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The future role of customs

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Abstract

Customs agencies have some powerful tools at their disposal to supervise the informational movement of goods. These tools are designed for interference with the goods flow at the moment of border crossing, as well as for levying the right amount of taxes and duties. Some research on these tools shows that they are not easily applicable for situations they were not designed for. New regulation, however, puts increasing demands on, among others, the role of Customs agencies in their enforcement approaches.

We look at three regulatory developments in the EU (regulation on fluorinated gasses, the Carbon Border Adjustment Mechanism and the Corporate Sustainable Due Diligence regulation). to assess the strength of the current Customs enforcement toolbox. We find that these tools are useful, but that Customs agencies will also need to develop new competencies to sustain their role as an important enforcement agency. These competencies revolve around cooperation with other competent authorities, as well as the integration of system based and transaction based supervision.

Introduction

Customs has played an important role in international trade for centuries. Customs organizations in many countries are characterised by the combination of seemingly contradictory roles: levying taxes on trade, as well as enabling trade and international business through standardised procedures and simplifications. Often a third responsibility is added to these two: the protection of society against illegal trade, irresponsible business and dangerous products. This last role is also recognised in the Green Customs Initiative that was launched in 2004 as an informal partnership between various UN organizations and has concentrated on capacity building around illegal trade (www.greencustoms.org/)

While the world, trade, and therefore Customs, has seen much change, the basic operating approach of Customs has remained the same. Resource limitations, as well as the need for more efficient enforcement have resulted in risk based operations. The large volume of communication between Customs and Trade has made Customs agencies early adopters of digitization in their work. But the core of the processes Customs relies on still revolve around declarations and simplifications.

At the same time, the world keeps changing. Now more than ever, the state of our environment is considered under threat. More and more, environmental impact of economic activities become regulated and restricted. In addition, fair business practices are recognised more and more and also become regulated, also due to increasing societal pressure towards traders. Furthermore, violent conflicts keep developing, and very few parts of the world are exempted. This results in new and

sudden restrictions on trade that need to be enforced. In much of this regulation, trade is restricted and as a result, Customs is at least one of the agencies tasked with additional responsibilities. Another additional dimension is that the regulation aims more and more to regulate processes in global supply chain.

If the responsibilities for customs agencies are increasing, but the way Customs agencies work is not expanded or the customs supervision mechanisms are not innovated to satisfy these new demands, the question arises if Customs agencies will be able to play an effective role in regulating international trade going forward. This is also a central issue in the Wise Persons Group on the Reform of the EU Customs Union, that started its work in 2021 (see Wise Persons 2022).

This paper aims to evaluate if the way customs agencies execute their enforcement and facilitation roles is still fit for the future. We will do that in two stages. First we will review the standard mechanisms that Customs agencies have and discuss how effective these mechanisms are. We will then look at some of the new regulation that is being developed primarily in Europe to see what new roles are put on the shoulders of Customs. This is a preliminary study for discussion purposes.

This paper is structured as follows. We will first introduce the basic principles of a Customs agency and describe the manner in which Customs agencies carry out their designated tasks. We will then review the effectiveness of these mechanisms. After that we will briefly discuss three regulatory developments that are putting new responsibilities on the shoulders of Customs agencies, for the simple reason that they target border crossing goods flows. We will finish this paper with some preliminary recommendations.

Basic principles of customs

The essential role of Customs is to protect the territory of its jurisdiction, in the broadest sense of the word. It protects businesses' and citizens' safety, health, the economic position of businesses, safe food and living environment. Levying duties and taxes at the border can also be seen in this context. Customs duties realign cost differentials between markets, and as such protect the economic position of national businesses, or introduce discouragements on the use of certain products.

Customs' role is triggered by goods crossing borders. In many cases, Customs operations also take place at the border, but this is not necessarily required¹. Customs have developed mechanisms to cross borders without having to fulfil all required formalities right away. We will discuss these mechanisms in the next section.

In essence, customs operations have the following core idea: duties and taxes, once paid, are forfeit. This means that businesses prefer to postpone payment of these duties and taxes, if possible to the moment that best fits their commercial strategy. For this purpose suspension arrangements are in place, that relate to transportation, storage and processing under customs supervision. These regimes come with registration requirements so that customs agencies can control the goods that fall under the suspension, and for which payment of duties and taxes are postponed².

Once the goods are closed to being sold, they can be brought into free circulation by means of an import declaration. With this declaration, Customs receives all relevant information that is needed to compute the required duties and taxes.

¹ In some countries border control and revenue services are separate organizations.

² An exception is the draw back system in the USA.

The mirror image of bringing goods into free circulation is export, by which goods are taken out of free circulation in one country, usually, and with a few exceptions, followed by an import declaration in another jurisdiction or suspension arrangements.

The tools that Customs has at its disposal are related to these mechanisms:

- Customs can receive declarations, and evaluate the information in these declarations, based on characteristics such as type of good, value and weight,
- Customs can allow goods to be brought in free circulation and collect duties and taxes, or
- Customs can (physically or administratively) supervise goods that are brought under a suspension regime, until they are removed from that suspension regime,
- Customs can take measures to verify declarations on goods, by collecting more information on the goods, by technology to verify elements of the shipment, and by physically checking the goods.
- Customs has an intelligence function, that serves to assess the risk of criminal misuse of shipments and act accordingly to seize drugs, weapons, and so on.
- Customs has a number of formal instruments to pursue trading parties to pay the right amount of duties and punish unwanted behaviour through confiscation of the goods and levying penalties.

The basic level at which Customs is performing these tasks is the shipment. There are arrangements where Customs can suspend the individual collection of information at shipment level, and replace this with either the periodic collection of shipment level data, or the reliance on declarants' own records. The protective role of Customs at the border, however, is difficult to align with not collecting individual shipment information. We will see that this will turn out to be an important restriction.

Effectiveness of Customs enforcement

There are different ways to evaluate the effectiveness of customs. There is some scientific evidence that trade facilitation contributes directly to economic development and economic wealth. Therefore, a number of global efforts exist (or have existed until recently³), that look at the trade facilitation role, that is largely enacted by customs agencies.

A good starting point is the trade facilitation indicators program of OECD. Below in Figure 1, is the profile of the Netherlands. Note the variables that are included in this overview are basically dimensions of trade facilitation. Figure 1 reflects to a large extent the outcome of the way in which Dutch Customs operates. It is, however, only an indirect assessment.

There are other ways of evaluating efficiency of Customs agencies. One way would be to look at the performance measures of customs that they report themselves. Again we use Dutch Customs as an example. The annual report that Dutch Customs (Dutch Customs 2021) produces contains information on the number of objections received (4.199.000 in 2020), the number of objections handled (of which 94% on time), the number of appeals in the various courts (107), and how many times the appellant was right or partially right (about 30%). In addition, this report contains information on how many illegal shipments were seized, divided into drugs, cigarettes, and other contraband. This included, in 2020, among others, more than 100 tons of tobacco and almost 49 tons

³ In September 2021, the Worldbank announced it has stopped publishing the Doing Business Report. The Global Enabling Trade report of the World Economic Forum has not been published since 2016.

of cocaine. 33 mln regular import- and exportdeclarations were processed, 464 thousand hours of border supervision, and 2613 administrative audits in companies.

While all these numbers sound impressive, there is a problem in evaluating them. These numbers can only be appreciated if they are compared to other comparable figures. The number of declarations, for instance, is about 30% of the entire volume in the EU. Only then can we say it is a lot. But for the contraband seizures, this type of verification is difficult. One would like to know what percentage of the total flow is captured, and this, of course, is unknown.

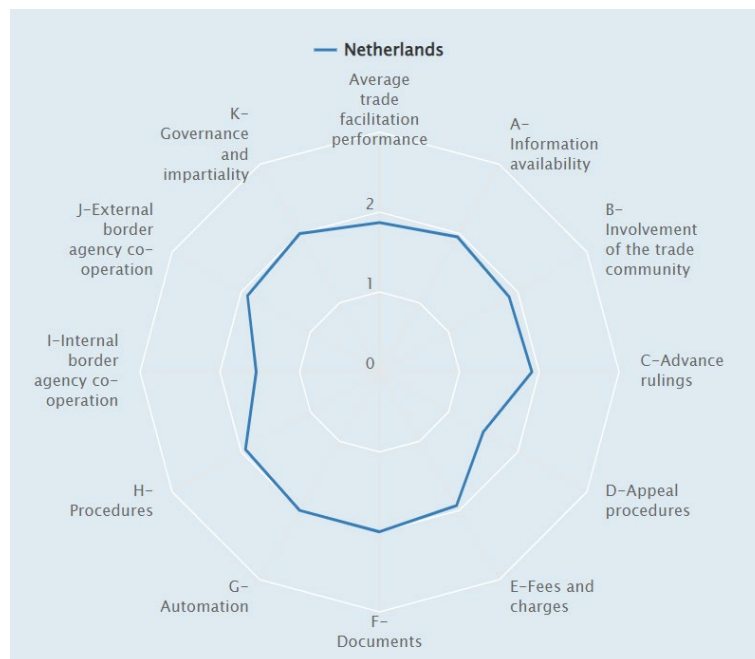


Figure 1: Trade Facilitation Profile The Netherlands

Source: <https://www.compareyourcountry.org/trade-facilitation/en/1/default/NLD/default>

We can also look at ways to evaluate the execution of some of the customs mechanisms. I will present the somewhat limited research that has been done into some of the elements in the toolbox of Customs.

Chan et al (2015) discuss the usefulness of HS codes for the monitoring of wildlife trade. They conclude that this system is inadequate for this societal purpose. Similar studies look at fish (Cawthorne & Mariani 2017), or timber (Datta et al 2020), or expand their view to the entire spectrum of illegal trade (Andersson et al 2021) with similar outcomes. In other words, if HS codes are used for another purpose than what they were designed for, they fall short.

The assessment of value for customs has received much less attention than the discussion on for instance, transfer prices in other areas of taxation research. The basic premise for customs value is that is evaluated on a transactional basis. However, a large part of the border crossing flows are part of supply chains and logistics solutions that result in a sound determination of customs value, that, however, not always translates in a predictable way to customs value at the shipment level. This will result in a lot of unnecessary work to still determine a customs value for a shipment at the moment of border crossing. Recently the problems emerging in the enforcement of international e-commerce have renewed the attention for the possibilities to determine (customs) value of goods objectively. Delissen (2020) analysed e-commerce value data for 2019 from Dutch Customs, and concluded that

Customs has the possibility to assess values for e-commerce shipments if the sales price and gross weight are available. He developed AI tools that reach a 91% accuracy in predicting customs value. Sales price, as well as the right product weight is not commonly collected by Customs. The collection of this type of information from some party in the complicated e-commerce chain would seem reasonable, given the value determination doctrine that is based on the GATT agreement on valuation⁴. On another issue, Ramaen (forthcoming) is looking in the way Customs valuation can be adapted to encompass circular economy developments. Her paper will be presented at the forthcoming WCO Picard conference.

Another crucial piece of information for the determination of the right tariff and therefore the payable duties, is the origin of the goods (see for some background Benton & Imagawa 2005). Verification of origin is commonly done with a so-called origin certificate. This certificate formalizes the correct application of origin rules that are usually written down in free trade agreements between countries.

Origin verification plays a role in two ways: preferential origin is the determination of origin for the application of trade preferences – a lower or zero tariff in most cases. Non-preferential origin is the determination of origin for the purpose of quota, sanctions, and other trade-restricting measures.

From an enforcement point of view, the origin certificate is always suspect, because it is issued by a foreign party (see also Valantiejus (2016) on legal unclarities related to origin certificates even within the EU). The European Union has therefore developed the Registered Exporter System to replace origin certificates from all kinds of countries. REX is applicable since 1 January 2017. This greatly facilitates repeat trade, because the exporter is now certified, and not all individual shipments have to be certified. The REX system imposes strict rules of application⁵, which still do not solve the first mentioned issue of the legal uncertainties.

In many parts of the world, Customs supports a mechanism for transportation under customs supervision: transit (see for an overview Kanuka and Carruthers 2014). This is a system where a shipment has to be announced as transit (with a special document or registration) and where at the destination, the transit registration has to be cancelled again. Eventually Customs will want to match start and end for all shipments under customs supervision, including the shipments that went across the border. While this may sound simple, it is not that straightforward in many parts of the world. It requires agreement on procedures, mutual recognition of processes, and a certain swiftness of communication. Groenendijk (2018) reminds us that the digitized system for transit in Europe (NCTS) was largely driven by the substantial problems with fraud and crime under the then paper based transit system. In addition, she also points out the digitization has not removed differences in application of the system, with regard to the inclusion of VAT (or not), requirements of HS codes, and the need for (physical) fiscal representation when presenting documents to some Customs agencies.

All in all, the conclusion at this point that the mechanism Customs has at its disposal are largely adequate, even if they might not serve other purposes. Application is not always perfect, and harmonization across Customs organization leaves a lot to be desired. But these mechanisms do offer substantial benefits in terms of the facilitation of trade, and therefore support the growth of regular global trade.

In the next section we will look at some new challenges in our globalized world. Here much is expected of customs, but in many cases, supervising regular trade is only one part of the task.

⁴ See for an entry into this topic https://www.wto.org/english/tratop_e/cusval_e/cusval_e.htm

⁵ PWC news and insights 20 April 2020 'Practical issues with REX statements [..]'

New responsibilities for customs

Given that the changes in our global environment are many, we have selected three specific cases that exemplify the new challenges, and expect supervision activities from Customs. We look at the way in which Customs can be expected to fulfil these obligations with the mechanism we discussed above. We will discuss regulation on fluorinated gasses, the Carbon Border Adjustment Mechanisms, and the Due Diligence in Global Supply Chains below.

Fluorinated gasses

While the Paris Climate accord gave great weight to CO₂ as a greenhouse gas, our understanding of greenhouse effects has taken great strides in the meantime. Some other gasses are having a much greater impact on the greenhouse problem than CO₂. Fluorinated gasses, or F-gasses, is one such category. F-gasses have a greenhouse effect that is 25.000 times larger than CO₂.

The European Commission has therefore developed regulation to control the use of these so-called F-gasses. Recently (April 2022) a legislative proposal has been forwarded to the Council and the European Parliament. This new proposal will amend the current regulation (EU) 517/2014. The purpose of the new proposals will be to reduce the usage of these F-gasses in the EU by two-thirds in 2030. This will be done in a step-by-step way.

Focusing on international trade in products that contain F-gasses, the main implementation mechanism is a quota system with reduced ceilings going forward to 2030. Furthermore, the regulation proposal applies these quotas to products that are placed on the market (and they equate this specifically to bringing goods in free circulation in the proposal)⁶. The proposal describes the approach for assigning quota, and states that subsidiaries of the same beneficial owner will be considered as one party. The exchange of quota is permitted between active importers. There will be a separate F-gas portal for quota allocation, licensing and reporting obligations. This portal will be connected with the European Single Window for Customs.

Parties that have applied and received for a quota will receive a license which needs to be presented to customs for every shipment. Customs agencies, or other competent authorities, are tasked to perform certain seizures (for instance of non-refillable containers) and prevent re-exporting of unlawful products containing f-gasses. Certain trades, involving parties in countries that are not part of the F-gasses treaty, is also banned.

This regulation expects that Customs acts at the border very much at the shipment level. Some shipments need to be seized right away, shipments from non-signatory countries need to be stopped, and for every shipment, the presence of a proper license needs to be verified. At the same time, the regulation also introduces a quota system with a registration requirement on an annual basis, and with the added complexity that quota may be traded between licensed parties. This registration will be done in the F-gas portal, which will get a link into the European Customs single window. Finally, there might be another authority involved that is tasked with the broad supervision of the use of F-gasses (storage, transportation and use in manufacturing) by businesses. For instance, in the Netherlands, this role is attributed to the Inspectorate for Transport and the Environment. They perform the risk analysis that also drives activities of Customs. This agency is part of the Ministry of Economic Affairs, while Customs falls under the responsibility of the Ministry of Finance.

⁶ European Commission, Legislative proposal, page 12.

This supervision construct for F-gasses, and the way it will be implemented in various countries generates a number of questions and challenges. First of all, will customs agencies in the Member States be able to verify the available allowance on a quota for an individual party in such a manner that they can stop goods based on overspending of the quota? Given that the role of Customs is actuated if and when goods are brought in free circulation, Customs will have to rely on another competent authority who is tracking the goods in a more generic way and who is also performing the risk assessment. In principle, this agency should trigger the involvement of Customs at the right time, and provide Customs officers with the right information to act on.

Second, Customs agencies in the EU will have to rely on information coming from the F-portal, via the European Customs Single Window into their operational enforcement information systems. While this might work in theory, in practice, this requires a lot of work. Specifications of the data links need to be made and these need to be made specific for national customs IT systems, agreements on data formats need to be in place, and so on. Current problems with the Customs Single Window system are not yet properly addressed, let alone adding new functionalities such as the quota registration system across the EU.

In summary, this regulation introduces new dependencies between Customs agencies and other competent authorities, and it introduces a new reliance on a quota registration system that requires a closer integration of shipment level enforcement and periodic quota monitoring. In addition, the requirement to enforce only at the moment of bringing goods in free circulation may create an opening of the physical movement of goods into the EU territory that seriously hampers proper enforcement of this particular type of product.

Carbon border adjustment mechanism

A major mechanism to reach global sustainability goals is the charging or taxation for CO₂ emissions. In Europe, this will be implemented in various ways, but the European Trading Scheme (ETS) for CO₂ is a main pillar⁷. This mechanism will introduce charging for CO₂ for products resulting from economic activities in the EU.

The challenge is that the EU is not a stand-alone area in the world. It is connected to the rest of the world via trading relationships. That means that there are possibilities to bring goods into the EU-ETS area without having to pay for the CO₂ that was generating during manufacturing outside the EU. This also creates the potential for businesses within the EU to move production outside the EU. This so-called carbon leakage problem has sparked an additional regulatory initiative.

The way to resolve the carbon leakage problem is to introduce a charging procedure at the outer border of the EU common market, similar to the EU-ETS approach. This idea was introduced in July 2021, and on 15 March 2022, the European Council reached a general agreement on the CBAM regulation. The gist of this general agreement is that it will be introduced, for some specific industries: cement, iron and steel, aluminium, fertilizer, and electric energy products and organic basic chemicals.

The regulation is still subject to negotiation between the main regulatory bodies in the EU, but some elements are already clear⁸. There will be great reliance on Customs agencies, since this regulation requires action at the border. The general approach is as follows. CO₂ charging will be based on some assessment of the amount of CO₂ emissions related to the amount of goods. For these emissions, a

⁷ See https://ec.europa.eu/clima/eu-action/eu-emissions-trading-system-eu-ets_en

⁸ This discussion is based on the draft regulation 2021/0214 (COD) 7226/22 dd 15 March 2022. 'Draft regulation of the European Parliament and of the Council establishing a carbon border adjustment mechanism'.

CO₂-price will be applied. Parties importing goods under the CBAM regulation need to become a so-called CBAM declarant. Parties can also rely on a CBAM declarant that performs the declaration duties or provides the CBAM certification on their behalf. This can be verified by Customs agencies at the border, or at the point of bringing goods in free circulation. There will be a so-called cap and trade system for CO₂ right, which means that parties can exchange their CO₂-rights with other licensed parties. It will probably be the case that parties have to account for their CO₂-rights related to shipments on an annual basis. This burden is put on the CBAM declarants, including those that declare embedded CO₂ emissions on behalf of others.

The main issue in the regulation is the assessment of the embedded CO₂ in products. Current calculation methods (see for instance the Greenhouse Gas Protocol) distinguish various types of direct and indirect CO₂ emissions (scope 1, 2 and 3). Calculation of all these types is still being discussed, but there is also debate on which types will fall under the CBAM declaration. The main idea in the proposal at this time is to link verified CO₂ emissions to product flows according to their HS codes. These so-called verified emissions should be verified by nationally accredited parties. In Annex 3 of the proposal, the concept behind 'embedded' CO₂ is clarified. It is based on direct emissions of the last stage of production before entering the EU market, plus the direct emissions related to the input materials for that production step. This means that the CBAM application is restricted to a single supply chain component outside the EU, or in supply chain terms, the first tier supplier.

A somewhat unfortunate ambiguity in the regulation is created by defining the carbon leakage as the risk that European business will move activities outside the EU. Given that carbon leakage is currently mentioned as the main reason for developing CBAM, it becomes vulnerable to a discussion on the likelihood of moving businesses. This detracts from the actual point of the regulation, which is to support the sustainability goals in 'Fit for 55'. In this sense, the definition of carbon leakage is too narrow. A CBAM mechanism needs to be in place as soon as the EU actually starts charging for CO₂ emissions within the common market, regardless of the risk of businesses looking for manufacturing activities outside the EU. The WTO compatibility of this regulation might play a role in this particular formulation as well.

Reviewing the role of Customs: their primary role seems to be to verify the role of the CBAM declarant. This task is triggered based on a customs instrument, namely the HS codes of specific products. Customs is not tasked with the verification of embedded CO₂ in products. There are added complications, however. Goods might be brought under suspension regimes, in which case, the charging for CO₂ can be postponed. In this case, it is not entirely clear who will supervise the proper charging of CO₂ rights at that point in time. There are also other complications for charging, since there can be exceptions for emissions outside the EU for which ETS rights have already been paid.

A second expectation in the regulation is that Customs will perform their regular tasks of assessing correctness of the goods declaration (amount, value, HS code) as a basis for the correct charging of CO₂ emissions. It is questionable if this can be done without increasing the burden of Customs' normal activities on trade.

All in all, new roles for Customs in this regulation seem to be fairly limited to two tasks: verifying the CBAM declarant status, and informing parties in the transition period. This is surprising since the structure of the regulation (charging, *de minimis*), the identification of goods, the use of periodic declarative systems, and the use of regular customs suspensions regimes play an important role. These are all familiar Customs mechanisms and the regulation thus relies very much on the competences of customs agencies to secure the correct informational basis for charging for CO₂ emissions. It remains unclear how this is related to the more periodic declarative system that is also

mentioned in the regulation. Will customs add its received data to this system, or will parties do that themselves, even if they do not use the periodic registration?

What possibly complicates things is that the formal sanctions for incorrect information or fraud do not lie with Customs but with the competent authority for the ETS and CBAM mechanisms. This competent authority will also supervise the verified embedded CO₂ data that parties will supply to Customs. This requires data on infringements to flow from Customs to competent authorities. How this is envisaged is not clear yet.

Due diligence in global supply chains

The collapse of the factory in Rana Plaza, Bangladesh sparked a new debate on the need to enforce responsible working conditions and practices in global supply chains. Some rules were already in place to prevent products manufactured with child labour or slavery, for instance, but the Rana Plaza incident brought a new immediacy for many policy makers. As a result of this, in Member States of the EU, much more regulation was introduced on working conditions, responsible mining, child labour, environmental practices, such as forest clearance, and so on.

The problem is, however, that this regulation is not harmonized across countries. An EU Member of Parliament, Lara Wolters, in her role as rapporteur for the legal affairs committee in the European parliament kick started a discussion to integrate this type of legislation under the heading corporate due diligence and corporate accountability. This proposal, that was adopted in the committee in February 2021, calls for the European Commission to draw up the appropriate regulation for responsible practices by businesses in their (international) value chains.

This initiative resulted in a proposal for regulation from the European Commission in February 2022 called the 'Corporate Sustainability Due Diligence Directive'. This directive extends the duties in the already existing 'Corporate Sustainability Reporting Directive' in the sense that now prevention and mitigation is also compulsory. In addition, the regulation will introduce a monitoring and complaints mechanism, which means that inferior practices can be highlighted to authorities. Finally the regulation is restricted to the value chain, because for other corporate responsibilities other regulation is already in place.

The main mechanism to enforce this regulation will be the installation of a competent authority in each Member State. A relevant question in the context of this paper is: could a national Customs agency be this competent authority? In other words, would it make sense to apply some of the instruments that are part of the toolbox of Customs to this regulation?

To be clear, the regulation does not contain any indication that there might be reliance on Customs, like was the case for CBAM. At the same time, this would make sense because the regulation essentially wants companies to become more responsible for the origin and manufacturing of the products they bring into the European market. Customs could play a role to perform spot checks at the border, seize products that are a clear infringement of the regulation, and collect information on the accuracy of reporting by the various companies. Also, in some of the high impact sectors that are named in the regulation (apparel manufacturing, food, trading in raw agricultural materials such as wood, minerals) Customs is already enforcing specific regulation such as the need to certify products, quota and preferential treatment. Finally, the existence of borders does play an explicit role in the regulation. There is a discussion on level playing field between the common market and third countries, as well as the recognition that businesses have a border-crossing presence in the world, that they may use to *choose* applications of responsible business rules.

While the contribution of Customs discussed in the previous paragraph seems straightforward, Customs will probably not play a role in the supervision of the main instrument of the regulation: the due diligence efforts of businesses. Customs agencies also perform audits in companies, but their expertise usually does not extend to corporate policies such as due diligence in developing business relationships.

One of the main ideas in this regulation is to force companies to take responsibility of activities at the beginning of their supply chains. Customs do have one mechanism that has a similar purpose, and that is the statement on the origin of the goods. Just the verification of origin, in the Customs/Free Trade Agreement sense, however, is not enough for the purpose of this regulation. Origin might not be the real starting point of the supply chain, but the point where the most economic value is created. This could be a point anywhere in the supply chain. This is an indication that the Customs does not have effective instruments to support the enforcement of the full scope of this regulation.

At this stage, the conclusion has to be that the regulation, and especially implementation guidelines, are not yet detailed enough to clearly formulate or evaluate the role of Customs in the enforcement of this Corporate Sustainable Due Diligence Regulation.

Recommendations going forward

Customs agencies have some powerful tools at their disposal to supervise the information on the movement of goods across borders. These tools are designed for interference with the goods flow at the moment of border crossing. Some of the previous research on these tools shows that they are not easily applicable for situations they were not designed for.

We have reviewed three pieces of regulation in the EU where border crossing is the trigger point for enforcement. These three cases differ substantially in their reliance on Customs to perform the supervision. The F-gases regulation puts a lot of weight on Customs agencies. The CBAM regulation takes its main structure from the operations of Customs, but attributes only limited responsibilities to Customs. Finally, the Corporate Sustainable Due Diligence regulation does not mention Customs at all even though the regulation is about the responsible border crossing flow of goods.

All three cases reveal both the power of the role of Customs (as a border enforcement agency) and its weakness. The latter refers to the fact that all these three regulatory developments require not only the supervision at the border, but also supervision at the product level or of business behaviour. For this, usually other competent authorities will have to be identified, that then have to cooperate with Customs. This need to share information, and share enforcement responsibilities (one agency identifies infringement, and the other then imposes penalties) creates substantial challenges in developing effective supervision mechanisms.

We observe, however, that this type of combined responsibilities on border crossing activities and product of business related behaviour is probably here to stay. All the responsible business and environmental regulation seems to go into this direction. This means that Customs agencies have to further develop their competencies to cooperate with other agencies, at the very least (this is echoed in the Wise Persons Group 2022 report). In some cases, Customs agencies might invest in product specific knowledge in order to bring that into their enforcement operations. Finally, Customs agencies might consider to develop new tools, as extensions of their current tools, such as company audits or chemical analysis in laboratories to verify origin, to extend their contribution to new regulation. This would contribute to the execution by Customs of systems based supervision.

We would also like to emphasize, however, that in much of the new legislation, it seems to be taken for granted that some supervision will have to take place at the border. . There might be alternatives

to this that are potentially more effective way to achieve the legislations' goals, and create less hindrance for global logistics.

A final word on the role of Customs as a transaction based supervision agency. The Wise Persons Group in the EU has as one of its points of analysis that this transaction based approach needs to be replaced by a systems based approach. We take issue with the word 'replaced'. We suggest this should much more develop towards a complementary use of the transaction and system based approaches (for the same flows of goods). Only then can the EU really achieve the goals it sets out in regulation such as the Corporate Sustainable Due Diligence regulation, where business practices can be improved based on system based supervision, but some pressure can be exerted through the transaction based approach. The key is in the combination of the two.

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