

Comprehensive approach for international customs regulatory framework for Sri Lanka

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ABSTRACT

As has been stipulated in the 'development roadmap for Sri Lanka' (*Mahinda Chithanaya*), the state authorities of Sri Lanka have undertaken to develop and promote the economy and society through, particularly, the establishment of five hubs (Naval hub, Aviation hub, Commercial hub, Energy hub and Knowledge hub) of which the Customs and Legal Framework considered from a trade and industry points of view is supposed to play a highly significant role. Of this, an effective border management system should complement national development objectives as envisaged by the regime in power.

The proposed study aims to derive a qualitative assessment of the crucial role played by the Customs in the present context and provide insights for the way forward. This research has been carried out by examining and investigating the literature available in the public domain that contains different indexes and rankings in relation to international trade. This article focuses on the status of the relevant laws, regulations, administrative guidelines, and standard operational procedures that demand thorough review in making desired and effective reform of them.

Sri Lanka is party to the International Convention on the Simplification and Harmonisation of Customs procedures. Fundamentally, a comprehensive and modern legal framework is the foundation upon which an effective Customs and trade facilitation regime should be built. A lot of improvement is evident in the present processes of Customs in Sri Lanka. Information Communication Technology is extensively used by customs authorities to offer better services to their stakeholders. The conclusions refer to author's analysis with respect to Competent Customs offices; Payment of duties; Resources; The mutual administrative assistance; and Examination and Release of Goods were provided based on the convention.

Keywords— Customs, Logistics, Commercial hub, International trade, Kyoto Convention

1 International Customs Law

International Customs Law is the body of international conventions, treaties, norms and standards which Customs agencies are entrusted by their Governments to implement and observe and which, if breached, would constitute a breach of that Government's legally binding international obligations. The World Customs Organisation (WCO) has introduced The International Convention on the Simplification and Harmonisation of Customs procedures (widely known as Kyoto Convention) to establish benchmarks by which Customs services can best manage their responsibilities in relation to the movement of goods.

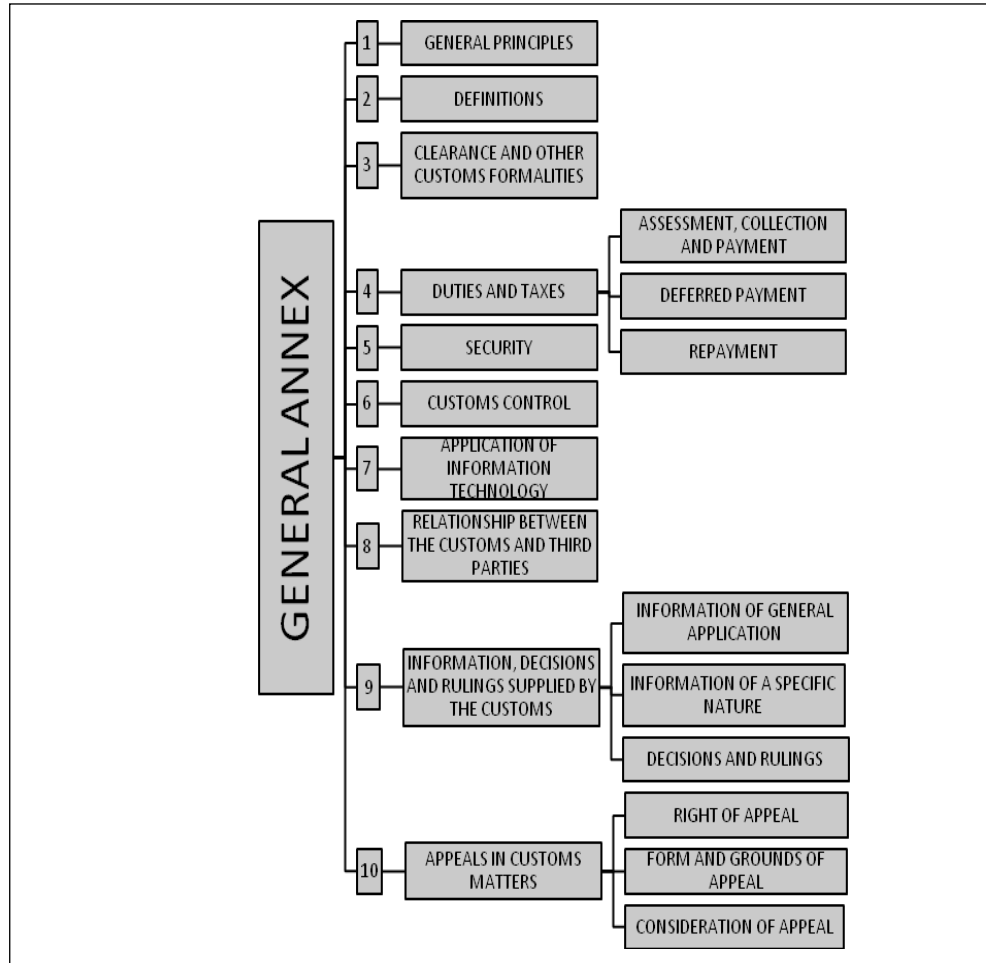
“Customs plays a crucial role in trade operations and revenue collection, and it directly affects the private rights and obligations of citizens’ (Wulf & Sokol, 2005).

It is believed that since its inception in 1952, the WCO has been working to develop Modern principles. The simplifying and harmonising of customs procedures was reflected in the Kyoto Convention, which was adopted by the WCO in 1973 and entered into force in 1974. The realities of modern international trade have prompted modernised customs legislation internationally because outdated customs laws constrain social and economic progress by acting as significant nontariff trade barriers. On one hand they prevent effective revenue collection, discourage foreign trade and investment, while creating a potential threat to social and national security. The Kyoto Convention therefore updated to ensure that it meets the current demands of governments and international trade. The WCO Council adopted the Revised Kyoto Convention (RKC) in June 1999 as the blueprint for modern and efficient Customs procedures in the 21st century. RKC was developed to standardise customs policies and procedures worldwide. Over the years economies have realised that it embodies best practices of national legislation around the world.

On the other hand this contributes towards compatibility of the rules of the World Trade Organisation (WTO) because implementation of RKC would enable countries to meet international commitments concerning trade and border procedures. The resultant revision of the Convention due to globalisation, rapid transformation of international trade patterns, and advances in information technology (IT) is known as Revised Kyoto Convention. “The modernization of customs laws and regulations and their supporting legal environment is an essential component of the reform effort. In this area, countries can refer to (or adopt) the RKC, which provides both the legal framework and a range of agreements on standards to improve customs operations with a view toward standardizing and harmonizing customs policies and procedures worldwide” (Wulf & Sokol, 2005).

Therefore the legal framework of the customs reforms in Sri Lanka should be the RKC. “To become party to the Convention, a state must accept the Body of the Convention and the General Annex. It is then up to each state to decide which, if any, of the Specific Annexes it will adopt. This means that each party can give different degrees of undertakings – and an almost infinite set of relationships between parties is conceivable” (Harrison, et

al, 2009). Therefore visualising the structure of the general annexure is a prerequisite of understanding the International Customs Law. Fig 1.1 illustrates the general annex of RKC.



Source: Author

Figure 1.1: The structure of RKC General Annex

2 Trade and Industry in Sri Lanka

Developing countries stand to gain the most from improving trade facilitation. (IBRD, 2013) Sri Lanka, having successfully eliminated barriers of its civil war, is on the journey towards 'Becoming the Wonder of Asia'. "First time in 7 years, a South Asian economy—Sri Lanka—ranks among those improving the most in the ease of doing business" (IBRD, 2013).

Indices that are used to compare performance of countries show that Sri Lanka has shows steady performance in the Global Competitiveness Index (GCI) with a GCI of 68 out of 144 and a score of 4.2 out of 7 in 2012-2013. Sri Lanka has posted positive indicators

in doing business across borders. In 2007, Sri Lanka was ranked 99 out of 185 countries and by 2013 the country has improved in its rank to 56. In the Logistics Performance Index (LPI) published by the World Bank in 2010, Sri Lanka was ranked a dismal 137 out 155 countries. By 2012 the rank has improved to 81. Government of Sri Lanka (GoSL)'s vision, primarily to increase per capita income to USD 4000 and sustaining a steady economic growth. The size of the local economy in Sri Lanka does not facilitate a domestic demand driven strategy for attaining sustained 8-10 per cent growth, thus Sri Lanka has to improve its export performance significantly. Doing Business 2013 report indentified Sri Lanka as an economy who made trading across borders easier in 2011/12 under the criteria of Introducing or improving electronic submission and processing (IBRD, 2013). The GoSL has embarked on a development agenda based on the *Mahinda Chintanaya* with the objective of converting the country to a naval, aviation, commercial, energy and knowledge hub in Asia (GoSL, 2010). It also emphasised a technologically advanced, knowledge based and self sufficient economy. In keeping with these objectives, in the recent years, the GoSL has invested heavily in developing the required infrastructure. "With respect to trading across borders Sri Lanka has reduced the time to export by implementing the ASYCUDA World electronic data interchange system" (IBRD, 2013). Table 2.1 provides a summary of competitive indicators with respect to infrastructure.

Table2.1: Infrastructure- Selected competitive indicators

Indicator	Rank 2010-11 (out of 139 countries)	Rank 2011-12 (out of 142 countries)
Quality of overall infrastructure	61	48
Quality of roads	55	49
Quality of railroad infrastructure	40	37
Quality of port infrastructure	44	45
Quality of air transport infrastructure	62	60
Available airline seat kilometres	64	59

Source: WEF, 2010 & 2011

Government's focus on infrastructure development should be commended. Nine tax amendment bills were presented to parliament on 22.03.2011 emphasising the Government efforts to introduce a simple tax system, which has a bearing on reform initiatives of customs especially in customs valuation and associated activities. In the early stages of Free Trade Zones, the government appointed verification Officers through Board of Investment (BOI) to expedite customs formalities of imports and exports of BOI Enterprises. This is a clear indication about the international pressure towards industry friendly customs procedures.

Table 2.2: Selected competitive indicators

Indicator	Rank 2010-11 (out of 139 countries)	Rank 2011-12 (out of 142 countries)
Prevalence of trade barriers	103	105
Trade tariffs	113	125
Burden of customs procedures	66	54

Source: WEF (2010 & 2011)

At present the growth of the tourism sector too demands more relaxed border management procedures. The customs reforms would have direct impact on tourism sector at multi stages as explained below. Border agency activities initially play a major role from the stage of importing construction materials to build infrastructure. Then customs and other border management regularly interact at the stage of actual tourist arrivals and departure. Therefore the attitudes of customs may act as one of the decisive factor of the sustainability of the tourism sector in today's customer driven competitive environment.

The apparel industry is a major contributor to the national economy and the Sri Lanka apparel industry is expected to achieve USD 5 billion revenue target by 2015. In working with world class buyers would essentially need modernised customs practices thus effectively compete with global competition. The overall export sector for that matter is heavily dependent on relaxation of customs burdens. Table 2.2 provides Sri Lanka ranking pertaining to relevant indicators.

The perception on trade tariff and customs procedures too should be considered seriously thus improvements are necessary in many areas. Accordingly, Sri Lanka would have to reform its customs practices in order to make it business friendly in order reap the benefits of the many opportunities in the present post war scenario.

3 The RKC benchmarking

"Customs tariffs are an important fiscal policy tool in shaping a nation's trade policy, economic growth and income distribution" (Ravindrakumar, 2013). The current trends in Sri Lanka justify the need for reforms in the customs. The RKC through its principles make clear representations in each fundamental requirement that Sri Lanka should exercise in the customs in order make trade friendly environment. In order the revised customs laws, regulations, administrative guidelines and operating procedures fully support the new requirements, procedures, systems, and controls these principles should be sufficiently adhered. Mathur (2006) suggests that a modern Customs legal framework should allow a minimum Customs value of the goods or minimum amount of duties/taxes; allow for the use of risk management techniques and audit-based controls for the purposes of Customs control over goods; and encourage cooperation with other Customs administrations and with other border agencies.

The initiative that are already in place regarding, simplified customs procedures ,the use of modern information technology and communication, modern Customs systems and procedures, such as risk management, post-clearance audit based controls and adequate automation should be strengthened. It is viewed that the transparency and predictability especially in valuation issues is vital. Maximum use of information technology is one potential area given the rapid improvements in infrastructure and high computer literacy rate of majority users in related fields. While the efforts in positive direction in certain areas should be appreciated the eternal delays in some other areas are questionable. A detailed discussion with this regard will follow in the conclusions section.

4 The need for Orientation

“The constant search for innovative ideas by Sri Lankan policy makers will be a key feature of a successful quest to accelerate growth and improve living standards” (Okonjo-Iweala, 2010). A comprehensive and modern legal framework is already in existence in Sri Lanka through the RKC as the foundation upon which the Customs and trade facilitation regime has been built. Many customs reform program that supports the new requirements are made possible to some extent through existing customs laws, regulations, administrative guidelines and standard operating Procedures are in place though not being extensively utilised or practiced by trade. Therefore an obvious question arises as to efforts on orientation of existing reforms should be given priority than new reforms.

Electronic lodgement of data or Direct Trader Input are used by only handful of companies especially Multi National Companies (MNC) only. The Customs Declaration Message (CUSDEC) permits the transfer of data from a declaration to a customs administration for the purpose of meeting legislative and/or operational requirements in respect of the declaration of goods for import, export or transit. Once they are fully implemented the clearing systems, the SLPA cargo could be handled electronically enabling to enhance the productivity and efficiency in all Ports in the country. The implementation of the Automated Cargo clearance system, ASYCUDA is expected fully operational soon according to customs sources. The shipping community is very keen to make use of electronic data interchange (EDI). The Ceylon Association of Ships Agents is closely working with customs on this and test runs are being done.

Especially in a transitional cum rapid development period, Customs officers need more training on new Customs techniques and technologies particularly for the implementation of the pre shipment certificates as well as conventional Customs techniques like valuation and rules of origin. Despite customs administrations have regular training activities sufficient budget and long term strategic efforts are needed to provide better human resource development. The initiative such as offering masters degrees in Customs in collaboration with private universities is commendable.

5 Conclusions

The intensifying global interconnectedness make it vital for countries to cross borders thus customs administrations will be increasingly important for managing the impact of the changes at the border. Efficient border management and the coordination of the agencies involved in border clearance are more critical now than ever (World Bank, 2012). A solid and modern legal framework is the foundation of effective customs operations. This legal framework benchmarking should be based on internationally accepted standards and best practices as set out in the RKC which provides important guidelines for the design and operation of a modern and efficient customs organisation.

RKC chapter 4, 2.1.2¹ Self-assessment is a recommended progressive procedure which can expedite the processing of goods through the border. Self-assessment involves the application of risk management principles, post-transaction auditing, administrative penalties, binding rulings, Customs responsibilities and red/green line lodgements.

In some administrations, self-assessment is only permitted by certain clients. (For instance, those with proven compliance records) As far as Sri Lanka is concerned, Self Declaration (SD) by Sri Lanka importers for customs valuation is predominant. It was noted that 90-95% of SD is accepted as at now the long room. The existing harmony between wharf assistants and Customs is commendable and more efforts in same direction are important.

5.1 Competent Customs offices

“Sri Lanka reduced the time to export by implementing the ASYCUDA World electronic data interchange system” (IBRD, 2013). RKC chapter 3 1.1 refers to the need to establish a Customs office that will be based on the volumes of traffic, goods and travellers that enter the Customs territory at land routes, ports, airports and inland locations.

Chapter 6.8.2.3 Degree of Centralisation and 8.2.5 Local Customs offices sufficiently focus on this matter. Given the fast track development in Hambantota the long term plans should comprise not just commissioning customs buildings but also to station suitable trained staff there. Standard 1.3 of RKC establishes one final fundamental point, that Customs ‘shall institute and maintain formal consultative relationships with the trade to increase cooperation and facilitate participation in establishing the most effective methods of working commensurate with national provisions and international agreements’ (Harrison, M, et al, 2009).

5.2 Payment of duties

RKC chapter 4-Standard 4.6 explains that, “To facilitate the accounting procedure, Customs should accept payment of duties and taxes in forms other than cash, such as travellers

¹ This section frequently refers to chapters of Text of the Revised Kyoto Convention of World Customs Organization .

cheques, money orders, certified cheques, uncertified cheques (in specified circumstances), bonds, credit cards, securities, etc.” Due to administrative constraints in the government sector implementation of certain latest technologies faces eternal delays. “The improvements in global logistics over the past two decades have been driven by innovation and a great increase in global trade” (World Bank, 2012). Therefore, it is important Sri Lanka customs act fast on this matter as it was revealed that credit cards are still not accepted even at the Air ports in Sri Lanka.

5.3 Resources

Chapter 6.8.2.1 expresses that Customs should identify human, technical and financial resource needs for implementing control programs by assessing and analysing current and potential international trading activities in their respective countries or regions. If Sri Lanka is to market as an attractive tourist destination, customs who act as the front line agents should understand their vital role. The border management officers such as customs and emigration/immigration usually make the first impression to a tourist. Chapter 6.8.2.2 Management Philosophy and 8.4 Human Resource Development discuss these phenomena at macro level.

The expected increase of exports and imports in the country would require more resources for customs to carry out duties effectively. As the expected trade increase in Sri Lanka in the future is huge the proportionate increase of resources would not be a feasible option. Chapter 6 Appendix II 14.2.1 Risk Management reveals a similar situation in the past. In 1998, Customs Port Director (United States of America) Susan Parker was facing serious workload and resource problems. Imports into her port had increased 15 percent since 1996, but resources remained the same. It was the capacity building strategy that had eased the problem faced by her at that time. The approach has lead to an effective tool that Sri Lanka too may use appropriately. While this case study is simple, its results are real and remarkable.

The WTO agreement on Pre-shipment inspection (PSI) is the practice of employing specialised private companies to check shipment details — essentially price, quantity, quality — of goods ordered overseas. “This is used by governments of developing countries, primarily to safeguard national financial interests (prevention of capital flight and commercial fraud as well as customs duty evasion, for instance) and to compensate for inadequacies in administrative infrastructures” (Gürler, 2002). Though the potential has been identified and actions were initiated, there is no evidence of success in the context of Sri Lanka. Therefore, implementation of PSI implementation by Sri Lanka customs is to be expedited. (Presently special cases such as Atomic Clearance for Milk Powder are facilitated under the terms of PSI)

5.4 The mutual administrative assistance

The increase in international trade and the newly developed methods of Customs control have highlighted the shortcomings of a system in which controls are based solely on goods declarations and supporting documents submitted after the goods' arrival in the Customs territory. "In border management reform, governments try to reconcile security and fiscal objectives with trade facilitation" (World Bank, 2012). RKC article 6 8.6 Mutual administrative assistance (Standard 6.7) states that it may be desirable for Customs to receive such information at an earlier stage and to have access to further information, from other Customs administrations to obtain pre-arrival information on goods bound for their Customs territory and for other types of assistance to ensure the proper application of Customs laws.

5.5 Examination and Release of Goods

Part 8 of Chapter 3 Standard 3.33 requires that the examination be conducted as soon as possible while Standard 3.35 requires Customs to ensure that inspections by other Government agencies are coordinated with the Customs examination and, if possible, conducted at the same time. In some circumstances, Customs may release the goods before the formalities have been completed. These circumstances are set out in Standards 3.41 and as per 3.42 special focuses on these standards by authorities are recommended.

In order to perform the important role of customs authorities, the officials should process unique set of skills and knowledge. It is commendable that respective officers are very knowledgeable in their subject thus customs formalities are handled by highly qualified and competent officers in Sri Lanka. They represent the government, to facilitate and regulate international trade, and to achieve national policy objectives through the Strategic Risk Management, Compliance Management and Change Management which considered being relatively weak in many countries. In addition the Information Communication Technology is extensively used by customs authorities to offer better services to their stakeholders. Therefore customs reform, modernisation or re-engineering considered a priority in many administrations and implementation of change management is needed especially in Sri Lanka due to rapid development expected in the future.

References

- Edirisinghe, L. & Muller, S., (2013). *Converting Sri Lanka into a Commercial Hub in Asia: An Assessment of Postwar Progress with Insights to the Way Forward*. Ratmalana, General Sir John Kotalawala Defense University, p. 117.
- GoSL (2010). *Mahinda Chintana – Vision for the Future*. Colombo: Ministry Of Finance And Planning- Government of Sri Lanka.
- Gürler, O (2002). WTO Agreement on Non-Tariff Barriers and Implementation for the OIC Members States. *Journal of Economic Cooperation* , 23 (1), 61-88.
- Harrison, M., Muller, S., & Holloway, S. (2009). *International Customs Law Study Guide*. Canberra: University of Canberra.
- IBRD (2013). *Doing Business 2013*. International Bank for Reconstruction and Development / The World Bank. Washington, DC 20433: The World Bank and the International Finance Corporation.
- Okonjo-Iweala, N. (2010). *Becoming the Wonder of Asia: Accelerating Inclusive Growth in Sri Lanka*. Colombo: The World Bank.
- Ravindrakumar, M. (2013). *WTO Customs Valuation - A Decade of Sri Lankan Experience 2003-2013* (First ed.). Dehiwala: tg.Dehiwala.
- WCO (2013). *Text of the Revised Kyoto Convention*. Retrieved May 25, 2013, from World Customs Organization: http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new.aspx
- World Bank (2012). *Connecting to Compete 2012*. Washington: The International Bank for Reconstruction and Development/The World Bank.
- Wulf, L. D., & Sokol, J. B. (2005). *Customs Modernization Handbook*,. Washington: The World Bank.