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Facilitating Trade in a Security Conscious World

by Nkululeko Khumalo

Introduction

In his article, *A US Obsession the World Does Not Share*, Roger Cohen¹ makes a strong assertion that 'the war on terror is not, like the cold war, a label for an era. It describes the focus of America, but no more than that, because other countries have other agendas.' This might be the case. However, while the world may or may not share the 'obsession' it does certainly share the cost, at least in as far as prosecuting this war interferes with international trade.

This briefing explores how the new security measures adopted by Africa's key trading partners after the September 11, 2001 terrorist attacks in the United States could adversely affect our export competitiveness and economic growth. More importantly, it examines ways in which a virtuous relationship between the security imperative and trade facilitation could be struck at a global level. It also looks at ways African governments and suppliers should respond to avoid further marginalisation.

Counting the cost

In response to 9/11, 'governments everywhere have enacted security measures that could, if not managed properly, drive up trade costs and shut out exports from developing countries'². Needless to say, 'secure trade is now as important as free trade'.

Terrorist activities can severely disrupt international trade. The consequent financial costs are compounded by the continuing threats of terrorist attacks. The war on terror's effects on the international economy include the

disruption to international trade and consequent increases in insurance costs for cargoes and passengers. It also reduces the benefits of just-in-time manufacturing processes by raising the need for companies to carry higher levels of inventory due to inefficiencies in the delivery system.

Terrorism threats have a negative effect on trade flows. A study of 200 countries from 1968 to 1979 found, for example, that a doubling of the number of terrorist incidents decreased bilateral trade between targeted economies by around six percent³. Such costs could be exacerbated if the US economy was closed-down. A month-long disruption of 29 US West Coast ports in 2002 delayed 300,000 containers, and cost Asian economies 0.4 percent of nominal GDP. The Organization of Economic Cooperation and Development estimates that extra trade security measures in response to 9/11 cost between 1-3 percent of US trade flows. They also estimate that for every one percent increase in the cost of world trade, world welfare would decline by US\$75 billion annually⁴.

Developing countries, because of their budgetary constraints and comparative reliance on trade and capital flows, are the most vulnerable to cost increases resulting from security threats. Such risks are heightened by the increased costs associated with revising the adequacy of their security measures.

According to Mwalwanda⁵ 'while the basis and foundations for the new security rules governing international trade are understood and appreciated, they still pose serious concerns for many

African countries.' He warned that the cost to Africa of implementing and conforming to these new rules, especially LDCs, could have the effect of offsetting the benefits from preferential schemes, such as the AGOA⁶ and EBA⁷.

Policy responses

Reconciling new security priorities with trade facilitation objectives is not an easy task. Security measures can disrupt global supply chains, and often require costly changes to business practices, process redesigns, and new equipment. Developing countries are at risk of further marginalisation from international trade as a result of their weak capacities to implement new security requirements.

Before 9/11, security focused on curbing the movement of illicit goods such as drugs and weapons, and trafficking in persons. The attack led to the realisation that the supply chain is vulnerable to terrorist activities as it is fragmented, with many different actors involved including: customs, carriers, customs brokers, and freight forwarders, among others. It therefore became necessary for all these participants and their activities to be brought into the net in devising and implementing measures to secure the transport of goods and services across the globe.

Pertinent security initiatives post September 11 having a bearing on international trade include:

1. The Container Security Initiative (CSI)

Introduced in January 2002 by the US customs, the CSI is designed to prevent the smuggling of terrorists or terrorist weapons in cargo containers by facilitating detection of potential threats at the earliest possible stage. The programme includes the use of automated and intelligence information to identify high-risk containers as well as pre-screening suspected containers at the port of departure. The screening is done through the use of non-intrusive inspection (NII) equipment, such as large X-ray-type systems and radiation detection equipment. Although most large ports already had this equipment for their own compliance enforcement requirements, many commercial ports world-wide do not.

The CSI is based on bilateral agreements between the US and the exporting country

involved. To avoid being disadvantaged a number of countries have signed up to the CSI presently amounting to 21 countries and 33 ports throughout the world.

This initiative has far-reaching consequences for major exporters to the US. A country that fails to implement the new procedures would be at a competitive disadvantage because its shipments would undergo more complex clearance procedures.

2. 24-Hour Advance Vessel Manifest Rule and the US Trade Act of 2002

To complement the CSI, the US customs⁸ established the 24-Hour Advance Vessel Manifest Rule (24-Hour Rule)⁹ in December 2002 following the passage of the Trade Act of 2002. The Trade Act of 2002 mandated the Customs and Border Protection agency (CBP) to enact regulations providing for electronic transmission to customs of information pertaining to cargo destined for and from the US prior to arrival or departure of such cargo.

It is a unilateral requirement whereby customs now require detailed manifest information in relation to US bound cargo to be provided 24 hours before loading at the foreign port¹⁰. The 24-hour rule requires that the vessel's cargo declaration, including 14 specific mandatory informational elements, be notified 24 hours before the cargo is loaded in a foreign port, and that the data be provided in electronic form. The new data requirements brought by the 24-hour rule to the cargo declaration include the last foreign port before the vessel departs for the United States; as well as the data element "Place of Receipt" are mandatory for all carriers. In addition, information on the shipper, consignee, and products must now be provided in more detail¹¹.

Non-compliance with the rule can result in a container being denied loading and late submissions of cargo declarations may attract a monetary penalty of US\$ 5,000 for first violation, and US\$ 10,000 for subsequent violations. In a period of about 3 months in early 2003, the CBP reviewed about 2, 4 million bills of loading; and about 260 containers with inadequate cargo descriptions were denied loading for violation of the 24-hour rule¹².

The regulation is to enable customs

officials to identify high risk containers in advance and to complement the CSI. The new regime's requirement for mandatory electronic transmission of documents could prove costly for most developing country traders¹³.

The United Nations Conference on Trade and Development's (UNCTAD) Advanced Cargo Information System seems to have inspired the adoption of this regulation. The trend towards advanced electronic submission of cargo information is gathering momentum, and UNCTAD's best practice standards are gradually assuming a binding nature through unilateral and bilateral regulations. This raises the need for ensuring common grounds for transparency and more openness in favour of traders.

3. The Customs Trade Partnership Against Terrorism (C-TPAT)

In April 2002, U.S. Customs introduced the Customs-Trade Partnership Against Terrorism (C-TPAT) to improve security along the transport chain and facilitate controls. The initiative aims to bring together manufacturers, warehouse operators and shipping lines that agree to comply with the supply-chain security profile. Under the programme, importers or carriers provide US Customs with documentation relating to security measures at each step along the route of goods.

C-TPAT is a public-private and international partnership formally based on a non-contractual voluntary agreement with over 7,000 businesses across the world. The agreement includes a list of security guidelines/recommendations whose effects extend well beyond the participant who undertakes to apply the guidelines and also to communicate them to its business partners. Once a company becomes a C-TPAT member, its risk score in the automated targeting system is partially reduced. Both parties may terminate the agreement and cannot incur any liability for error or non-compliance.

Membership of the C-TPAT gives a company some competitive edge over non-members as it expedites the clearing of its containers. However such a company has to increase its own security to prevent terrorists from tampering with its shipments. It therefore comes with significant cost implications especially

for small companies in developing countries.

4. Other Security Initiatives and Developments

Apart from the US, other countries have developed their own security initiatives. For example the EU has made proposals to introduce customs requirements similar to the U.S. 24-Hour Rule in Europe. It provides for cargo information to be electronically submitted 24 hours before goods are imported into or exported to the European Union¹⁴.

Similarly, Canada has adopted its own 24-hour rule, which became applicable in relation to all cargo imports by 19 April 2004¹⁵. As strongly underlined by UNCTAD, these developments suggest that advance electronic submission of cargo information to customs may soon become the norm in international trade, especially in relation to the major trading players¹⁶.

At best the new security measures implemented at ports, customs offices, and border posts around the world could promote safety and security without necessarily becoming a hindrance to cross-frontier trade. Indeed a virtuous relationship between greater facilitation, greater compliance by traders, and improved controls, should be sought.

However, security measures could provide a plausible excuse for bare-faced trade protectionism. The fear is made even more intense by the fact that security measures fall under a GATT Article XXI exception. The WTO legal framework provides for exceptions to its various principles, for policy reasons ranging, inter alia, from environment to health, moral protection and security¹⁷. The security exception is of particular importance in trade facilitation due to the current War on Terror. Article XXI of the GATT 1994 makes it very clear that measures aimed at protecting a country's 'essential security interests', 'taken in time of war or other emergency in international relations' effectively fall outside the ambit of this agreement¹⁸. The fear is that if the matter is left solely to the decision of the invoking states, there could be abuse of this exception with the effect that the international trading regime could be undermined by excessive reliance on national security considerations. Even where legitimate controls are concerned, unilateral

initiatives place unnecessary obstacles in the way of goods transportation, slow down the logistical process and raise costs of doing trade.

Cooperation is key

For this reason, a global framework should be established to ensure that the needs of developing countries are addressed in the new security regimes, and that legitimate security measures do not necessarily hinder the efficient flow of goods. This requires a high degree of cooperation between developed and developing countries. It could be useful to have an enforceable provision on security in a possible WTO trade facilitation agreement that would ensure security measures are not abused to promote trade protectionism.

This is clearly an area where the basic GATT/WTO principles such as proportionality, necessity, least trade restrictiveness, reasonableness, transparency and non-discrimination - applicable to agreements like Technical Barriers to Trade - should be applied in order to contain the threat mentioned above.

It is important to note that trade facilitation and improved security against terrorism should not be seen as incompatible alternatives. This is because the goals of trade facilitation - the elimination of red tape, transparency and speed in the communication and use of data, the removal of sources of error and confusion in the supply chain, and closer cooperation between all parties to international trade transactions - by their very nature result in enhanced security. On the contrary, inefficiency, opaque processes and controls, poor communication and concentration of resources on the wrong targets, provide a conducive environment for terrorism to thrive.

How should Africa respond?

African countries and their traders should not wait for multilateral reforms to bear fruit. They should individually (as South Africa has done by joining the CSI), and collectively (i.e. at a regional or continental level) formulate satisfactory security standards and measures at ports, airports and land borders.

Indeed resources are an issue, and capacity building is needed for these countries to conform to the requirements

of their major trading partners in the US and the EU. The costs of implementing the new security measures should be seen as a worthy investment that would by reducing the threat of terrorism lead to lower risk premiums, and increased trade efficiency.

Collective regional or continental efforts are important to prevent a situation whereby trade would expand in those countries that can afford implementation like South Africa, at the expense of those that cannot. For example, when wealthier EU members¹⁹ signed the bilateral CSI agreement with the US, the EU initiated infringement proceedings against them on the basis that Article 133 of the treaty establishing the European Communities (EC) gives the EU commission power to regulate policy concerning imports, exports, and commercial agreements with non-member states²⁰.

The major concern, however, was that bilateral agreements might discriminate against ports not covered; particularly the fear that such a bilateral approach could penalise smaller EU ports that had not signed agreements with the US. The issue was finally resolved when the EC, as a block, signed an agreement on trade security with the United States in April 2004.

Moreover, the threat of bio-terrorism and consequent counter measures pose a serious challenge to Africa and other poor agricultural and chemical goods exporters. Stricter enforcement of Sanitary and Phytosanitary Standards and technical standards will require increasing commitments of resources to upgrade relevant institutions, further widening regional divides. As such, the need for the establishment of regional standard bodies and testing laboratories cannot be over-emphasised. African countries should therefore prioritise this issue in cooperation with donor agencies as well as intergovernmental development organisations such as the World Bank.

Related to the above, for the CSI, C-PAT, and other supply chain security initiatives to work effectively, they require tighter or at least more vigorously enforced rules of origin. Consequent compliance costs could be prohibitive to most African traders.

This raises the need for strengthening institutions responsible for monitoring compliance in the region, and requires reallocation of resources towards such institutions.

Conclusion

While the 'war on terror' may be regarded as the preoccupation of the US and its mainly developed-country allies, secure international trade, as well as prevention of abuse of otherwise legitimate security measures for trade protectionism, is a collective responsibility.

Global cooperative arrangements are an imperative so as to avoid

a flurry of different and sometimes conflicting national approaches, and the potential marginalisation of developing countries. This could be done through the establishment of WTO principles and disciplines, and at a more practical level through WCO integrated border management processes. A WTO trade facilitation agreement encompassing security disciplines would therefore be desirable for all countries.

Ultimately, the aim is to get to a level where trade facilitation and security objectives are mutually reinforcing and balanced. African countries would do well to not simply cite implementation difficulties, but do all they can to beef up their security.

Even more so because the cost of non-implementation may, in the long term, prove higher than that of initial implementation.

Endnotes

1. See Cohen R, 'A US Obsession the World Does Not Share'. New York Times article in South Africa's Sunday Times, December 19, 2004, pg. 3.
2. For a more detailed treatment of this area see World Bank's Global Economic Prospects 2004: Realizing the Development Promise of the Doha Agenda, Washington, DC, pg. 179. Available online at <http://www.worldbank.org/prospects/gep2004/index.htm>. This section draws extensively on that report.
3. Asia Pacific Economic Co-operation, 2003, 'The Cost of Terrorism', APEC. Paper submitted by Thailand to the Senior Officials Meeting 1, Chiang Rai, Thailand, 20-21 February, 2003.
4. APEC, Ibid.
5. Mwalwanda Cornelius, T, 'Trade Facilitation in a Multilateral Framework: Challenges for Africa', Economic Commission for Africa, 15 May 2003, Geneva, Switzerland.
6. African Growth and Opportunity Act.
7. Everything but arms.
8. On 1 March 2003, the US Customs service was transferred to the new Department of Homeland Security; the border inspection functions were organised into the bureau of customs and border protection, at <http://www.cbp.gov>.
9. US Federal Register (2002) 67 211 at 66318.
10. US law and customs regulations impose certain documentary requirements upon vessels bound for the United States; a manifest meeting certain requirements must be submitted. The manifest must include accurate and complete information regarding the shippers, shipment and vessel.
See 19 U.S.C. 1431 and 19 U.S.C. 1434, at http://www.customs.ustreas.gov/xp/cgov/import/communications_to_industry/advance_info.
11. See WTO (2004) Trade Policy Review-United States of America Minutes of Meeting WT/TPR/s/126 at pg. 36. Available online: http://www.wto.org/english/tratop_e/tp_r_e/s126_3_e.doc.
12. Ibid.
13. Ibid.
14. See UNCTAD (2004) 'Container Security: Major Initiatives and Related International Developments'. Report by the UNCTAD secretariat. Geneva. Available online: http://www.itco.be/download/TC_104_N_997.pdf.
15. Canada Border Services Agency at <http://www.cbsa-asfc.gc.ca> (accessed 16 May 2004.)
16. WTO (1999) Articles XX and XXI GATT at 455-456.
17. WTO (1999) GATT Article XXI at 456.
18. See concerns expressed by some WTO members about US trade restrictions based on national security WTO (2004) Trade Policy Review-United States of America Minutes of Meeting WT/TPR/M/126 at pp.7 & 20.
19. The United Kingdom, France, Germany, the Netherlands, Belgium, Italy, Spain, and Sweden – signed the bilateral CSI agreement with the United States. See EU online information. Available at: <http://www.eurunion.org/news/press/2003/2003>.
20. See Ntamack, S. 'Balancing Trade Facilitation against Revenue Collection and Border Security Imperatives: A Developing Country Perspective,' University of Pretoria, South Africa, 2004, pg. 11.

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