

**MEMORIAS DE LA REUNIÓN MUNDIAL  
DE DERECHO ADUANERO - BRUSELAS**



International  
Customs Law  
Academy

EDITORIAL  
**TEMIS**  
OBRAS JURÍDICAS

MEMORIAS  
DE LA REUNIÓN MUNDIAL  
DE DERECHO ADUANERO  
(BRUSELAS)

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## PROLOGUE

The effort carried out over 10 years by the International Customs Law Academy (ICLA) and especially by its president, Professor Andrés Rohde Ponce, has led to many results that are visible and tangible nowadays:

1. The meeting of academics within Hispanic-American scope and the interrelationship between them had not been possible until 2005. This convocation, which has expended nowadays even by non-Latin American and Europeans, has allowed the possibility of academics to meet, to present their work, to exchange ideas and experiences, to participate in various sessions, seminars, symposiums, etcetera, and to reflect and deliberate the aspects that comprise the reality and influence the advent of Customs Law and global trade.

2. To become the International Academy of Customs Law ICLA a global academic organization. The work done has turned the ICLA in a global academic reference heard in the most important scenarios (for example, the global meetings at the World Customs Organization WCO headquarters in 2013, the United States Court of International Trade Organization WTO headquarters). Thus, the most important organizations have not only opened the doors to the ICLA but they look forward to ICLA academic output.

3. The Customs doctrine. Before the ICLA creations, the academic output was scarce, mainly local and little diffused. Now we have more debates and issues to consider on.

For such reasons, we celebrate that Temis (one of the most important publishing companies in America) has agree to release the memories of meetings at Brussels and New York. Temis has published many authors in various legal disciplines as Uruguayan professor Ramón Valdés Costa, Ecuadorian professor José Vicente Troya, Spanish professors Eduardo García de Enterría and Tomas-Ramón Fernández, and Italians professor Víctor Uckmar, Oreste Raneletti and Andrea Amatucci. We are proud of our work with Temis Publishing House which, with no doubt, constitute part of the most important current doctrine in Custom Law and trade issues.

Also, the accurate words of professor Rohde Ponce demonstrate our point when he said that it is not more true that there is no doctrine around

the Customs Law, and that this doctrine has no form to be known. Surely, the academic effort of those who wrote and Temis Publishing House will serve to promote the study of these subjects at University level, and to ensure that anyone interested in this topic will be able to acquire it easily. Trade these multilateral fields produce legislation with binding content and also with quality of “soft law”.

The last meeting held at the WCO headquarters in 2013 enable to analyze some of the Customs Law instruments that have emerged or are being negotiated. There are papers, for example, related to the legal principles of the modernized customs control in the cross-border traffic; the impact of administrative assistance in customs agreements; the trade security through the knowledge of the supply and logistics chain; the harmonized customs regulation and customs clearance; risk management, special customs procedures, containers, shipping and customs compliance issues. They all point to the need to combine trade facilitation with legal certainty, harmonized regulations, and the establishment of mechanisms that encourage the study and the creation of skills and capabilities to develop the custom function.

On the other hand, the New York meeting in 2014 served to highlight some aspects related to trade facilitation, especially after twenty years of the Marrakesh Agreement. Here we discussed, among other issues, the role of the United States Court of International Trade, case law on unfair competition in world trade practices, foreign trade authorities, risk policies, management, customs principles as equality and fairness, and best practices.

We hope to be this the opportunity to express our joy for being part of this big project, to thank all the institutions that and help the ICLA work and in particular to recognize the ICLA’s president work. We also thank Temis Publishing House for hosting our work and allow us to welcome these new books collecting the memories of the ICLA meetings.

GERMÁN PARDO CARRERO

## PRESENTATION

The conditions under which customs laws and regulations were issued and enforced in the 20th century were quite varied and polarized, as they attempted to span the full spectrum of political, economical, social, and juridical thinking.

In the political arena, the world suffered two World Wars that devastated the population, economies and infrastructure of the planet's most developed countries. The world also suffered the effects of the *Cold War* between two blocs, the socialists around the Soviet Union and the capitalist group of Western Europe, the United States, and Japan, not to mention the division of the German nation into two states, each attached to one of the blocs. The world developed along the last 25 years of the century with the collapse of the *Berlin Wall*, a symbol of the demise of the two blocs, and the reunification of Germany, which also signaled the rebirth of German power and the establishment of democratic regimens in a large segment of the planet's countries. Lastly, in this century we are facing the rise of *terrorism*, inflicted not by states but by individuals and groups, which has hurt the civilian population of many cities including New York, London, Madrid, Buenos Aires, and others.

Economically speaking, the last century witnessed the great depression in the United States, as well as the reconstruction of Europe, which created the European Union as a major arena for integration not only of trade but also of financial, currency and economic aspects; add to this the abandonment of protectionist policies in favor of liberal policies that, in the trade arena, translated into the application of the principles of *free trade* and the consolidation of institutions such as the World Trade Organization and World Bank. And what can we say about the unstoppable invasion of international markets by China, both to flood nations with their low-priced products and to demand from them enormous amounts of raw materials to serve the Chinese local consumer market and its industries.

On the social sphere, two phenomena had an undeniable impact on world society: the increasing participation and empowerment of women, and the surging development of technology. The growth of women to lead core changes in the family unit, in the management of corporations, in political trends, in the issue of public policies, and in worldwide production and consumption patterns. The rise of technology made the world smaller thanks to telecommunications; it enable major change in world economies

and markets, and provided individuals, corporations and governments with real-time, complete information, along with new products and instruments enabling enhanced decision-making, notably decisions relating to the regulation of international trade.

The practice of Law also was forced to abandon its status of the past, largely based on the ideas of the 18th century.

The 20th century witnessed the metamorphosis of Law through the rise of global juridical standards, that is to say, a framework in which neither identifies with or supersedes the internal laws of each country, or merely comprised of a series of international treaties which, rather than leading to closer collaboration among the legal systems of the various countries, tended to keep states apart due to the enforcement of international and constitutional principles that allowed allegiance to, and application, of compartmentalized spheres separate from those two types of standards and regulations. Thanks to the principles of immediate incorporation and direct enforcement, unexpected juridical effects and interventions occurred that led to the rise of a class of legislation which created obligations and rights for the entire world population, bringing back to the limelight the international agreements on human rights.

This very short and quick summary enables us to see that the customs laws regulating customs activity within states with the purpose of controlling the cross-border traffic of means of transportation, individuals, and goods have been implemented in both ends of the political, economic, social, and juridical spectrum, and precisely due to this, the customs laws have also undergone substantial transformation from closed, police-like and tax-driven customs agencies into institutions open to the user and focusing service, which seek trade facilitation and also protect the health and security of the population. It has been a transition from a highly bureaucratic customs agency to a modern and electronic institution that expressly and forcefully contributes to the foreign-trade competitiveness of each of the states.

In this work, which compiles the research of several customs jurists from several countries around the world and with various legal system and languages, we share analyses and studies that strongly highlight the causes of the previously summarized phenomena and their effects on Customs Law.

The *International Customs Law Academy*, an international association comprised of customs jurists from all corners of the world, is pleased to share with readers —both professional and academic— the fruits of the Ninth and Tenth meetings on Customs Law held in 2013 hosted by the World Customs Organization in Brussels, and in 2014 by the *United States Court of international Trade* in New York. We duly extend our appreciation to our hosts, for facilitating the stay of attendees to both events.

This book joins the extensive reference library that has appeared in the last ten years, thanks to the intensive and generous research and analysis of our Academy members — to whom I extend my deepest appreciation. It is an avenue for the doctrine to contribute to an enhancement of customs practices leading to increased international trade, and thus to increased production and well-being for all nations, especially for less-developed countries.

ANDRÉS ROHDE

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## THE ROLE OF CUSTOMS SCHOLARSHIP IN CAPACITY BUILDING

DAVID WIDDOWSON

## 1. BACKGROUND

National authorities and international bodies such as the World Trade Organization (WTO) and World Customs Organization (WCO) are under increasing pressure from the international trading community to facilitate the cross-border movement of goods. A major catalyst for reform is the increasingly complex nature of international trade, resulting from the highly integrated and interdependent nature of modern supply chains and the associated trend towards cross-border investment. In an environment in which the term 'global marketplace' has become commonplace, the importance of harmonised, simplified and efficient cross-border regulation has never been greater.

For some years, a major focus of the international customs community has been the development and implementation of regulatory instruments designed to achieve a globally consistent approach to the regulation of cross-border trade in order to achieve the high level of trade facilitation being sought by both government and industry alike. In order to achieve the outcomes being sought, three basic requirements must be fulfilled: the need for a comprehensive international regulatory framework; the need for consistent interpretation of the framework; and the need for a consistent application of the framework.

The significance of these three basic requirements was raised in the context of the WCO SAFE Framework of Standards to Secure and Facilitate Global Trade—the 'SAFE Framework'—(WCO 2007) at the 2008 WCO Asia Pacific Regional Heads of Administrations Conference in New Delhi, where it was noted that consistent interpretation and application of the Framework represented critical elements in the achievement of mutual recognition of member administration's programs (WCO 2008).

Such consistency is a fundamental requirement of the international trading community, which is seeking a high degree of certainty and clarity in its dealings with government<sup>1</sup>. This proposition has been reinforced by the World Economic Forum (2008), which comments, "professionals view the friendliness of border processes primarily in terms of the transparency and the predictability of clearance procedures" (págs. 54, 55). De

<sup>1</sup> See for example Widdowson 2007

Wulf & Sokol (2005) make the point rather more bluntly when commenting on the role played by Customs in meeting an economy's international obligations, noting that "travellers, businesses, and international air, sea, and land carriers expect services that are uniform, predictable, easy to use, and consistent with international standards and conventions" (pág. 8).

## 2. INTERNATIONAL RESPONSES

According to the International Organization for Standardization (ISO 2013), "A standard is a document that provides requirements, specifications, guidelines or characteristics that can be used consistently to ensure that materials, products, processes and services are fit for their purpose ... they are strategic tools that reduce costs by minimizing waste and errors, and increasing productivity. They help companies to access new markets, level the playing field for developing countries and facilitate free and fair global trade".

The ISO further describes international standardisation as follows (ISO 2013a):

When the large majority of products or services in a particular business or industry sector conform to International Standards, a state of industry-wide standardization can be said to exist. This is achieved through consensus agreements between national delegations representing all the economic stakeholders concerned - suppliers, users and, often, governments. They agree on specifications and criteria to be applied consistently in the classification of materials, the manufacture of products and the provision of services. In this way, International Standards provide a reference framework, or a common technological language, between suppliers and their customers - which facilitates trade and the transfer of technology.

In a similar vein, cross-border regulatory standards emerge when economies reach agreement on the policies and procedures to be applied consistently to the regulation of international trade, transport and travel. Numerous examples of international regulatory frameworks, both binding and non-binding, exist in the form of conventions, agreements, guidelines and the like, which seek to establish global standards in their particular area of relevance, including those established by the WTO, WCO, the UN Conference on Trade and Development (UNCTAD), the UN Economic Commission for Europe (UNECE) and the International Chamber of Commerce (ICC).

The importance of international standards in the context of world trade is highlighted by reference to the work of the International Maritime Organization (IMO). According to the IMO, it "has made it a practice to pursue the universality of regulation in shipping without detracting from regional practices. As ships move between different waters and jurisdictions, it is imperative that they are governed by uniform standards, applied to and recognized by all...international standards - developed, agreed, implemented and enforced universally - are the only effective way to regulate such a diverse and truly international industry as shipping" (United Nations 2008).

The Harmonized Commodity Description and Coding System (HS) is another good example of a legal doctrine that is specifically designed to facilitate international trade. The HS, which was developed by the WCO, is essentially a set of clearly defined rules and procedural steps through which the nomenclature for any given product can be determined. The international convention that governs the HS is the International Convention on the Harmonized Commodity Description and Coding System<sup>2</sup>. The HS provides governments and the international trading community with a means of achieving international uniformity in the classification of goods, and has been adopted by over 200 economies, which use it as the basis for their national customs tariffs. Its universal acceptance is evidenced by the fact that more than 98 per cent of internationally traded goods are classified in terms of the HS<sup>3</sup>.

As comprehensive a framework as it is, the HS cannot be expected to achieve its desired outcome of simplifying, harmonising and standardising the cross-border movement of goods through international uniformity in classification in the absence of a globally consistent interpretation and application of the framework. In other words, manifestation of the significant policy outcomes that are rigorously debated, negotiated and agreed at the international level is wholly dependent upon implementation of the policy in a globally consistent manner.

## 3. NATIONAL INTERPRETATION

As noted above, adoption of the HS is almost universal. As such, the legal framework which the HS represents has a clear capacity to

<sup>2</sup> The International Convention on the Harmonized Commodity Description and Coding System was adopted in June 1983 and entered into force in January 1988.

<sup>3</sup> See <http://www.wcoomd.org/en/topics/nomenclature/overview/what-is-the-harmonized-system.aspx>.

achieve international uniformity in the classification of goods. However, the establishment of international regulatory standards does not necessarily result in high levels of consistency of interpretation among the relevant member states, as reflected in their national legislation. In the customs context for example, significant inconsistencies can be observed in the way in which the provisions of the Revised Kyoto Convention (WCO 1999) have been interpreted, generally due to the diverse range of policies and procedures to which the Convention relates. In relation to national adoption of the international standards for issues of a more technical nature, however, it is common to see a much higher level of consistency of interpretation, and this applies to national interpretation of the HS and other 'bread and butter' aspects of international trade regulation such as customs valuation<sup>4</sup>.

The high degree of consistency in interpretation of the HS can be attributed to the relatively stringent nature of the legal obligations of Contracting Parties. The provisions of Article 3, for example, bind Contracting Parties to adopt the HS without change, requiring the customs tariff and statistical nomenclatures of the country to be in full conformity with the HS as is. In this regard, apart from certain exceptions that apply to developing countries, all Contracting Parties must undertake:

- to use all headings and subheadings of the HS without addition or modification, together with their related numerical codes;
- to apply the General Rules for the interpretation of the HS and all Section, Chapter and Subheading Notes, and not to modify the scope of the Sections, Chapters, headings or subheadings; and
- to follow the numerical sequence of the HS.

Indeed, the only amendments that may be made by Contracting Parties are "such textual adaptations as may be necessary to give effect to the Harmonized System in its domestic law", provided they do not affect the scope of the headings or subheadings. To ensure transparency and to provide a further degree of global uniformity, Article 3 also requires Contracting Parties to publish their trade statistics in conformity with the HS six-digit codes. The Convention does, however, allow for the introduction of further subdivisions in domestic tariffs beyond the level of the existing HS subheadings in order to cater for particular national policy requirements.

<sup>4</sup> The World Trade Organization's Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (GATT) 1994, generally referred to as the "WTO Valuation Agreement".

Due to the carefully constructed nature of the HS with its clearly defined, albeit somewhat complex, rules and procedures, an extremely high degree of consistency can be observed across the national legislation of those 200-plus economies that have adopted it. Two of the three elements essential to achieving a globally consistent approach to the regulation of cross-border trade are therefore apparent in the case of the HS, that is, a comprehensive international regulatory framework and consistent interpretation of the framework at the national level. The final element then remains the need for a consistent application of the framework by the national administration.

#### 4. CONSISTENT APPLICATION

The achievement of such consistency is heavily dependent upon the capacity of an administration and of the individuals within the administration to effectively and uniformly apply the relevant regulatory provisions, and this is an aspect of implementation that is often ignored. Eland (2008) puts this quite succinctly when he says "Capacity building is about delivery. It is no good us concluding instruments in international meetings if we are then unable to implement them effectively".

The Doha Ministerial Declaration and subsequent decisions of the General Council of the WTO have sought to intensify international commitment to further expedite the movement, release and clearance of internationally traded goods, including goods in transit. The success of the trade facilitation agenda is heavily reliant on the ability of customs administrations to achieve an appropriate balance between international trade facilitation and regulatory intervention, particularly in the current climate of heightened international security concerns. Of particular note is the WTO's formal recognition that this cannot be achieved without significant technical assistance and support for capacity building, particularly in respect of developing and least developed countries<sup>5</sup>.

The WTO, WCO, World Bank and many other international organisations (as well as individual developed countries) have pledged their commitment to providing technical assistance and support for such capacity building, recognising that developing countries comprise the majority of the WTO membership, with over three quarters of WTO

<sup>5</sup> See for example Widdowson, David 2005, *International Trade Facilitation: The Customs Imperative*, a paper presented to the APEC Workshop on the WTO Trade Facilitation Negotiations, Kuala Lumpur, March 2005

members identifying themselves as such<sup>6</sup>. The extent of the required assistance to achieve widespread reform is therefore significant, and should not be underestimated. The agreed modalities for negotiations on trade facilitation highlight this point:

As an integral part of the negotiations, Members shall seek to identify their trade facilitation needs and priorities, particularly those of developing and least-developed countries, and shall also address the concerns of developing and least-developed countries related to cost implications of proposed measures.

It is recognized that the provision of technical assistance and support for capacity building is vital for developing and least-developed countries to enable them to fully participate in and benefit from the negotiations. Members, in particular developed countries, therefore commit themselves to adequately ensure such support and assistance during the negotiations<sup>7</sup>.

Despite the increasing unlikelihood of success of even the trade facilitation elements of the WTO negotiations, capacity building considerations remain firmly on the agenda. In this regard, an economy's ability to comply with the trade facilitation proposals is seen to fall into three basic categories: those which can be implemented immediately; those requiring time to implement; and those for which both time and capacity building support are required.

The SAFE Framework, mentioned previously, also identifies capacity building as a critical element for its effective implementation, and the WCO recognises that, "While certain aspects of this instrument can be implemented without capacity building, it is recognized that many administrations will need assistance to implement the standards" (WCO 2012, pág. 2). In this context, the SAFE Framework contemplates appropriate assistance with capacity building for those customs administrations that adopt it.

Following the adoption of the Framework of Standards, the WCO initiated a significant capacity building program, the Columbus Programme, which was specifically designed to assist members to effectively implement the Framework and related international obligations. The significance of the Columbus Programme lies in the sheer size and extent of its application. The Programme is comprised of three distinct phases:

<sup>6</sup> Estimate by the Economic Research Service, US Department of Agriculture <http://www.ers.usda.gov/Briefing/WTO/DevelopingCountries.htm>

<sup>7</sup> Annex D of the WTO General Council Agreement of 31 July 2004 (known as the 'July Package'), paragraphs 4 and 5.

a comprehensive diagnostic needs assessment of the current state of play within the customs administration; implementation; and monitoring.

Due to the broad scope of activities undertaken across more than 100 countries, the Columbus Programme provides a wealth of data from which conclusions can be drawn concerning actual and potential impediments to effective national implementation of global policy initiatives. The WCO analysis of the Columbus Programme has to date revealed a broad range of developmental needs among its members, ranging from those economies with minimal developmental needs and no requirement for external capacity building support, through to those requiring comprehensive technical assistance and capacity building support. Falling between these two extremes are economies which have already established the underlying infrastructure requirements, but require specific training and technical assistance, some of which also require assistance with policy development and change management support.

The fact that such comprehensive and, in some instances, quite basic developmental requirements have been identified in relation to this particular international regulatory framework is significant. These findings point not only to the need for extensive capacity building support requirements to implement the WCO Framework of Standards, but also a potential inability of many economies to effectively implement the numerous conventions, agreements and guidelines to which they have made an international commitment without firstly being provided with significant capacity building support. The HS is but one of many such conventions.

As a consequence, considerable effort has been made by the WCO to ensure that its member administrations are provided with the necessary capacity building support, and in doing so it has sought the assistance of academia.

## 5. PICARD

The reasons for academia's interest in customs matters are manifold, including the increasing complexity of the customs subject matter, the need for a more rigorous approach to customs training and development, the legalistic nature of many customs-related issues, a realisation that core customs topics such as the HS are sufficiently complex to warrant recognition of their mastery at graduate and postgraduate levels and, most importantly, an acknowledgement that Customs is a profession worthy of academic recognition.

Working closely with the WCO since 2006 through its Partnership in Customs Academic Research and Development (PICARD) program, a number of universities and research centres have developed academic courses and applied research programs in an effort to raise the academic standing of the customs profession. As a starting point, the development of management skills and competencies was jointly addressed by academia and the WCO in an effort to establish internationally consistent professional standards that are capable of recognition on a global basis.

According to the WCO (2008a), the primary objective in developing such standards is to “establish benchmarks which can be developed into job profiles for the purposes of customs recruitment; against which the in-house training of member administrations may be measured; and against which academic development can be designed or procured”. A further use to which the standards should be applied is performance assessment, whereby a determination may be made as to whether employees are meeting the knowledge, skill and competency requirements of their position. This is further discussed below.

The resultant standards (WCO 2008b), are now being used by several universities to develop and deliver educational programs which provide internationally recognised professional qualifications for customs professionals from both the public and private sectors. They focus specifically on the senior and middle manager, and support the WCO’s contention that “The role of Customs in the 21st century, as it faces the challenges posed by globalization, trade facilitation initiatives, and security concerns necessitates a renewed professional approach to the management and operations of customs administrations across the globe” (WCO 2008b, pág. 9).

Many customs administrations are now seeking to formalise their knowledge, skills and competencies through a series of partnerships with academia which not only address managerial and leadership standards, but also some of the more fundamental elements of customs practice such as the HS. For example, in the past few years Sri Lanka Customs has sponsored over 100 of its officers to complete a Master of Customs Administration through the Postgraduate Institute of Management of the University of Sri Jayewardenepura, in association with Australia’s Centre for Customs and Excise Studies.

## 6. PERFORMANCE STANDARDS

It is the author’s contention that the professional standards that have been jointly developed by the WCO and INCU should be integrated into

the organisational context of national administrations through the development of performance standards. Such standards should be established for each position within the administration, and officers should be appointed to a position only if they are assessed to have, or be capable of attaining, the necessary knowledge, skills and competencies to meet the established performance standards. Selection would therefore be based on a person’s assessed ability to perform the particular role proficiently, either at the time of their appointment or within a set period of time, given the opportunity to attain the necessary knowledge, skills and competencies through a structured learning and development program.

Officers should be expected to meet the performance standards relevant to their particular position, and such expectations would be articulated in performance agreements which should be based firstly on a person’s ability to perform their role proficiently and secondly on their assessed ability to further advance their career. Learning and development opportunities would therefore assist officers to both perform their role proficiently, and further develop their knowledge, skills and competencies in order to advance their career.

## 7. MILESTONES

The 2010 PICARD conference, held in Abu Dhabi, marked a significant milestone in the development of the partnership between the World Customs Organization (WCO) and the academic world. From the inception of PICARD, the collective aim was to raise the academic standing of the customs profession – but it was not always clear how this would be achieved. In early 2006, a small group of WCO officials and academics met to discuss possible ways forward. At that time, there were:

- no established standards for the customs profession;
- no recognised areas of legitimate academic pursuit in customs-related matters;
- no internationally recognised customs university programs;
- no academic journals dedicated to customs matters; and
- no international conferences at which the customs and academic communities could exchange ideas and research findings.

Following the 2006 meeting in Brussels, the International Network of Customs Universities (INCUCU) was founded, and at that time its membership was comprised of only four universities – it now has over 200



members and affiliates<sup>8</sup>. The idea behind INCU's establishment was to promote academic excellence in customs management and administration and in doing so, to provide the WCO and other organisations with a single point of contact with universities and research institutes that are active in the fields of customs research, education and training. It was also designed to generate greater public awareness of customs matters, to promote and facilitate research in the field of Customs and related areas, and to provide a global resource for governments, the private sector, and students wishing to further their knowledge in the field of Customs and international trade.

The INCU provides a mechanism for academic institutions and individuals to contribute to the customs and border management knowledge base and to exchange ideas and best practice that not only helps organisations and individuals to build capacity but also serves to build closer links between government, academia and the private sector. The INCU is now formally recognised by the WCO as representing its conduit to academia, with the Secretary General of the WCO, Dr Kunio Mikuriya, having been a supporter of the INCU from its inception.

The PICARD initiative was launched in the second half of 2006. At the first PICARD conference which was held in Brussels, there was plenty of lively debate, including discussion of the need to develop an international academic journal dedicated to customs matters, which some delegates claimed was too hard to achieve and excessively ambitious. Undeterred, the 2007 PICARD conference which was again held in Brussels, saw the launch of the *World Customs Journal*<sup>9</sup>.

At the time of the Journal's launch, Dr Mikuriya, who was then Deputy Secretary-General of the WCO, said, "I would like to commend the efforts of the INCU in providing customs professionals, academics, industry researchers, and research students with a medium through which to share insights and knowledge in the customs field ... I hope the World Customs Journal will grow as a valuable reference source for the customs community to meet the requirements of the new strategic environment and for the wider international community to deepen their understanding of the customs world" (Mikuriya 2007, p. v).

Moving ever forward, work commenced on the development of the Customs Professional Standards, which were debated at some length at

<sup>8</sup> For further information on the INCU and its membership base, see [www.incu.org](http://www.incu.org)

<sup>9</sup> For information about the World Customs Journal, see [www.worldcustoms-journal.org](http://www.worldcustoms-journal.org)

the 2008 conference in Shanghai. The Professional Standards were formally endorsed by the WCO at its 2009 Council Sessions and this paved the way to address the application guidelines and related matters at the PICARD conference that was held in Costa Rica later that year. Then, on 26 January 2010, World Customs Day, the WCO formally recognised the academic programs of three universities: Riga Technical University, the University of Muenster and the University of Canberra.

Consequently, at the 2010 conference in Abu Dhabi a number of significant milestones had indeed been reached: standards for the customs profession were in place; several internationally recognised academic programs were well established with several more under development; the ninth edition of the *World Customs Journal* was about to be published, and the planning process for the sixth annual PICARD Conference was underway. Working together, the WCO and INCU have since continued to progress a range of capacity building initiatives in the areas of educational programmes, strategic management development, professional standards, and academic research and development.

#### 8. KEY AREAS OF COOPERATION BETWEEN THE WCO AND INCU

	WCO	INCU
<b>PICARD Programme</b>	Joint initiative	Joint initiative
<b>Columbus Programme</b>	WCO initiative	INCU support
<b>Professional Standards</b>	WCO initiative	INCU support
<b>World Customs Journal</b>	WCO support	INCU initiative
<b>INCU Network</b>	WCO support	INCU initiative

#### 9. EMPOWERING CUSTOMS THROUGH KNOWLEDGE

The WCO's theme for 2011 was '*Empowering Customs through Knowledge*'. The INCU, through the PICARD initiative, had to that point been increasingly focusing its research efforts on areas of specific relevance to the WCO, its Members and its stakeholders. In doing so, it was able to provide empirical evidence to help inform decision-making. The themes of the *World Customs Journal* and PICARD conferences over the past few years are testament to this. Research topics have included the changing customs environment, capacity building, trade facilitation, supply chain security, the impact of the global financial crisis

on world trade and Customs, coordinated border management, the use of information and communications technology in the cross-border environment, Customs-Business partnerships, revenue collection, the impact of climate change, and performance measurement.

The WCO's focus on knowledge in 2011 therefore neatly paved the way for PICARD to build on its significant achievements. For its part, the INCU committed to continue its work with the WCO in further developing the body of knowledge upon which informed decision-making relies. It also committed to continue facilitating a free exchange of ideas and best practice that serves to build closer links between government and the private sector in their efforts to facilitate legitimate trade and to secure the international supply chain.

One of the earliest manifestations of the INCU's significant impact on customs decision-making resulted from a Masters dissertation that was completed as part of one of the first university degrees to receive WCO endorsement. In 2010, a student enrolled in the Master of International Customs Law and Administration at the Centre for Customs and Excise Studies, University of Canberra, wrote a dissertation on the need for Customs to rethink the way it obtained information about internationally traded goods. The article was subsequently published in the *World Customs Journal* and its visionary principles now represent a key element in a major international project designed to enhance supply chain visibility in an effort to improve commercial operations and the efficiency and effectiveness of government supply chain security initiatives.

In his article *Weaknesses in the supply chain: who packed the box?* (Hesketh 2010), David Hesketh, a senior manager with HM Revenue and Customs, with responsibility for the development and implementation of the long-term freight strategy known as the 'Blueprint', discusses a new paradigm that will provide Customs and other border management agencies with real-time, accurate information about international transactions. According to Hesketh (2010):

The international trade supply chain has grown in complexity to a point where clear visibility is masked from those who need to know what is going on. International conventions cover the transport of goods between seller and buyer but concentrate more on limiting liabilities than they do on ensuring the accurate description of the goods. The person who knows what is being sent into the supply chain is the person who packed the box or consigned the goods. If the packing list is wrong, not recorded or hidden from view then the transport documents such as way bills and the manifest are likely to be inaccurate. This poses safety, security,

legal compliance and commercial risks. Information required by border enforcement agencies is being asked for further upstream in the supply chain, prior to the goods being loaded. But the consignor, who holds the key to the majority of that information is outside the jurisdiction of the importing country's authorities so they turn to the carrier and the importer instead. Unfortunately, information held by the carrier is not always accurate and Customs hold the importer accountable for goods they have probably never seen. In these days of information management rather than the physical control of the goods, the role of export data is increasingly important. A multilateral, international legal framework with enforceable jurisdiction is needed with more emphasis placed on the point at which the international movement of the goods begins. The consignor and the true packing list play a key role. A new key performance indicator and critical way-point must be created called the Consignment Completion Point. A web-based, seamless, electronic data 'pipeline' needs to link the seller/consignor and the buyer/consignee and the interested economic operators in between. Real-time, accurate data must be assured from the beginning, updated as the goods move, and shared in a risk based, layered approach (p. 3).

The concepts addressed by Hesketh now form a key element of the work of the European Union's CASSANDRA (Common Assessment and analysis of risk in global supply chains) project<sup>10</sup> which is seeking to make container security more efficient and effective. According to the project team, "The project addresses the visibility needs of both business and government in the international flow of containerised cargo by developing a data sharing concept that allows an extended assessment of risks by both business and government. The CASSANDRA concept will improve supply chain visibility, efficiency of trade compliance and effectiveness of border control and supervision by combining E-Freight and E-Customs" (EU 2013). The project team also comments (EU 2013a):

The strategic impact for businesses is an improved supply chain performance and cost efficiency by reducing administrative and planning errors along the chain. For government agencies CASSANDRA improves efficiency and effectiveness. The project helps customs to assess business processes and procedures and identify secure supply chains. By minimizing the attention given to these secure flows and businesses, government agencies can focus on high-risk flows resulting in a higher

<sup>10</sup> For further details about the CASSANDRA Project, see <http://www.cassandra-project.eu/mainmenu/home.html>

hit rate and greater effectiveness of security related government inspections.

...To provide supply chain actors and government authorities with these accurate data, the project develops a data-sharing concept. CASSANDRA achieves interoperability of heterogeneous systems by combining state of the art IT innovations. Access rights and security mechanisms are implemented in the data pipeline concept to enable secure data sharing. Furthermore, dashboards for supporting businesses and customs for risk management and supply chain visibility are implemented (pp.1, 2).

As can be seen from this example, the web-based, seamless, electronic data 'pipeline' envisaged in Hesketh's studies is now emerging from the realms of academic theory into operational practice and commercial reality.

Many other significant research studies are also underway, including a major review of the emerging 'Accredited Operator' concept by the Centre for Customs and Excise Studies, Australia. Internationally, this concept is being espoused by a number of regulatory agencies in the form of 'Regulated Shipper', 'Regulated Agent', 'Accredited Agent', 'Authorised Economic Operator', 'Approved Exporter', 'Registered Operator', etc. which have emerged as a result of international initiatives relating to supply chain security and trade facilitation (including the previously cited WCO SAFE Framework). This particular research project is reviewing the subject from a number of perspectives, including international initiatives, global responses, national responses, and implications for regulators and the business community.

The aim of the research project is to develop an industry position for presentation to the Australian Government on the various forms of Accredited Operator schemes that are in place, under development, or being considered by Australian agencies, including recommendations on how they should be progressed. In particular, it seeks to identify options for maximising the relevance of such schemes, minimising compliance costs and ensuring that the Australian international trade and transport industry is able to compete on an equal footing with their overseas competitors, particularly when exporting to countries that have similar arrangements in place.

## 10. CONCLUSION

While considerable progress has been made by the international community in relation to the establishment and agreement of standards,

there is a long way to go in ensuring that individual economies have the necessary capacity to translate the theory into practice. The research suggests that consistent global application of existing and future conventions, agreements and guidelines relating to border management is unlikely in the absence of significant capacity building support.

The recent collaboration between Customs and the academic world has provided a new dimension to such support. Not only have the evolving university programs served to inject a high degree of academic rigour into even the most basic of customs practices, but the associated applied research activities have also proved extremely valuable in informing strategic decision-making at the international level.

Ongoing collaboration among and between academic institutions, customs administrations and other members of the international trading community will ensure the continued success of such initiatives and further raise the academic standing of the customs profession. In this regard, the importance of maintaining a partnership approach – working together to find practical solutions based on sound information and empirical evidence – is paramount. Also of particular importance is the need to ensure the practicality of the PICARD standards and programs, including a need to consider the articulation of industry and customs training programs into higher academic award programs, in the context of taking a more logical approach to developing customs career paths, including the WCO's proposed model career plan.

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