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LEGAL FRAMEWORKS FOR IMPLEMENTING CUSTOMS RISK MANAGEMENT

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ABSTRACT

This study examines the legal frameworks governing customs risk management through a detailed analysis of primary legal documents, international treaties, and regional regulations. The research focuses on key instruments including the World Customs Organization's Revised Kyoto Convention (RKC) and SAFE Framework of Standards, the World Trade Organization's Trade Facilitation Agreement (TFA), and the European Union Customs Code (UCC). Qualitative documentary analysis and comparative assessment were employed to understand how these frameworks guide customs authorities in implementing risk-based controls. The findings reveal that while the international framework offers foundational principles for customs risk management, regional regulations provide tailored approaches for specific contexts. The study highlights the importance of integrating advanced technologies and fostering collaboration among customs authorities, businesses, and other stakeholders. Continuous updates to legal standards, capacity-building for developing countries, and incorporation of emerging technologies are essential for effective customs risk management.

KEY WORDS: legal frameworks, customs risk management, World Customs Organization, World Trade Organization, European Union

INTRODUCTION

Customs risk management is an essential aspect of modern trade. It is designed to balance facilitating legitimate trade with enforcing regulations to prevent illegal activities such as smuggling, fraud, and terrorism (L Vasileska, D Miloshoska, 2012). Effective customs risk management involves identifying, assessing, and prioritizing potential risks to ensure efficient and secure trade operations. The legal frameworks supporting customs risk management are critical to guide and support these efforts. This paper examines the key international and regional legal frameworks for implementing customs risk management. The World Customs Organization (WCO) has established foundational guidelines through the Revised Kyoto Convention (RKC) and the SAFE Framework of Standards, emphasizing risk management as a core component of customs procedures. Similarly, the World Trade Organization (WTO) has introduced the Trade Facilitation Agreement (TFA) to streamline customs procedures while promoting risk-based management. At the regional level, the European Union's Customs Code (UCC) incorporates these international principles, adapting them to the specific needs of EU member states. This study aims to provide a detailed analysis of the key legal instruments shaping customs risk management by addressing the following research questions: How do international and regional frameworks guide customs risk management? What are the key similarities and differences between these frameworks? How effective are these frameworks in balancing trade facilitation and security? And what challenges do customs authorities face in implementing these legal standards? The findings from this research will offer insights into the customs risk management approach and provide recommendations for improving the effectiveness of legal frameworks in addressing contemporary challenges in international trade.

LITERATURE REVIEW

According to Anderson and Terp (2006), 'Customs risk management has always been at the core of customs administration and is a fundamental discipline enshrined within the WCO's Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures. It has proven to be the most effective means of managing the huge volumes of cargo that enter the country every day of the week because it allows an administration to concentrate resources on high-risk areas while allowing low-risk cargo to flow unimpeded into the commerce of the country.'

The implementation of a risk management system in customs was discussed by Jacob and Zaharia (2012, p.3): 'Risk management is a process that determines the risk of an activity, the seriousness of these risks, the means to avoid, control or prevent them.' Drobrot, Klevleeva, Afonin, and Gamidullaev (2017, p.4) define customs risk management as 'an effective means of treating flows involving a large number of people, goods and vehicles with limited resources and changing risks without impeding the flow of legitimate trade.' According to the information obtained, Miloshoska believes that the customs risk management approach positively affects making the best decisions in terms of risk exposure. Implementing a risk management approach should ease the controls on the less risky consignments and focus on the ones representing the greatest risk. (Miloshoska, D., 2022, Miloshoska, D., 2023) Satyadini et al. emphasized implementing a well-defined and structured risk management framework to minimize trading disruptions and regulatory burdens. They advocate for using risk assessment techniques to monitor the movement of goods, identifying who is moving what, to whom, and from where. (Satyadini, Agung Endika, Abdul Basir & Adi Barata, 2020)

According to Satyadini et al. (2020), as well as Varese and Ronco (2019), Widdowson (2020), Razumei et al. (2023), and Van Trang et al. (2023), the legal framework for risk management should be based on flexible and tailored solutions. The government and the trading community should share responsibility for compliance, moving away from the traditional governance model that solely burdens the trading community. Furthermore, Sparrow (2000) argues that the administrative framework for risk management should be tailored to the level of risk. It should focus on post-transaction compliance assessments, incorporating effective redress mechanisms, especially in high-risk areas, and vice versa. While some scholars, such as Satyadini et al. (2020), argue for flexible and tailored regulatory frameworks for risk management to suit different national contexts, others emphasize the need for standardized international frameworks, such as the Revised Kyoto Convention (RKC) and the World Trade Organization Trade Facilitation Agreement (WTO TFA). To ensure a balance between control and facilitation, the Revised Kyoto Convention (RKC) and the WTO's Trade Facilitation Agreement (TFA) explicitly require the implementation of an effective risk management system (Regmi, Ram Hari & Arun K. Timalsina, 2018). Laszuk and Šramková (2021) point out the significance of EU legislation to apply risk management in collecting data and information, analyzing and assessing risk, making recommendations and initiating action, and regularly monitoring and reviewing the process and its results based on international, EU, and national law.

MATERIALS AND METHODS

The research methodology for this study includes the analysis of primary legal documents, international treaties, and regional regulations related to customs risk management. The key materials used for this research include international legal frameworks under the World Customs Organization (WCO), the World Trade Organization (WTO), and the regional legal framework of the European Union. Access to the full texts of the Revised Kyoto Convention, the SAFE Framework of Standards, the WTO Trade Facilitation Agreement, and the Union Customs Code was essential. These documents were retrieved from official databases and legal repositories. A qualitative documentary analysis was conducted to identify provisions specifically related to customs risk management. A comparative analysis evaluated the differences and similarities between the international frameworks (RKC, SAFE Framework, WTO TFA) and the regional framework (UCC). The goal was to identify best practices and areas where regional regulations complement or diverge from international standards. The findings from the documentary and comparative analyses were integrated with the literature review. This integration helped contextualize the legal analysis within the broader academic discourse on customs risk management. This combination of materials and methods provides a comprehensive approach to understanding the legal frameworks for implementing customs risk management and their practical implications for international trade.

RESULTS

The legal framework governing the implementation and regulation of customs risk management approaches can vary from country to country and region to region. However, common elements and international standards often influence these legal frameworks. This study analyzes some key components and international agreements that shape customs risk management regulations established by the World Customs Organization, World Trade Organization, and European Union.

World Customs Organization (WCO) Framework:

WCO sees customs risk management as the main pillar in the work of the customs administrations worldwide. It has developed guidelines and recommendations related to customs risk management, embodied in the Revised Kyoto Convention and the SAFE Framework of Standards.

Revised Kyoto Convention:

The International Convention on the Simplification and Harmonization of Customs Procedures, known as the Revised Kyoto Convention, provides a comprehensive set of guidelines and standards aimed at facilitating international trade while ensuring effective customs control and security measures. The Revised Kyoto Convention introduced these major principles: transparency and predictability of Customs actions; standardization and simplification of the goods declaration and supporting documents; simplified procedures for authorized persons; maximum use of information technology; minimum necessary Customs control to ensure compliance with regulations; use of risk management and audit-based controls; coordinated interventions with other border agencies; partnership with the trade.

Adoption of modern techniques such as risk management and audit-based controls, is recognized as one of the principles that can contribute effectively to the development of facilitation of international trade without compromising appropriate standards of Customs control.

The legal basis for the application of risk management by Customs is provided in the Standards of Chapter 6 of the General Annex of the revised Kyoto Convention. Chapter 6 includes provisions that elaborate Customs control by 10 Standards. According to Chapter 6 all goods, including means of transport, which enter or leave the Customs territory, regardless of whether they are liable to duties and taxes, shall be subject to Customs control. Customs control shall be limited to that necessary to ensure compliance with the Customs law. In the application of Customs control, the Customs shall use risk management. Customs shall use risk analysis to determine which persons and which goods, including means of transport, should be examined and the extent of the examination. Customs shall adopt a compliance measurement strategy to support risk management. Customs control systems shall include audit-based controls. Customs shall seek to cooperate with other Customs administrations and seek to conclude mutual administrative assistance agreements to enhance Customs control. Customs shall seek to cooperate with the trade and seek to conclude Memoranda of Understanding to enhance Customs control. Customs shall use information technology and electronic commerce to the greatest possible extent to enhance Customs control. Customs shall evaluate traders' commercial systems where those systems have an impact on Customs operations to ensure compliance with Customs requirements. (General Annex/Chapter 6, standards from 1 to 10)

According to Standard 6.3, Customs is mandated to employ risk management when implementing Customs control.

The revised Kyoto Convention promotes trade facilitation and effective controls through its legal provisions that detail the application of simple yet efficient procedures. The revised Convention also contains new and obligatory rules for its application which all Contracting Parties must accept without reservation. The revised Kyoto Convention entered into force on February 3, 2006.

WCO SAFE Framework of Standards to Secure and Facilitate Global Trade:
The WCO SAFE Framework is an integrated approach for balancing trade security threats and trade facilitation by accelerating and simplification of customs procedures (Miloshoska, D., 2013, Miloshoska, D., 2016). The SAFE Framework consists of five core elements. First, it harmonizes the advanced electronic cargo information requirements on inbound, outbound, and transit shipments. Second, each country that joins the SAFE Framework commits to employing a consistent risk management approach to address security threats. Third, it requires that at the reasonable request of the receiving nation, based upon a comparable risk targeting methodology, the sending nation's Customs administration will perform an outbound inspection of high-risk cargo and transport conveyances, preferably using non-intrusive detection equipment such as large-scale X-ray machines and radiation detectors. Fourth, the SAFE Framework suggests benefits that Customs will provide to businesses that meet minimal supply chain security standards and best practices. Fifth, it promotes close cooperation with other governmental agencies representing different regulatory areas, to keep societies safe and secure while facilitating the movement of goods. (WCO, 2006)

The Framework has been updated and revised over the years to address evolving challenges in international trade and security. The 2021 version of the SAFE Framework encourages cooperation between Customs and Other Government Agencies and promotes smart security devices to optimize Customs control, ensuring real-time monitoring of the movement of goods. Furthermore, the 2021 version includes foundational provisions to foster the development of regional Customs Union AEO programs and facilitate the implementation of mutual recognition. These updates collectively contribute to a more responsive framework that aligns with the dynamic nature of international supply chains. The Framework revolves around four crucial elements and is structured upon three foundational pillars, forming a comprehensive strategy that emphasizes risk management and the advanced utilization of electronic information. The four key elements are risk management, advanced electronic information, outbound inspection, and partnership with trade.

Pillar 1, known as Customs to Customs Cooperation, is built upon 11 standards. This pillar underscores the significance of seamless collaboration and information exchange among customs authorities to enhance operational efficiency and risk mitigation. Pillar 1 of the SAFE Framework includes Standard 4, which focuses on "Risk-Management Systems." According to Standard 4 Customs Administration should establish a risk-management system to identify potentially high-risk cargo and transport conveyances and automate that system. This management system should include a mechanism for validating threat assessments, targeting decisions, and implementing best practices. These standards underscore the importance of implementing effective risk management strategies within customs operations.

Pillar 2, Customs to Business Partnership, consists of 6 standards. Focused on fostering strong ties between customs and the business community, this pillar encourages a cooperative environment that facilitates smoother cross-border transactions and ensures compliance with regulations. The introduction of a more efficient system of communication with the public will allow the institutions to open and publicize all the necessary documents for all customs services. (Miloshoska, D., Vasileska, L., 2012, Miloshoska, D., 2018, Miloshoska, D., 2022, Miloshoska, D., & Vasileska, L., 2022)

Pillar 3, Customs to Other Government and Inter-Government Agencies, encompasses 11 standards. This pillar highlights the importance of coordination and cooperation between customs and various government agencies, fostering a holistic approach to trade management. The standards within this pillar aim to streamline processes and enhance communication between customs and other governmental entities, ensuring a more integrated and efficient regulatory framework.

The World Customs Organization provides a range of tools and resources to support the pillars of the SAFE Framework. The Risk Management Compendium is a significant tool the World Customs Organization provides to support the implementation of Pillar 1 within the SAFE Framework, which focuses on "Customs-to-Customs" cooperation.

The WCO Risk Management Compendium is flexible enough to align the different operating environments and conditions of individual WCO Members. This guarantees an effective and coherent global methodology for identifying and managing potential risks. The Compendium has five purposes. First, it defines some of the key terminology associated with risk management. Second, it outlines the Customs context for managing risk. Third, it presents the key components of a holistic organizational risk management approach including a systematic methodology for managing risk. Fourth, it sets out various techniques and tools for managing risk in practice. Fifth, it presents Members' experiences in risk management in the form of case studies. (WCO, Customs Risk Management Compendium, p 7)

World Trade Organization Framework -Trade Facilitation Agreement (TFA): The primary WTO agreement related to customs procedures is the Trade Facilitation Agreement (TFA), which came into effect on February 22, 2017, after being ratified by two-thirds of WTO members. The TFA aims to simplify, streamline, and harmonize customs procedures to facilitate the movement of goods across borders. TFA encourages member countries to implement efficient and transparent customs procedures that contribute to effective risk management. The Trade Facilitation Agreement has three sections:

- Section I - Articles 1 to 12 contain the trade facilitation measures/provisions for expediting the movement, release, and clearance of goods, including goods in transit, plus customs cooperation
- Section II - Articles 13 to 22 outline the special implementation flexibilities for developing and least-developed countries (LDCs)
- Section III - Articles 23 to 24 contain the institutional arrangements and final provisions of the Agreement.

Article 7 - Release and Clearance of Goods is in Section I. Measure 4 refers to Risk management. Article 7.4 of the TFA mandates WTO Members to arrange and implement a risk-based management system for carrying out customs controls on all imports, exports, and transit transactions. This provision requires Members to ensure that customs administrations handle the nature of risks and compliance through a systematic application of risk management principles in trade transactions, to ease the process of releasing goods while at the same time ensuring the safety of the released merchandise.

EU framework:

In 2005 The European Commission work program noted that "security is one of the primary expectations of European citizens" (EC, 2005). To minimize the risk to the Union, its citizens, and its trading partners, the Union Customs Code stipulates that "harmonized application of customs controls by the Member States should be based upon a common risk management framework and an electronic system for its implementation. The establishment of a risk management framework common to all Member States should not prevent them from controlling goods by random checks". (Union Customs Code, 2013) Union Customs Code defines "risk management" as "the systematic identification of risk, including through random checks and the implementation of all measures necessary for limiting exposure to risk". (Union Customs Code, 2013)

Article 4- Risk Management and Customs Controls, Section 7 on Control of Goods, (Union Customs Code, 2013) outlines the authority and procedures for customs controls. Customs authorities have the discretion to conduct necessary controls, such as examining goods, verifying information, and inspecting documents and records. The controls are primarily based on risk analysis using electronic data processing techniques, aiming to identify and address risks through national, Union, and international criteria. Customs controls operate within a common risk management framework, facilitating the exchange of risk information between customs administrations. The risk management process involves data collection, analysis, assessment, action, and continuous monitoring. The establishment of common risk criteria considers factors like proportionality, urgency, and impact on trade flow and resources. Priority control areas are designated for increased levels of risk analysis and customs controls based on specific criteria, without undermining other customary controls carried out by authorities.

DISCUSSION

The analysis of the legal frameworks for implementing customs risk management reveals a complex framework influenced by international, regional, and national standards. These frameworks are designed to provide a balance between facilitating legitimate trade and ensuring security by identifying, assessing, and managing risks associated with the movement of goods across borders.

The study underscores the significance of the World Customs Organization (WCO) and its central role in shaping global customs risk management practices. The WCO's Revised Kyoto Convention (RKC) and the SAFE Framework of Standards provide foundational principles for customs authorities worldwide. These frameworks emphasize the use of risk management as a core component of customs operations, promoting efficient trade facilitation while maintaining security measures.

At the regional level, the European Union's Customs Code (UCC) complements the WCO's guidelines by integrating advanced risk management techniques tailored to the specific needs of the EU. The UCC's focus on harmonizing risk management across member states demonstrates the EU's commitment to a unified approach, which not only enhances security but also ensures the smooth functioning of the single market. This regional approach is reflective of the broader trend towards localized adaptation of international standards, allowing for flexibility while maintaining alignment with global practices.

The effectiveness of these legal frameworks covering customs risk management can be evaluated through several elements. The first element is balancing security with trade facilitation. The frameworks analyzed, particularly the RKC and the SAFE Framework, are designed to balance security with trade facilitation by promoting risk-based controls. This approach allows customs authorities to prioritize high-risk consignments for inspection while expediting the clearance of low-risk goods. The WTO's Trade Facilitation Agreement (TFA) further strengthens this by mandating member states to implement risk management systems, thus ensuring that rigorous security measures do not compromise trade facilitation.

Despite the comprehensive nature of these frameworks, implementation challenges exist. The differences in resources and capacities among customs administrations, especially in developing countries, can delay the effective adoption of these standards. Moreover, the reliance on advanced technology and data analytics, as seen in the UCC, may not be feasible for all countries, potentially leading to differences in the effectiveness of customs risk management globally. The legal frameworks analyzed demonstrate flexibility, allowing for adaptation to specific national and regional contexts. This is crucial in addressing the diverse challenges different countries face in managing customs risks. However, this flexibility also presents a risk of inconsistency, particularly in the application of risk management principles. The balance between standardized international practices and tailored national approaches is delicate and requires careful management to ensure coherence in global customs operations.

The use of electronic data processing, as highlighted in the UCC and the SAFE Framework, enables customs authorities to conduct more accurate and efficient risk assessments. Technology facilitates the collection, analysis, and sharing of data, which is essential for identifying potential risks and ensuring timely interventions. However, the dependence on technology also introduces new challenges, including the need for cybersecurity measures and the potential for technology gaps between developed and developing countries.
Collaboration between customs authorities and other stakeholders, including businesses and other government agencies, is a constant theme in the legal frameworks analyzed. The SAFE Framework's emphasis on the Authorized Economic Operator (AEO) program and the Customs-to-Business partnership underscores the importance of cooperation in enhancing supply chain security. Similarly, the UCC's provisions for coordinated border management highlight the need for integrated approaches to customs control. Effective information sharing and cooperation are crucial for managing risks that transcend national borders, such as smuggling and terrorism. However, the success of these collaborative efforts depends on the trust and willingness of all parties involved, as well as the establishment of clear and consistent protocols for information exchange.

CONCLUSION

While the current legal frameworks provide a strong foundation for customs risk management, their effectiveness depends on consistent implementation, technological advancement, and international cooperation. The continuous evolution of international trade and the emergence of new risks will require ongoing updates to the legal frameworks governing customs risk management. The WCO, WTO, and regional bodies like the EU must remain proactive in revising their standards to address these emerging challenges. Additionally, capacity-building initiatives, particularly for developing countries, will be essential to ensure that all customs administrations can effectively implement these frameworks. By addressing these areas, customs authorities can better manage the complexities of global trade while safeguarding against potential risks. Future research should focus on the integration of advanced technologies, such as artificial intelligence into customs risk management practices. Further studies should also examine the effectiveness of international cooperation in responding to new and evolving risks, and the impact of legal frameworks on developing countries' customs administrations, particularly in terms of capacity-building and resource allocation.

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