective response to future crises.

### **More information**

[www.wcoomd.org](http://www.wcoomd.org)

## Natural catastrophe management: international standards

- Chapter 5 on relief consignments in Specific Annex J to the revised WCO International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention) lists several facilitation measures, such as authorizing the lodging of a simplified or incomplete goods declaration subject to completion of the declaration within a specified period.
- Annex B9 to the WCO Convention on Temporary Admission (Istanbul Convention) stipulates that temporary admission can be granted without a Customs document or security being required and that the Customs authorities may require only a simple inventory of the goods, together with an undertaking to re-export them.
- Other appropriate measures to speed up the delivery of humanitarian assistance may also make provision for eliminating the requirement to provide certificates of origin, consular invoices and fumigation certificates or dispensing with import/export licences.

These provisions and measures have been brought together and set out in the 'Customs Model Agreement to expedite the import of relief consignments and possessions of relief personnel in the event of disasters and emergencies,' drawn up jointly by OCHA and the WCO.



UNMEER/Martine Perret

Two ambulances, dozens of motorbikes, incinerators, and other urgently needed material and equipment being unloaded from a freight plane in Freetown, Sierra Leone. The motorbikes, donated by the German Government, were used to transport blood samples to laboratories as well as for contact tracing and social mobilization purposes

## Women in Customs: spotlight on the career of Emilienne Pambo Bouassa



4 APRIL 2018 was a special day in the life of Emilienne Pambo Bouassa. Emilienne, a Customs officer from Gabon, was attending the festivities in Dakar, held by Senegal Customs in the presence of the country's Minister for the Budget, in commemoration of the anniversary of the country's independence.

Her beige uniform stood out from among the sea of blue uniforms worn by the Senegalese Customs officers. Then came the decoration ceremony for deserving Customs officers. On hearing her name called by the Minister, Emilienne stood before approaching him to receive the Senegal Customs medal of honour for services to the Administration.

A few minutes later, she pinned to her uniform the medal of honour awarded to her back in January 2018 by her own Administration following 30 years of service. "Gabonese Customs seeing fit to bestow a medal of honour on me is one thing, but to have one awarded by

Senegal Customs just seemed like an impossible dream," she explained to any well-wishers at the ceremony.

Emilienne joined the Regional Intelligence Liaison Office (RILO) for West Africa, based in Dakar at Senegal Customs offices, back in September 2002 as an intelligence analyst. "The Director General of Gabonese Customs at the time believed in me and thought that I was up to the challenge of dealing with Customs at an international level, working both as a Customs attaché and as an intelligence analyst. Subsequent Directors General also supported and encouraged me in their own individual way. My efforts certainly didn't go unnoticed!"

At the time of her appointment, Gabon had no network of Customs attachés to speak of, and so Emilienne was the first Customs officer to take up this position. Others would be appointed later in Brussels, Paris, Washington

and Beijing. Gabon and Senegal enjoy strong diplomatic relations: since the 1970s, many Senegalese nationals have settled in Gabon.

Emilienne knew Senegal well because her husband had been living there for two years by the time she was appointed to the RILO, and she had already visited Senegal Customs to study the Administration's Customs valuation practices, among other subject areas. So, her subsequent arrival in Senegal passed relatively smoothly. She knew she was embarking on uncharted territory, but she also knew she could rely on her family.

Although the Gabonese Customs Administration she joined in 1988 as an Inspector-Auditor had long been accustomed to women (the first woman joined Gabonese Customs in 1980), when she first joined Senegal Customs, by contrast, she found no women at all among its ranks. The law provided

that only male Senegalese nationals were permitted to join the ranks of the Senegalese Customs Administration. However, the Director General sought change, and Emilienne's arrival would allow him to achieve that very aim.

She soon felt welcome in Senegal: she was invited to present the WCO Information and Intelligence Strategy to the various steering committees, to be involved annually in International Customs Day, and was encouraged to give addresses whenever necessary. On meeting the Minister for the Budget, who asked her what it was like to be a woman working in Customs, she replied, "In my 15-year career, I have never found myself in a situation which made me regret being a woman."

Three years after her arrival, one young female student from the *École Nationale d'Administration* (the national civil servant training institution) opted to join the Customs section, soon to be followed by another, then another. Gradually, women began joining Senegal Customs, even though the law prohibiting their entering the Administration had not yet been repealed, as is now the case. Today, women occupy positions at all levels of the Administration. Emilienne recalls how she "looked on proudly at these young women coming into the Customs Administration, as if I were backstage at a major event, witnessing a watershed moment in a country's history."

On joining the RILO for West Africa, one of Emilienne's specific tasks was to reactivate the RILO for the Central Africa region, the idea being initially to manage the two offices from Dakar. However, the structure that she joined was disjointed and had only one operative, namely a Senegalese public servant seconded to the structure, but also having a number of responsibilities at national level, dealing, for instance, with matters connected to the Senegalese Intelligence Office.

Uncertain about how a RILO should operate, Emilienne turned to the WCO, which suggested that she join the Scholarship Programme and complete her traineeship at the RILO for Western Europe. On her return to Dakar, Emilienne, together with her Senegalese colleague and the newly appointed head of the RILO, drew up an action plan setting out objectives and priorities.

One of the RILO's tasks is to produce analyses. For such purposes, all administrations in the region must be aware of the intelligence in their possession and input their data into the database of the WCO Customs Enforcement Network (CEN). One of the first objectives of the team would, therefore, be to secure the approval of the Directors General for establishing a framework instruction on intelligence within the administrations.

To that end, the Directors General were first required to familiarize themselves with the RILO and its functions. The team requested that an item on the RILOs be included on the agenda of the annual Conference of Directors General of Customs of the West and Central Africa region. The draft framework instruction was presented and agreed at that conference. The Directors General undertook to set up, in their respective administrations, a structure responsible for intelligence, and thus for gathering information on fraud and forwarding it to the RILO.

Once the national structures were in place, their members were invited to Dakar to receive training in the use of the CEN, and to familiarize themselves with the relevant WCO tools. However, since travel expenses were not included, none of the countries invited took up the invitation. The RILO team successfully requested financial assistance from the Director General of Senegal Customs. The inaugural meeting of the RILO team and its national counterparts was subsequently held.

Three years after her arrival, one young female student from the *École Nationale d'Administration* opted to join the Customs section, soon to be followed by another, then another. Emilienne recalls how she "looked on proudly at these young women coming into the Customs Administration, as if I were backstage at a major event, witnessing a watershed moment in a country's history."



Emilienne receiving the Senegal Customs Medal of Honour for services to the Administration from the Minister for the Budget

Consequently, through hard work, the RILO for Central Africa was reactivated, and a regional fund providing financial support for the activities of the two offices was established. The principle was to ensure that all administrations contributed equally to the funding, in particular, visits to administrations for the purposes of training and raising awareness with regard to the fight against illegal trafficking.

The team was soon capable of conducting its own trend analyses. In fact, it was one of their own analyses bringing to light cocaine seizures in Europe on flights from West Africa that would result in the very first operation touching on this area to be organized by the WCO: Operation COCAIR, which has since continued to a sixth edition. As well as being involved in virtually all anti-fraud operations organized by the WCO

and its partners, the RILO has also independently organized a regional operation to combat pharmaceutical crime (Operation CRIPHARM), which, for its part, is now in its third edition.

Emilienne believes that regional efforts to combat fraud have evolved over the past 15 years. The organization of the services and the officers' attitudes have improved. Evidence of this progress can be seen in the quantity and quality of the data on seizures reported by countries as well as in the exchanges between the national teams and the two RILOs which, albeit now set up in different countries, still operate in a coordinated manner.

Emilienne is personally committed to continuous learning and has become a seasoned trainer. She is, for that matter, a WCO-accredited expert in the field

of the WCO's revised International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention), and is currently undergoing accreditation in risk management.

As regards the place of women in Customs, Emilienne feels there is still some way to go. She explains that "Growing up and studying in Gabon, I never imagined that doors would be closed to me because I am a woman. But, when you look at their responsibilities and their promotion within a structure like Gabonese Customs, the progression of women still poses a challenge. I am one of those women who have had the opportunity to progress."

#### More information

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# Assessing the clearance process: India shares its experience

**By Vijay Singh Chauhan,**

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Aron Visuals / Unsplash

The importance of the Time Release Study (TRS) has long been emphasized by the WCO as a useful tool for Customs administrations across the world to assess their performance in terms of the clearance process. Jawaharlal Nehru Custom House, catering to Jawaharlal Nehru Port Trust (JNPT), India's biggest containerized port, has been conducting such studies<sup>1</sup> since 2013 as per the WCO's guidelines. This article presents the results drawn from the latest study, highlighting the impact of facilitation schemes on goods release times.

<sup>1</sup> These studies can be accessed at <http://www.jawaharcustoms.gov.in/pdf/TRS2018-Jan-June.pdf>

THE LARGEST CUSTOMS house in the country, Jawaharlal Nehru Custom House (JNCH), accounting for about 21% of national Customs revenue, has been at the forefront of implementing various trade facilitation measures defined by the Central Board of Indirect Taxes and Customs (CBIC) as well as attempting innovative local initiatives to improve the ease of doing business.

It is worth reminding readers here of India's trade facilitation agenda. The country aims not only to meet the requirements of the World Trade Organization's Trade Facilitation Agreement (TFA) which entered into force in 2017, but also to become a global manufacturing hub by improving the ease of doing business. Many of the goals listed in India's National Trade Facilitation Action Plan (NTFAP), drawn up to fulfil national commitments under the TFA, go beyond the TFA provisions. The idea is to bring down the overall cargo release time for imports and exports as follows:

- for imports – within three days for sea cargo, within two days for air cargo and inland container depots, and on the same day for land Customs stations.
- for exports – within two days for sea cargo, and on the same day for air cargo, inland container depots, and land Customs stations.

The JNCH has been undertaking Time Release Studies (TRS) since 2013, an exercise which is recommended in clause 6 of Article 7 of the TFA. In 2018, a new study was carried out in order to assess the impact of various measures and for drawing-up an evidence based roadmap to achieve the new target release times of cargo. The main objectives were to:

- spread awareness about time release among all stakeholders, and their role in its reduction;
- measure the distance to the target release times set out in the NTFAP;
- identify categories of bills of entry (Customs declarations), commodities and sub-processes that

are relatively more time-consuming, with a view to suggesting measures to improve time releases relating thereto;

- improve coordinated border management by seeking to estimate release times associated with different partner agencies;
- assess the impact of statutory and administrative changes on trade behaviour over time;
- present a first set of time release data for export cargo through the JNCH; and
- build the capacity of officers.

One major decision was to conduct the study in-house, with the cooperation of all stakeholders, including importers, Customs brokers, and other government agencies. In a break from the earlier TRS's, which were based on ex-post statistical analysis, TRS 2018 was conducted as a "live" sensitization-cum-learning exercise under the "Best Foot Forward" slogan. Emphasis was placed on doing things efficiently, without compromising due diligence, as expected of Customs and other regulatory agencies.

It could be argued that conducting a "live" TRS might impact actual performance. We did recognise the concerns posed by this mechanism, however, guided by the substantive benefit in terms of sensitization of various stakeholders, we went ahead with the same, confident that our results do not suffer from any bias.

In terms of data sources, the study relied primarily on the time stamps in the Customs information technology (IT) system, as in earlier studies. However, for the first time, other data sources from the port terminals, container freight stations (CFSs), participating government agencies (PGAs), such as the Food Safety and Standards Authority, the Drug Controller, the Textiles Committee and the Chemical Laboratory, were also utilized. These agencies were happy to participate in the study. Their recommendations were

included in the study, and the efforts of their staff were duly recognized along with those of the Customs officers.

In addition, a small sample of bills of entry and shipping bills (import and export Customs declarations) were tracked "live" through the concerned Customs brokers. In fact, the results of the exports TRS are based on such "live" tracking, given that the time-stamps in the Customs IT system do not appropriately capture the export process.

### Methodology for imports

The study analyzed all 14,973 bills of entry (import declarations) lodged during the sample period, viz. from 1 to 7 January 2018, and tracked them till 7 February 2018. The standard WCO definition of time release is the time taken from arrival of the goods at the port to its eventual release by Customs. For this study, the arrival time is approximated by the grant of entry inwards of the vessel, and the release time by the grant of out of charge by Customs. This release time includes the time taken by all government agencies, including Customs.

However, the study also quantified the time from berthing of the vessel at the JNPT to the grant of entry inwards by correlating data from the terminal operating system and the Customs system in respect of all 46 vessels that berthed at the port. It showed that the average time was 31 minutes. Further, comparing the data from the Customs system with that from five CFSs, the time taken from "out of charge" given by Customs to "gate out" by the importers was found to be 35.4 hours.

The standard time release analysis is, however, based on the time taken from entry inwards to out of charge. Moreover, 216 bills of entry (1.4%) were excluded for three sets of reasons: (i) in 57 cases, goods had not yet arrived by 7 February 2018; (ii) 134 cases were pending at various stages of clearance; and (iii) 25 bills of entry were filed more than 60 days after the arrival of the goods.

The import release time was calculated in respect of various categories of bills of entry, with the intention to highlight

various aspects of clearance processes, and to test various hypotheses formed on the basis of day-to-day working activities at the JNCH. Some of the major categories are discussed below.

The all-in-one average release time for bills of entry was found to have declined from 181 hours in January 2017 to 144 hours in 2018. It shows that the distance to the NTFAP target of 72 hours is still significant. The “essence of the effort” is captured in the fact that a higher number of consignments, i.e. 29% as against 21% in 2017, were cleared in less than 72 hours, and very few took longer than 400 hours.

The bill of entry with a minimum release time of 11.01 hours was identified, highlighting the four features that form the core of the drive to reach the NTFAP target, namely (a) a higher share of advance bills of entry to enable pre-arrival processing, (b) a greater level of facilitation, (c) more authorized economic operator (AEO) enrolment, and (d) higher direct port delivery (DPD) clearances. The DPD scheme allows importers/consignees to take delivery of containers directly from port terminals and haul them to factories without first having to take them to CFSs.

The study captured the improvement in the share of pre-arrival processing and facilitation levels in 2018 over 2017. The disaggregated and stratified release time data in this regard, as presented in figure 1, is being utilised to drive home the outreach message that despite the fact that advance bills of entry have about 40% lower release time, 40% of the bills of entry were not filed in advance.

AEO and DPD are two categories of clients who are accorded preferred treatment in the cargo clearance process. In order to highlight the benefits to them in terms facilitation and/or release time, disaggregated release times in respect of these bills of entry were presented. They showed that 84.6% of bills of entry submitted by AEOs enjoyed higher full facilitation benefits while only 60.2% of the overall bills of entry did, and that the average release time was 103.06 hours vis-à-vis an overall average of 144 hours. With 75.1% of DPDs enjoying full

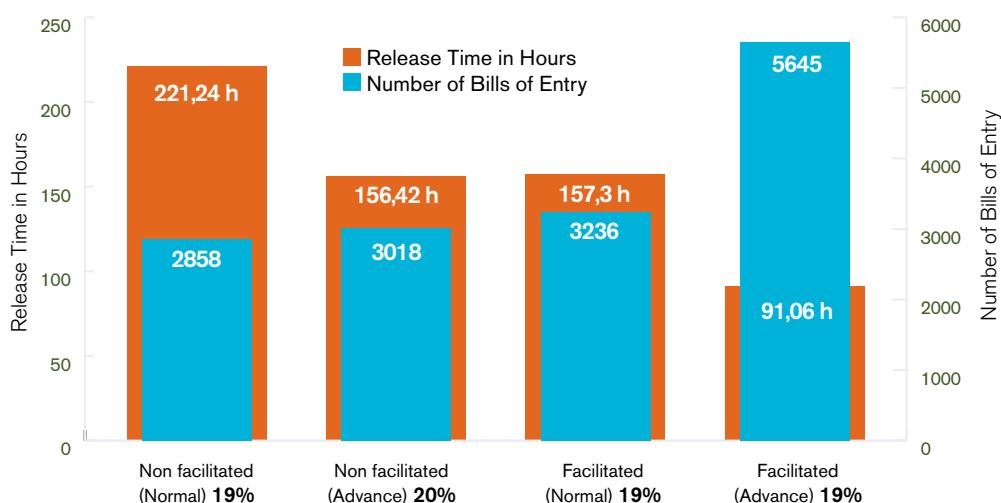
facilitation benefits, the average release time for DPD advance facilitated bills of entry was 65.36 hours.

The study identified six categories of commodities based on specific requirements associated with them to highlight their impact on the release time. As part of this exercise, the release time for auto components was computed for comparison with the data presented by the World Bank in its Ease of Doing Business index. Although the World Bank study found that the release time for auto components imported from South Korea was 267 hours, this is more than double the release time of 126.54 hours under TRS 2018. The release time

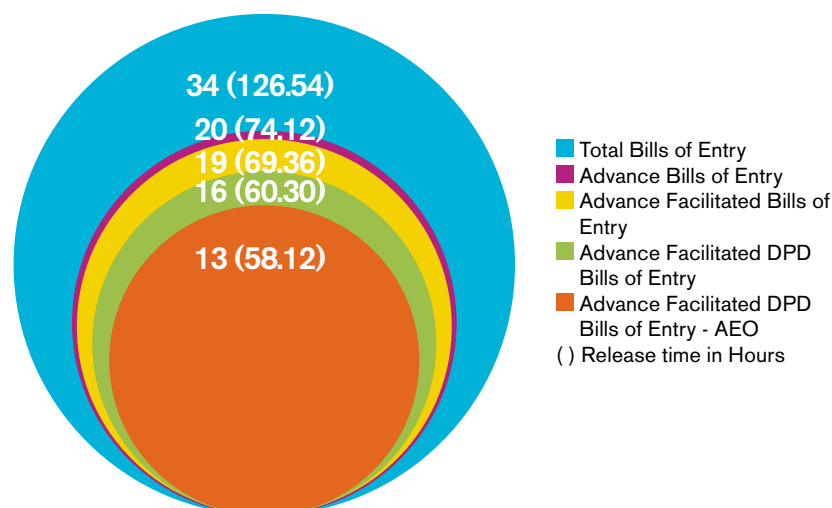
data for auto component imports from South Korea was used to highlight the benefits of various facilitation measures as the “path to promptness,” as can be seen in figure 2.

The issues pertaining to other regulatory agencies participating in the Single Window initiative of the CBIC were highlighted by presenting the disaggregated release time in respect of bills of entry processed by these agencies (see Figure 3 on page 60). This has highlighted the importance of streamlining the processes associated with the clearance of these goods from the point of view of non-revenue regulations.

**Figure 1: Release times, according to the category of bills of entry**



**Figure 2: Release time data for auto component imports from South Korea for a total of 34 bills of entry falling under different and cumulative schemes**



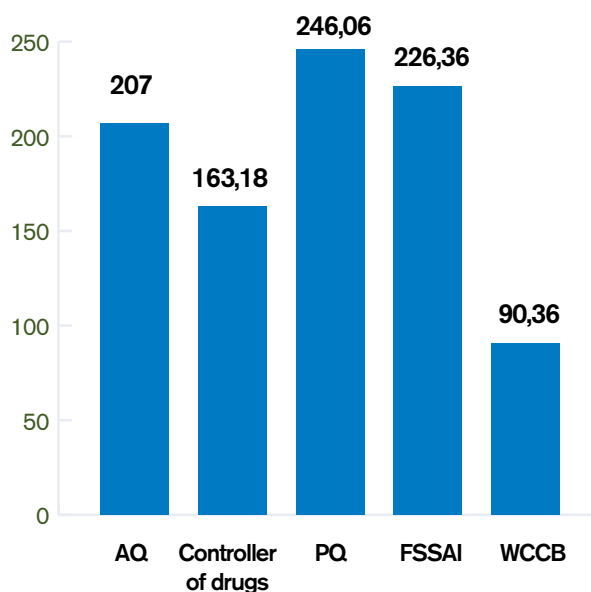


Figure 3: Release time data according to the agency involved in the clearance process – Animal Quarantine (AQ), Plant Quarantine (PQ), Food Safety and Standards Authority of India (FSSAI), and the Wildlife Crime Control Bureau (WCCB)

Figure 4: Time spent in the different areas of the port at export



The study also enabled the responses of importers to three specific measures to reduce release times to be analysed. It was found that during the period from January 2017 to January 2018: (a) the share of advance filing of bills of entry, allowing for pre-arrival processing, increased from 53.3 to 58.7%; (b) prompt filing of normal bills of entry, as measured by those filing normal bills of entry within 48 hours of entry inwards, increased from 48 to 79%; and (c) prompt payment of duty, as measured by those paying duty within 48 hours of the assessment, increased from 42 to 46%. These findings revealed a significant compliance gap that has been taken up for further analysis.

### Methodology for exports

The gross export release time, measured from the time of departure of cargo from the factory premises to the departure of the vessel and net export release time by excluding the domestic transport time, were presented in respect of six major categories of goods: (i) frozen meat, (ii)

frozen fish, (iii) pharmaceuticals, (iv) automobile parts, (v) two and three wheelers (bikes, auto rickshaws), and (vi) electrical machinery (falling under chapter 85 of the Harmonized System nomenclature). This was computed, based on a sample survey among the five top exporters in respect of each of the six categories.

The gross average export release time was found to be 108 hours and the net average export release time was 84.1 hours. This is broadly in line with the World Bank's Ease of Doing Business Report 2018 finding of an export release time of about 85 hours. There is significant variation in the average export release time, according to the type of commodity being exported, with a net average export release time of 53.4 hours for frozen meat and 99.7 hours for electrical machinery. The stage-wise analysis of the export process, as shown in figure 4, highlighted that a large share of time is taken after cargo enters the terminal premises.

### Conclusions and challenges

The study has enabled the CBIC to make many short term and long term suggestions and recommendations to further reduce release times, which calls for actions on the part of all stakeholders, and entails process improvements, outreach, and the upgrading of physical infrastructure.

The conduct of TRS 2018 was a challenge given the new grounds that were traversed and the large number of people, representing various stakeholders, who worked as part of the team. Regarding exports especially, the rate and quality of the responses provided by the targeted exporters to the sample surveys were not very encouraging. But, the study has been a learning experience, and is expected to contribute to an even better study next year.

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Terracotta figures, discovered by Customs, turn out to be fake

## Cultural goods: insight from the Netherlands on the value of collaboration

**By Marja van Heese,**  
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INSPECTORATE, THE NETHERLANDS

DESTRUCTION, ILLEGAL EXCAVATIONS, theft, plundering and the illicit export of legally-protected cultural heritage can rob a country of its national treasures, and can often cause irreparable damage to a country's history and cultural identity.

The illicit trade in cultural objects is a worldwide problem that is not confined by national borders. Although numerous studies have been published on illicit trade, there are very few statistics that properly quantify the extent of the problem. What is known is that there are numerous illegal excavations across the world and a thriving trade in cultural objects. Areas of conflict and countries in Africa, Asia and Latin America are particularly vulnerable. It is not only archaeological sites, including those

underwater, that are affected; it also impacts museums, religious buildings, archives, libraries, private owners, and collectors.

The Netherlands is committed to combating illicit trade in cultural goods and has taken a range of measures to achieve this over the years. Such measures include building a partnership between Dutch Customs and the Cultural Heritage Inspectorate (CHI), an institution that is part of the Ministry of Education, Culture and Science, and which is responsible for supervising compliance in relation to the import, export and transfer of ownership of cultural property. How this partnership came about and what it involves is described in more detail below.

### Regulation

The first global tool for combating illicit imports and exports, developed by

UNESCO, is the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. This Convention calls on State Parties to take preventive measures, establish restitution provisions, and collaborate internationally in areas such as import and export controls. These preventive measures involve, for example, evaluating and registering national heritage, establishing a system of export licences, and monitoring legal and illegal trade flows.

The 1970 UNESCO Convention marked an important milestone in awareness of the need to protect cultural objects and of the cross-border traffic in objects. It was followed by other conventions and regulations in this area, developed by various authorities such as the Council of Europe, the International Institute for the Unification of Private Law

In relative terms, the Netherlands is a small country and there are strong lines of communication between the various ministries involved, which makes collaboration easier.

As every country is organized differently, this exact model may not be replicated easily, but what matters most is for cooperation mechanisms to be in place that suit a country's structures.

(UNIDROIT) and the European Union (EU). The United Nations Security Council has also passed resolutions to protect cultural heritage, including for Iraq and Syria.<sup>1</sup>

There is no standard definition of what legally-protected cultural heritage is. It varies from country to country and depends on such factors as history and cultural and economic development. The 1970 UNESCO Convention defines “cultural property” as property which, on religious or secular grounds, is of importance for archaeology, prehistory, history, literature, art or science, and which belongs to one of the categories specifically listed in the Convention. This definition has been adopted in national legislation by many countries, including the Netherlands.

### Partnership

The collaboration between Dutch Customs and the CHI came about more than 20 years ago, when European cultural legislation took effect in 1993 with the elimination of the EU’s internal border controls and the introduction of a complementary system that aimed to protect cultural goods within the EU and at its external borders.<sup>2</sup>

This collaboration is enshrined in a covenant between the Ministry of Finance and the Ministry of Education, Culture and Science, which deals with policy and implementation matters. At policy level, issues addressed in the covenant include the exchange of information, planning of activities, financial resources, and control procedures.

The annexes to the covenant establish the duties and powers of Customs and the CHI, the procedures regarding the

implementation of relevant cultural legislation, and how any infringements are dealt with. Moreover, the exchange of information between Customs and the CHI is detailed in one of the annexes and is compliant with the new EU General Data Protection Regulation 2016/679 (GDPR), which regulates the use of personal data relating to individuals in the EU.

### Customs training

Training is an important area of focus. As part of the general Customs training programme, every Customs officer is given instruction on matters relating to art and culture. The cultural module in the training programme focuses on issues such as recognizing cultural goods, knowledge about cultural legislation and relevant developments, and information on how a cultural object should be described (according to the standard identification method: Object ID<sup>3</sup>), photographed, and safely handled and stored.

Customs officers are trained using the blended learning approach, i.e. partly through computer training and partly in the classroom. In addition, Dutch Customs has designated special Cultural Goods Officers (*Vraagbaken Cultuurgoederen*) who liaise between Customs officers and the CHI. The

training programme for Cultural Goods Officers was developed by the Customs Academy in close collaboration with the CHI. It comprises knowledge of law and legislation, risk management, and applying instructions and procedures.

The training and education system is an ongoing one: in addition to an intensive module, Cultural Goods Officers meet once or twice annually to focus on a specific theme, such as cultural heritage in Iraq, Mali or Syria, or a vulnerable area of heritage, such as archives. These training sessions generally take place in a museum repository or at another heritage institution, enabling officers to experience cultural objects in situ and become acquainted with experts at these institutions.

Customs officers must be able to recognize cultural goods. They are not expected to be experts, since this would be impossible in view of the diversity of the heritage field. However, it is important that officers should know when alarm bells should start ringing: are there signs of recent fractures, are there stickers on the back of a painting that refer to a specific collection, or are there any inventory numbers or other marks of interest on a cultural object? Customs cannot take samples when it comes to this category of goods and will, therefore, have to halt an entire shipment until it is clear whether it can be released or not.

### Identification

When a Customs officer finds something in a shipment and there are doubts as to its legitimacy, the Cultural Goods Officer is consulted. If the officer confirms the Customs officer’s suspicions, he/she will enlist the services of the CHI. Initially, the CHI assesses the photographs and

1 UNSC Resolution Numbers S/RES/1483 (2003), S/RES/ 2199 (2015), S/RES/2347 (2017).

2 Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State; Council Regulation (EC) No. 116/2009 on the export of cultural goods.

3 See for example: <http://icom.museum/programmes/fighting-illicit-traffic/object-id/>.



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Items waiting to be cleared by Customs in the warehouse of a postal operator

object descriptions submitted, together with the circumstances surrounding the shipment and, if necessary, will enlist the services of experts from museums or universities.

In some cases, the CHI will assess the shipment in situ, possibly together with an expert. If there are reasonable grounds for suspecting that an object has been illegally exported from a country that is party to the 1970 UNESCO Convention, or from Iraq or Syria, and imported into the Netherlands, the object will be seized for further investigation and processing by the CHI. The police or Public Prosecutor's Office may also be called in to assist.

### Customs controls

Dutch Customs conducts physical and administrative inspections on items brought into the EU and leaving the EU. The strategic goal in this important process is 100% supervision in monitoring the flow of goods.

Customs and the CHI work on the basis of a Cultural Goods Implementation Plan (Uitvoeringsplan Cultuurogoederen), which indicates, for example, how many inspections are to be conducted in each Customs process (e.g. passenger controls, cargo inspections) and location (e.g. airports, sea ports) on an annual basis.

Alongside managing legal trade flows, the main focus is on combating illicit trade. A risk analysis system is used for this purpose. For this analysis, the CHI provides Customs with risk indicators, which relate, for example, to the origin of the shipment or the flight (war zones or countries affected by natural disasters), or the type of goods declared.

Such goods are archaeological and ethnological objects, archives and religious artefacts of particular importance, or goods listed in UNESCO alerts, INTERPOL's database, research studies, and the Red Lists developed by the International Council of Museums (ICOM). These so-called Red Lists are designed to help Customs officials, police officers and heritage professionals to identify the categories of objects most targeted by illicit traffic, and which trade and exportation is prohibited. Since 2000, ICOM has developed 17 Red Lists, most of them for Latin America and the Middle East.<sup>4</sup>

Thanks to the risk analysis in place, Dutch Customs regularly comes across cultural goods that require further investigation. In several cases, controls have resulted in the seizure and/or return of objects to their country of origin.

In addition to routine inspection work, authorities also engage in global

enforcement operations targeting cultural goods, such as Operations Colosseum (2012) and Odysseus (2014), two joint Customs operations, and Operation Athena (2017), a global Customs-police operation led by the WCO and INTERPOL and which was complemented by Operation Pandora II, a regional initiative led by the Spanish Guardia Civil and Europol.<sup>5</sup> Participants share a lot of data during these operations, which is analysed to identify modus operandi, trends and patterns, as well as to refine risk indicators.

### Export licences

The system of export licences is the same across the EU and is based on Council Regulation (EC) No. 116/2009. Cultural goods are divided into 15 categories, and an export licence must be applied for when goods are above a specified value and age.<sup>6</sup> The model form for an EU export licence is similar to the Model Export Certificate for cultural objects designed by UNESCO and the WCO.<sup>7</sup>

In the Netherlands, an export licence can be obtained free of charge from the Tax Department/Customs Central Office for Import and Export (CDIU). Applications are made electronically. The CHI verifies the data reported in the application and authorizes or rejects the licence. Checks are made to ascertain whether an object has legal protection, including in other countries, whether it may be stolen, and whether all reported data matches the object to be exported. Once an application is approved by the CHI, the CDIU finalizes the administrative procedures.

Of utmost importance is the verification of the provenance information. Research in this area is becoming increasingly

<sup>4</sup> <http://icom.museum/programmes/fighting-illicit-traffic/red-list/>.

<sup>5</sup> [https://illicittrade.com/reports/downloads/OMD\\_ITR\\_Complete\\_LR\\_2016\\_12\\_04.pdf](https://illicittrade.com/reports/downloads/OMD_ITR_Complete_LR_2016_12_04.pdf); <http://www.wcoomd.org/en/media/newsroom/2018/february/over-41-000-artefacts-seized-in-global-operation-targeting-trafficking-of-cultural-goods.aspx?p=1>.

<sup>6</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:039:0001:0007:en:PDF>.

<sup>7</sup> <http://www.unesco.org/new/en/culture/themes/illicit-traffic-of-cultural-property/legal-and-practical-instruments/unesco-wco-model-export-certificate/>.

crucial. As part of the Customs 2020 programme, an EU cooperation programme that provides national Customs administrations with the possibility to create and exchange information and expertise, a study focusing on the concept of provenance and on Customs controls on cultural goods has been launched at the initiative of the Netherlands and Belgium. The aim of the study is to develop a more standardized working method to be applied by culture and Customs authorities within the EU. The results are expected to be published at the start of 2019.

### To conclude

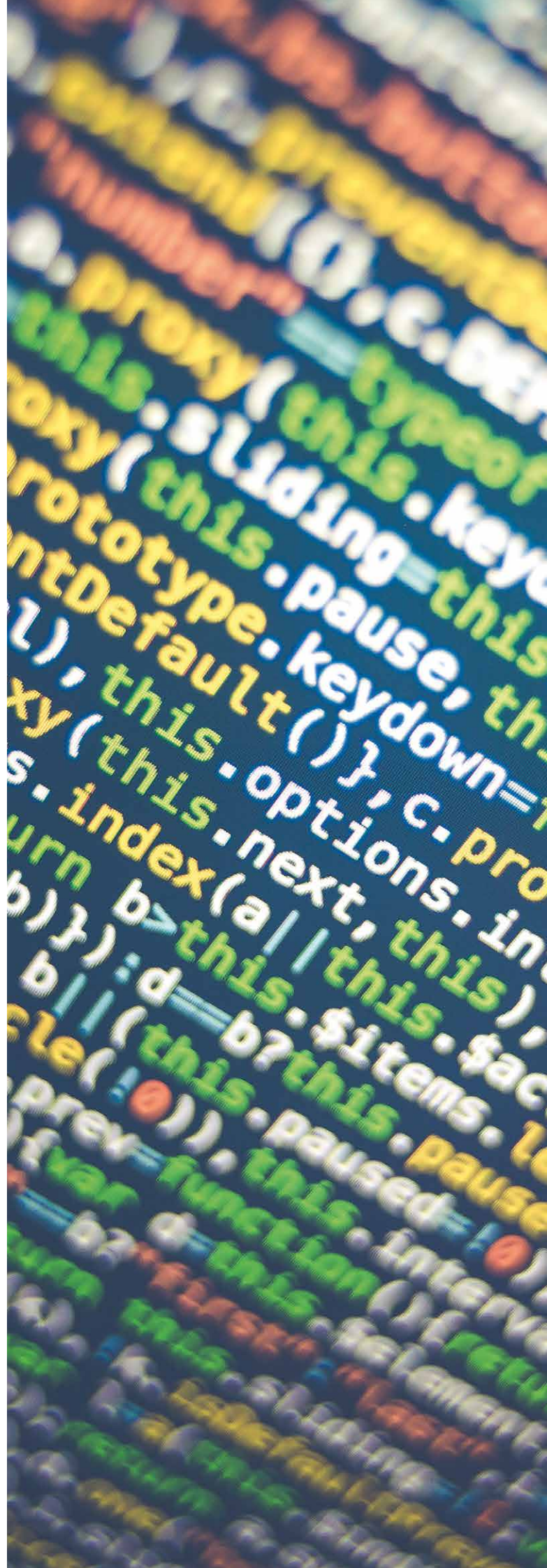
Stopping the illicit exportation and importation of cultural objects at the border contributes towards protecting not only Dutch cultural heritage, but also that of other countries. Efficient export control also prevents potentially expensive return procedures. The Dutch model of collaboration has been developed over the years, and has proven itself to be efficient. It is notably worthwhile for cultural institutions to invest in training courses for Customs; they help to reinforce national collaboration and the sharing of knowledge and information.

In relative terms, the Netherlands is a small country and there are strong lines of communication between the various ministries involved (including the Ministry of Justice and Security, and the Ministry of Foreign Affairs), which makes collaboration easier. As every country is organized differently, this exact model may not be replicated easily, but what matters most is for cooperation mechanisms to be in place that suit a country's structures. Ultimately, all national services share the goal of protecting cultural heritage, a goal which reaches far beyond national borders.

### More information

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DIRECTOR GENERAL, KOREA CUSTOMS SERVICE

Things changed, however, with the development of modern IT infrastructure as well as Big Data open source analytics solutions to manage and analyse data. Tools such as Hadoop and R, a language and environment for statistical computing and graphics, have made it possible to create “values” from the huge amounts of data that are received each day.

In 2017, the KCS set up a Roadmap for Big Data Analysis, and commenced a six month-long training programme to nurture talents and experts in data analysis. This year, the Service established its own infrastructure to initiate in-house data analysis. Moreover, it is planning to raise 300 experts (7% of the total Customs workforce) in Big Data analysis over the next five years.

This article presents an experiment that the KCS has been undertaking to see whether new analytical tools could help in testing a hypothesis related to commercial fraud via express cargo and postal items, and identify potential illicit transactions.

With the exponential growth in e-commerce, the number of small parcels to be cleared by Customs has skyrocketed, stretching the limits of Customs enforcement capacities. Korea has a tax-exemption system

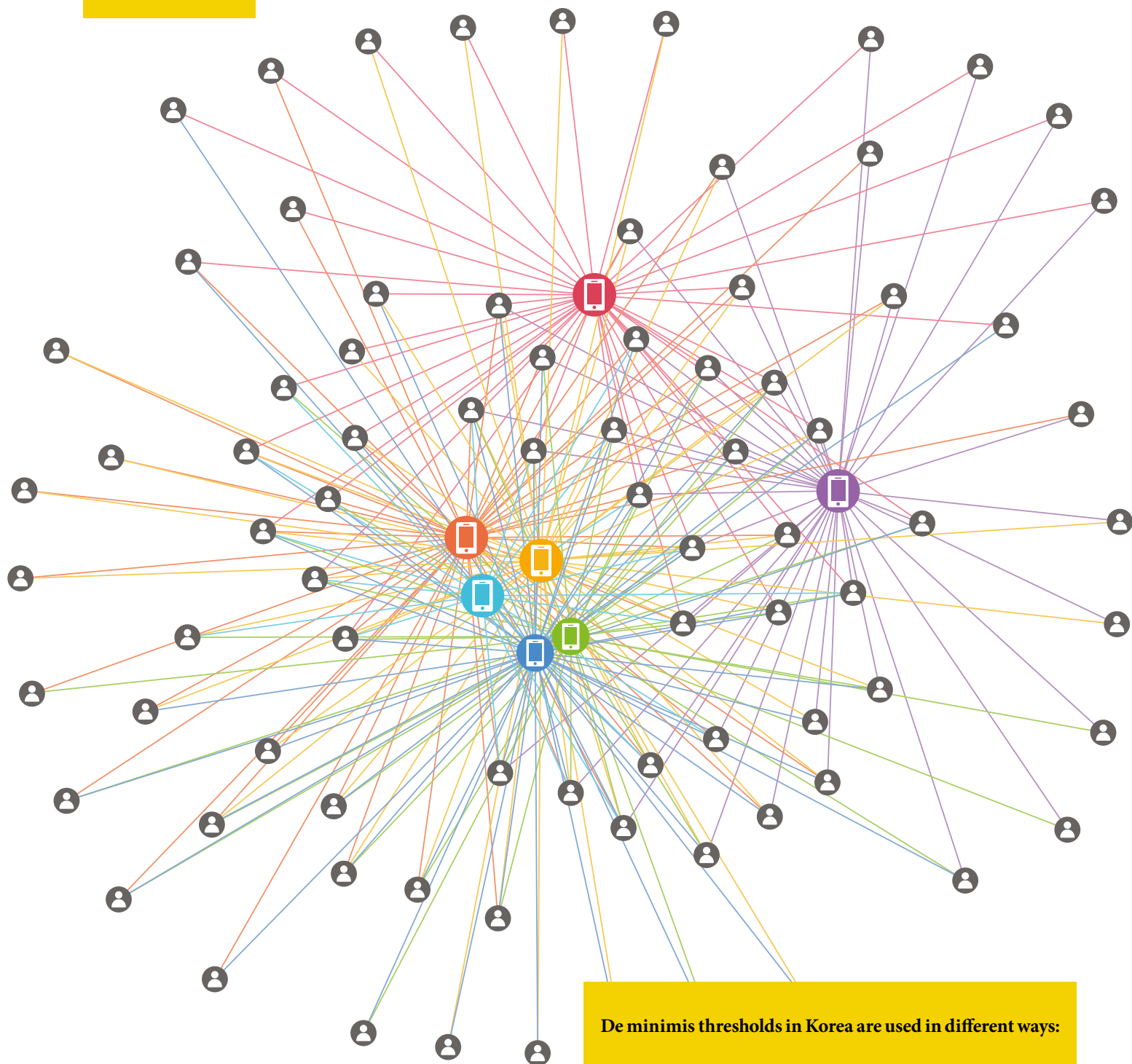
and simplified Customs procedures in place for “low-value goods,” and there is reason to believe, for example, that criminals sneak in smaller quantities of goods in separate consignments to avoid reaching the de minimis thresholds, above which duties and/or taxes become payable.

But so far, Customs has failed to effectively respond to this form of crime using conventional methods due to difficulties in analysing the 200 million pieces of data that have been generated just over the past 10 years. It is worth mentioning here that, in Korea, express couriers send requested clearance information electronically, in order to permit the pre-advice and possible pre-clearance of items. Korea Post also send some information on parcels electronically.



**Figure 1: A word cloud created by analysing the descriptions of goods bought online by a single trader**

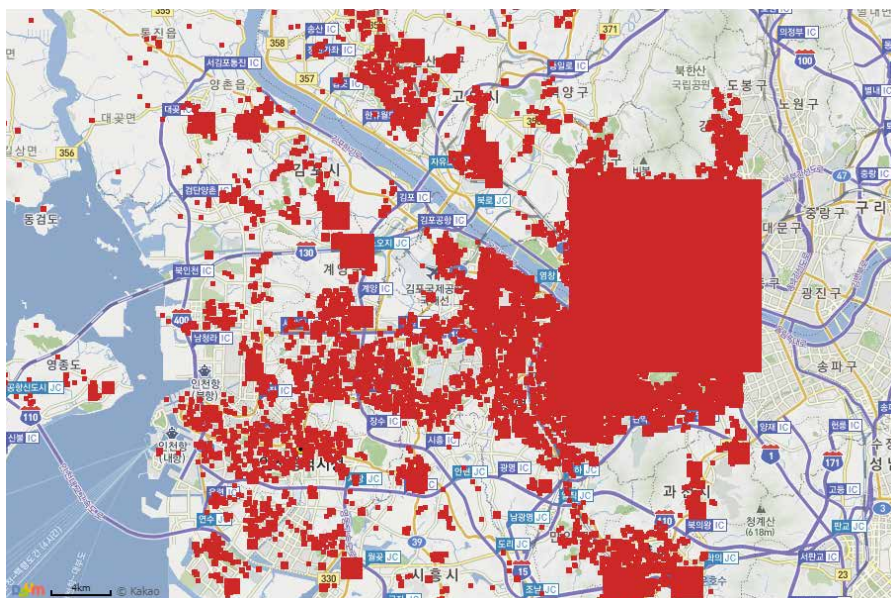
To address this challenge, the KCS decided to boost its data analysis capacity by bringing together Customs officers trained in data mining and Customs experts dealing with the clearance of express cargo and postal items. Based on the outcomes of their discussions, IT experts from the private sector who have been working with Customs' IT systems for years then reviewed the actual analysis tools and methods, and trained officers conducted a two month-long projects.



**Figure 2: Geographic coordinates showing different people reporting the same phone numbers on different occasions**

**De minimis thresholds in Korea are used in different ways:**

- as a “value” threshold below which duties and taxes are not collected and no Customs declaration is required: for postal operators the threshold is 150 US dollars using the FOB price; and for couriers the threshold is 150 US dollars using the FOB price, or 200 US dollars for goods originating in the US, under the terms of the Free Trade Agreement signed between Korea and the US;
- as a “reporting” threshold for goods in respect of which a full Customs declaration must be submitted: for express cargo, a “list clearance” procedure allows a trader to receive goods and, providing their value is below the de minimis threshold, clear them by submitting 24 pieces of information, such as the trader’s name and address, the consignee’s name and address, and the type and price of the goods; as for goods entering via the international mail channel, they are cleared on-the-spot.



**Figure 3: A visualization of the different addresses used by suspicious importers showing that a specific region of Seoul is more frequently reported**

### Hypothesis

Based on their experience, the hypothesis formulated by risk analysts was that operators (in an effort to avoid paying duties/taxes) were importing items in a multiple of small parcels, using a number of different addresses and contact numbers. In other words, compliant importers use one name, one phone number, and one address for all their operations, while non-compliant importers use a complex series of names, phone numbers, and addresses.

To confirm the hypothesis, records of importations that were transported via express and postal services were extracted for a three-year period. Then, search tools were used to mine the data in order to identify specific information such as phone numbers and addresses. Datasets containing the refined data, including the consignee's name, address and phone number, were then created for analysis purposes.

### Results

Among the suspicious cases that came out of the analysis was an importer who had reported 123 different phone numbers and 127 different addresses. To facilitate data-reading, the analysis team converted the addresses into geographic coordinates. Several visualization techniques were used. For example, the datasets were analysed using ORA, a network analysis tool, to examine correlations and relationships. As can be seen in figure 2, 83 different people

reported the same seven phone numbers on different occasions when importing goods destined for 60 different addresses.

By inputting information such as phone numbers, descriptions of goods and the exporting country into the visualization programme, analysts were able to identify importers' different addresses. Data on seven suspicious importers showed that they were using a specific region of Seoul, Korea's capital, as their address, which indicated that they might be importing items in a multiple of small parcels with false destination addresses across this region.

### Issues and solutions

When the KCS first mapped the project, the team wanted to analyse data reported in all simplified and general declarations. However, many of the declarations contained omitted or incomplete information on the consignor, the consignee, the goods description, and the phone number. As a result, the scope of the analysis was scaled down to include only general import declarations of goods containing relatively complete and accurate information.

Even when data was complete, it had to be refined. In many cases, the same address would be written in a different way or use different spellings. The data cleansing process took a long time and was rather burdensome. It involved replacing the country code with a country name, and removing special characters in

international phone numbers as well as blank spaces in addresses. Data collection and refinement was the process where unexpected difficulties were experienced the most, and which took the longest time.

### Lessons learned

"Garbage in, garbage out" is a well-known maxim relating to the need for "good" information for meaningful data analysis. The expression emphasizes that the quality of output is determined by the quality of input. The KCS has learned through experience that Customs officers tend to be nonchalant to the importance of the quality of data in Customs as much as to the quantity of it. In light of this, the Service plans to conduct automatic data cleansing at the time when data is recorded in its database by adopting artificial intelligence technologies.

Another lesson learned is the importance of "domain knowledge." During the project, one IT expert from the private sector said that a task which took one week to complete by Customs officials would have taken one month by a "lay" person. In other words, domain knowledge matters a lot when analysing data. Therefore, Big Data analysis of Customs related topics should remain within the purview of Customs.

### Future plans

This project was a short-term pilot project aimed at testing how data analytics could enhance risk analysis. It was applied to express cargo and postal items to identify commercial fraud, but the KCS believes that the same methodology could be applied to other areas. For example, criminals trying to import high-risk cargo, such as narcotics and weaponry, tend to file an import declaration with a false address in order to hide their identity.

The KCS plans to invite a larger number of IT experts to enhance the tools used during the project in order to make them fit the Service's analytical needs. These solutions will be integrated into KCS's system for utilization in actual investigations.

### More information

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# Storage and destruction of counterfeit goods: the safety and environmental challenges

## Interview with Ms Louise van Greunen

DIRECTOR, BUILDING RESPECT FOR IP DIVISION,  
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## and Dr Martin Guard

CHARTERED ENVIRONMENTALIST AND HAZARDOUS  
WASTE SPECIALIST

THE STORAGE OF goods suspected of infringing intellectual property (IP) rights, and their sound disposal, once the infringement has been confirmed, involves costs and represents major logistical challenges. Goods may remain in storage during the entire litigation process, and even longer, if there is a need to analyse them in order to determine their composition or hazard.

As for the disposal or destruction of these goods, it must be done in an appropriate, environmentally safe manner in line

with applicable environmental and public health legislation. Depending on the nature of the goods involved, this can be a costly and technically complex undertaking, and minimizing the environmental impact of the disposal requires specialized facilities, expertise, and high levels of stakeholder collaboration.

To shed more light on this contentious and often problematic issue, WCO News interviewed two experts on the storage and destruction of counterfeit goods, which it hopes will provide Customs administrations with more solid information on how to handle such goods or how to improve their current disposal regime, including their legal framework.

*What must be taken into account before storing IP-infringing goods, and who is liable for storage costs?*

**Dr Martin Guard:** Storage of IP-infringing goods can be both complex and expensive. Firstly, IP-infringing goods need to be stored in secure Customs or private bonded warehouses, secondly, the litigation process in relation to such goods is often protracted and therefore costly, and thirdly, when large amounts of goods are confiscated, such as during seizure operations, storage space can rapidly become limiting, especially in more remote locations with little storage capacity.

Moreover, in respect of hazardous IP-infringing goods, such as counterfeit



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chemicals and pesticides, storage must be done in a way that ensures incompatible substances are separated, so as to prevent the potential for fire, explosion or release of toxic fumes. More often than not this is not done effectively, and emergency equipment to help in the event of an incident is often lacking.

In respect of who is responsible for paying the costs for the storage of IP-infringing goods, what is evident is a lack of harmonization both from one country to another, and further across legal proceedings (e.g. Customs, civil, criminal).

While Article 45 of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS agreement) obliges Members of the World Trade Organization (WTO) to make it possible for right holders to be awarded damages and expenses to be covered by the infringer, in reality the infringers or criminal groups either disappear or the importing company is liquidated shortly after the event, ultimately leaving the bill to be paid by right holders or tax payers.

These situations have ultimately led some right holders to request Customs administrations not to seize their products or at least not until a certain threshold of volume has been encountered, and it is an area that needs to be improved.

**Ms Louise van Greunen:** The complexity and costs associated with the storage of IP-infringing goods, as mentioned by Dr Guard, are important issues to consider in this context. The applicable legal framework in the country where infringing goods are to be stored is another factor that may also have a bearing on the question of liability for costs.

For instance, some countries qualify certain acts of importing IP-infringing goods as administrative violations and right holders may be liable for the costs of storage. In Italy, this is the case in relation to small consignments transported by express courier and postal services. At the same time,

other importation acts of IP-infringing goods constitute criminal offences, and the legal liability clearly rests with the infringer.

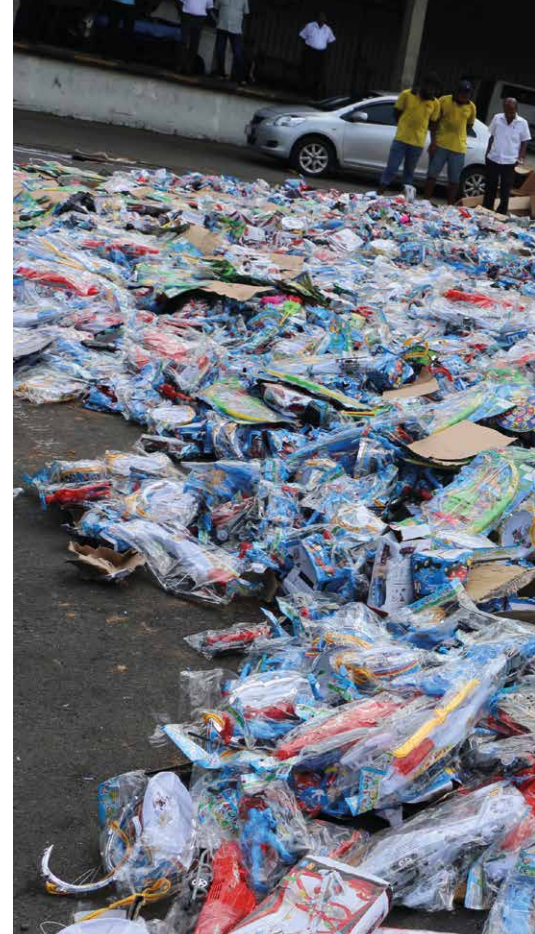
*Have you identified best practices for reducing storage costs, especially in light of the length of time that a litigation process can take?*

**Ms Louise van Greunen:** The question of storage and the possibility of subsequent disposal or destruction of IP-infringing goods derive from the international legal framework for enforcement of IP rights established under the TRIPS Agreement. Potentially infringing goods may be suspended from release by Customs authorities in line with the special provisions on border measures, i.e. Articles 51-60 of the TRIPS Agreement.

Article 59 specifically refers to Article 46, which establishes as a basic civil or administrative remedy the possibility of disposing of or destroying IP-infringing goods in a way that precludes them from entering the channels of commerce. This remedy is also available in criminal procedures following Article 61 of the TRIPS Agreement.

While so-called “simplified procedures” for the disposal of infringing goods are not explicitly mandated by the TRIPS Agreement, they align with the general obligations stipulated under Article 41 thereof that WTO Members shall provide for effective and expeditious enforcement procedures and remedies. Simplified procedures are in place in many WIPO Member States, and act as an effective mechanism for containing storage costs.

In essence, such procedures allow Customs authorities, under certain conditions and with the agreement of the affected right holder, to destroy or dispose of goods that the importer has agreed – or is deemed to have agreed – to abandon even before an infringement of an IP right has been established through court proceedings. As in the case of standard procedures, the right holder may be required to provide security as a means of preventing abuse and



protecting the interests of the owner or importer of the goods.

In addition, samples of the goods are collected and retained by the Customs authorities prior to the destruction. In the absence of litigation, simplified procedures allow for the swift destruction and disposal of goods, and thereby reduce storage costs. Examples of the effective operation of such measures can be observed, inter alia, in the Philippines and in the European Union (EU) where simplified procedures were established through a regulation concerning Customs enforcement of IP rights.

**Dr Martin Guard:** Beside the wider use of simplified administrative procedures and administrative remedies to reduce complex legal litigation in dealing with some IP-infringing goods, some potential areas where the burden for the cost of storage may be reduced or covered include:

- the introduction of a mechanism similar to the United States' Treasury Forfeiture Fund, whereby confiscated proceeds of crime and specifically those related to counterfeiting could provide



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Often in financially constrained countries with poor waste management infrastructure, ideal disposal solutions may be difficult to implement. Under these circumstances, encapsulation, crushing with plant machinery or broken with sledge hammers may offer a cheaper alternative disposal solution for infringing goods.

funding support for national enforcement activities in relation to IP-infringing goods. Such a mechanism would send a clear message to criminal gangs that all assets will be seized following a proven IP crime;

- the possible introduction of a requirement, at the earliest stage of proceedings, that the infringer shall pay a financial warranty based on prima facie evidence of infringement to cover storage and destruction costs;
- the availability of specialized judiciary to be used in cases specifically relating to IP-infringing goods;
- the increased use and acceptance of admissibility of representative samples and photographic evidence as an alternative to physical goods needing to be stored over long periods;
- the introduction of prescribed timeframes for litigation concerning IP-infringing goods, so as to limit the storage period and the costs related thereto.

*With regard to destruction or disposal, which practices have you seen that are not appropriate?*

**Dr Martin Guard:** Probably the most inappropriate destruction method, ironically often used for “showcase events” after seizure operations, is open burning. These IP-infringing goods, often burnt with their plastic packaging at low temperatures, release large volumes of toxic fumes and smoke composed primarily of dioxans and furans that are persistent organic pollutants (POPs) resistant to environmental degradation, and which can lead to extensive pollution of adjacent soils.

Exposure to the smoke can cause a wide range of respiratory ailments in humans, and the pollutants are also considered carcinogenic. Furthermore, plants or crops that are grown in these polluted areas can uptake the pollutants and when harvested or are grazed by domestic animals can result in their bioaccumulation and bio-magnification further up the food chain.

Disposal into non-sanitary landfills can also result in environmental and potential health impacts through the

escape of toxic leachates, potentially polluting waterways and groundwater. When such landfills are heavily scavenged, individuals can be exposed to potentially harmful material, and if not fully destroyed prior to disposal some goods may re-enter channels of commerce.

*Can you give some examples of best practices in the area of destruction or disposal?*

**Dr Martin Guard:** Improved methods for disposal or destruction of IP-infringing goods include proper incineration in “fit for purpose” commercial incinerators, shredding or crushing of the goods, or encapsulation, which entails encasing the infringing goods (e.g. pharmaceuticals) in a sand, gravel, cement mix to form solid inert blocks that can then be dumped into a landfill site.

Obviously, some goods such as counterfeit electronics could be recycled as they often contain valuable metals. However, it is important that any recycling is conducted in a formal regulated system to prevent pollution and worker health impacts, and that the first step should be to remove the goods’

functionality to ensure that they cannot re-enter the marketplace.

*What about the financial responsibility of the infringer, can you shed some light on this issue?*

**Ms Louise van Greunen:** The ultimate liability for the storage and disposal of IP-infringing goods rests with the infringer. Civil, criminal and administrative measures should, therefore, provide relief for the associated costs where the infringer can be identified. In this respect, efficient litigation processes can contribute towards ensuring that right holders and governments are compensated for their costs. In practice, however, this is still a challenge.

**Dr Martin Guard:** Many of the same issues apply for the cost of storage and the cost of final destruction. While, as Ms Van Greunen explained, the infringer is ultimately liable, they often remove themselves quickly from the process such that the burden again falls on the right holder and/or the government.

Although some methods of disposal as mentioned above can be relatively low cost, it will also depend on the amount of IP-infringing goods to be disposed of and whether they are hazardous or not. For counterfeit pesticides where the true composition of the infringing good is unknown, expensive testing will be required to determine the best method for disposal, which may also require an expensive disposal treatment to be used.

*What are the options for countries that do not have the proper facilities to safely destroy or recycle goods?*

**Dr Martin Guard:** Often in financially constrained countries with poor waste management infrastructure, ideal disposal solutions may be difficult to implement. Under these circumstances, encapsulation, crushing with plant machinery or broken with sledge hammers may offer a cheaper alternative disposal solution for infringing goods.

Moreover, for particularly hazardous IP-infringing goods (e.g. counterfeit pesticides), they may be destroyed in

cement kilns or other industrial furnaces of which there is normally at least one in most countries. Efforts should be made to contact such facilities to discuss their potential to dispose of these goods as long as they are suitable for incineration (e.g. do not contain metals).

*What sort of guidance is available to countries, and what kind of assistance do you offer to those that wish to review their current practices?*

**Dr Martin Guard:** Challenges for the environmentally safe storage and destruction or disposal of IP-infringing goods are numerous. Inappropriate destruction and disposal of these goods frequently results from poor technical capacity or environmental awareness, lack of disposal or recycling infrastructure, weak legislation, or a lack of financial resources.

The storage and destruction or disposal of IP-infringing goods are processes authorized, overseen and conducted by many parties (e.g., IP enforcement agencies, environmental agencies, right holders, and private contractors). This increases the difficulty of coordination and cooperation, resulting in a process that may be disorganized and fail to function properly.

To ensure that technical capacity and awareness of the environmentally safe storage and disposal of IP-infringing goods are improved in the future, new training initiatives are required together with the provision of adequate technologies and tools, and appropriate financial support.

New training and awareness modules could be developed by the WCO's Customs Learning and Knowledge Community (CLiKC) and INTERPOL's International IP Crime Investigators College, and other technical support and guidance is available from the United Nations Environment Programme (UN Environment) and the Basel Convention's Regional and Coordinating Centres.

This could be through direct support or using the specific disposal and recycling guidelines that have been developed,

and which particularly emphasize ways to achieve environmentally sound management (ESM) for storage and disposal activities.

**Ms Louise van Greunen:** At WIPO, we have long recognized the importance of raising awareness and building capacities in relation to the environmentally safe disposal and destruction of IP-infringing goods. We introduced this topic at the highest policy level almost 10 years ago by placing it on the agenda of the WIPO Advisory Committee on Enforcement (ACE), which considers IP enforcement in the context of broader societal interests and development-oriented concerns.

Since then, the topic has remained of interest and importance to our Member States. WIPO has also commissioned two comprehensive studies – one on methods of disposal and destruction of counterfeit and pirated goods within the Asia Pacific region prepared by David Blakemore, IPR Business Partnership's Executive Director for Asia Pacific, and another by Dr Guard, on the environmentally safe disposal and destruction of IP-infringing goods, which he presented at last year's session of the ACE.

Some WIPO Member States have also come forward to share their experiences with issues surrounding disposal and destruction operations. Ronald Brohm, the Managing Director of REACT, the association fighting the trade in counterfeit goods, has also presented information on environmentally friendly recycling facilities, and on REACT's efforts to reduce the costs of enforcement.

Recognizing the importance of coordinating action and expertise on these issues, WIPO has also collaborated with UN Environment in organizing several dedicated workshops for enforcement authorities and other relevant actors in the Asia Pacific Region that addressed the disposal of IP-infringing goods from both the IP and environmental perspective.

At WIPO, the topic of environmentally friendly disposal and destruction forms an integral part of our capacity

building activities with enforcement authorities, in particular with judges and prosecutors, in WIPO Member States. We also highly valued the opportunity to introduce this topic to the WCO Enforcement Committee earlier this year, and look forward to future collaboration between WIPO and the WCO in this area.

Finally, at WIPO, we also seek to draw attention to the importance of environmental considerations in the disposal and destruction of IP-infringing goods through a spotlight item on this issue on the WIPO "Building Respect for IP" webpage as well as through a dedicated publication on the challenges associated with the disposal of counterfeit goods that appeared in the WIPO Magazine in November 2012.

### *How can right holders provide assistance with respect to the disposal or destruction process?*

**Ms Louise van Greunen:** Right holders play an important role at all stages of IP enforcement operations, including with respect to the disposal and destruction process. Their cooperation and input is necessary in identifying IP-infringing goods, in initiating enforcement proceedings, and in using simplified procedures for the disposal and destruction of goods, if such procedures are in place. Right holders also have the potential to contribute towards environmentally friendly disposal and destruction operations through knowledge-sharing, assistance, and cooperation with enforcement authorities.

**Dr Martin Guard:** Rights holders can indeed provide assistance in two ways. Firstly, these companies are often developing effective and innovative techniques for improved recycling and waste disposal as part of their extended producer responsibility schemes, and it would be beneficial if such knowledge, techniques and lessons learned could be shared with the relevant parties involved with the destruction of IP-infringing goods to better guide these activities. Secondly, where necessary to provide both financial and logistical support to ensure the safe disposal of infringing goods contravening their brand.

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## Focus: Illicit Financial Flows

This section of the magazine gathers several articles addressing the topic of illicit financial flows (IFFs), including its links to the smuggling of minerals such as gold. The first article gives an overview of the discussions which took place during the WCO Conference on Illicit Financial Flows and Trade Mis-Invoicing that was held in May 2018. A second article introduces the German Customs organizational structure and work processes to detect IFFs and fight the concealment of the proceeds of fraud and crime. The third article describes how a joint portal for Customs verification of minerals will contribute to fighting the smuggling of minerals, in particular gold, and related IFFs. Last but not least, a fourth article explains how the production and trade in gold is organized in Burkina Faso and the challenges faced in fighting gold smuggling.

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# Wrap-up of the and Trade Mis-

ILLICIT FINANCIAL FLOWS (IFFs) have been an issue of increasing concern over the past two decades, with many discussions, raising questions on what IFFs include, what we know about them, and how they can be measured.

Estimates of the scale of the phenomenon have played a key role in attracting attention and building political momentum. For example, Global Financial Integrity, a non-governmental organization (NGO), which was created “with the aim of quantifying and studying the flow of illegal money while promoting public policy solutions to curtail it,” published figures estimating that annual IFFs from developing countries were in the order of one trillion US dollars.

The NGO defines an IFF simply as “funds [that] are illegally earned, transferred, and/or utilized.” The Organisation for Economic Co-operation and Development (OECD) defines an IFF as any financial flows “generated by methods, practices and crimes aiming to transfer financial capital out of a country in contravention of national or international laws.” Other organizations have their own definitions as well. While there is a fair degree of convergence between these definitions, some fuzziness does remain.

Delegates attending the Conference on Illicit Financial Flows and Trade Mis-Invoicing that was organized by the WCO on 23 May 2018 did not discuss the definition of an IFF and figures related to the scale of the phenomenon at length. They mainly examined how to better identify illegal transfer mechanisms of money via commercial transactions, deliberated on the organizational and operational aspects of the Customs response to the issue, and looked at the potential offered by technologies such as blockchains.

# WCO Conference on Illicit Financial Flows Invoicing

## Trade mis-invoicing

Trade mis-invoicing is a form of Customs and/or tax fraud involving exporters and importers deliberately misreporting the value, quantity, or nature of goods or services in a commercial transaction. The motive governing such transfers ranges from:

- the evasion of taxes and tariffs;
- the payment of bribes and kick-backs;
- the avoidance of trade regulations;
- the exploitation of trade incentives;
- the evasion of capital controls.

Trade mis-invoicing can be related to, but does not precisely correspond to, trade-based money laundering (TBML). Rather, trade mis-invoicing is a mechanism that can be used to engage in TBML.

The principle areas where trade mis-invoicing, as a channel for IFFs, have been observed include the over-invoicing of imports intended to disguise capital flight, the under-invoicing of exports intended to conceal trade profit abroad (in a third-party country such as tax havens), and the over-invoicing of exports intended to bring illicit (concealed) proceeds into the domestic legal financial system.

## WCO Study Report

The Conference provided the WCO with an ideal opportunity to present to participants the main findings of the WCO Study Report on Illicit Financial Flows via Trade Mis-invoicing, which the Organization was commissioned to undertake by the G20 leaders.

This Study Report, which is the culmination of many months of empirical analysis and collaboration between Customs administrations, the WCO Secretariat and other experts, provided a narrative background to the Conference, and the WCO was pleased to welcome many of the co-authors of the Report to present their research,

thanks to funding provided by the Korea Customs Service.

The Report discusses the two methods that could be used to effectively detect trade transactions presenting a risk, highlights recommended practices, and introduces specific mechanisms developed by some administrations, notably those from Italy, China, Korea and Norway, some aspects of which will be presented later in this article. In addition, the Report lists a number of recommendations inviting countries in particular to:

- ensure that Customs has a sufficient mandate and the resources necessary to tackle not only under-invoiced imports, but also over-invoiced imports, under-invoiced exports, and over-invoiced exports;
- allow Customs to access foreign exchange transaction databases, and equip Customs with a mandate to examine whether financial transactions between traders correspond to the declared value of traded goods;
- facilitate inter-agency cooperation among Customs authorities, Tax authorities, Financial Intelligence Units and other agencies availing of information-sharing, joint investigation teams, joint intelligence centres, secondments and co-location of personnel, and joint training programmes.

The Report is a “living” document that will be shared with Members of the WCO for their comments and input, before being considered for approval by the WCO Council, the Organization’s highest decision-making body, in June 2018. An excerpt of the Report will be presented to the G20 for their consideration too.

## PCM and PFM

As IFFs via trade mis-invoicing are concealed across countless trade transactions, it is impossible to directly measure the magnitude of them. Different methods have been developed by researchers to estimate the volume of the trade transactions, chief amongst them are the Partner Country Method (PCM), which compares the trade value of one country to the corresponding trade value of a partner country (i.e. the comparison of bilateral trade data), and the Price Filter Method (PFM), which uses price filters to detect suspicious transactions with abnormal prices.

Three researchers presented the work carried out to demonstrate the usefulness of the PCM and PFM in managing trade mis-invoicing risks. Matthew Salomon, Senior Economist at Global Financial Integrity, presented a case study where data on importations from South Africa from 2010 to 2015 was used. The objective of the study was to examine how the PCM and PFM compare in identifying potential import under-invoicing. The principal findings of the study were that the PCM and PFM yielded very different estimates of the magnitude of trade mis-invoicing (which is not surprising as the data and metrics were different), but largely identified the same risks of potential under-invoicing of South African imports.

Philipp Hong from Central Michigan University and Simon Pak from Pennsylvania State University, in their research presentation, compared both methods using data on United States imports and exports in 2016. Their findings show that the two methods estimate quite different magnitudes of trade mis-invoicing, and identify a different list of potential high-risk transactions.

Yeon Soo Choi from the WCO Research Unit presented research where datasets of three countries were examined. As

demonstrated by other research, the researchers found that estimates of trade mis-invoicing were very different according to the method used, but that cross-referencing both methods – i.e. using both methods and selecting transactions flagged by both for further investigation – can be one of the useful mechanisms to manage the risk associated with suspicious trade transactions.

### Practices

Moving from the academic realm to the practitioner's perspective, the second session of the Conference showcased best practices with engaging presentations featuring representatives from the Korea Customs Service (KCS) and the Nigeria Customs Service (NCS), who advocated for a shift in the focus from undervaluation to overvaluation.

Adewale Adeniyi from the NCS highlighted the pressure that his administration is put under to reach unrealistic revenue targets as well as the high level of non-compliance existing in the country, with 20% of trade estimated to be compliant. Recently, the NCS had started working more on data analysis, with patterns suggesting the emergence of a high degree of mis-invoicing. Transactions of low duty items were found to present some risk of over-invoicing, while transactions of high duty items were found to be undervalued.

He also pointed out the need for more awareness about over-invoicing, the adoption of a “data culture” and of efficient reporting procedures on inspection results to enhance risk management, and the development of analysis capacity among officers as well as the use of analytical tools.

Matthew Joo from the KCS started his intervention by stating that Customs is in the right position to address IFFs as it was able to monitor trade and financial transactions at the same time. He explained that his Administration had acquired investigative authority on foreign exchange (FX) transactions related to cross-border trade in 1999. In practice, KCS investigators initiate investigations through

cross-referencing Customs declaration data (on transferring of goods) and FX transaction data (on payment for goods).

Moreover, in 2013, the speaker added, the Korean Customs Act had been revised to criminalize the manipulation of prices of goods, irrespective of whether the evasion of taxes was involved. Indeed, as Customs duty has dramatically decreased around the world, criminal traders have less incentive to declare undervalued prices of traded goods to Customs, and instead have sought to overvalue imported goods in order to evade corporate income tax or embezzle government subsidies.

Mr Joo continued by outlining the structure of his administration, which established financial investigation units dedicated to fighting illicit FX transactions in 2000. Today, there is one unit housed within Customs' Headquarters and three units in local Customs houses, with a total number of 80 financial investigators. Beside trade and FX transaction data, they also receive reports from the Tax Service and the Immigration Bureau, as well as suspicious transaction reports (STRs) and currency transaction reports (CTRs) related to cross-border trade from Korea's Financial Intelligence Unit that includes Customs officers among its staff.

Last but not least, the speaker gave examples of cases of overpricing, highlighting the critical need for access to financial transaction information to efficiently tackle mis-invoicing and related IFFs.

Some participants then took the floor. A representative of Brazil explained that a Joint Task Force to study IFFs had identified that the main conduit of IFFs is the under-invoicing of exports, the magnitude of which, according to the representative, is huge. Money flows, in particular, to countries offering high banking secrecy or tax havens, where under-invoicing is used by companies to shift profits and reduce their tax liabilities in Brazil.

She then called on the WCO to encourage multilateral cooperation and the automatic exchange of transaction-level trade data, an exchange which is already in place among Mercosur countries, as it is a key measure that enables real-time risk management models to counter IFFs through mis-invoicing.

A representative from the Russian Federation reminded participants that copies of two important model agreements developed by Russia to formalize cooperation with foreign countries had been made available: the agreement on information cooperation



during cross-border transportation by individuals of cash and/or monetary instruments; and the agreement on preventing, detecting and suppressing the commitment of suspicious financial transactions by participants in foreign economic activities.

He then stated that his country is particularly confronted with the overvaluation of high-tech goods that were exempt from duty. Exchange of information between countries was, therefore, critical in order to check import declarations and the existence of destination companies, or just the fact that it is a registered importer. In one case alone, the price declared was 900 times higher than the “normal price.”

The panel discussing recommended practices also included speakers from the Financial Action Task Force (FATF) and the Organisation for Economic Co-operation and Development (OECD). Derek Leist from the FATF outlined practical policies that Customs could implement in order to facilitate the sharing of information, such as standardizing data formats and centralizing data for operational use, while Melissa Dejong from the OECD spoke about the necessity to adopt a whole-of-government approach in order to develop a coherent strategy and to avoid a scenario whereby

agencies operate in silos. Inter-agency cooperation is the subject of an entire chapter of the WCO Study Report, and its chief recommendation in this respect is that inter-agency cooperation is paramount in the fight against IFFs.

Ms Dejong also highlighted the work being done under the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes to make available information on companies and beneficial ownership. 150 jurisdictions have committed to implementing the international standard on exchange of information on request (EOIR), and over 100 countries and jurisdictions have committed to implementing the new standard on automatic exchange of financial account information including the official owner of the accounts. The latter will enable recipients to receive real-time information that they may not have requested, and uncover facts that they were unaware of.

### Blockchain

The WCO Study Report also advocates for Customs to take full advantage of the potential offered by new technologies, such as blockchains, to prevent any fraudulent manipulation of trade transactions, and to allow the sharing of relevant information in a trusted and secure manner.

Jeffrey Owens from the Institute for Austrian and International Tax Law at Vienna University of Economics and Business acknowledged that the WCO was one of the only international organizations seriously examining blockchains, and presented an overview of the principle features of the technology; the fact that it allows for the creation of immutable records and the decentralization and distribution of ledgers, in addition to a potential increase in transparency, would make it a very attractive option for Customs, particularly those wishing to engage in information-sharing with other agencies such as tax authorities.

Yao-Hua Tan from Delft University of Technology outlined the principle features and benefits of a pilot project undertaken in the Netherlands by Maersk and IBM with the cooperation of Dutch Customs; an example of cooperation and collaboration across industries and agencies, which enabled all stakeholders to leverage knowledge from the supply chain.

All panellists of this last session agreed on the importance for the WCO and Customs to keep abreast of the changes in a rapidly-evolving technological realm.

### More information

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# Overview of German Customs' fight against illicit financial flows

## By the German Central Customs Authority

Monitoring and combating illicit financial flows (IFFs) represent a substantial challenge to all countries.

This is particularly true for Germany with its growing significance as a financial centre. This article introduces the German Customs organizational structure and work processes to detect IFFs and fight the concealment of the proceeds of fraud and crime.

THE FINANCIAL SECRECY Index<sup>1</sup> that was first issued in 2018 ranks jurisdictions, according to their secrecy and the scale of their offshore financial activities. It assesses the ways in which legislation enables the origin of legal and illegal funds and the persons actually entitled to them to be concealed. In addition, it assesses the ways in which illegal funds can be fed into the legal, financial and economic system, i.e. the level of efficiency of state measures in specific countries such as information exchange between authorities and law enforcement measures.

The indicators are weighted according to the importance of a country as a financial

centre, which is why Switzerland (which tops the list and therefore takes the worst position), the United States (in second place) and Germany (in seventh place) are ranked much higher than "classic" tax havens like Panama, whose criminal, banking, tax and commercial laws generally facilitate tax avoidance and tax evasion.

Among European Union (EU) Member States, Luxembourg, Malta and the Netherlands are also ranked high up in the Financial Secrecy Index. "Maintaining strict levels of secrecy, Switzerland remains the undisputed leader," the report says. Germany's neighbour was assessed a secrecy score of approximately 76, Germany scored 59, Austria 56, France 51, Italy 49, and Belgium only 49 points.

### Organizational structure

Germany's authorities and, in particular, the German Customs administration, are taking up the challenge: the fight against IFFs that make use of the facilities provided by financial regulations, and the offshore secrecy system. In Germany, IFFs include various criminal activities, comprising money laundering and terrorist financing as well as other offences related to the cross-border movement of cash and currencies.

The German Customs administration is a very large entity with two main services involved in the fight against IFF related activities:

- the Customs Criminological Office, Zollkriminalamt or ZKA, whose main task is the prosecution and prevention of minor, serious and organized Customs crime;
- the Financial Intelligence Unit (FIU), which receives and evaluates suspicious transaction reports (STRs) dealing with financial transactions that are potentially

associated with money laundering or the financing of terrorism.

The ZKA coordinates and manages the investigations carried out by eight regional Customs investigation offices and, in special and significant cases, can carry out investigations itself. In addition, 16 Joint Financial Investigation Groups (Gemeinsame Finanzermittlungsgruppen) composed of police and Customs investigation officers also deal with cases in this area. In cooperation with these 16 joint groups, the Customs investigation offices in particular process:

- analytical reports submitted by the FIU and other relevant information, as well as related reports of suspected money laundering;
- information gathered by Customs officers within the framework of controlling cash and currencies, if there is reason to believe that cash or its equivalent means of payment are transported in cross-border movements for the purposes of money laundering or terrorist financing or the like;
- information with regard to postal shipments, if such shipments contain cash or an equivalent means of payment, which are entered into, transported through or out of the country, and where the means of payment are related to committed or intended crimes or offences;
- cases of trade-based mis-invoicing, including those related to money laundering.

Before June 2017, the German FIU acted under the umbrella of the BKA, the Federal Criminal Police Office. It was restructured and moved under the umbrella of the German Customs administration in June 2017 following

<sup>1</sup> <https://netzwerk-steuergerechtigkeit.de/fsi2018/>

the transposition into German law of the EU's Fourth Anti-Money Laundering Directive. The FIU was re-established as an administrative authority within the Customs administration.

One of the core duties performed by the FIU is to analyse incoming alerts on suspicious financial transactions, pursuant to the Anti-Money Laundering Act and the Fiscal Code. To this end, the German FIU makes use of goAML software, which was developed especially for FIUs by the United Nations Office on Drugs and Crime (UNODC), and which is used by more than 50 FIUs worldwide.

### Training

Customs investigation officers need to undertake specific training courses to prepare them for tasks that require specialist know-how, for example in the

field of combating money laundering or asset recovery.

As for the FIU, it applies a multidisciplinary approach with regard to recruitment and human resources. Analysts are drawn from different professional backgrounds that are relevant to the analysis of financial flows and transactions in the context of money laundering and terrorist financing. FIU staff are, for example, drawn from Customs, police, supervisory authorities and the tax administration, as well as from the private sector, in particular banks and auditing and consulting firms.

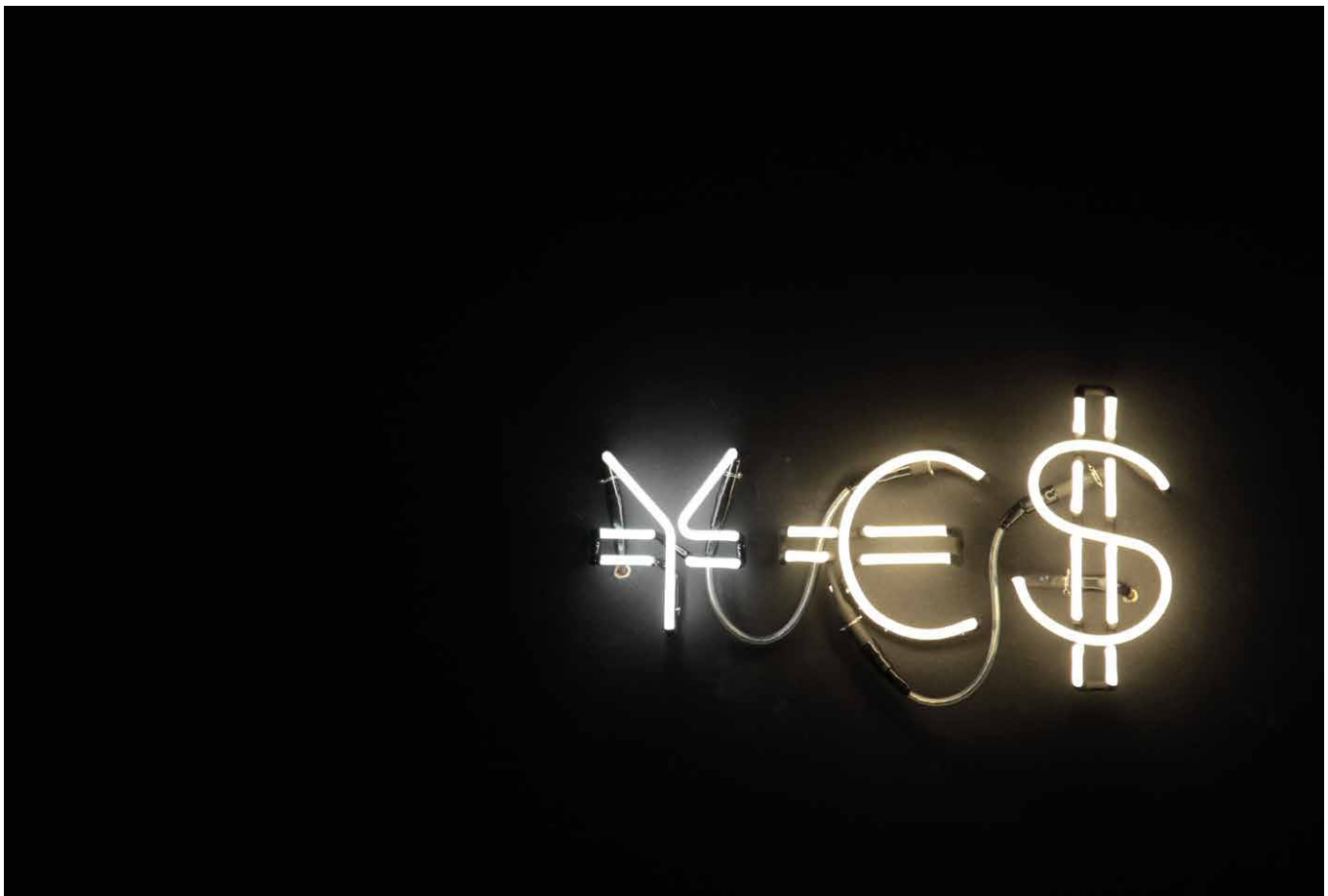
### Cross-border movement of cash and currencies

People who carry cash or an equivalent means of payment amounting to 10,000 euro or more into Germany, or who

transport such amounts through or out of the country, are obliged to inform officers that they are carrying this amount or more when they are subject to an inspection.

In addition, since 15 June 2007 and the entry into force of a specific EU regulation, every traveller entering or leaving the EU must declare in writing any amount equalling or exceeding 10,000 euro in cash to Customs. Customs control units perform risk-sensitive checks and random checks at borders as well as within Germany's national territory. When performing their controls, Customs officers have at their disposal several tools such as mobile x-ray equipment and sniffer dogs.

Any infringement of the obligation to report and declare will be deemed an administrative offence, which may also



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give rise to the suspicion that money laundering may be taking place. Such administrative offences may be punished by a fine of up to one million euros. Once control units discover the suspicious movement of cash, they transfer the case to the ZKA / Customs investigation offices for investigation.

The Customs investigation authorities are also authorized to confiscate an object in order to avert a present threat. Confiscating cash to avert a threat may be considered, in particular, if the cash is intended to be used for the commission of an offence.

Furthermore, a judge can independently order the confiscation of objects that are the result of illegal activities and which were confiscated within the framework of proceedings on the suspicion of an offence, even if the party affected cannot be prosecuted or convicted on the criminal offence, if the court is convinced that the funds cannot have been obtained legally. If confiscation of the object is ordered, ownership of the object or the right of final decision will pass to the State.

### Trade-based mis-invoicing

While processing cross-border trade transactions or in the course of undertaking tax audits, Customs officials repeatedly detect cases of trade-based mis-invoicing, which are primarily cases of under-invoicing used to avoid import duties. If it is found that the mis-invoicing scheme put in place is being used for money laundering or terrorist financing purposes, the Customs administration must notify the FIU and the ZKA; the Customs investigation offices will also be involved.

Moreover, analysing STRs for under- or overvaluation is a standard procedure in the FIU. Suspicious cases will be

transmitted to the Customs investigation service who will check whether a criminal suspicion can be substantiated and, if necessary, forward the facts to the public prosecutor for the initiation of a judicial investigation.

### FIU operations

The active participation of individuals and companies plays an important role in the process of combating money laundering and terrorist financing. The “obliged entities” are subject to money laundering related monitoring and reporting obligations, which, in particular, include the submission of STRs whenever there are indications that illegal financial transactions are being executed. Not only banks and insurance companies, but also parties from the non-financial sector, such as estate agents and traders, are subject to these obligations.

The FIU may suspend the execution of transactions for a period of up to one month if there is reason to assume that the transactions are related to money laundering or the financing of terrorism. This power is applied in order to prevent incriminated funds from being fed into the (legal) flow of money while the FIU concludes its analysis. Subsequently, law enforcement agencies and prosecutors can apply measures on the basis of the provisions of the criminal procedural law to freeze funds.

Depending on the results of the analysis, data is forwarded to the competent prosecution authorities. By forwarding only relevant information, the FIU fulfils its function as a “filter.” This reduces the burden on prosecution authorities in favour of investigating and prosecuting IFFs. To summarize, once the FIU identifies transactions that may be connected to money laundering, terrorist financing activities, or other crimes (drug

crimes, tax offences, bankruptcy crimes, etc.), it disseminates its analysis and the relevant information to concerned agencies for further investigation if needed, including to the ZKA.

In addition to the above-mentioned operational analysis related to individual cases, the FIU also prepares strategic analysis across the different cases in order to be able to identify any current risks in the field of IFFs from case patterns and trends. Among other things, the findings are then incorporated into the operational analyses.

To ensure that the operational analysis is effective, the FIU was granted a broad range of rights to obtain information and data from law enforcement agencies, and financial and administrative authorities. However, this is not a “one-way-street.” Conversely, if relevant information is available, the FIU also provides this information to competent authorities.

In addition to the exchange of information on a case-by-case basis, the FIU also maintains constant exchanges of information with national and international authorities. Among other things, findings from strategic evaluations are made available to national and international partners as required.

At the international level, the participation in meetings of the Egmont Group and the Financial Action Task Force (FATF) are also noteworthy. More than 150 FIUs are part of the Egmont Group, which aims, inter alia, at setting uniform standards for a global approach to the fight against money laundering and terrorist financing, and in shaping information exchange in this field as intensively and effectively as possible. Moreover, since the start of its operations in the summer of 2017, the German FIU has cooperated with more than 80 FIUs worldwide.

One of the main benefits of the new structure is that the FIU has the power to “filter” the increasing volume of STRs. It disseminates only cases that provide added-value for further investigation by law enforcement agencies. This new approach enables the burden on law enforcement and prosecution authorities to be reduced. As a consequence, resources may be shifted from the processing of STRs to the investigation and prosecution of IFFs.

At the national level, the close working relationship with the regulatory authorities of the obliged entities is worth highlighting. At the same time, the intensive exchange with national law enforcement agencies and prosecutors plays an essential role. This of course includes the two-way communication between the FIU and the German Customs administration, in particular with regard to criminal Customs investigations.

The vast majority of STRs that are filed originate from financial sector entities. The FIU and the supervisory authorities cooperate closely to raise awareness among entities belonging to the non-financial sector on their obligations by, inter alia, organizing information sessions.

### Performance

As in many other jurisdictions, the volume of STRs has been growing considerably over the last 10 years. This is probably due to increasing awareness on anti-money laundering and the prevention of terrorist financing issues by the financial sector, as well as to the active policy of the supervisory authority in this sector. In 2006, the number of STRs had reached 7,600, while this number had grown to around 46,000 in 2016, and, in 2017, some 60,000 were filed.

Upon receipt, all reports are subject to a preliminary review and assessment by the FIU within one, or at most the next,

working day. Depending on the urgency, priority and importance of an underlying case, it is analysed more or less quickly and, if relevant, disseminated to the appropriate authorities.

The high number of filings poses a challenge to the new FIU, which only commenced its operations in mid-2017. Nevertheless, since the start of its operations, all the STRs that have been submitted to the unit have been reviewed and prioritized upon their receipt. To date, analysis of more than 50% of the cases has been finalized, and approximately one third of them have been disseminated to law enforcement agencies and prosecutors. In about 20% of the cases, the FIU has decided not to disseminate the information yet, because the underlying facts were not sufficiently linked to money laundering, terrorist financing, or other crimes. All STRs are monitored for a period of three to five years after being filed, i. e. key information about the cases is matched.

One of the main benefits of the new structure is that the FIU has the power to “filter” the increasing volume of STRs. It disseminates only cases that provide added-value for further investigation by law enforcement agencies. This new approach enables the burden on law enforcement and prosecution authorities to be reduced. As a consequence, resources may be shifted from the processing of STRs to the investigation and prosecution of IFFs.

### More information

[www.zoll.de/EN/Businesses/Movement-of-goods/Import/Restrictions/Goods/Cash/cash\\_node.html](http://www.zoll.de/EN/Businesses/Movement-of-goods/Import/Restrictions/Goods/Cash/cash_node.html)

[www.zoll.de/EN/Private-individuals/Travel/Travel-within-the-EU/Restrictions/Cash/cash\\_node.html](http://www.zoll.de/EN/Private-individuals/Travel/Travel-within-the-EU/Restrictions/Cash/cash_node.html)

[www.zoll.de/DE/Der-Zoll/FIU/fiu\\_node.html](http://www.zoll.de/DE/Der-Zoll/FIU/fiu_node.html)

# Trade in minerals: Ghana, Liberia and Sierra Leone launch a Customs verification portal

**By Aasmund Andersen,**

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ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Three West African countries announced the publication of a joint portal for Customs verification of minerals at this year's Organisation for Economic Co-operation and Development (OECD) Forum for Responsible Mineral Supply Chains<sup>1</sup>. The portal allows Customs officers around the world to look up and verify mineral export permits issued by Ghana, Liberia and Sierra Leone. With more countries set to join, the portal will become an essential tool in addressing the smuggling of minerals such as gold and related illicit financial flows.

## Mineral trade and illicit financial flows

COUNTRIES IN AFRICA that export minerals generate a substantial part of their national revenue from this trade. But the smuggling or false declaration of such commodities poses a major threat to domestic resource mobilization in resource-rich African countries. The export of minerals requires a specific permit to be issued by an authority in the exporting country. When making an enquiry about a suspicious transaction, Customs officers trying to verify an exporter's documents at the point of import have to wait for the relevant information to reach them, or are sometimes left

to take decisions based on incomplete information.

To remedy the situation, the German Federal Ministry for Economic Cooperation and Development (BMZ) through the German Development Agency (GIZ) decided to fund a web-based portal designed to serve Customs officers' need to verify export licences swiftly, and to replace a time-consuming and often delay-prone system of enquiry via email. The project falls within the Ministry's Marshall Plan with Africa developed in 2017, in which it commits itself to support African countries in implementing the United Nations 2030 Agenda for Sustainable Development

and the new framework for financing and implementing sustainable development – the Addis Ababa Action Agenda. Among other things, the Action Agenda commits countries to redouble efforts to substantially reduce illicit financial flows (IFFs) by 2030, with a view to eliminating them over time.

## A scalable solution

Forged documents typically contain falsified signatures, stamps no longer in use, and permit codes that are not valid. While the manual verification of these documents has often been successful in uncovering fraud, it is inefficient and has limited scalability. Customs officers need to sign up to multiple exporting country systems and to contact mineral agency staff who have to invest substantial resources in answering up to five verification requests per day on average, and who are only available during office hours.

What the Customs verification portal does is draw data directly from a system called the Mining Cadastre Administration System (MCAS) currently used by nine African countries for their licensing management, including the issue of mineral export permits. This portal provides all the information needed to verify an export permit against information directly from the exporting country's system. Simply put, if it is not in the portal, it is not legitimate. The information on the portal is no older than a day, and the portal is meant for Customs officers who want to verify a specific export permit, to look up the permit's code, or check the exporter's name. Other users, such as companies and buyers, may access similar information through their

<sup>1</sup> <http://mneguidelines.oecd.org/forum-responsible-mineral-supply-chains.htm>



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respective national online repository portals, linked to the Ministry's websites.

The governments of Ghana, Liberia and Sierra Leone, as early adopters of the portal, are driving the pilot phase of the project. Other MCAS countries are expected to join the portal. As for developing countries not using the MCAS yet, a specific version of the system is in the making, which will allow them to issue export permits and join the portal without costs.

### Impact

The MCAS system and the Customs verification portal have been developed by the Revenue Development Foundation (RDF) – an international non-profit consultancy. System implementations are mostly funded by donors (Australia, Germany, the European Union and the United Nations). Each new implementation project contributes to improving the system, and new releases are provided without cost to developing countries.

The MCAS system has been in use for over a decade in some developing

countries. It has matured and proven its positive impact on governance by changing public administration processes around licences and permits. Using information technology (IT) systems to reduce discretionary behaviour works, and efficient processes become permanent.

As for the Customs verification portal, when the RDF presented it at the OECD Forum on Responsible Mineral Supply Chains in April 2018, representatives from the Governments of Ghana and Sierra Leone explained how valuable the portal is, and how instrumental it has been in decreasing the number of verification enquiries they receive every day.

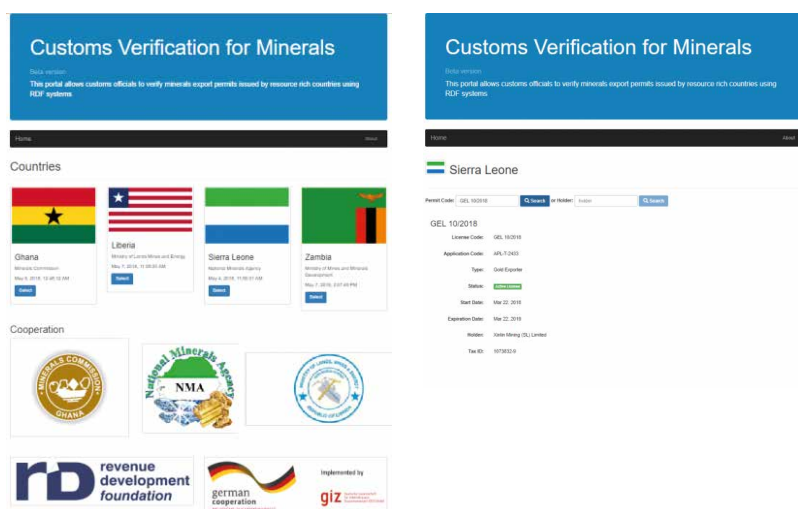
### Current discussions

Consumers and buyers around the world are putting pressure on jewellery stores and gold refineries to certify that their gold is sourced responsibly. As a minimum, such certification should prove that no forced labour, child labour or human rights violations are taking place in the mine it is extracted from. Since 2009, the OECD

has gathered all mineral supply chain stakeholders, defining guidelines<sup>2</sup> for companies to have in place systems that allow them to identify the risks of contributing to conflict financing, serious abuses of human rights, money laundering, and corruption. These guidelines are applicable to all mineral extracting industries, and cover gold, tin, tantalum, tungsten, and increasingly precious stones, cobalt, coal and mica.

From a company's perspective, carrying out due diligence implies the collection of relevant and verified information on the provenance and legality of an exported commodity. In this regard, the MCAS and its associated portals can, and for some companies already do, play a key role in supporting private sector due diligence, and in enhancing the transparency and integrity of global mineral supply chains. For some gold refineries, consulting national online repository portals, which draw data from the MCAS system, is already an instrumental part of their verification process to implement OECD guidance.

2 OECD (2016), OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition, OECD Publishing, Paris



**Figure 1: Customs verification portal country selection start page (left) and look-up of valid export permit page (right)**

The screenshot shows the 'GoSL Online Repository - All Workspaces' interface. It includes a search bar and a table of active exporters. The table columns are: Start Date, License Code, Owner, Type, Status, Minerals, and Province. The data rows list various exporters such as Seteban, Mocha, Goldika, Hiten Ghanshyamsinh, Xindu Mining (SL) Limited, Touch of Fame Trading F20, K Mineral and Farming Limited, Sato Resources Limited, Sato Resources Limited, Helvetia Brand Minerals (SL) Limited, and 100 Carats Diamond and Mineral Company Limited.

Start Date	License Code	Owner	Type	Status	Minerals	Province
23-03-2018	DEAF 42018	Seteban, Mocha	Diamond Exporter's Agent (Pres)	Active License	Diamonds	WESTERN AREA / District PRESTOWN / Chieftain
23-03-2018	DEAF 32018	Goldika, Hiten Ghanshyamsinh	Diamond Exporter's Agent (Pres)	Active License	Diamonds	WESTERN AREA / District PRESTOWN / Chieftain
23-03-2018	GEL 102018	Xindu Mining (SL) Limited	Gold Exporter	Active License	Gold	BD District WESTERN DISTRICT KAKA / Chieftain NONGOMA / Chieftain
21-03-2018	GEL 102018	Touch of Fame Trading F20	Diamond Exporter (FULL YEAR)	Active License	Diamonds	BD District WESTERN DISTRICT KAKA / Chieftain NONGOMA / Chieftain
19-03-2018	GEL 92018	K Mineral and Farming Limited	Gold Exporter	Active License	Gold	WESTERN AREA / District PRESTOWN / Chieftain
13-03-2018	GEL 82018	Sato Resources Limited	Gold Exporter	Active License	Gold	KONO District GIBBIE / Chieftain
13-03-2018	GEL 42018	Sato Resources Limited	Diamond Exporter (FULL YEAR)	Active License	Diamonds	KONO District GIBBIE / Chieftain
09-03-2018	GEL 72018	Helvetia Brand Minerals (SL) Limited	Gold Exporter	Active License	Gold	WESTERN AREA / District PRESTOWN / Chieftain KONO District GIBBIE / Chieftain
09-03-2018	GEL 102018	100 Carats Diamond and Mineral Company Limited	Industrial & Sand Based Exporter's License	Active License	Tanzite Columbite	KONO District GIBBIE / Chieftain NONGOMA / Chieftain

**Figure 2: Sierra Leone Government's Online Repository, showing search results for active exporters of minerals: <https://sierraleone.revenuedev.org>**

One of the issues that came up during the OECD Forum was how to follow up on confiscated gold, for example gold that is exported without a valid permit. A specific provision of Sierra Leone's law which says that "anyone who identifies illicitly traded gold is entitled to 40% of the value when returning it to the government," triggered much discussion. In addition, some participants felt that African exporting countries may want importing countries to return the value of confiscated gold. This would enable developing countries to get additional revenue, which could be spent on strengthening their enforcement capacities.

### Going Forward

The Customs verification portal and the underlying MCAS system, like all systems from RDF, are continuously being improved, based on stakeholder feedback. The feedback provided during the OECD Forum was, for example, extremely useful. It helped to inform a new release of the MCAS system, which will include a stronger due diligence process and more detailed licence ownership details. In addition, a functionality will enable mine inspectors using MCAS mobile devices in the field to inform users whether any violation has been identified.

To increase awareness of the portal, the RDF and the three governments who are currently piloting the project are planning to send letters to Customs administrations as well as to the biggest refineries. We hope that this article will also play its part and trigger the interest of the global Customs community. Should any Customs administration need more information about the Customs verification portal, they are invited to email either Aasmund Andersen or Janne Kaiser, whose contact details appear below.

### More information

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<https://Customs.revenuedev.org>



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# Burkina Faso: the problem of gold smuggling

**By Évariste Somda,**

HEAD OF PCA, BURKINA FASO CUSTOMS

ALTHOUGH BURKINA FASO has long been regarded as a land lacking in natural resources, over the space of just a few years, the country has been transformed into a mining player specializing in the production of gold. Among the reasons for this growth in the country's extractive industries are the tax breaks granted to investors and the arsenal of legal provisions put in place to make mining investment projects predictable and safer in the "Land of Incorruptible People."

According to a report published in 2014 by the Canadian Fraser Institute, Burkina Faso is currently the sixth most attractive location in Africa for mining investors, beaten only by Botswana, Ghana, Morocco, Namibia and Zambia.

The country's mining legislation provides for the extraction of minerals via three different routes: artisanal mining, semi-mechanized mining, and industrial mining. According to the Minister for Mines, a total of 12 industrial mines, 200 officially recognized artisanal mining sites, and around 800 illegal gold panning sites were operating in Burkina Faso in 2017.

## Gold exports

The gold exported by the industrial mines is sold to Metalor Technologies International, a Switzerland-based limited company, which specializes in the refining of precious metals. Artisanal miners, individual gold panners and holders of artisanal production permits are obliged to hand their gold over to an approved trading house for the purchase, sale and export of gold, which must keep a ledger of all sales and purchases, smelt the gold into pieces, ingots or bars, and have it officially assayed by the Office of Mines and Geology [Bureau des Mines

et de la Géologie, or BUMIGEB]; as of 2015, there were 74 such trading houses.

The overwhelming majority of the gold mined in Burkina Faso is exported. In 2017, 41.4 of the 46 tonnes of gold produced was sent abroad (estimates by the General Directorate of Mining). According to official data, 45,582 tonnes of gold – or in other words 99.09% of the country's total production – was extracted by the 12 industrial mines alone.

Mining output has an impact on budgets at both state and local authority level. In 2017, 226 billion<sup>1</sup> CFA francs (344 million euros) was raised through various related channels (levies, Customs duties, and other taxes).

Exports of gold are subject to a "proportional gold mining royalty," which is a tax collected by the Directorate General of the Treasury and Public Accounting. The level of this royalty varies depending on whether the gold is being exported by an industrial mine or a trading house for the purchase, sale or export of gold; in the case of industrial mines, it is charged at a rate of 3% of turnover if the price per ounce for the gold extracted is less than or equal to 1,000 US dollars, 4% if the price per ounce is between 1,000 and 1,300 US dollars, and 5% if the price per ounce is above 1,300 US dollars. The trading houses are subject to a uniform rate of 5% and benefit from tax relief of 100 CFA francs per gram of raw gold.

Exports of gold are allowed to leave the country freely, and Customs duties are charged at 1.75% of the London Bullion Market Association (LBMA) value of the product plus the cost of assays by the state laboratory at 0.2%. The exporter must also obtain an export document from the Chamber of Commerce and Industry, signed by Customs and the



Endeavour Mining's Houndé gold mine, located 250 km

exporter's home bank (which must hold a licence in Burkina Faso).

This document provides the Burkina Faso authorities with information on the recipient of the goods, the nature of the goods, and the arrangements for the payment of export charges (in addition to Switzerland, the leading destinations for artisanal-mined gold include Belgium, France, Dubai, and the United States). Trading houses are obliged to repatriate funds from the home bank within a deadline of one month from the date on which payment is due, and to forward supporting documents within a deadline of 45 days. This document, therefore, serves as a means of repatriating currency flows that originate from commercial operations.

## Gold trafficking

In parallel to these lawful export channels, and prompted by a desire to avoid the associated fees and obligations, gold trafficking circuits have emerged in recent years, which deprive Burkina Faso of several billion CFA francs in government revenues per annum.

Most of this gold is exported illegally in travellers' luggage. In November 2014, for example, three people carrying

<sup>1</sup> 1 euro (EUR) = 655.957 CFA francs (XOF).



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southwest of Ouagadougou, the capital of Burkina Faso

77 kg of gold in their luggage were intercepted by the Special Customs Brigade based at Ouagadougou Airport. Upon questioning, the gold seller found to be involved admitted that an average of two illegal export operations had been carried out each month for some time, with the traffickers carrying amounts of gold varying between 6 and 30 kg. He also admitted casting gold, which had been previously purchased from a number of gold panning sites (both approved and illegal).

Gold traffickers also include individuals acting independently: in 2017, the Special Customs Brigade seized gold on three occasions (250g, 1,666g and 400g respectively) from travellers intending to resell it in Colombia and Turkey.

Some of the trafficking circuits are more organized in nature. On 23 February 2016, the Mobile Brigade stationed in Tenkodogo (a town in central eastern Burkina Faso, which is a hub for significant trade flows to and from Togo) seized 16.55 kg of gold that a trafficker had hidden in the doors of his vehicle with the aim of exporting it illegally to Togo.

According to Public Eye, a non-governmental organization (NGO), Switzerland imported at least 7 tonnes

of gold from Togo in 2014 despite the fact that there are no gold mines in the country; this gold was traced back to artisanal mines in Burkina Faso. Many tonnes of gold produced by these mines (located mainly in the north and west of the country) are imported unlawfully into Togo each year, and this trafficking circuit alone deprives Burkina Faso of an estimated 3.5 billion CFA francs in tax revenues.

Analysts also believe that some gold traffickers wish to place currency abroad without paying export taxes, or to purchase goods abroad, which can be imported at a lower face value or brought in as contraband in order to be sold in Burkina Faso (thus minimizing Customs duties or avoiding them entirely). Claims of this kind are difficult to substantiate, however.

### Anti-smuggling actions and challenges

With a view to preventing the trafficking in mined minerals, Burkina Faso recently established a National Agency for the Supervision of Artisanal and Semi-Mechanized Mining [*Agence Nationale d'Encadrement des Exploitations Minières Artisanales et Semi-mécanisées*, or ANEEMAS], one of its aims of which is to organize gold panners into cooperatives so that they

can benefit from a preferential rate for the proportional gold mining royalty.

On the ground, the National Anti-Fraud Brigade for Gold [*Brigade Nationale Anti-Fraude de l'Or*, or BNAF] has been specially tasked with investigating, identifying and prosecuting offences relating to the marketing of gold and other precious substances extracted by artisanal and semi-industrial mines. This cross-agency body brings together officials from various services, including Customs, and takes responsibility for pursuing any court cases relating to gold, regardless of the authority which seized the trafficked goods.

The level of insecurity affecting Burkina Faso as a whole means that the BNAF cannot gain access to individual mining sites, and so, for the time being, it can only monitor the trading houses which operate in towns. Its scope of action is further limited by a lack of funds to pay informants for valuable information in the fight against gold-related fraud. Nevertheless, the country remains determined to do what it can to prevent gold smuggling, thereby preventing the loss of much needed state revenue.

### More information

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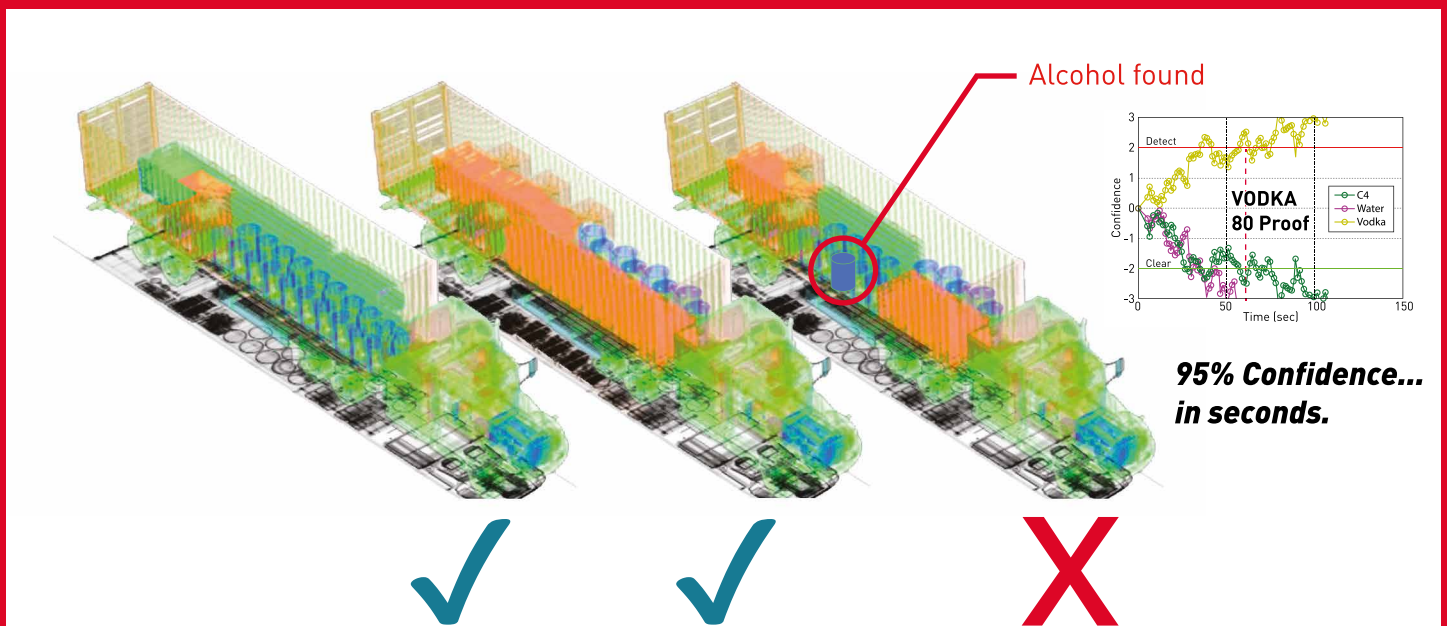
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President Yoweri Kaguta Museveni delivers his opening address

## Highlights from the 4<sup>th</sup> WCO Global AEO Conference

**By James Barungi,**  
UGANDA REVENUE AUTHORITY,  
**and Asha Menon,**  
WCO

THE SOUND OF African drums and dances welcomed participants as they arrived at the 4<sup>th</sup> WCO Global AEO Conference that begun in Kampala, Uganda on 14 March 2018. They were addressed by the President of Uganda, H.E. Mr Yoweri Kaguta Museveni, who gave an inspiring message on the importance of regional collaboration among East African countries, and the need for ongoing cooperation among all the continent's countries that would ultimately broaden the scope for more investment in Africa.

Throughout the three-day event, 125 speakers shared their knowledge, expertise and experience on a wide range of topics, broadly related to authorized economic operator (AEO) programmes. Among other things, participants discussed challenges related to the provision of tangible benefits, a recurrent theme, and examined initiatives aimed at improving coordinated border management and at ensuring mutual recognition of AEOs between countries.

At present, 77 AEO programmes have been implemented worldwide and 56 mutual recognition agreements (MRAs) have been signed with another 37 under negotiation. Under the banner of the Conference's theme "Promoting Mutual Recognition of AEOs to Strengthen and

Secure Global Trade," two important documents were signed: a MRA Action Plan between the Korea Customs Service (KCS) and the Members of the East African Community (EAC), a first of its kind in Africa; and a MRA between the Customs administrations of Peru and Uruguay.

More than 1,100 participants from over 95 countries saw presentations on the implementation of AEO national programmes in EAC Member countries and on the AEO regional programme that these countries have established, as well as on the different ways to involve the private sector in the discussions, and how to consolidate the partnership between Customs and other government agencies.

The following conclusions were drawn:

- There is a need to standardize and harmonize AEO programmes around the world.
- Attracting small and medium size enterprises (SMEs) to join AEO programmes is key to the success of such programmes.
- Intermediaries should be given the opportunity to become AEOs.
- The AEO concept is moving to another level with buy-in from different stakeholders increasing.

- Involving other government agencies in the AEO certification process should be something to work towards, especially as it will enable more benefits to be provided.

In addition, other issues were identified, such as:

- the need to build trust not only between Customs and private sector companies, but also among Customs authorities;
- the important role technology solutions have to play;
- the difficulty in identifying tangible benefits for AEOs;
- the relevance of the programme in countries where compliance levels of the private sector are low;
- the threat to AEO programmes and MRAs as a result of the high levels of trade facilitation that traders already enjoy.

The next AEO Conference will take place in Dubai in 2020.

### **More information**

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# Calendar of Events

## July

2 - 7 Knowledge Academy for Customs and Trade

## September

5 - 7 Revised Kyoto Convention Working Group, 1<sup>st</sup> Meeting  
 13 - 14 Harmonized System Committee, Working Party  
 17 - 28 Harmonized System Committee, 62<sup>nd</sup> Session

## October

2 - 4 Global Security Conference  
 1 - 5 Data Model Project Team  
 8 - 12 Working Group on E-Commerce, 4<sup>th</sup> Meeting  
 9 - 11 Annual PICARD Conference, Malatya (Turkey)  
 15 - 16 Private Sector Consultative Group  
 17 - 19 SAFE Working Group, 20<sup>th</sup> Meeting  
 22 - 23 Trade Facilitation Agreement Working Group, 10<sup>th</sup> Meeting  
 22 - 26 Technical Committee on Customs Valuation, 47<sup>th</sup> Session  
 29 - 30 Information Management Sub-Committee, 75<sup>th</sup> Meeting

## November

5 - 8 Permanent Technical Committee, 221<sup>st</sup>/222<sup>nd</sup> Sessions  
 12 - 13 Revised Kyoto Convention Management Committee, 19<sup>th</sup> Meeting  
 14 - 16 WCO/UPU Contact Committee  
 19 - 30 Harmonized System Review Sub-Committee, 55<sup>th</sup> Session  
 21 - 23 Working Group on Revenue Compliance and Fraud, 5<sup>th</sup> Meeting

## December

3 - 5 API/PNR Contact Committee (Members only), 12<sup>th</sup> Meeting  
 3 - 5 Policy Commission, 80<sup>th</sup> Session  
 6 - 7 WCO Counterfeiting and Piracy Group, 15<sup>th</sup> Meeting  
 10 - 12 Revised Kyoto Convention Working Group, 2<sup>nd</sup> Meeting  
 13 - 14 Technical Experts Group on Non-Intrusive Inspection

*It should be noted that WCO meetings are mentioned for information purposes and are not all open to the public. Unless otherwise indicated, all meetings are held in Brussels. Please note that these dates are indicative only and may be subject to change. The WCO meetings schedule is regularly updated on the WCO website.*

# SOLUTION READY



## OFFERINGS

- ▣ TRADE FACILITATION SOLUTIONS
- ▣ ICT CONSULTING
- ▣ BUSINESS AUTOMATION
- ▣ PORTAL DEVELOPMENT
- ▣ KNOWLEDGE TRANSFER
- ▣ CAPACITY BUILDING & TRAINING
- ▣ MANAGED SERVICES

## SOLUTIONS



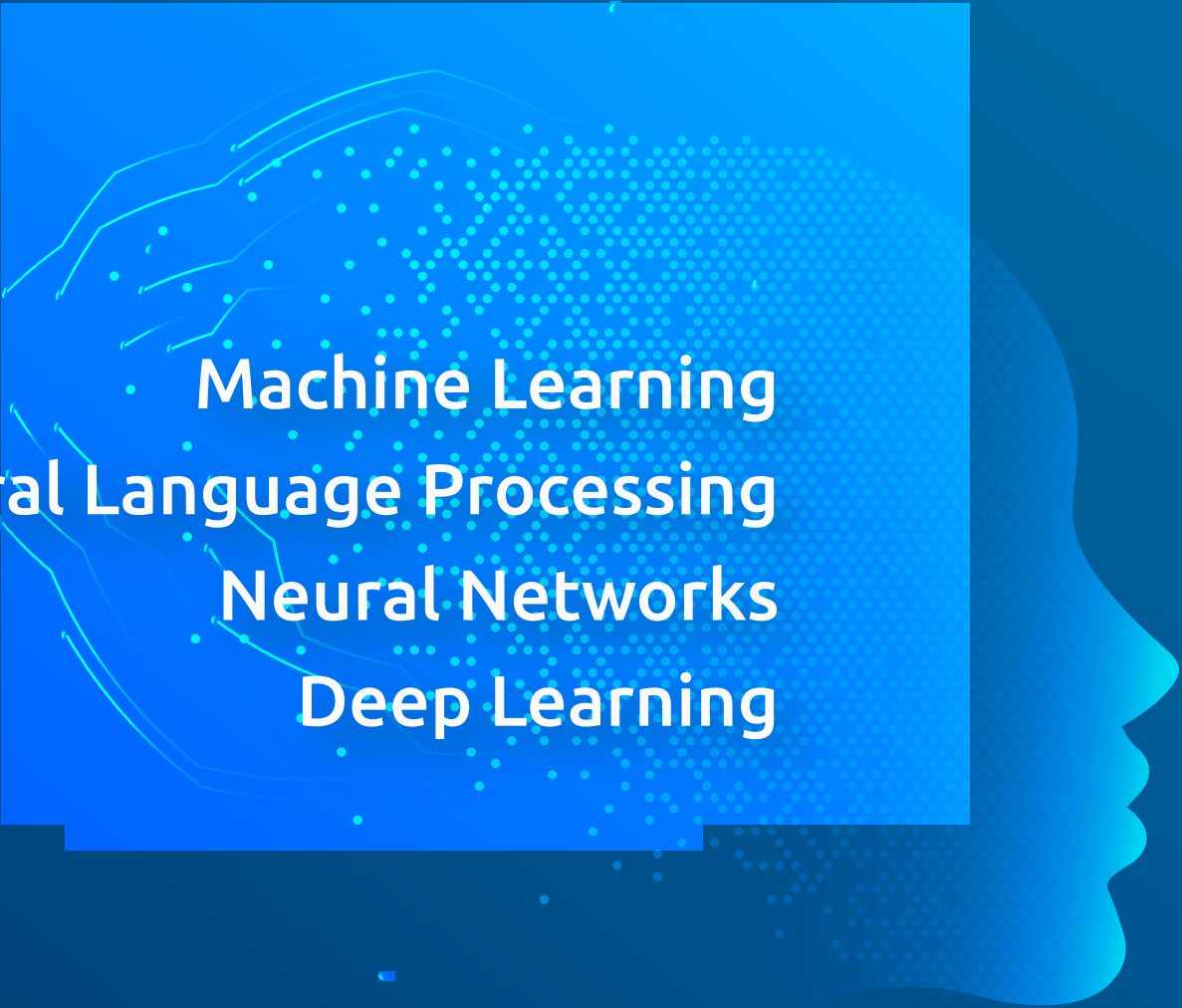
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# Artificial Intelligence

State-of-the-art technology for Customs



Machine Learning  
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Deep Learning