Taxud Seminar 30th October

Trade Associations have a mission to facilitate trade, Customs to regulate it.

This is a simple truth which implies two bodies with diametrically opposed objectives which are doomed to exist in a state of perpetual conflict.

However I would argue that the reality is rather more complex. Customs do have a range of duties which include protecting state revenues by supervising the collection and payment of duties and taxes and preventing the movement of illicit goods; drugs firearms and contraband. Fulfilling these obligations inevitably means that data must be collected and some goods movements physically inspected.

But Governments also recognise that International trade is good for the general economy therefore regulatory measures must be applied in a way which not just minimises any disruption to legitimate business but actively encourages the right type of trader to engage in cross border operations. It follows that Customs and legislators need to be aware of, and sympathetic to, the business environment.

Equally, responsible trade Associations have an obligation to make sure they are promoting the interests of legitimate businesses and by definition this means working to ensure that potential misusers of a trade facility do not gain access to it in the first place. And this is a key area where the interests of Customs and the trade associations converge.

In short there has to be a process of selection based on standardised and uniformly applied criteria. But this process has also got to be fair and non-discriminatory, effective without being inflexible.

If we are thinking of giving the keys of our house to someone we will certainly do everything we can to make sure the person chosen is reliable and trustworthy because the consequences of getting this decision wrong are always going to be painful and expensive.

Of course the process of determining who can be given access to the TIR scheme should not be trivialised by comparing this to deciding who is going to feed the cat but both decisions involve the exercise of judgment based on the evaluation of known facts.

The main difference is that personal knowledge will influence our domestic decisions but in dealing with businesses wanting to use Carnets the first and most crucial decision as to whether they should be admitted into the scheme is going to be based primarily on documentation provided, in most cases, by the applicant himself.

Now this is useful as a starting point but nothing more. If you were to ask every TIR applicant to make a declaration saying that they promise to use Carnets correctly and honestly you are unlikely to get many replying that their real purpose is to commit fraud.

Self –certification is not the answer, the key to reserving the TIR system for legitimate users, minimising the risk of claims and thereby ensuring the schemes long-term sustainability can only be based on a close and constructive partnership between trade and government bodies.

The importance of such close co-operation can be illustrated by reference to another sphere, the fight against potential terrorism, where the US C-TPAT scheme provides a model, not necessarily a perfect one, for collaboration between customs and trade so that potentially suspect shipments into the US can be

quickly and easily identified without unnecessary disruption to normal trade flows.

Policing the TIR scheme can only be done efficiently through a partnership between Customs and the national Carnet issuing bodies. There is mutual interest in combating fraud, crime and ignorance, bearing in mind it is not only the transport operators which are culpable in these areas.

The framework for this relationship and the respective roles of the parties is contained in Annex 9 part 2 of the TIR convention.

In practice, the way in which we apply these rules in the UK and as far as I am aware, a similar process is followed in /most other member states can be summarised as follows. When a new applicant for TIR Carnets contacts us a two-way process is started.

He needs to know what his obligations are going to be and we need to start collecting information from him.

I am sure everyone is familiar with the type of data that is required over and above the IRU Declaration of Engagement.

- Does the company have an O-Licences?
- What is the extent of knowledge and experience of TIR?
- Are copies of the last two years audited accounts available?
- How many vehicles are operated and will there be use of sub-contractors?
- What types of goods are carried?
- Between which countries?

The above list is not exhaustive.

Collection of this information constitutes a preliminary, but vital stage and by evaluating the data we place the applicant

into one of three categories. At one extreme the application is from such a blue chip company, say Ford or Philips, that the application and supporting documentation can be sent to customs immediately for authorisation.

The second type are those with no prospect of succeeding and we have to tell the company why their application was unsuccessful and, if possible, suggest what they need to do to qualify for TIR carnets.

In fact, the majority of applications fall into a third category where we feel it necessary to check and validate some of the information, for example by contacting the Traffic Office to make sure the O-licence is still in force, and obtaining a financial report from a credit agency, we use Dun and Bradstreet.

It is only when we are satisfied that, from our point of view, there is no reason why the company should not be issued with TIR carnets that we send the papers to the UK Customs for their consideration of the application and possible official authorisation.

This is where the partnership arrangement really takes effect. We see our task as filtering applications and obtaining all the information Customs might need to carry out their own checks. For example, the company registration and VAT numbers along with names and dates of birth of the Company directors. Generally, we have no way of checking whether a company has committed Customs offences, VAT evasion or is under investigation for more serious matters.

In my experience cases where these considerations do apply have been very rare but it does highlight that where a Customs Authority has knowledge which indicates a company is not suitable to be entrusted with TIR carnets there may be difficulty in communicating this to the Association if that information is

not in the public domain or it would be prejudicial to an existing investigation to reveal the nature of the concerns.

Similar considerations apply when we, or Customs, have reason to become suspicious about the activities of an existing TIR Holder.

These situations have to be handled sensitively by balancing considerations of the impact on the business, legal rights and data protection laws against prevention of illegal activities. These are not necessarily insurmountable problems and this is one area where regular liaison between the Customs and Associations is invaluable in ensuring that both sides understand their respective roles and the constraints that they sometimes operate under.

Fortuneately we have never had to deal with a situation where Customs have refused an authorisation we believed should be granted or where we have been compelled to issue carnets against our own judgment.

Of course, authorising a company to use TIR carnets is the start, not the end, of the story. There has to be a constant process of monitoring to ensure that the company is operating within its quotas and the terms of the guarantees they have given. There is also a need for there to be periodic checks to ensure that the ownership of the business has not changes and that the financial standing of the company has not deteriorated.

We carry out such checks on a small percentage of users annually on a random basis or exceptionally where there are indications which suggest there may have been a change in the business profile, for example slow payment, use of different routes or personnel changes in their TIR department could all be a trigger for some further investigation.

That said, it is important to keep a balanced perspective, the vast majority of companies in the TIR scheme are perfectly legitimate businesses who have used hundreds of carnets without any problems other than those caused by theft, robbery and other perils international operators face in the course of normal business.

Indeed we must never forget that part of our job is to help operators protect themselves by alerting them to potential risks and that by being encouraged to report suspicious incidents they are also potential allies in the fight against transit crime.

We see that close controls over entry to the scheme monitoring use of carnets on a risk management basis and selective checks are the most efficient way of keeping the TIR scheme viable. In this objective customs have a key role to play not least in providing accurate and timely information through the Safetir system and in exercising their power to bar or exclude companies which pose a threat to the scheme.

We do have regular liaison meetings with the UK Customs on a range of trade issues, not just TIR, and this is the basis for a relationship which enables the individuals concerned to feel able to pick up the phone and take action to avoid potential problems.

In conclusion, co-operation on TIR issues is, I would suggest, a classic example of a public private partnership in which two bodies with apparently conflicting roles actually have powerful reasons to work closely together for the mutual benefit of legitimate trade and the protection of national interests.

GCL- Oct 03.