

**Trade Facilitation and Customs Regulatory Control:
A Study of Express Consignment Operations in Thailand**

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ABSTRACT

In the contemporary international trade environment, trade facilitation and customs regulatory control are two significant requirements for both government and the business community. These requirements, however, are difficult to put into practice and have become a major challenge for customs administrations. Customs administrations are required to facilitate international trade while at the same time ensuring effective control in compliance with both national and international obligations, particularly in the light of current concerns about public health and safety and security issues.

This study examines and analyses approaches for customs administrations to effectively reconcile tensions between trade facilitation and customs regulatory control. The study is based on a case study of express consignment operations at the Suvarnabhumi International Airport, Thailand using multiple methods of data collection: documentation, interviews and direct observation. Four major findings from the case study are identified as the key criteria required for facilitating international trade while ensuring customs regulatory control. First, risk management is identified as a core principle of accommodating facilitation and control. Second, customs laws and regulations, customs procedures and information technology are found to be key instruments for supporting the achievement of trade facilitation and customs regulatory control. Third, comprehensive and integrated approaches to cooperation are regarded as enablers, which contribute to facilitation and control. Finally, human resource development is identified as a prerequisite to support all other elements in accommodating trade facilitation and customs regulatory control.

The accommodation between trade facilitation and customs regulatory control can be achieved dependent on these key criteria being effective and consistent with international standards and guidelines. Despite the effort of the Thai Customs Department to accommodate trade facilitation and customs regulatory control, the study identifies some discrepancies between 'policy and implementation' or 'principles and practices', particularly in the areas of risk management, customs procedures and information technology. These implementation problems are found to result mainly from the lack of skills and knowledge of the customs officers. A key finding of the study is that continuous and sustainable development of human

resources in terms of customs competency is required to ensure transparency, consistency and predictability in providing customs services.

The study makes theoretical contributions to the body of knowledge in the field of customs by proposing an accommodation approach to facilitation and control. This approach represents a more practical and effective mechanism alternative to the traditional approach of reconciling a balance between apparent tensions of trade facilitation and customs regulatory control. The research also makes practical contributions to both the public and private sectors by outlining facilitative mechanisms for the continuous development of public services while at the same time maintaining regulatory compliance through an appropriate level of regulatory and procedural impositions. The study concludes with potential avenues for future research in the areas of customs administration and border management.

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LIST OF ABBREVIATIONS

ACCS	Airport Cargo Community System
ADB	Asian Development Bank
APEC	Asia-Pacific Economic Cooperation
APEC SCCP	APEC Sub-Committee on Customs Procedures
ASEAN	Association of Southeast Asian Nations
AWB	Air Waybill
CAPEC	Conference of Asia Pacific Express Carriers
CIF	Cost, Insurance and Freight
DHL	DHL International GmbH
ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
EU	European Union
FedEx	FedEx Corporation
FOB	Free on Board
GEA	Global Express Association
HAWB	House Airway Bill
IATA	International Air Transport Association
ICC	International Chamber of Commerce
IMF	International Monetary Fund

OECD	Organisation for Economic Co-operation and Development
PDA	Personal Digital Assistant
RFID	Radio Frequency Identification
TEXCA	Thai Express Courier Association
TNT	TNT Express Worldwide
UN	United Nations
UN/CEFACT	United Nations Centre for Trade Facilitation and Electronic Business
UNCTAD	United Nations Conference on Trade and Development
UNECE	United Nations Economic Commission for Europe
UPS	United Parcel Service Inc
WCO	World Customs Organization
WTO	World Trade Organization

CHAPTER 1

INTRODUCTION

1.1 Background

In the current international business environment, the quantities of goods that move across borders have increased noticeably due to changes in the international trading environment. These changes result from the global integration of modern production and delivery systems, the increasing significance of Just-in-Time management¹ and new forms of electronic commerce (WCO, 2005c).

Companies involved in international trade have to make certain that all processes of manufacturing in their business can be completed in a defined period of time. Delays in any one process of the supply chain can have an effect on all other processes. Every delay not only leads to increases in business costs, but also reduces the quality of goods, particularly sensitive or perishable goods, such as agricultural products, dairy products, newspapers and magazines, all of which require fast transportation.

In this trading environment in which tariffs have been gradually reduced, customs procedures and practices are considered the principal remaining barriers to international trade (Bodegraven, 1999, p.38). The World Bank (2003, p.179) concluded that the cost of transporting goods between destinations and across international borders, together with delays in customs processing, is as important as formal trade barriers, particularly in developing countries. The Bank argues that “every day spent in customs adds almost 1 per cent to the cost of goods”, and this affects the competitiveness of countries, particularly in exportation of goods (World Bank, 2003, p.198). The United Nations Conference on Trade and Development (UNCTAD) estimated that the trade transaction cost in the early 1990s was approximately 7-10 per cent of the value of world trade, and the estimated cost of border formalities was about

¹ Just-in-Time generally refers to

a method of minimizing product and supply inventories by ordering materials as close as possible to the actual time of need. This reduces the cost of maintaining inventories of expensive items [and thus] precise timing and reliable suppliers are essential for this technique to work effectively (QAP, 2005).

27 per cent of the price of goods (Keen, 2003, pp.13-14). These costs of trade transaction and border formalities are commonly higher in developing countries (Keen, 2003, p.14; Walsh, 2006). Even though trade facilitation is important for both developed and developing countries, it is much more challenging for developing countries to achieve high facilitation of trade since their customs procedures are typically less efficient than those of developed countries. Hence, there is a particular need for these countries to enhance customs operational efficiency and capacity to facilitate trade. In a typical unreformed customs administration in many developing countries, shipments generally face unpredictable delays of at least 20 days before the release of goods from customs control (Walsh, 2006). These delays add to business costs and can affect the competitiveness of the export prices of goods, particularly for landlocked developing countries that rely on transit to get their goods to export markets.

The term ‘trade facilitation’ has emerged as a focus of studies aimed at reducing these transaction costs imposed through international trade. The World Trade Organization (WTO) defines trade facilitation as “the simplification and harmonization of international trade procedures covering the activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade” (OECD, 2005a, p.2).

Trade facilitation has been recognised worldwide as a significant means of reducing trading costs. It has been strongly promoted by international organisations and the trading community since it is expected that trade facilitation can increase international trade volume and reduce the cost of business at the same time. It is clear that customs administrations form a significant part of the supply chain. The simplification and harmonisation of customs procedures is, therefore, important in contributing to the increase in the volume of international trade, the development of economies and the prosperity of the international trading community. It is expected that improvement in customs systems and processes can also lead to a decrease in the time and the cost of international trade transactions.

In order to deal with international trade requirements, a number of international organisations have taken initiatives in trade facilitation. They include the World Trade Organization (WTO), the World Customs Organization (WCO), the Organisation for Economic Co-operation and

Development (OECD), the United Nations Conference on Trade and Development (UNCTAD), the World Bank, the International Monetary Fund (IMF), the International Trade Centre (ITC) of UNCTAD and WTO, the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), the International Chamber of Commerce (ICC), and regional institutions such as the European Union (EU) and Asia-Pacific Economic Cooperation (APEC).

In relation to international trade, the WTO is one of the predominant organisations involved in the development of global trade. Its main functions include the enhancement of trade facilitation through multilateral trade agreements and cooperation among concerned parties, in both the government and the private sector. Trade facilitation is one of the ‘Singapore Issues’² which WTO members regard as important. WTO Submissions on Trade Facilitation in the Doha Ministerial Declaration³ aim to increase the significance of trade facilitation through cooperation with other international organisations and business partners. In this regard, former WTO Director-General, Dr. Supachai affirmed that trade facilitation is a vital part of the market access package that is being negotiated in the Doha Round, and that the improvement of trade facilitation practices has the potential to contribute to increasing the volume of world trade, as tariffs and non-tariff barriers have fallen through successive rounds of negotiations (APEC, 2005). Therefore, “faster processing of imports and exports by using streamlined procedures, can bring efficiency gains to the whole economy, revenue gains to the government, and commercial gains to private business” (APEC, 2005). In addition, the WTO has promoted World Customs Organization (WCO) instruments to achieve customs modernisation and standardisation, with the aim of enhancing trade facilitation, which is considered one of the “key factors for economic development of nations” (WCO, 2005c).

² ‘Singapore issues’ refers to four working groups established during the first WTO Ministerial Conference, held in Singapore in 1996. The working groups cover issues related to ‘trade and investment’, ‘competition policy’, ‘transparency in government procurement’ and ‘trade facilitation’ (ICTSD & IISD, 2003).

³ The Doha Ministerial Declaration provides the mandate for negotiations on a range of subjects. This includes the work program on trade facilitation under paragraph 27 of the declaration, which relates to freedom of transit, fees and formalities connected with importation and exportation, and publication and administration of trade regulations (Articles V, VIII and X of the GATT 1994, respectively). The declaration emphasises the trade facilitation needs and priorities of members, particularly in developing and least-developed countries (WTO, 2001, p.6).

In the context of customs, the WCO⁴ and the APEC Sub-Committee on Customs Procedures (APEC SCCP)⁵ play a critical role in initiating and enhancing trade facilitation and developing customs procedures. The WCO has developed international conventions, standards and programs to enhance both trade facilitation and customs practice and control. There are a number of ‘WCO Instruments and Programs’ concerned with customs procedures and trade facilitation. In particular, the revised International Convention on the Simplification and Harmonization of Customs Procedures (revised Kyoto Convention) is by far the most significant convention as it has initiated “the blueprint for modern and efficient Customs procedures in the 21st century” (WCO, 2006a). The revised Kyoto Convention, through its legal provisions, aims to promote trade facilitation and effective controls with the application of simple and efficient procedures. Thus, it is expected that the revised Kyoto Convention will provide international trade with predictability, transparency and efficiency for all those involved in aspects of international trade (WCO, 2005c).

APEC SCCP was established under the Committee on Trade and Investment (CTI)⁶ to “advance and build standards in customs procedures” among member countries (Korea Customs Service, 2005). Trade facilitation is one of the most significant issues and is considered a ‘centrepiece of work’ for customs administrations. APEC SCCP created the SCCP Guiding Principles (FACTS), which comprise five main principles for modernising and reforming APEC customs administrations: Facilitation, Accountability, Consistency, Transparency and Simplification. According to FACTS (APEC SCCP, 1996), APEC customs administrations are expected to improve the facilitation of customs clearance procedures while also ensuring the proper enforcement of customs laws and regulations. It is also necessary to take the customs practice of the APEC customs administrations into account through a transparent and easily accessible process of administration and/or judicial review. In this

⁴ The World Customs Organization (WCO) was established in 1952 as the Customs Co-operation Council (CCC). The WCO is an independent intergovernmental body focused on customs matters and has the mission to enhance the effectiveness and efficiency of customs administrations (WCO, 2008b).

⁵ The Sub-Committee on Customs Procedures (SCCP) was established in 1994 as part of the Committee on Trade and Investment (CTI). Its main objectives include the simplification and harmonisation of customs procedures to ensure that “goods and services move efficiently, effectively and safely through the region, and to reconcile and facilitate border control”. The SCCP takes policy directions from the heads of customs of member economies and reports to the CTI (APEC, 2007b).

⁶ The Committee on Trade and Investment (CTI) was established in November 1993 by the Declaration of the APEC Trade and Investment Framework. The CTI provides a regional forum for APEC’s 21 member economies to deliberate trade and investment issues as outlined in the Osaka Action Agenda (OAA) (APEC, 2007a).

regard, customs laws, regulations, administrative guidelines and procedures should be applied in a uniform manner within each economy. They should also be made publicly available in a prompt and easily accessible manner, and simplified to the extent possible so that customs clearance can proceed without excessive burden (APEC SCCP, 1996).

Trade facilitation is not the only important factor. Effective customs control⁷ is also necessary to verify compliance with national and international obligations in the contemporary customs environment. The role of customs control was brought into focus following a number of incidents of international terrorism. For example, the U.S. Customs and Border Protection has initiated measures to enhance supply chain security, such as the Container Security Initiative (CSI)⁸ and the 10+2 Rule⁹. These measures are based on the utilisation of advance cargo information and management of risk thus allowing customs administrations to identify high-risk shipments to ensure security in the international supply chain while still facilitating international trade. In addition, customs administrations around the world were asked by international organisations such as United Nations Counter Terrorism Committee, the Group of Eight nations (G8), the International Maritime Organization and other relevant organisations to undertake an effective role in supply chain security in order to ensure secured trade among nations (WCO, 2003c). Customs administrations, as one of the government agencies controlling commodity transactions across borders, have to take the initiative, therefore, in responding to this new security environment and enlarge their roles and responsibilities to facilitate supply chain security. These customs administrations have to ensure the confidence of traders in international trade with appropriate levels of security and

⁷ Customs control refers to “measures applied by the customs to ensure compliance with customs law” (the revised Kyoto Convention, Chapter 2: definitions).

⁸ The Container Security Initiative (CSI) has been proposed by the U.S. Customs on 17 January 2002. It is an initiative designed to enhance supply chain security, especially from terrorist attack and the arms trafficking through sea ports. “The Container Security Initiative consists of four core elements: (1) establishing security criteria to identify high-risk containers; (2) pre-screening those containers identified as high-risk before they arrive at U.S. ports; (3) using technology to quickly pre-screen high-risk containers; and (4) developing and using smart and secure containers” (U.S. Customs and Border Protection, 2006).

⁹ In January 2008, the U.S. Customs and Border Protection proposed a rule titled ‘Importer Security Filing and Additional Carrier Requirements’, commonly known as the ‘10+2 Rule’. This rule is an extension of the ‘24-Hour Rule’, which requires importers and carriers to submit additional cargo information to the U.S. Customs no later than 24 hours prior to loading at the foreign port bound for the United States. The ‘10’ requires importers to transfer ten data elements and the ‘2’ requires carriers to submit two data elements to the U.S. Customs through the Vessel Automated System (See Bergami, 2009; U.S. Customs and Border Protection, 2009).

regulatory control at the point of entry and exit, yet also maintain a critical role in enhancing trade facilitation.

The WCO is concerned about security issues to enhance supply chain security and the protection of society. Thus, for example, the WCO Framework of Standards to Secure and Facilitate Global Trade was proposed to ensure national security and law enforcement and to increase the confidence of traders in international trade through appropriate regulatory control. The WCO also further promoted the ‘Application of Information and Communication Technology’¹⁰ as a means of increasing the quality of customs control at the same time as enhancing trade facilitation (WCO, 2005c). The objective of this guideline is to focus the impact of information and communication technologies on customs and to outline the potential advantages of implementation of these technologies in customs activities. This guideline can assist customs in risk management and in the decision-making processes, covering “legal issues and requirements, security, client consultation and a brief explanation of various communication protocols” (WCO, 2005c).

1.2 Statement of the Research Problem

Trade facilitation has become one of the most challenging tasks for customs administrations¹¹. As customs¹² is involved in the movement of goods across borders, the efficiency and effectiveness of customs procedures can influence national economies, the growth of international trade and the development of the global marketplace (WCO, 2005c). Accordingly, customs administrations need to contribute to trade facilitation while, at the same time, also ensure effective control in compliance with both national and international obligations. Such obligations are increasingly complicated with the security challenges arising from the threat of terrorist attacks.

¹⁰ Application of Information and Communication Technology is one of the WCO Instruments and Programs focusing on the potential advantages of using information and communication technologies to support customs administrations, improve customs services and increase the quality of control activities (WCO, 2005c).

¹¹ Customs administration refers to the ‘organisation’ that is responsible for the collection of duties and taxes on the import of or export of goods, administration of customs functions and enforcement of customs-related laws and regulations.

¹² Customs refers to ‘officials’ designated to collect customs duties and taxes, control the movement of goods and passengers across borders, and regulate customs-related laws and regulations. This term also applies to ‘procedures’ involved in ‘customs functions’.

Trade facilitation and customs regulatory control, therefore, can be regarded as two major requirements for both government and the business community in pursuing their national and international trade in the competitive environment of today. These requirements are, however, rather difficult in practice, and have become a significant challenge for customs administrations. Even though trade facilitation and compliance issues have been raised over many years, it is complicated for customs administrations in many developing countries to adopt international standards to achieve an accommodation between these two requirements. Therefore, questions have been raised regarding how customs administrations should perform their day-to-day activities in response to changing international trends and the requirements of the international trading community and at the same time ensuring that the regulatory control responsibilities are met.

This research aims to analyse ways of reconciling trade facilitation and customs regulatory control by examining the case study of air express consignment operations at the Suvarnabhumi International Airport, Thailand. The study addresses this through four objectives:

1. To examine and analyse international trends and initiatives as well as international standards and best practices in relation to trade facilitation and customs regulatory control
2. To identify conditions and measures for accommodating trade facilitation and customs regulatory control
3. To examine and analyse the implementation of international standards and best practices for trade facilitation and customs regulatory control by the Customs Department, Thailand
4. To identify potential alternatives to current practice that will streamline the regulatory processing of air express consignments

To achieve these objectives, this research purposely investigates the following questions:

1. What are the criteria required for facilitating international trade while ensuring customs regulatory control?
2. To what extent can customs administrations facilitate trade while at the same time maintaining customs regulatory control?

3. To what extent can the Customs Department, Thailand, adopt and apply international standards and best practices to the clearance of express consignments?
4. How can operational efficiency in the clearance of express consignments be developed or streamlined?

1.3 Significance of Study

Trade facilitation is a significant issue that has become even more important today, leading to a number of international requirements from both government and the trading community. As international trade now requires efficiency and effectiveness in customs systems and procedures, there is a need for customs administrations to develop their operational efficiency and capacity to support the international trading community and enhance the competitiveness of individual nations. At the same time, customs has to ensure effective control in compliance with both national and international obligations.

This study of trade facilitation and customs regulatory control in the area of air express consignments in Thailand is the first attempt to use a case study approach to gain an in-depth understanding of the experiences and perspectives of customs administrations and stakeholders in this area. The study is grounded on theoretical frameworks derived from international standards and best practices. It intends to generate a conceptual contribution and develop a body of knowledge in the field of customs administration in general, and more particularly, in the area of express consignments. The study can contribute to a better understanding of customs administrations and associated stakeholders on issues of trade facilitation and customs regulatory control.

The findings of this study can be generalised to theory based on the conceptual framework developed, which can be applied to other customs administrations, particularly in developing countries that have a similar context or phenomena, to achieve an accommodation approach to trade facilitation and customs regulatory control. Significantly, the increased operational efficiency in the clearance of express consignments, which are normally sensitive to the time spent in the transportation and release of goods, has the potential to be used as a template to

achieve fast and reliable delivery services in other customs areas such as in the importation, exportation and transit of normal cargo at ports, airports or across borders.

1.4 Research Methodology

The case study methodology was used in this study to obtain an intensive and comprehensive understanding of the current phenomenon involved in the real-life context, experiences and perspectives of customs administrations and stakeholders¹³. The case study of express consignments operations in Thailand was chosen as the single case study with embedded multiple units of analysis. Multiple methods of data collection: documentation, interviews and direct observation, were used to obtain a holistic view of the current practice of express consignment operations in order to answer the research questions about trade facilitation and customs regulatory control.

Primary sources of information were obtained from in-depth interviews and direct observation. The interviews were conducted with interviewees mainly from the Customs Department, as well as those employed in the express industry and other stakeholders. Interviews involved both management and operational levels of customs officers and included other stakeholders whose work is related to international trade, particularly the main express integrators or the ‘big 4’ (DHL, FedEx, TNT, UPS). The aim of the interviews was to develop a full understanding of the implementation of guidelines or practices in regard to trade facilitation as well as the implementation of measures to ensure effective control. Additionally, data was collected by direct observation at an express consignment operational area to examine the real circumstances of express consignment operations at the Suvarnabhumi International Airport, Thailand. Direct observation was used as an unobtrusive method without interrupting the daily activities of officers or staff of the organisations being observed.

Secondary sources included international guidelines and practices, legislation, operational guidelines, policy documents, academic literature, as well as reports or records from customs administrations, international organisations and the trading community. The study examined trade facilitation and customs regulatory control at various levels. At the international level,

¹³ Full details of the case study methodology are provided in Chapter 4.

this included data from the revised International Convention on the Simplification and Harmonization of Customs Procedures (the revised Kyoto Convention) and the WCO Guidelines for the Immediate Release of Consignments by Customs (the Immediate Release Guidelines), which are by far the most significant guidelines for international standards and best practices in regard to trade facilitation and customs regulatory control. At the regional and intra-regional levels, data from guidelines and practices included customs cooperation under APEC SCCP and ASEAN. These guidelines included the APEC SCCP Guiding Principles (FACTS) and the Harmonization and Integration of Customs Cargo Processing: Policies and Practices in the ASEAN Region. Useful information also came from global and regional express industries such as the Global Express Association (GEA) and the Conference of Asia Pacific Express Carriers (CAPEC).

1.5 Outcomes of the Study

The study proposes a set of criteria for trade facilitation and customs regulatory control, which was developed in accordance with existing literature and two principal international guidelines: the revised Kyoto Convention and the Immediate Release Guidelines. The outcomes of the study make a theoretical and practical contribution to the body of knowledge in the field of public administration, customs administration, and more particularly in the area of express consignments. The study offers potential alternatives for regulatory authorities to achieve an accommodation between trade facilitation and regulatory control, which represents a more effective and appropriate improvement on the traditional ‘balanced approach’. In particular, the findings of the study offer potential alternatives for the improvement of operational efficiency in the clearance of express consignments in Thailand. These findings can be a model for streamlining the normal processes of customs clearance at other ports, airports or land borders.

1.6 Structure of the Thesis

This thesis comprises six chapters. Chapter 1 provides an introduction to the study of trade facilitation and customs regulatory control, covering the background of the study, a statement

of the research problem, the significance of the study, the research methods, the outcomes of the study and the structure of the thesis.

Chapter 2 reviews a range of theoretical and empirical literature, covering academic literature, corporate publications, international standards and guidelines on trade facilitation and customs regulatory control. The chapter concludes with a discussion of the implications of the literature for this present study.

Chapter 3 provides a conceptual framework for the study, based on the previous literature on trade facilitation and customs regulatory control. The framework comprises a set of criteria required for accommodating trade facilitation and customs regulatory control, which is used in the examination and analysis of the case study.

Chapter 4 details the methodological approach used in this study. It explains the philosophy underpinning and rationales behind the use of a single case study of air express consignments in Thailand. It also presents the research methods: documentation, interview and direct observation.

Chapter 5 provides an overview of the case study of express consignment operations in Thailand. The overview includes an introduction to the organisations examined in this study, the customs procedures for express consignment clearance and the current practice of express consignment operations.

Chapter 6 presents the key findings from the case study of express consignment operations in relation to trade facilitation and customs regulatory control. The chapter also examines issues identified in the conceptual framework constructed for this study.

Chapter 7 analyses the findings of the case study and discusses six criteria developed to achieve an accommodation between trade facilitation and customs regulatory control: risk management, customs legislation, customs procedures, information and communication technology, cooperation and consultation, and human resource development.

Chapter 8 summarises and integrates the principal findings of the study in response to the research questions. It also discusses the potential theoretical and practical implications of the study and concludes with directions for future research.

CHAPTER 2

LITERATURE REVIEW

This chapter provides a review of literature on the existing theory and practice of trade facilitation and customs regulatory control. The chapter comprises three sections: beginning with an explanation of the nature of the literature in the field. It then reviews literature related to the two major dimensions of the thesis: trade facilitation and customs regulatory control. The chapter concludes with a discussion of the implications of the literature for the present study.

2.1 Nature of the Literature

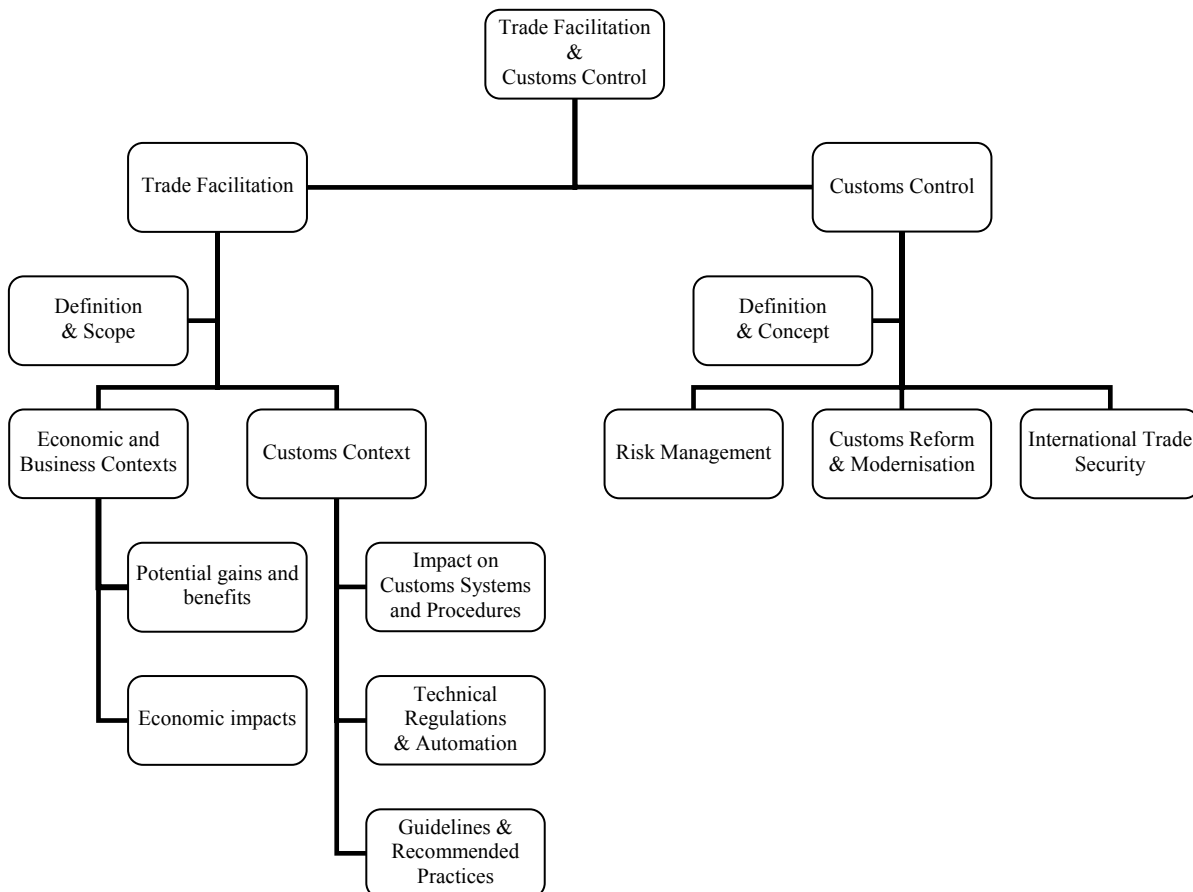
Trade facilitation is a broad concept that has received widespread attention at the global, regional and national levels. The literature covered in this chapter is largely drawn from publications and documents of international organisations, institutions and other bodies involved in trade facilitation¹⁴. This includes research papers, reports, frameworks, standards, guidelines and recommended practices provided by the OECD, the Asian Development Bank (ADB), the World Bank and the WTO in particular. This literature is considered a useful and credible source of data as it is authored by experts and research groups in the field. While there is a wide range of corporate publications produced by international organisations, the existing academic literature in the form of books, journals and theses is relatively limited and typically focuses on the broader issues of international trade and business.

In relation to customs regulatory control, there is a small amount of academic literature such as books, journals or theses. Most of the existing publications provide information on customs systems and procedures rather than thoroughly examining control or compliance issues. The key sources of information on customs control are based on international guidelines and practices, operational guidelines, policy documents, reports and records from international, regional and national organisations, both governmental and of the trading community.

¹⁴ A list of international organisations, institutions and other bodies in relation to trade facilitation is at Appendix 2.1

The key literature for this research covers academic literature, corporate publications, international standards and guidelines on trade facilitation and customs regulatory control. The review of the literature endeavours to demonstrate the extent of the current knowledge in this field, justify the reasons for the present study and establish a conceptual and methodological approach based on findings from the previous literature. The approach adopted in this literature review is illustrated in Figure 2.1

Figure 2.1: A diagram of the Literature Review



2.2 Trade Facilitation

Trade facilitation has generated significant issues involving international trade today. While businesses place emphasis on the issues of costs and benefits of trade facilitation, governments tend to concentrate on international trade procedures and, more particularly, on customs operational efficiency, which has an impact on the international supply chain. In this section,

the review of the literature begins with a definition of trade facilitation and an examination of its scope. Then, the review examines the literature relating to trade facilitation in the economic and business contexts and in the customs context.

In the economic and business contexts, the literature focuses mainly on the issues of the potential gains and benefits and the economic impacts of trade facilitation. The issues also include the reduction of trade transaction costs and the relationship between trade facilitation and trade flows. In the customs context, the review examines the impact of trade facilitation on customs systems and procedures, the specific issues of technical regulations and automation and the international framework, guidelines and recommended practices that provide the core components of trade facilitation.

2.2.1 Definition and Scope of Trade Facilitation

Trade facilitation is a broad concept with no single standard definition (ESCAP, 2002; Hellqvist, 2002, p.6; OECD, 2002, p.5; Taneja, 2004, p.8; UN, 2002, p.1; Wilson, Mann & Otsuki, 2003b, p.369). The use of the term ‘trade facilitation’ varies in the literature since each definition serves the particular attention or purpose of each organisation. Trade facilitation can be defined either in simple terms, or in the narrow sense or in the broad sense, and it can be identified at different levels depending on scope and areas.

In simple terms, trade facilitation is often defined as the simplification and standardisation of international trade procedures and other administrative procedures related to the transportation of goods (Hellqvist, 2002, p.6; OECD, 2002, p.5; Taxation and Customs Union, 2007; UN, 2002, p.1). In the narrow sense, trade facilitation refers to the improvement of procedural efficiency associated with the movement of goods across national borders (ICC, 2003; Wilson et al., 2003b). A broader definition of trade facilitation focuses on the improvement of the ‘environment’ where trade transactions take place. This includes the removal of non-tariff barriers, the improvement of infrastructure and facilities, the transparency of regulatory environments and the harmonisation of standards and related laws and regulations (OECD, 2005a, p.2; UNECE, 2002c; Wilson et al., 2003b, p.369; World Bank, 2005, p.9).

In some studies, the term ‘trade facilitation’ is used to cover a wide range of areas such as government regulations and controls, business efficiency, transportation and shipping, information and communication technologies, health and safety standards, and financial requirements (Taneja, 2004, p.3; UNECE, 2002b, p.3). However, the preferred definition in some studies is a wide-ranging one but does not cover the physical infrastructure, non-tariff barriers (NTBs), tariff negotiations or trade promotion (Staples, 1998, pp.1-2; UN, 2002, p.1).

Much of the literature uses the definition adopted by the WTO in which trade facilitation refers to “the simplification and harmonisation of international trade procedures, where trade procedures are the activities, practices and formalities involved in collecting, presenting, communicating and processing the data required for the movement of goods in international trade” (Hellqvist 2002, p.6; OECD, 2002, p.6; OECD 2005a, p.2; SITPRO, 2005; Taneja, 2004, p.8).

While the definition and the scope of the term trade facilitation vary in the studies, there is a general consensus that trade facilitation refers to the simplification, harmonisation and standardisation of international trade procedures. This understanding of the concept and the definition of it are widely used in the studies of the international organisations such as the WTO, the OECD and the UNECE. Some trade facilitation studies use a narrow definition, which focuses for the most part on the improvement of trade procedures. Other studies, however, broaden the concept of trade facilitation and its definition to embrace the trade environment. In general, trade facilitation covers areas such as transportation, the regulatory requirements, business efficiency and information technologies. However, studies which focus on the improvement of the trade environment encompass areas such as infrastructure and facilities, tariff and non-tariff barriers, transparency and trade promotion while other studies exclude these issues from both the definition and the scope of trade facilitation.

This study uses the widely accepted definition adopted by the WTO since it is an international organisation, which sets global rules and standards for trade between nations, and is thus considered the core of a multilateral trading system in which trade rules are set on a consensus basis and applied equally to all member countries with a balance of rights and obligations. In particular, the WTO is the predominant organisation concerned with trade facilitation

negotiations and international trade procedures. In addition, customs administration is a central government agency involved in activities related to the movement of goods across international borders. Thus, trade facilitation basically refers to the simplification, standardisation and harmonisation of customs procedures. In addition to adopting the meaning of trade facilitation provided by the WTO, the study also considers trade facilitation in the customs context provided by the World Customs Organization (WCO). In this context, trade facilitation means “the simplification and harmonisation of international trade procedures” (WCO, 2007c, p.11) with avoidance of unnecessary trade restrictiveness while at the same time enhancing the efficiency and effectiveness of customs controls in accordance with international standards (WCO, 2008c).

2.2.2 Trade Facilitation in Economic and Business Contexts

There is a broad body of knowledge available on trade facilitation in the economic and business contexts. This review focuses on two main issues relating to trade facilitation. First, it examines the business benefit of trade facilitation and the relationship of trade facilitation to the reduction of trade transaction costs, including the potential gains and benefits of trade facilitation to governments and the business community. Second, the review quantifies the economic impacts of trade facilitation and the relationship between trade facilitation and trade flows. This includes the economic impact of trade facilitation and the improvements in border procedures and the impact of specific trade facilitation initiatives in certain sectors. Other issues involved in this context are the costs of introducing and implementing trade facilitation measures and the income distribution impact in developing countries.

- **Potential gains and benefits of trade facilitation**

The studies by the OECD (2002, 2005a) and UNECE (2002c) provide the concepts of trade facilitation and its benefits to governments and the business community. There is general agreement in the literature that trade facilitation has a positive effect on the capacity of a country in several ways. It enables a country to increase revenue collection, reduce trade transaction costs, improve economic efficiency and competitiveness, increase international trade, encourage foreign direct investment, and improve the efficiency of production and the

allocation of resources (ICC, 2003; ESCAP, 2004, p.46; OECD, 2005a, p.3; OECD, 2005b, p.26; UNECE, 2003b, pp.11-12; UNECE, 2002c; Wilson et al., 2003b, p.382)

A number of OECD papers (2002, 2003, 2005a) studied the benefits of trade facilitation and its relationship to the reduction of trade transaction costs. Trade transaction costs have been defined as “costs directly related to formalities, charges for trade-related services, costs related to procedural delays, lost business opportunity costs, costs related to lack of predictability” (OECD, 2002, p.1). The OECD (2002) assessed the business benefits of trade facilitation based on a survey of available studies, particularly the literature on transaction costs. Another OECD paper (2003) extended the earlier research in this field by adopting a more comprehensive perspective on recent studies on the impact of trade facilitation on trade transaction costs in particular. Later OECD studies (OECD, 2005a, 2005b; Walsh, 2006) uniformly indicated that the costs of trade transactions are high due largely to unnecessary or over-complicated trade procedures and requirements, and this has an impact on international trade and the overall supply chain. The results showed that trade transaction costs for business can be reduced by trade facilitation measures, saving many of the costs to governments involved in customs administration and enforcement (OECD, 2002, p.18; OECD, 2005b, p.26)

- **Economic Impacts of Trade Facilitation**

A number of papers have concentrated on estimating the trade transaction costs and quantifying the economic impacts of trade facilitation (Wilson et al., 2003a, 2003b; OECD, 2003, 2005b). The studies of Wilson et al. (2003a, 2003b, 2005) and the OECD (2005b) reflected a similar concept of trade facilitation and its relationship to international trade despite different perspectives on the costs and benefits and different research approaches. In other words, the studies of Wilson et al. focused (2003a, 2003b, 2005) on the economic impact of trade facilitation and the relationship between trade facilitation and trade flows, government revenue and foreign direct investment. However, the research attention of the OECD (2003, 2005b) focused, in particular, on estimating the economic impact of improvements in border procedures.

The study of Wilson et al. (2003b) estimated the relationship between trade facilitation and trade flows in the Asia-Pacific region. A later study (Wilson et al., 2005) broadened this focus by examining global trade from various perspectives based on a sample of 75 countries. The relationship between trade facilitation and trade flows in these two studies was measured in line with four main categories: port efficiency measures, the customs environment, the regulatory environment and service infrastructure. The first three issues were constructed on the basis of GATT Article V (Freedom of Transit), Article VIII (Fees and Formalities Connected with Importation and Exportation) and Article X (Publication and Administration of Trade Regulations). The fourth issue, service infrastructure, has been considered a key area in the trade negotiations in the Doha Development Agenda.

Most studies on the impacts and potential gains of trade facilitation contain some quantification of the potential economic benefits of trade facilitation initiatives, the costs and benefits involved in the removal of trade barriers, and the impact of trade facilitation initiatives on particular sectors. These sectors include port efficiency, government regulations, transportation, information technology and customs systems and procedures. The quantitative approach has been employed in many studies to estimate the importance of trade facilitation issues and to assess both the business benefits and the economic impact of trade facilitation (Messerlin & Zarrouk, 2000; Wilson et al., 2003a, 2003b, 2005; OECD, 2005b). The econometric models carried out in current studies are based, for the most part, on the gravity model, survey results, the GTAP-model and CGS analysis (APEC, 2000; Wilson et al., 2003a, 2003b, 2005; OECD, 2003, 2005b, 2007).

The OECD (2004) and the UNECE (2003a) studied the costs of introducing and implementing trade facilitation measures and the income distribution impact of trade facilitation in developing countries. The OECD (2004, p.1) presented “preliminary findings from a series of country surveys on the costs to governments of introducing and implementing trade facilitation measures”. The study examined 11 areas of trade facilitation involved in the discussions at the WTO Committee on Trade in Goods (OECD, 2004, p.4). The findings indicated that the cost of implementing trade facilitation measures arises largely from the technical systems applied in the areas of risk assessment and audit-based controls. In addition, a UNECE paper (2003a) examined the income distribution impact of trade facilitation in

developing countries in regard to four elements: transport costs, procedural and compliance costs, standards and corruption. The major findings of this paper indicate that trade facilitation has an impact on income distribution and poverty in developing countries, and that it also affects international trade, economic growth and government revenue (UNECE, 2003a, p.3). This study used transaction costs theory and ‘iceberg models’ to analyse the benefits of trade facilitation, concluding that greater efficiency in production and the allocation of resources and cheaper consumption are the major benefits (UNECE, 2003a, pp.11-12).

From the economic and business perspectives, trade facilitation is considered an efficient means of increasing business benefits and reducing business costs. In this context, the studies mainly focus on issues related to the potential gains and impacts of trade facilitation. This includes the reduction of trade transaction costs and the relationship between trade facilitation and trade flows. As far as the approaches and methodologies to these studies are concerned, quantitative research methods, economic models and selected indicators have been widely used to estimate the various impacts of trade facilitation.

2.2.3 Trade Facilitation in the Customs Context

This review of the literature also examined the impact of trade facilitation on customs and administrative procedures as well as the specific issues of technical regulations and automated systems. Further, the review examined the international framework, strategy papers and recommended practices that relate to trade facilitation and customs operations. The literature identified the core components of trade facilitation, which generally include the improvement of trade and customs procedures, the enhancement of cooperation among concerned authorities and trading communities, the improvement of customs controls and enforcement, and the implementation of information and communication technology.

- **Impact of Trade Facilitation on Customs Systems and Procedures**

Recent research at the OECD (2005b, 2007) examined the trade effects and impacts of customs and administrative procedures on trade facilitation. The OECD (2005b) studied the economic impact of trade facilitation in general and the specific issues of customs systems and procedures in particular. The data analysis of this study is based on empirical data derived

from “country experiences and recent quantitative estimates of the economic impact of improvements in border procedures” (OECD, 2005b, p.6). The 2007 OECD study provides quantitative evidence of the effects of non-tariff measures on trade flows. This study used metrics in a gravity model, which derived from the World Bank survey called ‘Doing Business: Benchmarking Business Regulations’, to estimate the effect of the corresponding customs and administrative procedures on trade (OECD, 2007, pp.7, 9).

These two studies by the OECD (2005b, 2007) presented evidence that customs and administrative procedures have substantial effects on trade flows. Inefficient customs systems and procedures resulted in “delayed and unreliable delivery, costly customs clearance and missed business opportunities” (OECD, 2005b, p.26). At the same time, the simplification and harmonisation of customs procedures had a significant positive impact on trade facilitation, trade flows and investment (OECD, 2007, p.18; Walsh, 2006). The results further showed that all countries could benefit from the efficiency and effectiveness of customs and administrative procedures. Importantly, the OECD (2005b, 2007) reached the same conclusion as the studies of Taneja (2004) and UNECE (2003a) that trade facilitation measures are particularly significant for developing countries, and the greatest benefits of trade facilitation to these countries come mainly from improvements in port and customs efficiency.

- **Technical Regulations and Automation**

Messerlin and Zarrouk (2000) and the OECD (2005c) provide two major research studies related to the specific issues of customs procedures, technical regulations and automated systems within the area of trade facilitation. The former paper focused on quantitative estimates of the importance of trade facilitation, multilateral responses to trade facilitation and the enforcement of both technical and customs regulations. The paper addressed trade facilitation issues in general and examined technical regulations and customs procedures in particular. It found that there are some trade conflicts between developed and developing countries regarding trade regulations and customs procedures. Developed countries criticised the restrictions in the trade regulations of developing countries while developing countries complained about the ‘spaghetti bowl’ of rules of origin included in the customs procedures of the developed countries (Messerlin & Zarrouk, 2000, pp.577-578). The study suggested that

trade conflicts between developed and developing countries can be solved by establishing clear essential requirements for bilateral or regional agreements. Also, the enforcement of trade regulations and customs procedures should be discussed in the global framework. The study also highlighted the need for cooperation between the WTO and the WCO on the implementation of the revised Kyoto Convention on customs best practices.

In a review of studies in this field (ESCAP, 2004; UNECE, 2001; WCO, 2005a), it is notable that customs automation is considered a potential means to reduce trade transaction costs and facilitate trade while safeguarding national and social security. The WCO revised Kyoto Convention also places emphasis on the use of automation in customs systems and procedures. However, the recent study of the OECD (2005c, p.4) pointed out that although automation is not a 'panacea' for trade facilitation, commitment and financial sustainability are prerequisites for successful modernisation involving automation. The study further explained that automation is useful only if it serves as a tool to support the implementation of modern customs management and practices (OECD, 2005c, p.7). This conclusion is supported by the evidence provided by the experience of other countries that trade facilitation measures can be achieved without automation (OECD, 2005c, p.7).

- **International Guidelines and Recommended Practices**

Trade facilitation is a key component of the WTO Doha Development Agenda (DDA). The Doha Round talks on trade facilitation cover issues such as freedom of transit, fees and formalities connected with importation and exportation, and the publication and administration of trade regulations under GATT articles V, VIII and X. There is wide agreement in the literature (Holloway, 2005; Messerlin & Zarrouk, 2000; Taneja, 2004; Widdowson, 2005b, 2006a, 2006b; World Bank, 2005) that these three GATT articles are regarded as providing the guiding principles of trade facilitation under the WTO. At the same time, the revised Kyoto Convention is a crucial WCO instrument, which provides the mechanisms to implement the trade facilitation principles. Furthermore, the WCO has prepared an information sheet on trade facilitation to provide customs administrations with the WCO concept and terms of key facilitation measures (WCO, 2008d) consistent with the revised Kyoto Convention. The key measures of trade facilitation consist of advance rulings, appeals in customs matters, the single

window system, risk management, post-clearance control and the simplified procedures granted to authorised persons (WCO, 2008c).

In essence, the World Customs Organization (WCO) has developed international conventions, standards and programs to enhance trade facilitation with effective customs practice and control. The revised Kyoto Convention¹⁵ sets out the blueprint for modern customs administrations. It incorporates the principles and modern concepts for simplification and standardisation of customs procedures, including the enhancement of trade facilitation and control with the application of efficient and effective measures and procedures (APEC SCCP, 2003, p.9).

In relation to the private sector perspective, the International Chamber of Commerce (ICC) Customs Guidelines¹⁶ represent the private sector perspective on “a modern, efficient and effective customs administration[s]” (ICC, 1997). These Guidelines are in keeping with the provisions of the revised Kyoto Convention and consist of strategic plan, workforce and structure, cargo processing, the transparency of administration and regulation, automation, tariff classification and valuation, the rules of origin, disputes and sanctions, international organisations and passenger processing.

In the light of the international frameworks, strategy papers and recommendations on trade facilitation, the studies of ESCAP (2004), Holloway (2005) and UNECE (2001) provide the core components of trade facilitation. These papers were drafted in a flexible and practical manner to allow countries to adopt aspects depending on the individual circumstances, needs and priorities. The ESCAP trade facilitation framework (ESCAP, 2004) addressed the six key components of trade facilitation: trade and customs legislation and regulations, trade documentation and procedures, customs clearance procedures, trade and customs enforcement practices, the use of information and communication technology, and the development of trade finance infrastructure. This study comes to the same conclusions as the OECD study (2005c) about the significance of information technology and the national commitment by governments to implement trade facilitation measures. The Trade Facilitation Handbook

¹⁵ The key provisions of the revised Kyoto Convention are provided in Appendix 2.2

¹⁶ The key standards of the International Chamber of Commerce (ICC) Customs Guidelines are provided in Appendix 2.2

(ESCAP, 2002) provides general concepts of trade facilitation as well as some guidance for pursuing trade facilitation at the national and regional level. In particular, the Handbook focused on important issues related to trade facilitation in the Greater Mekong Subregion. These issues include the costs and benefits of trade facilitation, the improvement of trade and customs procedures, the development of public and private sector cooperation, the improvement of customs controls and enforcement, the implementation of information technology and the role of government in trade financing.

In addition, UNECE (2001) provides comprehensive recommendations on international best practices and standards for trade facilitation and international supply chains. The model for the international supply chain is composed of four major categories: commercial measures, international payment measures, official control measures and transport-related measures. In the current study of trade facilitation and customs regulatory control, the review of the literature has concentrated on official control measures and transport-related measures. Regarding official control measures, the UNECE study pointed to the significance of customs control for the national and international public interest. This includes the implementation of information technology to enhance trade facilitation measures and the need for close cooperation among concerned authorities and the trading community to ensure a balance between the private and the public interest. The issue of transport related measures was identified as another issue that needs to be taken into account to provide safe, reliable and accurate physical movement of traded goods throughout the entire supply chain.

The major survey by APEC (2000) has been one of the most significant regional initiatives in regard to trade facilitation. It addressed the perspective of the private sector in the APEC region on three issues of APEC's trade facilitation agenda: customs procedures, standards and conformity, and business mobility. The survey results indicated that customs procedures are ranked as one of the top three trade barriers among the ten categories of trade impediments (APEC, 2000, p.5). In addition, the strategy paper by Holloway (2005) examined the key international developments on trade facilitation and the application of international standards in the specific customs and trade environments of East and Central Asia. The paper suggested a structured approach to reform in the areas of trade facilitation and customs cooperation in the region. It was designed to provide the underlying conditions and instruments to help

contracting parties to achieve a modern customs administration and to make a major contribution to the facilitation of international trade (Holloway, 2005, pp.13-14). A comparative analysis, incorporating both situation analysis and gap analysis, was used to compare the current regional situation and initiatives with the benchmark provisions of the relevant GATT valuation guidelines and the revised Kyoto Convention (Holloway, 2005, p.21).

In the customs context, the literature has uniformly indicated that the success of trade facilitation relies heavily on the efficiency and capacity of customs administrations, and that customs systems and procedures have a major impact on international trade flows and trade transaction costs. Thus, the studies discussed in this review of the literature provide international frameworks, standards and comprehensive recommendations on trade facilitation and international supply chains. In particular, this includes principles for the improvement of customs and trade procedures, for the development of cooperation among concerned departments and for the use of information technology.

2.3 Customs Regulatory Control

Customs regulatory control has become one of the most challenging tasks for customs administrations today since customs officers have to facilitate trade in response to the needs of the trading community while at the same time ensuring compliance with regulatory requirements. The literature on customs control focuses on the broader issue of regulatory compliance management and, in general, discusses control in the particular context of the need for trade facilitation rather than confining the discussion to the issue of control alone. In this section, the review of the literature examines the definition and the concept of customs control, comprising the application of the concept and principles of contemporary compliance management. The second part of the review addresses three main issues relating to customs control: risk management, customs reform and modernisation, and trade facilitation and international trade security. This includes the implementation of information and communication technology, which is central to the application of each of the three main issues.

2.3.1 Definition and Concept of Customs Control and Compliance

Much of the literature in this field has adopted the definition and concept of ‘customs control’ as defined in Chapter 2 of the revised Kyoto Convention and the WCO Glossary of Customs Terms, which refers to the measures applied by customs administrations to ensure compliance with customs-related laws and regulations. The revised Kyoto Convention (WCO, 1999) outlined the principle of customs control as representing “the proper application of customs laws and compliance with other legal and regulatory requirements, with maximum facilitation of international trade and travel”. In other words, “[customs] controls should ... be kept to the minimum necessary to meet the main objectives [of ensuring regulatory compliance] and should be carried out on a selective basis using risk management techniques to the greatest extent possible”¹⁷ (WCO, 1999).

In applying the principle of customs control, the revised Kyoto Convention recommends that customs administrations should “focus on high-risk areas and therefore ensure more effective use of available resources, increase ability to detect offences and non-compliant traders and travellers, offer compliant traders and travellers greater facilitation and expedite trade and travel” (WCO, 1999). From this principle, it is possible to conclude that customs controls should be limited only if it is necessary to verify compliance, and it should be based on the principle of risk management to ensure a high degree of facilitation of legitimate trade at the same time. The principle of customs control provided by the WCO (1999) is generally that used in the current literature on customs compliance and control (Widdowson, 2005b, p.4; Widdowson, 2006b, p.6; Holloway, 2005, p.14). In the review of studies in this field (ESCAP, 2002, 2004; Holloway, 2005; Messerlin & Zarrouk, 2000; Taneja, 2004; UNECE, 2001; Walsh, 2006; Widdowson, 2003, 2005a, 2005b, 2006a, 2006b), there is general agreement in the literature that the revised Kyoto Convention is considered the international customs blueprint, which aims to promote trade facilitation in line with the WTO trade facilitation agenda (Article V, VIII, X). The revised Kyoto Convention also provides the concepts of contemporary compliance management, including the new technology, risk management and

¹⁷ Principle of customs control, Guideline of Chapter 6: Customs Control of the General Annex of the Revised Kyoto Convention (WCO, 1999)

mutual partnerships for modern, efficient and effective customs procedures, which could lead to the achievement of both trade facilitation and customs control (WCO, 2006a, 2006b).

In relation to regulatory compliance management, compliance theories discuss compliance at two principal levels: international compliance and domestic compliance. “Theories about international compliance are largely about the behaviour of states - about how and why they comply with international law. Theories about domestic compliance, on the other hand, focus more on the behaviour of firms and individuals” (Zaelke, Kaniaru & Kružiková, 2005, p.53). These theories can be categorised into two groups, ‘rationalist’ models and ‘normative’ models.

Rationalist theories, which are in line with the ‘logic of consequences’, have suggested that “enforcement and deterrence are the main ways to prevent non-compliance” (Zaelke et al., 2005, p.53). On the other hand, normative theories, which follow the ‘logic of appropriateness’, have suggested “a more cooperative approach to obtaining compliance” (Zaelke et al., 2005, p.57). In short, the rationalist model advocates the enforcement approach while the normative model focuses on cooperative approaches to ensure compliance. Black (2001, p.3) noted that “enforcement is not just about gaining compliance with the law [and regulations;] it is about determining what compliance is”. Thus, the regulatory authorities need to concentrate on risk and problem areas such as patterns of non-compliance, including the switch from a ‘reactive strategy’ to a ‘preventive strategy’ (Sparrow, 2000, p.191). In relation to the identification of non-compliance, six sources of non-compliance with regulatory standards are failure of understanding, collapse of belief in the law, procedural injustice, the cost of regulation, enforcement failure and the failure of civil society (Braithwaite, 1993, p.7).

The regulatory literature (Ayres & Braithwaite, 1992; Black, 2001; Braithwaite, 1985, 1993; Sparrow, 2000; Zaelke et al., 2005) has covered a range of compliance management strategies based on both the rationalist and the normative models. In the enforcement pyramid (Ayres & Braithwaite, 1992, p.35), the range of regulatory actions manage to coax compliance by persuasion at the beginning, escalating through warning letter, civil penalty, criminal penalty, licence suspension and licence revocation. Similarly, Black (2001, p.5) recognised the effectiveness of the persuasive approach to securing compliance through “education, coaxing,

cajoling, persuading, patiently explaining rationales for law and means for compliance”. Even though education and negotiation play a similar role in the insistent approach, “officials are less benevolent and less flexible” (Black, 2001, p.5). Furthermore, Sparrow (2000) focused on the reform of regulatory and enforcement practice through the concepts of customer service and process improvement to achieve compliance while minimising the need for detection, reaction and enforcement (Sparrow, 2000, pp.2, 191). Zaelke et al. (2005, p.60) also identified a range of compliance assistance strategies, which include dissemination of information, technological assistance and compliance advice.

In essence, the literature (Ayres & Braithwaite, 1992; Black, 2001; Braithwaite, 1985) has underlined the importance of the appropriate application of compliance management strategies to ensure compliance with laws and regulations in different regulatory arenas. In other words, the regulatory literature has focused on integrating the approach to ‘rationalist and normative models (Zaelke et al., 2005) or ‘insistent and persuasive approaches’ (Black, 2001) or ‘punishment and persuasion’ (Braithwaite, 1985) as regulatory strategies to ensure compliance with laws and regulations. The fact that enforcement strategies based on the rationalist approach involve costly enforcement means that the regulatory literature (Braithwaite, 1993) has tended to focus on a more cooperative compliance strategy, including regulatory advice or assistance in order to improve regulatory compliance while minimising the enforcement costs when enforcement strategies are unnecessary.

2.3.2 Customs Regulatory Control

The literature directly related to customs control is quite limited. Most studies have focused on the specific topic of risk management and automated systems as a means of achieving customs control (ESCAP, 2002, 2004; Messerlin & Zarrouk, 2000; UNECE, 2001; UNECE, 2003b; Widdowson, 2003, 2005a, 2005b, 2006a, 2006b). Some of the literature provides a wider perspective on customs modernisation and reform focusing on the application of automated systems and risk management principles (Geourjon & Laporte, 2005; Holloway, 2005; ICC 2003, Walsh, 2006). The research studies from the international organisations also provide international frameworks and recommended practices in relation to the specific issues of

facilitation and security in the international trade (ESCAP, 2006; UNECE, 2003b; WCO, 2005a).

- **Risk Management**

Risk management is a major issue, which is widely discussed in the literature on trade facilitation and customs regulatory control. In one study, Geourjon and Laporte (2005) focused on information technology and intelligence as requirements for risk management and customs control. The paper demonstrated how a sophisticated risk management method could facilitate trade by comparing traditional methods for targeting operations with modern systems: automatic and rational targeting of transactions. Traditional methods used information and risk criteria based on the judgement and experience of customs officers, including keeping abreast of the latest fraudulent practices. On the other hand, Geourjon and Laporte (2005) maintained that automatic and rational targeting systems are required to check all new transactions, examining documents, systematic inspection and random selection. In the study of Geourjon and Laporte (2005), an empirical study of two African countries was conducted focusing on ‘targeted customs inspections’, which are considered a prerequisite for facilitating trade and safeguarding revenue. This, together with appropriate risk analysis, is a key factor in trade facilitation. The paper concluded that there is no risk to revenue performance if the careful design and operational implementation of appropriate targeting methods took place.

The studies of Widdowson (2005a, 2005b, 2006a, 2006b) examined the traditional role of customs and the change in the trading environment, which increasingly required effective facilitation of trade. The studies mainly focused on the WTO Trade Facilitation Agenda and indicated that “the success of the trade facilitation agenda is heavily reliant on the ability of customs administrations to achieve an appropriate balance between facilitation and regulatory control” (Widdowson, 2005b p.1). In particular, a number of the studies examined the use of risk management principles and practices by customs administrations to maximise both international trade facilitation and regulatory control. Widdowson (2005a, 2006a) raised the issue of the emerging dilemma between trade facilitation and regulatory control due to the different expectations of customs administrations and trading communities. In other words,

customs administrations focus on verifying regulatory compliance while traders prefer minimisation of government intervention and maximisation of trade facilitation. According to the study, it appeared that some incorrectly assumed that “trade facilitation and customs control sat at opposite ends of a continuum” (Widdowson, 2006b, p.7). Thus, it seems clear that there is an incorrect presumption that the level of facilitation increases where the level of control decreases; likewise, “where regulatory controls are tightened, it is commonly assumed that facilitation must suffer as a result” (Widdowson, 2006b, p.7).

In the international trading environment, governments might face the risk of non-compliance with relevant laws and regulations while, on the other hand, traders or businesses pay additional costs due to unpredictable delays in the delivery of goods (OECD, 2005a; Widdowson, 2003, 2005b, 2006a). The challenge to customs is to reconcile intensified security concerns with the goal of facilitating legitimate trade (Geourjon & Laporte 2005; Walsh, 2006). Widdowson’s recommended approach to achieve the balance between trade facilitation and customs regulatory control is the effective application of the principles of risk management. The principles in the Widdowson (2003) study are based on a Compliance Management Matrix and the risk management style of compliance management, which consists of a legislative framework, an administrative framework, a risk management framework and a technological framework. Also, a Risk-Based Compliance Management Pyramid is another framework, which provides various elements of risk management strategies. It comprises a legislative base, client service, compliance assessment, enforcement and recognition.

- **Customs Reform and Modernisation**

When international trade facilitation and customs control are discussed, the current studies usually address these issues in terms of customs reform and modernisation, the implementation of information technology and the use of risk management (Geourjon & Laporte, 2005; Holloway, 2005; ICC 2003; Widdowson; 2003, 2005a, 2005b, 2006a, 2006b). A number of the studies reviewed (Geourjon & Laporte, 2005, Holloway, 2005; ICC 2003, Walsh, 2006) provide information regarding trade facilitation and customs control by focusing on the significance of customs modernisation and reform in achieving effective facilitation of

trade. These studies uniformly indicate that customs modernisation and reform is considered a core component of trade facilitation, and the use of risk management and information technology is regarded as an important means of maintaining a balance between facilitation and control.

- **International Trade Security**

There is a general agreement in the current literature regarding the significance of securing the international trade supply chain while continuing to ensure improvements in trade facilitation (ESCAP, 2006; UNECE, 2003b; WCO, 2005a). The UNECE proposed some possible areas of collaboration in the development of standards for international trade facilitation and trade security (UNECE, 2003b, pp.16-17). The basic concept in the UNECE approach is the same as that in other studies in this area, which emphasised the effective use of risk management systems to enhance the efficiency of customs control (ESCAP, 2002, 2004; Holloway, 2005; Messerlin & Zarrouk, 2000; UNECE, 2001; UNECE, 2003b; Walsh, 2006; Widdowson, 2003, 2005a, 2005b, 2005c, 2006a, 2006b). These studies concluded that the implementation of international trade facilitation and security standards should provide an excellent opportunity for customs administrations to grant trade facilitation benefits to the parties involved in the international supply chain. The UNECE (2003b) study and Widdowson (2005a) study also placed emphasis on a ‘partnership approach’ involving the cooperation and coordination among the organisations involved in the international supply chain.

ESCAP (2006) reviewed the core concept of trade security and examined the link between trade security and trade facilitation, emphasising the WCO Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework) (WCO, 2005a). The WCO SAFE Framework comprises standards to secure and facilitate international trade based on the existing WCO security and facilitation measures and programs developed by member administrations. The Framework consists of four core elements (WCO, 2005a, p.4; WCO, 2007c, p.14). These core elements are first; harmonisation of advance electronic cargo information for inbound, outbound and transit shipments; second, employment of a consistent risk management approach to address security threats; third, implementation of a risk-targeting methodology and non-intrusive detection equipment for examining high risk cargo; and fourth,

identification of benefits for businesses that meet minimal supply chain security standards and best practices. The Framework focuses on the twin pillars of Customs-to-Customs network arrangements and Customs-to-Business partnerships. The adoption of the twin pillars constitutes a significant strategy for securing the movement of goods across international borders whilst also facilitating international trade.

This section has highlighted the fact that international frameworks, standards, strategy papers and recommendations provide the core components of trade facilitation and customs regulatory control. These current studies by international organisations have expressed concern about the need for a safe, legal and efficient environment for international trade facilitation and security, and, in particular, about ways of preventing international trade from being used as a tool for terrorists. To achieve a balanced approach between trade facilitation and customs control, much of the literature raises the importance of customs modernisation and reform, the implementation of risk management, the introduction of information technologies and cooperation among stakeholders.

2.4 Implications of the Literature Review for the Present Study

The quantitative approach is widely used in the current studies on trade facilitation. Most of these studies focus on the potential gains and impacts of trade facilitation based on the business and economic perspectives. However, other aspects of the research on trade facilitation are quite limited, particularly in regard to the application of a qualitative approach to gain in-depth understandings of situations from various perspectives and experience. The current use of a quantitative approach is based on the economic perspective of quantifying the economic impacts or potential gains of trade facilitation with the aim of reducing business costs. However, a purely quantitative approach is not what is required in an international trading environment, which is increasingly complicated by other factors such as politics, international relations and supply chain security. The present study will employ qualitative research methods to examine and analyse trade facilitation and customs regulatory control issues, also taking into consideration a range of other related factors.

There is a wide range of information in relation to trade facilitation. More recent studies have examined the issues of trade facilitation widely from the business or economic points of view. However, the cost and benefits for the public sector are not a major interest for the current studies. Moreover, in the customs context, issues relating to customs offences have received very little mention in these studies whereas the impact of the unpredictable and over-complicated customs procedures has received considerable attention.

As far as studies on customs regulatory control are concerned, there are only a limited number in the current literature. Among these studies, most examine customs modernisation and reform, the implementation of information technology and risk management whereas relatively few consider the issue of customs regulatory control. In addition, international frameworks, standards, guidelines and best practices have been proposed for the particular issue of trade security due to the increased focus of supply chain security since the terrorist attacks on the US on 11 September, 2001 (often referred to as September 11th or 9/11). A great deal of research has been conducted on enhancing border control to ensure supply chain security in particular while the general issue of customs control has received little attention in the literature. Meanwhile, the research attention of the current studies has focused on trade facilitation and security, rather than on a comprehensive approach to customs control. In fact, customs control is a broad concept, which generally includes the supervision of imports and exports to ensure compliance with relevant laws and regulations, as well as the prevention and suppression of smuggling, tax and duty evasion and other customs offences in order to ensure the collection of revenue, the protection of society and the enhancement of supply chain security.

The review of the literature suggests that there is a gap in trade facilitation and customs regulatory control since particular attention has been paid to supply chain security, rather than to the overall concept of customs control. The purpose of this thesis is, therefore, to provide a comprehensive examination and analysis of trade facilitation and customs regulatory control issues. This study differs from earlier research studies by analysing related aspects of trade facilitation and customs regulatory control from a general perspective. The study draws on qualitative analysis and practical experience to construct a broad framework to explain how to reconcile the tension between trade facilitation and regulatory control. Also, the conceptual

framework for the present study will be based on the existing literature on trade facilitation and customs regulatory control, particularly in regard to international standards, guidelines and best practices.

2.5 Chapter Summary

The review of the literature presented in this chapter provides a contextual background for the present research on trade facilitation and customs regulatory control. The chapter reveals a range of important aspects of trade facilitation in the economic and business contexts and in the customs context. The review also identifies the major literature on customs regulatory control and compliance. The limitations of the existing literature in this field provide an opening for this study to identify potential alternatives to the current practices of trade facilitation and customs regulatory control. The chapter concludes with a commentary on the implications of the current literature. The following chapter will present a conceptual framework constructed for this study based on the theoretical and empirical literature relating to trade facilitation and customs regulatory control identified in this chapter.

CHAPTER 3

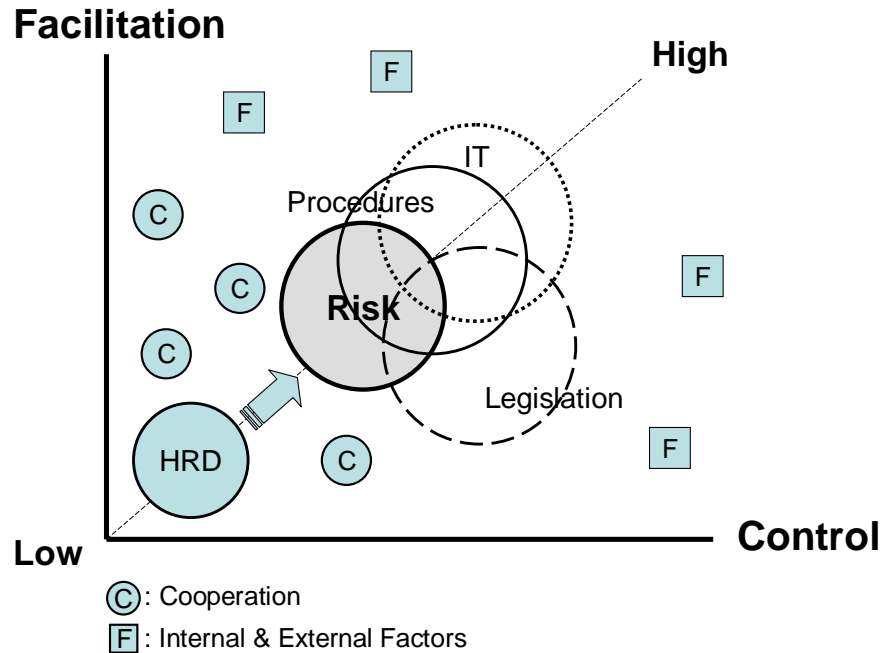
CONCEPTUAL FRAMEWORK

The chapter presents a conceptual framework constructed for this study based on the literature review on trade facilitation and customs regulatory control. The framework for the accommodation between trade facilitation and customs regulatory control comprises a risk management framework, a legal framework, a procedural framework, an information technology framework, a cooperation framework and a human resource framework.

3.1 Conceptual Framework

The conceptual framework developed for this study focuses on the core components of trade facilitation provided by ESCAP (2004), Holloway (2005) and UNECE (2001). These are combined with the proposed concepts and principles of risk management developed by Widdowson (2003). The framework also adopts the principles of customs modernisation recommended as part of the international standards provided by ESCAP (2006), UNECE (2003b) and WCO (1999, 2005a, 2007b) to generate broad perspectives on the issues of trade facilitation and customs regulatory control.

The conceptual framework is designed to identify methods and mechanisms for maximising trade facilitation and customs regulatory control. In particular, the framework represents the criteria for examining the extent to which customs administrations can facilitate trade while at the same time maintaining customs regulatory control. The key principles of this framework are based on the optimum use of risk management strategies, simplification of customs procedures and the improvement of legislation and administration. This framework is driven by the implementation of information technology and supported by human resources and the cooperation of all the stakeholders. The conceptual framework for this present study is illustrated in Figure 3.1.

Figure 3.1: Accommodation Approach to Facilitation and Control

3.1.1 Risk Management Framework

Trade facilitation and customs regulatory control are generally viewed as conflicting concepts. However, both can be achieved simultaneously through the introduction of risk management, where scrutiny is applied to high risk areas while immediate release is given to low risk areas (WTO, 2005, p.1.). The WCO (2003b, p.8) defines risk management as “the systematic application of management procedures and practices, which provide customs with the necessary information to address movements or consignments which present a risk”. It involves the process of establishing the risk management context, identifying risk, analysing risk, assessing risk, addressing risk, and monitoring and reviewing the process through compliance measurement (WCO, 1999).

In application of the principle, customs administrations have to identify and analyse risk from the beginning of the supply chain until the final process of releasing goods: pre-arrival, at arrival and post-clearance. The decisions made by customs administrations on the

identification, analysis and evaluation of risk have to be practical and effective and based on national and international obligations. This is essential to facilitate the movement of legitimate trade and to verify regulatory compliance.

When addressing the criteria required for achieving trade facilitation and customs regulatory control, risk management is by far the most significant element, complemented by audit-based control and information technology. Risk management has received considerable attention from international organisations, and thus customs administrations have been encouraged to implement risk management policies to provide greater facilitation for legitimate trade and higher levels of control for non-compliance (WCO, 2003b, p.22). In particular, the WCO has introduced risk management principles and strategies as a standard for modern customs administrations to achieve high levels of facilitation for international trade while maintaining effective regulatory control.

The provisions, recommendations and guidance for the implementation of risk management are reflected in the WCO revised Kyoto Convention. The Convention (WCO, 1999) provides standards for the application of risk management and requires customs administrations to use risk management for customs control purposes¹⁸. It stipulates that “the 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” (WCO, 1999)¹⁹. The Convention requires the use of information technology, electronic commerce, and cooperation with other customs administrations and the trading community to support customs control.

From the experience and achievements of customs administrations in many countries, risk management is recognised as the core principle in achieving high levels of facilitation and control since it allows customs administrations to allocate resources to high risk cargo without inspecting all shipments. This results in the efficient allocation of human resources and facilities. There is evidence of this in the success of many developed countries and developing countries in which risk management has been fully and effectively implemented with the support of legislation and human resources as well as well organised facilities and

¹⁸ Standard 6.3 of the General Annex of the revised Kyoto Convention

¹⁹ Standard 6.4 of the General Annex of the revised Kyoto Convention

infrastructure. From the experience of Japan, the use of risk management has enabled the Japan Customs to facilitate legitimate trade while taking appropriate action against the illicit movement of goods (WTO, 2005). The Australian Customs Service has also emphasised the importance of risk management, which relies on the provision of accurate and timely information for the selection of high risk transactions without impeding the flow of legitimate trade (Australian Customs Service, 2006).

Audit-based control is also often introduced in conjunction with the implementation of risk management to provide traders with greater facilitation while ensuring regulatory control (UNCTAD, 2008b, p.2; 2008d, p.4). The term audit-based control refers to “measures by which the Customs satisfy themselves as to the accuracy and authenticity of declarations through the examination of the relevant books, records, business systems and commercial data held by persons concerned” (WCO, 1999). De Wulf (2005b, p.6) outlines the views on the implementation of a risk assessment, including the change from the traditional physical inspection at the time of arrival to post-release verification using audit-based controls. One study by the WCO (2003b, p.17) suggests that customs administrations “shift the emphasis from exclusive use of movement controls to greater use of audit-based controls”. In this regard, the revised Kyoto Convention (WCO, 1999) provides standards for the adoption of a compliance measurement strategy to support risk management and the implementation of audit-based controls, which may vary from a simple post-clearance audit to trader self assessment²⁰.

3.1.2 Legal Framework

The concept of regulatory compliance management emphasises the need for an effective legislative base, which is considered the core of a regulatory regime (Widdowson & Holloway, 2009, p.4). Elements of effective regulation include regulatory compliance management, a legislative base, informing the regulated community, compliance assessment, enforcement and recognition, and measuring compliance (Widdowson & Holloway, 2009, pp. 4-7)

²⁰ Standards 6.5 and 6.6 of the General Annex of the revised Kyoto Convention

The legal framework is essential to support customs operations and administration as highlighted by the provisions of the revised Kyoto Convention (WCO, 1999). In essence, outdated laws and regulations, legal frameworks which are inadequate for the support of customs operations, and overly complex customs procedures can create problems for customs administrations, particularly in many developing countries. Thus, the legal framework should provide the necessary basis for the respective procedures, including risk management, customs controls, customs cooperation, transparency and integrity. In particular, the customs legislation needs to be simple and able to reflect international developments and the current environment. The legislation should also support customs operations with new technological concepts and international best practices to ensure transparency and predictability in customs systems and procedures. These include the preparation of a new legal framework for the application of electronic formats and the filing of customs documents, the implementation of risk management and audit-based controls, and the availability of the right of appeal in customs matters.

3.1.3 Procedural Framework

Customs procedures are a significant factor that needs to be taken into consideration in relation to trade facilitation and customs regulatory control. Customs administrations should strengthen their customs operations by simplifying customs procedures and implementing risk management and audit-based control in order to enhance the capacity for revenue collection, improve the efficiency of customs clearance and controls, and reduce the time and costs for customs administrations and the trading community.

The simplification and harmonisation of customs procedures is essential to support the clearance of goods with effective measures such as advanced lodgement, electronic declaration and payment, standardisation of required documents and reduction of the number of copies needed for goods declaration. This needs to be based on appropriate customs legislation and regulations supported by the application of information technology and intelligence, principles of risk management and the use of modern equipment for non-intrusive detection systems.

In this regard, the revised Kyoto Convention provides general principles and standards for customs formalities and the clearance of goods²¹. In particular, the WCO Guidelines for the Immediate Release of Consignments by Customs (Immediate Release Guidelines) provide the key international standards for the customs clearance of express consignments. The Immediate Release Guidelines aim to facilitate the movement of time-sensitive consignments by implementing simplified customs procedures designed to permit a rapid and reliable delivery service on the condition that the goods are in compliance with the basic requirements of customs administrations (APEC SCCP, 2006a, p.29). The Immediate Release Guidelines provide the principles for modern customs administrations in regard to the immediate release of goods, which needs to be supported by the implementation of information technology, modern techniques and risk management. In particular, the guidelines comprise two key principles for immediate release and clearance of consignments. They include the advance submission of cargo information as well as the categorisation of shipments into four categories with specific procedures and a set of data for each category (see WCO, 2007b).

3.1.4 Information Technology Framework

International trade today requires customs administrations to introduce information technology to expedite customs operations since the traditional paper-based system is slow and cannot cope with the increasing number of international trade transactions (ESCAP, 2002, p.51; UNCTAD, 2006, p.1). The literature (De Wulf & McLinden, 2005, p.289) highlights the importance of information technology in customs operations. In other words, sophisticated implementation of information technology leads to complementary improvement in customs practices to reduce cargo clearance time, increase transparency and predictability, and enhance cargo information management for risk management and post-clearance audit purposes.

The introduction and application of information technology can be regarded as supplementing customs efficiency and effectiveness in addition to reducing the number of opportunities for corruption. McLinden (2005, p.76) states that “well-designed and implemented [automation] systems can minimize unnecessary face-to-face contact between officials and traders and reduce opportunities for the improper exercise of discretion”. This can create accountability

²¹ Chapter 3: Clearances and Other Customs Formalities, General Annex of the revised Kyoto Convention

and confidence for traders in doing business with customs, leading to the creation of a compliance environment.

The revised Kyoto Convention (WCO, 1999) emphasises that the application of information technology to support customs operations is cost-effective and efficient for both customs administrations and the trading community²². The focus of the Convention is on the development of the technological infrastructure²³, including the electronic commerce methods that need to be specified in the national legislation.

3.1.5 Cooperation Framework

The new security environment and current international trade make it essential for customs administrations to cooperate with other government agencies and the private sector at both national and international levels in order to enhance customs efficiency and effectiveness to achieve better customs services and controls. Cooperation with other customs administrations is essential for the exchange of information and the enhancement of mutual assistance. Close cooperation and consultation with the trade, which involves all the stakeholders, is important in dealing with difficulties in customs and international trade-related matters. These difficulties may arise from national requirements such as the customs laws and regulations, other government agencies' requirements and customs procedures, or international obligations such as security initiative measures and both bilateral and regional trade agreements.

The revised Kyoto Convention (WCO, 1999) highlights the importance of formal consultation and cooperation between customs administrations and the trading community in establishing the most effective measures to comply with national provisions and international agreements²⁴. The Convention requires customs administrations to cooperate with the trading community in providing information relating to cooperation in a range of areas. These include customs laws and regulations, the application of information technology, trade consultation, and the establishment of enquiry offices for interested parties and the general public²⁵. The

²² Standard 7.1 of the General Annex of the revised Kyoto Convention

²³ Chapter 7 of the General Annex of the revised Kyoto Convention

²⁴ Standard 1.3 of the General Annex of the revised Kyoto Convention

²⁵ Standards 6.8 and 7.3 of the General Annex of the revised Kyoto Convention

revised Kyoto Convention also emphasises the importance of a relationship between customs administrations and third parties²⁶. It specifies that national legislation should set out the condition that a person may act for and on behalf of another person in dealing with customs matters. The Convention also specifies the liability of third parties to customs administrations for duties and taxes and for any irregularities²⁷. Also, the customs should provide for third parties to participate in formal consultations with the trade²⁸.

3.1.6 Human Resource Framework

The human resource framework is also necessary to accommodate trade facilitation and customs regulatory control. To strengthen the administrative areas, customs administrations have to review the current administrative systems and prepare new effective administrative mechanisms. This includes human resource development and improvement in the motivation of customs officers, recruitment procedures, remuneration and promotion.

The development of customs skill and knowledge is one of the priorities that customs administrations have to take into account in order to develop their organisations. The long-term training program should be designed to enhance customs capacity skills and knowledge in valuation, classification, simplification of customs procedures, information technology, investigation and intelligence, transparency and integrity, risk management and audit-based control.

Another aspect that needs to be taken into consideration is the promotion of customs integrity and a code of conduct. Integrity has become one of the most important issues in customs administrations today. In this regard, the Declaration of the Customs Co-Operation Council Concerning Integrity in Customs (Arusha Declaration) of 1993 is the best guideline. It comprises 12 key factors to maintain a standard of integrity in customs (WCO, 2003a). These factors include clear customs legislation and practices, simplification and harmonisation of customs procedures, implementation of automation, employment of effective measures (such

²⁶ Chapter 8 of the General Annex of the revised Kyoto Convention

²⁷ Standard 8.2 of the General Annex of the revised Kyoto Convention

²⁸ Standard 8.5 of the General Annex of the revised Kyoto Convention

as separation of functions and rotation of assignments), identification of the work performance and integrity of officers, effective internal and external audits, commitment of management levels to support integrity, transparent processes for the recruitment and promotion, promotion of a code of conduct, coverage of ethics and integrity issues in training programs, sufficient remuneration and an open and transparent relationship with trading community (WCO, 2003a).

3.2 Chapter Summary

This chapter develops a conceptual framework covering the criteria for an effective accommodation between trade facilitation and customs regulatory control. The framework comprises the six criteria required for the achievement of facilitation and control: risk management, customs legislation, customs procedures, cooperation and human resource development. These criteria will be used in the analysis and discussion of the research findings in Chapter 7. The following chapter will address the research methodology and research methods.

CHAPTER 4

RESEARCH METHODOLOGY

This chapter explains and justifies the research design, methodology and methods adopted to address the research questions. This study is based on a qualitative approach and uses a case study methodology with multiple methods for data collection: documentation, interviews and direct observation. The chapter begins with a justification of qualitative research and an explanation of the rationale for the selection of the research design and case study methodology for the study of trade facilitation and customs regulatory control. This is followed by justification of the use of multiple methods for data collection and analysis. The chapter also addresses the issues of the reliability and validity of the research and concludes with a discussion of ethical considerations.

4.1 Research Design and Methodology

Research methodology refers to the theoretical analysis of the research methods, which seeks to explain the rationale behind the selected research design and specific methods. The methodology is a “strategy or plan of action that links methods to outcomes”, which provides a general perception of theoretical analysis in relation to the nature of the knowledge (Creswell, 2003, p.5). This is not only useful for indicating the nature of the study problems or research questions, but can also lead to the determination of the paradigm or conceptual framework, including the selection of appropriate forms of research strategy and design. The main purpose of the research methodology is to explain how the research will be accomplished, what knowledge is required, what information is needed and how information will be collected (Berg, 2004, p.307).

This study is based on the empirical and constructivist approach²⁹ in that a broad body of knowledge comes not only from international guidelines and related standards, but also from the experience and perspectives of customs officers and stakeholders as well as the physical

²⁹ Five epistemological approaches to nature of the knowledge consist of (1) empiricism, which views that knowledge as derived from experience, (2) rationalism, which determines the knowledge or reality by reason, (3) constructivism, which believes that knowledge is constructed in social context, (4) pragmatism, which “defines knowledge in terms of expediency”, and (5) scepticism, which claims that knowledge is unrealistic or difficult to obtain (Blackman, Connelly & Henderson, 2005, pp.48-57).

environment of express consignment operations. The empirical approach claims that knowledge is derived from experience, and thus it directly relates to the method of observation of the natural world. The constructivist approach develops subjective meanings of experience by engaging with the world and constructs knowledge derived from historical and social perspectives (Creswell, 2003, pp.8-9). Empiricism and constructivism typically take a qualitative approach using interviews or observation to obtain an in-depth understanding of the situation or phenomenon based on subjective beliefs (Wainwright, 1997).

Qualitative research is concerned with the nature of phenomena. It provides an in-depth and detailed description of situations, events, interactions and interpreted understanding of the social world by learning about people's experiences, perspectives and histories (Labuschagne, 2003; Snape & Spencer, 2003, p.22). Qualitative research focuses on understanding a particular phenomenon that is diverse, flexible and complex in the natural setting. The aim of qualitative research is to describe the variation in a phenomenon, situation or perspective (Kumar, 2005, p.14), including "the meaning, concepts, definitions, characteristics, metaphors, symbols, and descriptions of things" (Berg, 2004, p.3). This is unlike quantitative research, which aims to quantify the variation and examine the relationships of various elements.

The qualitative approach was used in this study since the research questions are concerned with complex issues of trade facilitation and customs regulatory control taking place within the particular context of current express consignment operations. Qualitative research provides researchers with the opportunity to observe and uncover the concept or the meaning of individual perspectives and experiences on the issues involved in the natural settings.

In relation to perceptions of the world and knowledge, qualitative research attempts to describe how individuals and groups view and understand the world, including the reality of knowledge. As the nature of this research is such that it needs interpretation, explanation and exploration of situations, phenomena, problems and perspectives to construct meanings out of peoples' experiences, the qualitative approach is especially appropriate.

Qualitative research is based on five methodological traditions of inquiry: biography, phenomenology, grounded theory, ethnography and case study (Creswell, 1998, p.2)³⁰. This study is based on a case study methodology, which is ‘a detailed investigation’ of organisations or groups within organisations to understand and explain complex phenomena embedded in an organisational or social context (Tharenou, Donohue & Cooper, 2007, pp.76, 78).

A case study is an appropriate methodology when situations involve an individual, a group, an organisation, a society and other related phenomena (Yin, 2003, pp.1-2). The case study is a comprehensive research strategy that is particularly appropriate for this study in that it focuses on the current international trends and initiatives as well as the implementation of international standards and best practices in trade facilitation and customs regulatory control. These are largely concerned with the current phenomena involved in the real-life context, experiences and perspectives of customs administrations and stakeholders. The use of case study also provides the opportunity for the researcher to understand the research phenomenon within its context (Lewis, 2003, p.76).

In addition, the case study is an appropriate strategy when 'how' or 'why' questions are being asked about a contemporary event within the real-life context, particularly “when the boundaries between phenomenon and context are not clearly evident” (Yin, 2003, pp.9, 13). The study addressed four research questions:

1. What are the criteria required for facilitating international trade while ensuring customs regulatory control?
2. To what extent can customs administrations facilitate trade while at the same time maintaining customs regulatory control?
3. To what extent can the Customs Department, Thailand, adopt and apply international standards and best practices to the clearance of express consignments?

³⁰ Biography is “a study of a single individual and his/her experiences as told to the researcher or as found in documents and archival materials” (Creswell, 1998, p.232). Phenomenology is “a study of the shared meaning of the experience of a phenomenon for several individuals” (McCaslin & Scott, 2003). Grounded theory is a study of a phenomenon with the aim of generating or developing a theory (Creswell, 1998, p.40). Ethnography is a study of a culture or social group based on systematic observations in the field within a period of time (McCaslin & Scott, 2003). Case study is a study of a ‘bounded system’ of the case or issues being illustrated (McCaslin & Scott, 2003).

4. How can operational efficiency in the clearance of express consignments be developed or streamlined?

The case study is the preferred strategy for 'how' or 'why' questions addressed in an organisational or social context. However, it can be applied to the questions 'to what extent' and 'what' in this study since 'to what extent' questions are used for examining and analysing a phenomenon or context from a broader perspective and in a more exploratory way. The use of the 'what' question also aims to justify the rationale of the study and develop propositions for further analysis. The case study, thus, can be conducted as an exploratory case study to answer 'to what extent' and 'what' questions as well as an explanatory case study to answer 'how' questions (Yin, 2003, p.6).

In this study, the case study of express consignment operations at the Suvarnabhumi International Airport, Thailand has been chosen as a single case study. There are two main reasons for researching in the context of Thailand. First, trade facilitation has recently been addressed as one of the needs and priorities of Thailand. The government expects that the Suvarnabhumi International Airport has potential to become Southeast Asia's regional cargo hub where the cargo services will be centred at one stop after the full implementation of Airport Cargo Community System (ACCS) (Suvarnabhumi Airport Thailand, 2007). Thus, a well designed approach to the streamlining customs operational efficiency is essential to facilitate trade with the appropriate level of regulatory control.

Second, Thailand is a founding and active member of the Association of South East Asian Nations (ASEAN). Thailand's contribution to trade facilitation and the simplification of customs procedures will enhance regional cooperation and customs integration in the region. The then WCO Deputy Secretary General, Mr. Kunio emphasised that "regional cooperation is the most effective basis for implementing the WCO standards" (Mikuriya, 2007, p.2). In this regard, Thailand's membership of ASEAN could help to establish customs facilitation and control in subregional, regional and international contexts. In particular, Thailand may also be considered "the subregional leader in export promotion and facilitation" due to its highest per

capita income among countries in the Greater Mekong Subregion (GMS)³¹ (ESCAP 2002, p.70). The study of a case in Thailand can be an exemplar of how customs administrations in developing countries, particularly in the ASEAN and GMS, can perform their day-to-day activities in response to the alteration of current international trends and the requirements of the international trading community regarding trade facilitation. The case study can also demonstrate how customs can accommodate trade facilitation while regulatory control responsibilities can be met.

In particular, the case study of express consignments has been selected since, over the last 10 years, the express industry has been one of the fastest growing sectors of international trade (Embassy of France in the United States, 2001). Oxford Economic Forecasting concludes that the growth of the express industry since 1998 has experienced more than twice the growth of the overall global economy, and the industry is expected to continue “growing by an average of 8 per cent a year in real terms between 2003-2013” (Oxford Economic Forecasting 2005, p.3). Besides, ‘express consignment clearance’ is one of the Collective Action Plans (CAPs) promoted by the APEC SCCP (2005, p.5) to achieve trade facilitation and meet the new challenges of securing and facilitating global trade.

As the global economy is increasingly reliant on an efficient means of transportation to deliver import, export or transit goods to their destination, air express is particularly important for developing countries where the domestic transport infrastructure is poor (Oxford Economic Forecasting, 2005, pp.11, 16). The volume of shipments transported through air express represents only a small amount of overall international trade compared with other modes of transportation such as by sea, road or rail. However, the very nature of the air transportation means that air express carries a higher percentage of high-value shipments and time-sensitive goods.

Express consignments demand fast service and speedy clearance, and this places pressure on the development of efficiency and effectiveness in customs operations. Air express is also considered a sensitive area for customs, in terms of facilitation and control, since express

³¹ The Greater Mekong Subregion (GMS) comprises Cambodia, the People's Republic of China, the Lao People's Democratic Republic, Myanmar, Thailand and Vietnam.

consignments need to be immediately released from customs custody on the presentation by carriers of only a summary manifest listing detailed information of cargo (categories 1 and 2) and a consolidated declaration (category 3)³². As express shipments can be cleared without filing a formal declaration and supporting documents, effective control is particularly required for verifying regulatory compliance. Accordingly, the study of express consignments is the most appropriate way to examine how customs can facilitate trade while maintaining effective control in a situation in which a time constraint is imposed.

The case study of express consignment operations at the Suvarnabhumi International Airport, Thailand was chosen as the single case study with embedded multiple units of analysis. This case study can be used to obtain an in-depth and comprehensive understanding of the current phenomenon of trade facilitation and customs regulatory control in the natural context of express consignment operations. The literature suggests that a single case study is an appropriate design when it represents a critical test of existing theory or represents an extreme or unique case (Yin, 2003, p.40). It can be used when the case is considered a representative or typical case, or when the case serves a revelatory or longitudinal purpose (Yin, 2003, pp.41-42). In the situation in which there are no other cases available or suitable for replication, the researcher is also limited to a single case design (Tellis, 1997). The case study of express consignment operations is considered a distinctive case in terms of regulatory processing. It is the most appropriate case for examining and analysing the extent to which customs can facilitate trade while ensuring regulatory control in the situation where a time constraint is imposed.

However, there may be issues regarding generalisability of the single case study in that the study is based on only one case whose research results are difficult to generalise to others (Yin, 2003, p.37). In fact, the single case study does not attempt to generalise one case to other cases. Rather, it generalises the ‘findings’ to ‘theory’, which is then used to explain other cases (Yin, 2003, p.38). In this study, the research findings will be generalised to theory based on

³² Express consignments are classified into four categories: category 1: correspondence and documents, category 2: low value and non-dutiable consignments, category 3: low value dutiable consignments (a value not exceeding THB 40,000) and category 4: high value consignments (a value THB 40,000 or more).

the conceptual framework developed, and this can be applied to other customs administrations, particularly in developing countries that have a similar context or phenomena.

4.2 Research Methods

This section describes the methods used to collect and analyse data related to the perspectives and experiences of customs officers and stakeholders in relation to trade facilitation and customs control. It explains the rationale for the selection of the particular data collection methods, including the types, the approaches and the procedures for data collection. This is followed by an explanation of qualitative data analysis for each data collection method chosen.

4.2.1 Data Collection

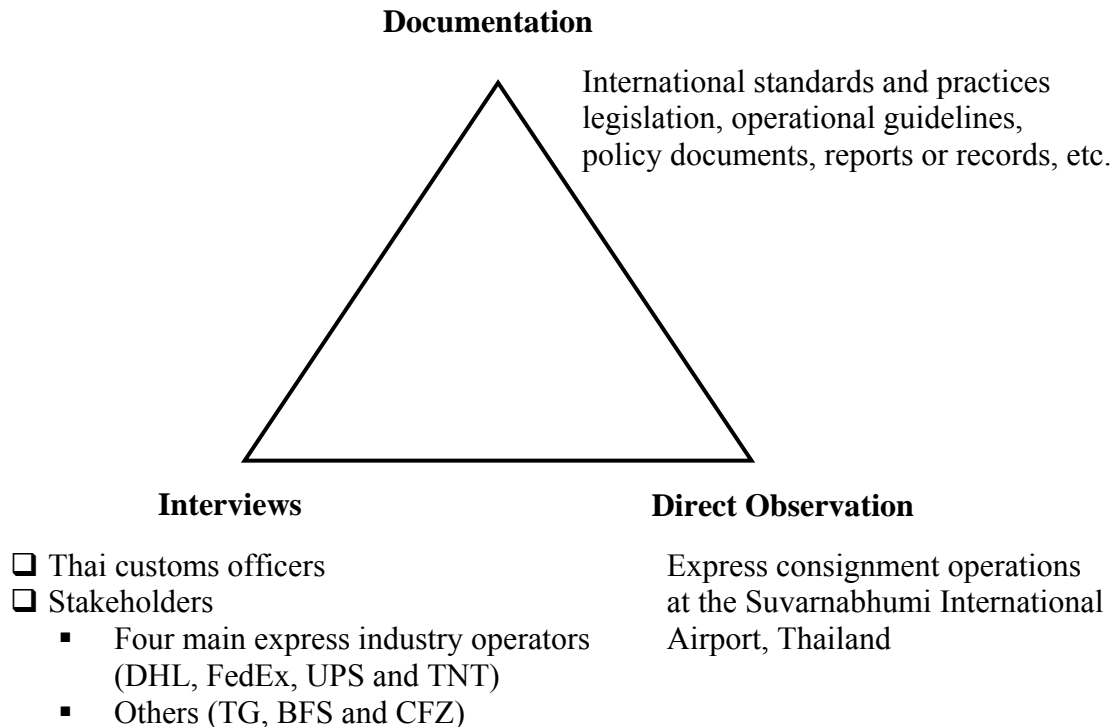
Data collection in qualitative research typically refers to the methods of participating in the setting, directly observing, in-depth interviewing and analysing documents (Marshall & Rossman, 2006, p.97). For case study research, it is necessary to obtain the “widest array of data collection as the researcher attempts to build an in-depth picture of the case” (Creswell, 1998, p.123). Sources of evidence commonly used in a case study consist of “documentation, archival records, interviews, direct observations, participant observation and physical artifacts” (Yin, 2003, p.85).

The selection of data methods for this study is based on the nature of the knowledge and data required to answer the research questions. The knowledge this study seeks to construct consists of international guidelines and related standards, experiences of customs administrations, perspectives of the air express industries, the physical environments of air express consignment and customs operational areas. These kinds of knowledge are essential for this research and can be accessed by qualitative research strategies involving a number of data collection methods. The knowledge derived from international standards and best practices can be accessed by documentary research while the knowledge involved in the phenomenon of express consignments can be obtained by interviews and direct observation.

In this study, the case study of express consignment operations at the Suvarnabhumi International Airport was examined and analysed through multiple methods of data collection:

documentation, interviews and direct observation. These methods were used to obtain a holistic view of the current practice of express consignment operations in order to answer the research questions about trade facilitation and customs regulatory control. Documentation provides information from official or institutional views since it consists of “quotations or entire passages from records, correspondence, official reports” (Labuschagne, 2003). The use of interviews and observation provide the researcher with the opportunity to observe and uncover the concept or meaning of individual perspectives and experiences related to the issues involved in a real life context.

Multiple methods of data collection were used in this study for the purpose of the triangulation of data to ensure the reliability and validity of information and to compensate for the weaknesses of each method by the strengths of the others (see Figure 4.1). Documentation is considered a useful source of information, particularly when situations or events cannot be investigated by direct observation or interviews (Ritchie, 2003, p.35). Interviews and observation are the main methods widely used in qualitative research, which is not only concerned with facts or events, but also involves “the ways that people construct, interpret and give meaning” to the experiences (Gerson & Horowitz, 2002, p.199). Interviews provide data from individuals’ experiences and perspectives. Also, direct observation consists of detailed descriptions of behaviours, actions and the full range of communication and interactions (Labuschagne, 2003). In particular, interviews are intended to develop a full understanding of the implementation of guidelines or practices regarding trade facilitation and measures to ensure effective control. Also, direct observation at the research site provides the real circumstances of express consignment operations.

Figure 4.1: Triangulation of data

Each of the collection methods covered in this study is explained in detail below.

- **Documentation**

This study is based on data collected from many sources of information such as international standards and best practices, legislation, operational guidelines, policy documents, academic literature, reports and records from customs administrations, international organisations and the trading community. In particular, the revised International Convention on the Simplification and Harmonization of Customs Procedures (the revised Kyoto Convention) and the WCO Guidelines for the Immediate Release of Consignments by Customs (the Immediate Release Guidelines) are major sources of information providing international standards and best practices in relation to trade facilitation and customs regulatory control. Other information was derived from regional and intra-regional guidelines and practices such as both the APEC SCCP Guiding Principles (FACTS) and the Harmonization and Integration of Customs Cargo Processing: Policies and Practices in the ASEAN Region. Useful information

also came from global and regional express industries such as the Global Express Association (GEA) and the Conference of Asia Pacific Express Carriers (CAPEC).

This information was used in the study to provide the researcher with the fundamental background, concepts and guidelines to examine and analyse international trends and initiatives as well as international standards and best practices in relation to trade facilitation and customs regulatory control. The information was also used to explore more specific issues about the extent to which customs can adopt and apply international standards and best practices to the clearance of express consignments. In particular, a review of relevant documentation can generally generate issues or themes, which are appropriate for interviews or observation. Documentation is considered a useful source of information that can further support other data collection methods for social research (Marshall & Rossman, 2006, p.107; Punch, 2005, p.184). This study used documentation to supplement interviews and direct observation.

- **Interviews**

The interview method is generally used in qualitative research to gain an in-depth understanding of individual perceptions and experience in relation to the particular phenomenon being studied. The approaches to interviews can be categorised into structured, semi-structured and unstructured interviews according to the extent to which the interview questions are determined and structured.

In-depth semi-structured interviews were used in this study to gain an intensive and comprehensive understanding of the perspectives and experiences of customs officers and stakeholders concerning the current practice of trade facilitation and regulatory processing of air express consignments. Semi-structured interviews are appropriate for this study in that they are more flexible than structured interviews and more focused than unstructured interviews (Tharenou et al., 2007, p.104). Semi-structured interviews aim to explore particular matters in elaborate and comprehensive detail to achieve both breadth and depth of coverage within and across key issues (Jorgensen, 1989, p.90; Legard, Keegan & Ward, 2003, p.148). This type of interview is guided by topics, themes, issues or specific questions that make the interviews

“more systematic and comprehensive by delimiting the issues to be taken up in the interviews” (World Bank, 2002). It provides the opportunity for the researcher to freely pursue further questions in depth and in detail, and at the same time, allow interviewees to express their opinions and ideas or even raise other topics or issues of interest (World Bank, 2002; Esterberg, 2002, p.87). This is of great significance for creating new knowledge at some stage during the interviews (Legard et al., 2003, pp.141-142; Trochim, 2006a).

The interviews were conducted with the preparation of topic guides and interview questions³³ developed in line with the conceptual framework and research questions. The interviews were used to answer the research questions on the criteria required for maximising both trade facilitation and customs regulatory control and to explore a more particular issue about how operational efficiency in the clearance of express consignments can be developed or streamlined. The key guidelines for interviewing consist of the six main elements of the conceptual framework: risk management, customs legislation, customs procedures, information technology, cooperation and consultation, and human resource development.

This study used ‘purposive sampling’ to select interviewees. In this method, a particular sample is selected deliberately on the basis of analytical or theoretical purposes that link to the research focus or questions being addressed (Ritchie, Lewis & Elam, 2003, p.107). Purposive sampling was used to select the key informants who have extensive knowledge that can provide information and contribute meaningful data in the area of express consignments. The interviews were conducted with interviewees from management and operational levels of customs officers, and staff from the main express industries or the ‘big 4’ (DHL, FedEx, TNT and UPS), and other stakeholders whose work is involved in international trade such as TG, BFS and CFZ. Interviews with management levels provide an overall picture of the policy or decision-making on trade facilitation and customs regulatory control. Interviews with operational levels are necessary in that they know the actual situations and the practical operations in relation to facilitation and control. Individuals for interviews will be nominated by the organisations and by a process of snowballing. A summary of the organisations and the level and number of interviewees is presented in Table 4.1.

³³ In-depth Interview Guidelines are provided in Appendix 4.1.

Table 4.1: Summary of Interviews

Organisations	Level	Number of Interviewees
Thailand		
Public Sector		
The Customs Department		(20)
1. Central Office	Management	7
	Operation	3
2. Express Consignment Operations	Management	5
	Operation	5
Private Sector		(42)
The Express Industry		(29)
1. DHL	Management	6
	Operation	2
2. FedEx	Management	4
	Operation	5
3. TNT	Management	3
	Operation	4
4. UPS	Management	2
	Operation	3
Other Stakeholders		(13)
1. Thai Airways International (TG)	Management	2
	Operation	-
2. Bangkok Flight Services (BFS)	Management	2
	Operation	2
3. Free Zone Operators (FZO)	Management	2
	Operation	4
4. Other (DPEX)	Management	1
	Operation	-
Singapore & Australia		(10)
Public Sector	Management	2
Private Sector	Management	8
Total		72

Interviews were conducted in two stages, before and after direct observation. This was to allow interesting issues raised during the interviews to be confirmed later by observation, and to allow issues which arose during observation to be clarified in subsequent interviews. Individual interviews were conducted for approximately 45 minutes to examine the interviewees' perceptions and experiences in depth. The researcher raised the issues at the beginning of the interviews and then allowed the interviewees to freely respond to the topics in-depth. With the agreement of the interviewees, a digital-recorder was used to record the interviews. This is to enable the researcher to devote full attention to listening to the interviewees and ask subsequent questions for in-depth understanding (Legard et al., 2003, p.166). It also provided the researcher with the opportunity to listen to the tapes on a number of occasions and gain a thorough understanding of interviewees' perspectives and experiences in relation to trade facilitation and customs regulatory control, particularly the improvement of operational efficiency and control in the area of express consignments.

- **Direct observation**

As interviews mainly obtain subjective points of view depending on the experiences of the interviewees, this study also gathered data through direct observation to uncover the complex interactions and phenomena in a variety of natural settings (Tharenou et al., 2007, p.142). The approaches to observation can be described according to 'the degree of structure in the observations themselves' and 'the degree to which the researcher participates in the scene being observed' (Tharenou et al., 2007, p.134). The approaches to observation can be categorised into structured or unstructured observation and can be described in terms of participant or non-participant observation, sometimes called direct observation.

In this study, rather than focusing on a description of social life and culture based on the ethnography tradition³⁴, observation was used as part of an empirical study to seek an understanding of operational efficiency and current practices of air express consignments. The researcher gather information by noting facts and situations related to the phenomenon of express consignment operations purely as an observer rather than by being deliberately

³⁴ Participant observation is based on the ethnography tradition in that it tries to develop an understanding of participants' lived experience (Esterberg, 2002, p.85). Thus, it requires a prolonged period of social interaction to be accepted as "a natural part of the culture in order to assure that the observations are of the natural phenomenon" (Trochim, 2006b).

involved in the phenomenon or becoming a part of the natural context. In this regard, direct observation is more appropriate in that it attempts to comprehend complex interactions or phenomena in their natural context by “systematic noting and recording of events, behaviours, and artifacts in the social setting” (Marshall & Rossman, 2006, pp.98, 99).

Direct observation is a study of a culture or social group based on systematic observations in the field within a given period of time (McCaslin & Scott, 2003). It was used in this study to obtain a greater understanding of the complex interactions involved and to answer the research questions concerning contemporary events, in particular those related to phenomenon of express consignment operations. Direct observation is generally used with a structured or systematic approach. This involves “a predetermined set of categories of the phenomenon to be studied, and observations of behaviour are specifically recorded against the categories” (Tharenou et al., 2007, p.135). In this study, direct observation was used as an unobtrusive method with minimal interruption of the daily activities of officials and staff in the organisation being observed. An observation sheet was prepared in advance and used as a guide for direct observation, and field notes were used as an observational record. The key areas or subjects for observation comprise risk management principles, laws and regulations, operational procedures, information technology, cooperation among stakeholders and human resource development.

Direct observation provided the researcher with a better understanding of context and was used as a method for cross-checking the data to compensate for a possible gap between what people might say and what they would actually do. In this regard, direct observation was used to fill the gap in information arising from the reluctance of interviewees to address sensitive issues. However, the disadvantage of this method is that it encourages researchers to interpret the particular phenomena without the clarification of the people being observed (Rauterberg, 2007). In this situation, data from interviews can support and supplement observational data. As the interviews were also conducted after the observation, the researcher was in a position during the interviews to ask for clarification of unclear issues, which had arisen during the observation.

4.2.2 Data Analysis

The study examined and analysed the application of international standards and best practice for express consignment operations. The convergence of factors such as different social contexts, cultures and related issues, which may differ from country to country, was also taken into consideration to develop a set of criteria to achieve high facilitation of trade and effectiveness of customs regulatory control. The case study of Thailand's express consignment operations was analysed by reviewing the documentation on international standards and guidelines. This includes interview and observation data derived from the customs administrations of Thailand, Singapore and Australia, and from the members of the Conference of Asia Pacific Express Carriers (CAPEC) in Thailand, Singapore and Australia.

- **Analysis of documentation**

Qualitative analysis of the documentation used in this study consists of content analysis and descriptive analysis. Content analysis is an unobtrusive and rapid method used for analysing a large number of text documents (Troche, 2006b). Descriptive analysis is used to document and describe the phenomenon and individuals' perceptions and experiences. In this study, the combination of content analysis and descriptive analysis was used to identify themes or major ideas regarding trade facilitation and customs regulatory control, particularly in relation to international standards and best practices. This review and analysis of documents was used to further supplement the qualitative methods of interviewing and observing.

- **Analysis of interviews**

Qualitative analysis with non-statistical processes was used to analyse data derived from the interviews. The literature provides a number of methods for use in the analysis of interviews. In general, data analysis includes the processes of organising and preparing the data, generalising categories and themes, coding the data, interpreting and developing thematic analysis, and presenting the research results (Creswell, 2003, p.206; Marshall & Rossman, 2006, p.98; Ritchie, Spencer & O'Connor, 2003, p.261; Schmidt, 2004, pp.253-257). Data analysis for this study followed these processes, and the conceptual framework developed for this study was used as a central component in organising and classifying the data (Ritchie et

al., 2003, p.262). In other words, the researcher transcribed the data derived from the interviews, reviewed the interviews scripts and notes, coded the data according to topic guidelines and interview questions, analysed and interpreted the data on the basis of the core concepts of the conceptual framework, and then summarised and presented the research findings.

- **Analysis of direct observation**

Analysis of direct observation is usually inductive (Tharenou et al., 2007, p.138). It includes the process of identifying the conceptual framework and research problems, checking the frequency and distribution of phenomena and constructing social system models (May, 1997, pp.147-148). Data collected from the observation, mainly the field notes, were reviewed and analysed following the same processes as in the analysis of the interview scripts. This involved using the framework to categorise, interpret and analyse observations of recurrent patterns.

4.3 Reliability and Validity of the Research

4.3.1 Reliability

Reliability is concerned with the ‘replicability of research findings’ and the extent to which the same results are repeated when the same or similar methods are applied to the same group under the same conditions (Lewis & Ritchie, 2003, p.270). The reliability of the study is considered a means to “minimise the errors and biases in a study” (Yin, 2003, p.37). The reliability of the data collection can be achieved by using the appropriate methodology and methods for conducting the research. This includes the process of cross-checking information, applying multiple sources and verification, employing different methods of data measurement, and involving other researchers in the data collection and analysis (Tharenou et al., 2007, p.81). To ensure the reliability of the research results, this study was conducted in a comparable manner over repeated interviews and observation under the same conditions each time. Even though this study used a single case study, the interviews and observation were conducted across a number of organisations using in-depth semi-structured interviews and structured observation with the same predetermined set of topic guides or categories. Within

the phenomenon of express consignment operations, data collected from the Customs Department, the four main express industries and other stakeholders were used for cross-checking information.

4.3.2 Validity

Validity of finding or data is “traditionally understood to refer to the ‘correctness’ or ‘precision’ of a research [study]” (Lewis & Ritchie, 2003, p.273). In this study, validity is ensured through multiple sources of evidence, including documentation, interview and direct observation. This is consistent with the literature, which suggests that researchers use multiple sources of evidence, establish a chain of evidence and have key informants to review a draft of the case study (Yin, 2003, p.34). According to Tharenou et al. (2007, p.83), researchers can increase internal validity through the use of multiple sources and methods, and external validity can be increased through the use of multiple case studies or replication. Similarly, Stake (1995, pp.112, 115) suggests ‘triangulation of information’ and ‘member checking’ as two methods to ensure validity. Triangulation is used to confirm the data obtained in a study by comparing three or more sources of evidence, and a draft of the report is examined by participants for verification of information through the member checking method (Stake, 1995, pp.114, 116).

4.4 Ethical Considerations

All research involving human subjects needs to consider ethical issues, which may arise as follows:

- Ethical approval from the relevant institutions
- Privacy, confidentiality and anonymity of information
- Voluntary and informed consent of participants
- Discomfort involved for the research participants
- Benefits and risks of the study
- Participants’ access to results
- The right of participants to discontinue or withdraw from the project

In this study, privacy, confidentiality, data protection and voluntary nature of participation were considered the significant ethical issues. Every effort was made to minimise the risk or discomfort to the participants arising from these issues.

This research was approved by the University Committee for Ethics in Human Research which ensures that the rights and welfare of participants involved in research projects are protected and the research conducted is beneficial to the community. Prior to the interviews and direct observation, the researcher asked for organisational permission to conduct the research with staff and officials, including permission for the observation at the research site and the express consignment operational areas. This includes permission from the Customs Department, the four leading express companies (Big 4): DHL, FedEx, TNT and UPS, and the other main stakeholders: TG, BFS and CFZ.

The information sheets³⁵ and consent forms³⁶ were sent to the interviewees to obtain their permission prior to the interviews as involvement in this research is based on voluntary participation. The interviewees were informed of the aims and objectives of the research and were given explanations of the research procedures. Individuals and organisations were not identified in the report to preserve the confidentiality of personal and organisational information. Care was taken to ensure that, where possible, the data were amalgamated before reporting so that individual identification was not possible, even for insiders. No information obtained from the interviewees and other participants was reported to any organisation in either the public or the private sector. All relevant information was treated confidentially throughout the research project and has been stored at the University of Canberra for a period of five years.

4.5 Limitations of the Study

Statistical information received from the Customs Department, the express industry and the Free Zone Operator in relation to the importation and exportation of goods is limited and varies among the organisations. First, the Customs Free Zone, which is the new cargo

³⁵ See Appendix 4.2 for detailed information on a participant information sheet

³⁶ An informed consent form is provided in Appendix 4.3.

management at the Suvarnabhumi Airport, was established in September 2006 when not all facilities were fully functional. At the time of the study, the collection of information for statistical purpose was done manually in the first year. Even though a database has been used later for collecting customs and trade statistics, the information was not available for some period of time due to the technical problems accompanying the establishment of electronic data collection. Second, some information has been collected manually and there were some mistakes in the data collected such as gaps in the data or figures. Therefore, the statistics derived from these organisations vary considerably, particularly in relation to the number of red line and green line shipments as well as the actual rate of customs inspection. For this reason, the statistical information provided in this study is limited and aims only to provide an overall picture of the current situation in relation to customs procedures and the clearance of express consignments.

4.6 Chapter Summary

This chapter outlines the research design methodological framework for this study. It justifies the use of a case study methodology and research methods for the data collection and analysis. The case study methodology has been selected in line with the nature of the research problems, which are involved with contemporary events within the natural setting and real life contexts. Multiple sources of data collection, which consist of documentation, interviews and direct observation, have been discussed. Qualitative data analysis has been used to examine and analyse the data derived from the data collection methods. The reliability and validity of the research, the ethical issues and the limitations of the study have been considered at the end of the chapter. The next chapter will present the research findings based on the conceptual framework developed for this study.

CHAPTER 5

THE CASE STUDY OVERVIEW: THE PLAYERS, PROCEDURES AND PRACTICES

The chapter provides background information on the case study of express consignment operations in Thailand. It includes an introduction of the organisations examined in this study: the Thai Customs Department, the express industry and other stakeholders. This is combined with the description of express consignment procedures and practices, the classification of express consignments and the requirements of the Customs Department for express consignments clearance.

5.1 The Case Study Overview: The Players

5.1.1 The Thai Customs Department³⁷

The Thai Customs Department is a government agency located under the Ministry of Finance. The Department performs a range of functions and responsibilities, including the collection of customs taxes and duties, the promotion of manufacturing and export through tax measures, the facilitation of international trade, the protection of society, and the compilation and publication of export-import statistics and other customs related information (Thai Customs Department, 2008d).

Its main functions also include the supervision of imports and exports to ensure compliance with customs laws and regulations, along with the investigation of any breach or attempted breach of the statutory or regulatory provisions. These functions cover a range of prevention responsibilities, including the prevention and suppression of smuggling, of tax and duty evasion, of commercial fraud such as under- or over-valuation, misdescription, false declaration of quantity or quality, violation of prohibitions or restrictions on imports and exports, and other customs offences (Thai Customs Department, 2008b).

³⁷ The three terms “The Thai Customs Department”, “The Customs Department” and “The Department” are used interchangeably in this study.

In performing its functions and responsibilities, the Thai Customs Department aims to develop as a “world-class customs for national competitiveness and social protection” with the mission and strategy³⁸ to comply with international standards by promoting economic development and national competitiveness and by enhancing efficiency in customs control (Thai Customs Department, 2008g). This reflects in the endeavours of the Department to take on roles from collection and protection of revenue to trade facilitation and regulatory enforcement, in accordance with international customs’ standards and best practices. The Thai Customs Department has placed emphasis on trade facilitation in response to the needs of the trading community while at the same time maintaining an appropriate level of regulatory control in accordance with government requirements. In this regard, the Customs Department has aimed to simplify and harmonise customs systems and procedures for the efficient and expeditious clearance of consignments, in accordance with the international standards, guidelines and recommendations. In essence, the World Customs Organization (WCO) International Convention on the Simplification and Harmonization of Customs Procedures (as amended), known as the revised Kyoto Convention, is the international framework for modern, efficient and effective customs procedures.

To enhance operational efficiency in the clearance of express consignments, the Thai Customs Department has adopted the World Customs Organization (WCO) Guidelines for the Immediate Release of Consignments by Customs (Immediate Release Guidelines) which are consistent with the revised Kyoto Convention. The Customs Department assigns the responsibilities for customs formalities and clearance of express consignments to the Customs Service Division III of the Suvarnabhumi Airport Cargo Clearance Customs Bureau, where

³⁸ Mission (Thai Customs Department, 2008h):

- a) To provide a modern, expeditious and customs service in accordance with global standards
- b) To promote economic development and national competitiveness by implementing customs-related measures
- c) To enhance efficiency in customs control, targeting social protection
- d) To collect revenue in an efficient, fair and transparent manner

Strategy:

- a) To align customs business processes with world-class standards
- b) To develop customs measures, targeting national competitiveness
- c) To develop capacity for customs control, focusing on international standards
- d) To manage a revenue collection system, focusing on the good governance principles

three groups of officers work shifts of 24 hours in rotation. The functions of the Customs Service Division III include acceptance of the aircraft entry and exit report, acceptance of the inbound and outbound manifest³⁹, collection of import duties and taxes for express consignments, and inspection and release of express consignments.

5.1.2 The Express Industry

The express industry plays a significant role in the world of logistics that requires fast and reliable delivery to serve customers worldwide based on the concept of door-to-door service and in response to Just-in-Time management. The industry, therefore, needs facilitation practices with certainty, consistency and predictability from customs administrations to ensure time-definite and guaranteed delivery, which is crucial for this business.

At an earlier time, the express industry carried bags of documents on commercial flights as on-board couriers. The industry has changed dramatically from its initial focus on carrying documents to a focus on the transport of packages and freight, carried by its own or dedicated fleets of aircraft, trucks, trains and delivery vans (EEA, 2008). The express industry currently provides a unique combination of “door[-]to[-]door delivery, custodial control, track and trace technology, facilitation of customs clearance, high level of reliability, global service and speed of delivery”⁴⁰, all of which are considered key characteristics of express delivery services (Lin, 2006, p.6; U.S.-China Business Council, 2003, p.vi).

³⁹ The term ‘manifest’ refers to

a listing of the goods comprising the cargo (freight) carried in a means of transport or in a transport-unit. The Cargo manifest which gives the commercial particulars of the goods, such as transport document numbers, consignors, consignees, marks and numbers, number and kind of packages, descriptions and quantities of the goods, may be used in place of the Cargo Declaration (WCO, 1995).

⁴⁰ Key characteristics of express delivery services:

- a) Door to door delivery: the service processes picking up to final delivery with “seamless transfer among multiple modes of transport” (Lin, 2006, p.6).
- b) Custodial control: the express industry uses a sophisticated information system to control shipments in order to ensure security of shipments and reduce risk of loss or damage.
- c) Track and trace technology: the service provides the opportunity for shippers to track the precise movement and location of the shipment through the internet to confirm delivery.
- d) Facilitation of customs clearance: the express industry assists shippers in completing customs formalities and clearance of shipments.

DHL International GmbH (DHL), FedEx Corporation (FedEx), TNT Express Worldwide (TNT) and United Parcel Service Inc (UPS)⁴¹, also referred to as ‘integrators’⁴², are the four largest express delivery service companies dominating this industry accounting for almost 85 per cent of the world’s express shipments (Lin, 2006). FedEx and UPS are based in the United States while DHL and TNT are based in Germany and Netherlands respectively. The express integrators provide customers worldwide with a comprehensive range of business, logistics and express delivery services to more than 220 countries and territories. With their international networks, global hubs and stations, the express integrators are able to expedite delivery of time-sensitive shipments to provide a door-to-door service for their customers with maximum reliability and speed of delivery, usually in one to two business days with the delivery time guaranteed.

In Thailand, express consignments are operated by 14 licensed companies, including ten express carriers who are members of the Thai Express Courier Association (TEXCA)⁴³ as well as four major express operators who are members of the Conference of Asia Pacific Express Carriers (CAPEC): DHL, FedEx, TNT and UPS. The express consignments transported by

e) High level of reliability: the express industry guarantees an on time delivery service at the required destination.

f) Global service: the air express industry has global networks of business, including air hubs and stations to serve worldwide delivery.

g) Speed of delivery: the express industry provides the quickest possible delivery service, usually within one to two business days with the time-definite guaranteed.

⁴¹ Information on the four express integrators is provided in Appendix 5.1.

⁴² The term ‘integrator’ refers to “the ability of these companies to offer door-to-door, time-definite integrated services, where the company maintains control over all aspects of the distribution process” (Oxford Economic Forecasting, 2005, p.5).

⁴³ Thai Express Courier Association (TEXCA) consists of ten express carriers as follows:

a) Document Parcel Express Co., Ltd.

b) Linehaul Express (Thailand) Co., Ltd.

c) OCS Cargo Co., Ltd.

d) Siam Star Enterprise Co., Ltd.

e) Siam Trans International Co., Ltd.,

f) J.U.A. Express Co., Ltd.,

g) Transpeed Co., Ltd.

h) O.B.International Co., Ltd.

i) Unlimited Express (Thailand) Corp., Ltd.

j) I.O.B.Courier Co., Ltd.

these four express companies represent a substantial proportion of the total express shipments in Thailand.

DHL, FedEx, TNT and UPS are the four largest express integrators operating as airlines, express carriers and express delivery services. They cover a wide range of activities, from operations: break-bulk and loading, customs formalities and clearance to final delivery. In general, the express companies operate all the processes of express consignment operations from shipping to final delivery. However, some express operators employ outsourcing for break-bulk⁴⁴ and loading and use contracted vendors for customs clearance and delivery services. The express companies operate 24 hours to ensure that all packages can be cleared on an overnight basis. These companies also have their own infrastructures, instruments and facilities with airside and landside access to facilitate express consignment operations and services.

5.1.3 Other Stakeholders

Express consignments are operated under the Customs Free Zone, authorised by the Airports of Thailand Public Company Limited (AOT) and managed by the Free Zone Operator (FZO) at Thai Airways International Cargo Terminal (TG) or Bangkok Flight Services Cargo Terminal (BFS). These stakeholders are not directly involved in express consignment operations for the reason that customs formalities and clearance of express consignments are operated by the express industry at its own facilities. However, FZO, TG and BFS play a significant role in supporting and facilitating a seamless flow in the international supply chain. In other words, FZO is responsible for management of the Customs Free Zone, which is a new concept of cargo handling and management at the Suvarnabhumi Airport. It supports and facilitates logistics flows with management of the facilities and the cargo information system and provides assistance and support for customs officers and other government agencies

⁴⁴ The term ‘break-bulk’ refers to “unload[ing] and distribu[ting] a portion or all of the contents of a consolidated shipment for delivery or reconsignment” (Hinkelman, 2006, p.26). As far as consolidated air freight is concerned,

it is moved under one MAWB and each consignment designated to [a] specific consignee or recipient is under one HAWB. When [the] freight forwarder receives the consolidated cargo from [the] carrier, [freight forwarder breaks] the consolidation apart per HAWB then proceed[s] [to] customs clearance along with associated shipping and import documents. Such Break-Bulk is normally handled by [the] airlines or their contracted ground handling agent (Taurus Logistics Ltd, 2009).

(OGAs). This includes ensuring safety and security within the Customs Free Zone. Furthermore, TG and BFS operate as the cargo terminal operators, providing cargo handling services for the express industry, including submitting air cargo manifests to the Thai Customs Department.

5.2 Express Consignment Operations in Thailand

5.2.1 Background

Express consignment operations in Thailand have developed from an On-Board courier (OBC) service, carrying documents and small parcels on commercial flights through the airport terminal. As the number of goods increased substantially and the types of shipments expanded to include industrial packages and freight, the operational area became inadequate. In 1992, the express consignment operations moved to the Import Cargo Terminal at the Bangkok International Airport for customs formalities and clearance. In 1997, the Express Consignment Centre was established for the operations of the Express Handling Unit (EHU), and was developed to become the Express Consignment Hub in 2003 to serve the full range of import, export and transit express consignments. Finally, in 2006, the express consignment operations were moved to the Customs Free Zone⁴⁵ at the Suvarnabhumi Airport.

5.2.2 Customs Free Zone

The Customs Free Zone is designated for the purpose of commercial operations, including commercial cargo and value added activities⁴⁶. A goods declaration is not required provided that such goods are introduced into the free zone directly from abroad. With the free movement of goods within the Free Zone, facilitation and control of goods are expected to be supported by an electronic system. In particular, a high standard of customs control is required

⁴⁵ The Customs Department defines free zone as “a designated area for industrial or commercial operation or any other operations [involved] in economic growth and development. Foreign and domestic merchandise removed into Free Zone is eligible for tax and duty privileges as indicated by the law” (Thai Customs Department, 2008c). Chapter 2 of the Specific Annex D of the revised Kyoto Convention defines free zone as “a part of the territory of a contracting party where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the customs territory” (WCO, 1999).

⁴⁶ Commercial cargo includes import cargo, export cargo, transit and transshipment cargo and cargo storage. Value added activities encompass trading, break bulking, grading and sorting, repackaging and relabelling, partial clearance and combined cargo.

to ensure effective regulatory compliances measures, especially in regard to the entry and exit of goods into and out of this restricted area. In respect of the requirement of the Customs Department in establishing the Customs Free Zone, the Airport Cargo Community System (ACCS)⁴⁷ is required to provide primary information technological support for cargo operations, particularly for reporting cargo information and controlling the extensive range of value added activities within the Free Zone. This technological support includes electronic control equipment such as a barcode system for the control of shipments, Radio Frequency Identification (RFID) for the control of delivery vans and trucks, and Personal Digital Assistants (PDAs) to allow customs officers and Free Zone Operators to check information on shipments. However, as the electronic or ACCS system has yet to be implemented, the current practice of cargo operations relies on a manual system.

5.2.3 Operational Area

The express consignments are operated in the restricted area, the Customs Free Zone (CFZ), which encompasses an area of 660,572 square metres with direct landside and airside access. The operational area for express consignments in Thailand was designed and constructed separately from the normal cargo terminals. The operations take place in the express industry's own facilities at two cargo terminals: the Bangkok Flight Services Cargo Terminal (BFS) and the Thai Airways International Cargo Terminal (TG). DHL, FedEx and TNT operate at the BFS Cargo Terminal while UPS and the other ten express carriers operate at the TG Cargo Terminal. Customs formalities and clearance of express consignments take place in other buildings at the Suvarnabhumi Airport Cargo Clearance Customs Bureau (BC-1), the Customs Import Clearance Building (CI) and the Customs Export Clearance Building (CE)⁴⁸.

5.2.4 Procedures and Practices

The importance of air cargo transportation has been increasing over recent years as a result of economic globalisation, the needs of customers and the growing market in fast transportation

⁴⁷ ACCS consists of eight components: the Management Information System (MIS), the Cargo Management System (CMS), the Declaration System (DS), the Risk Management System (RMS), the Electronic Payment System (EPS), the Flight Information System (FIS), the System Administration System (SAS) and the FZ Information Exchange System (FIES)

⁴⁸ A location map is provided in Appendix 5.2.

and delivery service. The number of import and export goods carried as air cargo into and out of Thailand accounts for more than one third of the total cargo⁴⁹. Transportation by air is typically concerned with fast transportation and the early release of goods. Simplified customs procedures are therefore required to expedite the clearance of consignments, particularly in the case of the air express consignments. Customs procedures applied to the clearance of express consignments are different from and more sophisticated than those applied to general air cargo and other means of transportation: road, rail, ship and post. Express consignment operations and customs clearance are simplified and facilitated by the categorisation of consignments, the application of informal or consolidated clearance and the advance submission of cargo information.

First, in accordance with the WCO Immediate Release Guidelines (WCO, 2007b), the express consignments are classified into four categories for import express consignments and two categories for export express consignments to enable immediate clearance of shipments⁵⁰. The WCO express consignment classification and the WCO Guidelines adopted by the Thai Customs Department are illustrated in Table 5.1 below.

Table 5.1: Classification of Express Consignments

WCO Immediate Release Guidelines	The Thai Customs Department	
	Import Express Consignment	Export Express Consignment
Category 1: Correspondence and documents	Yes	Category 1 (documents, sample and non-tax privileged items)
Category 2: Low value consignments for which no duties and taxes are collected	Yes	
Category 3: Low value dutiable consignments	Yes	Category 2 (restricted items, privilege of duty and tax, and re-export shipments)
Category 4: High-value consignments	Yes	

⁴⁹ See Appendices 5.3 and 5.4 for detailed information on Thailand Import and Export Statistics

⁵⁰ Full details of the classification of express consignments are provided in Appendices 5.5 and 5.6.

In Thailand, import express consignments are classified into four categories based on the type and value of shipments: documents, de minimis, low value dutiable consignments and high-value consignments. Each category is subject to different customs regulatory requirements and customs clearance procedures. The description and attribute of each category is summarised in Table 5.2. In relation to export express consignments, two categories are classified based on privilege of duty and tax exemption, refund or reimbursement. Table 5.3 provides a summary of the categorisation of export express consignments, including the customs regulatory requirements and customs clearance procedures for each category.

Second, express consignments can be cleared by means of informal or consolidated entry, thus obviating the need to file constant formal declarations with supporting documents for cargo clearance. In other words, express consignment in categories 1 to 3 can be cleared immediately after flight arrival with the consolidated customs clearance. Only consignment category 4 is subject to formal customs clearance. The Thai Customs Department allows the express industry to file one consolidated entry for clearance of all import express consignments in categories 1 and 2 as well as export express consignments in category 1. However, consolidated clearance of import express consignments in category 3 is limited to 40 Air Waybills⁵¹ (AWBs) per entry and 30 AWBs per entry for export express consignments (see Tables 5.2 and 5.3).

⁵¹ Air Waybill (AWB) refers to

A shipping document used by the airlines for air freight. It is a contract for carriage that [covers] carrier conditions of carriage, including such items as limits of liability and claims procedures. The air waybill also contains shipping instructions to [the] airline, a description of the commodity, and applicable transportation charges. Air waybills can be used by many truckers [in the same way as] documents for coordinated air-truck service (Hinkelman, 2006, p.12).

Air waybills are not negotiable. The airline industry has adopted a standard formatted air waybill that accommodates both domestic and international traffic. The standard document was designed to enhance the application of modern computerized systems to air freight processing for both the carrier and the shipper (Hinkelman, 2006, p.12).

Normally, an Air Waybill refers to the Air Waybill issued by carrying airlines and also called [the] Master Air Waybill (MAWB) which comes with three digits of [the] numeric airline identification codes issued by IATA to non-U.S. based airlines and [by the] Air Transport Association of America to U.S. based airlines. However, air freight forwarders also issue [the] HAWB (House Air Waybill) to their customers for each of the shipments (ABCS, 2008).

Table 5.2: Categories of Import Express Consignments and Customs Regulatory Requirements in Thailand

Category	Definition	Customs regulatory requirements	Customs clearance
Category 1: Correspondence and documents	- Documents	100% x-ray	Consolidated clearance
Category 2: Low value non-dutiable consignments	- Trade sample - CIF ⁵² value \leq THB ⁵³ 1,000 (USD 28) ⁵⁴	100% x-ray	Consolidated clearance
Category 3: Low value dutiable consignments	- FOB ⁵⁵ value \leq THB 40,000 (USD 1,150)	\leq 10% Customs inspection / X-ray	Consolidated clearance (40 AWBs per entry)
Category 4: High-value consignments	- FOB value $>$ THB 40,000 (USD 1,150) - Prohibited or restricted items	Red line: Customs Inspection Green line: Exemption of customs inspection	Formal clearance (Single customs entry per shipment)

Source: Documents from the Thai Customs Department and the express industry, interviews and observation (Full details of categories of import express consignments in Thailand are provided in Appendix 5.6)

⁵² Cost, insurance, freight (CIF) refers to

the cargo insurance and delivery of goods to the named port of destination (discharge) at the seller's expense. Buyer is responsible for the import customs clearance and other costs and risks. In the export quotation, indicate the port of destination (discharge) after the acronym CIF, for example CIF Pusan and CIF Singapore. Under the rules of the INCOTERMS 1990, the term CIF is used for ocean freight only. However, in practice, many importers and exporters still use the term CIF in the air freight (ICC, 2000).

⁵³ THB is the currency abbreviation for Thai baht.

⁵⁴ The US rate quoted in this study is based on 35 Baht per US dollar

⁵⁵ Free on Board (FOB) refers to

the delivery of goods on[-]board the vessel at the named port of origin (loading), at seller's expense. Buyer is responsible for the main carriage/freight, cargo insurance and other costs and risks. In the export quotation, indicate the port of origin (loading) after the acronym FOB, for example FOB Vancouver and FOB Shanghai. Under the rules of the INCOTERMS 1990, the term FOB is used for ocean freight only. However, in practice, many importers and exporters still use the term FOB in the air freight (ICC, 2000).

Table 5.3: Categories of Export Express Consignments and Customs Regulatory Requirements in Thailand

Category	Definition	Customs regulatory requirements	Customs clearance
Category 1: Document and non-tax privileged consignments	- Documents, sample and non-tax privileged items	≤ 10% Customs inspection/ X-ray	Consolidated clearance (30 AWBs per entry)
Category 2: Tax privileged consignments	- Prohibited or restricted items - Privilege of duty and tax exemption, refund or reimbursement - Re-export shipments	Red line: Customs inspection Green line: Exemption of customs inspection	Formal clearance (Single customs entry per shipment)

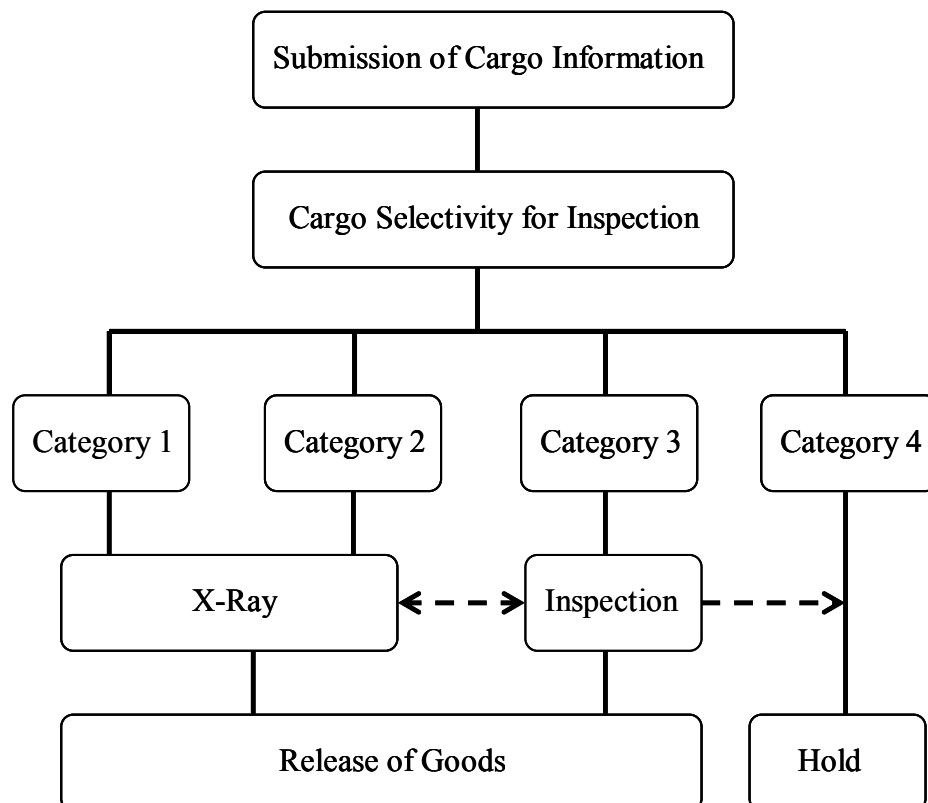
Source: Documents from the Thai Customs Department and the express industry, interviews and observation (Full details of categories of export express consignments in Thailand are provided in Appendix 5.6)

Remark: Most export items are exempted from payment of duty, except the following items (Thai Customs Department, 2008f):

- a) Rice and glutinous rice, whether in the form of paddy, white rice, cargo rice, parboiled rice, broken rice or meal
- b) Metal scraps of any kind
- c) Hides of bovine animals, raw or tanned, (excluding parings, waste and dust which can not be used in the production or manufacture of leather)
- d) Rubber of the genus *Hevea*, in the form of sheets, blocks, cuttings, slabs, latex or scraps from rubber trees, rubber containing soil or barks from rubber trees, including rubber in other forms which is usable as raw material
- e) Wood, sawn wood and articles made of wood
- f) Raw silk (not thrown), silk yarn and yarn spun from waste silk and noil silk
- g) Fish, pulverized or only baked, unfit for human consumption
- h) Fuel oil, lubricating oil and lubricants to be used for replenishment of store on aircraft or on ships of gross tonnage more than 500 tons under the authority of a customs clearance to a foreign destination

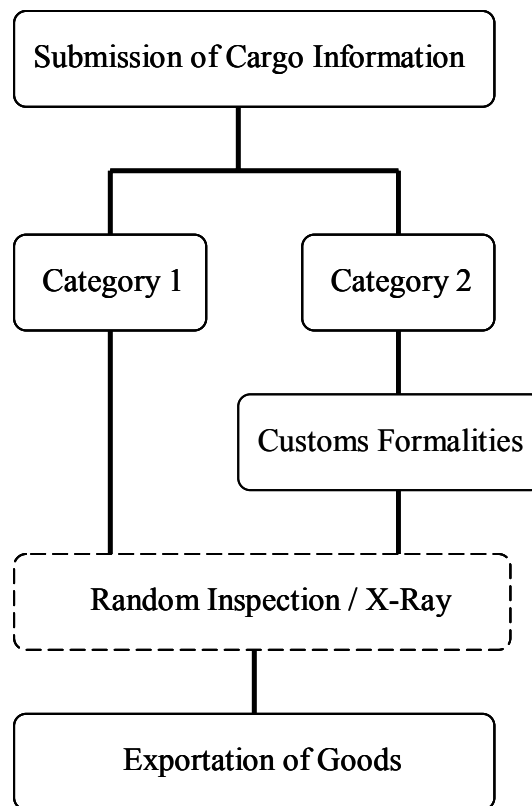
Third, express consignment clearance relies on advance cargo information, which enables the immediate release of consignments by customs officers after flight arrival. The express industry is required to submit cargo information on imported shipments to the Customs Department electronically at least two hours prior to flight arrival so that customs officers can verify information and select goods for inspection or x-ray if required. In general, all category 1 and 2 items are subject to x-ray whereas customs officers carry out physical inspections of items in category 3 in particular and make a decision as to whether individual shipments can be released from customs custody or need to be held for formal clearance processes. Express consignments in categories 1 to 3 can be cleared with consolidated entry whereas category 4 items are held for formal customs clearance. Figure 5.1 illustrates the process of customs clearance for import express consignments.

Figure 5.1: Customs Clearance for Import Express Consignments



Similar customs procedures are in place for export express consignments, the express industry submits cargo information to the Customs Department. Express consignments in category 2 are subject to customs formalities and clearance while category 1 items can bring into the company facilities in the Customs Free Zone for loading into containers. In general, customs officers rarely inspect export shipments. Random inspection or x-ray is applied only if high-risk or suspected shipments are identified. Figure 5.2 illustrates the process of customs clearance for export express consignments.

Figure 5.2: Customs Clearance for Export Express Consignments



In addition, the current express consignment operations and customs clearance are facilitated through the maximum use of automation. In the early days, there was neither information technology nor automated system to assist customs operations and the clearance of goods. Express consignment clearance was therefore carried out using manual operations alone and required both physical and documentary control to identify and enforce non-compliance. Customs officers focused entirely on the physical inspection of goods and the scrutiny of

documents, including the description of the goods, the quantities involved, the value of the good, the manifests and the invoices. Import express consignments can be cleared only after logging a customs declaration together with all relevant documents, which need to be presented in hard copy prior to the clearance of goods. Moreover, the payment of duties and taxes has been a prerequisite for customs clearance. Thus, the clearance of goods per flight at that time definitely took several hours.

At present, the Thai Customs Department emphasises the optimal use of automation and technology, the application of risk management and increased audit-based control. This includes the consistency, transparency and simplification of customs procedures. Due to the substantial increase in the volume of express consignments, the use of automated system is required as the most significant means of enabling customs to move from physical control to information management. Express consignment operations today are subject to advanced technologies and automated systems. In particular, the paperless system has been fully implemented since 1 April 2008. Though the system is in a transitional period, it makes a major contribution to a national and customs policy to facilitate international trade and expedite customs clearance procedures. In this regard, the clearance of import express consignments for categories 1 to 3 can be completed within 10 to 15 minutes per flight arrival or within one hour in the case of four major express flights. The express industry can also file the declaration electronically for pre-arrival clearance even though declaration forms and relevant documents are required for presentation to customs in paper form for final clearance of express consignments.

The express consignment system contains data necessary for customs to conduct cargo selectivity operations. Such data includes the Air Waybill, date of arrival, consignee, consignor, origin, destination, description of goods, quantities, value of goods, etc. This relevant data and information are transmitted to customs through the electronic system prior to the flight arrival. This allows customs to make an advance determination on the shipments, including whether there are any high-risk shipments that need to be examined, and to release the rest of cargo immediately. As express consignments are released on the presentation by carriers of a summary manifest listing detailed information on the cargo, the express industry can sometimes declare additional documents at the end of a certain period of time.

To achieve trade facilitation and control in express consignment operations, the Thai Customs Department has implemented an automated system and follows principles of risk management to identify potential risks so that the Department can allocate resources efficiently to high-risk areas while at the same time minimising customs intervention in low-risk areas. At the initial implementation of risk management procedures, customs officers checked all high-risk shipments without the use of advanced technology such as x-ray machines. Approximately 40 percent of the arrival goods were physically inspected.

In the current practices in regard to express consignments, the Customs Department receives cargo information two hours prior to arrival. To check and identify high-risk cargo, customs officers select goods for inspections based on consignment lists forwarded by express carriers. Provided that the express industry presents comprehensive and accurate information, customs officers may adopt information management process rather than physical inspection of shipments. Accordingly, express consignments in categories 1 and 2 or low value and non-dutiable shipments (see Table 5.2), which are not subject to regulations on restricted or prohibited goods, can be released immediately.

In the case of express consignments in category 3 or goods less than 40,000 baht or approximately 1,150 US dollars in value, customs officers may perform random inspections on approximately ten percent of goods, depending on the cargo information submitted electronically by the express industry. Some goods and sensitive products are targeted, including high-value shipments, chemical or pharmaceutical goods, medical devices and other goods, which may be of public health and safety concern. Customs officers verify the relevant documents to make certain that the imported shipments meet the standards and requirements of the related agencies. This is particularly so in regard to express consignments as these require import licences issued by other government agencies such as the Thai Food and Drug Administration (FDA) under the Ministry of Public Health and the Thai Industrial Standards Institute under the Ministry of Industry. In principle, shipments that require further examination are generally subject to x-ray scanning; physical inspection is applied only if the shipments cannot be identified clearly from the x-ray scanning or the outside packaging in order to verify the accuracy of goods declarations and to ensure regulatory compliance. Goods in express consignments in category 3 can be cleared if the duty amounts are correct and other regulatory requirements have been met. On the other hand,

customs officers may hold some shipments that require additional information or further examination for the formal clearance process.

In the case of express consignments in category 4, or goods which exceed 40,000 baht in value or are restricted and prohibited items, a formal clearance process is required. Customs declarations are automatically classified by the profiling systems into either green line or red line according to the potential risk. Green line shipments, which account for 90 per cent of total shipments, can be cleared without customs inspection while some sort of examination, such as a physical inspection, is required for red line shipments.

5.3 Chapter Summary

The chapter provides an overview of the case study of express consignment operations in Thailand. This overview includes a description of the organisations involved in the case study: the Thai Customs Department, the express industry and other stakeholders. The chapter also examines customs procedures and practices in express consignments. It covers the classification of express consignments, customs regulatory requirements, customs procedures and the current practices of express consignments. The research findings derived from the case study will be presented in the next chapter.

CHAPTER 6

RESEARCH FINDINGS

This chapter presents the research findings from the case study, which derived from in-depth interviews as the primary source of information, supplemented with documentation and direct observation. The chapter addresses the research findings on the issues of trade facilitation and customs regulatory control. The key findings are then presented in the context of the conceptual framework, which comprises risk management, customs legislation, customs procedures, information technology, cooperation and consultation, and human resource development.

6.1 Trade Facilitation

The Customs Department is progressing towards the adoption and application of international standards and best practices to facilitate international trade and enhance national competitiveness with simple, predictable and efficient customs systems and procedures. This includes the simplification of customs procedures, the introduction of an automated system and the use of risk management to enhance the efficiency of customs operations, including customs procedures and the clearance of express consignments.

Based on observation, information technology, automation and advanced techniques are important in the support of customs procedures and operations in the current international trading environment. This is particularly so in the case of express consignments, which rely heavily on automated systems for advance and electronic submission of cargo information and customs entry in regard to customs formalities and clearance of express consignments.

The findings derived from the interviews with customs managers⁵⁶ indicated that customs managers regard a range of issues as crucial. These issues include the use of risk management, the introduction of an automated system, cooperation among regulatory authorities and human resource development, as significant elements in the facilitation of international trade. In other words, information technology and risk management are considered significant instruments in streamlining customs procedures and operations to achieve trade facilitation. Moreover,

⁵⁶ Customs manager refers to the management level of customs officers (level 7-9) interviewed in this study.

cooperation and consultation with the relevant government agencies involved in the importation and exportation of goods are essential for expediting customs clearance. In particular, customs managers highlighted the development of the skills and knowledge of customs officers as a fundamental prerequisite for the achievement of efficiency and effectiveness in customs procedures and operations. On the other hand, customs operators⁵⁷ regarded the improvement of customs systems and procedures to related day-to-day operations as important in achieving trade facilitation. This is particularly so in relation to the simplification of customs procedures and the reduction in the number of customs inspections.

From a private sector perspective, both the management and the operational levels of staff from the express industry and other stakeholders provided similar comments on the key elements for trade facilitation, which they saw as the full implementation of information technology, precise rules and regulations, and cooperation and consultation. The express industry and other stakeholders focused particularly on the use of information technology to enhance the efficiency and effectiveness of customs formalities and the clearance of express consignments. This focus on information technology includes the development of the skills and knowledge of customs officers in regard to new applications and automated systems. Moreover, cooperation and consultation between the Customs Department and the private sector were viewed as important elements in achieving international trade facilitation. Specifically, the express industry stressed the importance of customs laws and regulations that link to operational procedures, and the need for such laws and regulations to be drafted in a precise manner to reduce the need for customs officers to provide their own interpretation of customs laws and regulations.

The express industry and other stakeholders also expressed concern about current operations, arising from differences between policy and implementation. The findings indicated that the Thai Customs Department has emphasised the importance of trade facilitation, in response to the requirements of international organisations and the trading community; however, these requirements differed markedly from what was actually in place. The research revealed that the Department has adopted international guidelines and recommendations in relation to GATT valuation, the Harmonised System (HS), risk management, post-clearance audit, and, particularly,

⁵⁷ Customs operator or frontline officer refers to the operational level of customs officers (level 4-6) interviewed in this study.

the maximum use of information technology, referred to as ‘e-customs’ with a paperless system for customs procedures and clearance. However, these principles have yet to be fully implemented in current practices, and, more importantly, some frontline officers are not familiar with advanced technology and the new application of e-customs using a paperless system, including the principles of GATT valuation and risk management.

The findings from the interviews and observation in this study identified six key elements for the achievement of trade facilitation, comprising risk management, customs laws and regulations, customs procedures, information technology, cooperation and human resource development as illustrated in Table 6.1.

Table 6.1: Issues related to Trade Facilitation

Trade Facilitation	Management Level	Operational Level
The Customs Department	<ul style="list-style-type: none"> ▪ Risk management ▪ Human resource development ▪ Information technology ▪ Cooperation 	<ul style="list-style-type: none"> ▪ Simplification of customs procedures ▪ Exemption of inspection
The express industry	<ul style="list-style-type: none"> ▪ Laws and regulations ▪ Human resource development ▪ Information technology 	<ul style="list-style-type: none"> ▪ Human resource development ▪ Information technology
Other stakeholders	<ul style="list-style-type: none"> ▪ Human resource development ▪ Information technology 	<ul style="list-style-type: none"> ▪ Human resource development ▪ Information technology

6.2 Customs Regulatory Control

The Thai Customs Department endeavours to enhance efficiency in customs regulatory control in order to verify compliance with national obligations by implementing international guidelines and recommended practices, including the use of risk management, the optimum use of information technology and post-clearance audit measures.

Interviews with customs managers indicated that advanced technology, risk management and post-clearance audit are three significant customs control measures currently in place. The Customs Department has adopted risk management to identify potential risk and target high-risk

or suspected shipments to verify compliance. This includes the use of advanced technology and non-intrusive equipment such as x-ray machines, together with the support of post-clearance audit to verify compliance with customs-related laws and regulations. However, the implementation has not yet reached the required degree of success based on internationally accepted standards, largely due to the limitations of existing customs' skills and knowledge for the establishment of sophisticated profiling systems. On the other hand, customs operators interviewed in this study focused on customs inspections of express consignments with the support of x-ray machines to make certain that customs regulatory responsibilities are met.

The information gained from observation confirmed the finding that customs operators maintained regulatory control over the examination of consignments. All express consignments in categories 1 and 2 are subject to x-ray, as required by the Customs Department. The inspection of consignments in category 3 depends on customs' decisions, based on individual or manual risk assessment linked to the experience and knowledge of customs operators. In general, customs operators focused on prohibited or restricted shipments to ensure that both importation and exportation complied with the regulatory provisions. Customs officers also scrutinised the tariff rate, the tariff classification and the declared value of shipments to make certain that customs duties and taxes are accurately collected. Organisational or systematic risk management, with the assistance of central and local profiles, has been used only for the clearance of express consignments in category 4. A physical inspection is made of express consignments in category 3, including most red-line shipments that require further examination, sometimes also using advanced technology such as x-ray.

Interviews with staff of the express industry indicated that the customs inspection claimed as an application of risk management by frontline officers is the traditional control measure currently in place. Most staff from the express industry were unable to provide detailed information on the use of systematic risk management by the Customs Department. However, the express operators raised the problem of the customs inspection being applied at the discretion of customs operators whose decisions depend on their individual background and experience.

In regard to the immediate release of express consignments, express managers and express operators viewed post-clearance audit and other customs control measures, such as investigation

and suppression, post-clearance review and post-clearance audit, as useful in the verification of regulatory compliance following the release of goods. This view has also been promoted by the Customs Department. However, customs officers who work on post-clearance review and post-clearance audit explained that only documentary scrutiny has the capacity to verify regulatory compliance after the release of goods from customs custody. This makes it rather difficult to determine the correctness of imported shipments, particularly in relation to tariff classification.

Stakeholders provided information on the overall control system by customs within the Free Zone, which consisted of random physical inspection or scrutiny of documents at the checking post, investigation and suppression, x-ray support, post-clearance review and post-clearance audit. It is important to note that the ACCS system, including the sophisticated control system within the Free Zone, has yet to be implemented. Accordingly, the checking post is used for updating the status of shipments for statistics purposes rather than for rechecking or exercising control over breaches of customs-related laws and regulations.

Table 6.2 summarises issues related to customs regulatory control arising from the interviews and observation in this study. The issues include risk management, post-clearance review and audit, human resource development and information technology. Customs control measures have also been raised in this study in regard to investigation and suppression, customs control at the checking post and the use of non-intrusive equipment such as x-ray machines.

Table 6.2: Issues related to Customs Regulatory Control

Customs Control	Management Level	Operational Level
The Customs Department	<ul style="list-style-type: none"> ▪ Risk management ▪ Post-clearance review & audit ▪ Human resource development ▪ Information technology 	<ul style="list-style-type: none"> ▪ Physical inspection ▪ X-ray
The express industry	<ul style="list-style-type: none"> ▪ Physical inspection ▪ X-ray ▪ Human resource development 	<ul style="list-style-type: none"> ▪ Physical inspection ▪ X-ray
Other stakeholders	<ul style="list-style-type: none"> ▪ X-ray ▪ Checking post ▪ Investigation & suppression ▪ Post-clearance review & audit 	<ul style="list-style-type: none"> ▪ Physical inspection ▪ X-ray ▪ Investigation and suppression

6.3 The Key Findings in relation to the Conceptual Framework

This section identifies the key findings and operational issues arising from the study in the context of the conceptual framework: risk management, customs legislation, customs procedures, information technology, cooperation and consultation, and human resource development. First, principles and practices of risk management are identified, particularly in relation to selectivity criteria and inspection, including post-clearance audit. Second, the application of customs laws and regulations is examined on the issues of inadequacy, interpretations of legislation, the prosecution and penalty regime, and appeal avenues. Third, the operational time and procedures for the consolidated clearance of express consignments and for pre-arrival clearance are addressed within the context of customs procedures. Fourth, the application of automated systems and advanced technology is identified in relation to technical problems and supporting facilities and resources, including the establishment of a single window system. Next, the issues related to cooperation and consultation with national agencies and the trading community are identified. Last, the section addresses human resource issues that link to competency in customs operations, including standards of work, capacity building, transparency and integrity.

6.3.1 Risk Management

The Customs Department has introduced risk management as one of its policies designed to enhance international trade facilitation and customs regulatory control. Both customs managers and operators were of the view that the Thai Customs Department has applied the principle of risk management to the clearance of goods as recommended by the WCO. The Department recognised the significance of developing risk management practices to target high-risk or suspected shipments in preference to examining all shipments to achieve both trade facilitation and customs regulatory controls. This resulted in a more rapid customs clearance, thus facilitating international trade, as was evident from an operational time of only 15 minutes for the clearance of goods exempted from the inspection, compared with 90 minutes for goods requiring inspection.

In addition, the Customs Department has issued a number of customs notifications and regulations in relation to the use of risk management in customs procedures to streamline express consignment operations. One recent example was Customs Notification no.89/2547 regarding the implementation of risk management to identify potential risks and impose an inspection rate for imported shipments at not more than ten per cent. The Department has also established the Risk Management Committee, which has responsibility for the development of risk management policies and guidelines, including profiling systems based on criteria, for the selection of goods for inspection.

From the interviews with customs officers, it emerged that systematic risk management using a profiling system has been applied to the clearance of express consignments in category 4, with red line shipments subjected to customs inspection at a rate not exceeding ten per cent according to the Customs Notification. The central express electronic clearance system called e-express has not yet been implemented, and thus all the express consignment goods in categories 1 and 2 are subject to x-ray, and individual or manual risk management is used for the selection of consignments for customs inspection from express consignments in category 3.

Based on the observation and the interviews with customs operators, the basic selection criteria used by customs officers for selecting goods for inspection focus on restricted items, such as

chemical and pharmaceutical products that require import certificates or licences, shipments with a weight exceeding 20 kilograms, high-value shipments and shipments with unclear descriptions.

In operational practices, staff of the express industry indicated that, without a single standard, the express consignments required for customs inspection and the rate of inspection depend on the interpretations and understanding of individual customs officers. This has become the major problem of the express industry since business is not able to estimate customs clearance time when express consignments are held for further examination and formal customs clearance.

Another issue raised by the interviewees was a post-clearance audit system that the Customs Department had introduced along with the implementation of risk management. The express industry was aware of the implementation of post-clearance audit to verify compliance after the release of goods, but they were unable to provide detailed information or assess the efficiency of the system. On the other hand, customs officers emphasised the importance of the post-clearance audit to assist in facilitating the clearance of goods while at the same time ensuring compliance with regulatory requirements. However, customs managers also pointed out the difficulties of the implementation resulting from the paucity of trade information on the consolidated clearance of express consignments. The issues related to the principles and practices of risk management identified in this section are illustrated in Table 6.3.

Table 6.3: Issues related to Principle and Practices of Risk Management

Risk Management	Management Level (Principles & Policy)	Operational Level (Practices)
The Customs Department	<ul style="list-style-type: none"> ▪ Use of risk management, profiling systems and post-clearance audit 	<ul style="list-style-type: none"> ▪ Use of risk management, profiling systems and post-clearance audit
The express industry	<ul style="list-style-type: none"> ▪ Use of risk management in principle, not in practice 	<ul style="list-style-type: none"> ▪ No clear evidence of using risk management
Other stakeholders	<ul style="list-style-type: none"> ▪ Use of risk management based on officers' discretion with no single standard 	<ul style="list-style-type: none"> ▪ No clear evidence of using risk management

6.3.2 Customs Legislation

Legislation is a fundamental element providing customs with the authority to exercise power in verifying regulatory compliance and to empower the express industry with the administrative settlement of customs disputes such as tariff classification. Legislation is a specific issue that most interviewees were reluctant to comment on due to their limited knowledge of customs laws and regulations. Only a few customs and express managers, whose work is directly related to the laws and regulations, were able to provide precise and detailed information. Most interviewees generally provided comment on current procedures that provide for the application of rules and regulations on express consignment clearance.

From the viewpoint of customs officers, legislation was regarded as significant in that it provided customs officers with regulatory authority in relation to customs clearance processes, and the customs officers are able to exercise control following what has been stated in law. Customs regulations and related procedures have recently been amended to support customs formalities and the clearance of goods. These regulations or notifications not only aim to control shipments, but also facilitate international trade by simplifying customs systems and procedures, exempting physical inspection for low-risk shipments and imposing a rate for the inspection of goods.

In the view of representatives from management levels of the express industry and other stakeholders, laws and regulations aim at controlling the movement of goods rather than facilitating international trade. In addition, the current legislation was seen as insufficient to support express consignment operations in that customs procedures for normal air cargo have been applied to the clearance of express consignments, which are different from normal air cargo procedures, particularly in terms of the nature of the business and the time release requirement. However, customs managers and frontline officers maintained that customs formalities and clearance procedures were on the same standards due to the simplification and harmonisation of customs procedures. In terms of customs procedures, there was no significant difference between normal air cargo and air express cargo. Thus, it was possible to base the clearance of express consignments on the single standard of normal cargo processing.

The express industry further suggested that the laws and regulations in relation to express consignments should be enacted in a more precise manner to reduce the exercise of discretion by individual customs officers. This is because the complicated rules and regulations resulted in misunderstandings by traders in the use of the regulations in practice. This has also left room for discretion in interpretation, which can lead to the problem of transparency. Even though avenues are available for the express industry to appeal customs' decisions, the appeal processes take a period of time, which does not match the needs of business. In cases of prosecution, where customs officers are not able to make decisions due to the lack of laws or regulations that can be applied, the express industry suggested separating the prosecution processes from the release of shipments since customs processes take a long time. This does not suit the express industry's need for fast clearance of shipments.

From observation, the express operations generally complied with customs-related laws and regulations although there were inconsistencies by some express companies in applying customs laws and regulations involved in the clearance of consignments. However, it appeared that most delays resulted from other regulatory requirements, specifically the licensing provisions, rather than the customs regulatory requirements, which generally expedited the clearance of express consignments. The express industry faced more difficulties with the different interpretations of customs laws and regulations by customs officers. The issues related to the application of customs laws and regulations addressed in this section are summarised in Table 6.4.

Table 6.4: Issues related to Application of Rules and Regulations

Legislation	Management Level (Legislation)	Operational Level (Operations & Practices)
The Customs Department	<ul style="list-style-type: none"> ▪ Support for customs procedures and operations 	<ul style="list-style-type: none"> ▪ Support for customs procedures and operations
The express industry	<ul style="list-style-type: none"> ▪ Insufficient legislation ▪ Prosecution and appeal avenues ▪ Interpretation of legislation 	<ul style="list-style-type: none"> ▪ No comment
Other stakeholders	<ul style="list-style-type: none"> ▪ Problem of government regulatory authorities 	<ul style="list-style-type: none"> ▪ No comment

6.3.3 Customs Procedures

The Thai Customs Department endeavours to accommodate the express industry with the most advanced and efficient systems and a much faster process for the clearance of express consignments, particularly in relation to the consolidated clearance of express consignments in categories 1 to 3.

The interviews with customs officers revealed a direct link between customs procedures and customs-related laws and regulations in that the application of laws and regulations by customs officers is reflected in the operations and practices. The findings indicated that the Customs Department has simplified customs systems and procedures, including the operational and service time, which has been imposed as a fundamental standard for customs clearance to ensure that the entire process of customs clearance can be completed within a fixed time limit. Accordingly, the express industry can estimate the time required for customs formalities and clearance to meet the commitment on delivery services to their customers. The operational time for the clearance of express consignments in categories 1 to 3 has to be completed within 105 minutes for up to 600 House Airway Bills (HAWBs)⁵⁸. The processes include the examination of transmitted data, x-ray and inspection, payment of duty and tax and the issue of customs permits for release of shipments.

From observation, all clearance processes of express consignments in categories 1 to 3 were generally completed within two hours. The process of examination of transmitted data prior to flight arrival took the most time, which was approximately 30 minutes for shipments up to 1,000 HAWBs. After flight arrival, the process of x-ray and inspection took another 45 minutes. Other processes did not take much time and could be conducted prior to flight arrival. The record of express operations also indicated that customs clearance processes took from a minimum of five minutes to complete the customs clearance processes for ten HAWBs to a maximum of 120 minutes for up to 2,500 HAWBs.

⁵⁸ House Air Waybill (HAWB) refers to

a bill of lading issued by a freight forwarder for consolidated air freight shipments. In documentary letter of credit transactions, HAWBs are treated exactly the same as conventional air waybills, provided they indicate that the issuer itself assumes the liability as carrier or is acting as the agent of a named carrier, or if the credit expressly permits the acceptance of a HAWB (Hinkelman, 2006, p.90).

In relation to the clearance of express consignments in category 4, it follows the operational times for the clearance of normal import cargo, which has been set as follows:

1. Process of checking documents and customs valuation
 - Up to 10 items per entry 60 minutes
 - Exceeds 10 items per entry 90 minutes
2. Payments of duties and taxes 15 minutes
3. Clearance of goods
 - Exemption from inspection 30 minutes
 - Inspection 90 minutes

The customs officers revealed that the process for category 4 relies on formal customs clearance the same as normal air cargo. Customs officers need to verify compliance with national and international obligations on behalf of other government agencies, and most delays occur because shipments require approval from other agencies. This is beyond the authority of the Customs Department. Delays sometimes occur because the express industry does not submit the required documents stated by law, and thus customs officers need to detain goods unless related documents have been presented promptly. The documents required for clearance of goods in consignment category 4 include the Air Waybill, commercial invoices, the packing list, the insurance premium invoice, the customs entry form, the import licence (if applicable), certificate of origin (if applicable) and other relevant documents such as catalogues, product specifications (Thai Customs Department, 2008e).

From observation, the entire process of express consignment clearance in category 4 is generally completed within an hour per shipment, excluding goods requiring certification of importation or exportation, or inspection by other government agencies. The process is delayed due to the need to wait in line for payment of duties and taxes, which takes the most time, approximately 15 to 20 minutes.

According to the express industry, the clearance of express consignments in categories 1 to 3 is quite fast, but the clearance of the express consignments in category 4 still takes time. The industry argued that the tardiness of customs clearance processes is the main obstacle in that any

unnecessary delays result in increased costs and the lower competitiveness of the business. In particular, the express industry requires predictability of the clearance of express consignments in category 4 to meet the needs of customers and businesses. The express industry has therefore requested the simplification of customs procedures, including a reduction in the number of customs processes and documents, and in the operational time required to streamline express consignment operations. Such measures could increase the logistics supply chain, enhance country competitiveness in global trade and promote foreign investments.

The findings revealed that, in the circumstances where customs operators are not able to make the decision on whether a shipment can be cleared, they avoid risk by holding the shipments for formal clearance with supporting documents. As the time-definite delivery of the express industry, express consignments in categories 1 to 3 are expected to be cleared immediately after flight arrival rather than being held for formal clearance like express consignments in category 4 or in normal cargo processing. In addition, the express industry pointed out that customs officers are very concerned about the value of shipments. On occasion, they have urged the industry to increase the declared value of goods despite the fact that the Thai Customs Department has ratified the WTO GATT Valuation Agreement. In practice, the customs officers still do not have sufficient knowledge of GATT valuation and do not regard the value of shipments as consistent with this Agreement.

Significantly, the express industry focused on enhancing operational efficiency in the clearance of express consignments and asked the Thai Customs Department to adopt and apply international standards and best practices to achieve effective facilitation of international trade. This is particularly so in regard to the de minimis value threshold, the informal or consolidated clearance of low-value shipments and pre-arrival customs processing.

The findings indicated that the Thai Customs Department currently provides the de minimis level of 1,000 baht or approximately 28 US dollars⁵⁹ and the value for informal or consolidated clearance of goods not exceeding 40,000 baht (FOB) per shipment or approximately 1,150 US dollars. The express industry requested an increase in these values to expedite the release of

⁵⁹ In this study, the US rate quoted is based on 35 Baht per US dollar

shipments, particularly in relation to the de minimis threshold value, which was introduced in September 2003 and is quite low compared to that of other economies in the Asia Pacific (see Table 6.5).

Table 6.5: De minimis thresholds for Asia Pacific economies

Countries	Local Currency	US Dollars (Approximate Value)
Australia	AUD 1,000	USD 745 (FOB)
Bangladesh	N/A	N/A
Brunei	N/A	N/A
Cambodia	N/A	N/A
China	RMB 400	USD 48 (FOB)
Hong Kong	Duty exemption for most communities, except for a very limited number of products such as tobacco and alcoholic beverages	
India	INR 10,000	USD 45 (FOB)
Indonesia	IDR 455	USD 50 (FOB)
Japan	JPY 10,000	USD 90 (CIF)
Korea	N/A	USD 100 (FOB)
Laos	N/A	N/A
Malaysia	RM 500	USD 131(FOB)
Myanmar	N/A	N/A
New Zealand	NZD 400	USD 252 (CIF)
Pakistan	N/A	N/A
Philippines	Pesos 10	USD 0.18 (FOB)
Singapore	SGD 400	USD 241 (CIF)
Sri Lanka	N/A	N/A
Taiwan	TWD 3,000	USD 91 (CIF)
Thailand	THB 1000	USD 28 (CIF)
Vietnam	N/A	N/A

Source: Adapted from De Minimis Comparison Table for APEC (CAPEC, 2006) and Express Delivery Services: Integrating ASEAN to Global Markets (Lin, 2006, p.48)

In relation to pre-arrival customs processing, customs officers interviewed in this study indicated that most express consignments in categories 1 to 3 receive clearance prior to arrival unless consignments are selected for further examination. Category 4 consignments, on the other hand, are detained until the completion of formal customs clearance processes. However, express managers observed that, in their view, the current practices cannot be called ‘pre-arrival customs processing’ or ‘pre-arrival customs clearance’ in that although customs formalities can be prepared, the process of express consignment clearance cannot be completed until arrival of goods.

From observation, the customs officers allow the express industry to submit customs declaration forms in advance, including details of consignments and related information. On arrival, express consignments that are not subject to customs inspection can be cleared without delay. However, the process of pre-arrival clearance cannot be completed since the customs system requires the input of manifest data for customs processing, including payments of duties and taxes, which remain a precondition for the release of express consignments. The issues related to customs procedures identified in this section are summarised in Table 6.6.

Table 6.6: Issues related to Customs Procedures

Customs Procedures	Management Level (Policy & Requirements)	Operational Level (Operations & Practices)
The Customs Department	<ul style="list-style-type: none"> ▪ Limitation of regulations ▪ Operational and service time ▪ Consolidated clearance 	<ul style="list-style-type: none"> ▪ Regulations ▪ Operational and service time ▪ Consolidated clearance ▪ Licensing provisions ▪ Tariff & valuation
The express industry	<ul style="list-style-type: none"> ▪ Document requirements ▪ Average time for customs clearance ▪ Tariff & valuation ▪ Human resource development ▪ De minimis value ▪ Value for consolidated clearance ▪ Pre-arrival clearance 	<ul style="list-style-type: none"> ▪ Document requirements ▪ Average time for customs clearance ▪ Tariff & valuation ▪ Human resource development
Other stakeholders	<ul style="list-style-type: none"> ▪ No comment 	<ul style="list-style-type: none"> ▪ No comment

6.3.4 Information Technology

The Customs Department has introduced information technology and automation to assist in customs formalities and the clearance of express consignments. Most interviewees from both the Customs Department and the private sector agreed that information technology is required for effective customs procedures and operations.

At the time of the study, the Customs Department was introducing electronic customs clearance with a paperless system called e-customs. This new system was implemented from 1 January 2008 to replace the Electronic Data Interchange (EDI) system, which had been used as the import and export processing system at major ports and airports since January 2000 (APEC, 2003, p.4). The plan is that the e-customs system will apply to the importation and exportation of goods, mainly for the submission of customs entry and cargo information for import procedures (e-import), export procedures (e-export), submission of cargo manifest (e-manifest), payment of duties and taxes (e-payment) and warehouse management (e-warehouse).

The respondents pointed out that the paperless system represented another step in the application of information technology in Thailand. The express industry considered the introduction of information technology and automation the most important factor in streamlining express consignment operations. Both express managers and operators explained that the automated system has been used for most of the processes of the express business, particularly in relation to network control, electronic transfer of cargo information to customs and submission of customs entry. The express industry also provides the Customs Department with advanced facilities such as x-ray machines and CCTV in the operational areas. The stakeholders agreed that the use of technologies can expedite customs processes, reduce cost, reduce opportunity for corruption and increase foreign investment.

However, both the Customs Department and the express industry reported that many problems have arisen during the implementation process. Despite a running test of the system, some technical problems emerged that resulted in delays in data submission and processing due to the limited capacity of the server in processing Air Waybills (AWBs). In general, AWBs contain a great deal of information and a huge number of AWBs are processed by terminal operators at the Suvarnabhumi Airport.

In principle, customs declaration is also processed automatically, and shipments are subject to automatic selection for customs inspection. Thus, hard copies of the customs declaration and related documents such as the AWB and the invoice are not required for the clearance of goods. In practice, the express industry in this case study needs to submit manifest data in paper format for express consignments in categories 1 to 3 and print out the customs entry documents for clearance of consignments in category 4. Thus, the express industry described the system as a 'less paper' system rather than a paperless system. On the other hand, frontline officers expressed the view that it is difficult to examine documents using the computer while inspecting shipments in the inspection area outside the customs office. The inspection area is separated from the express facilities and the cargo terminal by the Customs Free Zone, which itself occupies a large area.

The express managers commented on the paperless system, which requires the operators to contact customs officers during the final clearance process of red line shipments. This makes the

process heavily reliant on customs decisions. They further expressed the view that the scrutiny of shipments is not necessary, provided that customs officers are able to exercise control through the electronic system with the application of risk management principles and sophisticated profiling systems.

In addition, the express industry and relevant stakeholders pointed out that the paperless system can only work successfully with the cooperation of related government agencies whose work is involved in international trade. One example they provided concerned the clearance of express shipments that require certification or licences for import or export from the Thai Food and Drug Administration of the Ministry of Public Health. As the system of the two organisations has yet to be linked, the manual system is still used for customs clearance processes. Customs managers also suggested more cooperation with government agencies to establish a national single window system in order to enhance efficiency and effectiveness of border management. The issues related to information technology presented in this section are summarised in Table 6.7.

Table 6.7: Issues related to Information Technology

IT	Management Level (Principles & Policy)	Operational Level (Operation & Practice)
The Customs Department	<ul style="list-style-type: none"> ▪ Single officer ▪ Capacity building ▪ Transparency and integrity ▪ Single window system 	<ul style="list-style-type: none"> ▪ Customs' experience, skill and knowledge
The express industry	<ul style="list-style-type: none"> ▪ Transparency and integrity ▪ Role of trade facilitator or service provider ▪ Technical problems ▪ Supporting facilities ▪ Single window system 	<ul style="list-style-type: none"> ▪ Transparency and integrity
Other stakeholders	<ul style="list-style-type: none"> ▪ Capacity and competency of customs officers ▪ Standard of work 	<ul style="list-style-type: none"> ▪ Transparency and integrity

6.3.5 Cooperation and Consultation

The Customs Department, the express industry and other stakeholders interviewed in this study agreed that cooperation and consultation are significant factors in enhancing international trade facilitation through the better operations of customs systems and procedures. The interviewees emphasised the fact that the Customs Department is not the sole agency responsible for the importation or exportation of goods. Therefore, cooperation among the relevant national agencies was seen as crucial in enhancing trade facilitation, at the same time, cooperation with the express industry would enable to maintain appropriate regulatory control.

Customs managers interviewed in this study stressed the importance of cooperation among the Thai Customs Department, other government agencies and the business sector. They indicated that the Department communicated with relevant stakeholders in regard to the introduction of new systems or procedures, including the provision of appropriate time frames for businesses such as the express industry to prepare internal systems and allowing them to provide comments or suggestions on new policies or applications. The Customs Department and the express industry work closely together in relation to customs clearance and related international trade issues. However, there are few formal agreements such as Memorandum of Understanding (MOU) that the Customs Department has signed either with the business sector in general or with the express industry in particular. There has been a proposal to establish a ‘customs advisory centre’ to enhance the cooperation and consultation between the Customs Department and the trade.

The interviews with the express managers revealed perspectives that are in line with those of the customs officers. The express managers regarded the cooperation between the Customs Department and the regulatory authorities as significant in expediting customs clearance processes. The express operators commented that customs officers work with business to a much greater extent than before despite the limitations on the involvement of traders in some cases. They considered consultation an important part of cooperation in that formal consultations between the Department and the express industry generally responded to the needs of the trading community on a case by case basis. Also, informal consultations between frontline officers and express operators were reported as underway.

Stakeholders placed more emphasis on internal communication within the Customs Department since they experienced difficulties due to a lack of communication between the management and operational levels of customs officers, particularly when the Customs Department announces new policies or services. Thus, stakeholders were of the view that there is a need to improve internal consultation and cooperation among bureaus or divisions within the Customs Department. This can increase efficiency and effectiveness in customs operations and make policy achievable in practice. Table 6.8 summarises the issues related to cooperation and consultation addressed in this section.

Table 6.8: Issues Identification in Cooperation and Consultation

Cooperation	Management Level (Principles & Policy)	Operational Level (Operation & Practice)
The Customs Department	<ul style="list-style-type: none"> ▪ Cooperative relationships with relevant national agencies and the business community ▪ Establishment of a customs advisory centre 	<ul style="list-style-type: none"> ▪ Consultation
The express industry	<ul style="list-style-type: none"> ▪ Cooperation, communication and consultation 	<ul style="list-style-type: none"> ▪ Consultation
Other stakeholders	<ul style="list-style-type: none"> ▪ Internal communication 	<ul style="list-style-type: none"> ▪ Consultation

6.3.6 Human Resource Development

The main conclusion that emerged from the interviews indicated that human resources are fundamental to the success of any customs task, and that there is a need to improve the capacity and competency of customs officers. Most interviewees from both the Customs Department and the private sector agreed that principles of risk management and information technology assisted in facilitating international trade while at the same time maintaining an appropriate level of customs regulatory control. However, no matter how sophisticated a systems might be, it would not be effective without further capacity building and professional development.

The interviews with customs managers indicated that the Thai Customs Department had introduced a ‘single officer’ policy, in which the express industry refers to one officer as a single

point of contact for the whole process of customs formalities and clearance. This one stop procedure provides convenience for the express industry. Meanwhile, respondents pointed out that customs officers need to be trained to understand customs operations comprehensively as generalists, rather than as specialists, which was the case previously. However, in practice, the data showed that the single officer policy offered little advantage to the express industry since customs officers worked according to different standards. In cases where the clearance of express shipments is not possible in one day or when there are problems regarding the shipments, the express industry has to contact the same officer and perhaps wait for another two days since customs officers work three shifts in rotation.

The findings showed that the flight schedules of the express industry mostly operate after the regular working hours of customs operations. Some interviewees from the express industry were aware of customs regulations on overtime payments. However, another group of interviewees expected customs to work for 24 hours without overtime payment since the Airport operates on a 24 hours basis. The express industry had to pay a 'knock door' charge of 300 baht per customs entry and an overtime charge of 200 baht per shipment. In the eyes of the express industry, overtime payment has become an important issue in that customs officers are viewed as concentrating on checking the receipt of overtime payments rather than on verifying the accuracy of shipments. However, the express industry does acknowledge that the current 24 hours of operation allows the expeditious processing of express consignments.

In addition, the express industry observed that experienced customs officers are professional in customs procedures, customs inspection and tariff classification but are weak in the skills and knowledge required for information technology and risk management. Participants from the express industry believed that the new generation of officers is competent in handling these new systems and principles but lacks work experience and argued that education and training was necessary to fill this gap. The express industry suggested that customs officers should act as service providers or trade facilitators rather than maintaining the traditional role of gatekeeper, which is inconsistent with the current trading environment.

In regard to the implementation of the new policy, including systems and procedures, relevant stakeholders expressed the view that customs officers work on the basis of individual decisions

rather than on the basis of a consistent set of standards. Moreover, none of the audit systems were applied. Thus, respondents pointed out that the importation or exportation of goods relies on the broad discretion of a single officer and therefore there is a lack of predictability and certainty. Stakeholders believed that this situation has a significant effect on the express business, which requires speed, predictability and reliability of delivery services.

In addition, the Customs Department has introduced information technology with the aim of reducing the opportunity for customs officers to contact the express industry directly. This is expected to reduce the corruption problem. However, the express industry and other relevant stakeholders commented that although information technology might assist in reducing the problem, it could not solve the problem completely since the cause of the problem is the conduct of individual officers. Thus, the Department should solve the problem from the ground upwards and accept that there is a need for human resource development. The express industry and stakeholders also revealed that the information technology or best practices that succeed elsewhere in the world might not necessarily work in the case of Thailand since Thai customs officers are closely involved in the system. In other words, individuals control the system rather than leaving the system to run itself automatically.

In relation to transparency and integrity, anti-corruption programs have been introduced to increase integrity and build confidence amongst traders to trade and invest in Thailand. One such program is the Agreement on Transparency-Unity Program, which has been established with the cooperation of both the Thai Customs Department and the private sector to develop integrity and transparency in customs procedures. The express industry agreed that this project demonstrates the intention of the Customs Department to eliminate the critical issue of corruption in the Department. The express industry accepted that the customs officers responsible for express consignments operations work with integrity and transparency in regard to the procedures and practices of express consignments for the four main express companies. However, integrity violation remains noticeable in the payment of ‘facilitation money’, which is a regular feature of the clearance procedures of some other express carriers. The issues related to human resource development addressed in this section are illustrated in Table 6.9.

Table 6.9: Issues related to Human Resource Development

HRD	Management Level (Policy & Requirements)	Operational Level (Operation & Practice)
The Customs Department	<ul style="list-style-type: none"> ▪ Single officer ▪ Capacity building ▪ Transparency and integrity 	<ul style="list-style-type: none"> ▪ Customs' experience, skill and knowledge
The express industry	<ul style="list-style-type: none"> ▪ Transparency and integrity ▪ Role of trade facilitator or service provider 	<ul style="list-style-type: none"> ▪ Transparency and integrity
Other stakeholders	<ul style="list-style-type: none"> ▪ Capacity and competency of customs officers ▪ Standard of work 	<ul style="list-style-type: none"> ▪ Transparency and integrity

In summary, the data gathered from the Customs Department, the express industry and other relevant stakeholders provided a fruitful source of information in relation to the conceptual framework. The information from observation and interviews was generally comparable and support each other. There was no significant difference between the express industry and stakeholders even though the management level provided a wider range of comments in relation to various policies and procedures while the operational level could give comments on day-to-day operations. There is general agreement between the Customs Department and the express industry regarding cooperation and consultation. However, the differences lie mainly in the aspects of risk management implementation and application of customs laws and regulations.

Legislation is the only issue that the interviewees were reluctant to respond to due to their limited knowledge of customs-related laws and regulations. Human resources were highlighted by management and operational levels of all parties involved as a fundamental element that is particularly required for supporting other elements identified in this section: risk management, legislation, procedures, information technology and cooperation. Table 6.10 summarises the key elements and issues identified in the context of this study.

Table 6.10: Issues Identified in the Context of Conceptual Framework

Elements	Issue Identification
Risk management	<ul style="list-style-type: none"> ▪ Selectivity criteria and inspection ▪ Post-clearance audit
Customs legislation	<ul style="list-style-type: none"> ▪ Inadequate laws and regulations ▪ Interpretation of laws and regulations ▪ Prosecution and penalty regime ▪ Appeal avenues
Customs procedures	<ul style="list-style-type: none"> ▪ Pre-arrival clearance ▪ Consolidated customs clearance ▪ Customs valuation and tariff classification
Information technology	<ul style="list-style-type: none"> ▪ Application of information technology ▪ Single window system
Cooperation and consultation	<ul style="list-style-type: none"> ▪ Establishment of a customs advisory centre
Human resource development	<ul style="list-style-type: none"> ▪ Capacity building and professional development ▪ Integrity and transparency

6.4 Chapter Summary

This chapter presents the key findings from the case study based on documentation, interviews and observation. Information from multiple organisations has provided a further understanding of the problems, which occur in practice and has given direction for the enhancement of operational efficiency in the clearance of express consignments. This has complemented by insightful perspectives from both the public and the private sector at both management and operational levels, thus strengthening the reliability and validity of the findings. In particular, management levels have provided an overall picture of the policies and principles that the organisations attempt to implement while operational levels have provided insights into practices and actual operations.

The chapter also addresses the findings in the context of the conceptual framework, which covers risk management, customs legislation, customs procedures, information technology and communication technology, cooperation and consultation, and human resource development. The development of customs procedures and practices in these areas has a potential to develop greater efficiency and effectiveness in trade facilitation and customs regulatory control. The key findings

identified in this chapter, as summarised in Table 6.10, will be analysed and discussed in the next chapter.

CHAPTER 7

ANALYSIS AND DISCUSSION OF FINDINGS

This chapter provides an analysis and discussion of the research findings presented in the previous chapter. It also analyses the key findings developed, which accommodate trade facilitation and ensure effective customs control, within the conceptual framework outlined in Chapter 3. The chapter also seeks to answer the key research questions posed in Chapter 1. The first of these questions involves the extent to which customs can facilitate international trade while at the same time maintaining customs regulatory control. The second question focuses on the criteria required for facilitating international trade while at the same time maintaining customs regulatory control. The chapter also identifies matches and mismatches between what the case study of express consignment operations in Thailand shows, on the one hand, and international standards, guidelines, recommendations and international customs practices, on the other. In this examination, answers to two further research questions are provided: the extent to which the Thai Customs Department can adopt and apply international standards and best practices to the clearance of express consignments, and how operational efficiency in the clearance of express consignments can be developed and streamlined.

7.1 Discussion of Research Findings

This chapter presents the case study analysis and discusses six criteria which were found to contribute to success in trade facilitation and customs regulatory control. These six criteria are risk management, customs legislation, customs procedures, information technology, cooperation and consultation, and human resource development. The key findings were generally consistent with those of previous studies and were confirmed by the respondents as the major factors which had an effect on trade facilitation and customs regulatory control. Most of the literature reviewed for this study suggested that risk management is a key element in making an accommodation between trade facilitation and customs control achievable. In addition, legislation, procedures and information technology are key instruments in the effectiveness of customs formalities and the clearance of express consignments. Cooperation is an enabler which makes customs operations more efficient. Human resource development is a fundamental requirement to support all elements in fulfilling customs responsibilities in that there is a direct link between human

resource development and other elements identified in this study. In essence, the six key elements connect with and support one another in the conduct of customs practices and procedures.

7.2 Risk Management

Risk management is considered a key element in facilitating international trade while at the same time ensuring customs regulatory control. The study found that the Customs Department is progressing towards a greater use of risk management to ensure compliance with customs-related laws and regulations. However, the implementation of risk management policies has not yet reached the degree of sophistication required for success. This section discusses the key findings presented in the previous chapter covering policy and implementation of risk management, selectivity criteria and inspection and audit-based control.

7.2.1 Risk Management for Facilitation and Control

The Customs Department has introduced risk management as a new philosophy for facilitation and control, with the support of audit based control and information technology, to provide effective facilitation of international trade while also maintaining an appropriate level of customs control to ensure regulatory compliance. It is evident that the Customs Department announces risk management policy and issues customs regulations in relation to risk management implementation. This includes the preparation of risk management systems, procedures and facilities. While an understanding of the international standards on risk management has been developed, the Customs Department faces challenges in implementing risk management. The case study reveals several contradictions between the policy and its implementation, which come from a wide range of interpretations of risk management in customs practices. The difficulties of implementation also relate to customs control systems and human resource issues.

While the Customs Department uses risk management to facilitate trade, some implementation problems arise from the lack of competency of custom officers and customs control systems. It appears that customs officers have differing levels of knowledge and understanding of risk management principles as suggested by the range of explanations given by customs officers on the principles and practices of risk management. When the concept of risk management is interpreted in different ways, it can lead to a distortion of the principles when applied to practice.

The interviews with customs officers raise concerns about the skills and knowledge of customs officers and whether these are adequate for the implementation of risk management for facilitation and control. As one customs operator noted:

The current use of risk management is considered to be a risk to national revenue since customs officers subjected both documents and shipments to less scrutiny in order to effect the immediate release of goods without necessarily assessing the risk. As a result, customs can only facilitate trade, but customs is quite unable to ensure regulatory control (Customs operator, personal communication, February 27, 2008).

When customs officers view risk management as a risk to national revenue, it may be because the Customs Department provides insufficient knowledge relating to risk management principles and implementation. It is observed that the knowledge of risk management principles, including profiling systems, is confined to a particular group of officers such as the customs officers appointed to the Risk Management Committee. On the other hand, a number of frontline officers only understand the general principles of the risk management introduced as part of the Customs Department's policies. Even though customs officers receive training in risk management, there is a mismatch between the training needs and the training provision. It appears that 'training provision' generally explains the policy but does not train officials how to implement risk management or deal with new tasks. Training provision needs to include scenario setting and case studies to enhance the skills and knowledge of customs officers to deal with a range of different situations. Also, official guidelines and practical manuals on the principles and implementation of risk management should be available and easily accessible by customs officers.

The current implementation of risk management also raises concerns about the efficiency and effectiveness of the customs control systems in that customs officers attempt to facilitate trade in response to the policy on risk management. However, customs control is not appropriately and effectively applied and therefore does not ensure regulatory compliance. This issue relates to the skills and knowledge of customs officers to manage customs control as well as to the supporting infrastructure such as facilities and equipment. As mentioned in Chapter 5, express consignments are processed within the Customs Free Zone, which allows the free movement of goods. Thus, a high standard of customs control is required to ensure regulatory compliance. Customs control measures currently applied to customs operations include the verification of documents and

information during the pre-arrival customs processing and post-clearance processes, as well as the customs inspection or physical examination of goods in the customs clearance process. In addition, investigations and audits take place at traders' premises to verify compliance with customs-related laws and regulations.

However, some of the control measures required for the establishment of the Customs Free Zone have not yet been implemented. The Airport Cargo Community System (ACCS), designed for controlling the movement of goods within and out of the Customs Free Zone, has yet to be implemented to support customs operations and customs control systems. Electronic control equipment⁶⁰ such as the barcode system and Radio Frequency Identification (RFID) have not been prepared for controlling shipments or delivery vans or trucks. Thus, customs control is required at the checking post to verify compliance. In principle, consignments can be inspected by customs officers and then released into or out of the Customs Free Zone. In practice, it is difficult for customs officers to check a large number of express consignments mix-loaded with in vans or trucks. Thus, this main gate, where shipments moving in and out of the Customs Free Zone should be checked, is used merely for the submission of cargo permit documents rather than for verifying compliance.

As long as customs control systems, particularly the Airport Cargo Community System (ACCS) and the electronic control equipment, are not yet in place, the establishment of the Customs Free Zone is, in fact, premature. This places more responsibility on customs officers to appropriately apply effective control measures both to ensure regulatory compliance and to support international trade facilitation. The study found that some systematic controls using information management system and profiling systems have been introduced to support the implementation of risk management in the customs operations. However, whereas customs officers are familiar with the traditional documentary and physical examinations, they possess only limited knowledge of these new systems. This makes trade facilitation and customs control achievement more challenging.

⁶⁰ The electronic control equipment includes a barcode system controlling shipments, Radio Frequency Identification (RFID) controlling a delivery van or truck, and a Personal Digital Assistant (PDA) for customs officers and free zone operators to check information on shipments.

It is obvious that the efficiency of the risk management implementation is heavily reliant on the competence of customs officers, who apply the principles into practices. This is particularly so in regard to the understanding of custom officers in risk management principles as well as the skills and knowledge of individual customs officers in risk management implementation. Surprisingly, most customs officers interviewed for the purpose of this study did not see risk management as a key principle in achieving facilitation and control⁶¹. Instead, they placed more emphasis on the role of human resource issues. One experienced customs manager observed:

Human resources should be considered as the most important elements for any reform and development. Although risk management is a proper system suggested by international organisations, it cannot be successfully implemented if customs officers do not have sufficient skills and knowledge in the principles and practice of risk management (Customs manager, personal communication, December 27, 2007).

Similarly, more than half of the express operators and other relevant stakeholders who participated in this study reiterated the importance of human resources in customs operations. One stakeholder maintained that “trade facilitation and customs regulatory control cannot be achieved as long as customs officers still adopt ‘individual practices’ rather than international practices when applying risk management principles into practice” (Stakeholder, personal communication, January 31, 2008).

The evidence obtained in this study reveals the significance of human resource and customs control issues in the implementation of risk management. This implies that risk management is perhaps not the single most important element for facilitation and control, particularly when customs administrations still require improvement in human resources and in the support of customs control systems, including facilities and infrastructure. This is consistent with the WCO’s (1999, 2003b) studies that view supporting infrastructure and human resource development as important steps in implementing risk management in customs administrations. This issue will be revisited in the human resource section (Section 7.7) of this chapter.

⁶¹ Six out of 20 customs officers regarded risk management as a significant factor in achieving trade facilitation and customs regulatory control while another 14 customs officers emphasised the importance of other issues, such as information technology and, particularly, human resource development.

7.2.2 Selectivity Criteria and Inspection

In modern customs, decisions on the customs management of goods should be made on a risk assessment basis, which is essential to facilitate the movement of legitimate trade and ensure compliance with customs-related laws and regulations. The Thai Customs Department has applied individual and organisational risk management for customs clearance of express consignments to comply with international customs standards. This is consistent with risk management for customs administrations as provided by the WCO (2003b, p.10), which comprises ‘strategic, operational and tactical risk management’. Individual risk management is comparable to tactical risk management⁶² while organisational risk management combines concepts of strategic⁶³ and operational risk management⁶⁴. When identifying risk, the Thai Customs Department generally focuses on the import express consignment, which is considered a potential risk to national revenue and social safety.

As far as export express consignments are concerned, customs officers scrutinise these less closely than in the case of imported shipments since most export shipments are non-dutiable goods, which are considered low risk to the national revenue. In general, customs officers only physically inspect export express consignments that are accompanied by claims for duty and tax compensation since the number of cases of commercial fraud increases in this category. In the current international trade environment, exports have increasingly been concerned for social health and safety as well as supply chain security. Accordingly, the Customs Department needs to maintain the capability of lawful trade, ensure secured trade among nations and protect the community from trade in dangerous products such as the illicit traffic in narcotic drugs and counterfeit goods (WCO, 2006a).

In express consignment clearance, express consignments in categories 1 and 2 are subject to a 100 per cent check through an x-ray machine. This practice is applied in accordance with

⁶² “Tactical risk management is used by officers at their workplace in dealing with immediate situations. Using set procedures combined with intelligence, experience and skill, they decide which movements require greater controls” (WCO, 2003b, p.10).

⁶³ Strategic risk management is applied with support of comprehensive information to “identify areas of risk, sift out those of minor importance, and intervene only where experienced and practical judgement indicates it is necessary” (WCO, 2003b, p.10).

⁶⁴ “Operational risk management is the determination of the level of control necessary to deal effectively with the assessed risk”. With this approach, customs can move to check selected shipments in which the greatest risk is identified without checking every shipment as traditional gatekeeper (WCO, 2003b, p.10).

customs regulatory requirements for import express consignment clearance. The examination through non-intrusive equipment can ensure extensive control while at the same time facilitating the customs inspection and clearance processes. However, the x-ray scanning of shipments should be subject to specific rules of selection rather than a 100 per cent x-ray scanning. There is a possibility that the examination of all shipments may distort the risk management concept although the imposition of this regulation may be based on risk identification and assessment.

From the perspective of customs control, there is a potential risk to social safety and security caused by the concealment of illegal substances such as drugs and explosive devices, which may be contained in the small packages of express consignments in categories 1 and 2. This includes the potential risk to national revenue due to the evasion of customs duties, for example, by the concealment of diamonds enveloped in express mails. It is important to note that a single case of a customs offence should not be regarded as a risk for all subsequent goods of the same description without any re-evaluation since levels of risk can change over a period of time. Rather, it is imperative that risk be monitored and re-assessed based on the rate of occurrence and the impact of the event. There is potential to reduce the examination of express consignments in categories 1 and 2 when potential risk is reduced or the level of compliance is increased. On the contrary, the amount of x-ray scanning can be increased when the likelihood of an offence begins to rise. In a country such as Singapore, express consignments in category 1 or correspondence and documents are not subject to examination or x-ray unless a potential risk has been identified in particular circumstances.

In respect of express consignments in category 3, individual or tactical risk management is applied to verify compliance. However, this risk management approach relies very much on the experience and background of individual customs officers. One express operator commented on the implementation of risk management by customs officers, claiming that “customs officers have their own criteria and individual concept to select goods for inspection” (Express operator, personal communication, March 8, 2008). Another express operator offered a similar view:

Officers with an appraiser’s background mainly check the accuracy of the tariff classification and the valuation. Inspectors focus on the shipments rather than on the information provided. In some cases, shipments cannot be cleared but are held for formal clearance due to the weight of the shipment.

For example, educational textbooks, which are considered a low-risk shipment with no import duty levied, are held for formal inspection due to a weight in excess of 20 kilogram. Some officers allow some of these shipments to be cleared while others need further inspection or formal clearance. The unpredictability of customs practices impacts on the capacity of delivery services to fulfil their commitment to customers (Express operator, personal communication, January 15, 2008).

The findings are strong that customs officers exercise their own individual discretion in the selection of goods for inspection without basing their decision on the principles of risk assessment. This practice has potential to distort the principles of risk management for the purpose of trade facilitation and customs regulatory control. When customs decisions play a significant role in customs operations, it is necessary to ensure that the professional development of customs officers equips them appropriately for the risk management process and compliance management. In this regard, the development of operational guidelines and identification of selectivity criteria for customs inspection should be such as to support the implementation of risk management by customs officers. The effective use of risk management also requires the establishment of a risk management context, as well as identification and analysis of risk from the beginning of the supply chain until the final process of releasing goods, pre-arrival, arrival and post clearance (WCO, 1999). This includes assessing risk, addressing risk, and monitoring and reviewing the risk management process through compliance measurement to ensure that any international trade transaction is compliant with the regulatory requirements (WCO, 1999).

The current use of individual risk management results in major criticisms of the wide discretion of customs officers in customs practices, which is applied in the absence of a single set of standards. This has become a major problem in the implementation of risk management. To reduce reliance on the discretion of customs officers, information technology development and human resource development are required to support the clearance of express consignments. This was supported by a recommendation made during the interviews on the introduction of the express electronic clearance system or the e-express system:

The e-express system, which includes the inspection selectivity program, is required to support express consignment clearance. A system should be designed for the automatic categorisation of shipments based on profiling systems for the purpose of customs inspection. Three channels of categorised shipments should be established: a green channel for low risk shipments that

can be released immediately; a red channel for high risk shipments to be held for formal clearance; and a yellow channel for shipments that require further inspection. In this way, customs officers need only make decisions on shipments in the yellow channel. This has the potential to reduce the current criticism of the exercise of discretion by customs officers and the lack of a single standard (Customs manager, personal communication, March 6, 2008).

This comment supports the emphasis of the UNCTAD (2008d, p.2), which exhorted the use of risk management based on risk assessment, profiling and inspection selectivity programs in which consignments are routed through channels depending on the potential risk involved. The four channels comprise: the green channel for goods for immediate release without examination; the yellow channel for goods requiring documentary check; the red channel for goods which require physical examination of goods and documents; and the blue channel for goods which require examination at a later stage or post audit.

In applying this principle, the Customs Department needs to embrace the principles of risk management, including the use of central and local profiling systems, based on the accuracy and the adequacy of the cargo information received from the express industry. Significantly, it is essential to ensure that mechanisms for post-clearance verification are effective in assessing overall compliance, particularly in the case of shipments cleared through the green line channel. These mechanisms cover the quality of the cargo information management available to assist customs officers in verifying compliance after the release of shipments. The introduction of the e-express system is able to support the clearance of express consignments for the purpose of trade facilitation and customs regulatory control. The automated processes of the system are also essential for reducing the widespread use of discretion by customs officers in selecting goods for customs inspection, particularly in regard to express consignments in category 3.

In relation to express consignments in category 4, the level of risk is verified by central and local profiling systems according to risk areas such as duty and tax issues, prohibitions and restrictions, social and public health, and environment. The central profiling system is managed by the Post-Clearance Audit Bureau at the customs head office to monitor the nature and sources of potential risks at ports, airports or land borders. The local profiling system at the Suvarnabhumi Airport Cargo Processing Customs Bureau has been developed by a risk management working team to

deal with the particular risk involved in air cargo and air express consignments. Customs declarations are automatically classified by the profiling systems into either the green line or the red line. Shipments subject to green line status can be cleared immediately without inspection while shipments accorded red line status require further examination. Approximately ten per cent of shipments are accorded red line status while 90 percent of shipments receive green line status which will be verified after release by the Post-Review Section and the Post-Clearance Audit Bureau.

Frontline officers agreed that risk management and profiling systems have the potential to assist customs operations in facilitating the movement of goods. However, they were not in a position to provide reliable comment on whether profiling systems are effective in ensuring customs regulatory control since most shipments are automatically cleared without examination of either documents or shipments. During the interviews with the post-review team, it was claimed that the profiling system is ineffective in identifying high risk shipments since the same irregularities have occurred repeatedly. One customs manager added to this point:

Information related to false declarations, evasion of duty or other customs offences is reported to a risk management working team which meets on a monthly basis to provide information on the errors and other problems commonly found by the post-review team. The same mistake is not expected to occur if the local profiling system is well managed and had been developed based on the information or statistics provided (Customs manager, personal communication, February 29, 2008).

This view, together with evidence obtained from this study, leads to the conclusion that the implementation of risk management by the Thai Customs Department has not yet reached the required level of sophistication. Further improvement in individual and organisational risk management is required in terms of skills and knowledge of customs officers and information technology supporting e-express and the profiling systems. In order to improve profiling systems to support the implementation of risk management, the Customs Department needs to make optimal use of information describing irregularities found in the post-review and non-compliance record for identification of risk areas and assessment of risk. While improvement in the profiling systems, based on the past record of non-compliance, is important in supporting risk management in customs operations, a proactive approach to ensuring compliance needs to be considered. This

approach would enable the Customs Department to identify and prevent both current and potential risk. This would allow the Department to facilitate low-risk shipments and target high-risk shipment while at the same time ensuring regulatory compliance.

7.2.3 Post-Clearance Audit

Post-release verification using audit-based control is generally introduced in conjunction with the implementation of risk management so that customs officers can shift the control of goods on arrival to post-clearance audit to provide the traders with greater facilitation of trade while still ensuring regulatory control (UNCTAD, 2008b, 2008d; WCO, 2003b). The Thai Customs Department has adopted the principle of post-clearance audit to verify compliance with statutory and regulatory provisions in accordance with the recommendations of the WCO revised Kyoto Convention (WCO, 1999)⁶⁵.

In relation to customs regulations, the Customs ACT No.17, B.E.2543 (A.D.2000) provides customs officers with the authority to verify compliance and conduct audits at the premises of traders, importers and exporters, customs brokers and other related companies or persons. The accuracy of the detailed information in customs declarations and duties payments are verified within 15 days after the clearance of express consignments by the Post-Review Section of the Suvarnabhumi International Airport Customs Bureau. Then, the customs declarations are passed to the Post-Clearance Audit Bureau for further audits.

When post-clearance audits are applied to customs operations, shipments should be released immediately after the basic declaration documents are checked, based on risk management procedures. However, in the current practices, the physical examination of goods at the time of arrival still remains critical in express consignment clearance, according to the customs regulation of mandatory physical examination. This has become a routine inspection, which sometimes delays the clearance of shipments. Instead of focusing on physical inspection, customs officers need to pay more attention on managing cargo and trade information to verify compliance with customs-related laws and regulations prior to flight arrival and post clearance. This is to concur with the concept of ‘information management’ to “monitor and assess

⁶⁵ Standard 6.6 of the General Annex of the Revised Kyoto Convention

compliance [which] generally represents a far less intrusive and hence more facilitative approach than the use of physical controls” (Widdowson, 2005c, p.97).

In this study, some difficulties emerged in the implementation of post-clearance audit for express consignments. These difficulties are largely due to the insufficient knowledge of customs officers in applying post-clearance audit as well as a lack of cargo information to verify compliance. Customs audit teams have little practical knowledge of the express business or of the specific regulations in regard to express clearance procedures. For example, express consignments use freight zone, which is different from normal freight for general cargo that uses CIF value to calculate customs duties and taxes. The study reveals some cases in which the express industry has been accused of false declarations because some audit teams have calculated duties and taxes based on the normal freight rate rather than on the freight zone rate (Express operator, personal communication, February 18, 2008). Besides, it is possible for express consignments in categories 1 to 3 to be cleared with consolidated entry for which formal customs entry is not required. However, in practice, post-clearance audit teams sometimes request formal customs declarations for further examination which neither the importers nor the express industry are able to provide as these shipments are clear consolidated (Express operator, personal communication, January 9, 2008).

In addition, implementation remains problematic because cargo information on express consignments in categories 1 to 3 is often inadequate to be able to verify compliance after release of express consignments. On the one hand, the consolidated clearance of express consignments in categories 1 to 3 is a key facilitative measure for express consignments. On the other hand, from a control perspective, non-verification of these three categories is considered a key drawback. Post-clearance audit is, therefore, particularly required to verify compliance after the release of goods. However, customs audit teams have encountered problems related to the adequacy of cargo information for post-clearance audit. One experienced customs manager offered the following explanation:

Post-review or post-clearance audit is only able to verify the accuracy of express consignments in category 4 for which formal declarations and related documents are provided. However, the verification of consolidated clearance of express consignments in categories 1 to 3 is rather difficult due to a lack

of reliable cargo information. Therefore, customs officers need to ensure that the clearance of express consignments is compliant with customs-related laws and regulations at the point of entry or exit since it is difficult to verify compliance after the release of goods (Customs manager, personal communication, February 27, 2008).

It is obvious that a concise summary of cargo information provided for consolidated clearance is deficient for post-clearance audit. Even though additional cargo information can be provided by the importers or the express industry for further examination, it is not practical for customs audit teams to conduct post-clearance audit when the cargo information is unavailable on the customs system or cannot be accessed directly by the customs audit teams. This finding underlines the importance of comprehensive and reliable cargo information to support the verification of compliance with customs laws and regulations. This confirms the findings from a study by Harrison and Holloway (2007, p.4), which emphasises that cargo information and information management are equally important to the customs risk identification process (see WCO, 1999) for achieving both trade facilitation and customs regulatory control.

Based on the evidence obtained in this study, the most common errors consistently found during the post-review or post-clearance audit of express consignments are false declarations of tariff classification and valuation. These include declarations which under-value consignments, misclassification and false description. This finding raises an important issue regarding compliance management, which is one of the issues discussed in the existing literature (UNCTAD, 2008b; WCO 1999; Widdowson, 1998, 2005c). More importantly, the information gathered here informs the improvement of the post-clearance audit system. The study suggests a more useful approach in achieving regulatory compliance through a shared responsibility between the Customs Department and the trading community. This includes increased participation of companies in the audit system, for example, by self assessment. This involves the importers themselves checking the appropriateness and correctness of the customs duties and taxes paid as well as the legitimacy of customs clearance in compliance with regulations and procedures. This approach is in line with the implementation of audit-based controls, which

include traders' systems audit and traders' self assessment⁶⁶ as recommended in the WCO revised Kyoto Convention (WCO, 1999).

The results of the study also provide valuable information and some insights in regard to improvement in compliance management, which focus on identifying both regulatory compliance and non-compliance to enable the Customs Department to adopt an appropriate approach to deal effectively with both groups and allocate resources to appropriate areas of risk. This compliance approach is in line with the conclusions from the literature (Ayres & Braithwaite, 1992; Black, 2001; Braithwaite, 1985), which underline the importance of appropriate incentives and sanctions to a range of different regulatory arenas. It seems clear that where non-compliance is identified, a range of compliance improvement and enforcement measures need to be undertaken. Meanwhile, customs officers need to take into account all the relevant circumstances to determine how and why errors occur, whether they are innocent mistakes, insignificant errors or blatant frauds, revenue or non-revenue errors (Widdowson, 2005b, p.10). Some sanctions may be necessary in regard to non-compliance in order to correct current problems and prevent future problems. Such measures might include administrative sanctions, stricter provisions, greater scrutiny in both documentary and physical examination or even more frequent checks of transactions and documents (see Black, 2001; Widdowson, 2005c).

At the same time, the Customs Department needs to provide the express companies, whose activities and transactions are compliant with customs-related laws and regulations, with rewards as incentives to maintain their good compliance. In other word, the same level of scrutiny is not required in the case of those who have demonstrated compliance. Privileges such as those offered to authorised trade, fast-track services and less onerous reporting requirements may be appropriate for compliant companies (Widdowson, 2005c, p.96). Moreover, customs officers should stress regulatory assistance to support the express companies, which are willing and able to comply with regulatory requirements, to maintain their regulatory compliance as well as to be a good incentive for other express companies to join the ranks of informed compliance. In this regard, it is necessary to consider how to reward compliance, how to enforce non-compliance, and particularly how to improve compliance in the future. The Thai Customs Department has to

⁶⁶ Standard 6.6 and 6.10 of the General Annex of the revised Kyoto Convention

enforce compliance and non-compliance with an appropriate level of sanctions and penalties depending on circumstances, not just rely on the ‘one size fit all’ approach. In particular, the legislative framework should provide customs officers with the authority to support practices which encourage compliance. This issue will be revisited in the legislation section (Section 7.3).

In summary, at a policy level, the Customs Department has adopted risk management for trade facilitation and customs control as recommended by the revised Kyoto Convention and the WCO Immediate Release Guidelines. However, implementation of risk management by the Thai Customs Department has not yet reached the level of sophistication and success required. There are obvious distinctions between the policy and the actual implementation of risk management, particularly in the area of customs inspection and post-clearance audit. The existing literature (for example, APEC SCCP, 2006a; UNCTAD, 2008d; Widdowson, 2003; WCO, 2003b) often discusses risk management as ‘an indispensable element’ in achieving trade facilitation while at the same maintaining effective customs control. However, from the evidence obtained in this study, it is not possible to state categorically that risk management is the single most significant element for facilitation and control. In response to recommendations made by the various international organisations, many customs administrations have successfully implemented risk management. However, it is more difficult to implement risk management in countries such as Thailand that still require improvements in terms of infrastructure, technical assistance and, in particular, human resource development to support facilitation and control measures. For this reason, the WCO acknowledged that differences exist between the circumstances of countries and noted that “while overall risk management principles remain the same for all WCO [members]”, each customs administration needs to “develop and refine its own risk management regime to meet national and departmental objectives” (WCO, 2002).

To the extent to which customs is able to facilitate trade while at the same ensuring customs regulatory control, the study reveals that the Thai Customs Department has made great progress in developing customs principles and policy in relation to risk management. However, the Customs Department may be less concerned about the implementation processes, which include evaluating and monitoring the actual and potential effects and outcomes. It is, therefore, necessary to ensure that risk management has been implemented according to uniform standards and with a full understanding of the principles and practices involved in order to minimise any

discrepancies between policy and implementation. The Customs Department needs to take into account the improvement of operational efficiency and the effectiveness of customs practices to meet international standards and to provide facilitation of trade while at the same time ensuring customs regulatory control. To effectively implement risk management as part of a realistic approach to achieve both trade facilitation and customs regulatory control requires major development of risk management practices in customs inspections with the support of the customs control system and post-clearance audit as well as human resources, particularly in terms of officers' understanding and awareness of the principles and practices involved. This includes preparation of the infrastructure and facilities to support the implementation of risk management to ensure compliance with customs-related laws and regulations while facilitating legitimate trade.

7.3 Customs Legislation

Customs legislation is an essential instrument in the support of trade facilitation and customs regulatory control. Even though customs laws and regulations are traditionally used for the purpose of control and enforcement, there is growing concern about the regulatory provisions for international trade facilitation. In applying customs laws and regulations to customs operations, some problematic issues have emerged from the case study. These relate to the inadequacy of operational rules and regulations, the interpretation of legislation, prosecution and penalty regimes and appeal avenues.

7.3.1 Legislation for Facilitation and Control

The primary role of customs administrations is to ensure compliance with customs-related laws and regulations. Thus, legislation is a crucial factor in fulfilling customs' regulatory responsibilities. Customs legislation is a fundamental principle, which provides customs officers with the authority to verify compliance with customs-related laws and regulations. At the same time, the legislation provides the private sector with rules and regulations for operating businesses. The legislation covers the rights of the private sector under the law, particularly in regard to the administrative settlement of customs disputes and appeal avenues. Without an effective and modern legal framework, on the one hand customs officers will be unable to

achieve compliance management, while on the other, the private sector will find outdated and inefficient legislation extremely burdensome for conducting business (Mikuriya, 2005, p.51).

Customs legislation is considered a significant element in ensuring customs regulatory control to meet the regulatory responsibilities of the Customs Department. This is due to the fact that the provisions of laws and regulations confer on customs officers the power to examine and exercise control over shipments in order to verify customs regulatory compliance. It is apparent from the study that customs officers regard regulatory responsibility as the first priority of the Customs Department and view customs laws and regulations as important instruments for safeguarding regulatory control. In relation to customs operations, legislation is indispensable in supporting customs formalities and the clearance of express consignments because operational rules and regulations for customs procedures are enacted pursuant to legislative provisions. The majority of customs officers interviewed for this study were clear in identifying the significance of customs laws and regulations in day-to-day operations, particularly in regard to customs clearance procedures and the examination of documents and shipments.

Even though legislation, by its very nature, is characterised by control and enforcement, evidence from the study reveals that legislation has been introduced for the purpose of trade facilitation. In other words, the Customs Department has issued regulations in the form of the Customs Department's notifications, customs orders and general directives to support trade facilitation in response to international requirements. These notifications and directives cover the provisions in relation to the simplification and harmonisation of customs procedures, implementation of information technology, particularly the use of risk management, including profiling systems and selectivity criteria for inspection. In particular, the Customs Department has issued customs notifications in relation to the reduction of customs inspections⁶⁷ and the introduction of e-customs and a paperless system⁶⁸ to support trade facilitation and customs regulatory control. It is clear that customs laws and regulations are designed not only for the purposes of government control to ensure regulatory compliance, but also to provide statutory provisions to support trade

⁶⁷ Customs Notification no.89/2547 regarding the reduction of customs inspections for imported shipments

⁶⁸ Customs Notification no. 116/2549 regarding the e-customs system, Customs Notification no.47/2550 regarding the paperless system for exported shipments at Suvarnabhumi International Airport, Customs Notification no.27/2551 regarding the paperless system for imported shipments at Suvarnabhumi International Airport, and Customs Notification no. 68/2551 regarding the paperless system for express consignment procedures and clearance

facilitation. This is highly congruent with the concept of customs control provided by the revised Kyoto Convention (WCO, 1999), which places emphasis on the appropriate application of customs laws and other regulatory requirements as well as on the maximum facilitation of international trade.

However, it is not just the actual provisions of the legislation that are important. The application of the laws and regulations to customs operations is also a significant factor. While the application of risk management, information technology and other facilitative or control measures has been specified in customs laws and regulations, it appears that a legislative gap still remains, arising from the inadequacy of operational rules and practical guidelines for implementation. Specifically, the application of the laws and regulations to day-to-day operations remains problematic in relation to the inadequacy of operational rules and regulations, the interpretation of legislation, prosecution and penalty regimes and appeal avenues.

7.3.2 Inadequacy of Operational Rules and Regulations

The Customs Act B.E.2469 (A.D.1926) is the principal legislation which provides customs officers with authority and power to enforce customs-related laws and regulations. It covers a range of provisions in relation to customs duty and payment, examination of goods, detention of suspected imports or exports, search of persons and premises, prevention of false declarations and smuggling, and legal proceedings. These provisions engage with the standard of the revised Kyoto Convention (WCO, 1999), which requires customs administrations to specify statutory provisions in national legislation⁶⁹. However, with the contemporary changes in the international trade and customs environment, the provisions of the Customs Act are no longer compatible with the means of transportation, the technological advances and the international customs obligations.

While the Thai Customs Department has been attempting to establish a modern customs organisation, provisions of customs legislation are unlikely to support the implementation of internationally accepted standards and best practices for the clearance of goods, for example, in regard to deferred payment, periodic declaration or pre-arrival clearance. In particular, deferred

⁶⁹ Standard 1.2 of the General Annex of the revised Kyoto Convention

payment and periodic declaration are not allowed by the Thai customs laws as customs duty and tax payment remain a prerequisite for customs clearance. In addition, pre-arrival clearance has yet to be implemented since the examination of goods is an essential component of the customs procedures required to ensure compliance with customs laws and regulations. Even though the Customs Department has introduced risk management and post-clearance audit, there is a general perception that shipments need to be examined on arrival, rather than being cleared just by means of documentary examination or information management.

When the Customs Act was enacted, there was only a small number of import and export shipments. At that time, revenue collection and customs control were the key means established to support the public and national interests. Even though the Customs Act was later amended several times to respond to international developments, the core principles remain critical in traditional procedures and enforcement. As one express manager commented:

The Customs Department maintains the use of the Customs Act, which was enacted a long time ago, when goods were transported by road, rail or ship, even as long ago as when cattle were used for transporting goods. Of course, the provisions of the Act focus on the conventional importation and exportation of goods, excluding transportation by air and air express. This, definitely, cannot respond to the needs of business today. (Express manager, personal communication, February 11, 2008).

This view expresses concern about the current legislation for customs procedures and operations. It confirms the need for modern legislation that provides comprehensive customs-related provisions as ‘a foundation of effective customs operations’, as suggested by the literature (Mikuriya, 2005, p.53; WCO, 1999). In fact, the Customs Act is the principal legislation for the provisions of customs rules and regulations for day-to-day operations. In the application of the legislation, the Customs Department has to issue customs regulations in the form of customs notifications, customs orders and general directives to provide operational rules and guidelines for customs procedures and operations. The problem is that such operational rules and regulations are not specified clearly enough to be practical guidelines for implementation. In general, the Customs Department applies the practices of the normal cargo processing to the customs procedures and clearance of express consignments. Regulations related to express consignment clearance have been issued only in particular cases, for example, in the categorisation of express

consignments and consolidated clearance where regulations on normal cargo processing cannot be applied. One express manager explained:

Customs officers apply customs regulations and procedures for general cargo to express consignment operations as customs procedures in relation to the clearance of express consignments have not yet been specified in the customs regulations; for example, documentary and regulatory requirements for express consignment clearance, operational guidelines for risk management implementation, including selectivity criteria and methods of examination (Express manager, personal communication, February 11, 2008).

Even though specific procedures for express consignments clearance have been stipulated in customs notifications and general directives, it appears that the operational rules and regulations are specified only in brief. This means that additional legal support is required for express consignment operations. Another express manager asserted that:

Customs laws and regulations focus on general customs procedures, but not on express consignments. For example, Customs Notification no.89/2547 requires customs officers to adopt risk management practices with the support of advanced technology to inspect imported shipments at a rate of not more than ten per cent of total imported shipments. This is the inspection rate, which serves as a basic guideline for general cargo clearance. Due to the absence of customs regulations specifically for express consignments, the customs officers apply the general cargo inspection rate, which is still relatively high also to express consignments. With the trade information provided, the Customs Department should revise the inspection rate and encourages customs officers to examine shipments on a risk basis (Express manager, personal communication, January 21, 2008).

These findings raise an important issue in regard to inadequate customs regulations, which is one of the issues discussed in the existing literature (Mikuriya, 2005; Walsh, 2003b). While the fact remains that standard customs procedures can be applied to any means of transportation in the clearance of goods, it is important to note that customs procedures for normal cargo and air express cargo differ in detail, particularly in relation to the categorisation of goods and the consolidated clearance of shipments. In the current situation, the regulatory issues related to express consignments are increasingly complicated. However, the scope of customs regulations is limited to general customs procedures, which cannot always be applied appropriately to the case of express consignments. Thus, adequate laws and regulatory procedures, together with

precise and comprehensive operational rules and guidelines, are required to support express consignment operations.

In relation to revisions of the regulatory procedures, the Thai Customs Department increasingly places emphasis on both the needs of the regulatory authority and the requirement of the regulated community. When revising statutory or regulatory provisions, including the operational rules and guidelines for implementation, the Department has introduced regulatory consultation processes, which involve regulatory authorities, express operators and other stakeholders, all of whom can affect or be affected by the regulatory provisions. However, information regarding the laws and regulations, including revisions or amendments of operational rules and procedures, has not been widely disseminated to the public. The dissemination of this information is necessary to create an understanding and awareness of the express industry to encourage compliance with the regulatory requirements. The dissemination of information is highlighted in the standard of the revised Kyoto Convention (WCO, 1999), which emphasises the importance of making information regarding the revision or amendment of customs laws, administrative arrangements or requirements widely available to enable interested persons to take account of them in advance of the entry of new laws and arrangements into force⁷⁰.

7.3.3 Interpretation of Laws and Regulations

The interpretation of laws and regulations also poses problems in the application of customs laws and regulations. The major problem found in this study emerges from the inadequate understanding and knowledge of customs officers rather than from the complexity of rules and regulations which has been the prime concern in the recent literature. However, it is important to note that customs laws and regulations are used mainly by practitioners such as frontline customs officers or traders. Thus, simple clarity and precision is required in the legislative and regulatory provisions so that non-legislators or non-lawyers can understand them (Mikuriya, 2005, p.60).

In relation to express consignment operations, the enforcement of customs laws and regulations is centred on individual customs officers, particularly in regard to the interpretation of operational rules or regulatory procedures. One express manager observed:

⁷⁰ Standard 9.2 of the General Annex of the revised Kyoto Convention

Customs legislation provides customs officers with the authority to make decisions on cases arising from customs procedures and practices. The main problem is that customs officers have varying levels of knowledge, and thus customs regulations can be interpreted in many different ways depending on the individual discretion of the customs officers involved. (Express manager, personal communication, January 10, 2008).

It is obvious that customs operations involve both interpretation and decision-making. It is, therefore, essential for customs laws and regulations to be enacted in a precise manner. Lack of precision in customs laws and regulations leads to inconsistencies in the interpretation of legislative and regulatory provisions. On the one hand, simple and precise laws and regulations have the potential to minimise opportunities for excessive administrative and judicial discretion in the interpretation of those laws and regulations. This, in turn, leads to an increase in the transparency and predictability of customs systems and procedures in the customs legislative regime. On the other hand, complicated rules and regulations not only result in misunderstanding of regulatory provisions by the trading community, but also encourage discretion in the interpretation of customs laws and regulations. This can lead to problems of consistency, clarity and certainty in customs operations.

In the application of customs laws and regulations, the understanding and knowledge of individual customs officers in relation to legislation, regulations, and operational procedures are extremely important in ensuring the accurate interpretation of the laws and regulations. One express operator provided the following example of the current practice:

Customs notification identifies the use of risk management for customs inspections of imported shipments at a rate not exceeding ten per cent of the total imported shipments. However, risk management has not been a major concern. Rather, the rate of ten per cent has become a standard of customs inspection for customs inspections of imported shipments (Express operator, personal communication, January 15, 2008).

The regulation on the reduction of customs inspections⁷¹ to ten per cent of the total imported shipments serves as a guideline for customs officers to perform their task by applying the principles of risk management. It is clear that a number of customs officers use this regulation as

⁷¹ Customs Notification no.89/2547 regarding the reduction of customs inspections for imported shipments

a guideline when applying individual risk management to customs inspections and the clearance of goods. This is despite the fact that the discretion given to customs officers for implementation has been strongly criticised due to the inadequate skills and knowledge of customs officers in regard to risk management principles. However, some customs officers focus solely on the ‘rate of inspection’ without necessarily considering the potential risk in accordance with the principles and processes of risk management (see WCO, 1999). Instead of facilitating international trade, misinterpretation or discrepancies in the interpretation of customs laws and regulations by individual customs officers can affect operational efficiency and effectiveness as well as lead to adverse effects on the consistency, predictability and transparency of customs operations. When this regulation has been imposed for some time, it is necessary to consider whether it is cost effective in terms of measures input and applicable outcome. Post-hoc evaluation of the regulatory imposition and performance needs to be taken into account in order to recalibrate policy or define a better regulatory and management system.

7.3.4 Prosecution and Penalty Regimes

The customs legislative regime provides customs officers with extensive powers over any breach or attempted breach of the statutory or regulatory provisions irrespective of intention. This makes customs legislation different from conventional criminal law that individuals shall be liable to penalties due to ‘the act of intention’⁷². Section 16 of the Customs Act (No.9) B.E.2482 (A.D.1939) prescribes that “the execution of any act provided in section 27⁷³ and section 99⁷⁴ of

⁷² Section 59 of the Criminal Law B.E.2499 (A.D.1956) specifies that:

Individuals shall be liable to penalties as specified in the Criminal Law only if there is the act of intention...The act of intention is to act with consciousness for particular purpose or consequences of the action. If the person acts with unconsciousness or without expecting the outcomes, the action of that person shall not be considered as the act of intention (Criminal Law, 1956).

⁷³ Section 27 of the Customs Act, B.E.2469 (A.D.1926) as amended by section 3 of the Customs Act (No.11), B.E.2490 (A.D.1947) provides that:

Any person who shall import or export any restricted, or prohibited goods, or any goods which have not been duly passed through the customs...; or shall be in any way concerned in any evasion or attempted evasion of any duties of customs with intent to defraud His Majesty’s Government of any duties...shall be liable to a fine equal to quadruple the duty-paid value of the goods, or imprisonment for a period not exceeding ten years, or both fine and imprisonment (Customs Act, 1926).

⁷⁴ Section 99 of the Customs Act, B.E.2469 (A.D.1926) as amended by section 4 of the Customs Act (No.19), B.E.2548 (A.D.2005) provides that

Any person who makes or allows others to make or submits or arranges for others to submit a shipment entry, declaration, certificate, record or other instruments to the competent official in

the Customs Law B.E.2469 [A.D.1926] shall be deemed to be an offence, irrespective of the existence or non-existence of any wilful intent of negligence”. This provision provides a wide range of customs powers over any customs offences and places greater onus on the offenders to defend themselves in the prosecution.

The study provides evidence that customs officers apply the provision of ‘false declarations’ under section 99 and ‘smuggling’ under section 27 of the Customs Act, B.E.2469 (A.D.1926) extensively to customs offences and irregularities. False declarations of tariff classification and valuation are common irregularities found in the case of express consignments. An experienced express operator remarked:

For the clearance of express consignments, there are a number of trivial errors in trader’s information such as the spelling of the trader’s name, the company’s name or the address. This detailed information can be amended prior to the clearance of goods. Provided that these errors are found during the clearance of goods, the express industry and importers are prosecuted for breaching section 99 of the Customs Act. Besides, the prosecution processes are complicated and take a long time, no matter what the case is (Express operator, personal communication, January 16, 2008).

This is indicative that the operation of rules and regulations by customs officers relies on a ‘one size fits all’ approach to compliance management. Customs officers take this approach to apply sanctions or enforcement regardless of circumstances such as the significance of the breach or the intent to commit customs offences. Even though customs offences are prosecuted regardless of intention, it is worthwhile applying an appropriate level of sanctions and penalties with regard to the significance of the breach and the intention or reasons beyond the offences. Customs legislation should provide a range of compliance improvement and enforcement measures, including administrative sanctions so that customs can apply an appropriate level of sanctions and penalties, depending on the circumstances, to correct current mistakes and prevent future problems. The application of enforcement strategies should be based on “legality, consistency,

relation to this Act or required by this Act, which is false, incomplete, or misleading in any particular statement..., or any person who counterfeits or makes any transaction relating to this Act, or alters any instrument of record or other instruments after it has been officially issued..., such person shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding five hundred thousand baht or both the fine and imprisonment (Customs Act, 1926).

proportionality, non-discrimination, due process, transparency and accessibility, and efficiency and expertise” (Black 2001, p.27).

Enforcement strategies are necessary to ensure regulatory compliance. However, sanctions and penalties incur significant compliance cost. Thus, there is increasing concern about a ‘persuasive approach’ to compliance, which aims to change the current practices through advice and education (Ayres & Braithwaite, 1992). The regulatory literature underlines the importance of the appropriate application of ‘insistent and persuasive approaches’ (Black, 2001) or ‘punishment and persuasion’ (Braithwaite, 1985) as regulatory strategies to ensure compliance with laws and regulations.

In this study, it is apparent that customs legislation confers a wide range of investigatory powers to pursue sanctions and enforcement strategies to ensure compliance with the relevant laws and regulations. This forces customs officers to concentrate on control and enforcement. Consequently, there is less concern about treating non-compliance with regulatory assistance by means such as education and advice. In the compliance management regime, it is necessary also to place emphasis on ‘prevention before suppression’ and provide the express industry and related stakeholders with an environment of ‘regulatory advice and assistance’, particularly in regard to unintended faults or honest mistakes. This includes “the need to balance enforcement with assistance, [and] further recognises the benefits of providing industry with incentives to comply”, or ‘more carrot and less stick’ (Widdowson, 1998, p.1). The concept of the ‘stick and carrot’ nature of super-punishment consists of “a short ‘stick’ period of discomfort followed by a longer ‘carrot’ period of reintegration” (Ayres & Braithwaite, 1992, p.43).

Another critical problem found in this study is the length of time that the process of prosecution takes, even for unimportant matters. This directly impacts on the express business as express shipments cannot be cleared until a prosecution is completed. In the case of trivial errors, it is worthwhile to apply administrative settlement or other administrative measures for innocent or unintentional mistakes. This is more beneficial to both the regulatory authority and the regulated community than other forms of sanctions such as prosecution. A long prosecution not only has a deleterious effect on the express business, which is based on fast delivery services to customers. It can also result in negative impacts on the regulatory authority since a long prosecution can

discourage customs officers from performing their tasks or enforcing the laws. Meanwhile, it also brings about a negative inducement for the regulated community to continue their non-compliance due to the inefficiency of the prosecution and enforcement measures.

7.3.5 Appeal Avenues

Customs operations are involved with decision-making on a daily basis, and thus there may be problems in regard to the interpretation of legislation and the wide discretion exercised in the decision-making process. In this situation, the right of appeal becomes a significant element in ensuring the transparency and predictability of customs decisions and practices, as well as in making certain that the rights of traders are fully protected by law.

In principle, the Customs Department provides appeal avenues for the express industry to lodge an appeal against the decisions of customs officers. The express industry has the right to appeal the assessment of duty to the Customs Department's Appeal Commission within 30 days of an assessment as well as the right to appeal to a court against the Appeal Commission's decision within 30 days of a decision. In principle, the current appeal processes follow the standards of the revised Kyoto Convention (WCO, 1999)⁷⁵.

In practice, however, the express industry receives little advantage from the appeal avenues due to the nature of its business, which requires the immediate release of goods, whereas the appeal processes take a long time. The express industry cannot predict how long the process will take as there are no time obligations imposed on the consideration of an appeal. One express manager commented that:

Appeal processes take long time and the express business cannot wait for that. The express business serves our customers with a fast and reliable service. In many cases, we would like to appeal against customs' decisions, but our customers cannot wait for the products. The customers use air express consignments and pay more to get the goods on time because of the urgent needs of their business. Therefore, the business cannot wait for such long appeal avenue processes, which sometimes take three to six months, and we need to give a guarantee at 140 per cent of the duties and taxes paid (Express manager, personal communication, January 15, 2008).

⁷⁵ Standard 10.1, 10.2, 10.4, 10.5 and 10.6 of the General Annex of the revised Kyoto Convention

It is obvious that the appeal avenues introduced by the Customs Department have yet to be processed effectively to ensure the transparency of customs' decisions. This is due to delays in the appeal processes. It is also important to note that the revised Kyoto Convention requires customs administrations to give a ruling upon an appeal and written notice to the appellant as soon as possible⁷⁶. Therefore, the Customs Department and the trading community may receive additional benefits, provided that the appeal processes can be completed quickly within the timeframe specified for general cases, even though there may be an extension of the appeal processes in specific cases, and these should be notified in writing with appropriate reasons.

In summary, customs legislation is an instrument, which is required for customs procedures and operations to ensure compliance with customs-related laws and regulations. The application of customs laws and regulations for the purpose of trade facilitation is evident in the regulatory provisions, yet customs operations and the perceptions of customs officers remain reliant on conventional control and enforcement. Importantly, there has been a tendency towards the better use of customs laws and regulations to support trade facilitation and customs regulatory control. Nevertheless, the application of customs laws and regulations is not functioning effectively as far as several aspects of customs operations are concerned. These aspects include the inadequacy of laws and regulations, the interpretation of legislation, the prosecution and penalty regimes as well as the appeal avenues. Trade facilitation and customs regulatory control can be achieved on the condition that customs laws and regulations have been implemented effectively. This requires the development of customs officers in terms of their understanding and knowledge of customs laws and regulations, including consistency in interpretation and decision-making.

7.4 Customs Procedures

Customs procedures are considered another key instrument in the achievement of trade facilitation and customs regulatory control. This is particularly so in the area of express consignments in that simplified and standardised procedures have the potential to enhance operational efficiency to achieve the immediate release and clearance of shipments while at the same time ensuring compliance with the statutory provisions. The study found that the overall principles and procedures for the clearance of express consignments have been developed in line

⁷⁶ Standard 10.10 of the General Annex of the revised Kyoto Convention

with international guidelines, particularly the revised Kyoto Convention and the Immediate Release Guidelines for express consignments. Nor does the express industry experience any clearance delays with export and transit consignments. However, some implementation problems still persist in the areas of pre-arrival clearance, informal or consolidated clearance of low-value shipments as well as customs valuation and tariff classification.

7.4.1 Customs Procedures for Facilitation and Control

Customs procedures for express consignments conform to a number of international standards and modern customs practices for enhancing operational efficiency in response to the need to facilitate international trade while at the same time maintaining high standards of customs regulatory control. The current practices of express consignments in Thailand operate with reference to the principle of immediate release or the clearance procedures stated in the Immediate Release Guidelines and the revised Kyoto Convention⁷⁷. Two core principles for trade facilitation and customs regulatory control applied by the Customs Department are the advance submission of cargo information for verification of compliance with customs-related laws and regulations as well as the categorisation of shipments for consolidated customs clearance.

First, customs formalities and clearance of express consignments require advance electronic cargo information supplied by the express industry at least two hours prior to flight arrival. This cargo information is essential for the immediate release of express consignments in that customs officers can make decisions about whether shipments can be cleared, or whether customs inspections are required, or whether shipments need to be held for formal customs clearance. Second, the Thai Customs Department has divided express consignments into four categories and has specified the customs clearance procedures, including documentary and regulatory requirements for the purpose of immediate release of shipments. Accordingly, customs procedures and the clearance of express consignments can be facilitated by the simplified procedures for consolidated clearance while formal customs clearance takes longer.

It is clear that the advance submission of cargo information and the categorisation of shipments for consolidated clearance provide immediate or expedited customs release and clearance of

⁷⁷ Standard 3.30, 3.40 and transitional standard 4.13 of the General Annex of the Revised Kyoto Convention

express consignments. The reason for this is that the procedures are based on the principles of risk management and are congruent with the key principles of the Immediate Release Guidelines (WCO, 2007b, p.1). This implies that risk management principles and standardised customs procedures are both significant for the achievement of trade facilitation and customs regulatory control. In particular, these principles and practices make express consignment operations more progressive than operations for consignments by other means of transportation: road, rail, ship or even normal air cargo. This is even though further development of operational efficiency is required in the case of imported express consignments in relation to pre-arrival customs processing, informal or consolidated clearance of low-value shipments, and customs valuation and tariff classification.

7.4.2 Pre-arrival Customs Processing

Pre-arrival customs processing refers to “a procedure allowing traders to submit clearance data to [c]ustoms for advance processing and release of the goods immediately upon arrival into the country” (UNCTAD, 2008c, p.1). This pre-arrival processing is considered a key facilitative and control measure required for the immediate release and clearance of express consignments in that it has shifted the focus away from the traditional control or intervention in the movement of goods on arrival to the management of cargo information in advance. In essence, pre-arrival customs processing involves risk assessment based on advance cargo information to target high-risk shipments and facilitate low-risk shipments.

In the customs context, “release⁷⁸ may even take place prior to the actual arrival of the goods, provided all the necessary details have been provided and screened by [c]ustoms in advance” (UNCTAD, 2008c, p.1). Thus, shipments can be release immediately provided that there is no indication of possible problems when shipments arrive. On the other hand, ‘clearance’ can generally be completed after verifying the accuracy of duty and tax payments, tariff classification, customs valuation and other necessary information.

⁷⁸ Release refers to “the action by [c]ustoms to permit goods undergoing clearance to be placed at the disposal of the persons concerned” while clearance refers to “the accomplishment of the [c]ustoms formalities necessary to allow goods to enter home use, to be exported or to be placed under another [c]ustoms procedure” (UNCTAD, 2008C, p.1). In short, “release is the first step in any clearance process” while clearance is the finalization or accomplishment of all [c]ustoms formalities and procedures (IATA, 1999, p.1).

In the current practice, release and clearance actually occur at the same point in time since express consignments cannot be released from customs custody until customs clearance is completed. Even though the concept of pre-arrival customs processing is developing to expedite the immediate release and clearance of express consignments, release and clearance in advance of arrival are not evident from the case study. Some implementation problems appear to be emerging from the limitation on both the Customs Department and the express industry in relation to operational guidelines and advance cargo information. First, the list of shipments requested for pre-arrival clearance needs to be submitted to the Customs Department prior to flight arrival. After flight arrival, shipments on the list are regarded as priority for release and clearance, other than those specified in the list as subject to normal express procedures. Second, the system for processing customs declarations is based on the cargo manifest reported by the BFS or the TG after flight arrival. Thus, the express industry is able to prepare customs declarations and documents but not able to submit customs declarations nor pay the duties and taxes prior to flight arrival. Third, the express industry is not able to submit customs declarations until flight arrival when there are discrepancies in the cargo manifest received from the country of origin, particularly in case of shipments that are short- or over-landed⁷⁹. If errors in the cargo information or the customs declarations are found during or after the clearance of goods, the express industry may be in breach of the provision on 'false declarations' under section 99 of the Customs Act. These issues were also stressed by respondents from customs officers and express operators. One express manager commented on operational rules and customs practices as follows:

An electronic pre-alert system, including pre-advice of the cargo manifest allows the express industry to prepare documents in order to clear shipments in the air. However, customs formalities for clearance of express consignments cannot be completed prior to flight arrival due to regulatory requirements such as customs inspection and complicated rules for the amendment of cargo manifests. Even though there is a growing trend of using risk management with advance information, most customs officers maintain physical control of express consignments (Express manager, personal communication, February 11, 2008).

⁷⁹ Short- or over-landed refers to discrepancies in the amount of cargo between the cargo received at final destination and the cargo listed in the cargo manifest, which may be due to unloaded, overloaded or missing cargo. Short-landed is a term used when shipments that arrive at the port of destination are less than the cargo listed in the manifest. Over-landed, on the other hand, is used when shipments in excess of those listed in the manifest arrive at the port of destination.

On the other hand, the limitations on the express industry in regard to the submission of cargo information have been addressed by customs officers. One of frontline officer explained:

The Customs Department allows the express industry to submit customs declaration forms, covering details of consignments and related information in advance. On arrival, express consignments that are not subject to customs inspection can be cleared without delay. In fact, the express industry can not submit customs declarations together with related documents for pre-arrival clearance due to uncertainty in the cargo information received from the country of origin rather than because of problems from the customs side (Customs operator, personal communication, February 12, 2008).

Due to the nature of the express business, it is understandable that the express industry has only limited time in which to prepare cargo information for express consignment formalities and clearance, including rechecking the accuracy of cargo information. However, this information is important for customs officers to be able to make decisions on shipments, such as whether shipments can be released or need to be held for formal customs clearance. Customs officers can immediately release low-risk shipments based on accurate and clear cargo information received from the express industry. At the same time, appropriate levels of customs control can be applied to high-risk or suspect shipments through examination of documents or inspection of shipments if required.

It is evident that pre-arrival processing is based on risk assessment of advance cargo information in order to identify high-risk consignments. This concentrates on documentary control rather than on traditional control or intervention in the movement of shipments. Even though some level of physical inspection remains for the identification of cases of potential high-risk, customs officers need to place more emphasis on the management of cargo information and the adoption of risk management, post-clearance audit and information technology. Combined, these constitute a key customs philosophy for achieving an accommodation between trade facilitation and customs regulatory control.

The findings of this study also underline the important role played by information technology in pre-arrival customs processing. The literature points out that “pre-arrival processing can be applied in a fully automated [c]ustoms environment as well as in a manual or semi-automated environment” (UNCTAD, 2008c, p.3). Nevertheless, it is difficult to deny the fact that electronic

transmission of cargo information and documents in advance makes pre-arrival processing for express consignments clearance very much easier. With the electronic communication of shipment information, it is more efficient for customs officers to facilitate pre-arrival processing and grant the immediate release of express consignments based on risk identification, assessment and control procedures. Further examination of shipments can also be arranged at the time for customs inspection without delay. This confirms the significance of advance electronic cargo information as noted in the existing literature (Hoekman & Kostecki, 2001; IATA, 1999; UNCTAD, 2008c).

7.4.3 Consolidated Customs Clearance

Informal or consolidated clearance of express consignments is currently applied to express consignments in categories 1 to 3. As noted in Chapter 5, shipments valued below the de minimis level of 1,000 baht or approximately 28 US dollars can be cleared without submitting a formal customs clearance. The Thai Customs Department also provides informal or consolidated clearance procedures for low-value shipments not exceeding 40,000 baht (FOB) per shipment or approximately 1,150 US Dollars per shipment.

In the light of consolidated customs clearance, express consignments in category 1 account for approximately 40 per cent of the total number of imported express consignments while express consignments in categories 2 to 4 account for about 20 per cent each. This shows that the majority of express consignments can be cleared under a consolidated declaration, which account for 80 per cent of total imported express shipments while another 20 per cent is subject to formal customs clearance. In particular, express consignments in categories 1 and 2, which account for 60 per cent, are facilitated by x-ray scanning while only 20 per cent are subject to customs inspection. Table 7.1 below summarises the approximate percentages of express consignment clearance.

Table 7.1: Proportion of Consolidated and Formal Customs Clearance

Category	Percentage (approximate)	Customs regulatory requirements	Customs clearance
Category 1: Correspondence and documents	40%	X-ray	Informal or consolidated clearance
Category 2: Low value non-dutiable consignments	20%		
Category 3: Low value dutiable consignments	20%	Selective customs inspection	Formal clearance
Category 4: High-value consignments	20%	Selective customs inspection*	

Note*: Approximately ten per cent of shipments are accorded red line status (customs inspection)

It is clear from the study that simplified procedures for consolidated clearance of shipments below the de minimis or low value threshold provide a significant degree of facilitation while time delays still exist in the formal clearance processes. Thus, informal or consolidated clearance for express consignments is sought by the express industry. This includes an increase in the de minimis and low value threshold to facilitate international trade since the de minimis and low-value threshold value has remained the same even though express consignment operations in Thailand have developed over the past five years. Besides, the de minimis threshold in Thailand, which was imposed in accordance with Thai Postal Law, is relatively low compared to that of other economies in the Asia Pacific region (see Table 6.5 in Chapter 6). These issues may be reasons to support the increase in the de minimis and low-value threshold value. Nevertheless, the Customs Department needs to place more emphasis on the level of regulatory compliance provided by the express industry and the potential risks that may occur as a result of the increase in value.

On the one hand, an increase in consolidated or informal clearance has potential to expedite the customs clearance and release of express consignments, significantly facilitating the clearance of express consignments. On the other hand, there is growing concern about customs regulatory

control to ensure compliance with customs-related laws and regulations. As discussed in the post-clearance audit of the risk management section (Section 7.2.3), express consignments in categories 1 to 3 can be cleared consolidated without full declaration procedures and supporting documents. Thus, the Customs Department receives only a brief summary of cargo information in the form of consolidated manifests, making it difficult for the post-clearance review and audit teams to verify express consignments in categories 1 to 3.

Nevertheless, the fact remains that post-clearance review and audit can be applied to verify the accuracy of tariff classification and valuation to protect national revenue. However, in the case of illegal trafficking or smuggling either into or out of the country, it is important to ensure social safety and supply chain security with an appropriate level of effective control at the point of entry or exit. The detection of illegal trafficking or smuggling relies on both the adequacy and the accuracy of cargo information, including intelligence reports and other sources of information. In this regard, cooperation with the express industry is important, particularly in detecting suspect shipments during the process of cargo acceptance, which can ensure compliance at least to some extent. In other words, account customers called ‘known shippers’ and unknown shippers are subject to different treatment in the examination of shipments according to the rules of the express industry which govern the acceptance of shipments. All shipments from unknown shippers require physical examination or x-ray, with the express industry informing the authorities concerned when suspect shipments are identified.

The fact that the regulation on the increase in the de minimis and the low-value threshold will be applied equally to all express operators, it is necessary to consider whether the entire industry provides a high level of regulatory compliance and whether effective control measures, such as risk management and advanced technology, including the e-express system, are being implemented comprehensively and efficiently. When the express industry presents comprehensive and reliable information about express consignments and proves its validity as well as full compliance or, at least, success in increasing compliance, the de minimis and the low-value threshold can be increased to facilitate express consignment operations.

Nevertheless, the current practices of express consignment clearance have yet to meet the compliance standards required by the Thai Customs Department. A number of cases of non-compliance arise from the clearance of express consignments. One customs officer noted:

The express industry has concentrated on fast service without paying enough attention to the accuracy of the information submitted. In many cases the express industry clears shipments to serve its customers first, later requesting amending information or paying additional duties and taxes to comply with the legislation. In some cases, the rate of duty declared differs considerably from the rate of duties that should be applied. Such cases have a major impact on national revenue (Customs manager, personal communication, March 8, 2008).

Another customs officer offered a similar viewpoint and raised the issue of cooperation among concerned government agencies to strengthen regulatory compliance:

The express industry submits a request for amendment and payment of duties and taxes since the importers and exporters sometimes receive privileges in the form of duty or tax refunds. The Revenue Department has the capacity to cross check companies' accounts through its auditing system (Customs manager, personal communication, March 6, 2008).

On the other hand, express managers insisted on their good intentions to comply with customs laws and regulations as evident from requests for amendment of cargo information and payment of additional duties and taxes (Express manager, personal communication, January 16, 2008). The responses obtained in this study reveal that customs officers and express operators situate the facts from different standpoints. Customs officers provide comments as the regulatory authority and thus focus on control and compliance while the express industry operators confirm their intent to comply with regulatory requirements. Even though customs declarations can be amended and additional payments can be made for customs duties and taxes to ensure correctness, this takes time and resources from both the Customs Department and the express industry. Therefore, the accuracy of customs formalities and clearance should be confirmed at the start of the process to avoid the unnecessary duplication of work involved in making corrections later. In this regard, customs officers should work more closely with the express companies and provide them with regulatory advice and assistance to facilitate progressive compliance. This requires a more cooperative approach to increase the level of 'partnership and mutual trust'

between customs officers and express operators, thereby contributing to the efficiency and effectiveness of trade facilitation and regulatory compliance.

7.4.4 Customs Valuation and Tariff Classification

Customs valuation and tariff classification are technical customs matters that remain problematic in customs formalities and the clearance of express consignments. This is mainly due to inexperience and inadequate skills and knowledge in the case of both customs officers and express operators. On the one hand, there are problems in the express industry in declaring the value of shipments and stipulating the tariff codes. These problems can be attributed to the low levels of skills and knowledge of the express operators in regard to customs valuation and tariff classification. Moreover, cargo information received from importers or exporters is sometimes unclear or uncertain. On the other hand, customs officers have only limited knowledge of customs valuation and tariff classification, which leads to difficulties in interpretation and implementation.

In relation to customs valuation, the Customs Department has committed to comply with the GATT valuation principles⁸⁰. In practice, however, customs officers continue to value shipments according to the ‘minimum values’ established prior to the GATT valuation guidelines for the clearance of express consignments. Express operators provided examples of minimum values that customs officers applied for express consignment clearance. As one express operator claimed:

Cloth or fabric is valued at 500 baht (14 US dollars) per kilogram. IC is valued at 600 baht (17 US dollars) per kilogram. A software CD Rom is valued at 20 US dollars while a music CD Rom is valued at 5 US dollars. With the exception of these commodities, the value is generally applied at 200 baht (6 US dollars) (Express operator, personal communication, March 8, 2008).

Provided that the declared values of shipments are below the minimum values, customs officers will increase the values up to these minimum levels (Express operator, personal communication, January 15, 2008). The increase in the values of individual shipments appears to be a regular

⁸⁰ The Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (GATT Valuation Agreement) specifies six methods of customs valuation to be applied in the prescribed hierarchical order: transaction value, transaction value of identical goods, transaction value of similar goods, deductive method, computed method and fall-back method (see CCES, 2003; WTO, 1994b).

practice for customs inspection across the express industry. Customs officers, who have been newly posted to the Customs Service Division III, also follow this practice and use the minimum values as the customary guidelines for customs duty and tax purposes. It appears that customs officers tend to facilitate clearance by increasing the declared value of shipments in consultation with express operators rather than holding shipments for formal customs clearance, unless the shipments are subject to import licensing controls such as chemicals, medical devices, machine parts, electronic equipment and foodstuffs. One possible explanation for this is that revenue collection remains the primary focus of the Customs Department. Thus, customs officers try to ensure that customs' responsibility for revenue collection is met while also making an effort to facilitate the clearance of express consignments. However, this perception and the practice of increasing the values of goods detracts from the principles which accommodate both trade facilitation and customs regulatory control. This problem is directly related to the precise knowledge of customs officers in customs valuation as well as the competence of customs officers in putting the theory into practice.

More importantly, such practice is inconsistent with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (GATT Valuation Agreement) (WTO, 1994a) to which the Customs Department is a signatory. In fact, customs valuation needs to be based primarily on the transaction value in accordance with the methods of valuation stipulated in the GATT Valuation Agreement⁸¹. This is despite the fact that customs officers may ask for further explanation, including documents or other evidence to prove that “the declared value represents the total amount actually paid or payable for the imported goods” in accordance with Decisions Regarding Cases where Customs Administrations have Reasons to Doubt the Truth or Accuracy of the Declared Value (WTO, 1994b).

Tariff classification is another technical issue that requires knowledge and understanding on the part of both the customs officers and the express operators. In the current situation, the express operators simply input the tariff codes based on the cargo information supplied by the importers without a full understanding of tariff classification as stipulated in the Explanatory Notes. Some customs officers also select a tariff item with the highest rate of duty, rather than taking into

⁸¹ The following methods of valuation are transaction value of identical goods, transaction value of similar goods, deductive method, computed method and fall-back method, which shall be applied respectively (see CCES, 2003; WTO, 1994b).

account the ‘essential character’ of the goods declared, in accordance with the General Rules for the Interpretation of the Harmonized System, together with its Explanatory Notes. This is evidenced by the observations of customs inspections and by interviews with express operators. As one express operator observed:

When the description of goods is not clear, for example, ‘cutting tools’ or ‘CD Rom’, customs officers generally apply the higher rate of duty without examination of any other evidence. On the one hand, goods described as ‘cutting tools’ can be classified as knives and cutting blades for ‘metal working’ under HS code 8208.10 to which a zero per cent duty rate is applied. On the other hand, such goods can also be classified as knives and cutting blades for ‘wood working’ under HS code 8208.20 or as ‘kitchen appliances’ under HS code 8208.30 to which a ten per cent duty rate is applied. A similar practice is applied to CD Roms. A duty rate at three per cent is applied to a ‘software CD Rom’ under HS code 8523.40.14 while a duty rate at 30 per cent is applied to a ‘music CD Rom’ under HS code 8523.40.13 (Express operator, personal communication, January 18, 2008).

This practice is not compliant with the Harmonized Commodity Description and Coding Systems (HS)⁸² to which Thailand is a contracting party under the Harmonized System Convention. In addition, the rate of customs duties and taxes appears to be a primary focus of customs officers in express consignment clearance. It is observed that customs officers allow the release of shipments provided that the ‘tariff rate’ is correct even though the ‘tariff code’ may be incorrect at the tariff item level, but excluding misdeclaration of the tariff code at the heading or sub-heading level. Shipments can be cleared when the express industry amends the tariff code in customs declaration documents. It is also important to note that irregularities in customs valuation and tariff classification can be examined through post-clearance reviews and audits. Thus, physical inspection of shipments for the purpose of verifying valuation and tariff classification should be minimal. This is despite the fact that post-clearance verification is more difficult than the physical inspection of goods on arrival, as discussed in the post-clearance audit part of the risk management section (Section 7.2.3) earlier in this chapter. However, physical intervention in the movement of goods can delay shipments. Customs officers, therefore, need to place more emphasis on managing and verifying cargo information for pre-arrival customs

⁸² The Harmonized Commodity Description and Coding Systems (HS) is an internationally standardised system of tariff nomenclature governed by the International Convention on the Harmonized Commodity Description and Coding System (WCO, 2009).

processing and post-clearance audit, thus expediting the release and clearance of express consignments while at the same time ensuring customs regulatory compliance.

A number of cases emerged during the study in which the tariff codes have been amended by customs officers during customs inspection. While some customs officers have a good knowledge of tariff classification and can make decisions on shipments professionally, a number of officers still have only a limited understanding of tariff classification and the rates of duties and taxes. The problem is more critical in some cases in that customs officers are not consistent in interpreting and applying the tariff classification. When arguments about the tariff classification arise, the express industry needs to consider either amendments of tariff codes for immediate clearance or acceptance of holding shipments for formal clearance. One express operator commented:

In the event that shipments need to be cleared and delivered to our customers, we need to amend the tariff codes for immediate release purposes; otherwise, shipments will be held for formal customs clearance. In some cases, the customers refuse to pay for the additional costs in duties and taxes arising from amendments to the tariff code, and thus the express industry needs to absorb those costs. On the other hand, we also receive complaints from our customers if shipments are held for formal customs clearance. This is because the customers pay higher costs for the express services in order to receive goods as quickly as possible within a specified time frame (Express operator, personal communication, January 9, 2008).

In fact, the Customs Department provides appeal avenues against customs' decisions on tariff classification. However, the appeal processes take a long time and are not able to respond to the needs of the express business, as indicated in the discussion of appeal avenues in the customs legislation section of this chapter (Section 7.3.5). In this regard, the advance tariff classification ruling system or advance ruling is another issue, which was raised in this study as a means of providing traders and importers with accurate information that can be referred to and relied on as a formal and binding ruling in the future or during the appeal process. Advance ruling refers to "a binding official decision prior to an importation or exportation, issued by a competent [c]ustoms authority in writing, which provides the applicant with a time-bound ruling on the goods to be imported" (UNCTAD, 2008a, p.1). The Thai Customs Department has introduced the advance ruling, as stated in Customs Notification No.54/2551, in order to comply with the revised Kyoto

Convention⁸³. By the time of the study, advance ruling had already introduced as a pilot project but had not then been implemented to support pre-arrival customs processing. Therefore, at this stage, it is difficult to determine whether the implementation of advance ruling by the Customs Department is consistent with international standards, or how effective the advance ruling system is, or whether the system provides actual benefits to the public and private sector. However, advance ruling is “a proven trade facilitation tool for both traders and [c]ustoms administrations that enhances the certainty and predictability of customs operations” (UNCTAD, 2008a, p.4).

In summary, the Thai Customs has adopted the international standards in relation to customs systems and procedures, particularly the revised Kyoto Convention and the Immediate Release Guidelines for express consignments. However, customs valuation and tariff classification have yet to comply with these international conventions and development. Likewise, the current practices in regard to pre-arrival customs processing and the consolidated clearance of low-value shipments still require accurate and reliable cargo information, appropriate regulatory procedures and practical guidelines, as well as further development of the professional skills and knowledge of both customs officers and express operators.

The extent to which trade facilitation and customs regulatory control can be accommodated largely depends on the simplification and standardisation of customs procedures in conjunction with the adoption of risk management principles and information technological support. At a time when the Customs Department is progressing toward the full application of international standards and guidelines on express consignments, it is necessary to ensure that the simplified and standardised procedures are efficiently applied to customs practices with certainty, clarity and consistency. This is required in combination with coherent trade policies and clear supporting regulations, effective automation systems and modern techniques, sophisticated risk management and audit-based control, good management of human resources and close cooperation with the trading community.

⁸³ Standard 9.9 of the General Annex of the revised Kyoto Convention

7.5 Information Technology

Information technology is another key instrument which the Customs Department regards as important in enhancing the efficiency and effectiveness of customs operations to facilitate international trade whilst also accommodating customs regulatory control. The study found that the Customs Department has made good progress in developing automated systems and modern technologies for customs formalities and clearance of goods as recommended by the revised Kyoto Convention⁸⁴ (WCO, 1999). These technological advances range from an Electronic Data Interchange (EDI) system, electronic customs clearance using a paperless system (e-customs) and currently preparing for a national single window system. However, these technological and automated systems require further development in terms of the application of the system and supporting facilities, including development of the skills and knowledge of customs officers.

7.5.1 Information Technology for Facilitation and Control

In the contemporary customs and international trade environment, information technology has become an indispensable tool for customs administrations and trading communities. This is particularly so in regard to the express business, which requires the fast transportation and delivery of goods. The express industry underlines the importance of information technology in its worldwide express business and focuses on the optimal use of information technology for facilitating customs formalities and clearance of express consignments. As one express manager explained:

The express industry uses advanced technologies and sophisticated information systems to facilitate and control shipments through our global network to ensure the security of shipments as well as fast and reliable delivery services. This includes the use of information technology for the electronic submission of cargo information and customs declarations so that customs officers can check information and make decisions on the shipments prior to flight arrival. To facilitate a seamless flow in the supply chain, the express industry also provides the Customs Department with facilities such as CCTV and x-ray machines to assist customs officers in customs inspections in order to reduce the customs clearance time. (Express manager, personal communication, January 10, 2008).

⁸⁴ Standard 7.1 of the General Annex of the Revised Kyoto Convention

In relation to customs operations, the Customs Department has developed information technology to support customs formalities and the clearance of express consignments, The finding of this study highlights the importance of information technology consistent with UNCTAD (2008e, p.1), which considers the “automated system in customs to be one of the most significant instruments for simplifying international trade procedures”. In other words, information technology has also become an integral part of customs procedures and operations for stimulating international trade and facilitating customs systems and procedures for the clearance of express consignments. This is particularly so in relation to the introduction of e-customs with a paperless system, including the advance submission of cargo information and electronic declarations. An experienced customs manager explained:

Automated systems for electronic and advance cargo information are essential for the immediate release and clearance of express consignments, in that customs officers can target high-risk shipments while facilitating the clearance of legitimate consignments. Moreover, information technology is essential for formal customs clearance processes within the large area of the Customs Free Zone, where customs formalities take place in one building, customs inspection in another building, and shipments are stored at other TG or BFS Cargo Terminals. Without a fully functioning automated system, facilitation and control of shipments is much more difficult (Customs manager, personal communication, March 8, 2008).

This explanation confirms the significance of the advance and electronic submission of cargo information, including the need for accurate and complete information on consignments to be submitted by the express industry. This finding also testifies to the findings in the existing literature (ESCAP: 2002, 2004), which underline the use of effective electronic and automated systems to enhance the efficiency of international trade transactions. Electronic cargo information is required and considered to be a significant application that can be used for both facilitating international trade and ensuring customs regulatory control. This is because current international trade relies on accurate and reliable cargo information for systematic control based on risk management strategies rather than on the physical intervention of shipments on arrival. As discussed in the pre-arrival customs processing part of the customs procedures section (Section 7.4.2), customs officers can make decisions on shipments based on electronic and advance cargo information prior to flight arrival for pre-arrival customs processing in order to facilitate the

clearance of goods. Furthermore, this electronic cargo information is important for post-clearance audit after the release of goods to verify compliance with customs laws and regulations.

Electronic and advance submission of cargo information is a key facilitative and control measure in customs procedures and the clearance of express consignments. This involves cargo information on express consignments in categories 1 to 3 being sent electronically to the Customs Department two hours prior to flight arrival. With this measure in place, customs officers are able to make decisions regarding shipments, for example, whether customs inspection is required or whether shipments can be cleared or need to be held for formal clearance. This current practice of express consignment clearance is congruent with the WCO Immediate Release Guidelines (WCO, 2007b) and the revised Kyoto Convention (WCO, 1999) in relation to the advance and electronic lodgement of customs declarations and supporting documents⁸⁵.

As discussed earlier in the selectivity criteria and inspection part of the risk management section of this chapter (Section 7.2.2), the express electronic clearance system or e-express system, which incorporates both risk management and profiling systems, has yet to be introduced to support express consignment operations. Thus, current customs procedures and the clearance of express consignments rely largely on the experience and knowledge of individual customs officers. These individual practices often lead to criticism of the wide discretion exercised by customs officers and the lack of a uniform standard. The literature (De Wulf & McLinden, 2005, p.289) notes that information technology makes customs systems and procedures more transparent and predictable while at the same time minimising the opportunity for the inappropriate exercise of discretion by customs officers. Therefore, the support of information technology, for example, by the introduction of an e-express system, is essential to reduce the wide discretion exercised by customs officers in determining which shipments require customs inspection. This can lead to improved transparency and predictability in customs operations.

In addition, the Customs Department has recently introduced electronic customs clearance using a paperless system, called e-customs, to facilitate customs formalities and the clearance of goods. E-customs using a paperless system has also been applied to the customs clearance of express consignments in category 4, which is subject to formal clearance processes. Under the system,

⁸⁵ Transitional Standard 3.18 and standard 3.25 of the General Annex of the Revised Kyoto Convention

customs declarations and related documents such as the Air Waybill or invoice are processed automatically, and the original copies or hard copies of the documents are not required for the clearance of goods. However, importers and exporters have the responsibility for storing either hard or soft copies of related documents for at least five years in the case of post-clearance audit.

The use of the e-customs system, including the support of risk management and profiling systems, is relatively efficient for facilitating customs clearance of shipments even though there is considerable uncertainty about the efficiency of profiling systems, as discussed previously in the risk management section (Section 7.2). It is clear that green line shipments can be facilitated by the paperless system while the customs clearance of red line shipments requires time for the completion of customs processes since further examination of documents and inspection of shipments are required. This implies that information technology can stimulate trade when it is used for the entire process of customs formalities and the clearance of goods. Meanwhile, limiting the application of information technology to particular customs clearance processes rather than the whole process may not necessarily lead to an increased level of trade facilitation.

In addition, information technology is essential to support risk management, pre-arrival clearance and post-clearance audit, particularly in regard to electronic cargo information, profiling systems and the e-express system, all of which can enhance the efficiency of customs operations and overall regulatory control. In particular, information technology is ‘an effective tool for risk management’, which enables more rapid analysis of selectivity criteria (WCO, 2003b, p.18). Even though information technology plays an important role in risk management programs, the existing literature (Widdowson, 2005c, p.99) often notes that risk management can be applied to either manual or automated system provided that the principle is incorporated with “key elements of a risk-based approach to compliance management”. Nevertheless, it has become apparent in this study that advanced technology and computerised systems have become inextricably involved in risk management practices to make trade facilitation and customs control achievable in today’s international trading environment.

It is obvious in this study that information technology can facilitate international trade through automated systems to expedite customs procedures and clearance of goods while at the same time strengthening the efficiency of customs control through modern techniques to ensure regulatory

compliance. This is because customs automated systems comprise core functionalities or modules such as cargo control, declaration processing, payments and accounting, risk management and statistics and reports (see Holloway, 2009). On the one hand, customs automation, including the e-customs system with a paperless system, can streamline routine customs operations through electronic processes such as e-import, e-export and e-manifest, thus facilitating customs formalities and the clearance of shipments. On the other hand, profiling systems and advanced technologies, which include CCTV and non-intrusive equipment such as x-ray machines, are used for the purpose of customs control as stipulated in the revised Kyoto Convention⁸⁶. These automated and advanced technologies can increase the efficiency and effectiveness of customs control in verifying compliance with customs laws and regulations with less intervention in the movement of goods. This finding is congruent with the study of UNCTAD (2008e, p.2), which emphasises the importance of information technology for facilitating customs clearance in legitimate trade while at the same time monitoring the movement of goods to ensure compliance with customs-related laws and regulations. It is also important to note that information technology is not an end itself. Rather, it is only a means, which can bring about better customs operations only if it is complemented by appropriate legislation and fully developed human resources, enhanced operational procedures and close cooperation and consultation with relevant stakeholders (De Wulf & McLinden, 2005, pp.292-293).

7.5.2 Application of Information Technology

Information technology is an integral part of trade facilitation policy having been introduced by the Customs Department to streamline customs formalities and the clearance of goods and to verify compliance with customs laws and regulations. At the time of this study, automated systems for customs formalities and the clearance of goods are in a transitional phase involving the transfer from an Electronic Data Interchange (EDI) system to electronic customs clearance with a paperless system (e-customs). It is not surprising, therefore, that some problems have arisen in this initial stage of implementation in regard to technical application, supporting facilities and the skills and knowledge of customs officers.

⁸⁶ Transitional Standard 6.9 of the General Annex of the Revised Kyoto Convention

First, some delays have been experienced in the express consignment clearance due to network failures at the TG and BFS Cargo Terminals even though a test of the system was in operation at the time. This problem arises from the capacity of the server due to the fact that Air Waybills contain a great deal of information and a large number of Air Waybills are processed at the Suvarnabhumi Airport. Moreover, the Customs Department is unable to receive cargo manifests from the Terminal Operators through the e-customs system due to technical problems in the application software that is used for sending cargo information to the Customs Department. Consequently, import declarations, which need to be matched with Air Waybills and the cargo information shown in the manifest, cannot be conducted automatically.

Second, difficulties of the e-customs with a paperless system arise from the inadequacy of the support for technological facilities and infrastructure. For example, the Airport Cargo Community System (ACCS), which is an information technological support for cargo operations in the Customs Free Zone, including advanced technologies and facilities, such as a barcode system, Radio Frequency Identification (RFID) and a Personal Digital Assistant (PDA), cannot be used as planned. Consequently, printed versions of customs declarations and related documents are sometimes required for the customs clearance of goods. For this reason, the express industry views the current use of a paperless system for express consignment clearance as a 'less paper' system since printed versions of customs entry and related documents, including signature and stamps are still required for the final clearance of express consignments (Express manager, personal communication, February 18, 2008). One possible explanation for this is that technical facilities and equipment have not been adequately prepared to support the use of a paperless system. As one experienced customs officer claimed:

In cases that require physical inspection, it is difficult for customs officers to verify the accuracy of cargo information without printed customs entry documentation. This is because information regarding shipments such as the tariff classification, the tariff rates and the prescription of goods is shown on the computer screen within the building while the shipments required for customs inspection are in the customs inspection area or the loading or parking bay outside the building. Customs officers may be able to remember or note down details of two to three shipments, but the express industry normally clears a large number of shipments. In these circumstances, customs officers cannot verify compliance without the cargo information nor can they take the computer outside to check the accuracy of the

consignments declared (Customs operator, personal communication, February 11, 2008).

Third, the electronic payment (e-payment) of customs duties and taxes has been introduced in conjunction with the e-customs system to provide facilitation of the accounting transfer and payment system as recommended in the guidelines on electronic payment⁸⁷ (WCO, 1999). However, the ‘electronic receipt’ required to support the e-payment has yet to be introduced; therefore, it is not possible to complete the entire process of the electronic system. Instead, the manual system is used for issuing receipts for payments, which results in delays in customs formalities and the clearance of goods. One express operator complained as follows:

The Customs Department has introduced an e-payment system to facilitate the process of customs duty and tax payment. However, the system for issuing electronic receipts has yet to be prepared or implemented. It is meaningless if duties and taxes can be paid through electronic system, yet the express industry and other traders need to wait in a long queue for individual receipts of payments that are processed manually (Express operator, personal communication, January 9, 2008).

This finding reiterates the importance of the application of automated systems to the entire process of customs procedures and the clearance of goods, including the electronic payment of duties and taxes. As customs procedures and the clearance of express consignments are streamlined through the e-customs system, it would be beneficial for both the Customs Department and the express industry providing that the entire process of payment and issue of receipts can be processed electronically. The methods of payment may include direct debit or money transfer from an express industry nominated account to the Customs Department account.

Furthermore, other methods such as periodic payment should be introduced to strengthen the efficiency of duty and tax payment. This principle of periodic accounting testifies to the recognition of the immediate release of consignments and the adoption of a risk management style of compliance management that “breaks the nexus between physical control over goods and a trader’s revenue liability” (Widdowson, 2005c, p.95). In fact, the Customs Department allows the express industry and authorised traders to release goods prior to the payment of duties and taxes with a guarantee that covers the amount of duties and taxes. However, in practice, the

⁸⁷ Standard 4.6 of the General Annex of the Revised Kyoto Convention

payments for customs duties and taxes tend to be a precondition for the release of goods. Also, the process of launching applications and granting approvals for a duty and tax guarantee for the release of goods is complicated and takes time. Therefore, it does not meet the needs of the express industry.

Fourth, the application of the e-customs with a paperless system remains problematic due to the lack of skills and knowledge of customs officers. Even though the Customs Department has planned and prepared for the e-customs system over a period of time, the development of the skills and knowledge of customs officers is not such as to support customs operations under the new system. This is because the system application is considered the priority of the Customs Department in order to launch the system within the time specified in the plan. However, education and training to improve the knowledge and develop the skills of customs officers have not been given enough attention prior to the implementation of the e-customs system. One frontline officer explained:

Even though the Customs Department provides training for customs officers and stakeholders in a paperless system, the number of customs officers who need to receive the training exceed the capacity of the Department to provide the training due to the limited time frame and resources. In the meantime, the paperless system needs to be launched simultaneously at the major ports and airports, including the points of entry and exit. However, customs officers have yet to receive training in the implementation of the new system. To keep customs operations proceeding, customs officers use practice guides with the support of IT service desks (Customs operator, personal communication, February 12, 2008).

With a bureaucratic system that centralises top-down management, customs managers have attempted to achieve the policy of the Customs Department on the e-customs system even though some problems still exist in implementation and customs officers are not fully prepared for the change to the new system. The fact is that the introduction of the e-customs with a paperless system represents a transformation of a traditional paper-based system to a fully automated system. Thus, a well implemented plan is required to ensure efficiency and effectiveness in implementing the systems and providing customs services. The plan should cover preparation of the knowledge and understanding of the express operators, importers, exporters and related stakeholders. This is in line with the existing literature (UNCTAD, 2006; 2008e), which

underlines the significance of the skills and knowledge of customs officers in the operation of an automated system and emphasises the need for training and professional development in customs competency.

In addition, the introduction of the automated system has the capacity to reduce the opportunity for the inappropriate exercise of officer discretion and to allow customs operations to be verified in a straightforward manner. The literature (ESCAP 2002, p51; UNCTAD 2008e, p.3) points out that the major results from the implementation of an effective electronic and automated system are substantial reductions in customs clearance times and increased transparency and predictability in customs operations. However, the information technology currently developed by the Customs Department has not yet been fully functional. Moreover, it appears that customs officers can be directly involved in the system even though it is designed to run automatically (Express operator, personal communication, January 17, 2008). This practice can be observed specifically in the area of export express consignments in that customs processes for express consignments in category 1⁸⁸ still require the stamps and signatures of customs officers prior to goods being brought into the Customs Free Zone. In fact, customs declaration and trade documents for the clearance of consignments in category 1 are submitted by electronic means. Also, these shipments are not subject to customs inspection or any other regulatory requirements unless a potential risk is identified. When it is possible for customs officers to interrupt the automated system in unnecessary processes, a question regarding transparency and integrity may arise. It is difficult to deny the fact that customs automation and advanced technologies can streamline customs processing and minimise the level of discretion exercised by customs officers in shipment decisions. However, it is important to note that partial customs automation as employed by the Customs Department cannot lead to transparency and predictability in customs operations or achieve an accommodation between trade facilitation and customs regulatory control. Rather, such achievements can be reached only when sophisticated automated systems and advanced technologies are applied to the entire customs administration, particularly in relation to the electronic processes involved in customs systems and procedures.

⁸⁸ Export express consignments in category 1 consist of documents, trade sample and non-tax privileged items while express consignments in category 2 comprise restricted and re-export items as well as shipments requested for privilege of refund or reimbursement of duty and tax (see Appendix 5.6 for full detailed information).

7.5.3 Single Window System

Information technology is a significant factor in enhancing operational efficiency in border management, particularly in regard to the transmission of data required among government agencies and the private sector, which can not only expedite processes of border control but also facilitate international trade. The Customs Department is not the sole agency responsible for the importation and exportation of goods. Cooperation among concerned government agencies is, therefore, essential to ensure more effective coordination between all those involved, including the various government agencies charged with regulating cross-border trade and the private sector (De Wulf, 2005b, p.7). The United Nations also accords importance to the establishment of a single window environment to expedite and simplify information flows between the government agencies responsible for border management and the trading community (UNECE, 2003c, p.2). The single window can be described as “a system that allows traders to lodge information with a single body to fulfil all import- or export-related regulatory requirements” (UNECE, 2003c, p.2). It can be developed as a single authority, a single system or an automated system⁸⁹, and can be achievable by either physical or electronic submission of trade related information for the release and clearance of an international transaction (UNECE, 2003c, pp.2, 4).

The Customs Department has introduced e-customs using a paperless system to facilitate customs clearance. However, the system has yet to integrate the requirements of relevant government agencies within the system. Accordingly, it appears that some delays exist when manual processes are used for the importation of restricted items, which require certificates or licensing provisions that are controlled by the relevant government agencies such as the Thai Food and Drug Administration under the Ministry of Public Health and the Thai Industrial Standards Institute under the Ministry of Industry (Express manager, personal communication, February 11, 2008). For this reason, the establishment of a single window system to enhance the efficiency and

⁸⁹ UNECE (2003c, p.4) provides explanations of a single authority, a single system and an automated system as follows:

- a) A single authority refers to coordination and enforcement of all border related controls by one government agency such as customs administration to work on behalf of and based on other government agencies' requirements.
- b) A single system refers to an electronic integration of international trade information and transactions.
- c) An automated system refers to the processes in which a trader can “submit electronic trade declarations to the various controlling authorities for processing and approval in a single application” (UNECE, 2003c, p.4).

effectiveness of customs operations is essential. Significantly, when cargo and trade information can be linked electronically to other relevant government agencies under the single window system, it can also lead to a reduction in the cargo clearance time to facilitate international trade and a rise in comprehensive verification to ensure regulatory compliance.

In the establishment of a single window system, it is important to refer to Singapore's Advance Clearance for Courier and Express Shipments (ACCESS) system and the TradeNet[®] system, which are the most successful Electronic Trade Documentation Systems (ESCAP, 2002, p.51). In Singapore, the express industry uses the ACCESS system for the consolidated clearance of express consignments in categories 1 to 3 while the consignments in category 4 with certificate requirement need to be processed through the TradeNet[®] system. In other words, the ACCESS system was introduced to facilitate the pre-clearance of air express shipments based on the electronic submission of cargo information to Singapore Customs to receive the pre-clearance in advance. The TradeNet[®] system is "a nation-wide Electronic Data Interchange (EDI) system which allows the various parties from the public and the private sector to exchange structured trade messages and information electronically" (Singapore Government, 2008). The TradeNet[®] system has integrated the requirements of the Singapore Customs relevant government agencies within the system so that the trade can submit cargo information and documents for the clearance of goods. In express consignment operations, the express industry can clear express consignments in category 4 with electronic submission of cargo information, together with licence or certificate numbers to Singapore Customs via the TradeNet[®] system. In most cases, the original copies of licences or certificates of importation or exportation are not required for customs clearance. Moreover, 90 per cent of shipments can be approved within ten minutes. The Singapore ACCESS and TradeNet[®] systems can be regarded as best practice for the Thai Customs Department to facilitate express consignment clearance and develop the national single window system. In other words, the Customs Department may apply the ACCESS system to develop the e-express system for consolidated clearance of express consignments in categories 1 to 3. At the same time, the TradeNet[®] system may be used as a model for developing a single window system with the cooperation of the relevant regulatory authorities to streamline the formal clearance of express consignments category 4.

In summary, information technology is one of the key instruments that the Customs Department and the express industry view as one of the measures that can be used to achieve trade facilitation while at the same time enhancing customs regulatory compliance. At the time of the study, the e-customs using a paperless system has recently been introduced to customs procedures and the clearance of shipments. It is, therefore, difficult to determine whether the implementation of the system for trade facilitation and customs regulatory control is successful or not. However, there is an increasing tendency towards the greater use of information technology in customs systems and procedures to facilitate international trade and expedite the process of regulatory control to ensure regulatory compliance.

As regards to the extent to which information technology is able to contribute to the accommodation between trade facilitation and customs regulatory responsibilities, the study found that information technology, including e-customs with a paperless system, profiling systems and modern technologies, enhances customs efficiency in the facilitation of international trade noticeably. However, at this stage, technological facilities and equipment are not able to support customs operations in the Customs Free Zone as planned. However, it seems that trade facilitation and customs regulatory control can be achieved with the continuous development of information technology applications and supporting facilities. This includes development of the skills and knowledge of customs officers and other stakeholders as well as cooperation with relevant stakeholders in the development of a national single window system.

7.6 Cooperation and Consultation

International trade today makes it essential for the Customs Department to cooperate with international organisations, other customs administrations, relevant government agencies and the trading community. The study found that the cooperation and consultation adopted by the Customs Department emphasises the improvement of customs systems and operations while cooperative and consultative approaches toward customs regulatory control are not clearly evident. This section discusses cooperation and consultation for facilitation and control, including consultative and partnership approaches and the establishment of a 'customs advisory centre'.

7.6.1 Cooperation and Consultation for Facilitation and Control

The Customs Department has a policy of adopting and applying international standards and guidelines on cooperation and consultation as provided by the revised Kyoto Convention (WCO, 1999). A number of standards of the Convention highlight the significance of formal consultation and cooperation between customs administrations and the trading community in establishing the most effective measures to facilitate international trade and maintain an appropriate level of customs regulatory control⁹⁰. The WCO (2003b, p.21) also stresses that “good communication, consultation and co-operation between the trade and Customs administrations is vital to achieve a satisfactory balance between effective control and facilitation”.

The study found that cooperation and consultation are considered to be complementary mechanisms in the improvement of trade facilitation and regulatory compliance. The management and operational levels of customs officers and the express industry, including stakeholders, provide similar comments on the essentials of cooperation and consultation for the enhancement of trade facilitation, particularly in creating better understanding of the customs systems and procedures. However, the relative importance of cooperation for the purposes of customs control is not clear from the findings of this study.

The Customs Department has made good progress in developing cooperation and consultation with other customs administrations, related government agencies and the trading community, including the express industry and other stakeholders. On the one hand, the express industry and stakeholders highlight the importance of formal and informal consultations in relation to customs procedures and operations. On the other hand, customs officers stress the close cooperation among related national government agencies while customs managers focus more on cooperation with international customs administrations and international organisations.

In relation to cooperation with the express industry and other stakeholders, the Customs Department has made significant improvements in terms of the level and scope of cooperation and consultation, including the involvement of the trading communities in customs and trade-related issues such as legislation, customs procedures and practices. In other words, cooperation

⁹⁰ Standard 1.3, 6.8, 7.3 and 8.5 of the General Annex of the revised Kyoto Convention in particular

and consultation are not limited only to the policy or management level. Operational staff can also consult and discuss matters with frontline officers in relation to customs-related procedures and operations. Moreover, the scope of cooperation and consultation is not limited to specific areas in which the traders' viewpoints are required to make decisions, or in which the topics are closely or directly relevant to traders as was the case previously. The express companies that are members of both the Conference of Asia Pacific Express Carriers (CAPEC) and the Thai Express Courier Association (TEXCA) can be involved in a consultative process in regard to changing the procedures or amending the related provisions and regulations, which can lead to greater understanding and transparency of the administration and regulations. The preparation of the e-customs with a paperless system is a clear example of the close collaboration and contribution of all stakeholders in the consultation systems. One express manager noted:

Customs officers today are much more cooperative and consultative than before. When operational problems arise, our staff can contact and consult with the officers to find appropriate solutions. Provided that such problems cannot be solved at the operational level, we can ask for informal or formal consultations with the management level of customs officers (Express manager, personal communication, January 10, 2008).

This inclusion of stakeholders in communication and consultations at both the policy and operational levels implies a growing tendency towards close cooperation between the Customs Department and the express industry. This cooperation has developed in response to international trends and development, which require more facilitative and consultative approaches to enhance trade facilitation and ensure regulatory compliance.

In addition, the Customs Department has introduced a number of agreements, arrangements and mutual recognition with other relevant customs administrations and government agencies to ensure close cooperation in customs-related matters. This includes a general recognition of the cooperation and consultation with the trading community for the further improvement of customs legislation, procedures and clearance of express consignments. In particular, the Department has

implemented a number of Customs-Business Partnership programs in accordance with a Collective Action Plan (CAP) promoted by the APEC⁹¹ (APEC SCCP, 2006b, pp.114-123).

These partnership programs herald a more cooperative approach with in-depth communication and coordination between the Customs Department and the business sector in relation to the exchange of information, improvement in customs procedures and clearance, and the enactment of customs laws and regulations. This can bring about improvements in international trade facilitation on the basis of accuracy, transparency and accountability. However, improvement in regulatory compliance and regulatory assistance has received little attention through this partnership approach. It appears that the current partnership programs focus on formal discussion and the exchange of information. However, the international trading community requires a more practical approach to the facilitation of customs procedures and clearance involving education, assistance and advice. This may be because of limitations on the scope and involvement of the trading community. One express manager remarked:

The partnership programs have been established for particular groups of traders with particular trade concerns. This does not work well and is unable to reflect or respond to the needs of the trading community as a whole. The partnership approach needs to involve two-way communication, which allows the express industry or other traders to consult with the Customs Department on a wide range of issues arising from customs systems, procedures and operations (Express manager, personal communication, February 15, 2008).

Even though the partnership approach is increasingly regarded as important in customs operations, the cooperative and consultative approaches found in this study have yet to reach the level of 'partnership and trust', which is found to contribute to the pattern of cooperation and communication discussed in the existing literature (WCO, 2005a; Widdowson, 1998). The literature (WCO, 2005a) highlights the principles of cooperation, with a partnership approach between customs administrations and the trading community to enhance both global supply chain security and trade facilitation. More importantly, the equation of partnership and trust has been

⁹¹ The current implemented programs include the Joint Committee between Customs and Customs Brokers, Working Group, Customs Alliance Club, Committee on Improving Customs Services, Transparency-Partnership Project, Voluntary Compliance Program, Customs Broker Privileges Program, Gold Card Privileges Program and Customs-Private Sector Consultative Meeting (APEC SCCP, 2006, pp.114-123).

highlighted in the literature (Widdowson, 1998, p.5) in the creation of a cooperative and consultative environment to encourage continual improvement in regulatory compliance. In application of the concept, companies need to demonstrate systems and operations for customs audits, which include advice from customs officers in regard to improving the level of regulatory compliance. In a similar way, customs administrations need to create an environment in which companies can achieve certainty and clarity with respect to their liabilities and entitlements (Widdowson, 1998, p.5). This concept represents the best compromise between the different needs and expectations of the Customs Department and the trading community regarding trade facilitation and customs control issues.

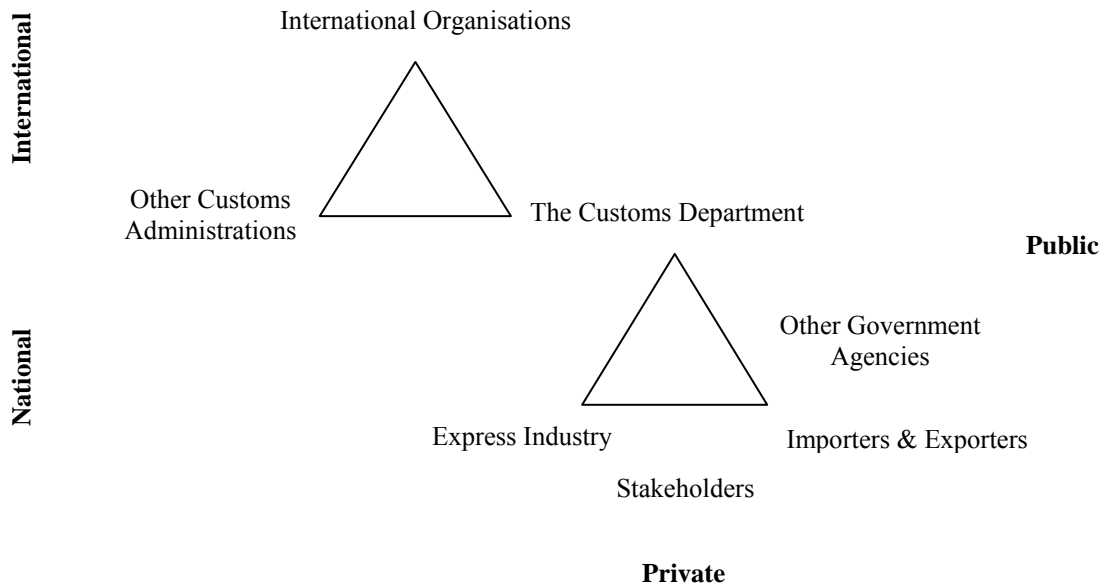
In this case study, cooperation and consultation are oriented more towards trade facilitation than towards sustaining regulatory control and compliance. However, there is a tendency towards a more cooperative and consultative approach to regulatory compliance. This tendency is evident in the Customs Department's attempts to adopt a more coordinated approach to the achievement of trade facilitation and regulatory compliance by providing the trading community with rights and responsibilities under the statutory provisions. This is particularly so in relation to the exchange of information and the development of mutual cooperation to enhance customs efficiency and effectiveness. This has the potential to lead to better customs services and controls.

The cooperative approach is seen as a channel through which exchanges and information updates on rules and regulations can be distributed to ensure regulatory compliance. This includes the dissemination of updated information through public notices and publications for the development of better cooperation and communications. Such measures have the potential to foster a cooperative environment to improve compliance with national customs-related laws and regulations as well as international requirements. These cooperative and consultative approaches can assist the express industry, relevant stakeholders and those who are involved in international trade by providing information regarding customs and trade-related rules and regulations. Such information should also include information on new applications for customs systems and procedures as it becomes available so that traders and other stakeholders can perform their business in compliance with the laws and regulations. In a cooperative environment, customs administrations may receive valuable trade information from the express industry and thus be

able to apply more effective risk management strategies, and in return, compliant traders may expect less customs intervention (WCO, 2003b, p.21).

However, the cooperative approach to exchanging information and intelligence involves a number of internal and external factors such as national legislation, the confidentiality of information and information technology support. Moreover, cooperation with international customs administrations, other government agencies and the trading community has concentrated on the establishment of Memoranda of Understanding or agreements. This is not practical for the development of customs systems and procedures to reach satisfactory solutions to customs and trade-related problems or difficulties. Rather, regular and close cooperation through communication and consultation in regard to updating customs and trade-related information, particularly customs legislation and procedures, provides practical opportunities to enhance the knowledge and understanding of the public with regard to customs and trade-related matters.

Any improvement in trade facilitation or customs regulatory control requires a comprehensive and integrated approach to cooperation and consultation, encompassing national and international organisations as well as the public and private sectors. This approach is illustrated below in Figure 7.1. In short, cooperation with international organisations and other customs administrations is essential for the exchange of information and intelligence, particularly customs knowledge in relation to international standards and best practices in response to international trends and development. At the national level, the cooperation and consultation with related government agencies and the trading community, including the express industry, importers, exporters and stakeholders, are required to ensure regulatory compliance with only minimal intervention in cargo movement while at the same time facilitating legitimate trade. This confirms the findings in Holloway's (2005, p.36) study that effective cooperation and communication mechanisms that engage international and national cooperation with both the public and private sectors have the potential to enhance trade security and streamline the movement of international trade for sustainable trade facilitation and customs cooperation outcomes.

Figure 7.1: Customs Cooperation and Consultation

In this regard, the Thai government is planning for a ‘one stop service’ based on a single authority concept in which the system is usually managed by a single agency on behalf of other government agencies concerned with border control and management. Under the one stop service, all relevant government agencies work together in the same area such as in the regional customs houses so that importers, exporters or traders can maintain contact with all the agencies concerned at one point. In a further step, there is an endeavour to establish the single window system based on a single or automated system, as discussed in the information technology section of this chapter (Section 7.5). It is important to note that the single window system requires the integration of regulatory control responsibilities as well as the development of information technology. This includes the active participation of the agencies as well as political and financial support from the government.

Another concrete approach to cooperation and consultation proposed by a customs officer during the interviews was the establishment of a customs advisory centre. This finding suggests the improvement of customs cooperation and consultations in a more practical approach. First, the centre would be the primary contact point for discussion and consultation in customs and trade-related matters such as customs procedures, advance ruling and the electronic lodgement of

declarations. Second, the centre would serve as an information centre for the exchange of information between the Customs Department and other government agencies. This includes the dissemination of information relating to customs-related laws and regulations, customs procedures, judicial decisions and administrative rulings, rates of taxes and duties or other charges, and restrictions or prohibitions on imports and exports.

It is important to note that the establishment of a customs advisory centre has the potential to lead to customs success by enabling customs administrations and the trading community to share responsibilities in terms of human resources and budgets, both of which need to be arranged by the government and the private sector, including the cooperation and involvement of customs brokers, freight forwarders, stakeholders and associations. The structure of the organisation should be divided into sub-committees according to the problems arising from customs systems and operations such as customs privileges and customs procedures for air, sea, road and rail transportation. Such an arrangement can be expected to assist traders to achieve the highest level of compliance and encourage a cooperative environment to support international trade facilitation and improve regulatory compliance. With a cooperative and consultative approach to ‘regulatory advice and assistance’, it is possible to enhance the knowledge and understanding of the trading community with regard to customs matters and to make certain that traders understand the regulatory requirements and can comply with them.

In summary, cooperation and consultation are regarded as essential supporting elements in bringing about trade facilitation and customs regulatory compliance. While it is clear from this study that a cooperative and consultative approach is necessary for trade facilitation, the evidence on the role of cooperation in achieving customs regulatory control is less clear. Nevertheless, the study found that, overall, there is a growing trend towards a more cooperative and consultative approach in the area of customs regulatory control and compliance.

Cooperation is also regarded as making a significant contribution to the achievement of the trade facilitation and customs regulatory control through the sophisticated and successful implementation of other key elements, particularly risk management, customs procedures and information technology. The study found that an accommodation between trade facilitation and customs regulatory control can be achieved provided that cooperation and consultation have been

developed as part of a comprehensive and integrated approach involving the continual development of partnership and trust.

7.7 Human Resource Development

There is evidence from this research that human resource development is considered a prerequisite or a fundamental criterion for facilitating international trade whilst also ensuring customs regulatory control. The main problems found in this study are based on human resource issues in relation to the limited knowledge and understanding of customs officers in customs principles and practices, which result in inconsistency and unpredictability in customs operations. Thus, there is a clear need for the continual and sustainable development of human resources in terms of competency and capacity building. This includes the need for learning and training opportunities as well as integrity and transparency enhancement.

7.7.1 Human Resource Development for Facilitation and Control

The evidence obtained from this study is centred on the competency and understanding of customs officers in day-to-day customs operations. When addressing the questions regarding trade facilitation and customs regulatory control or the improvement of operational efficiency in the clearance of express consignments, the single most compelling finding from the interviews suggested that more attention needs to be given to human resource issues. This reveals a clear link between human resource development and five other key elements outlined in the framework for trade facilitation and custom regulatory control: risk management, legislation, customs procedures, information technology and cooperation. Even though these elements are considered integral parts of the framework for facilitation and control, the elements alone are insufficient to bring about an effective approach to the accommodation of trade facilitation and customs regulatory control. Support in the form of effective management of human resources is required to make facilitation and control achievable. This finding is consistent with the study by De Wulf (2005a, p.47), which considers human resources a linchpin of a modern, efficient and effective customs administration. De Wulf (2005a, p.32) makes the point that “good management of human resources is probably the single most important issue that affects the efficiency and effectiveness of customs, irrespective of its organizational structure”.

While the express industry requires certainty, consistency and predictability, this study found that in the case of the Thai Customs Department, there are inconsistent and unpredictable customs standards and the wide exercise of discretion as a result of the insufficient skills and knowledge of customs officers. As discussed in the risk management section earlier in this chapter (Section 7.2), decisions made by customs officers on the selection of goods for customs inspection are unpredictable and inconsistent with the principles of risk management. This is because customs officers have limited knowledge and understanding of risk management principles to be able to convert theory into practice. In one comment, a representative of the express industry observed that “customs officers apply Thai standards instead of international standards and implement individual practices rather than the best practices” (Express manager, personal communication, January 18, 2008). This reveals a critical problem in the current practice, which relies on inconsistent interpretation and implementation by customs officers. Therefore, human resource development, particularly in terms of the practical knowledge and skills of customs officers, is required to enhance efficiency and effectiveness of customs operations, focusing especially on the areas of risk management, pre-arrival processing and post-clearance audit.

In the light of the customs laws and regulations, the express industry faces problems in regard to the inconsistency in the interpretation of customs laws and regulations, particularly the ability of customs officers to apply customs regulations and customs procedures evenly in day-to-day operations. In this regard, the UNCTAD (2006, p.2) emphasises the need to train customs professionals to apply regulatory and procedural requirements to customs operations and practices. Furthermore, the Customs Department has simplified and standardised the customs procedures to comply with internationally accepted standards. However, the efficiency and effectiveness of customs operations depend on the skills and knowledge of customs officers who apply the customs policies, principles and procedures in practice. The findings revealed that the current procedures and practices in relation to express consignments rely heavily on individual customs decisions and interpretations, resulting in problems of transparency, accountability and predictability. This is particularly so in the areas of customs inspection, tariff classification and valuation, e-customs with a paperless system and the e-express system for express consignment clearance.

At the time of the study, the use of information technology to reduce the extent of involvement by customs officers in the system has yet to be fully implemented. Thus, customs officers are still very much involved at the operating level of the system rather than allowing the system to function automatically. This finding supports the study by Widdowson (2002, p.5), which indicated that the degree of human intervention hinders the electronic clearance of express consignments in Thailand. The literature (Ruster, 2007, p.10) also points out that even the most sophisticated information technology does not completely eliminate the need for human intervention as regulations still require analysis and interpretation at the operating level. In addition to the modernisation of customs laws and regulations, it is necessary also to take into account the development of the human resources, particularly in terms of the skills and knowledge of customs officers to respond to the changes in customs systems and procedures as well as in international development. However, the study revealed that a number of customs officers have only limited knowledge of new technologies and equipment. One example provided by an express operator concerns the use of advanced technologies in the customs clearance of express consignments:

Even though third parties conduct and control the x-ray machine, customs officers need some knowledge of the use of an x-ray machine. How can customs officers exercise effective control if they rely solely on x-ray results or other information provided by the authorised companies while the officers themselves have insufficient knowledge of x-ray image interpretation. Many customs officers do not recognise differences in the shape or the colour of the shipments shown on the screen or the significance of the colours: orange, blue and green. (Express operator, personal communication, January 15, 2008).

This account addresses the issue relating to the competence of customs officers in information technology and advanced techniques. This concurs with the study by Mellow (2006, p.47), which concludes that the introduction of new technology demands effective training and sophisticated skills of officers. In this regard, training within the operational setting is required to ensure the efficient implementation of new systems such as e-customs with a paperless system as well as the use of non-intrusive instruments such as x-ray machines to support customs control.

The close cooperation between the Customs Department and the express industry at both operational and management levels is another issue that needs to be discussed in conjunction with

human resource development and customs' efficiency and effectiveness. The findings of this study reveal a growing tendency toward the use of a more cooperative and consultative approach to streamlining operational efficiency in the clearance of express consignments while maintaining an appropriate level of customs regulatory control. However, there is a need for continually improving cooperation and consultation with the trading community. In essence, cooperation requires a stronger understanding and acceptance on the part of customs officers of their changing role towards the role of services providers or facilitators rather than maintaining the traditional role of customs officers as controllers or gatekeepers.

In an operational environment of air express consignments, practical and comprehensive provisions, particularly the implementation of new policies, systems and procedures, are required to enhance customs administration in order to facilitate trade while at the same time ensuring regulatory compliance. The major problem affecting the clearance of express consignments relates to the training and development of the human resources, particularly in relation to inconsistency in the decisions and interpretations of individual officers. This finding is supported by Widdowson's (2008, pp.71, 73) study, which highlights the need for the consistent interpretation and application of international customs standards. This is because customs operations are heavily dependent on the competence of custom officers to ensure that the relevant regulatory provisions and procedures are applied effectively in practice. To provide certainty and predictability in customs services requires the development of human resources in terms of customs competence and expertise based on international standards and focused on the key principles outlined in the revised Kyoto Convention. This includes capacity building through learning and training opportunities, particularly in the areas of risk management, customs procedures and information technology.

7.7.2 Capacity Building and Learning Development

Capacity building in the customs context can be defined as a comprehensive strategy for developing and strengthening the knowledge and competencies of customs officers, including the improvement of institutional structures as well as instruments and processes to fulfil the functions and objectives needed for the sustainable development of the administration (WCO, 2008a, p.3). The scope of the capacity building covers the development of administrative and legal

frameworks, the enhancement of staff capabilities, and the application of international customs standards and modern techniques (Matsumoto, 2008, p.79).

The international organisations concerned, such as the WCO, WTO, OECD and UNCTAD, have all highlighted the importance of human resource development and promoted the development of customs administrations through a range of capacity building initiatives, including technical assistance and training in particular (for example, WCO, 2005b; WCO, 2007a; WCO, 2008a). This is indicative of the attempts of the WCO to establish standards for customs administrations to make certain that customs procedures and practices are simplified and standardised. The WCO has promoted capacity building through a number of programs and activities. The Columbus Program, which focuses on supporting the Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework), is by far the most comprehensive program (WCO, 2008e).

There is a range of initiatives for improving the capacity of customs administrations, particularly in developing countries. While the management of human resources comprises a wide range of areas, the vast majority of capacity building programs focus on the training provisions and an introduction of technical assistance. The WCO accepted that “many capacity building initiatives in [c]ustoms have failed to meet the desired objectives” (WCO, 2008a. p.1). The capacity building should, therefore, be based on international standards and focused on the key principles outlined in the revised Kyoto Convention. This includes development of customs knowledge and skills in the areas of risk management, legislation, customs procedures, information technology, cooperation and communication.

The Thai Customs Department recognises the importance of capacity building and is committed to implementing the SAFE Framework. This, combined with education and technical assistance for the improvement of the skills and knowledge of both customs officers and traders based on the capacity building methodology provided by the WCO. In addition, the Customs Department has introduced a ‘single officer’ program to accommodate the trading community and facilitate international trade. Under this program, the express industry contacts one officer for the entire process involved in the customs procedures and the clearance of express consignments. Thus, customs knowledge and skills are particularly required for customs operations in response to the policy of the Department, in accordance with Hall’s (1984, p.159) assertion that learning and

development, in terms of skills, knowledge and competencies, are required to undertake the current and future tasks required by the organisation.

In the light of the notion of learning⁹² and development, the Customs Department is attempting to promote a learning culture and environment in which customs officers are encouraged to learn continuously and knowledge is shared systematically across the organisation. This is evident in the initiative of the 'knowledge management' (KM) program as a part of organisational learning and development. This initiative is congruent with the literature on knowledge management (Armstrong, 2006; Mellow, 2006; Nonaka & Takeuchi, 1995; Von Krogh, Ichijo & Nonaka, 2000), which underlines the concept of knowledge management in the development of organisational capabilities and the enhancement of learning and performance. However, the knowledge management program is restricted to a specific group of customs officers with specific areas of customs knowledge. The continual development of the program is required to ensure that customs officers can access a program that covers a wide-range of customs tasks. This finding confirms Armstrong's (2006, p.560) and Nonaka and Takeuchi's (1995, p.123) reflections on learning as a never-ending process that requires continuous development of skills and knowledge to enhance existing and potential capabilities. These studies also highlight the importance of knowledge management through the development and sharing of knowledge to promote organisational learning, which can lead to success in human resource development (Armstrong, 2006, pp.535, 545, 547).

One interesting finding emerging in this study is that experience and knowledge in express consignment operations have been shared, exchanged and transferred among customs officers, particularly to new customs officers, who have been posted to the Customs Service Division III. On the one hand, the new officers have been informed about customs procedures and the clearance of express consignments, covering also the nature of the express business and the reasons it requires expedited customs clearance processes. This can be regarded as 'informal training' or 'transferring knowledge and experience within express consignment operations' in accordance with the theory of organisational knowledge management. The theory underlines the

⁹² Learning refers to "the process by which a person acquires and develops new knowledge, skills, capacities and attitudes" (Armstrong, 2006, p.559).

need to introduce mechanisms for transferring tacit knowledge that is acquired through personal experience to explicit knowledge that can be articulated, codified and transmitted to others (Nonaka & Takeuchi cited in Mellow, 2006, p.175). On the other hand, the informal training or sharing of knowledge among customs officers remains problematic since the knowledge acquired is based on individual and practical experience rather than on international customs standards and guidelines. As discussed earlier in the customs procedures section (Section 7.4), customs officers have been trained for the examination of documents or the physical inspection of shipments by selecting the tariff item with the highest rate of duty rather than by determining the essential character of the goods and applying minimum values for customs duty and tax purposes rather than applying the customs valuation based on the GATT valuation. Despite the fact that practical experience in express consignment operations is crucial for the Customs Department, development of customs competence based on international standards and guidelines is required to ensure that customs officers work according to the same standard and share knowledge accurately and efficiently with the new generation of customs officers.

In relation to formal training⁹³, the Customs Department provides customs officers with a wide range of training programs, which range from traditional core customs areas such as tariff classification and customs valuation to recent priority issues such as risk management and post-clearance audit. However, some differences exist between the training needs, on the one hand, and the training provisions on the other in that the Customs Department generally applies a conventional training model that emphasises specific knowledge based on the policies and principles of the Department. However, it is difficult for customs officers to apply principles or knowledge received from training courses to different circumstances in workplaces. As the WCO (2007c, p.6) asserted “implementation is a different and more challenging proposition because success requires not only action planning but actual action”. In this regard, the existing literature (Armstrong, 2006, p.576; WCO, 2007c, p.10) underlines the difficulties involved in putting theory into practice and suggests a new approach to build core learning capabilities through capacity building methods and training programs that link to effective mechanisms for implementation. Therefore, the training needs to be based on the skills and knowledge required and combined with training techniques such as instruction, lecture, discussion, seminar, case

⁹³ Training refers to “the use of systematic and planned instruction activities to promote leaning” (Armstrong, 2006, p.576).

study and workshop. In the operational environment of express consignments, the mixed method of training appears to be most appropriate. This includes instruction and lectures that centre on creating knowledge in terms of theory; discussion and seminars that focus on sharing experience and knowledge as well as case studies and workshops that concentrate on training in operational issues. More importantly, such training needs to be based on international best practices and combined with informal training or the transfer of practical experience and accurate knowledge within the operational settings.

In addition to learning and training, performance evaluation needs to be in place to ensure that customs officers have sufficient knowledge and understanding to deal with new policies, systems and procedures. Some responses provided constructive comments on the introduction of performance evaluation, which differs from the conventional performance evaluation currently applied by the Customs Department for promotion. According to one response:

Even though the Customs Department has a performance evaluation scheme for promotion, it is different from the process of performance audit conducted in the private sector, which comprises an assessment policy and implementation, including assessing the efficiency and effectiveness of procedures and operations (Customs operator, personal communication, March 15, 2008).

This finding provides some insights for the improvement of performance evaluation to make certain that operational efficiency is in line with the performance standards required by the Customs Department. This accords well with the performance appraisal recognised in the critical literature (for example, Armstrong, 2006; Fombrun, Tichy & Devanna, 1984; Mello, 2006). One study by Devanna (1984, p.109) claimed that effective performance appraisal is the “cornerstone of an effective human resource system”. Another study by Mellow (2006, p.65) made the point that “human resource practices must constantly be reviewed and evaluated to allow an organization to respond to changes taking place in its environment”.

7.7.3 Integrity and Transparency

The Department has developed various measures and strategies to increase the level of integrity and transparency to comply with the key factors provided in the Declaration of the Customs Co-operation Council concerning Good Governance and Integrity in Customs (the revised Arusha

Declaration)⁹⁴. These measures include cooperation with the private sector to improve integrity under the Transparency-Partnership Program with key objectives, which aim to enhance the efficiency of customs clearance and customs practices and provide expedited services to customs clients in a more transparent manner (APEC SCCP, 2006b, p.165).

The study found that some development of customs integrity has recently been occurring through the Transparency-Partnership Program in which the four major express companies have participated. The express managers interviewed for this study referred to ‘facilitation money’ that the express companies used to pay to facilitate customs procedures and the clearance of express consignments. However, the company discontinued paying the facilitation money after signing an agreement with the Customs Department under the Transparency-Partnership Program to improve integrity in customs procedures and the clearance of express consignments. Even though the express industry experienced problems with customs procedures and the clearance of express consignments during the initial implementation of the customs integrity program, the development of integrity and transparency provides greater benefits for both the Customs Department and the express industry. One express manager commented:

The express industry faced critical difficulties when we discontinued paying facilitation fees for the clearance of express consignments. Customs procedures for imported shipments were delayed considerably while a number of export shipments missed flights. However, the company cooperated with the high levels of customs managers and insisted on not paying for facilitation money in compliance with the agreement with the Customs Department. Eventually, customs clearance procedures returned to normal when customs officers accepted that the express industry would no

⁹⁴ The ten key elements of the revised Arusha Declaration (WCO, 2003a) are as follows:

- a) Leadership and commitment
- b) Regulatory framework
- c) Transparency
- d) Automation
- e) Reform and modernisation
- f) Audit and investigation
- g) Code of conduct
- h) Human resources management
- i) Morale and organisational culture
- j) Relationship with the private sector

longer offer bribes or pay facilitation fees. This has led to increased integrity and transparency in customs services (Express manager, personal communication, January 18, 2008).

This account together with evidence from the interviews and from observation confirms that there is a high level of integrity and transparency in the customs procedures and clearance of express consignments in the case of the four major express companies. Nevertheless, it is clear that dishonesty and misconduct in express procedures and clearance remains and is widespread across express companies that have yet to participate in the customs integrity program. One possible explanation for this is that express consignment operations are involved in a customs and trading environment that requires the immediate release of consignments. Current procedures for formal customs clearance, on the other hand, are burdensome, making customs officers more susceptible to improper inducements for expediting the customs clearance processes. This finding is consistent with McLinden's (2005, p.69) reflections on customs functions, which is vulnerable to integrity violation due to the nature of customs work that relates to customs decisions on the importation or exportation of goods, customs inspections as well as the examination and release of goods.

The violation of integrity in express consignment operations also corresponds closely with the Hors (2001, p.15) concepts of routine corruption⁹⁵. In other words, the corrupt practices are obvious in the area of customs procedures and the clearance of red line shipments that require the further examination of either documents or shipments by custom officers. The study indicates the need to enhance the awareness of customs officers and traders, reduce the excessive exercise of discretion by customs officers and decrease unnecessary delays in customs processes. To achieve a high degree of integrity and transparency requires sophisticated customs systems and procedures with the support of automation to eliminate tardy processes and redundant procedures, which occur traditionally under manual systems, so that both customs officers and traders are not

⁹⁵ Hors (2001, p.15) has identified three types of corruption:

- a) Routine corruption: private operators pay bribes to obtain a normal or hastened completion of customs operations.
- b) Fraudulent corruption: operators try to pay less tax than due or no tax at all, by not accomplishing properly the customs clearance process. They pay bribes to buy customs officers' blind eye or their active co-operation.
- c) Criminal corruption: operators pay bribes to permit a totally illegal, lucrative operation (drug trafficking, abuse of export of promotion scheme, etc.).

allowed by manual systems. This development is also supported by McLinden's (2005, p.76) study, which indicated that "[c]omputerization of core customs processes can improve efficiency and effectiveness and remove opportunities for corruption". Automation can minimise unnecessary face-to-face contact between customs officers and express operators thus reducing the number of opportunities for the improper exercise of discretion.

Significantly, it appears that customs officers and express operators have become accustomed to accepting and paying bribes as a normal part of operating procedures even for legitimate transactions. This has become a systemic problem for customs procedures and practices. An experienced express manager provided some insight into the issue of integrity violation, which derives largely from organisational cultures, emphasising the urgent need for integrity enhancement and human resource development:

The root of the corruption comes from the culture of the Customs Department, which fosters the acceptance of payments for facilitating customs clearance procedures. This problem has been a long-term problem for the organisation and cannot be solved in a short period of time even with the most efficient or comprehensive measures. To diminish the problems requires the creation of an integrity culture, which customs officers will not receive any bribe while the trade will not pay for it. This combines with an assurance by the new generation of customs officers that they will work with integrity (Express manager, personal communication, December 7, 2007).

Another express manager commented as follows:

Corruption within the Thai Customs Department relates to customs regulations and procedures that leave much room for customs decisions. This couples to tardiness of customs procedures that can lead to inducement to expedite the process. Therefore, customs laws and regulations need to be drafted in a precise manner to ensure the consistent application of customs laws and regulations. Significantly, it is necessary to streamline customs processing, with automation providing significant support, to reduce the opportunities for corrupt practices (Express manager, personal communication, February 11, 2008).

From this account, it is clear that continuous enhancement of customs integrity is required, similar to Walsh's (2003a, pp.156-166) comprehensive approach to the promotion of integrity in customs administrations. This includes a clear and well understood policy framework, simple and transparent procedures, a professional customs administration, appropriate compensation and

working conditions and an effective internal audit. Therefore, it is crucial for the Customs Department to continually develop customs integrity to create a better customs environment to support international trade. In particular, the Department needs to introduce comprehensive anticorruption strategies, which follow the key principles provided in the revised Arusha Declaration. This combines with the development of awareness on the part of customs officers and traders as well as a reduction in the excessive discretion of customs officers and in the number of unnecessary delays in customs clearance processes.

In summary, the most compelling findings of the study confirm the significance of human resource development in the achievement of trade facilitation and customs regulatory control in that the key elements that have contributed to facilitation and control are discussed within the context of human resource development. Thus, the extent to which customs can reach an accommodation approach to trade facilitation and customs regulatory control is heavily reliant on competency of customs officers and a culture of integrity and transparency. In particular, capacity building, learning and training are required focused on developing skills and knowledge of custom officers with respect to international customs standards and best practices in order to create a successful and sustainable contribution to trade facilitation and customs regulatory control (Holloway, 2008, 69). This includes the enhancement of customs integrity and transparency to “maintain public trust and confidence in the performance of customs functions” (McLinden, 2005, p.75).

7.8 Chapter Summary

The findings emerging from this study confirm that the criteria required for an accommodation between trade facilitation and customs regulatory control are best addressed through the conceptual framework constructed for this study. The six elements contained in the framework are risk management as a key element; legislation, customs procedures and information technology as the three major instruments; cooperation as a complementary mechanism; and human resources as a prerequisite.

The accommodation between trade facilitation and customs regulatory control can be achieved when these six elements are effectively functional in accordance with international standards and

guidelines, particularly the revised Kyoto Convention and the Immediate Release Guidelines. However, the analysis of the various elements identified in this chapter reveals a discrepancy between policy, on the one hand, and implementation on the other. To address this discrepancy requires the sophisticated development of human resources in order to ensure the consistency and predictability of the implementation. The key conclusions and general implications of the study will be discussed in the next chapter.

CHAPTER 8

CONCLUSIONS AND IMPLICATIONS

International trade today requires efficiency and effectiveness in customs systems and procedures as well as the enhancement of control measures in order to accommodate trade facilitation and customs regulatory control. The key elements necessary for this success comprise risk management, legislation, procedures, information technology, cooperation, and particularly, human resources. However, the application of these elements may be contingent upon the development of the country in terms of customs systems and procedures, facilities and infrastructure, and, most important of all, human resource development.

In the light of a wide divergence in the political, economic, social and cultural traditions of developing countries, a single element is inadequate for achieving trade facilitation and customs regulatory control. Rather, the introduction of a well-designed and comprehensive approach to the accommodation of trade facilitation and customs regulatory control, which highlights the development of fundamental infrastructure and human resources, is imperative.

This study explores trade facilitation and customs regulatory control in the light of a case study on express consignment operations in Thailand. The study presented the findings from the case study in Chapter 6 and analysed and discussed the research findings in Chapter 7. This chapter summarises and integrates the major findings from the case study of express consignment operations in Thailand in response to the research questions outlined in Chapter 1. It then discusses the theoretical and practical implications of the study as well as the possible generalisation of the case study and the key findings. The chapter concludes with directions for future research.

8.1 Principal Findings: The Case Study

The study uses the case study of air express consignment operations at the Suvarnabhumi International Airport, Thailand to illuminate ways in which the tensions between trade facilitation and customs regulatory control can be reconciled. The principal findings of the study seek to answer the four research questions:

1. What are the criteria required for facilitating international trade while ensuring customs regulatory control?
2. To what extent can customs administrations facilitate trade while at the same time maintaining customs regulatory control?
3. To what extent can the Customs Department, Thailand, adopt and apply international standards and best practices to the clearance of express consignments?
4. How can operational efficiency in the clearance of express consignments be developed or streamlined?

Trade facilitation and customs regulatory control can both be enhanced by the various elements of the conceptual framework described in this study. These elements include sophisticated risk management, an appropriate legal framework, effective customs procedures, fully functioning information technology, close cooperation and consultation with all stakeholders, and particularly adequate human resources development. Only when these elements are well developed and integrated to support customs efficiency and effectiveness will customs administrations have the capacity to facilitate international trade while at the same time maintaining an appropriate level of customs regulatory control. The extent to which customs administrations can facilitate trade while at the same time ensuring customs regulatory control depends on how sophisticated systems and resources are applied by Thai customs administrations. This requires a number of contributing principles and practices, particularly in relation to the development of systems and human resources.

First, the implementation of risk management principles along with the application of modern technology and audit-based control plays a significant role in accommodating trade facilitation and customs regulatory control. However, the use of risk management has not reached the sophisticated level of success in targeting high-risk shipments while facilitating low-risk shipments. This mainly relates to the competency of customs officers in selecting express consignments in category 3 for customs inspection and the efficiency of the profiling systems applied to express consignments in category 4 (see Section 7.2.2 on selectivity criteria and inspection in the discussion on risk management). When customs administrations facilitate international trade, systems and resources need to be established to support the immediate release of goods on arrival. In this regard, post-clearance audit is one of the most significant principles

applied by the Customs Department. However, the audit system has not been applied effectively to the verification of compliance with customs-related laws and regulations after the clearance of goods due to the inadequacy of cargo information and documents.

Second, customs legislation has a control focus while the international trend is moving toward a facilitative approach to achieving both trade facilitation and customs regulatory control. The current legislation provides general principles but lacks operational rules and guidelines for implementation. This leaves too many opportunities for customs officers to interpret laws and regulations when no specific provision can be applied. Thus, there is a need to create an appropriate legislative framework for customs compliance management since the current statutory and regulatory provisions are not sufficiently responsive to international customs developments. It is essential for the Thai Customs Department to revise customs-related laws and regulations, particularly in relation to operational guidelines, prosecution and penalty regimes, and appeal avenues. These laws and regulations should also be based on a compliance management approach in the light of regulatory advice or assistance.

Third, customs procedures for express consignments have been more progressive than those for other customs operations, with advance submission of cargo information and categorisation of goods for consolidated customs clearance based on risk management principles. However, customs practices remain problematic in regard to customs inspections since the customs officers have limited skills and knowledge in customs valuation and tariff classification. Customs procedures will be more facilitative with the development of customs systems and procedures for pre-arrival customs processing and pre-arrival customs clearance based on advance cargo information, automation and risk management.

Fourth, an automated system and modern technologies have been developed for customs formalities and the clearance of express consignments. In particular, the e-customs using a paperless system has recently been introduced to replace an Electronic Data Interchange (EDI) system. This shows an increasing tendency towards the greater use of information and communication technology in customs systems and procedures to facilitate international trade and expedite the process of regulatory control to ensure regulatory compliance. However, there are some problems related to the skills and knowledge of customs officers to operate automated

systems and to the technical applications and supporting facilities, which at this stage have only been partially implemented in the process involved in customs formalities and the clearance of goods.

Fifth, there is increasing consultation among the Customs Department, the express industry and other stakeholders with a view to solving difficulties in customs and trade matters for the purpose of trade facilitation. However, the cooperation and consultation among the public sector and international customs administrations is far less than required to make a significant contribution to customs regulatory control and compliance. This is particularly so in regard to the need for a cooperative approach to progressive compliance with regulatory advice and assistance. Therefore, cooperation and consultation need to be developed in a comprehensive and integrated approach. This requires the continual development of partnership and trust to support the other key elements, particularly risk management and customs procedures, in order to achieve trade facilitation and customs regulatory control.

Significantly, the operational problems found in this study occur as a result of individual customs practices that are linked to the limited skills and knowledge of customs officers. Thus, customs officers need to develop understanding and awareness of international customs principles and national policies on risk management, customs-related laws and regulations, customs procedures and automation for customs operations. Such understanding and awareness can be ensured through sustainable capacity building and learning development in the Customs Department. The Customs Department should also provide the trading community with education, technical assistance and practical advice to ensure that the express industry understands and acts in compliance with regulatory provisions and procedural requirements. It should also promote integrity, transparency and predictability in customs services.

The evidence obtained in this study reveals that the Thai Customs Department has made an effort to adopt and apply international standards and guidelines to streamline customs procedures and operations for express consignment clearance, particularly the revised Kyoto Convention and the Immediate Release Guidelines. In the light of the policy, the Customs Department has not only adopted risk management principles, it has also revised customs laws and regulations and developed fundamental infrastructure and facilities such as information and communication

technology for customs operations. However, although the Customs Department has introduced risk management, information technology and simplified customs procedures for express consignment clearance, the application and implementation of policies and principles has yet to reach the degree of sophistication required by international standards. There are some problems arising from inconsistent interpretation and application of customs standards and guidelines, particularly in the implementation of risk management, interpretation of laws and regulations, operations of customs procedures and application of information technology.

As express consignments are operated in an environment that requires high levels of facilitation and control, operational efficiency in the clearance of express consignment needs to be developed with efficient control systems and facilitative measures. There is a need for policy development, operational improvement and preparation of infrastructure, facilities and human resources to support customs operations to streamline the customs clearance procedures and enhance regulatory processing of air express consignments. In other words, policy has been introduced but without a logical and practical implementation plan or guidelines such as studies on the internal and external factors, available resources and readiness of stakeholders from both the public and the private sector. Policy needs to be precise and based on a clear implementation plan. While customs clearance procedures for express consignments are more progressive than other customs procedures, there is potential to increase the levels of facilitation and control through the introduction of more sophisticated profiling systems and a fully automated system. Express consignment operations can be further streamlined with the maximum use of information and communication technology through the introduction of an express electronic clearance system or e-express. Some express companies, which have not yet implemented automated systems, could consider giving prominence to risk management to facilitate and control the clearance of express consignments. In particular, the human resources require continuous development in terms of their understanding and awareness of the principles and practices necessary to manage the increasing complexity of the customs task. Significantly, customs clearance procedures need to be developed in accordance with the international conventions and guidelines on express consignments, particularly the revised Kyoto Convention and the Immediate Release Guidelines. This needs to be done in conjunction with the implementation of risk management, the creation of effective legislative frameworks, the establishment of efficient customs procedures, the

application of information technology, the development of human resources and the enhancement of transparency and integrity in customs operations.

8.2 General Implications of the Study

The findings of the research provide a significant contribution to the general theory and practice of trade facilitation and customs regulatory control, particularly in relation to express consignment operations. The study constitutes a theoretical contribution to the body of knowledge in the field of customs with the introduction of a set of criteria required for achieving an accommodation between trade facilitation and customs regulatory control. The research, with its practical implications, also contributes to the public sector and the private sector, both of which are involved in international trade. On the one hand, the public sector can facilitate international trade while at the same time ensuring regulatory responsibilities are met. On the other hand, the private sector can benefit from the certainty and consistency of customs systems and procedures, which are transparent and accountable.

8.2.1 Implications for Theory: Towards an Accommodation Approach

Trade facilitation and customs control are often viewed as conflicting concepts due to the misconception that when trade facilitation increases, customs control may decrease. Conversely, when customs control is strengthened, the flow of international trade may decrease. In fact, this view relies on ‘customs intervention’ in cargo movements rather than on ‘customs control’ which represents the proper application of customs laws and modern customs principles with maximum facilitation of international trade (WCO, 1999). In other words, customs intervention focuses on the physical examination of shipments while the concept of customs control lies in information management based on risk management and with the support of information technology.

In response to the current environment of international customs and trade, a balanced approach to trade facilitation and customs regulatory control has been highlighted in the literature to achieve a facilitation of international trade while at the same time ensuring an appropriate level of customs regulatory control. However, it is difficult for customs administrations to strike a balance between the two poles as ‘balance’ appears to reside in the perception of ‘best practice’. In fact, it is not necessary to maintain a balance between trade facilitation and customs control all the time.

A shift in balance is more practical in the more complex international customs and trade environment of today, which involves increased supply chain security and quarantine issues. In this environment, the ‘balanced approach’ is not a definitive answer. Rather, accommodating facilitation and control through the use of appropriate and effective mechanisms is more practicable in enhancing customs efficiency and effectiveness in dealing with particular contingencies. The ‘accommodation’ does not imply a compromise between facilitation and regulatory requirements. Rather, it is a way of achieving both objectives effectively and appropriately.

The principal research findings derived from this empirical study suggest the concept of ‘accommodation’ between facilitation and customs regulatory control is appropriate for current international customs organisations and customs administrations. The set of criteria proposed in this study - risk management, legislation, procedures, information technology, cooperation and consultation, and human resources - have the capacity to be important criteria through which this accommodation can occur. This approach contributes to theoretical knowledge in relation to trade facilitation and customs regulatory control. However, the success of such an accommodation between trade facilitation and customs regulatory control rests on the ways in which sophisticated systems and resources are applied by customs administrations. This includes the impact of internal factors such as government policy, bureaucratic systems, infrastructure and resources, as well as external factors such as international requirements and global phenomena.

8.2.2 Implications for Practice: Towards Professional Public Services

The accommodation approach towards facilitation and control has practical implications for the further development of public services in response to contemporary changes and international developments, particularly in relation to regional and global integration. The commitment of ASEAN members, as stated in the ASEAN Charter (ASEAN Secretariat, 2008), to the establishment of an ASEAN Community in 2015 is an example of regional integration, which requires both effective facilitation of international trade and an appropriate level of regulatory control. Such integration is not limited to the free flow of international trade in goods and services. It also encompasses the free flow of investment, capital and skilled labour, which involves a wide-range of security, economic and socio-cultural aspects.

In this borderless environment, the public sector, which has traditionally been concerned with tight bureaucratic control, needs to consider changes to government agencies to assist them to contribute to international trade facilitation. Customs administrations, particularly in South East Asian countries, therefore, need to enhance customs efficiency to achieve international trade facilitation through effective measures which also incorporate an appropriate level of customs regulatory control. In addition, the regulatory authorities responsible for border management, particularly those who control the movement of goods and passengers, such as immigration departments and quarantine departments, need to take into account ways of maximising both trade facilitation and regulatory control to ensure compliance with national laws and regulations. The accommodation approach to facilitation and control can be employed to improve the public sector in order to achieve strong, efficient and enforceable standards of service. Therefore, it is imperative for the public sector in general to provide facilitative mechanisms for the continuous development of public services while at the same time maintaining regulatory compliance through an appropriate level of regulatory and procedural impositions.

The accommodation between facilitation and control requires high standards and professional practices. However, the findings of this study reveal difficulties in implementing international principles for facilitation and control. International standards and guidelines proven to be best practice in the international context may be appropriate for countries that have sufficient support in terms of infrastructure, resources and knowledge. Nevertheless, the implementation of international standards and guidelines is perhaps premature for countries whose contexts, circumstances or conditions are radically different from those of developed countries. This applies particularly to countries requiring improvement of infrastructure and resources. In the case of Thailand, the Customs Department has adopted international standards and guidelines. However, a number of implementation problems have arisen from the distinction between policy, on the one hand, and implementation, which requires simplification and standardisation of procedures and operations, on the other. These issues are the key principles that the entire public sector needs to take into account to achieve professional public services.

- **Policy and Implementation**

The main problem in express consignment operations lies in the discrepancy between ‘policy and implementation’ or ‘principle and practice’, which greatly impacts on the efficiency and effectiveness of customs operations. While the principles based on international standards and guidelines are considered to be key elements for accommodating facilitation and control, application or implementation of the principles remains problematic, particularly in the area of risk management.

There are a number of factors involved in the discrepancy between policy and implementation. It is evident that the core principles are distorted when applied in practice. For example, the Customs Department has a policy on risk management for customs procedures and clearance of shipments based on international customs standards. However, customs officers conduct their work according to ‘individual and traditional practice’ rather than the principles specified in the international and national customs guidelines. Besides, a regulation on customs inspection has imposed a maximum rate of ten percent for customs inspections while the customs officers apply the rate as a minimum standard. This rate of inspection has become the issue that customs officers take into account rather than risk management principles. These problems are a result of unclear policies and principles that leave room for a range of interpretations and wide discretion in implementation. In particular, problems have also arisen from the lack of understanding of the principles, the poor training and skills of customs officers, and the inadequacy of infrastructure and facilities.

The results of this study suggest improvements to policy implementation to enhance the efficiency and effectiveness of public services can yield benefits to both the public sector and the trading community. The literature (for example, Althaus, Bridgman & Davis, 2007; Mazmanian & Sabatier, 1981; Stewart & Ayres, 2001) highlights the significance of effective policy implementation, including policy development, policy process management and implementation strategy. These are essential to underpin policy development and operational improvement⁹⁶. When the public sector adopts policies or principles, it is necessary to ensure that there are well-

⁹⁶ The model of policy cycles provided by Althaus, Bridgman & Davis (2007) is one example of good policy processes, which can be used to improve the implementation of public policies. It begins with “issues identification, and then proceeds to policy analysis, policy instruments, consultation, coordination, decision, implementation and evaluation” (Althaus et al., 2007, p.37).

designed and well-developed policies and procedures with clear and specific requirements as well as adequate resources in terms of both human resources and infrastructure. This includes monitoring of implementation processes and evaluating performance outcomes. As public services rely heavily on the functional competence of officers, capacity building is required in relation to the professional development of public servants in terms of skills and knowledge to ensure professional public services. Accordingly, development of human resources will provide strong support to the public sector to assist it to deal with the growing complexity of public tasks that require multi-skilled and professional officers. Moreover, the study implies the need for improvement in public sector management and public services with continuous improvement of infrastructure and facilities, including information technology, in order to be fully functional to support operational systems and procedures. This should include the formulation of quality assurance and service performance indicators to assure the public of the reliability of on-time services.

- **Simplification and Standardisation**

Simplification and standardisation of customs procedures and operations are crucial in increasing customs efficiency and effectiveness. However, simplification does not mean less control; rather, it is a way of achieving control through simplified procedures, which make customs operations more efficient and better able to maximise both international trade facilitation and customs regulatory compliance. In other words, customs regulatory compliance can be maintained when customs officers understand and are able to apply customs policies and principles, such as regulatory and procedural imposition, in practice. The trading community can also benefit from simple processes and speedy services through the reduction of unnecessary procedures, which can lead to greater facilitation of international trade. Moreover, a failure to understand relevant laws and regulations is among the main causes of business non-compliance (Braithwaite, 1993). Thus, simplified procedures and operations can enhance customs regulatory compliance in that traders and stakeholders can be expected to understand the laws and act in compliance with the regulatory requirements through simplified processes with regulatory assistance and advice.

Similarly, standardisation is another key principle that needs to be developed in conjunction with simplification. In this study, express consignment operations can be regarded as an example of

operations which are conducted in multinational companies around the world according to the same principles, practices and standards. This uniform application of the standard is a key to the success of the express industry. However, the success levels may be minimised as a result of the imposition of regulatory standards, the inefficiency of customs systems or the incompetency of customs officers. This definitely impacts on the degree of success of a business in terms of outputs and outcomes. It is, therefore, necessary to ensure that customs processes comply with international standards and guidelines, which can reduce unnecessary duplication in customs procedures or government processes. When customs systems and procedures are applied according to a uniform standard, this can reduce the level of discretion exercised by individual customs officers and assist by enabling policy implementation to be more consistent with policy.

The public sector is responsible and accountable for providing the private sector and the public with reliable and accountable services. The results of this study point to the importance of simplification and standardisation of government systems and procedures to ensure consistency, certainty and clarity in public services. The public sector needs to take into account the most appropriate ways to deliver efficient and effective public services. At the same time, the public sector also needs to ensure that the ultimate goals of the entire community are realised through appropriate mechanisms. These mechanisms include the simplification of regulatory procedures, the imposition of standards with precise rules, practical guidelines, and regulatory advice and assistance. This includes reviewing standards and service specifications, monitoring service performance and establishing mechanisms for redress against failure or damage (Domberger & Jensen 1997, p.76).

8.3 Generalisation of the Case Study and Key Findings

This study uses the case study of express consignments, which require the effective facilitation of trade and, at the same time, an appropriate level of customs regulatory control to ensure compliance with customs-related laws and regulations. In general, the customs clearance procedures are similar for all means of transportation in that the main procedures are the submission of import or export declarations with supporting documents, the payment of import or export duties and taxes, customs inspection (if required) and the release of cargo. However, customs procedures for express consignment clearance have been far more progressive than the

general customs procedures in that the express clearance procedures are based on principles of risk management and the support of information technology. In addition, the express procedures have been applied with reference to international standards, particularly the Immediate Release Guidelines, in relation to the advance submission of cargo information and the categorisation of shipments for consolidated customs clearance. As express consignment operations require the expeditious transportation and release of goods and effective customs regulatory control, the case study of express consignments provides a good exemplar of the customs systems and procedures needed to achieve trade facilitation and customs regulatory control more broadly. The outcomes of the study can possibly be used as a guide to the way in which fast and reliable delivery services might be achieved in other customs areas. Such areas include the importation, exportation and transit of normal (non-express) cargo at ports, airports and across borders.

Thailand is in a transitional period of gradual progress towards increased customs efficiency and effectiveness in customs operations. The results of the study offer potential alternatives for the authorities concerned to improve operational efficiency in the clearance of express consignments in Thailand. More importantly, the study contributes to an understanding of the difficulties encountered in the implementation of international guidelines and best practices. In particular, these difficulties are likely to occur in developing countries where the necessary systems, procedures and infrastructure are not fully established. This implies that these developing countries require fundamental support in terms of infrastructure and resources to be able to aspire to international standards and guidelines such as those enumerated in the revised Kyoto convention. Furthermore, the experience of the Thai Customs Department can provide a valuable lesson for other customs administrations, particularly in the ASEAN region and in developing countries more broadly, in relation to the modernisation and reform of their customs administrations to reach an accommodation between trade facilitation and customs regulatory control.

As the study is based on the single case study of express consignment operations in Thailand, it is difficult to generalise the findings to other jurisdictions. Nevertheless, the findings of this study can be generalised to theory based on the conceptual framework developed. This framework can be applied to other customs administrations, particularly in developing countries in similar contexts or facing similar phenomena. In other words, the set of criteria identified in this study

for accommodating trade facilitation and customs regulatory control can be generalised across other cases on condition that the application of the key elements proposed in this study is tailored to suit national capacities, including the supporting infrastructure and human resources. The study can serve as a guideline to enable customs administrations in developing countries to achieve an accommodation approach to trade facilitation and customs regulatory control. Individual customs administrations may apply the comprehensive approach to trade facilitation and customs regulatory control that suits the individual needs of particular countries, at least as far as streamlining the operational efficiency of customs administration and operations is concerned.

The study recognises that conditions and circumstances vary considerably across countries, particularly in relation to levels of customs development and fundamental infrastructure such as facilities and human resources. The approach to facilitation and control is possibly contingent upon the different operational contexts in which the approach is applied. Accordingly, the success of the accommodation between trade facilitation and customs regulatory control may not always be practicable for some countries because of their legal, infrastructural or technological constraints. Therefore, customs administrations should take into consideration particular criteria: risk management and audit-based control, automated systems, legislation, procedures, infrastructure and resources, all of which are a necessary part of the preparation for effective trade facilitation and regulatory control in the international trading environment.

8.4 Directions for Future Research

The study identifies the criteria for achievement of trade facilitation and customs regulatory control based on a qualitative analysis of the efficiency and effectiveness of express consignment operations in Thailand. Future research might further evaluate the effectiveness of customs systems and procedures by measuring operational efficiency, using statistical analysis to uncover the potential benefits and quantified outcomes of facilitation and control for both the public and the private sector. In addition, internal and external factors, which influence customs operations in facilitation and control, might be examined and analysed in further studies to identify any additional criteria that might contribute to the development of trade facilitation and customs regulatory control. These further studies might also focus on operational issues, such as periodic

payments of duties and taxes, advance rulings, and informed and voluntary compliance, for streamlining operational efficiency in the clearance of express consignments

The study uses express consignment operations in Thailand as a single case study with reference to international standards, guidelines and best practices from other customs administrations such as Singapore and Australia. Further studies conducted in a range of countries, particularly developing countries that have a similar customs and trade environment to that of Thailand where customs revenue has been a major source of national revenue, would build on findings in Thailand and provide a greater understanding of various facilitation and control issues. Such studies have the potential to contribute further to the theoretical and practical knowledge on trade facilitation and customs regulatory control. International comparative and regional studies of trade facilitation and customs regulatory control would also be a worthwhile focus for further research to generate a more reliable generalisation of the research findings. Such research might examine and analyse express consignment operations in Thailand by comparing it with the overall achievement of other customs administrations in ASEAN countries and APEC economies.

The selection of additional case studies in other areas or facilities such as road, rail and port would also provide a greater capacity for generalising the key issues identified in this research. Further studies in a range of regulatory authorities could also provide a more complete picture of the accommodation approach to trade facilitation and customs regulatory control in the current environment of regional and global integration. In particular, research into the development of integrated border management (IBM) could be a point for further empirical studies. Studies on the development of customs administrations in landlocked developing countries would be valuable, as would studies on the development of the regulatory authorities involved in border administration. Such studies would undoubtedly strengthen the field in relation to the accommodation between trade facilitation and customs regulatory control.

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APPENDICES

APPENDIX 2.1

List of International Organisations and Institutions in relation to Trade Facilitation

1. African Development Bank (AfDB)
2. Asia-Pacific Economic Cooperation (APEC)
3. Asian Development Bank (ADB)
4. Association of Committees on Simplified Procedures for International Trade within the European Community and the European Free Trade Association (EUROPRO)
5. Association of Southeast Asian Nations (ASEAN)
6. Bank for International Settlements (BIS)
7. Black Sea Economic Cooperation (BSEC)
8. Central Asia Regional Economic Cooperation (CAREC)
9. Commonwealth Business Council
10. Commonwealth of Independent States (CIS)
11. Economic Community of West African States (ECOWAS)
12. Electronic Commerce Code Management Association (ECCMA)
13. Electronic Commerce Europe Association (ECEA)
14. European Community Shipowners' Associations (ECSA)
15. European Electronic Messaging Association (EEMA)
16. European Union (EU)
17. European Bank for Reconstruction and Development (EBRD)
18. European Free Trade Association (EFTA)
19. Inter-American Development Bank (IADB)
20. Intergovernmental Organization for International Carriage by Rail (OTIF)
21. International Air Transport Association (IATA)
22. International Article Numbering Association (EAN)
23. International Association of Ports and Harbours (IAPH)
24. International Chamber of Commerce (ICC)
25. International Chamber of Shipping (ICS)
26. International Civil Aviation Organization (ICAO)
27. International Electro-technical Commission (IEC)

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28. International Express Carriers Conference (IECC)
 29. International Federation of Freight Forwarders Associations (FIATA)
 30. International Federation of Inspection Agencies (IFIA)
 31. International Maritime Organization (IMO)
 32. International Monetary Fund (IMF)
 33. International Multimodal Transport Association (IMMTA)
 34. International Organization for Standardization (ISO)
 35. International Railway Transport Committee (CIT)
 36. International Road Transport Union (IRU)
 37. International Telecommunication Union (ITU)
 38. International Trade Centre (ITC) of UNCTAD and WTO
 39. Organization for the Advancement of Structured Information Standards (OASIS)
 40. Organisation for Economic Co-operation and Development (OECD)
 41. Society for Worldwide Interbank Financial Telecommunications (SWIFT)
 42. Southeast European Cooperative Initiative (SECI)
 43. Supply-Chain Council
 44. United Nations (UN)
 45. United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT)
 46. United Nations Commission on International Trade Law (UNCITRAL)
 47. United Nations Conference on Trade and Development (UNCTAD)
 48. United Nations Economic and Social Commission for Asia and the Pacific (ESCAP)
 49. United Nations Economic and Social Commission for Western Asia (ESCWA)
 50. United Nations Economic Commission for Africa (ECA)
 51. United Nations Economic Commission for Europe (UNECE)
 52. United Nations Economic Commission for Latin America and the Caribbean (ECLAC)
 53. World Bank
 54. World Bank Global Facilitation Partnership for Transportation and Trade (GFP)
 55. World Customs Organization (WCO)
 56. World Economic Forum (WEF)
 57. World Trade Organization (WTO)

Source: Information from UNECE (2002a) and further developed for this study

APPENDIX 2.2

International Customs Standards

International Convention on the Simplification and Harmonization of Customs Procedures (revised Kyoto Convention)

The key principles of the revised Kyoto Convention are set out in three parts: the body of the Convention⁹⁷, the General Annex and the Specific Annexes⁹⁸, to assist customs administrations to “achieve appropriate balance between international trade facilitation and regulatory control” (APEC SCCP, 2003, p.1). The core provisions of the Convention outline the most advanced and efficient system for accommodating the trading community while maintaining an appropriate level of regulatory control. The Convention comprises provisions in relation to the simplification of customs systems and procedures, duties and taxes, security, customs control, the application of information technology, the relationship between the customs and third parties, information, decisions and rulings supplied by the customs, and appeals in customs matters. Improvements in customs administration, transparency, certainty and predictability, particularly in trade regulations and practices, are also set out for these provisions.

The revised Kyoto Convention provides general principles and standards for customs formalities and the clearance of goods⁹⁹. Accordingly, customs administrations need to improve customs procedures and requirements to support the clearance of goods, for example, by minimising the number of copies for supporting goods declaration, by the electronic lodgement of supporting documents, and by the advanced lodgement procedure and registration. The Convention also provides that processes of checking goods declarations and inspection of goods should proceed without delays, and goods can be released in advance on the condition that the traders can provide sufficient documents to complete the entire process of customs clearance and guarantees to cover the payment of duties and taxes.

⁹⁷ The Body of the Convention contains the preamble, definitions, scope and structure, administration, accession and amendment.

⁹⁸ The Specific Annexes cover standards and recommended practices relating to arrival of goods in a customs territory, importation and exportation, customs warehouse and free zones, transit, processing, temporary admission, offences, special procedures and origin.

⁹⁹ Chapter 3: Clearances and Other Customs Formalities, General Annex of the revised Kyoto Convention

In addition, the Convention provides provisions relating to the assessment, collection and payment of duties and taxes, deferred payment of duties and taxes, and repayment of duties and taxes¹⁰⁰. These provisions include the imposition of revenue liability on national legislation such as who will be liable for duty and tax payment and the methods of payment, including time and place. In particular, the Convention specifies that national legislation shall identify the conditions that require security measures¹⁰¹ and shall determine the amount of the security guarantee for the advance release of goods. The amount of security guarantees required shall be as low as possible and shall not exceed the amount chargeable in respect of the duty and tax payment. This sets out a principle for modern customs operations that breaks the relationship between physical control and revenue liability.

Significantly, the revised Kyoto Convention provides the principles for customs control¹⁰², which require customs administrations to implement risk management in the application of customs control. This includes the adoption of a compliance measurement strategy to support risk management and the implementation of audit-based controls. Customs shall use risk analysis to identify potential risk so that customs can efficiently allocate resources to high-risk areas and minimise customs intervention in low-risk areas. In order to support customs control systems, the Convention also covers the use of information technology and electronic commerce as well as cooperation with other customs administrations and the trading community.

The implementation of information technology is another key element required by the revised Kyoto Convention¹⁰³. In other words, the Convention emphasises the development of technological infrastructure, which can be cost-effective and efficient for both customs administrations and the trading community. Accordingly, the national legislation shall set out electronic commerce methods. The rapidity of transferring electronic information and the advance information system can also expedite customs operations, particularly in the clearance of goods and passengers. This can be achieved through cooperation and consultation with all the relevant parties.

¹⁰⁰ Chapter 4: Duties and Taxes, General Annex of the revised Kyoto Convention

¹⁰¹ Chapter 5: Security, General Annex of the revised Kyoto Convention

¹⁰² Chapter 6: Customs Control, General Annex of the revised Kyoto Convention

¹⁰³ Chapter 7: Application of Information Technology, General Annex of the revised Kyoto Convention

The Convention also emphasises the importance of cooperation and the exchange of information between customs authorities and the business community¹⁰⁴, which is essential for the establishment of effective measures to support customs operations and customs control. Customs and the trading community are required to cooperate and exchange information in relation to cooperation in customs control, trade consultation and enquiries for concerned parties and the general public in accordance with information, decisions and rulings supplied by customs¹⁰⁵. Customs shall also provide third parties for participation in formal consultations with the trade. National legislation shall set out the conditions for a person to act for and on behalf of another person in dealing with the customs and shall specify the liability of third parties to the customs authorities for duties and taxes and for any irregularities.

In addition, the revised Kyoto Convention sets out provisions in relation to information, decisions and rulings supplied by customs¹⁰⁶. In other words, customs shall provide relevant information to any interested person upon request as quickly and as accurately as possible. However, customs shall not reveal details of a private or confidential nature that can affect the customs or third parties unless such disclosure is required or authorised by national legislation. If amendments are made in customs laws, administrative arrangements or requirements, customs shall revise the information and make it available in advance, before arrangements enter into force. In the case of written requests, customs shall notify their decision in writing within a period specified in national legislation, and if the decision does not satisfy the person concerned, the reasons shall be given and the existence of the right of appeal shall be explained.

The revised Kyoto Convention states that national legislation shall provide for a right of appeal in customs matters¹⁰⁷. The appellant shall have the right of a further appeal to an authority independent of the customs administration and shall have the right of appeal to a judicial authority in the final instance. In relation to the form and grounds of appeal, the Convention states that an appeal shall be lodged in writing and shall state the grounds on which it is being

¹⁰⁴ Chapter 8: Relationship between the Customs and Third Parties, General Annex of the revised Kyoto Convention

¹⁰⁵ Chapter 9 of the General Annex of the revised Kyoto Convention, together with the provisions of standard 1.3, 6.8, 7.3, and 8.5

¹⁰⁶ Chapter 9: Information, Decisions and Rulings Supplied by the Customs, General Annex of the revised Kyoto Convention

¹⁰⁷ Chapter 10: Appeals in Customs Matters, General Annex of the revised Kyoto Convention

made. The lodgement of the appeal against a decision of customs can be made within a time limit; however, customs shall allow the appellant reasonable time to prepare an appeal and lodge arguments or supporting evidence. Where an appeal to the customs is dismissed, the customs shall provide the appellant with the reasons in writing and shall advise the appellant of the right of further appeals.

International Chamber of Commerce (ICC) Customs Guidelines

The Customs guidelines represent a private sector perspective on “a modern, efficient and effective customs administration” (ICC, 1997). The Guidelines consist of strategic plan, workforce and structure, cargo processing, transparency of administration and regulation, automation, tariff classification and valuation, origin, disputes and sanctions, international organisations and passenger processing.

The ICC (1997) noted that a modern customs administration should present a comprehensive set of customs practices to enhance trade facilitation and improve the effectiveness of customs controls. Customs has to ensure high standards for customs procedures and practices in the form of a binding, enforceable and truly multilateral agreement, as well as the transparency of administration and regulation. This includes the use of risk assessment techniques and post-clearance audits. ICC also urges that customs coordinate with the associated government agency to simplify customs and trade procedures in order to remove all unnecessary constraints on the individual trade transaction and reduce the substantial burden imposed on the international business community.

As modern customs administrations have to ensure high standards for customs procedures and practices in order to enhance trade facilitation and improve the effectiveness of customs controls, the guidelines and explanatory note present “a comprehensive set of practices” with the aim of modernising customs administrations, and this will be beneficial for those involved in international trade (ICC, 1997). In relation to cargo processing, guidelines 8 to 32 present customs procedures and practices in line with the provision of the revised Kyoto Convention. In particular, guidelines 18, 21, 24, and 25 give precedence to pre-arrival and post-entry procedures,

the implementation of risk management and profiling systems, and the use of non-intrusive examination techniques such as x-ray.

ICC Guidelines also focus on the implementation of international standards and automation systems to support customs practices such as the electronic data interchange (EDI) system, electronic declaration and payment, the operation of an automated enforcement information system, implementation of risk management and audit-based control (guidelines 38 to 43). Also, these guidelines place emphasis on the development of transparency in regulation and administration (guidelines 33-37), and also require the coordination of customs administrations and the international business community.

In addition, the ICC gives importance to the enforcement of the provisions of the revised Kyoto Convention as the significant tool in achieving a modern customs administration. The revised Kyoto Convention and the ICC International Customs Guidelines are the compilation of modern customs practices, which can be regarded as the significant element in achieving the modernisation of customs administration, efficiency in customs systems and procedures, the enhancement of trade facilitation and assurance of appropriate standards of customs control. For this reason, it is expected that the provisions of the revised Kyoto Convention and the ICC guidelines will lead to the reduction of customs operational time since they provide international trade with efficiency in customs systems and procedures, including predictability, and transparency. Simplification and harmonisation of customs procedures can enhance efficiency in customs operations in response to the requirements of the trading community by facilitating legitimate trade and minimising the cost to traders in addition to the requirements of government in ensuring customs control.

APPENDIX 4.1

In-depth Interview Guidelines

Topics / Areas	Interview Guidelines	Follow-up Questions / Probes
Trade facilitation	1. What procedures has customs developed to ensure the uniform application and implementation of trade facilitation?	<ul style="list-style-type: none"> • Does the Thai customs adopt or apply international standards and best practice to achieve effective facilitation of trade? (Please explain) • What trade facilitation measures currently take place? • How can trade facilitation be enhanced?
Customs regulatory control	2. What procedures has customs developed to ensure the uniform application and implementation of control methods?	<ul style="list-style-type: none"> • Does the Thai customs adopt or apply international standards and best practice in relation to customs regulatory control? (Please explain) • What customs controls are currently in use? <ul style="list-style-type: none"> ▪ risk management ▪ simplification of customs procedures and facilitative measures • How can customs control be ensured?
Trade facilitation & customs regulatory control	3. How have the initiatives for international trade facilitation and customs regulatory control been promoted or successfully implemented?	<ul style="list-style-type: none"> • What international standards and best practice in relation to trade facilitation and customs regulatory control have been implemented? • What strategic planning or policy has customs developed to ensure it moves towards effective and efficient facilitation and control? • Are there any problems in achieving effective facilitation of trade and ensuring customs regulatory control? (Please elaborate)

Topics / Areas	Interview Guidelines	Follow-up Questions / Probes
		<ul style="list-style-type: none"> • Are officials familiar with the theory and practices of trade facilitation and the customs control concept? How? • What current legislation and procedures operate in relation to trade facilitation and customs control?
Risk management	<p>4. What risk management principles are used in the clearance of express consignments?</p>	<ul style="list-style-type: none"> • Has customs developed a risk management program dedicated to trade facilitation or customs control? Please elaborate • Could you please detail the implementation of the current risk management system? <ul style="list-style-type: none"> ▪ How does customs strategically identify and manage risk to customs compliance? ▪ How are high-risk goods and means of transport identified and selected for inspection? • What control and detection systems are used by the express industry? <ul style="list-style-type: none"> ▪ To what extent does the company use these systems? ▪ Does customs understand or know about the existence of these systems? ▪ To what extent does customs rely on these systems?

Topics / Areas	Interview Guidelines	Follow-up Questions / Probes
Legislation	<p>5. Is the current regulatory framework sufficient to support trade facilitation and customs control? (Please explain)</p>	<ul style="list-style-type: none"> • What legal or administrative reform or modernisation requirements have been identified? • Does national legislation confer power on customs for the purpose of controls in regard to pre-arrival and post-clearance audit? (Please explain) • Does national legislation provide authority for the investigation, establishment and the administrative settlement of customs offences? (Please explain)
Procedures	<p>6. How can the Customs Department, Thailand, adopt and apply international standards and best practices to the clearance of express consignments?</p> <p>7. How can operational efficiency in the clearance of express consignments be developed or streamlined?</p>	<ul style="list-style-type: none"> • What systems and procedures are in place for the clearance of goods? • How often are procedures and practices revised to ensure effectiveness and efficiency across the administration? • What data are required to be submitted for the clearance of goods? <ul style="list-style-type: none"> ▪ Please define data requirements and timing for a carrier's submission of data prior to flight arrival ▪ Within what time does customs provide confirmation of pre-arrival clearance to carriers? ▪ Does customs provide confirmation of carriers' submission of data? • What procedures does customs use for the immediate release or clearance procedures?

Topics / Areas	Interview Guidelines	Follow-up Questions / Probes
		<ul style="list-style-type: none"> • What is the average release time for express consignments? • What action is taken if problems are discovered after the goods have been released and before clearance?
Information technology	<p>8. How has information technology been implemented in the clearance of express consignments?</p>	<ul style="list-style-type: none"> • What facilities and control equipment are available? • Are there any plans for future development of information technology? (Please outline) • How does information technology contribute to trade facilitation and customs regulatory control?
Cooperation	<p>9. What formal or informal mechanisms for communication, consultation and co-operation exist with express industries and related national or international agencies?</p>	<ul style="list-style-type: none"> • Please outline any agreements or cooperative relationships that customs has with relevant national agencies, neighbouring customs administrations, stakeholders. • How is/are trade facilitation or/and customs control initiatives communicated between the Customs Department and the trading community?
Human resource development	<p>10. In what ways can human resources be developed? (capacity building and customs integrity in particular)</p>	<ul style="list-style-type: none"> • How has customs improved accountability and transparency? • How has customs developed capacity building? • What training program does the administration provide for customs officers or trade operators?



APPENDIX 4.2

Participant Information Sheet¹⁰⁸

Researcher

Wunwimon Puengpradit

Doctoral Candidate

University of Canberra, Australia

Research Project Title

Trade Facilitation and Customs Regulatory Control: A Study of Express Consignment Operations in Thailand

Research Project

This research aims to analyse ways of reconciling tensions between trade facilitation and customs regulatory control by examining a case study of air express consignment operations at the Suvarnabhumi International Airport, Thailand. The study will address this aim through four objectives:

1. To examine and analyse international trends and initiatives as well as international standards and best practices in relation to trade facilitation and customs regulatory control
2. To identify conditions and measures for maximising trade facilitation and customs regulatory control
3. To examine and analyse the implementation of international standards and best practices for trade facilitation and customs regulatory control by the Customs Department, Thailand
4. To identify potential alternatives to current practice that will streamline the regulatory processing of air express consignments

¹⁰⁸ This participant information sheet was translated into Thai.

The study is intended to generate a conceptual contribution and develop a body of knowledge in the field of customs administration, and, more particularly, in the specific area of express consignments. Thus, the findings of this study should be beneficial for the Customs Department and customs administrations in developing countries in achieving trade facilitation and customs regulatory control. In particular, a thorough analysis of the theoretical frameworks and existing practices is expected to provide potential alternatives to streamline customs operational efficiency and capacity. The outcomes of the study also have the potential to be used as a template to achieve fast and reliable delivery services in other customs areas such as importation, exportation and transit of normal cargo at ports, airports or across borders.

Participants' Activities

Interviews

Your participation will include an interview with the researcher for 45 minutes. During the interview, you will be asked about your perspectives and experiences in relation to the issues of trade facilitation and customs regulatory control. A digital-recorder will be used with your permission. The transcript of the interview and the report finding will be made available to you upon request.

Direct observation

Direct observation will be conducted on site at the express consignment operational areas subject to approval from your organisations. The observation will be used as an unobtrusive method and will not involve interrupting your daily activities. Field notes will also be used as an observational record for the purpose of the study only.

Potential Benefits

Apart from the benefits to the project, your participation can also be of benefit to you in that you will have an opportunity to reflect upon your perspective and experience in relation to trade facilitation and customs regulatory control. You will have a better understanding about the criteria for maximising facilitation and control. This can be of assistance to your organisation in

improving operational efficiency in the clearance of express consignments, which can, in turn, be of great benefit to you, your organisation, the government and the trading community.

Your Participation and Protection of Data Collected

This project has been officially approved by the University of Canberra Committee for Ethics in Human Research. Your participation is completely voluntary. You are free to discontinue participation at any stage and to avoid answering questions without giving a reason.

All data collected by all means will be accessed by the researcher alone. The confidentiality of the data will be protected. The researcher will keep the data, both in the form of documents and tapes, in a locked cabinet at the University of Canberra. Computer files will be stored on a password-protected computer. There will be no reference to any individuals or any organisations.

Contacts for Information on the Project

If you have any questions regarding the project or wish to withdraw your participation, you can contact me, the researcher. Alternatively, if you have any other inquiries or concerns about the project, you may contact my supervisors.

Researcher

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If you agree to participate in the project, please complete and sign the Informed Consent Form attached to this information sheet. Signing the forms does not affect your right to withdraw from the project at any stage. You can still discontinue your participation without penalty and giving a reason. Access to the results of the study will be available from the University of Canberra on completion of the project, and a copy of the summary will be sent to you upon request.

Thank you for your co-operation

Wunwimon Puengpradit

APPENDIX 4.3

Informed Consent Form¹⁰⁹

Research Project Title

Trade Facilitation and Customs Regulatory Control: A Study of Express Consignment Operations in Thailand

Researcher

Wunwimon Puengpradit
School of Business and Government
Division of Business, Law and Information Sciences
University of Canberra, ACT 2601, Australia

Participant's Informed Consent

I.....(the participant), declare that I
(Participant's name)

1. have read and understood the participant information sheet;
2. willingly volunteer to participate in the study;
3. understand that I am free to withdraw from the study at any time;
4. allow the researcher to use and publish the data collected from me in the study while remaining anonymous in the study's report of findings;
5. am aware that all the information relating to my participation in the study will be treated as confidential;

Signature Date.....

Contact telephone number

Note: A summary of the research findings will be forwarded to your organisation on completion of the project. If you wish to receive a copy of the summary individually, please provide your email address below.

Email address:

¹⁰⁹ This informed consent form was translated into Thai.

APPENDIX 5.1

Express Integrators

DHL International GmbH (DHL)

DHL is a German company established in 1969 and owned by Deutsche Post World Net (DPWN) since 2001. There were about 300,000 employees in 2008 (DHL, 2008). It operates under five specialist divisions: DHL Express, DHL Freight, DHL Global Forwarding, DHL Exel Supply Chain and DHL Global Mail. With its international network, DHL offers freight and package shipping services amounting to more than 1.5 billion shipments per year to more than 220 countries and territories worldwide.

FedEx Corporation (FedEx)

FedEx was founded in 1971 as a logistics services company, based in the United States. The company provides customers and businesses with a number of services from delivery of small parcels to logistics and marketing services. FedEx delivers more than 3.3 million packages a day through its global network, which can speed delivery of time-sensitive shipments with delivery time guaranteed, usually one to two business days (FedEx, 2008a, 2008b). FedEx has more than 260,000 employees and contractors worldwide to provide fast and reliable delivery and services to more than 220 countries and territories around the world (FedEx, 2008b).

TNT Express Worldwide (TNT)

TNT was founded in 1946 in Australia and taken over by Royal PTT Nederland NV (KPN) in 1996 (TNT, 2008a). TNT is a global express and mail delivery services company with headquarters in the Netherlands. The company provides express delivery services known as TNT Express and a national postal service under the name TNT Post (TNT, 2008b). TNT Express delivers 3.5 million parcels, documents and pieces of freight a week to over 200 countries (TNT Express, 2008). TNT Express employs more than 159,000 people worldwide to provide express delivery services for documents, parcels and freight (TNT Express, 2008).

United Parcel Service Inc (UPS)

UPS was founded in the United States, in 1907, as a messenger company. The company provides a range of services, which includes specialised transportation, capital and e-commerce services, courier express services, freight forwarding services and logistics services. In 2007, UPS delivered more than 15.8 million packages and documents a day to 7.9 million customers (1.8 million pick-up and 6.1 million delivery) in more than 200 countries and territories around the world (UPS, 2008a, 2008b). Total employees worldwide were about 425,300 in 2007 (UPS, 2008b).

APPENDIX 5.2

Customs Free Zone Location Map



Source: Free Zone Operator, Suvarnabhumi Airport Free Zone

APPENDIX 5.3

Thailand Import Statistics Years 2006-2007

Year	Transportations	Import Entry (Entry)	Volume (Shipment)	Weight (kg)	Value (Baht)
2006	Port	1,013,375	341,158,882,927	99,249,148,677	3,306,546,299,423
	Rail	13,108	4,134,709,665	145,007,298	10,533,336,565
	Road	97,815	18,439,017,232	3,068,400,602	140,797,477,163
	Airport	1,409,409	201,898,322,664	626,787,654	1,395,715,918,396
	Post	22,779	218,093,808	25,617,052	2,209,013,850
	Other	211	6,763,738,088	9,146,241,949	87,088,324,701
	Total	2,556,697	572,612,764,384	112,261,203,232	4,942,890,370,098
2007	Port	1,045,794	360,486,727,416	101,975,816,558	3,321,481,499,591
	Rail	9,042	1,958,823,616	98,107,712	6,858,424,209
	Road	113,910	17,228,573,946	3,458,969,058	179,671,089,110
	Airport	1,448,998	231,349,990,993	833,027,165	1,323,579,676,499
	Post	20,106	190,998,590	34,206,496	1,926,379,848
	Other	349	3,405,213,807	8,400,435,710	74,212,771,644
	Total	2,638,199	614,620,328,368	114,800,562,699	4,907,729,840,901

Source: Information and Communication Technology Bureau, the Thai Customs Department, 2008

APPENDIX 5.4

Thailand Export Statistics Years 2006-2007

Year	Transportations	Export Entry (Entry)	Volume (Shipment)	Weight (kg)	Value (Baht)
2006	Port	1,442,905	233,477,198,988	80,900,016,598	3,225,864,199,226
	Rail	28,393	2,323,743,697	1,826,841,990	96,118,615,246
	Road	262,590	27,144,961,456	6,356,585,778	223,832,468,563
	Airport	1,511,957	160,184,588,289	3,320,340,782	1,382,779,431,229
	Post	4,216	90,615,540	9,658,357	490,046,882
	Other	61	519,895,998	22,370	1,109,412,362
	Total	3,250,122	423,741,003,968	92,413,465,875	4,930,194,173,508
2007	Port	1,495,936	447,004,705,664	109,186,973,155	3,474,050,865,165
	Rail	12,692	1,123,888,605	712,018,636	36,467,093,334
	Road	296,014	21,382,297,976	8,163,883,288	282,167,278,419
	Airport	1,546,360	176,927,197,825	755,851,844	1,448,728,545,564
	Post	3,695	102,476,414	6,749,536	448,417,933
	Other	1,823	730,771,551	8,148,661	7,524,251,652
	Total	3,356,520	647,271,338,035	118,833,625,120	5,249,386,452,067

Source: Information and Communication Technology Bureau, the Thai Customs Department, 2008

APPENDIX 5.5

Categories of Express Consignments

The WCO Immediate Release Guidelines divides consignments into four categories for the purpose of immediate clearance or release as follows (WCO, 2007b).

Category 1: Correspondence and documents

This category comprises correspondence and documents having no commercial value and which are not subject to duties and taxes. Correspondence is limited to written messages from one person to another, post-cards and letters containing personal messages. Documents are limited to printed matter in non-commercial quantities. Correspondence or documents that are recorded on carrier media will not be included in this Category. Any items that are prohibited or restricted are not included.

Category 2: Low value consignments for which no duties and taxes are collected

This category comprises (1) material for mass distribution in commercial quantities, certain types of literature for the blind, printed papers (2) low value consignments where duties and taxes are remitted or waived as the amount of duties and taxes applicable would be negligible, for example, unsolicited gifts below a defined value, trade samples, and (3) low value goods which are not dutiable and taxable in their own right. Any items that are prohibited or restricted are excluded.

Category 3: Low value dutiable consignments

This category comprises consignments that are above the value and/or duty/tax limits of category 2 consignments or do not qualify for duty and tax remission or waiver. Any goods that are prohibited or restricted are excluded.

Category 4: High-value consignments

This category comprises consignments not falling under the other three categories described above and includes consignments containing goods that are subject to restrictions. Normal release and clearance procedures, including payment of duties and taxes apply.

APPENDIX 5.6

Classification of Express Consignments in Thailand

The Customs Notification No. 47/2541 regarding import express consignments with the amendment of Customs Notification No. 74/2547 classifies import express consignments in four categories in accordance with the WCO Immediate Release Guidelines and separates export express consignments into two categories as follows:

Import Express Consignments

Category 1: Correspondence and documents

Documents exempted from duty and tax under part 2 of the Customs Tariff Royal Ordinance B.E.2530 (A.D.1987), and not subject to prohibited or restricted items

Category 2: Low value non-dutiable consignments

Goods exempted from duty and tax under part 2 of the Customs Tariff Royal Ordinance B.E.2530 (A.D.1987), and not subject to prohibited or restricted items.

Goods with a value not exceeding 1,000 baht, which are exempted from duty and tax under part 4, category 12 of the Customs Act B.E.2545 (A.D.2002) as amended by the Customs Tariff Royal Ordinance B.E.2530 (A.D.1987), and not subject to prohibited or restricted items.

Trade samples with non-commercial value, which are exempted from duty and tax under part 4, category 14, and not subject to prohibited or restricted items.

Category 3: Low value dutiable consignments

Dutiable goods not exceeding 40,000 baht (FOB) per shipment, not subject to prohibited or restricted items and not requiring analysis before release.

Category 4: High-value consignments

Goods other than category 1, 2 and 3

Export Express Consignments**Category 1:**

Goods exempted from duty and tax under part 3 of the Customs Tariff Royal Ordinance B.E.2530 (A.D.1987), and not subject to prohibited and restricted items, the privilege of refund or reimbursement of duty and tax, the privilege under the Investment Promotion Act¹¹⁰, and imported goods, which have to be re-exported for vanishing guarantee and bond paper.

Category 2:

Goods other than category 1

¹¹⁰ Duty exemption for goods under the Board of Investment (BOI) scheme, which refers to an exemption of import duties on the raw and essential materials imported for use specifically in producing, mixing or assembling products or commodities for export, including items which the eligible person imports for re-export (Thai Customs Department, 2008a).