

# Designing and implementing Customs-Business partnerships: a possible framework for collaborative governance

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## Abstract

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The emergence of the Customs community's interest in building Customs-Business partnerships (CBP) can be examined in the overall context of the development of government to business partnerships, including the often successful public-private partnerships (PPP) model. The concept of CBP is that relationships between Customs and business are shifting away from the former adversarial and interventionist approaches and moving towards relationships that represent an ambition of working together for a common purpose. Based on a theoretical review of the partnership dynamics, a conceptual collaborative governance framework is proposed and the key elements in designing and implementing CBP arrangements are identified and developed. It is argued that CBP should be interwoven with the overall strategies of Customs reform and modernisation and should go beyond operational and technical matters for effectiveness and sustainability.

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## 1. Introduction

In the world of administrative reform some people have been inclined to adopt 'buzz words' or 'catch-phrases', concepts that are more symbolic than having actual substance. In the context of 'government to business' relationships, both the concept and the use of the term 'partnership' have emerged as potential catch-phrases and are used by policy makers and academics to suggest government and business are working together to achieve common goals. Whilst many of these government to business 'partnerships' seem to be lacking any real substance, there is an increasingly popular model known as a 'public-private partnership' (PPP) which has, in fact, been delivering tangible benefits to both partners, and to the broader community. This paper looks at the progress of the 'customs to business partnership' concept in this context, and discusses issues such as 'tangible benefits' and 'substance' whilst also proposing a possible framework to further develop the customs-business partnership approach.

Seemingly, the Customs community is not immune from following this new move to form 'partnerships' with business, and it is worthwhile considering whether the Customs approach to partnering is simply following the 'buzz'. The World Customs Organization (WCO) designated 'Customs and Business improving performances through partnership' as the theme of its 2010 International Customs Day in which various partnership approaches at both regional and national levels were celebrated.

To highlight the significance of Customs-Business partnership (CBP), Dr Kunio Mikuriya, Secretary General of the WCO, stated:

This [CBP] means that Customs cannot act alone without taking into account the interests of its partners. It must further develop consultation, promote information exchange and cooperation,

and reduce the barriers to the smooth flow of trade by jointly identifying bottlenecks and offering solutions (Mikuriya 2010).

The WCO's promotion may be a symbolic gesture without evidence of actual mutual actions that have led to these types of objectives being met. We need to look at what concrete steps, if any, have been taken by the WCO and national customs agencies to form partnerships with business, and equally, it is important to try and understand what business may expect from a CBP. As part of this analysis, this paper discusses ways in which both parties can strengthen future CBP initiatives to create 'real' and 'meaningful' partnerships between Customs and industry.

The concept of government partnering with business is not new, and certainly did not originate with Customs. Government and business partnerships have a long history with the development of the PPP model which has now been accepted in developed and developing countries since the 1980s. PPPs have their origin as a major theme of New Public Management and governance reform. Has Customs picked up this same approach and applied it with the same success as many PPPs, or does the CBP fall short of the same effectiveness we see in many of these successful PPPs? Perhaps a key to the success of the CBP may lie in observing some of the factors we see in successful PPPs and determining whether they have been, or can be implemented in a CBP.

Enthusiasm alone by Customs to embrace the CBP approach does not necessarily mean that partnership-like relationships and infrastructure are in place for implementing CBP programs such as the emerging Authorised Economic Operator (AEO) program. Theoretically, CBP calls for conceptual clarification which provides guidance for policy makers. Practically, problems in implementing AEO have arisen, namely, a lack of legal frameworks, deficiencies in tangible benefits, 'discrimination' against small and medium-sized enterprises (SMEs), lack of expertise on security verification, and problems with mutual recognition across countries (ROCB A/P 2010).

The WCO's diagnosis missions under the umbrella of the Columbus Program find that the business sector is generally not satisfied about relationships with Customs, and consider that advocacy of partnership by Customs is still at the 'rhetoric' stage as opposed to any 'concrete action'. This may be particularly true for Customs in developing countries, as the CBP approach still sits uncomfortably in their national context.

For both Customs and business, it is desirable to resolve some of the following types of lingering doubts:

- Why do we need CBP?
- What is the nature of CBP?
- Is there substance, or is CBP a gimmick, or a fad?
- How does the trade community respond to CBP initiatives like AEO programs?
- Is it possible to propose a CBP model which overcomes these doubts?

This paper now explores the issues and suggests answers to these questions.

## **2. Partnership and public-private partnership: theoretical view**

### **Partnership**

Before analysing the CBP, it is worth defining and discussing the development of the term 'partnership'. We can start by looking at the dictionary meaning. In Merriam-Webster Online Dictionary, 'partnership' means: (1) participation; (2) a legal relation existing between two or more persons contractually associated as joint principals in a business; (3) a relationship resembling a legal partnership and usually involving close cooperation between parties having specified and joint rights and responsibilities (2010).

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Collins Essential English Dictionary offers a broader definition: ‘a relationship in which two or more people, organizations, or countries work together as partners’.

These definitions help to clarify the major dimensions of a ‘partnership’: first, partnership is not a new human activity; second, partnership is in essence a relationship between two or more parties, which can be informal or formal; third, partnership involves cooperation, collaboration and participation; and finally, partnership is a term commonly used in the business world. These characteristics are now proposed as the basis for constructing a ‘conceptual framework’ for the CBP.

Going beyond the literal understanding of ‘partnership’, the literature in relation to strategic management provides further insight. Strategic management challenges the stereotyped division between competition and collaboration and argues for the importance of partnership and collaborative working, as opposed to competitive behaviour. Within the school of strategic management, ‘*collaborative advantage*’ was conceptualised. According to Huxham (1993), this means that ‘synergy can be achieved by integrating the resources and expertise of one organization with that of others’. Partnerships can contribute to competitive and/or collaborative advantage in the following ways: providing *economies of scale and economies of scope* in the provision of certain services or activities, and *opportunities for mutual learning* between partners (Bovaird 2004). The relationship between ‘competitive advantage’ and ‘collaborative advantage’ is not a kind of substitution. It is argued that only when all participants have become expert in achieving ‘collaborative advantage’ with their partnership is it likely that the partnership as a whole will be able to gain competitive advantage against other rival partnerships (Huxham 1993; Kanter 1994).

In the modern business and corporate world, it is not uncommon for businesses to cooperate with their stakeholders for shared objectives such as cost reduction, joint technology development, and shared market. Kanter (1994) argued that such arrangements move along a continuum from weak and distant to strong and close. She identified three major types: at one extreme, in *mutual service consortia*, similar companies in similar industries pool their resources to gain a benefit; at mid-range, in *joint ventures*, with the strongest and closest collaboration in *value-chain partnerships*.

Historically, although international cross-licensing agreements were a widespread form of cooperation in manufacturing as early as the 1930s and, after 1945, many large corporations formed joint ventures with local companies in order to start up operations in foreign countries, it was not until the 1980s that real strategic alliances began to develop (Dussauge & Garrette 1999). Since the 1990s, forging such alliances has extended beyond national boundaries to multinational companies, the main players of globalisation (Bleeke & Ernst 1991; Kanter 1994). Longer-term strategic alliances typically involve closer cooperation than this, with relationships based on trust, sharing of assets (including knowledge bases) and a commitment to mutual learning opportunities (Lorange & Roos 1992; Dror & Hamel 1998).

## Public-private partnership

When we think of partnerships between government and business, it prompts us to better know what ‘Public-Private Partnerships’ (PPP) mean. As Wettenhall summarised, PPP is becoming a more established concept in the area of public sector management. However, he also argued:

The term partnership is now a dominant slogan in the rhetoric of public sector reform, arguably capturing that status from privatization which held similar dominance through the 1980s and 1990s (Wettenhall 2003).

Jung and Osborne (2008) believe that ‘Partnership is an ill-defined and vague concept that is applied inconsistently across the literature’. Conclusively, in spite of its popularity both pragmatically and ideologically, there is no agreed definition or consensus on an integrative conceptual framework of PPPs (Rosenau 1999, 2000; ed. Osborne 2000; Wettenhall 2003; Hodge & Greve 2007; Khanom 2009).

According to Osborne's and Jung's (2000) analysis, two broad schools of thought can be identified within PPP and partnership literature. Such observation is echoed by Hodge and Greve (2007) in their international review of PPPs.

The first school of thought sees partnership as mainly a language game, drawing attention to the moral appeal of the concept. While ideas such as 'contracting out', 'market' and 'privatisation' carry negative associations and cause opposition in New Public Management in western countries, 'partnership' heralds inclusiveness, synergy, harmony, moral value and superiority (Hodge & Greve 2007). The second group perceives partnership as a governance tool and a practical answer to increasingly interdependent and complex social systems (Lowndes & Skelcher 1998; Peters & Pierre 1998; Rhodes 1988, 2007; Stoker 1998). However, there is little definitional consensus about this umbrella term.

Traces of the CBP development can be found in both schools. Leaders of Customs may use partnership as a pleasing 'selling' phrase both among internal and external stakeholders. This is consistent with the views of Teisman and Klijn (2002) and Wettenhall (2003) who suspect 'partnership' in the government to business context may be just 'rhetoric rather than reality'.

On the other hand however, there is evidence that some of the principles of partnership are being translated into tangible CBP measures, especially in developed countries. Implementing AEO programs at the global level can also be seen as a step forward in forging the CBP.

Literature on the theoretical roots of partnerships and PPPs has highlighted several possible reasons for the development of this partnering approach (Linder 1999; Wettenhall & Thynne 1999; Wettenhall 2003; Selsky & Parker 2005; Khanom 2009). In short, these developments appear to be linked to collaboration theory (game theory), economics (transaction cost), organisation theory (resource dependence), and governance theory (network and others). All of these theories shed light on why PPPs are needed and how they are designed and implemented.

**Game theory.** Why do different individuals and organisations like to cooperate in their transactions and interaction? Axelrod's (2004) application of game theory in economic development partnership between a donor and a recipient is meaningful and helps to understand partnerships in the context of a PPP. Axelrod's studies found that to a certain degree, cooperating partners working on a problem tend to cooperate and bring about mutual benefits, rather than parties who do not work together.

Such discussions on game theory can be extended in a meaningful way to help our understanding of the relationship between Customs and business. Similar to prison/prisoner relationships, the traditional command-and-control model between Customs and business has a history of low trust, adversarial approaches, and differences in opinion on many issues. However, under a model of partnership, misunderstanding and misinterpretation can be minimised, with enhanced communication, cooperation, consultation and collaboration between Customs and business.

**Transaction cost theory** is one of the main thrusts of the new institutionalism in economics and sociology. The key notions are that individuals are self-interested, opportunistic and bounded by rationality; any transaction between entities incurs cost; contractual relationships may be unreliable; there is always a problem of information asymmetry; and concerns over transaction costs may encourage parties to cooperate to minimise those costs.

Applying these theoretical arguments to the CBP, it can be assumed that both Customs and business seek to reduce costs (financial and non-financial) in their interactions. As such, partnership may be an institutional innovation to lower transaction cost.

The third area of discussion is **resource dependence**. This idea falls into the sphere of organisational development by taking the perspective of meeting organisational needs or solving organisational problems through cross-boundary cooperation. The core arguments are:

- organisations collaborate because they lack critical competencies and cannot develop them on their own or in a timely fashion
- their environments are more uncertain or turbulent today
- many resources are scarce, and environments are turbulent
- any organisation has an inherent tendency to attempt to overcome uncertainty.

These arguments may be particularly relevant to the Customs context. The tension between increasing workloads and reduced resources compels Customs to seek external resources from the private sector to meet its policy objectives, such as information, expertise, commitments and support. On the other hand, the resources of information and power held by Customs are also valuable to the business sector.

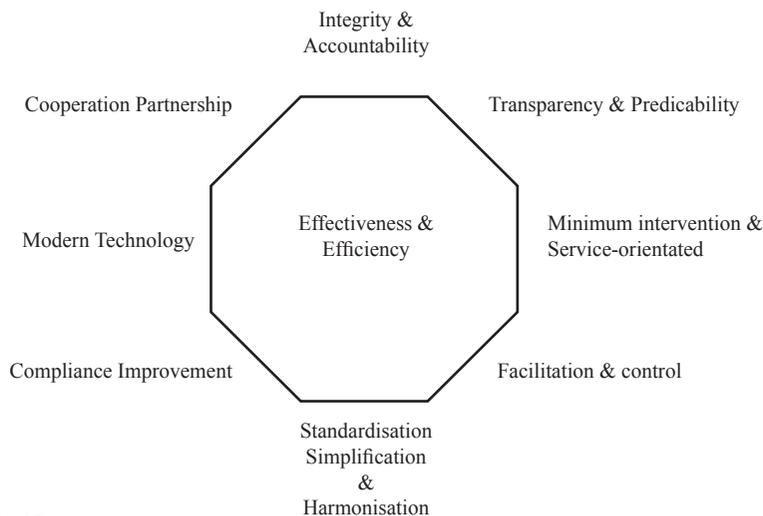
Finally, **governance and network theory**. Nearly all of the literature on PPPs traces its origin to the broad themes of New Public Management and governance reform. The logic is that the boundaries of the public, private and social sectors are blurring (Rhodes 1988; O’Toole 1997; Stoker 1998; Pollitt 2003). Such blurring of sectoral boundaries occurs when an organisation in one sector adopts or captures a role or function traditionally associated with another sector, such as when governments contract out social welfare functions to nonprofit organisations or business.

Another element is the emergence of ‘wicked problems’, which are problems well beyond the boundary of one organisation (Rhodes 1988). It means that traditional sector solutions cannot address certain challenges and therefore, must be enhanced by learning and borrowing from expertise in other sectors. This has led to increased emphasis on governance through network structures as a ‘new process of governing; or a changed condition of ordered rule; or the new method by which society is governed’ (Rhodes 1988).

Rhodes (1988) put forward the bold notion of ‘governance without government’, which is sometimes coined as ‘the third way of governance’ (Stoker 1998). Based on Rhodes’s seminal work, network theory in public administration has developed. PPPs come within such discourse.

This broad theoretical and practical development in governance has much bearing on the understanding of the CBP. Firstly, the main principles for a ‘modern’ Customs can be identified as being the underpinning of good governance, transparency, accountability and integrity, for which cooperation and partnerships with outside stakeholders are critical (WCO 2005). The WCO has set out these principles (see Figure 1).

Figure 1: Modern Customs: governance perspective



Source: WCO 2005.

Secondly, as part of government, customs reform must remain consistent with the pace and priorities of administrative and/or governance reforms occurring in their countries. Thirdly, customs modernisation is a holistic process, and the effectiveness of the CBP is contingent on effectiveness of other aspects.

However, we must realise that equal status, that is, power among participants proposed by the network theory, may not be applicable to the CBP because the CBP arrangements, informal or formal, are generally initiated or 'dominated' by Customs. This raises doubts about whether such partnership is 'genuine' or not and this will be expanded upon later in this paper when we seek to analyse the CBP from a business perspective.

To summarise, the literature suggests that the CBP should be understood under the broad movement of New Public Management and governance reform, in which PPP has been a key concept and commonly utilised tool. However, the CBP is unique: it differs from general PPPs as CBP arrangements concentrate on assisting Customs, supposedly to develop better policy, standards, and guidelines, and to enhance compliance of the industry, rather than on jointly providing a service. Or are they different? This question will be developed further, particularly by a better understanding of what Customs and business want from a CBP and how this should be put in place.

### 3. Development of CBP under the WCO framework

The concept and practice of the CBP is not new in the customs environment. The developments of CBP are embodied in three key WCO instruments: the Revised Kyoto Convention (1999), the Framework of Standards to Secure and Facilitate Global Trade (the SAFE Framework) (2007), and the policy document 'Customs in the 21st Century' (2008).

Firstly, the Preamble to the Revised Kyoto Convention, calls on:

... cooperation wherever appropriate with other national authorities and *the trading communities* (emphasis added).

General Annex, Chapter 1, Article 3 further stipulates that:

The Customs shall institute and maintain *formal consultative relationships with the trade* to increase co-operation and facilitate participation in ... (emphasis added)

These two provisions formally establish the principle of partnership in the process of policy, stressing wide participation with business and institutionalisation of the relationship. On an operational level, special procedures for *authorised persons* under transitional standard 3.32 are stipulated, and the principle of compliance and facilitation is upheld. However, under the concept of authorised persons, trade security is not yet treated as a 'must have' condition.

Secondly, detailed standards are incorporated in the SAFE Framework (2007) and the WCO AEO Guidelines (2009) where the scope and dimensions of partnership are expanded. Under the pillar of Customs-Business partnership, six standards are outlined to establish the international accredited trader regime. The AEO guidelines serve as a starting point for national AEO programs. The key notion of the AEO regime is to adopt integrated international supply chain management and control to secure trade security and facilitation.

Under the SAFE Framework, an AEO is defined as 'a party involved in the international movement of goods in whatever function that has been approved by or on behalf of a national Customs administration as complying with WCO or equivalent supply chain security standards' (WCO 2007, p. 36). The scope of AEO encompasses all stakeholders in the international supply chain: manufacturers, importers, exporters, brokers, carriers, consolidators, intermediaries, ports, airports, terminal operators, integrated operators, warehouses, distributors. It can be said that an AEO is a more advanced stage of a CBP arrangement.

Finally, the WCO reconfirms CBP as a key building block in its strategic policy paper, 'Customs in the 21st Century' (WCO 2008). In this blueprint for a future modern customs environment, it reiterates:

Customs in the 21st Century should enter into strategic pacts with trusted economic operators. Customs needs to understand the concerns of business, while business needs to know the requirements of Customs. Most importantly, there is a need to translate this relationship into a partnership that results in mutually beneficial outcomes (WCO 2008, p. 7).

Tracing the conceptual and pragmatic development of partnerships within the WCO framework, we can tell that a partnership-like relationship between Customs and business is not a new concept. The dimensions of such relationships become ever more substantial and concrete through 'trusted persons' to 'authorised economic operators'. However, it should be noted that AEO is not all about CBP. CBP should not stop at the implementation of AEO programs. Therefore, incorporation of CBP as an integral part of modern Customs will indicate that building and sustaining partnerships has gone beyond the operational or technical aspects of customs administration. Rather, effective external cooperation and partnership with stakeholders (mainly the business sector) is a hallmark of modern Customs.

#### **4. Customs and business: what business seeks in a partnership**

So far, this paper has been concerned with the use of the term 'partnership' by Customs and has suggested that the phrase 'partnership with business' is being used with increasing frequency. This 'partnering with business' phraseology is seemingly becoming an automatic part of the first response to any and all contemporary trade or compliance issues being addressed by Customs.

The question now is whether this is positive for industry, as it is potentially able to increase its input to future policy and standards, or whether this phrase of 'partnership with business' is at risk of being over-used and seen more as a 'marketing tool' or even as a 'gimmick' by Customs to show that it has become inclusive in addressing trade and compliance issues.

The question can, perhaps, start to be answered by looking at whether there has been or are 'concrete' partnerships that are delivering tangible benefits to both Customs and business, or whether such partnerships are merely a mechanism for industry to have input to customs considerations. Indeed, we have 'concrete' government-business partnerships against which we can benchmark if applying the PPP model that is being used with increasing effect in many countries. The PPP model has been delivering clear commercial benefits to the private sector whilst government partners have enjoyed seeing delivery of services that are likely unable to be provided without private sector investment. Although PPP projects are generally applied to infrastructure, education, and health, as opposed to law enforcement, regulation and revenue collection, there are factors to consider for the partnerships being built between Customs and industry.

There are a number of Customs and industry-based partnerships in place for us to consider such as the Customs-Trade Partnership Against Terrorism (C-TPAT), and the related 'Customs-to-Business Partnership' pillar of the SAFE Framework mentioned above. However, from a more commercial perspective, do both parties get clear benefits from these types of CBPs, or are they a little 'one-sided'? One view expanded upon in this section is that rather than a true 'partnership' we have a 'relationship' in which the partnership is being pushed on to business in what one industry representative body for the transport sector alluded to as a 'forced marriage' to facilitate legitimate trade (BIMCO 2010).

From a business perspective, we need to explore what business considers is a partnership and then analyse whether these considerations are being met in the current CBP developments. The business view of a partnership can be broken down into tangible basic elements just as we did when broadly defining a 'partnership' in the introduction to this paper. In a business context however, the term 'partnership' is more focused and likely means: that there is more than one party in the relationship; that there is a

common enterprise or objective from the relationship; that there is an economic or other benefit by working together; and that there is some legal formality to the relationship.

The remainder of this section of the paper applies these elements to the current situation.

### ***Is there more than one party in a CBP?***

There are clearly two parties in a CBP: firstly, Customs and secondly, the 'business'. We do, though, need to define the parties which comprise both sides as we have an almost 'layered' or 'tiered' range of 'partnerships' alluded to in the CBP context. There can be partnerships between Customs and business at the 'industry-wide level' which generally occurs as a means for customs authorities to be 'inclusive' in terms of policy development or in making changes to administration or process. These relationships can be at the international level and at the national level. Examples may include the 'partnership' between the WCO and say, the International Chamber of Commerce (ICC), which the ICC interestingly refers to as a 'public-private' dialogue when referring to the work it is doing with the WCO to implement an efficient AEO program for global businesses (ICC 2009).

On a separate level, there may be relationships created between the customs agency of a nation and a representative industry body. An example here may be a recent agreement between the Royal Thai Customs Department and the Federation of Thai Industries (FTI) on implementing the National Single Window in Thailand (Wichit Chaitrong 2011).

Finally, there will be relationships between individual customs agencies and individual business entities for purposes of facilitation programs such as the AEO, or border protection initiatives such as 'Frontline' in Australia, or the 'Industry Partnership Program' (IPP) in the United States.

### ***Common objectives between Customs and business***

It could be stated that business would probably not choose to subject themselves to any form of regulation! However, provided business has indeed accepted that there are sovereign laws around the importation and exportation of goods, then this opening statement could be adjusted to state that business would choose not to subject themselves to any unnecessary regulation. From this, it can be derived that the objective of business in this context is to reduce the amount of intervention by Customs in the importation/exportation process, thereby reducing costs and being able to rely on the movement of goods and their availability for sale.

Whilst customs agencies recognise their roles in administering import/export legislation and operating the respective import/export processes, they too would seek to achieve these objectives in the most cost-effective manner. This would include reducing intervention where possible, limiting such resource-intensive intervention to only those businesses or transactions whose risk warrants it. These risks too are changing, and whereas revenue has been a traditional focus, risks now increasingly include security against terrorist attack, and the potential for trans-national crime.

Business, on the other hand, has commercial objectives and seeks to both maximise revenues and reduce costs to deliver desired levels of profitability. Importantly, we need to split the business community into the larger 'legitimate' and 'seeking to be compliant' categories whose risks are inherently lower than the other categories of trade that would be considered 'illegitimate' or 'profit before compliance' and pose greater risks. Whilst both legitimate and non-compliant businesses would seek lower rates of customs intervention as objectives, legitimate traders also have objectives relating to 'level playing fields in markets' and would share a common objective with Customs of incorporating strong risk management and compliance procedures in import/export processes.

Limited intervention in a low-risk environment is a central part of the modern customs approach; it not only allows for cost-effective border management, it also allows for trade facilitation, so important to the growth of the economy. Trade facilitation initiatives benefit both the business community and

governments. Industry is better able to compete locally and internationally in a number of areas relating to time, predictability and costs which will be discussed in more detail below. Whereas for the customs agencies, they are better able to ‘enhance controls, ensure proper collection of revenues due and at the same time contribute to the economic development through increased trade and encouragement of foreign investment’ (WCO n.d.).

In short, there is likely to be a common objective for business and Customs in a partnership context, that is, to reduce the level of intervention in international trade transactions, albeit for differing reasons.

### ***Economic benefit from working together***

This element of a partnership is certainly a focus for business, and is perhaps an element for which there can be tangible measurement. There are numerous and often significant costs in conducting international trade in goods, and the analysis becomes one of whether, and by how much, these costs can be lowered through reduced customs intervention directly attributable to the partnership.

Whilst the nature and value of costs will vary from trader to trader dependent on factors such as the type of goods, speed of delivery required, scale of operations, level of knowledge, and so on, there are studies which have attempted to look at the impact of various costs associated with the import/export of goods, some of which are directly attributable to the clearance process.

Looking at these relevant costs of international trade, we find several surveys and studies have attempted to put a value on the cost expressed as an *ad valorem* tax equivalent (Anderson & van Wincoop 2004; Brooks 2008). In this regard, ‘international trade costs’ were found to be equivalent to a 74 per cent *ad valorem* tax, of which 21 per cent are transport costs, and 44 per cent are border-related costs. Significantly, these figures are for developed economies, and can rise markedly in developing economies.

In this cost figure, there is also reference to ‘time costs’ which for the United States were measured at an *ad valorem* tax equivalent of 0.8 per cent per day while goods are in transit (Hummels 2001), which equates to a 16 per cent *ad valorem* tax for an average sea cargo consignment in transit for 20 days. These costs can then rise significantly depending on the nature of the business and/or the nature of the goods being traded. For example, we would see many more cost sensitivities for perishable goods, or businesses such as express couriers whose business relies on ‘next day’ or a guaranteed time of delivery.

Hummels (2001) also suggested that time costs hurt international competitiveness and that in the case of the United States, business is 1-1.5 per cent less likely to trade with a country for every additional day of perceived delay it may place on moving cargo. Whilst customs processes are not the only factor in time delays, they certainly are contributors. That suggests that customs authorities need to continually look at possible reforms and other opportunities to reduce time costs for industry in line with other time savings which are occurring, such as speed and routing of ships and aircraft and stevedoring practices.

Another area of economic benefit which is sought by business is that of ‘certainty’. This applies not only to access to goods upon arrival (or that they will be loaded on to the nominated export vessel) but also applies to ongoing treatment in terms of reporting, payment of duties and taxes and processes (GEA 2010). This certainty allows businesses to plan for pricing, distribution and long term contracts with either suppliers or customers, each of which can have an impact on eventual costs.

Therefore, where business believes it will be able to reduce costs in the areas of reduced transport times, and in less intrusive and more certain clearance processes, it will be keen to form such partnerships with Customs as clearly there are potential economic benefits.

Interestingly, if we look at the relationship between the customs process and some of the key international trading costs of time, border clearances and certainty, we should also ask whether Customs can reduce these costs through improvements and reforms without requiring a level of formal partnership with business. Should it be the initiative of national customs agencies to improve and reform their processes

and procedures to create economic benefits and productivity for their economies, irrespective of how business operates?

Further, should Customs attach the benefits of reduced intervention, or limit these benefits only to those businesses that go through certain processes and certification to enter a formalised partnership with Customs? Thus, we come back to the earlier concept raised, that of a ‘forced marriage’ where perhaps one partner is gaining more from the relationship and certainly enjoys more control over that relationship.

There is scope for industry to set up trading systems and other business practices which ensure full compliance with national revenue, reporting and security regulations as this must reduce costs by avoiding non-compliance and lowering risk ratings (and associated attention and intervention) by Customs. Again, this benefit can occur irrespective of a partnership arrangement with Customs, and just be ‘good business practice’. As such, this question is likely best dealt with by observing that if there is some formal recognition of a trader’s low risk and guaranteed benefits flowing from this recognition, we again return to a point where ‘yes’ there is an economic benefit for individual businesses to enter partnerships with Customs.

### *Is there a formal agreement?*

The term ‘partnership’ needs to be used with some care from a business perspective as in many jurisdictions the term may have a legal meaning, and may also convey that there is some form of formal legal agreement such as a contract which covers structure and accountabilities created by the arrangement. One issue, therefore, in a CBP is to look at the array of existing partnership arrangements and determine if these set out such accountabilities, and perhaps more importantly, whether they are binding or simply representative of a type of relationship.

In 2010 the WCO celebrated ‘Customs-Business Partnerships’ (CBP) as its theme on International Customs Day. An article by the WCO Chairman (WCO, 2010b, p. 16) outlined the WCO’s thoughts and achievements in terms of these partnerships and interestingly, did not appear to refer to any formal agreement documentation or processes. Instead, terms like ‘collaboration’ and ‘co-operation’ are used which suggest that CBPs are very much at a strategic, ‘direction setting level’, and played out in the context of forums and meetings between Customs and industry. Nothing in the article suggests that these partnerships are contractual or binding on either party in any way and it is assumed that Customs will eventually set standards and guidelines, albeit with industry input, with which industry will need to comply. These types of joint discussions are occurring at the WCO level with international industry representation (ICC 2009), and at national levels between Customs and national business representatives.

The main benefit of this type of partnership for industry is perhaps one of industry being able to have these various standards and guidelines created, and then adopted in forms which will result in future economic benefits to the industry. However, the question can be asked as to whether this in fact is a ‘partnership’ or whether it is simply a new approach to policy and standards development, an approach which now is more inclusive of industry.

The same article from the WCO Chairman does discuss the AEO concept, which is a point worth exploring further. Potentially, the AEO program is the only actual CBP which will meet all of the elements that are discussed in this paper and constitute a ‘partnership’ which is ‘formal’ and which has joint objectives and economic benefit. The granting of recognition and entry to the AEO is likely to be the ‘formal agreement’ between Customs and business. However, the form of this recognition of AEO status will vary from country to country, but much of the literature reviewed to date suggests that this will be in the form of ‘certification’ rather than contractual commitment. Currently there are around 15 AEO programs in operation which follow this principle (BIMCO 2010).

Again, ‘certification’ may suggest that there is a lack of a binding nature, and that a failure to adhere to the aspects of the AEO program would mean removal of a business ‘certification’ as a consequence. It is

not clear what consequences would be placed upon a customs agency if, for example, it failed to release low-risk cargo of a certified business in a timely manner.

Thus, perhaps that is what is missing from the current concepts of the CBP which apply at a Customs to individual trader level – a form of binding contractual arrangement for which clear accountabilities are spelt out for each partner, along with consequences for each partner should any conditions of the agreement be breached. However, from our review, under existing ‘direction setting’ partnerships, industry is still lobbying for improvements to actual AEO programs’ standards, data, mutual recognition, IT systems, and so on, rather than looking at any binding nature of any operational agreements (ICC 2009; BIMCO 2010)!

### ***What next for Customs-Business Partnerships?***

If we look back to an observation in this paper about the argued success of the PPP model, elements of that success can be examined in the context of the CBP. These elements would include clarity in shared objectives and risks of the public sector service provider and the private sector service provider to effectively deliver those services, and of legally binding contractual agreements which set out the terms of the partnership including the remuneration to the private sector service provider.

In its purest sense, a PPP model operating in the CBP context suggests that a customs agency contracts a private sector service provider to undertake the clearance of import/export cargo, and collection of revenue. This is, in fact, not too distant from the AEO level CBP, where the level of compliance, security of supply chains and remittance of accurate revenue liabilities have been ‘moved’ on to individual businesses with Customs ‘moving’ to a certification role.

What we can use from the PPP model, particularly at the AEO level, is the formality of the agreement in that the contracting parties can clearly specify a range of roles, responsibilities, risks and accountabilities in the partnership, about which both parties will be held to. The formality certainly gives a greater perception of equity in the CBP for industry, and would see Customs taking responsibility for any failures on its part through normal contractual provisions covering breaches. So, we may have lessons for CBP in the PPP model approach.

## **5. CBP: a possible framework for collaborative governance**

Based on the theoretical review and input from a business perspective, the authors have attempted to construct a conceptual framework for design and implementation of the CBP. Among the theoretical observations discussed above, the literature on ‘collaborative public management’ is perhaps more relevant. In 2006, *Public Administration Review* dedicated a special issue to a symposium on collaborative public management and invited noted scholars and practitioners in public administration to take part (O’Leary, Gerard & Bingham 2006). The aim was to generate a common definition and to benefit from cross-fertilisation in academic fields.

The term ‘collaborative public management’ describes the process of facilitating and operating in multi-organisational arrangements to solve problems that cannot be solved or easily solved by single organisations. ‘Collaborative’ means to co-labour, to cooperate to achieve common goals, working across boundaries in multi-sector relationships.

In the literature on ‘collaboration’, an integrated framework to understand cross-sector collaboration proposed by Bryson, Crosby and Stone (2006) is inspiring. Their framework is based on extensive review of the literature relating to cross-sector collaboration, organisational development and the notions of collaboration formation, process, structure and governance, constraints, and contingencies. In this paper, the authors have adapted that framework to the context of CBP.

We start by replacing the term ‘collaborative public management’ with the term ‘collaborative governance’ where we are looking to achieve ‘good governance’ in the context of Customs and business working towards building a partnership to deliver good policy, efficient trading and full compliance with relevant customs laws. The framework identifies a structure and key factors in the CBP, as we build a possible framework product which can be found in Figure 2.

Under each cluster of factors, brief theoretical and practical discussions are put forward, and propositions for designing and implementing the CBP arrangements are discussed.

### Initial conditions

This first group of issues, ‘Initial conditions’ relates to why the CBP approach has emerged. This cluster focuses on environmental factors, what has gone wrong and what has happened to give rise to the need to introduce a CBP.

**Environment factors.** We start the discussion by going back to the idea of ‘resource dependence theory’, and ask whether Customs and business have the tendency to build linkages to decrease uncertainty and increase organisational stability. Bryson, Crosby and Stone (2006) identified that collaborations are subject to both competitive and institutional pressures. The competitive pressures have direct impacts on business, as it needs to build competitive advantages in ways such as improving supply chain management to reduce costs. The institutional environment for a CBP can include the broader governance reform at national level, challenges posed by globalisation like requirements of trade facilitation and trade security, increased public expectations and other strategic drivers (Mikuriya 2007; Widdowson 2007; WCO 2008).

It can be argued, therefore, that a CBP is more likely to form or emerge in turbulent environments which include both competitive and institutional dimensions.

**Social failure.** Bryson, Crosby and Stone (2006) refer to social failure as ‘the often-observed (albeit general) agreement on the problem definition that single-sector efforts to solve a public problem are tried first and found wanting before cross-sector efforts are attempted’. In terms of the key notion of integrated international supply chain management, the WCO (2007) acknowledged that Customs does not own supply chain but Customs’ work has much bearing on efficiency and effectiveness of supply chain management.

In the face of increasing complexity and volume of trade, and potential risks in revenue collection, and community protection, Customs itself cannot take all the responsibility. Therefore, Customs and business are more likely to collaborate when they realise separate efforts by one side cannot address the cross-boundary problems or issues.

**Direct antecedents.** Bryson, Crosby and Stone (2006) point out three conditions. Firstly, a brokering organisation or a legitimate convener can facilitate collaboration. As for the CBP, Customs is usually the initiating party and leaders from Customs have the ability or the authority in many cases to conduct boundary-spanning activities.

Secondly, there needs to be an initial agreement on the problems identified. This may be problematic, for example, in programs like the AEO as those programs are focused on trade security for Customs, which business may not yet have flagged as a priority. .

Thirdly, the role of prior relationships or existing networks is important for any CBP. Again using the AEO program as an example, past compliance and adequacy of a trader’s internal business systems are important. Thus, in terms of antecedents, a CBP is more likely to succeed when one or more linking mechanisms like a brokering organisation, agreement on the problem, and prior relationship are in place.

## Process component

Different authors may stress different aspects of partnership building. Bryson, Crosby and Stone (2006), for example, have identified six components of partnership building which are relevant here: forging initial agreements, building leadership, building legitimacy, building trust, managing conflict, and planning. It is noted that discussion of process may overlap with some aspects of initial conditions and structure. For example, a key process in partnership is negotiating formal and informal agreements about the purpose of such a partnership. As well as agreeing with the purpose, partners may consider elements of structure, such as roles, responsibilities and decision-making authority.

**Forging initial agreement.** For collaboration, the parties should first negotiate and agree on a broad purpose, mandate for each party, resources commitment, decision-making structures, and so on. Such agreement can be informal at the beginning, but formal agreements are expected to evolve to sustain the partnership and support accountability. The drafting process itself is also meaningful as high participation and involvement by stakeholders and implementers are critical.

Next, consider the actual CBP arrangements discussed in this paper, where it is thought that three levels of agreement could evolve. First is the level of goodwill and intention. As stipulated in the preamble to the Revised Kyoto Convention, Customs should encourage business to participate widely in policy consultation and other relevant discussions. This level is likely to be more at an 'industry-wide' level, with a representative industry body partnering with Customs through a mechanism such as a non-binding Memorandum of Understanding (MOU) or exchange of goodwill letters.

The next level is some form of approval, such as the issue of a licence or permit, through to a form of certification, such as that under an AEO program. However, it is argued that this type of approval or certification is perhaps somewhat one-sided with all the decisions and approvals granted by Customs. Finally, there is an advanced level where a formal agreement, such as a legally binding contract, is expected which holds both partners to account and could well be a future extension of the AEO program. For this advanced or more formal level of partnership agreement, lessons can possibly be drawn from PPP where formal agreements such as legal contracts are in place.

**Building trust.** Trust in relationships is often depicted as the essence of collaboration. Trust can comprise interpersonal behaviour, confidence in organisational competence and expected performance, and a common bond and sense of goodwill (Chen & Graddy 2005). It is emphasised that building trust is an ongoing requirement in any relationship (Huxham & Vangen 2000, 2004). Collaborative partners build trust by sharing information and knowledge and demonstrating competency, good intentions, and follow-through. In this regard we believe that a CBP is more likely to succeed when trust-building activities are continuous.

**Leadership.** Political will and commitment are recognised as priorities in customs modernisation and capacity building (WCO 2004). Partnership building provides multiple roles for formal and informal leaders. Formal leadership might include co-chairs of Customs-Business consultative committees, coordinators in charge of AEO programs, and leaders of trade associations. It is expected that these people need formal and informal authority, vision, long-term commitment to the partnership, integrity and relational and political skills. Conversely, informal leadership is especially important because participants often cannot rely on, or wait for, clear directions from the formal process. Therefore, a successful CBP requires formal and informal leadership at many levels.

**Communication.** Communication is widely recognised as a key building block. Open, timely and effective communication will reduce possible misinterpretation and misunderstanding between Customs and business. This is particularly so for programs like the AEO where communication needs to include identifying points of contact, establishing procedures and mechanisms to report incidents in supply chain

management, and mutual training programs. The CBP is more likely to be fostered through effective communication between Customs and business counterparts, and relevant mechanisms should be in place.

**Mutual benefits and incentives.** Partnership, in its essence, should be voluntary, and certainly not perceived as a ‘forced marriage’ as we discussed earlier. Therefore, tangible benefits should be designed and provided to attract business to join a partnership. Possible benefits that Customs can offer to business could include measures to expedite cargo release, reduce transit processing time and logistics costs, access to information of value to AEOs, special measures during periods of trade disruption or elevated threat level, and priority in new cargo processing programs (WCO 2004; USAID 2010). Thus, mutual benefits should be embedded in any CBP arrangements. For voluntary AEO programs, tangible incentives should be identified and provided to business.

**Managing conflict.** Conflict is an integral and permanent facet of partnerships (Jung & Osborne 2008). Bryson, Crosby and Stone (2006) pointed out that conflict can emerge from many circumstances including differing aims and expectations of partners, differing views about strategies and tactics, and from attempts to protect or magnify a partner’s control over the partnership. No matter how positive the development of partnerships appears to be, the inherent conflict of interest between Customs and business cannot easily be removed. This is because the primary role of Customs is as an enforcement agency, but the inherent conflict can be managed. Conflict may be worse when the partnering parties differ in status, and industry may view itself as the least powerful of the partners should issues arise. Conflict is unavoidable in any partnership arrangement, but a CBP is more likely to succeed when partners use resources and tactics to manage conflict effectively.

**Transparency.** Under the explanation of ‘game theory’, transparency of gaming rules enables gamers to expect the other party’s reaction in a predictable, clear manner. Transparency, as a key principle for modern Customs is critical in designing and implementing a CBP. Only after businesses understand the requirements of Customs can they improve compliance. Equally, they need to know how Customs will respond when differing views on compliance issues arise. We consider that a CBP is more likely to succeed when Customs is dedicated to establishing channels and mechanisms to readily provide necessary information to business for better compliance.

### Structure and governance

Bryson, Crosby and Stone (2006) argued that structure is influenced by context, including system stability and the availability of resources. Another factor to be considered is that structures are likely to be dynamic because of the ambiguity and complexity that is inherent in collaboration. This sheds light on the various cooperation arrangements between Customs and business.

### Contingencies and constraints

Contingencies influence a partnership’s process, structure, and governance, as well as its overall sustainability. There are two major factors relevant to CBP: power imbalance and risk allocation.

**Power imbalance.** According to Huxham and Vangen (2004) power imbalance among collaborating partners can be a source of mistrust and therefore have an impact on effective collaboration. As discussed above, the relationship between Customs and business is traditionally dominated by Customs which can create barriers to an equal partnership and can be a source of conflict. Therefore, a CBP is more likely to succeed when it builds in resources and tactics to deal with power imbalances including, for example, formal agreements which provide for certain rights and redress for business in times of dispute.

In any formal partnership agreement between Customs and business it would be advisable to include dispute resolution processes and the identification of consequences should either party breach any clause of that agreement. In the context of equal partners and power balance, this would include consequences

for Customs in breaching the agreement such as a failure to release cargo on time, and consequences for business such as non-notification of key changes to systems and personnel.

**Risk allocation.** In any partnership we look for mutually achievable objectives and benefits which can be shared. However, the converse is that there may be risks of failure to meet objectives and of not receiving benefits. These risks need to be understood and ways of managing them need to be assigned to each party. The relationship can again become one-sided or imbalanced if only one party carries all of the risk.

To expand on this concept, the AEO program does create new risks in that there will be minimum intervention by Customs in the transactions of a certified trader. This is a risk that needs to be identified and captured in any formal partnering agreement and may, for example, lead to a clause in an agreement which guarantees automatic or speedy release of cargo that has been identified as being for a certified trader and within the scope of the AEO program. If, say, Customs wanted to retain the right to intercept and subject a certified trader's transaction to full risk management processes, the business is no longer an equal partner and loses benefits such as absolute certainty and timing of delivery.

On the other hand, business needs to look at risks associated with the AEO program, including granting to Customs the right to examine all business systems of the organisation which may relate to compliance and extend this right through the supply chain to service providers such as brokers and freight forwarders. If, however, business was to insist on the right to deny access to certain areas which are considered too commercially sensitive, Customs would feel that the balance was in favour of business.

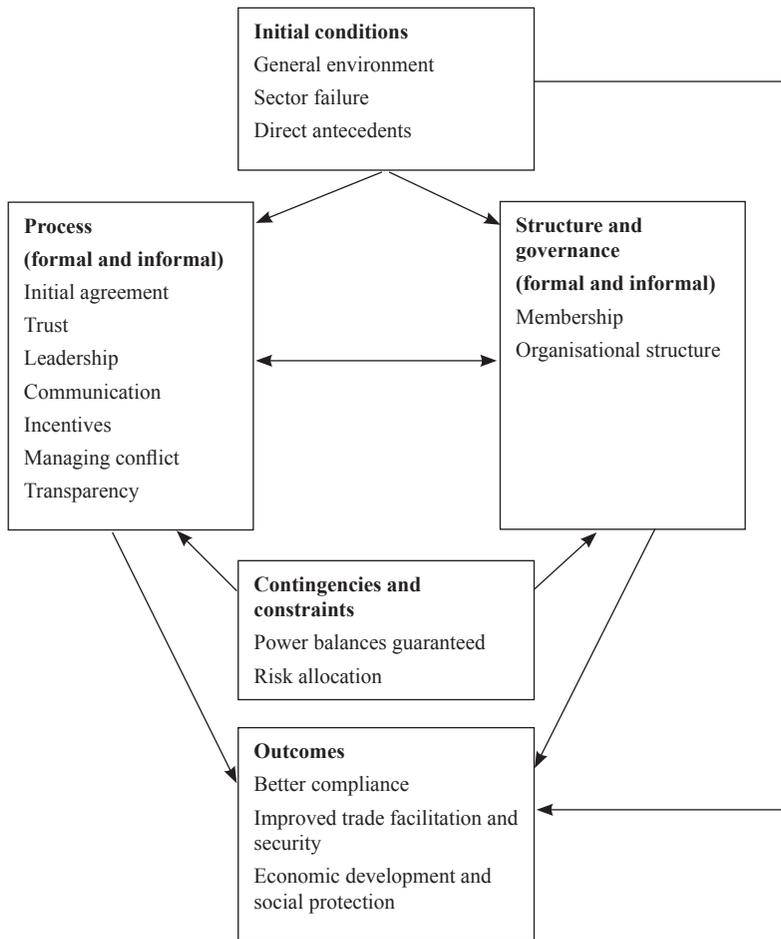
Thus, if neither side is able to accept risks such as in these examples, the benefits to Customs and business of partnering in programs like AEO are minimal. However, if one side was to break the agreement, perhaps business establishes new controls in its systems which are inadequate and are allowing errors to occur, this is a different issue and dealt with through redress mechanisms in the formal agreement, and not dealt with by looking to establish 'risk-free partnership' agreements.

## Outcomes

Finally, we look at the outcomes. Bryson, Crosby and Stone (2006) argued that creating and sustaining cross-sector collaboration ought to be the production of 'public value' that cannot be created by single sectors alone. Public value in cross-sector collaborations is more likely created by making use of each sector's characteristic strengths while finding ways to minimise, overcome or compensate for each sector's characteristic weaknesses. In regard to the CBP, expected outcomes are better compliance, improved trade facilitation and security, and ultimately, economic development and social protection. To achieve these outcomes, a CBP is more likely to create 'public value' when it is built on the self-interests and characteristics of both Customs and business.

As Bryson, Crosby and Stone (2006) said, 'cross-sector collaborations are complex entities that defy easy generalisation is an understatement'. The above elaboration of the proposed collaborative framework serves as a basic starting point for both parties of CBP to understand the relationships among the initial conditions, processes, structure, governance, contingencies and outcomes. However, the variables identified above may lead to success, but 'they are more likely to be inter-related with, moderated by, or mediated by other variables; embedded in fairly complicated feedback loops; and change over time' (Bryson, Crosby and Stone 2006).

Figure 2: Custom-business partnership (CBP): a collaborative governance framework



Source: Adapted from Bryson, Crosby & Stone 2006, p. 45.

## 6. Conclusions

The relationship between Customs and business is undergoing a paradigm shift from a ‘traditional bureaucratic model’ to a ‘new governance model’. It may be time to examine the concept of CBP and whether both Customs and business are benefiting from this new approach.

CBP could be examined in the context of the development of some very successful public-private partnerships (PPPs) which themselves have evolved from the broader reforms of New Public Management and governance both in developed and developing countries. Examining the roots of PPPs tells us that CBP is a different model to that of PPPs given the unique role of Customs, however, there may be lessons to adopt for the CBP.

What is important at this stage of development of CBPs is that any perceptions that they are mere ‘gimmicks’ or that they lack substance, are quickly extinguished by setting standards or adopting a framework that ensures future CBPs are effective, beneficial and binding on equal partners. The on-

going development of the AEO program as a type of CBP is a good place to start this new framework approach, which can only improve the quality and perception of quality of the partnerships envisaged by this type of program.

Based on the perspective of 'collaborative governance', this paper puts forward a possible 'conceptual framework' for designing and implementing CBPs in line with this desire to ensure future CBPs have perceived substance. The conceptual exploration is a starting point in the study of the future of the CBP, and more empirical research will be conducted later in order to test the framework.

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