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WORLD CUSTOMS ORGANIZATION

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The *World Customs Journal* is a peer-reviewed journal which provides a forum for customs professionals, academics, industry researchers, and research students to contribute items of interest and share research and experiences to enhance its readers' understanding of all aspects of the roles and responsibilities of Customs. The Journal is published twice a year. The website is at: www.worldcustomsjournal.org.

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INCU (www.incu.org) is an association that provides the WCO and other organisations with a single point of contact with universities and research institutes that are active in the field of customs research, education and training.

Contents

Editorial

This edition of the *World Customs Journal* represents a significant milestone in the *Journal's* history and that of the International Network of Customs Universities (INCU). At the first Partnership in Customs Academic Research and Development (PICARD) conference, which was jointly launched by the World Customs Organization (WCO) and INCU in 2006, there was considerable debate about how the PICARD initiative should be progressed. One thing in particular that I remember clearly was a message we received from a number of delegates – that the development of an international academic journal dedicated to Customs matters was simply too hard to achieve and excessively ambitious. Undeterred, at our 2007 conference, the first edition of the *World Customs Journal* was launched – and the current edition marks a full ten years of publication. So much for the critics!

The purpose of producing such a journal was to provide customs professionals, academics, industry researchers and research students with an opportunity to share and draw upon research, academic commentary and practical insights to enhance its readers' knowledge and understanding of all aspects of the roles and responsibilities of Customs. At the time of the *Journal's* launch, Secretary-General Mikuriya (who was at that time Deputy Secretary-General of the WCO), announced that, in his view, the *Journal* would serve as a valuable source of reference for Customs to meet the requirements of its new strategic environment, and would also serve as the flagship of the cooperative effort being made by the WCO and the academic world. So, as you can see, the Secretary-General has been a strong supporter from the early days of the partnership – and we thank him for his ongoing commitment and support.

In the intervening ten years, the *Journal* has adhered closely to its original purpose, and has lived up to all expectations as it continues to raise the academic standing of the customs profession. To mark the *Journal's* tenth anniversary, we will be producing a commemorative edition of bound volumes, the details of which will be available shortly.

The current edition includes a variety of articles that examine the issue of regulatory compliance management from the perspective of both government and industry, all of which highlight in some way the increasing compliance burden that regulators are placing on the international trading community. One wonders to what extent the WTO Trade Facilitation Agreement will serve to reverse this trend in its efforts to expedite the cross-border movement of goods and reduce the cost of trade through the introduction of simplified and more efficient regulatory procedures. In order for the Agreement to enter into force, two-thirds of the WTO's 164 members are required to complete their domestic ratification process, with 90 member countries having completed this process at the time of writing. In future editions, the Editorial Board would particularly welcome research into the way in which the Agreement is implemented, and the extent to which it achieves its ambitious aims.

David Widdowson
Editor-in-Chief

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Section 1

Academic Contributions

Managing the border: a transformational shift to pre-export screening

David Widdowson

Abstract

Until fairly recently, it has been the practice of customs authorities to screen international cargo upon its arrival in the country, that is, 'at the border', as opposed to pre-screening prior to its departure from the country of export. The concept of what constitutes the border has changed significantly, with an expanded view now encompassing the entire international supply chain. This paper examines catalysts for the pronounced change in practice and identifies the emergence of national security imperatives as the primary reason for the transformational shift to pre-export screening and targeting. The research examines the manner in which the policy has been adopted and applied by individual economies, and the proportion of containerised sea cargo impacted by its adoption. In doing so, related security initiatives and their impact on cross-border trade are addressed.

Introduction

In his article, 'Weaknesses in the supply chain: who packed the box?', Hesketh (2010) highlights the marked contrast between the regulatory scrutiny of passengers' baggage and that of containerised cargo destined for export:

> Imagine arriving at an airport to board a flight. You approach the check-in desk. You are asked the normal questions about your baggage. But consider the consequences of giving some not-so-normal answers. You have never seen the bag you are carrying; you did not pack it and you have only been told what is in it. It is unlikely you would be allowed on a flight. There are strong similarities between this and how we manage information about cargo moving along the international trade supply chain.[1]

Hesketh proceeds to explore strategies to address this anomaly and identifies options designed to provide regulators and other members of the trading community with accurate, timely and reliably sourced information on internationally traded goods at all points in the supply chain.

One may wonder why it has taken so long for customs authorities to focus on such fundamental matters. After all, the potential transport security risks associated with both passengers and cargo and the consequent need for enhanced security measures have for decades been recognised and addressed by both the International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO).

So why have customs authorities overlooked this seemingly obvious need until relatively recently? The answer can be found in the national (and, ultimately, international) cross-border policy imperatives of the day. In this regard, it is pertinent to note that safety and security have been long-standing priorities for transport authorities, whereas the principal focus of Customs has traditionally been revenue collection and trade compliance. And whilst the majority of regulatory responsibilities may be managed by way of more traditional compliance management methods, it is essential for security risks to be dealt with

through prevention rather than detection, ideally at the point of origin. Put simply, an administration's priorities are set by its political masters, and national security has only recently been identified as a priority for Customs.

National cross-border policy imperatives can usually be ascertained from the economy's ministerial or departmental structure; and specifically from the location of the customs administration within that structure. Generally speaking, a country that identifies import revenue and other trade-related matters as high national priorities will locate its customs administration within its finance, revenue or trade portfolio, a practice that is commonplace among most developing and least-developed economies. In Namibia, for example, the Directorate of Customs and Excise, which is responsible for collecting some 85 per cent of the country's tax revenue, forms part of the Finance Portfolio. Similarly, the Royal Customs and Excise Department of Brunei Darussalam is responsible for collecting 98.7 per cent of total revenue, and is unsurprisingly located within the Ministry of Finance.[2]

However, in those countries where import revenue is decreasing in relevance and national security is emerging as the principal cross-border concern, the customs administration is likely to form part of a border protection or homeland security portfolio (Widdowson 2007). This is an increasingly common phenomenon among developed countries. In the United States (US), for example, US Customs and Border Protection (CBP) and US Immigration and Customs Enforcement (ICE) form part of the US Department of Homeland Security; in Canada the customs responsibilities are administered by Canada Border Services Agency, which forms part of Public Safety Canada; and in Australia the policy and operational arms of Customs form part of the Department of Immigration and Border Protection and the Australian Border Force respectively, both of which fall within the federal Immigration and Border Protection portfolio. While not the focus of this paper, it is contended that this trend will soon become prevalent among other developed economies, particularly in light of the current immigration crisis and associated border protection concerns in the European Union (EU) and other regions of the world.

Trade facilitation: the initial catalyst for change

The way in which customs authorities have traditionally performed their role over the centuries can best be described as an interventionist approach, often manifested by regulatory intervention for intervention's sake. However, the latter part of the 20th century saw a change in approach to one which recognised a need to balance regulatory intervention with trade facilitation, due to the mounting pressure from the international trading community to minimise government intervention in commercial transactions. The advent of the global marketplace and the technological advances that have revolutionised trade have further fuelled the momentum of the global trade facilitation agenda and have led to a regulatory philosophy of 'intervention by exception', that is, intervention when there is a legitimate need to do so, based on identified risk.[3]

Consequently, more than two decades prior to the terrorist events of 11 September 2001 border management agencies were already screening international cargo prior to its arrival (but rarely prior to exportation) not for security reasons but for the purpose of facilitating the movement of legitimate trade. By ensuring that consignments complied with trade regulations, Customs and other authorities were able to streamline clearance processes, thereby providing the international trading community with greater certainty, and consequently reducing the regulatory cost of trade.

The desirability of pre-screening and pre-clearance is outlined in various elements of international trade law, including the *International Convention on the Simplification and Harmonization of Customs Procedures*, as amended (1999) (also known as the Revised Kyoto Convention); the WCO's Immediate Release Guidelines (WCO 2006) and the *General Agreement on Tariffs and Trade* (GATT 1994).

In more recent times, the importance and benefits of pre-clearance have been highlighted by the World Trade Organization (WTO) in its *Agreement on Trade Facilitation* (WTO 2013), which represents a Protocol of Amendment to GATT 1994, and which is expected to be ratified in mid 2017. Article 7 of the Agreement, which relates to the release and clearance of goods, provides as follows:

> **1. Pre-arrival Processing**
>
> 1.1 Each Member shall adopt or maintain procedures allowing for the submission of import documentation and other required information, including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.
>
> 1.2 Each Member shall, as appropriate, provide for advance lodging of documents in electronic format for pre-arrival processing of such documents.

This principle reflects the provisions of the Revised Kyoto Convention, which was drafted in 1999 and entered into force in 2006, including Standard 3.25 which provides that 'National legislation shall make provision for the lodging and registering or checking of the Goods declaration and supporting documents prior to the arrival of the goods'. Importantly, such measures are purely voluntary, and are made available to those members of the international trading community who wish to take advantage of pre-arrival processing procedures in the interests of facilitating the clearance of their goods.

National security: a new imperative

Following the terrorist attacks of September 2001, regulatory intervention in cross-border trade increased globally as supply chain security emerged as the new international imperative.

In early 2002, the ICAO introduced additional measures to further mitigate aviation security risks. Its Plan of Action for Strengthening Aviation Security includes a global audit program to ensure that security standards are being properly implemented, and the organisation has pointed to 'myriad security measures implemented by states, enforcement agencies, airport authorities and other concerned parties since the events of 11 September 2001 [that] thwarted acts of unlawful interference that would otherwise have been successful in weakening the integrity of international civil aviation' (ICAO 2007, p. 10). Of particular relevance to the current topic, the standards that have been introduced by the ICAO serve to identify the necessary security controls to be applied to all cargo and mail items prior to loading onto a commercial flight in order to mitigate the associated risks. In a joint examination of regulatory approaches to air cargo security, ICAO and the World Customs Organization (WCO) agree that:

> A global secure supply chain approach to air cargo and mail could be achieved by applying security controls at the point of origin. The implementation of the secure supply chain is an efficient solution, built on a risk-based approach that meets the following objectives:
>
> - respect existing obligations of businesses operating in the air cargo supply chain;
> - share costs and responsibilities among all stakeholders and allow cargo to be secured upstream in the supply chain to reduce the burden of security controls imposed on aircraft operators;
> - facilitate the flow of cargo transported by air and reduce or limit possible delays generated by the application of security controls;
> - apply appropriate security controls for specific categories of cargo that cannot be screened by the usual means due to their nature, packaging, size or volume; and
> - preserve the primary advantages of the air transport mode: speed, safety and security (ICAO & WCO 2013, p. 8).

Similarly, the IMO developed the International Ship and Port Facility Security Code (ISPS Code) which prescribes mandatory security management requirements for ports and ships. The ISPS Code

was adopted as an amendment to the *International Convention for the Safety of Life at Sea* (SOLAS)[4] in 2002, and entered into force in 2004.[5] The objectives of the Code are:

- to establish an international framework involving co-operation between Contracting Governments, Government agencies, local administrations and the shipping and port industries to detect security threats and take preventive measures against security incidents affecting ships or port facilities used in international trade;
- to establish the respective roles and responsibilities of the Contracting Governments, Government agencies, local administrations and the shipping and port industries, at the national and international level for ensuring maritime security;
- to ensure the early and efficient collection and exchange of security-related information;
- to provide a methodology for security assessments so as to have in place plans and procedures to react to changing security levels; and
- to ensure confidence that adequate and proportionate maritime security measures are in place.[6]

From a Customs perspective, the terrorist attacks of 2001 resulted in a sharp reversal of the balance between trade facilitation and regulatory intervention to which many governments had been aspiring. In the wake of these events, the US borders immediately closed to international trade, and the international approach to border management changed significantly. This included the introduction of a broad range of national and international initiatives, led by the US, designed to ensure the safety and security of global supply chains. One of the principal methods of addressing the newly perceived security risk of terrorist intervention in the international supply chain was the deployment of US personnel to foreign seaports to identify and examine high-risk cargo destined for the US prior to loading. The initiative, known as the Container Security Initiative (CSI), is now operational in 58 ports throughout the world (USCBP 2016a). This and other security-driven initiatives saw CBP conceptualising its 'border' in a new way. As noted by Bersin (2012, p. 392):

> The unacceptable economic and political consequences of shutting down the border, coupled with the new security imperative, forced a fundamental shift in our perspective. We began to understand that our borders begin not where our ports of entry are located, but rather, where passengers board air carriers and freight is loaded on maritime vessels bound for those ports of entry.

Another strategic element of CBP's layered cargo security strategy was the introduction of mandatory advance reporting of containerised sea cargo. Commencing in the US, the initiative has spread rapidly to other major trading countries. It involves the electronic reporting of cargo, usually by the carrier, to the customs authority in the importing country for the purposes of advance risk analysis prior to its arrival in the country of destination. In the case of cargo bound for the US, the transmission is required 24 hours prior to the container being loaded onto the vessel. The initiative has since been extended to other modes of transport, including air in some countries.[7]

The US initiative, known as the Advance Manifest requirements, but commonly referred to as the '24 hour Rule', has been operational since 2003 for maritime container cargo, and the advance reporting of manifest data has since been phased in for other transport modes.

In addition, the Importer Security Filing (ISF) rule under the US SAFE Ports Act (commonly referred to as the '10+2 Rule'), has been in operation since 2009, requiring traders to make advance declarations to CBP in respect of import cargo arriving in the US by vessel.[8] The US has also been developing its Air Cargo Advance Screening (ACAS) initiative, which requires the provision of pre-departure electronic data for destination country analysis prior to aircraft departure. A voluntary pilot program is currently being conducted in which participants provide CBP with advance air cargo data at the earliest point practicable prior to loading cargo onto an aircraft that is destined to or transiting through the US.[9]

Following the US lead, the WCO identified the need to develop international guidelines to provide its members with uniform strategies to secure and facilitate global trade. The result is the *WCO SAFE Framework of Standards to Secure and Facilitate Global Trade* (SAFE Framework), which was first introduced in 2005 and has undergone several iterations since that time, the latest being the 2015 edition, which was endorsed by the WCO Council in June 2015 (WCO 2015b). Along with other significant principles and standards,[10] some of which are discussed later in this paper, the SAFE Framework reinforces the need for and benefits of advance cargo reporting, and encourages the screening of containerised cargo prior to its loading onto the vessel.

Advance manifest requirements: implementation analysis

Although advance manifest requirements are in their infancy for air cargo, the global introduction of such requirements for containerised sea cargo is more mature, and while it is widely recognised that the practice is spreading fairly rapidly, the extent and speed of global implementation is not yet fully appreciated. The current study was triggered by the realisation that this fundamental change in practice by Customs, and its consequential regulatory impact on the trading community, is becoming commonplace.

The research examines two particular elements of advance manifest implementation in relation to containerised sea cargo:

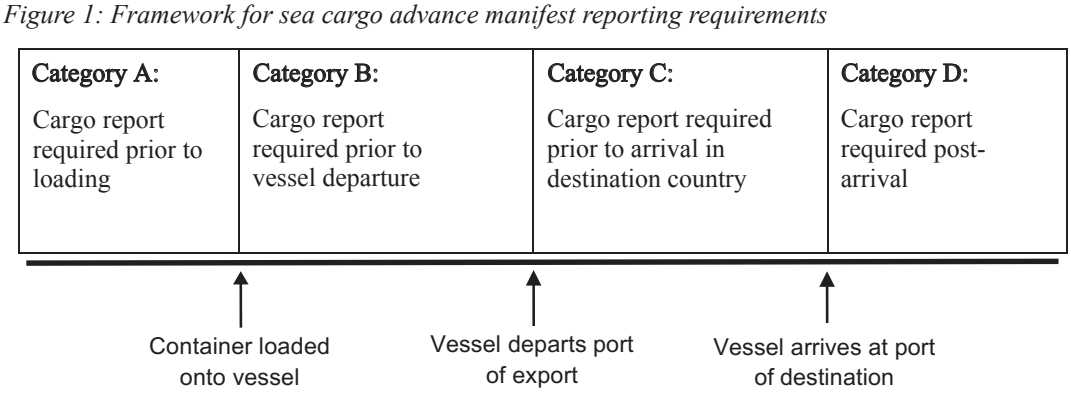
- the manner in which the policy has been adopted and applied by individual economies
- the proportion of containerised sea cargo impacted by its adoption.

The data were obtained through a comprehensive review of government websites and databases, supplemented by a review of information provided by service providers involved in the cross-border movement of cargo. The percentage share in total world imports of merchandise for individual economies was derived from the WTO International Trade Statistics series, based on imports for the year 2014. This measure includes modes of transport other than sea, as well as bulk and break bulk (or general) sea cargo. However, its use is considered to be appropriate in deriving an acceptable estimate of an economy's share of global containerised sea cargo.

Policy variations

The manner in which individual countries have adopted the policy of advance manifest reporting varies considerably. For the purposes of this research, the variations have been categorised according to the timeframe in which the cargo manifest is required to be submitted to the customs administration in the country of destination (see Figure 1).

Figure 1: Framework for sea cargo advance manifest reporting requirements



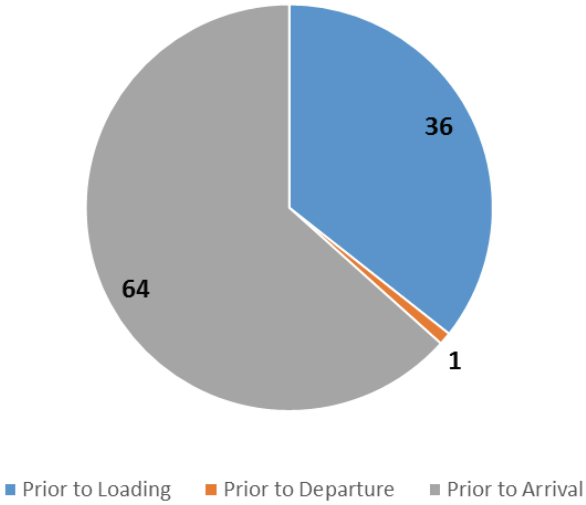
Source: Author.

Category A has the earliest timeframe, and reflects the requirement of some administrations for cargo manifests to be submitted prior to loading the container onto the vessel. This approach enables Customs in the destination country to prevent high-risk containers from being loaded.

Category B requires the cargo manifest to be provided prior to departure of the vessel from the port of export. However, in cases where the cargo is in fact reported prior to loading the container onto the vessel, Customs in the country of destination has the opportunity of preventing high-risk containers from being loaded. In those cases where the cargo is assessed as being high-risk following the vessel's departure, Customs will prevent the container from being unloaded at the destination port.

Category C requires the cargo manifest to be submitted prior to the arrival of the vessel in the country of destination, which enables Customs in the importing country to prevent high-risk containers from being unloaded. Category D applies to those countries that have no advance manifest reporting requirements, and allows for the cargo to be reported to Customs within a specified timeframe following its arrival.

Figure 2: Number of countries requiring advance reports for containerised sea cargo imports

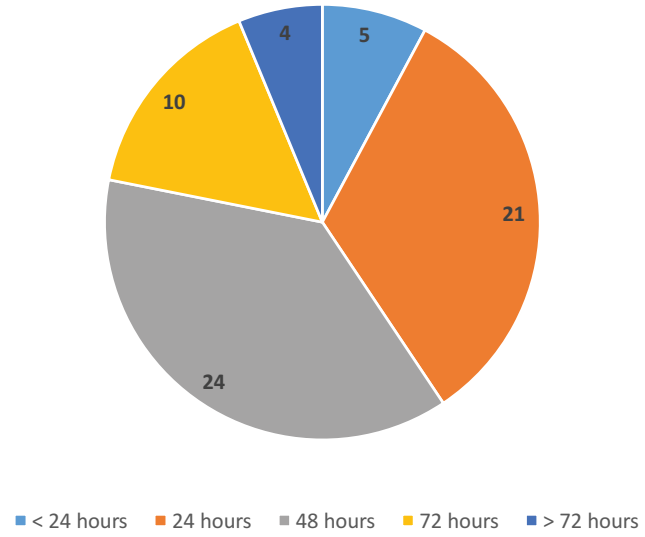


Source: Author.

The research has identified 101 countries with advance cargo manifest requirements in place, that is, Category A, B and C (Figure 2):

- Those countries with Category A requirements include the US, Mexico, the 28 members of the EU, Norway, Switzerland, Turkey, China, Canada and Nigeria. All Category A countries require cargo manifests to be submitted 24 hours prior to loading the container onto the vessel.
- Only one country, Japan, has introduced Category B requirements. It requires the cargo manifest to be submitted 24 hours prior to departure of the vessel from the port of export.
- The remaining 64 countries require the cargo manifest to be submitted prior to the arrival of the vessel in the country of destination. Timeframes generally vary between 24 and 72 hours, although some have reporting times as low as five hours (for example, Taiwan), and at the other extreme, Benin requires manifests to be submitted 7 days prior to arrival (see Figure 3).

Figure 3: Number of Category C countries and their reporting timeframes

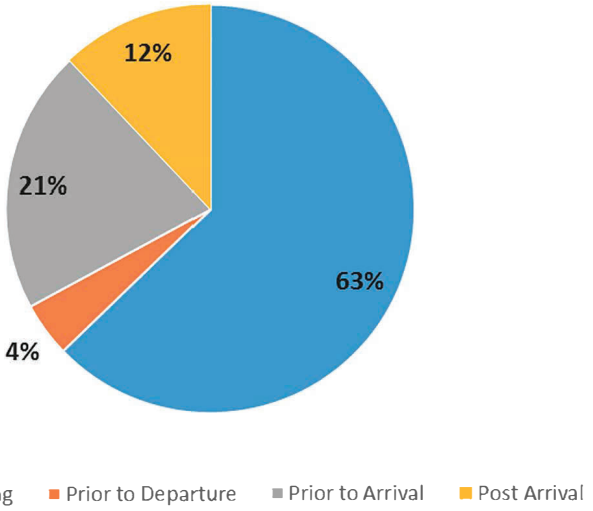


Source: Author.

It should be noted that some countries have different reporting requirements for specific trading partners. For example, Mauritius requires that cargo arriving from its close neighbour, Reunion Island, should be reported no later than five hours prior to arrival, whereas cargo arriving from elsewhere is to be reported no less than 24 hours prior to arrival. In such situations, the higher figure has been used in the context of this analysis.

By weighting each country by its percentage share in total world imports of merchandise,[11] it was estimated that 63 per cent of imports globally are subject to Category A requirements, 4 per cent to Category B requirements, 21 per cent to Category C and 12 per cent to Category D[12] (Figure 4).

Figure 4: Global reporting requirements for containerised sea cargo imports



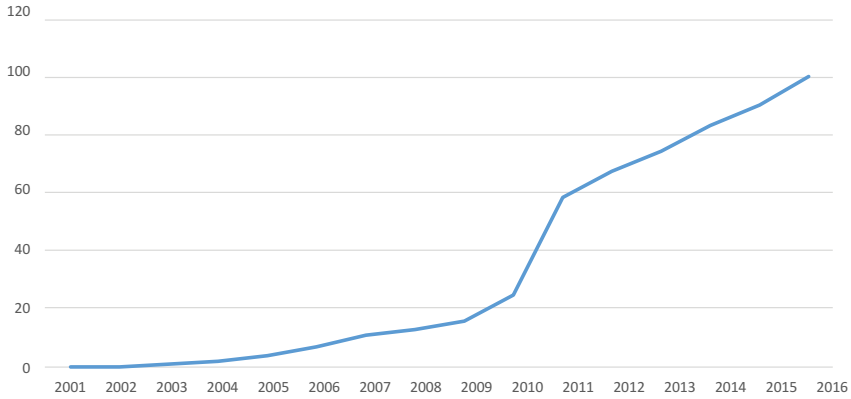
Source: Author.

Proportion of containerised sea cargo subject to advance reporting

Figure 5 serves to demonstrate the rapid adoption of advance manifest requirements since their initial introduction by the US in 2003. Similarly, Figure 6 shows the percentage of containerised sea cargo imports globally that are subject to advance reporting requirements. From a zero base immediately following the 2001 terrorist attacks, an estimated 87.68 per cent of such cargo is now subject to Category A, B or C reporting requirements.

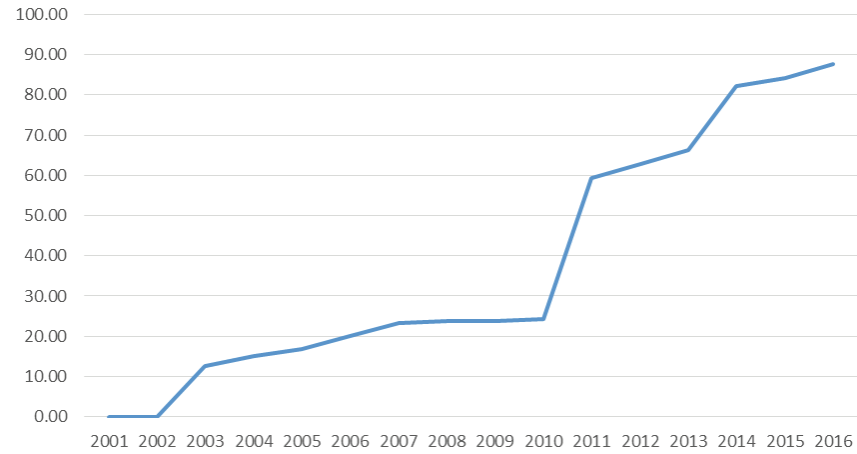
The sudden rise in such requirements in 2011 that is evident in Figures 5 and 6 is due to the EU's implementation of the requirement to report cargo 24 hours prior to its arrival at an EU port, with effect from 1 January 2011.

Figure 5: Number of countries requiring advance reports for containerised sea cargo imports[13]



Source: Author.

Figure 6: Percentage of containerised sea cargo imports requiring advance reports[14]



Source: Author.

It is likely that other countries will follow, especially since the requirement for advance electronic cargo data reporting is enshrined within the SAFE Framework. In this regard, future implementation is already being planned in countries such as South Africa and Korea, both of which intend to introduce Category A requirements.[15]

Such reporting requirements are in addition to pre-existing advance reporting requirements set by other border management agencies, such as in the US where the Food and Drug Administration (FDA) sets additional advance reporting requirements for food exports to the US by reference to the Bioterrorism Act (2002). In many countries advance reporting to sanitary and phytosanitary authorities also applies, although these requirements often predate 2003 and are generally concerned with ensuring that adequate inspection staff are available to clear the goods on their arrival.

Trusted traders

In an effort to restore a degree of normality and predictability for legitimate traders following the effective closure of the US borders in September 2001, the international trading community worked closely with CBP to introduce more facilitative arrangements for those who could demonstrate a high level of security across their supply chains. The resultant program, known as the Customs-Trade Partnership Against Terrorism (C-TPAT) represents another element of CBP's security strategy. It provides authorised traders with streamlined clearance procedures, greater certainty and formal recognition of their 'trusted' status in return for achieving and maintaining jointly (CBP and industry) developed security standards.

Recognising the benefits of such a scheme, the WCO included in its SAFE Framework a set of guidelines upon which its members could develop national arrangements that reflected the US C-TPAT initiative and which, importantly, could be formally recognised by other member administrations. Among other things, the SAFE Framework provides guidelines for formally recognising and providing benefits to trusted traders, known as Authorised Economic Operators (AEO) as well as mutual recognition guidelines. An AEO is a member of the international trading community that is deemed to represent a low customs risk and for whom greater levels of facilitation should be accorded, and where two countries have a Mutual Recognition Agreement (MRA) in place, an entity's AEO status should be recognised by the customs administrations of both economies. A number of MRAs have already been negotiated, and the benefits of such arrangements are now being realised. For example, under the agreement between New Zealand and the US that provides for mutual recognition of New Zealand's Secure Export Scheme and the US C-TPAT program, goods exported to the US by traders who are members of Secure Export Scheme are 3.5 times less likely to be held up for examination upon arrival at a US port (NZCS 2013).

Unlike the C-TPAT program, the 2007 and subsequent iterations of the SAFE Framework expand the criteria for an AEO to include trade compliance as well as supply chain security. Such criteria go well beyond the security agenda which originally triggered the development of the SAFE Framework, and have introduced an additional layer of complexity to its administration. However, as noted by the then Secretary General of the WCO when responding to questions about the intended coverage of the original (2005) version of the SAFE Framework:

> From a Customs perspective, a participant's reliability history and consistent adherence to basic Customs requirements, even outside of the security context, is so fundamental as to form the foundation for all special programme participation. This is especially true when considering programmes with a security emphasis, such as SAFE.[16]

The AEO guidelines that were subsequently issued by the WCO go to great lengths to emphasise this point.[17] The AEO concept has more recently been adopted by the WTO in its Agreement on Trade Facilitation. Article 7, 'Trade Facilitation Measures for Authorized Operators' provides that:

> Each Member shall provide additional trade facilitation measures related to import, export or transit formalities and procedures … to operators who meet specified criteria, hereinafter called authorized operators. Alternatively, a Member may offer such facilitation measures through customs procedures generally available to all operators and not be required to establish a separate scheme … The specified criteria shall be related to compliance, or the risk of non-compliance, with requirements specified in a Member's laws, regulations or procedures.

Importantly, assessment of a trader's eligibility for C-TPAT membership, AEO status and participation in related programs involves a review of their entire supply chain including relevant aspects in the country of exportation. In this way, the customs administration in the country of importation can make an assessment of the trader's practices, procedures, personnel, systems and commercial arrangements, and whether they are likely to pose a risk from either a trade compliance or supply chain security perspective. Ideally, mutual recognition arrangements between trading partners would ultimately enable those aspects of the trader's supply chain to be verified by the customs administration of the exporting country. However, it is considered that the associated degree of trust in a trading partner's regulatory capability that is required for mutual recognition arrangements to operate effectively will inevitably restrict the practicability of such mechanisms.

Further, the lack of regional or multilateral mutual recognition arrangements has the potential to lead to an unwieldy number of MRAs. Consider for a moment what it would mean for the 180 WCO members if each had an AEO program in place and mutual recognition was to be achieved across all such programs. First, it is necessary to take into account the fact that the 28 Member States of the EU have established a single AEO program. The EU has accomplished this by reaching internal agreement among its members on the way in which the SAFE Framework should be interpreted and applied, resulting in a single EU AEO scheme, albeit with some national variations in practice. This has eliminated the need for its trading partners to engage in bilateral negotiations with individual EU Member States, effectively reducing the potential number of 'national' programs from 180 to 153. Consequently, the number of bilateral agreements that would need to be struck in order to achieve mutual recognition among all WCO members is 11,628, with each country being involved in the negotiation of 152 individual agreements. Accepting that trade does not occur between all WCO member countries, the magnitude of the remaining bilateral agreements would not only place a burden on the administrators charged with negotiating and maintaining the agreements but also the international trading community faced with such a proliferation of administrative procedures (Widdowson 2014).

This is an important point to consider, given the commonly held view among commentators that the principle of mutual recognition is fundamental to the effective operation of the AEO program. For example, the United Nations Conference on Trade and Development (UNCTAD) highlights the importance of achieving mutual recognition from the perspective of developing economies:

> In the longer term, mutual recognition of AEO status will be critical to ensure that operators who comply with the criteria set out in the SAFE Framework and have obtained AEO status in their own country are in fact able to enjoy the benefits outlined in the SAFE Framework and may participate in international trade on equal terms. In the absence of a system for global mutual recognition of AEO status, traders from some countries, particularly developing economies, may find themselves at a serious competitive disadvantage (UNCTAD 2008, p. 111).

A similar view is expressed by the International Chamber of Commerce (ICC):

> ICC has maintained that achievement of a mutual recognition process for companies implementing the Framework procedures is a top priority. Mutual recognition is necessary to capture the trade benefit of a world standard for security and trade facilitation, i.e., that:
>
> - A supply chain partner accepted as an AEO by a customs administration that participates in the Framework will not be subject to multiple verifications of its status by participating Administrations or other AEOs, i.e., that an AEO would not be subject to multiple inspections or verification by each AEO with which it does business;
>
> - Supply chain partners will be able to apply for AEO status in their own participating countries; and

- A supply chain partner accepted as an AEO by a customs administration that participates in the Framework will be afforded program benefits by all participating administrations, including those that are phasing in implementation (ICC 2009, p. 2).

Assuming that the difficulties associated with MRAs can be overcome, the SAFE Framework provides a significant opportunity for the regulatory burden on legitimate trade to be reduced. Nevertheless, it is likely that the more recently imposed reporting requirements that have been introduced in the name of national security will remain in place regardless of the assessed status of the trader, including ISF requirements. In this context, the following question must be asked: If a trader demonstrates a commitment to global supply chain security by achieving and maintaining AEO status, does there remain a genuinely risk-based need for the trader to provide advance information to the authorities who granted that status?

The standards contained in the SAFE Framework are already resulting in a situation in which cross-border trade falls into two distinct categories – those consignments that are traded within a formally recognised secure supply chain, and those that are not. In this regard, the SAFE Framework definition of high-risk cargo is 'that for which there is inadequate information or reason to deem it as low-risk, that tactical intelligence indicates as high risk, or that a risk-scoring assessment methodology based on security-related data elements identifies as high risk (WCO 2015b, p. I/1). Indeed, recent iterations of the SAFE Framework imply that unless goods are being traded between AEOs, they are to be regarded as high risk and therefore receive a greater degree of regulatory scrutiny than goods traded within a formally recognised secure supply chain.

Conclusions

Clear trends are emerging from the evolution of the SAFE Framework and the national initiatives that have been implemented under it. More and more countries are introducing AEO programs, with a broadening scope, and mandatory advance manifest reporting is now commonplace, with its introduction in over 100 countries and its application to approximately 88 per cent of containerised sea cargo. From a trader's perspective, having a consignment deemed low-risk at destination implies a more rapid and predictable customs clearance. At the same time, destination countries which require electronic pre-departure data are adding an additional layer of regulatory cost to trade.

There is, of course, general agreement around the international table that security is a key issue and that the principles of the SAFE Framework should be observed, including advance manifest reporting. That does not mean, however, that mitigation of the security risks expressed in the SAFE Framework genuinely reflects the national priorities of individual economies. For example, for some countries, the primary reason for implementing the CSI initiatives following 2001 had very little to do with mitigating the risk of terrorism attempts, but was more concerned with maintaining a healthy trading relationship with the US.[18]

Consequently for many economies, security-related cross-border risks may be of far less concern than more general trade-related risks. Nevertheless, whether an economy has a genuine concern about cross-border security issues, or whether they are simply paying lip service to an internationally agreed problem is somewhat irrelevant in terms of its operational impact. The tide has changed in the international trading environment, and the shift in regulatory focus to pre-export assessments and related security measures will undoubtedly continue. This is not a bad thing, provided the level and timing of regulatory intervention does not unnecessarily impede the flow of international trade. As technology evolves, such impediments will lessen. However, as is generally the case, the biggest impact will continue to be felt by exporters in less developed economies.

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Notes

1 Hesketh 2010, p. 3.

2 In comparison, USCBP is responsible for collecting 1.4 per cent of the country's tax revenue (WCO 2015).

3 Widdowson 2007.

4 The SOLAS Convention is the principal international treaty relating to the security of merchant ships and ports.

5 This was achieved through the addition of Chapter XI-2 (Special measures to enhance maritime security) to the SOLAS Convention.

6 ISPS Code Part A, s 1.2.

7 Widdowson, Blegen, Kashubsky & Grainger 2014.

8 USCBP 2016b.

9 USCBP 2015.

10 Among the most significant are the concepts of 'Authorised Economic Operator' and 'Mutual Recognition'.

11 Based on imports for the year 2014, WTO International Trade Statistics series.

12 Note that scores for Category D may be inflated as they may include countries that have introduced advance manifest requirements but were not identified as such during the course of the research.

13 Where the implementation date has not been identified, the date of passage of the relevant legislation has been adopted, where available. The default date used is 2016.

14 Where the implementation date has not been identified, the date of passage of the relevant legislation has been adopted, where available. The default date used is 2016.

15 See Customs Control Act 2014 and KCS 2011.

16 Letter to the author from the then Secretary General of the WCO dated 13 June 2006.

17 See WCO 2007.

18 Interviews held by the author with officials from twenty customs administrations who had been tasked with implementing a range of supply chain security initiatives.

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Customs management in multinational companies

Andrew Grainger[1]

Abstract

What do senior customs managers within multinational companies do? By answering this seemingly simple question this paper sheds light on an overlooked but significant business function with immediate relevance to logistics and supply chain management practice. The paper draws on a series of long interviews with key informants at nine multinational companies. Their combined annual turnover is in excess of $400 billion. Multiple feedback cycles enabled robust analysis and factual accuracy. A review of relevant customs law, procedures and literature gives the necessary context. Findings show that senior customs managers are involved in three interdependent areas of activity: logistics support, supply chain management and regulatory compliance. However, there is considerable diversity in practice and managers are often drawn between allocating time and effort to reducing costs, safeguarding compliance and developing strategic capabilities.

The identified customs management practices provide an opportunity for relevant staff in companies to identify and reflect on scope for improvements and to take more informed trade-off decisions about the allocated time and effort. A more informed understanding of the customs management practices also has utility for trade and customs policy makers tasked with reducing the transaction costs between businesses and border agencies—especially in the context of trade facilitation. Last, but not least, the paper may also serve as a stepping stone for further academic enquiry that extends the link between businesses and Customs agencies.

Introduction

At every port and border, globally operating companies and their supply chains are exposed to customs controls and related trade procedures. Compliance requirements are frequently equated with unnecessary red tape and the transaction costs between businesses and the border agencies are known to inhibit efficient logistics and supply chain management operations. The subsequent urgency for reform is highlighted by numerous international organisations. These include the World Economic Forum (WEF) (2015), the Organisation for Economic Co-operation and Development (OECD) (2009), the United Nations Commission for Trade and Development (UNCTAD) (2006a, 2006b) and the World Bank (De Wulf & Sokol 2005; McLinden et al. 2010). Pressure to reform has been accelerated by the World Trade Organization (WTO) and its recent Trade Facilitation Agreement (TFA) (WTO 2014), which aims to reduce trade and customs-related costs. It also places the impact of trade and customs procedures on businesses at the centre of trade and customs policy.

As is highlighted in the WTO's *World Trade Report 2015*, the TFA can generate significant benefits (WTO 2015). The OECD calculates that the WTO TFA could reduce the worldwide cost for internationally trading businesses by between 12.5 per cent and 17.5 per cent (OECD 2015). Given such favourable numbers it should not come as a surprise that governments across the world are making substantial investments to modernise the trade and customs environment (see McLinden et al. 2010). The subsequent challenge of understanding how trade facilitation policy affects corporate decision-making within international supply chains is highlighted by Mann (2012).

Developing an understanding of how customs issues relate to businesses in international supply chains is important. Indeed, as highlighted by Hameri and Hintsa (2009), customs issues are one of the key drivers to anticipated changes in international cross-border supply chains. Yet, the literature of Customs and their significance for businesses and supply chains is still young—much of it championed by this journal, especially with regard to the administration of customs. But how are customs issues managed within companies? What is it that people in charge of meeting Customs' expectations do? How do they go about it? By shining a light on customs professionals within multinational companies this paper seeks to help fill that gap and, importantly, help provide a starting point for further academic enquiry.

The findings presented are based on interviews with key informants in nine multinational companies from a cross section of industries. Their combined annual turnover in 2013 was in excess of $400 billion. They represent an example of companies that are responsible for the bulk of global trade.

This paper starts with a brief overview of customs procedures in order to provide the necessary context, especially for readers less familiar with the technical details—the initiated may gloss over that section. A review of the emerging customs literature follows, before going into detail about the methods, research findings and conclusions that expand upon the paper's relevance for companies, research and policy making.

A brief review of customs laws and procedures

Although the scope and institutional arrangements can vary somewhat from one country to the next (WCO 2015b), the main task for Customs is to collect import taxes and enforce trade prohibitions and restrictions. A quick glance at dedicated customs law books about customs procedures in any given country will quickly show how technical the topic can be (for example, for the EU: Lux 2003; Lyons 2008; Massimo 2012; Witte & Wolffgang 2012).

Ports and borders are the first and last point within the confines of national territories where authorities can exercise direct powers over the movement of goods. Once goods pass this point, it is much more difficult for the authorities to stop the goods when needed. The administration tasked with controlling and examining goods coming in and out of any given country is Customs. Though, depending on the specific arrangement in any given country, Customs may cooperate closely with other border agencies. Globally operating businesses are obliged to notify the customs administration and declare their shipments accordingly. Failure to comply with applicable customs legislations can lead to fines and custodial sentences (BBC 2012). In some countries customs law requires importers to use qualified licensed customs brokers. In other countries their use is voluntary or not required.

Customs-administrated import taxes inevitably include import duties, but can also extend to import-related value added taxes (VAT), excise duties and other levies. In a few countries export duties may also apply. Where transport routes involve several countries (for example, to landlocked countries or via global logistics hubs) customs transit procedures come into play. Furthermore, companies often rely upon the customs administration to provide proof of export so that these can be exempted (or zero-rated) from VAT[2] and excise duties, or apply for any other export refunds.

Physical customs inspections are usually enforced at the ports and borders, and are guided by risk-management principles that favour those businesses with a good compliance record (Widdowson 2005; Han & Ireland 2014). Electronic or paper customs declarations must be submitted to dedicated customs offices before goods can be cleared at the ports and borders. Often, customs declarations are also used for the collection of official trade statistics. The customs offices may not necessarily be located at the port or border. In many countries the administration of customs procedures is highly automated and reliant on electronic customs computers and supporting EDI or web-based data exchanges (Teo, Tan & Wei 1997; Appels & Struye de Swielande 1998; Raus, Flügge & Boutellier 2009; ASYCUDA 2016).

The procedures for declaring goods to customs administrations tend to be based on international instruments. The most relevant are the WTO's General Agreement on Tariffs and Trade (GATT 1994) and the WCO's Kyoto [Customs] Convention (WCO 1999). However, practices can vary significantly from one country to the next, sometimes even from one port or border crossing to the next. Customs officers are guided by their country's respective customs legislation and administrative guidelines.

Described in the most basic of terms, the assessment of customs duties is dependent on the correct tariff classification (WCO 2016) and the country's (or Customs Union's) applicable customs tariff (European Commission 2016; USITC 2016). The majority of customs duties are assessed on an *ad valorem* basis, which is a percentage figure based on the value of the goods. The value of goods is usually determined by reference to the methods outlined in the WTO Valuation Agreement (WTO 1994) and, in most cases, is based on the invoiced value of the goods, the cost of carriage and transport insurance.

Duty rates can be significantly lower where the country of origin benefits from preferential trade agreements. Of these there are many, and the WTO counts 406 active regional trade agreements and lists a further 28 preferential agreements (WTO 2016). Importers that wish to take advantage of them must demonstrate that they meet the relevant agreement's specific preferential origin rules. These, in turn, can be specific to the tariff classification. The resulting technical complexity, which can easily confound experts, has many critics. Bhagwati (1995) once famously compared the tangling of overlapping preferential origin rules to a spaghetti bowl—the so-called 'spaghetti bowl effect'. A different set of origin rules (so-called non-preferential origin rules), apply in instances where origin needs to be determined for anything other than tariff preference, such as for labelling purposes, statistical reporting and trade restrictions.

In most countries businesses are also able to draw on duty reliefs. These ensure that export-orientated manufacturers are placed on equal footing with competitors elsewhere in the world in instances where imported goods are incorporated into finished goods for export. Standard duty-relief procedures include: inward processing relief (or duty drawback); manufacturing under customs control (or customs bond); export processing zones; temporary import (or admission) for re-exportation in the same state; and customs warehousing (Grainger 2000; IFC 2006). In order to take advantage of these procedures companies will usually have to meet strict authorisation criteria which can include requirements for advanced electronic accounting and inventory control systems.

Subject to authorisation, most countries also offer so-called customs simplifications. These may, for example, permit suitably authorised traders to make declarations on a periodic basis (for example, monthly), or clear goods at the importer's own premises with minimal, if any, interference by customs officers at the ports and borders. Often promoted as an incentive in exchange for collaborating closely with the customs administration, several countries are now beginning to explore how duty-relief authorisations and simplifications can be incorporated into wider supply chain security partnership programs (Widdowson et al. 2014b), such as the EU's Authorised Economic Operator (AEO) scheme or the USA's Customs and Trade Partnership Against Terrorism (C-TPAT). These and similar Customs-led supply chain security programs elsewhere (WCO 2012a; WCO 2015a) came to life subsequent to political fears about how the supply chain could be misused for terrorist and criminal purposes—especially after the events of 9/11 (as highlighted by Flynn 2002).

In addition to the above, customs administrations also enforce prohibitions and restrictions. However, customs authorities may (depending on the country concerned) delegate the administration of related import and export licencing requirements to separate specialist government agencies. The list of prohibited and restricted goods differs significantly from one country to the next. Typically, prohibited and restricted goods include illicit narcotics or ingredients that can be used in their manufacture (so-called drug-precursors), weapons, pollutants, endangered species, as well as goods that are subject to veterinary and phytosanitary (or quarantine) controls. Intellectual property rights while goods are held under Customs' control (for example, at the port or border) may also be enforced. As suggested by Grainger (2007) in the context of the UK, the list of trade and customs procedures can include more than 60 procedures.

Perhaps the most significant type of restriction—especially amongst the customs managers interviewed in this study—relates to strategic export controls. These fall into two broad categories: technology controls; and end-use driven controls. Technology controls are concerned with the information necessary for the 'development', 'production' or 'use' of goods or software for military use or may be used by the military (that is, dual use). End-use export controls relate to weapons of mass destruction (WMD) as well as any country or organisation under an arms embargo or subject to sanctions. A number of countries, such as the USA and the European Union (EU), also apply a 'denied persons list' which prohibits trade with named individuals.

The Customs literature

Traditionally, customs management within companies is the domain of a small group of specialist lawyers, brokers and practitioners that concern themselves with the technical details of what has previously been reviewed. The *World Customs Journal* is one of the leading publications dedicated to championing the subject of Customs in a wider academic context. That said, there is emerging customs literature in a cross-section of related academic fields. For example, in history some writers place the administration of customs duties at the very foundation of the nation state—as is well described by Andreas (2013) in the context of the USA and the Boston Tea Party, but also reflected on in the context of Ancient Rome (Cottier et al. 2008) and in modern China (Brunero 2006; Chang 2012; Vynckier & Chang 2012). Indeed, customs officers are often quick to joke that they represent the second oldest profession in the world; in the UK they may also make reference to famous examples of their profession which includes the likes of Adam Smith (1723–1790) and Robert Burns (1759–1796).

The economic literature takes a specific interest in developing the case for the WTO TFA (Walkenhorst & Yasui, 2003; Wilson, Mann & Otsuki 2005; Pomfret & Sourdin, 2010; Busse, Hoekstra & Königer 2012). Following up within the trade policy literature, Grainger (2011) reviews the underlying trade facilitation concepts and ideas. International organisations complement this particular literature with implementation handbooks (UN ESCAP 2002, 2004, 2009; De Wulf & Sokol 2005; UNCTAD 2006a; UNCTAD 2006b; McLinden et al. 2010) and online information resources, such as the United Nations Economic Commission for Europe (UNECE) online trade facilitation implementation guide (UNECE 2016). The WTO and OECD report upon the spend in related Aid-For-Trade economic development projects (WTO/OECD 2015). The Enhanced Integrated Framework's (EIF) Diagnostic Trade Integration Studies provide a series of case studies where a focus on trade facilitation could make a difference (EIF 2016; World Bank 2016a).

The adverse impact of customs upon humanitarian aid logistics and the recommendation to implement facilitating customs agreements with countries prone to disasters, feature in the work of Kunz, Reiner and Gold (2014). Customs-led supply chain security programs are reviewed by Widdowson et al. (2014b) from an Australian customs-policy perspective, while USA-located company case studies are the focus of Sheu, Lee and Niehoff (2006). Border management reform is the topic of the World Bank – funded

handbook that was edited by McLinden,et al. (2010); a theme that has also been examined by those with an interest in electronic customs system (for example, Appels & de Swielande; 1998 Baida et al. 2008; Raus, Flügge & Boutellier 2009; den Butter, Liu & Tan 2012; Bharosa et al. 2013), port community systems (Long 2009; Baron & Mathieu 2013; Xu et al. 2013) and trade-management systems (Hausman et al. 2010).

The performance of border agencies is the focus of the World Bank's Logistics Performance Index (World Bank 2015) and Doing Business Trading Across Borders dataset (World Bank 2016b). While not always publicly accessible, many countries also conduct time release studies. These are based on a standardised framework developed by the WCO (WCO 2011; Matsuda 2012). The adverse impact of border delays upon perishable agricultural products has been examined by Liu and Yue (2013). The relationship between the private sector and regulatory authorities is highlighted in the work of Grainger (2014b), Davis and Friske (2013), and Mein (2014).

In all of the above, the driving perspectives are largely at the macroeconomic global or country level, or occasionally at the aggregated company level. The underlying motivation of the prevailing literature is to inform policy making and, occasionally, to highlight subsequent implications for businesses. Surprisingly, no concern as yet has been made for the functional level—that of the customs manager who is tasked with applying and administering customs issues within their respective companies. This gap deserves attention. The nine cases discussed in the following research represent a first comprehensive attempt at filling this gap.

Methods

The guiding motive for this research is to establish 'what it is that customs managers do' and 'how they go about it'. As such, the research is qualitative and relies on the long interview (McCracken 1988) with key informants. These interviews were then followed up with multiple feedback cycles.

As is stressed by McCracken (1988), the qualitative investigator serves as an instrument for collecting and analysing data. Unfortunately, access to senior customs managers is not straight forward. The topic is very technical and requires a deep understanding of customs laws and procedures. Developing such knowledge can take time and often includes what Bonoma (1985) calls a 'drift mode', where the researcher starts by learning the concepts, locale and jargon of the phenomenon as it occurs. Being an established expert before commencing an academic career helped short-circuit this considerable investment in time. The ability to understand and make reference to relevant customs laws, procedures and literature also served as a useful device to manufacture distance between the researcher and informant. Indeed, such manufactured distance is one of the prerequisites for a robust long interview (McCracken 1988).

Another challenge is that many companies view the topic to be commercially and legally sensitive. The interviewer thus needs to establish a high level of trust so that confidentiality is assured and that views are fairly represented within the technical context that they were shared. That required level of trust was developed over a period of more than 10 years, first as a trade and customs consultant for one of the Big Four and later as the Deputy Director for Trade Procedures at SITPRO (the UK's former trade facilitation agency), and Secretary for EUROPRO (the umbrella body of European trade facilitation bodies).

The nine key informants were primarily selected by virtue of the size of the companies that they work for—at least $1 billion in annual turnover with a combined annual turnover in excess of $400 billion—and to give insight into a cross section of industry sectors. The exclusive focus on multinational firms is merited because the *Pareto principle* (80/20 rule) applies; they represent the bulk of international trade activity. In Australia, for example, there are 245,000 customs-registered importers, but less than 450 make more than 1,000 customs declarations per year (Widdowson et al. 2014a). Anecdotal reports from customs officers in other countries suggest similar *Pareto distributions* (Grainger 2010).

Moreover, multinational companies, by their very nature, operate in multiple locations (Dicken 2011). Thus, insights gained here provide an opportunity to reflect on practices beyond the confines of customs law within any one single country. Importantly, by virtue of their scale and underpinning administrative structure, it is possible to ask about linkages with other business functions, such as logistics, procurement, informational technology, human resources, tax and legal, as well as linkages with suppliers and third parties. In smaller companies these boundaries may not be as clearly defined.

Seven of the nine companies examined can be classed as global shippers, with their primary activities in the following industry sectors: food (2), pharmaceutical (1); technology (1); media (1); automotive (1); and retail (1). Two companies are large-scale logistics service providers with a focus on express shipments. Each of these sectors is exposed to trade and customs procedures in different ways. For some, import taxes might be significant, whereas for others, less so. Some have high customer service expectations that place a premium on speedy logistics capabilities; others do not. Some sectors are predisposed to prohibitions and restrictions; others less so. By taking a cross-section approach, the likelihood of identifying variances in reported practices by nature of the goods shipped, existing customs capabilities and customer expectations, was increased.

Eight of the key informants hold full-time customs or trade compliance roles. One informant shares customs-related responsibilities with the company's indirect tax manager. The majority of interviewees' job titles are variants of Director, Senior Manager, Manager, and Counsellor for Customs, Customs Affairs, Indirect Tax or Trade Compliance. In some cases, job titles also include reference to the region of their responsibility. Geographical responsibilities amongst the sample include: global, Europe Middle East and Africa (EMEA), Europe and the UK (Figure 1). Six of the informants have responsibilities for customs operations in over 50 countries. With one exception, interviewed customs managers worked within their respective companies for more than five years, and most for significantly longer.

Figure 1: Interviewees by region of responsibility and industry sector

Region/Country of Responsibility	Number of Interviewees	Industry Sector
United Kingdom	1	Food (1)
Europe or EMEA	7	Pharmaceutical (1); Technology (1); Express Carriage (2); Media (1); Automotive (1); Food (1)
Global	1	Retail (1)

Source: Author.

All interviews were conducted by telephone in the northern spring 2014 at pre-agreed times and followed up with further emails and telephone exchanges. A typical interview session lasted 60 minutes and followed four lines of enquiry: (1) the interviewee and the company; (2) the company's customs-management practices; (3) the influences of the interviewee upon the company's supply chain and the interviewee's significance within the company; and (4) customs training and education (Figure 2). In line with McCracken's (1988) recommendations for long interviews this ensured that each interview session covered the same terrain and offered prompts to further help manufacture the necessary distance

between the researcher and the interviewee. However, the use of a strict interview protocol was avoided in order to give interviewees some space to shape direction and content, and not lose out on the benefits of learning through interviewer-interviewee interaction (Spradley 1979). To capture the richness of what was communicated, and make sure that the richness of what was conveyed (including the technical details) was not lost, extensive hand-written notes were taken (Lofland & Lofland 2006). Once typed up, these notes totalled 35 pages. The alternative of recording conversations would have been inappropriate since most key informants drew on confidential examples and were mindful of the possible implications that a recorded record might have.

Figure 2: Broad line of enquiry and content of interviews

Lines of enquiry	**Interview focal points**

About the interviewee and the company	• About the interviewee
	  • Role and function
	  • Contact and reference details
	• About the company
	  • General
	  • Type of goods traded
	  • Logistics and commercial arrangements

Customs management practices	• Location of customs as an area of activity within the corporate set-up • Number of customs staff • Outsourced customs activity (e.g. 3PL, brokers) • Customs linkages within the organisation (internal) • Standard Operating Procedures (SOPs) and related management practices • ICT and automation • Challenges
Influences on supply chain management and the significance of Customs [within the corporate set-up]	• Compliance operations • Duty and tax planning practices • AEO, Security, Prohibitions, Export Controls, Fair Trade and other non-duty related customs procedures • Public and legal affairs • General
Customs training and educations	• Education and training of the interviewee and of immediate colleagues at the corporate (head office) level and at the country/operational level

Source: Author.

NVivo software was used by the author as a support tool to help identify common narratives and compare and contrast the respective information provided by the interviewees. The first identified narrative touched upon in all interviews was an account of the customs manager's function within their respective organisations. The second identified narrative was an account of the tools used by customs managers to meet their objectives. The third identified narrative was an account of diversity in management practices.

These three identified narratives, which are discussed in the following section, provided for useful analytical categories which were confirmed in subsequent dialogue and through formal review cycles with the key informants. The review cycles also ensured the necessary validation of the analysis made, as well as safeguarding factual accuracy. Importantly, they also ensured that informants felt that confidentiality requirements had been met.

The review cycles applied in this project included: shorter follow-on conversations over the phone or in person to clarify questions that emerged subsequent to speaking to other informants; the production of a draft interim report of all the findings, which in turn provided a reference document for further consultation and feedback;[3] and a final feedback cycle with regard to the content and analysis presented in this specific paper. Last, but not least, three academics from different continents provided friendly peer review.

The customs manager's function

The accounts given by the key informants suggest that the function of a customs manager is broad. When describing what they do, three interdependent areas of activity were highlighted: (1) logistics support; (2) supply chain management; and (3) regulatory compliance. Depending on the company not all of these activities received the same level of attention. For some, out of fear of fines and damages to reputation, regulatory compliance is an overriding priority. For others, the primary priority is to ensure port and border clearance without delay (which also necessitates a good repute with Customs). Several, but not all, are also keen to reduce duty liabilities and the subsequent cost of supplies. Let us consider each of the three areas in greater detail.

Logistics support

Without the consent from Customs goods cannot be cleared through a port or border. One of the customs manager's objectives thus is to help ensure that goods clear ports and borders without disruption or delay at minimal costs. Inevitably, this includes making sure that the correct information is provided to the customs administration and that the correct amount of duties is paid. Where possible, exemptions from VAT on exports are sought. The customs manager may also consider and implement systems that provide for simplified customs and border clearance—for example, by ensuring that customs controls take place at the company's own premises (e.g. when unpacking containers and placing them into their own warehouse) rather than at the port where storage and demurrage costs can be significantly higher.

Customs managers also explained that they frequently find themselves working alongside logistics managers where goods have been held by Customs and subject to further questioning or examination. The customs manager will usually try to build a good rapport with the customs administration. This is to ensure that the risk of inspections with subsequent delays at the border is minimised or, where goods are held, to quickly provide assurance that goods can be cleared. Some customs managers may seek to join customs supply chain security partnership programs by applying, for example, for the EU's AEO status.

Supply chain management

Customs managers are relied on to provide advice about the implications of customs duty associated with the origin of respective supplies, product design (tariff classification), the degree of manufacturing at specific locations (customs valuation), the company's location decisions (applicable customs duties), and the company's logistics decisions—including transport and warehousing (duty suspensions and reliefs). In companies with multiple manufacturing locations this task can be complex and necessitates extensive modelling and business analysis. In sectors that are predisposed to tariff quotas (for example, textiles) and other trade controls (for example, agricultural products, food, high-tech), customs managers

may also have to ensure that import and/or export licences have been secured before procurement or sales decisions are taken. Furthermore, during contract negotiations with suppliers, customs managers are often relied on to ensure that customs-relevant obligations are specified in the contract, such as ensuring that the correct documentation relevant for customs declarations is provided for each and every shipment.

Regulatory compliance

The objective here is to ensure that there are no breaches with applicable customs procedures and legislation. It is also about ensuring that the correct amount of customs duties is paid. Usual regulatory compliance objectives require the customs manager to put systems in place (internally and externally with business partners) to minimise non-compliance risks and subsequent exposure to fines, custodial sentences and loss of reputation. Any adverse dealings with customs administrations can lead to the loss of advantageous customs authorisations, which in turn can impact upon the ability to clear goods efficiently or take advantage of any other beneficial customs procedures.

However, it is not just customs laws and regulations that customs managers need to be concerned about. It was highlighted by several of the informants that in some countries customs administrations are known to be corrupt. The company's country managers may, in such instances, feel tempted to breach company guidelines and pay bribes. This in turn exposes the company to anti-bribery laws in the USA (the *Foreign Corrupt Practices Act*, enacted in 1977), the EU (for example, the UK's *Anti Bribery Act 2010*) and elsewhere. One informant stated that '*corporate reputation is important; we are not a company that takes undue risk. [Though] there have been a few near misses where [country managers] believed [company] rules do not apply to them*'. This interviewee also suggested that competitors have been less diligent about weeding out corruption and subsequently faced criminal prosecution and blacklisting.

In addition to the requirements of customs administration, most informants also made reference to requirements with other tax authorities. One frequently cited example is the UK, where the senior accounting officer of larger companies is required (by reference to the UK's *Finance Act 2009*) to report and confirm that the company has suitable tax accounting arrangements in place. The customs manager will have to prepare reports that confirm that the company's management systems are sufficient to ensure that customs duties are correctly paid.

Tools of the trade

Customs managers, as was explained by the key informants, need to be on top of their field. Within the sample, most did not gain their knowledge and expertise through formal education and found that customs-related education opportunities are rare outside of customs administrations. Occasionally, interviewed customs managers do take part in specialist (non-accredited) executive courses offered by independent customs consultants, law and accountancy firms, and conference organisers. Most informants developed their knowledge and experience through a combination of extended careers: as a customs officer or related public-sector organisation (for example, a national trade facilitation body); as a trade and customs consultant within one of the big four; and as a freight forwarder.

The majority of the interviewees also hold one or more professional qualifications in law, tax, accounting, import and export, or logistics. Regular participation in specialist, often informal practitioner networks, helps ensure that knowledge is shared and kept current. Most interviewees also have an advanced awareness of how customs rules and regulations take shape, and actively engage with policy makers to influence regulatory outcomes.

Typically, customs managers have three mechanisms at their disposal to ensure that customs issues receive due consideration within their company. The first is in person as the in-house expert or 'go-to

person' (a term borrowed from one of the informants). The second mechanism is of an indirect nature by relying on the company's administrative systems. The third mechanism is to contract out to third parties. Let us consider each one of them.

The go-to person

The companies for which most interviewees work are complex, with multiple business units at multiple locations and in multiple countries. Often, as was explained by most informants, a distinction is made between corporate and country management levels as well as between business activities. The later—reminiscent of the work by Porter (1985)—includes primary business activities, such as procurement, production, logistics, and sales, as well as supporting business activities, such as human resources, information technology, tax and accounting. As phrased rather bluntly by one of the informants, the customs manager needs to deal with '*the whole lot*'.

Colleagues in procurement may ask the customs manager for advice about duty liabilities. Colleagues in logistics may: seek advice about how to correctly clear goods in the port; ask for customs clearance—related mentoring and training; request support in how to make customs declarations; and ask for beneficial simplified and duty-relief procedures to be put in place.

People in production may need to be consulted in order to work out the correct customs tariff classification. People in accounts may seek support in securing exemptions from VAT payments on exports, and, in the case of European-based food companies, pay or reclaim any agricultural levies. Customs managers may also need to work with accounts staff to establish the correct customs value upon which import taxes are based.

Further down the supply chain, sales staff, especially within the express sector, may ask the customs manager to provide advice to key customers. Likewise, logistics managers may draw upon the support of the customs manager when contracting out to third parties. Upstream, customs managers are relied on to lend advice on any contractual arrangements with suppliers that touch on customs, such as the correct use of the International Chamber of Commerce's (ICC) Incoterms (ICC 2010) and any customs-relevant obligations that fall upon suppliers (especially those concerning customs-relevant documents, such as origin declarations and commercial invoices).

Sometimes, customs managers partner with colleagues in other fields. For example, colleagues in tax and VAT may identify compliance irregularities within a specific country or business unit, which may also suggest that there are irregularities with regards to customs. '*They look out for me and I look out for them*', as was explained by one of the interviewees. Most interviewed customs managers also partner with suitably trained logistics colleagues who are responsible for the day-to-day interaction with relevant national customs administrations, including submitting customs declarations. This frees the customs manager to focus on more complex customs matter, especially at the company's regional or global level.

All interviewees stressed the importance of good personal relationships with staff within the customs administrations. This can help resolve any compliance irregularities quickly, and thus safeguard the company's good repute. Such relationships were also thought to be invaluable where companies seek to keep informed on new customs legislation and procedures, such as those relating to supply chain security (WCO 2012b) and the ongoing overhaul of EU customs law—the Union Customs Code (952/2013/EU 2013).

Utilisation of the company's administrative system

Rather than relying on colleagues 'going to' the customs manager, the use of the company's administrative systems can be an efficient way of ensuring that customs requirements and objectives are adequately met. All informants explained that they rely extensively on standard operating procedures (SOPs), as well as supporting electronic systems and software.

SOPs are commonly used within international businesses to document business processes; often they will be tied to the company's quality management system (and independently certified, for example, ISO 9000). Company employees are expected to follow the SOPs and, when necessary, review and update them. For customs managers, SOPs provide an opportunity to specify how customs-related issues are to be addressed within the company. Some of the interviewed informants write the customs-relevant SOPs themselves; others assist relevant business functions in writing SOPs where activities touch upon customs. SOP review meetings involving customs managers can be frequent; for some as frequent as once a week, for others it is more ad hoc.

Information technology is also heavily relied on. Indeed, nearly all declarations to customs (within this interview population) are made electronically. The systems described by the informants include in-house enterprise resource planning (ERP) implementations (for example, by SAP and Oracle) with add-on customs management functionality, as well as specialist third party electronic customs and trade management software (for example, by Amber Road). These systems require customs-relevant information (for example, the commercial invoice, tariff classification, origin, consignor and consignee, shipping details) to be captured correctly. As one of the interviewees delicately put it, '*if the data is shoddy, it [customs compliance] won't work*', and can be a constant worry for the customs manager. Several companies also use specialist tariff classification software (though not all interviewees were convinced of its accuracy) as well as software to help identify any potential shipments to 'denied persons' (Bureau of Industry and Security 2016) and other export controls and sanctions.

Contracting out to third parties

Contracting out is a further and very common approach to managing customs requirements, especially where companies rely on third party logistics service providers who, as part of their service bundle, will also clear goods through Customs at the ports and borders. Third party customs brokers and customs agents may also be used. A significant part of the customs manager's responsibility thus is to ensure that the appointed third parties are issued with the necessary customs instructions and to monitor their performance, for example by setting contractually pre-agreed key performance indicators and conduct occasional audits of the logistics service provider's customs records.

Some customs managers also rely on third parties—especially customs brokers and customs consultants—'*to provide an extra set of hands*'. These may be used to assist in the custom classification of goods and materials, provide advanced planning advice, implement customs – related IT systems, implement customs duty-relief regimes, and support any other activities necessitating an advanced understanding of customs rules and procedures.

Diversity in customs management practice

Amongst the nine informants, customs management practices differ significantly. In part, this is attributable to the company's specific customer expectations, industry sector, operational priorities and administrative legacies. For instance, the two express carriers and the media company within the interview sample were primarily concerned with ensuring that goods clear ports and borders without delay. Their ability to do this is a key customer expectation. In contrast, other interviewees stated that they were more concerned about safeguarding regulatory compliance and mindful of potential liabilities and impact upon their company's reputation.

A seemingly extreme strategy for avoiding customs compliance risks was described by one of the food manufacturers. This company avoids exposure to customs compliance risks by procuring most of its supplies from local distributors who imported the goods first and then sold them on for a profit. While this does reduce operational complexity and compliance risks, the flip side of this strategy is that the

company—as was explained by the interviewed manager —has no visibility or direct control over its supply chain, nor any knowledge of its exposure to customs-related costs.

Nearly all interviewees described complex electronic accounting and information management systems that enabled them to utilise duty deferment, customs warehousing, inland clearance, and periodic payment of customs duties (on a monthly basis). However, some of the interviewees stated that some of their operations were so complex that the cost of developing IT systems necessary to secure customs authorisation was too large. Some also gave examples of where they failed to persuade senior management to invest in such sophisticated systems (that would be able to meet the conditions of the customs administration and give subsequent access to beneficial customs procedures). Furthermore, several interviewees gave examples of where they are forgoing regular duty-saving opportunities (worth millions per year) in order to '*keep things simple*' and not add to the non-compliance risk or risk delay at the port and borders.

One informant also alluded to the negative public perception of aggressive tax planning, stating that '*we are not Amazon*'; a reference to firms that have been publicly singled out for their tax avoidance practices (Oliver & Houlder 2015). Yet, for other interviewees import duties do matter. For example, the retailer highlighted that customs duties amounted to one-quarter of the company's overall tax bill. This interviewee added that, although '*duty planning is not a defined process, it is miraculously well understood* [by buyers utilising preferential origin rules]'. This customs manager also went on to explain that he recently introduced systems to take advantage of beneficial customs valuation rules (so-called first or earlier sale) which helps reduce customs liabilities. Other interviewees explained that they were aware of this option, but were also mindful that this beneficial valuation method may be phased out in the EU once it updates its customs legislation in May 2016 (Regulation 952/2013/EU).

Some interviewees explained that although savings in customs duties are of interest, greater savings can be made in different tax areas, such as transfer pricing—especially in those sectors where goods attract comparatively low customs duties (for example, pharmaceuticals and media). Indeed, several interviewees went on to highlight that the number of tax specialists employed by their company is many times greater than that of customs specialists.

Nearly all interviewees explained that they rely heavily on third party logistics service providers for clearing goods at the ports and borders. However, to quote one of the interviewees, the company's reliance on third parties '*was not a good place to be*' and they went on to describe how vulnerable the company has become to the risk of agents acting on poor instructions from colleagues in logistics, or simply by making mistakes that go unnoticed by those that monitor the logistics service provider's performance. Others described a good relationship with their providers and expressed confidence in the services provided.

Perhaps surprising is the diversity in functional affinity. Amongst the interviewees, corporate-level customs managers may work together as a separate (albeit comparatively small) department (for example, Global Trade Compliance); be part of the organisation's logistics function (for example, Global Logistics and Trade Compliance) or report to the logistics department; be part of the legal department; or fall under tax and finance. Some interviewees highlighted that affinity with the tax or legal departments attracts higher salaries.

All interviewees described considerable scope for improvements, such as by taking advantage of duty-planning measures; becoming more involved in the decision-making process when appointing third party service providers; utilising technology; or engaging in customs policy-making processes more effectively. A common sentiment was that they '*only have so much time in the day*' and most lamented that there have been multiple occasions where they failed to secure suitable company commitment to enhancing customs capabilities. Subsequently, good ideas and initiatives were discarded for lack of investment.

The number of customs managers also differed from company to company. At the global corporate level, numbers ranged from 20 staff (sometimes subdivided by geographic regions) to no staff at all. At the country level, shippers tend to delegate customs matters to logistics staff and third party logistics service providers. In contrast, the two express carriers employed between 150 and 300 country-level customs experts in each of the major countries of their operations. One of the interviewee's company made less of a distinction between corporate and country-level responsibilities, highlighting that they employ about 60–70 full-time customs staff worldwide. Despite variances in staffing practices within the sample, when compared to the total number of staff within the respective companies—for some in excess of 100,000 employees—'*customs is a very small cog indeed*'. Several interviewees stated that they considered themselves to be an *'important cog, but frequently overlooked'*.

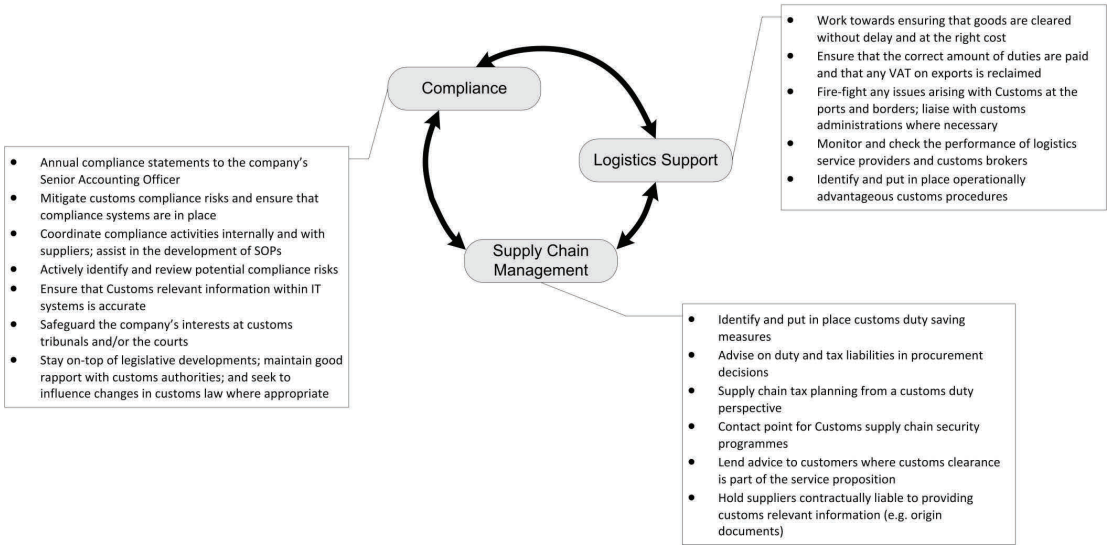
Some informants stated that public affairs work, where they seek to influence customs laws, can consume much of their time (in one case, 80 per cent), while others stated that their day-to-day responsibilities leave them with little spare time for any long-term strategic-motivated activities. Several of the informants have, on occasion, taken customs administrations to court or tribunal in order to overturn decisions made by officers.

Discussion

The customs manager's function is broad. Their activities support the logistics mission by ensuring smooth and undisrupted port and border operations; they inform wider supply chain management considerations, especially where it concerns preferential customs duties and subsequent location and sourcing decisions; and they ensure that the company does not fall foul of customs and related trade laws.

Figure 3 provides a brief summary of the interdependent activities of customs managers described in preceding sections. Each of these activities requires the customs manager to interact with colleagues across the firm at the country and corporate level, often with an eye on interfaces with suppliers and customers as well as contracted third party logistics services.

Figure 3: The activities of Customs managers within multinational companies



Source: Author.

That said, all interviewed customs managers felt they could do more. With only so much time in the day, they find themselves drawn between allocating time and effort to:

- **Reducing costs:** For example, by taking advantage of duty saving opportunities, but also by ensuring that goods are not delayed at the border.
- **Safeguarding compliance:** Where the customs manager seeks to ensure that the company and senior individuals (including the customs manager) are not exposed to fines or custodial sentences. This in turn safeguards good repute with customs and border agencies as well as customers and shareholders who expect that the company acts responsibly.
- **Developing strategic capabilities:** Where the customs manager ensures that the company is ahead of its competition. This appears to be particularly important for those managers working in sectors where reliable fast-track customs and border clearance is a critical customer expectation.

Inevitably, there is a significant degree of variance in practice. Within this study many gave examples of how compliance risks could be managed better (especially where customs compliance is outsourced to third parties), how further duty saving opportunities could be made, and how trade and customs procedures could be improved—if only they had the time and capacity. This suggests that there is considerable scope for companies to make improvements, or at the very least make more informed trade-off decisions when allocating time to customs – related activities (or not). The variances in priorities might be attributable to the individuals' specific functional affinity, whether it is linked to logistics, legal, tax, independent or other. Many companies may be well advised to review the role of the customs manager independent of any specific functional allegiance. Instead, guidance should be taken from applicable customs laws and the company's appetite for efficiencies, compliance and strategic capabilities within the customs domain.

That said, customs laws and procedures have been described as complex; a sentiment that has also been conveyed in this paper's brief review of customs law and procedures. Taking a leaf from Simon (1978), there appears to be a degree of *satisficing*, whereby companies and their managers take decisions within the boundaries of their understanding of the topic. This might explain why so much of customs compliance is outsourced and why so many customs opportunities are overlooked. Inevitably, there is scope for customs administration (and educators) to better inform, but also for policy makers to simplify procedures—for example, by eliminating red tape and advancing trade facilitation, which indeed is what much of the international trade and customs policy community is seeking to achieve by reference to the WTO TFA.

Moreover, customs managers, such as those interviewed in this study, have a robust understanding of the operational implications of customs and trade laws. Nearly all those interviewed in this study made reference to how governing customs laws and procedures could be simplified and improved without undermining regulatory objectives. The devil is in the technical detail and policy makers are well advised to draw on this source of expertise via dedicated consultation mechanisms (Grainger 2014b). Indeed, the creation of National Trade Facilitation Committees, as is recommended by the WTO TFA, would be one way of capturing that expertise in order to help reduce the impact of trade and customs procedures upon businesses. A better understanding of customs managers' practices and motivations could also help customs administrations develop better incentives for Customs-Business cooperation schemes, which are one of the cornerstones within the newly emerging supply chain security motivated customs controls (Widdowson et al. 2014b; WCO 2015a).

Conclusions

This paper has shone a light on customs managers within their respective companies. It has shown how their function matters to both logistics and supply chain management, and how it is also driven by fear of non-compliance. It has also highlighted what it is that customs managers do, reflected on opportunities to improve upon customs-management practices within relevant companies, and emphasised the value of consulting customs managers for policy-making purposes.

There remains considerable scope for further research that expands on the customs manager's function. For instance, now that we have identified what it is that customs managers do, it would be useful to explore the customs manager's specific management priorities, choices and behaviours to better understand what drives customs compliance, thus ensuring that regulatory objectives are best met. It would also be prudent to compare practices of the largest companies with those of smallest companies that are presumably even more reliant on third parties, less aware of customs management opportunities, and maybe even more fearful of customs-related risks. Further research that yields a better understanding of customs-related costs would be of interest to policymakers who need to set trade facilitation priorities. Individual companies may wish to learn how to best integrate the customs manager within wider corporate decision-making.

Last, but not least, there is also scope to reflect on this paper as a stepping stone towards extending logistics and supply chain theory by considering the link between Customs and border agencies. As touched upon here, customs administrations have a direct impact on logistics and supply chain management operations by adding to costs. Improved linkages between the parties can reduce those costs. To achieve this requires a better understanding of regulatory requirements, their operational implications as well as the will to reform governing procedures, such as by taking advantage of the favourable wind created by trade-policy commitments to enhance trade facilitation. Customs managers are familiar with the technical details and are a human face to the link between the company and customs administrations. These individuals and their function deserve attention with subsequent implications for research and practice.

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Notes

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2 In the EU, to give an example, the Standard VAT rate in each member state is at least 15 per cent (Article 97 of the VAT Directive 2006/112/EC).

3 Once further comments had been collated the author produced a final research report. This, too, was circulated to informants for comment and approval before it was made public as a discussion paper (Grainger 2014a).

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Valuation of goods in international transactions: diverging interpretations among national agencies

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Abstract

This article examines the derivation of an object's value and identifies three levels for analysing the concept of value: subjective valuation by whoever values such items individually; intersubjective valuation limited to the parties of the transaction that determines the price of the goods involved; and a supposedly objective valuation based on an ideal transaction pattern. It concludes that the fragmentation that results from the multiplicity of international treaties representing sectoral interests, which is later translated into soft law that member states apply at the local level through their government agencies, affects the rule of law. In reaching this conclusion it affirms that the value of an object in a transaction depends on the individual situation and the circumstances in which whoever the person performing the valuation is in, because value does not belong to the object itself, but rather, it is a perception of whoever is putting a value on it.

1. Value, valuation and price

1.1 One might say that the true value of goods is known only to God, the buyer and the seller (Alsina 1982). This highlights how hard it is for Customs to analyse the usual wheeling and dealing of a sales agreement in order to reach a price. This situation is faced not only by Customs when setting import or export values, but also by other government agencies, or even by any judge ruling on a dispute between parties.

1.2 The valuation of an object starts off with the subjectivity it impresses on us (Barreira 2014, p. 21). Value does not belong to the object, although it is a quality attributed to it. The concept of value, usually used to refer to a tax base, is based on a utility criterion. It is a measure of how useful an object is for an individual under certain circumstances (Gonnard 1930, p. 254). This leads to a first conclusion: ***The valuation of an object is subjective, insofar as it is a value judgement, and it does not emanate from the object under consideration but from the subject making the valuation.***

1.3 In a traditional bilateral exchange agreement, one of the parties may estimate or value a good differently from the other party. This depends on: (a) the utility of the object to the seller and the potential utility the buyer estimates the object has; (b) how convenient it is for the seller to keep the object or the buyer's urgency to have it; (c) the ease or difficulties the buyer has to go through to acquire an identical or similar object from another seller, or the higher or lower cost this implies; (d) what the final use of the object is in the purchasing party's business plan at a specific time and the role that it plays in the seller's business plan at that very same moment; (e) the opportunity that might be lost for either of the parties if they do not possess the object within a certain time frame (depending on the perspectives for scarcity or abundance of the product in the future), and the potential variation of future prices; (f) the buyer's financial capacity at the time; (g) implicit conditioning, transportation, and storage costs; and, finally, (h) the seller's financial urgency (if any) and to what extent the buyer wishes to have the object, or even, the fantasies in the buyer's mind that shapes the buyer's ideas of a future possession of the object, or the

seller's thoughts on what to do with the money from the sale. This leads to a second conclusion: ***There may be a valuation of the object by the buyer that is different from the seller's, although it is the same object at the same moment in time.***

1.4 The psychological motivations of each operator are affected by the utility that each party gives to the object, together with how abundant or scarce the object is. In a negotiation, there is a struggle between these expectations, culminating in an agreement reflecting a price agreed under certain terms of payment and delivery. The subjectivities surrounding each party's valuation lead to intersubjectivities in third parties. Through an agreement, and within the framework of business dealings, there is relative objectivity in the valuation, as it only encompasses the parties to the transaction and materialises into a valid price for this unique transaction. A price, one of the essential elements of a contract, is the valuation made of an object, measured in monetary terms (Bacigalupo 2011, p. 310; Rohde Ponce 1999, vol. II, p. 281). This distinction between price and the 'value' for customs purposes is particularly relevant in a breach known as an inaccurate customs declaration (Sarli 2007, pp. 376–8). A third conclusion may be drawn: ***An intersubjective valuation, translated into a price agreed in a transaction, is a direct outcome of conditionings for the specific case by the parties involved, and it is a real valuation for such parties.*** This is the so-called *positive notion* of customs value, reflected in article I of the Customs Valuation Agreement (CVA) as a transaction value.

1.5 Nevertheless, vital circumstances at play when setting the price in this specific negotiation may not be the same in another negotiation close in time where goods are identical but operators are different, or even among the same operators albeit under different conditions. This is the case of the thirsty traveller on their journey through the desert, willing to give their fortune for the first glass of water, but the following glasses of water are worth less, until the fifth glass is worthless. In a sales transaction between the same parties, and in a matter of seconds, the same object might undergo significant variations in price because of sudden subjective changes in the situation in which each party involved perceives itself. The idea of having the intersubjectivity of an object (resulting from the negotiations that operators carry on in a specific case) become an objective price therefore fades away. Thus, a fourth conclusion is inferred: ***A similar good may have different prices among different parties, in the same period and place, or even among the same buyers and sellers, and all such prices will be equally valid as a valuation base in the operations in which they are involved.***

1.6 Aside from parties defending their own interests, there are also third parties alien to the agreement. Nevertheless, setting a price that might not coincide with the value judgement these third parties estimate for this same object can entail consequences. These third parties, both in the negotiation and when contracts for import or export operations are entered into, estimate the price based on interests quite different from the ones that weighed heavily when setting the price during negotiations. They are mere spectators of the outcome, who are not conditioned by the circumstances that effectively influenced the will of the parties to the agreement. Among these third parties, financial analysts play a key role, since they attempt to establish the evolution of values for the goods depending on the changing circumstances at play in the overall supply and demand dynamics of a given product, regardless of the particular cases that may have served to set the trend (Mill 1848, III.15.4). Creditors seek to establish whether the price of the transaction diminishes the buyer's or seller's solvency, the seller being the creditor's debtor. The government, in turn, makes its best efforts to set the value of the goods of the transaction to serve as a basis for tax collection or for the amount of foreign currency that should enter or leave the country.

1.7 Although these third parties are not a party to the agreement, they are entitled to articulate claims arising therefrom when prices expressly stated in contracts are considered to be misrepresentations, prompting creditors to challenge them. These creditors are government agencies whose main task is tax collection, their interest lying in how great an incidence the contract's financial equation has on taxes. In the case of specific duties, the transaction's price lacks any relevance in customs duties, but when

dealing with *ad valorem* customs duties, the tax may have a strong impact on the negotiation of the price, especially if the tax is high. This entails a fifth conclusion: ***There are third parties who are unaware of the considerations taken into account in the negotiation, who in the face of clues or suspicions of a lack of sincerity in the transaction, may be interested in not knowing the agreed upon price and may assign to the goods an economic value that ignores the particularities and subjectivities of the case.***

1.8 These third parties, including government bodies such as customs, tax, foreign exchange or white-collar crime agencies, differ in their aims and purposes from the parties to the agreement, who actually reached the contract price willingly and by consensus. From their subjective standpoint, valuation is something else to them. This is clearly seen when setting up supply and demand curves, where the particularities of the case are not considered. This task provides an economic concept of value differing from the one generated in an actual case of a singular character. It is another value; a theoretical value created on the basis of an average of actual prices, which considers an ideal situation, where individuals are assumed to be driven only by economic utility and which, even if it might be close to the actual results of an individual case, is almost never identical to it. This is a valuation that suffers from an inevitable inaccuracy (Mill 1848, III.15.6). A sixth conclusion may be inferred here: ***The so-called market value of the good is an idealisation of the economic value that does not arise from a particular operation. Instead, it takes into account the prices obtained in multiple individual operations, pertaining to similar goods and under certain ideal conditions of an agreement, all of which lead to a theoretical notion of value, which does not usually coincide with the one obtained in an individual transaction, as exteriorised in the agreed contract price.*** This is the principle serving as the basis for the theoretical notion of customs value (CVA, Articles 2 to 7).

1.9 Third parties may refer to the exchange of goods between related enterprises when claiming there is a lack of sincerity in a transaction, thus justifying their ruling out the price as a basis for valuation. By 'related', we mean enterprises having a structural relationship as a business community seeking the maximum profit even when this profit is located in a business unit alien to whoever produces it. This transfer of profit is reflected in a distortion of prices, which should have been normally generated by supply and demand between independent parties. Thus, from the standpoint of Customs, the CVA in principle excludes transactions between related enterprises from the valuation method based on a positive notion and paves the way for the search of an objective valuation based on a theoretical notion, described in Articles 2 to 7 of the CVA. Domestic taxation is different. Earnings from an operation between independent parties are neither challenged nor subjected to adjustments (CVA, Article 8). The only thing necessary is to make comparisons if the parties are related in any way and it is thought that this affiliation distorts the arm's length price.

1.10 Even if a price as a basis for valuation is eventually dismissed because authorities are suspicious of its truthfulness or genuineness, the law does establish valuation rules restricting the discriminatory faculties of agencies in setting the tax base to somehow mitigate a strong backlash from the government. Therefore, ignoring the price obtained within the framework of an agreement and, as a result, going beyond the positive value, should have certain limits of objectivity and neutrality. An objective value may be based on intersubjectivity shared by all (Cossio 1945, p. 155). Insofar as we aim to distance ourselves from the subjectivity of the parties involved in a transaction, we should focus on an intellectual task, far from the intuitive perception wielded by parties to a transaction, to enter into a terrain where the valuation process is thought through and where the parties to the transaction are brushed aside to query other parties and data, all of which, under ideal conditions, provide a distance from the likely motivations the parties to the transaction had in the first place.

1.11 The task of setting a value in this way steers away from the real causes that originated the price. On the contrary, it is based on an archetype of a person, an ideal or idealised subject, driven by motivations of exclusively economic utility, only conditioned by supply and demand according to how scarce or abundant the goods are in the market regardless of other particular circumstances; that is, their

actual and concrete economic and financial status. This leads to a seventh conclusion: ***The idea of an objective valuation, based on an ideal pattern of transaction, has an entity that is different from the valuation performed by the parties to the actual transaction originating the price under scrutiny. As the conditionings of the participants in the business are not taken into account, the value will be different and, hence, from a Customs standpoint, the value will not have been actually adjusted or reset. It will just be another value.***

1.12 Therefore, the term *value* is used as an economic estimation of an object within the framework of an international transaction. Valuation differs depending on the position assumed by each one of the parties involved in this legal relationship. To sum up, there are three different levels for analysing the concept of value:

(a) At a first level there is a *subjective* valuation of the goods by whoever values such items individually (paragraph 1.2 above).
(b) At a second level there is an *intersubjective* valuation limited to the parties of the transaction that determines the price of the goods involved (paragraph 1.4 above).
(c) At a third level there is a supposedly *objective* valuation based on an ideal transaction pattern (paragraph 1.8 above).

1.13 A subjective valuation (first level) is not applicable in the case of transactions between two or more parties, so it is not a useful criterion for our analysis. An intersubjective valuation (second level) is applicable in most cases for customs value, except if the price is influenced by related parties or there are other reasons to consider it inadmissible, as the CVA indicates for the transaction value. The methods under the OECD guidelines for transfer pricing are based on a relationship that might influence prices so that it first displaces the transaction value and adopts methods that the CVA considers alternative in pursuit of an objective or theoretical valuation, for which the arm's length price becomes an ideal transaction pattern applying the notion of what would be the price under conditions that do not exist in the real world. An objective valuation (third level) is not, then, more appropriate than the intersubjective one; it is simply different and, therefore, except if the price paid or payable were outrageous, one should not punish anyone who in good faith believes that it is adequate to the circumstances of the transaction.

2. Fragmentation of international law

2.1 Again, specialised government agencies with different competencies and, thus, varying interests and objectives, converge to analyse the import or export declaration that a private party files to obtain the necessary clearances to enable an international deal to be realised. Depending on the circumstances, the declaration may be accepted by some and turned down by others, or a seemingly appropriate declaration to some is deemed suspicious or outright incorrect to others. Depending on how distrustful and susceptible the acting official is, and on the circumstances and ultimate gravity of what is being detected, the party may be exposed to a series of administrative enquiries, entailing delay costs, paperwork, contractual fines, and other inconveniences. One cannot ignore how mortified the party feels, particularly when suspicions are unfounded, all of which causes unease and, more importantly, a negative impact on the rule of law; that is, a situation incompatible with the simplicity, ease, fairness and facility international agencies aim to confer to international trade.

2.2 Controls may be justified, yet it is not desirable to have a legal system where the one same object is worth 10 to one government agency, 8 to another, and even 12 to yet another. From the civil law standpoint, these are different legal goods, that is, rights, protected by the law, but there is a certain incoherence in any legal system allowing this. The lack of connection between the objectives of the various domestic agencies is a reflection of the frequently disparate compliance requirements established

by international organisations that member states are mandated to enforce. In 2006, the International Law Commission (ILC) Study Group—formed to analyse the fragmentation of international law, with special reference to the difficulties stemming from its diversification and expansion—in its final report stated that one of the main features of globalisation is the rise of rules of cooperation in areas of expertise where the transborder application of domestic law is inapplicable. The work of different intergovernmental cooperation agencies has effectively produced a fragmentation of international law, where rules are drawn up for specific areas having no clear relation between one and the other (ILC Report, para. 483).

2.3 Thus, fragmentation occurs when agencies, because of their jurisdiction and competency, dissent in the application and interpretation of the rules and regulations they promote (Czar de Zalduendo 2007, p. 9). The absence of a clear hierarchy of rules in international law, save for a few exceptions, generates specialised legal frameworks, where rules and regulations enter into conflict. As international law is a law of coordination, lacking centralised institutions to ensure homogeneity in the different subsystems or systems, this promotes competition between the various legal areas (Remiro Brótons 2007, §18, p. 81).

2.4 The ILC has acknowledged that fragmentation implies a certain incoherence in international law, and that it works against the predictability of law and the rule of law. Furthermore, the ILC has admitted that although the principles embodied in the 1969 Vienna Convention on the Law of the Treaties could have brought some order toward the application of specific principles as well as the ultimate abrogation, either express or implicit, of some clauses of a multilateral treaty, they have yet to solve problems such as the ones we mention (Barreira 2007, pp. 19–21). Indeed, the Vienna Convention was grounded on the concept where the only subjects involved are nations and not the individuals subjected to its provisions. So it is not unusual that there is no solution so far, perhaps because domestic law might be thought to solve fragmentation and its consequences, by apparently serving as an arbiter of sorts for the legal rights that need to be protected. Yet this is not so.

2.5 Specialised international organisations, arising from international treaties, are a source of inspiration these days in the international trade system, striving to protect the specific social values or legal goods underlying their particular spheres of interests. Hence, they endeavour to compel the adoption of their rules of conduct at a global scale. However, as they lack any real power to impose imperative rules, these organisations establish standards, guidelines, recommendations, opinions, advice or warnings that create soft law. Soft law provides mechanisms contributing to enforce new values in existing institutions in an apparently harmless fashion, as they do not impose sanctions if unenforced. This new source of rules should be analysed as a change in values that is encouraged by promoting their practice and social acceptance at the national level; hence, guidelines first turn into principles and ultimately end up generating legal values to be protected by domestic law, even under the threat of sanctions. In the end, what actually changes is how noncompliance is sanctioned (Lasserre 2015, §109, p. 182).

2.6 Some international organisations are entitled to establish recommendations, to be abided by member states, and so deadlines are set up to report on any advances. Noncompliance is followed by the disapproval of the international organisation, to effectively induce their adoption by domestic law through the issuance of mandatory rules, even if contrary to the ideas and values of large sectors of a member state. Insofar as there are sectoral treaties made concurrently, touching upon different social institutions, this poses a serious risk where the proliferation of guidelines, recommendations, and advice might end up as rules that are alien to the social values that each nation attempts to preserve domestically. This risk implies that automatic acceptance of soft law in fact enhances unpredictability and has a negative impact on the rule of law.

3. Indeterminate legal concepts and interpretive discretionality

3.1 Every agency tends to reaffirm itself, justifying its own existence by wielding its power to the utmost, and there is no more notorious manifestation of power than the act of legislating. In *On Liberty*, John Stuart Mill (1869, I.6) warned about how we, as humans, are inclined to make others carry on according to our own whims or to the whims of the group to which we belong, without admitting that the regulator of judgement is an individual's own taste or interest, acting in disguise behind certain insincere principles. Mill stressed, in addition, the dangerous and growing tendency of extending the powers of society to an individual by exercising pressure on public opinion and restricting liberty through legislation. Mill (1869, I.15) predicted that this evil, far from vanishing, would become more and more formidable with the passage of time.

3.2 Agreements such as the CVA, as well as the guidelines and recommendations of other international organisations, usually lack precise wording. To use only one concept to encompass the most individual cases, indeterminate words are used to draft valuation rules, forcing upon whoever must apply them the heavy task of interpreting what they mean. The CVA abounds in indeterminate legal terms whose exact meanings are dependent on the various motivations driving the everyday performance of public officials at the domestic level. Thus, acting officials risk encountering suspicious elements where there are none or misrepresentations in declarations falling short of their expectations. The World Customs Organization (WCO) Technical Committee has attempted to hone the interpretation of these indeterminate words in its Advisory Opinions, Commentaries, Explanatory Notes, Studies and Case Studies, although such efforts are not international rules, unlike the CVA (Sherman 1988, p. 56; González Bianchi 2003, p. 83; Zolezzi 2008, p. 27; Lascano 2003, p. 49).

3.3 These indeterminate and uncertain legal terms are practically unavoidable because even if lawmakers make their best efforts to use accurate wording, they cannot imagine the countless cases that might come before the law without omitting others that are unforeseen. A greater part of legal doctrine argues that indeterminate language does not imply the use of discretionary powers. Nonetheless, this indeterminacy elicits an interpretation of the law and implies the existence of some leeway on the part of administrative agencies, where acting officials wield more autonomy to make choices, verging on the actual use of discretionary powers (Hart 1995, p. 169; Grecco 1980, p. 1312). The purpose of a rule sets a limit to this practice, but if the rule is characterised by its neutrality, as required by the CVA's General Introductory Commentary, then the aim is not only to apply the best means with the least sacrifice. Instead, a technically neutral application of the law is called for, prompting the need to enforce it, with the ensuing risk of arbitrariness. As one scholar has stated, 'When the rules of law are not neutral or precise, the threshold separating subjectivity from arbitrariness gets narrower' (Zolezzi 2008, §11.b, p. 17).

4. Conclusions

4.1 The value of an object in a transaction depends on the individual situation and the circumstances in which whoever is performing the valuation is in, because value does not belong to the object in itself, but rather, it is a perception of whoever is putting the value on it. This not only applies to the parties to the transaction, who agree on a transaction price, but also to third parties who have their own stake in the transaction, even if they are outside the immediate context of multiple needs, conditions, and options at play in a negotiation. This is the case of public officials with opposing missions to enforce within one and the same nation, who variously take part in estimating a value for the goods from different perspectives, even if they strive to be objective and impartial. In the end, there is always some degree of preference, buoyed by either personal interest or the specific requirements of the government agency. This explains why whoever has to judge a case sometimes has to step down for reasons of incompatibility or is challenged to do so.

4.2 Values assigned to goods by government agencies are far from predictable for the parties to the transaction because there is a certain degree of flexibility in the methods acting officials apply to decide whether prices reached by private parties are suspicious or should be dismissed outright. This flexibility is reflected in the discretionary powers that such rules provide acting officials, or in the open texture of the indeterminate language of the rule, subjecting the wording to the personal interpretation of the acting authority.

4.3 Acting officials may end up with dissimilar appraisals because their interests differ from the interests of operators in international transactions and of other agencies involved. This entails opposing consequences that clash with the purposes of other agencies belonging to one and the same nation. Thus, under a particular situation, there may well be diverging public interests at stake under the same legal framework, all of which affect the concept in itself of the sovereign state as a coherent legal system.

4.4 This divergent situation concerning the various legal goods in conflict within the same nation is worsened if international organisations, under the umbrella of international multilateral treaties, have segmented goals and act independently and concurrently through opinions, recommended practices, guidelines or other types of standards of conduct.

4.5 Fragmentation of international law is manifested by parallel, yet not always concordant, interests. These interests, however, influence or determine the content of national legislatures. In the long run, standards of conduct based on soft law are enacted at the national level, with the ensuing legal consequences for whoever does not abide by them.

4.6 If a party has to declare a certain value under the threat of punishment, the relativity of this value might conspire against the application of the penalty, because no sanction is fair if it cannot be prevented by performing a contrary action. In this case, the required conduct consists of determining a certain value or price for a transaction and requires that the said value or price be clearly determinable and independent from unlikely, or at least, unforeseeable, subjective estimations. Thus, a sanction is only applicable if actual data from the transaction is inaccurately declared; in other words, the agreed-upon price and the conditions that might have influenced this price. In short, to establish a true value, it is necessary to ensure the genuineness of the price.

4.7 The rights of individuals are relative and may be restricted for the benefit of the rest of society; yet this principle will apply provided that restrictions are inspired in the public good and that measures are appropriate and proportional to the end sought, that is, something coherent with the rest of the legal values prescribed by law.

4.8 Moreover, under the CVA, values estimated by parties in good faith—based on their wealth, needs and the circumstances of a transaction—should be the ones accepted '*to the greatest possible extent*' (paragraph 1.4 above). The fundamental principles governing the international flow of goods should be met; that is, promptness, simplicity and uniformity, as established by General Agreement on Tariffs and Trade (GATT) and accepted by the World Trade Organization (WTO) Agreement in 1994 under the CVA. Indeed, the CVA provides a neutral procedure to guarantee the streamlined flow of goods required by the dynamics of contemporary trade to ensure the rule of law in the context of fair international trade.

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In the name of legal certainty? Comparison of advance ruling systems for tariff classification in the European Union, China and Taiwan

Shu-Chien Chen

Abstract

In many jurisdictions, international traders can apply to customs authorities for an advance ruling for tariff classification before they import or export their goods. The advance ruling system for tariff classification is expected to grant more legal certainty to international traders because they can communicate with customs authorities and receive a legally binding tariff classification decision in advance. Such a system is important in the facilitation of international trade. In this paper, the advance ruling systems for tariff classification in the European Union (EU), China and Taiwan will be compared. It is shown that the advance ruling systems for tariff classification in these three jurisdictions all emphasise the efficiency of customs administration more than the legitimate expectation and procedural rights of the applicants. This imbalance might result from the complicated nature of tariff classification; however, it can also make the advance ruling system less attractive for international traders to use.

1. Introduction

Tariff classification is one of the core areas of work for customs authorities and requires attention to complicated and technical details. International traders may be faced with uncertainties because the classification of goods is not always indisputable. In order to reduce such legal uncertainties and facilitate international trade, many national customs laws provide an advance ruling system to decide tariff classifications. Such advance ruling systems provide traders with an opportunity to communicate with the customs authorities before the goods are imported, and for the customs authority to issue an administrative decision on the goods classification.

In this article, I will compare the advance ruling systems for tariff classification in three jurisdictions: the European Union (EU), China and Taiwan. My main observation is that the advance ruling system for tariff classification places greater weight on administrative efficiency than on ensuring legal certainty for the importers, although legal certainty has been claimed to be the underlying rationale.

To demonstrate this argument, for each of the jurisdictions I will describe the validity period of the advance ruling, the binding scope, grounds of refusal to grant an advance ruling, reasons for invalidation, and appeal procedures. I will also discuss the disputes and main issues from these three advance ruling systems.

2. European Union

2.1 Overview: European Binding Tariff Information

The EU is a single customs union.[1] It has a uniform system of customs duties on imports and exports from outside the EU, although the EU has no central customs authority. The customs union is the core principle and the foundation of the EU. The European Binding Tariff Information (EBTI) is the system at the EU level which provides a mechanism for international traders to apply for a decision of goods classification issued by a national customs authority.

Binding Tariff Information (BTI) is a decision issued by a national customs authority to the applicant. The underlying rationale for BTI is two-fold: it can provide legal certainty for importers and can facilitate and ensure uniform application of the EU Customs Code.[2] Issuing BTIs to traders in a consistent manner is important for the EU customs union. BTI decisions issued by national customs authorities are all recorded in a database that can be consulted by both the public and customs officers.

Legal basis

In 1991, the BTI system was adopted by the Community Customs Code (CCC)[3] and its legal basis have been amended over several years. On 1 May 2016, the Union Customs Code (UCC) came into effect, so the UCC is currently the legal basis for EU customs matters.[4]

Article 14 of the UCC provides:

1. Any person may request information concerning the application of the customs legislation from the customs authorities. Such a request may be refused where it does not relate to an activity pertaining to international trade in goods that is actually envisaged.
2. Customs authorities shall maintain a regular dialogue with economic operators and other authorities involved in international trade in goods. They shall promote transparency by making the customs legislation, general administrative rulings and application forms freely available, wherever practical without charge, and through the Internet.

Article 22 to Article 37 of the UCC further regulate the legal basis for BTI. In addition to the UCC, there are two related legal instruments implementing BTI: Commission Delegated Regulation EU 2015/2446 (the so-called Delegated Act, hereafter DA)[5] and Commission Implementing Regulation EU 2015/2447 (the so-called Implementing Act, hereafter IA).[6]

Validity

As set out in Article 33(3), the validity period of a BTI decision is three years.[7] Prior to 1 May 2016, the validity period of a BTI was six years and so the new UCC has shortened a BTI's validity period significantly. Prior to the end of the valid period, a BTI may cease to be valid when it no longer conforms to the law because of the adoption of an amendment to the nomenclatures or adoption of other non-tariff measures by the European Commission (EC).

Even if a BTI is about to become invalid, it is possible to extend a BTI's validity if certain conditions are met. This grace period can be up to six months. The conditions for extending a grace period for a BTI are provided in Article 34(9) of the UCC. However, the extended use of a BTI cannot be granted in the following situations:

- the BTI is annulled due to incomplete information
- the BTI becomes invalid as a result of changes to the Nomenclature of the Harmonized System and Combined Nomenclature (CN)[8]

- the revoked BTI decision covers a goods classification which has been decided by the Court of Justice of the European Union (CJEU)
- the BTI is revoked due to administrative errors.

If the circumstances indicated above are not present, the cumulative conditions to grant a grace period are provided in Article 34(9) as follows:

- the applicant is actually entitled to request a grace period
- the applicant has entered into binding contracts based on the classification of the invalidated BTI
- the applicant applies within 30 days prior to the BTI decision being invalidated
- the application is submitted to the original issuing customs authority
- the measure that has led to invalidating the BTI does not expressly exclude extension.

To sum up, the grace period is a measure for protecting a BTI holder's legitimate expectations. However, the extension period is a temporary arrangement, for a maximum of six months. The degree of legitimate expectation is not high.

Binding scope

The objective scope: the same or similar goods

A BTI can only cover the same or similar goods (IA Article 16(2)). The meaning of 'the same type of goods' is interpreted in the case law *Schenker* of the CJEU.[9] 'The same type of goods' can include identical or similar (but different) goods, but only when the distinguishing features are completely irrelevant for the purposes of tariff classification.[10] In other words, a BTI can cover not only identical goods but also goods with similar characteristics, provided that the differences are irrelevant for the purposes of tariff classification. Furthermore, a BTI may not be modified by the customs authority after it is issued (UCC Article 24(6)).

The subjective scope: the BTI holder and its representative

A BTI is binding on all customs authorities throughout the EU (UCC Article 26). Furthermore, under the new UCC from 1 May 2016 the BTI holder is obliged to use the BTI when they import the identical goods from the BTI (UCC Article 32(2)(6)). In the past, the applicant was entitled to use the BTI decision, but was not obliged to use it. After 1 May 2016, a BTI holder is obliged to use it, and such obligation may reduce the risk of inconsistencies due to 'BTI shopping' from different national customs authorities. BTI shopping will be discussed in section 2.2 of this paper.

It should be also noted that a BTI is only binding for the holder and their representatives. In other words, even when traders form a multinational group, the BTI issued to one subsidiary cannot be used by another subsidiary. The companies affiliated to the same multinational group do not have legitimate expectations on the BTI decision issue to one group member, even if these affiliated group members have a close economic relationship.

The CJEU case law *Sony Supply Chain Solutions*[11] deals with this issue. The multinational Sony Group produces and sells computer games, such as PlayStation 2 Computer Entertainment System (PS2). There are many companies in the Sony Group, such as Sony Computer Entertainment Europe Ltd (SCEE), a company established in the United Kingdom (UK) that is responsible for the marketing, selling and distribution of game machines in the EU, and Sony Logistics Europe BV (SLE), a Dutch company that provides logistical services for other companies in the Sony Group, including customs declarations.

In 2000 and 2001, SLE imported PS2 and applied for a BTI from Dutch Customs in its own name but was not satisfied with the classification decision. SLE argued that SCEE applied for a BTI for the same goods in 2000 from UK Customs, and that the classification decision by the UK Customs should be followed by Dutch Customs. The classification from UK Customs is more favourable than the decision by Dutch Customs and SLE used the legal certainty and legitimate expectation arguments against Dutch Customs.

The CJEU rejected SLE's argument and ruled that SLE is not the representative of SCEE, and therefore, SLE has the same status as a third party and cannot rely on the BTI issued to SCEE. Therefore, the SCEE's BTI from UK Customs does not give rise to legitimate expectation for SLE, and is not binding upon Dutch Customs.

It seems that the CJEU has a restrictive interpretation of 'the BTI holder and its representatives' in order to prevent the abuse of BTI by BTI shopping. However, it is ironic and undeniable that Dutch Customs would have to follow the SCEE's BTI from the UK if SCEE imported the goods to the Netherlands itself instead of SLE. In my opinion, such distinction seems artificial, and is not in line with the consistency principle of application of the UCC, because PS2 is classified differently by UK and Dutch Customs' BTI decisions to the same multinational group.

Refusal to issue a BTI

Article 33(1) of the UCC provides two grounds for refusing to issue a BTI:

(a) where the application is made, or has already been made, at the same or another customs office, by or on behalf of the holder of a decision in respect of the same goods and, for BTI decisions, under the same circumstances determining the acquisition of origin

(b) where the application does not relate to any intended use of the BTI or BOI decision or any intended use of a customs procedure.

In other words, if there is already an existing BTI decision on the same goods, the BTI application should be refused. This is to ensure consistent application of EU customs laws. Furthermore, if a BTI decision will not be actually used, the application should also be refused. The BTI should not be abused by the applicant with hypothetical import activities.

Revocation and annulment of an existing BTI

There are two ways to invalidate an effective BTI: annulment and revocation. However, it should be noted that the applicant or the BTI holder cannot invalidate it; it is the customs authorities that initiate invalidation of a BTI.[12]

Annulment: This invalidates a BTI from the starting date. The only reason to annul a BTI is that it was issued based on inaccurate or incomplete information from the applicant.[13]

Revocation: Revocation means that a BTI ceases to be valid. Unlike annulment, revocation does not have retrospective effect.[14] Article 33(7) provides several grounds to revoke BTI decisions.

The common ground for revocation is that the BTI is no longer compatible with the interpretation of nomenclatures because of law or norm changes. Once the law that a BTI decision was based on is changed, the BTI should be revoked. The 'law' includes the interpretation of any of the nomenclatures, explanatory notes referred to in the tariff and statistical nomenclature and on the CCT, a judgment of the CJEU, classification decisions, classification opinions or amendments of the explanatory notes to the Nomenclature of the Harmonized Commodity Description and Coding System.

As to the possible extension period of a BTI being revoked due to changes of explanatory notes to CN, CJEU has ruled on this issue in the British Sky Broadcasting group case.[15] British Sky Broadcasting group, the applicant, imported apparatus for televisions. In this case, the applicant's BTI was revoked

because the relevant explanatory notes to CN under the Harmonized System (HS) Convention were changed. The EU issued a new regulation to incorporate the changes of the explanatory notes. British Sky Broadcasting group argued that its revoked BTI should enjoy the grace period. However, the CJEU rejected this argument and ruled that, while Customs are obliged to issue a BTI with explanatory notes to CN, possible changes of explanatory notes that lead to invalidating a BTI is a risk that is foreseeable to the BTI holder. Therefore, BTI holders cannot claim legitimate expectation or ask for an extension period for their BTI because the change of the EU regulation is based on the change of explanatory notes to CN.[16]

Appeals

EU member states should ensure the applicant's right to appeal against any decision taken by the customs authorities, including a BTI decision.[17]

The appeal procedures of a BTI depend on the national laws of the member states, and thus there is no EU-wide harmonised procedure to appeal a BTI and the BTI applicant has to appeal a BTI decision at the issuing customs authority. According to the EU's survey[18] on BTI implementation in EU member states (EC 2014), the disparities are quite significant. Despite these disparities, there is still a common pattern, also provided by UCC Article 44. A national appeal procedure of a BTI usually involves a first-phase review process, and the reviewing body is within the customs authorities, followed by a second phase before a higher independent body, such as a court or a specialised court-type body.

It should be noted that the national appeal procedure should be prompt. Article 44(4) provides that: 'Member States shall ensure that the appeals procedure enables the prompt confirmation or correction of decisions taken by the customs authorities'. Article 45(1) also emphasises that: 'the submission of an appeal shall not cause implementation of the disputed decision to be suspended'.

During the appeal process the customs authorities have wide discretionary powers to suspend the decision if they have good reason to believe that the disputed decision is inconsistent with the customs legislation or that irreparable damage is to be feared for the person concerned.[19]

2.2 The disputed issues of EBTI

BTI shopping

Although the EU has a uniform customs code, it has no central customs authority. Goods imported from non-EU jurisdictions are still dealt with by national customs authorities and national customs authorities are responsible for issuing BTI decisions. It has been argued that there is a risk of BTI shopping[20] if different EU member states issue different BTI decisions on the same goods, and the importers can pick and choose a favourable BTI decision.

The problem of BTI shopping in the EU has even been disputed before the World Trade Organization (WTO) panel,[21] with the United States (US) suing the EC (at that time) for infringing WTO law for failing to endure uniform administration of customs law, as the tariff classification for a product in Germany is different from the tariff classification in Denmark, the UK and the Netherlands. This is claimed to be contrary to the EU's obligation under WTO law.

Although the WTO panel has ruled that the EU's customs practice is not contrary to WTO law, the EC[22] and the Court of Auditors of the EU[23] have conducted research and been aware of the possible negative impacts of inconsistent BTIs and the abusive shopping opportunities. In implementing regulations of the UCC, there are some measures to assist in combating BTI shopping.

First, a national customs officer has to consult the 'EBTI database' before issuing a BTI.[24] Consulting the EBTI database can reduce the possible conflicts in advance, and also provide ample data as an interpretation aid for the customs officers when issuing new BTI decisions.[25]

Second, if the customs authority in one member state discovers inconsistencies, it is obliged to reach out to consult the customs authority of the other member state (IA Article 14). The customs authorities of different member states should cooperate to prevent inconsistencies, and the EC should also be proactive in order to discover inconsistencies and inform other members.[26]

Last, but not least, after 1 May 2016, a BTI applicant is obliged to use the BTI, with this obligation expected to assist in reducing the temptation of BTI shopping as it is now impossible for the BTI holder to pick and choose the most favourable decision. In other words, an application for a BTI is not risk-free any more: if the result of pre-classification is not satisfactory, the applicant has to appeal it or suffer from the negative impact.

These rules all aim to ensure the consistent application of the UCC and prevent the BTI shopping problem that resulted from divergent BTI decisions. Nevertheless, there are still inherent features of the EU that may inevitably result in divergent BTIs as there is no central customs authority in the EU. Each member state implements the UCC independently. Even if the customs authorities of different member states try their best to cooperate with each other, the risk of BTI shopping cannot be completely eliminated.[27]

Binding upon another member state

A BTI issued by one member state is binding on all national customs authorities, but it is binding only when the same BTI holder uses the BTI to import the goods. If another party imports the identical goods via the national customs authority other than the customs authority issuing the BTI, that party cannot rely on the BTI, even if this party is an affiliated member to the BTI holder, such as a subsidiary. A dispute can arise when the BTI holder is a part of a multinational company group, and the other group members would like to claim legitimate expectation from an existing BTI. This is discussed in the Sony case above.

Right to be heard

In principle, before taking a decision that would adversely affect the applicant, the customs authorities shall communicate the grounds on which they intend to base their decision to the applicant, who shall be given the opportunity to express their point of view. This is the applicant's right to be heard under the UCC.[28]

There is a significant change in the UCC regarding the applicant's right to be heard. More precisely, the second sub-paragraph of Article 22(6) expressly provides that the applicant does not have the right to be heard before the BTI decision is issued. The applicant does not have the right to be heard if the customs authority decides not to issue a BTI decision, to annul or revoke the BTI decision, or not grant a period of extended use.

If the applicant is dissatisfied with the decision, they can still appeal; however, in the application phase, the applicant's right to be heard is lessened as administrative efficiency outweighs the applicant's right to be heard. This seems to reflect the fact that the main function of issuing a BTI is to pursue uniform application of the UCC and facilitate administration efficiency, and focuses less on the applicant's procedural rights.

3. China

3.1 Overview: a two-track system with three types of rulings

In China, the central authority for customs is the General Administration of Customs (GAC). There are also regional customs authorities and local GAC offices all over the country.[29]

The advance rulings system for goods classification in China was first adopted in 2000 as a temporary measure under Order 80 of the GAC.[30] In 2007, the advance rulings system was officially adopted.[31] Under this system, the importer/exporter can apply to a regional customs office for an advance ruling for the goods that they intend to import/export up to 45 days before the import date.

If the regional customs office is able to decide the classification, it will issue a decision of Advance Classification.[32] If that office finds out that the goods in the application involve a classification issue which has not been expressly covered or clearly regulated (that is, explained or regulated by the existing legislation or administrative orders), the regional customs office has to inform the applicant to apply for another type of administrative decision: Administrative Ruling.[33] The GAC's administrative ruling on advance classification, though, is applied by a specific individual, will have general binding effect, and is regarded as an extension of legislation. In other words, the regional customs authorities can only issue a classification advance ruling when the subject is doubtlessly clear; if there are still ambiguities or possible legal disputes, the regional customs authority will have to inform the applicant to apply for an advance ruling from the central authorities (that is, the GAC).

There is a third type of decision: Decision of Commodity Classification, which is issued by the GAC.[34] This is a new system introduced by Order No. 150 in 2007 and is an abstract administrative behaviour initiated by the GAC to publish its internal discussions and approaches regarding commodity classification, whether the subject matter is clear or not. Such decisions of commodity classification are also regarded as extensions or interpretations of legislation.

One significant difference between an administrative ruling and a decision of commodity classification is that the decision of commodity classification is initiated by the customs authority and not triggered by an applicant. Therefore, although an advance ruling and a decision of commodity classification are both generally binding upon all customs offices, a decision of commodity classification is not an advance ruling for the importers/exporters in the strict sense. Its main function is to disclose internal information to applicants in order to increase an individual's trust in the customs authorities and prevent disputes in the future.[35]

To sum up, the advance ruling of goods classification system in China is a two-track system with three types of decisions. In addition to issuing a decision of advance classification when there is no doubt, the regional customs offices are responsible for discovering the ambiguity of the existing norms regarding goods classification. If the goods classification is already clear, a regional customs office can issue a decision; if the goods classification is not clear, the regional customs offices have to inform the applicant to apply for an administrative ruling from the GAC. With this two-track approach, possible diversities can be avoided.

The three types of advance rulings for goods classification in China are outlined in Table 1.[36]

Table 1: Types of advance rulings for goods classifications

	Issuing organisation	Subject matter	Initiating party	Binding scope	Validity
A decision of advance classification (预归类决定书)	Regional Customs	The subject which is already clearly regulated	An individual applicant	The issuing regional customs	1 year
An administrative ruling on advance classification (行政裁定)	GAC	The subject which is not clearly regulated	An individual applicant	Nation-wide	Valid until revoked
A (general) decision of commodity classification (归类决定)	GAC	Both	GAC	Nation-wide	Valid until revoked

Legal basis

In China, the legal basis for advance rulings for goods classification is Article 43 of the Customs Law of the People's Republic of China.[37] It provides that:

> At the written request of a unit conducting foreign trade, Customs may provide an administrative decision in advance concerning the classification of certain imported or exported goods. The imported or exported goods shall be classified according to the administrative decision on the same goods. The Customs shall publish all administrative decisions about the classification of goods.

Article 43 of China Customs Law was further implemented in 2000 by the Order of the General Administration of Customs of the People's Republic of China No. 80. Order No. 80 was later abolished and replaced by Order No. 158[38] which was issued on 1 May 2007 under the full title of *Rules of the General Administration of Customs of the People's Republic of China on the Commodity Classification of Import and Export Goods*. The GAC also issued Order No. 92 (*The Interim Measures of the People's Republic of China for the Administration of the Administrative Rulings of Customs*) to regulate administrative rulings from all levels of customs offices (GAC 2001).[39]

Validity

Under Order No. 158, a decision of advance classification by a regional customs authority is valid unless the legislation or a higher authority's decision – such as one by the GAC – is amended or abolished. Therefore, a regional customs authority's decision of advance classification is in principle valid until its legal basis no longer exists. This is a significant difference to the old interim system that was adopted in 2000 under which the decision by the regional authority was only valid for one year.

As to other types of rulings issued by the GAC, they are valid as legislation until they are revoked.

Binding scope

The two types of decisions of goods classification have different binding scopes. A decision of advance classification issued by a regional customs authority is only binding upon the same regional customs office, while an administrative ruling issued by the GAC is generally legally binding to all regional customs authorities in China as it is regarded as an extension of legislation. Not only can the applicant rely an administrative ruling but other individuals can rely on a decision of commodity classification if they import/export the identical goods. A decision of commodity classification is also valid throughout the country.

Refusing to issue an advance ruling

Under Order No. 158, there are no longer express grounds for a regional customs authority to refuse to issue a decision of advance classification. Nevertheless, under the old law (Order No. 80), the grounds of refusal are provided by Article 10 which provides that, if the formal and substantive conditions of issuing a decision of advance classification are not met, the regional custom office can refuse to issue. Furthermore, Article 10 especially provides that the customs office may refuse to issue a decision of advance classification if the importer does not intend to import the goods. In other words, if the customs authority finds out that the importer tries to abuse the system and get a decision for goods not being imported, such application will be refused.

Although Order No. 158 does not mention grounds of refusal any more, the grounds in abolished Order No. 80 seem still applicable. It is because such behaviour is what the Chinese legislators had predicted and wanted to address. In the interpretation book of China Customs Law, which is published by the National People's Congress of the People's Republic of China, the interpretation of Article 43 of China Customs Law expressly mentions that 'if the application for a decision of advance classification is not related to an actual import or export, the Customs may refuse to accept the application'.[40] Therefore, if an applicant's actual import or export is unrelated to the application of the decision of advance classification, the customs authority should refuse it.

Invalidation of an advance ruling

According to Order No. 158 Article 19,[41] if there is a mistake found in a decision of advance classification by a regional customs office, the applicant must stop applying the decision. A decision should be revoked when the objective facts are mistaken. Furthermore, if the other norms on which the regional customs' decision of advance classification is based, is changed, the decision should also become invalid automatically. This situation involves law amendment or a new administrative order issued by the GAC.

As to the GAC's administrative ruling, Order No. 92 Article 19 provides three grounds for revocation and is similar to Order No. 158 Article 19. As to the GAC's general decision of commodity classification, Order No. 158 Articles 23 and 24 reiterate the same grounds in Order No. 158 Article 19 indicated above.

To sum up, according to Orders No. 92 and No. 158, the most important grounds for revoking an advance ruling is that the ruling is based on incorrect information, that is, the facts are mistaken.

Appeals

If a regional customs office refuses an application, the applicant may apply for reconsideration, because the refusal is a specific administrative act.[42] If the applicant disagrees with the decision of advance classification, it is a specific administrative act, and thus the applicant can appeal and request reconsideration.[43]

If the applicant disagrees with the GAC's administrative ruling or its decision of commodity classification, they cannot appeal the general decision immediately, but have to appeal the specific decision when the goods are imported/exported, and appeal the legality of the decision at the same time.[44] This is because

the GAC's general decision of commodity classification is regarded as an extension and interpretation of legislation, and thus cannot be appealed by an individual.

3.2 The significant features of the advance ruling system in China

The two-track system in China emphasises administration consistency and aims to prevent possible conflicts concerning advance tariff classification decisions. Among the three types of advance rulings, the GAC's administrative ruling on advance classification plays an especially important role to reduce inconsistencies. An administrative ruling is issued due to an individual application, but it has general binding as a piece of legislation. Such general decisions of commodity classification cannot be appealed directly. Instead, the importers/exporters have to wait until the customs authority has made the specific classification decision based on the administrative ruling.

The specific advance ruling issued by a local customs office, on the contrary, is binding in only limited circumstances. It is only binding upon the issuing customs office and only valid for one year. Although it is binding, the benefit of the legal certainty of such a decision is short. Since such decision is specific, it can be appealed directly.

The advance ruling system for classification in China demonstrates a strong emphasis on consistency and administration efficiency. The importer/exporter's legitimate expectation and right to appeal are not mentioned.

4. Taiwan

4.1 Overview: advance tariff classification ruling on imported goods

Taiwan is a much smaller jurisdiction than the jurisdiction of the EU and China. The central customs authority of Taiwan is the Customs Administration, which is part of the Ministry of Finance. There are only four local customs offices in Taiwan.[45] Since 1999, the advance tariff classification system has been adopted. The main purpose of the advance tariff classification ruling system is to prevent disputes between customs authorities and importers. This advance classification ruling system only applies to importers, not exporters. This is also different from the EU and China.

Legal basis

The legal basis of the advance tariff classification ruling system on imported goods in Taiwan, is Article 21(4) of the Customs Act.[46] Article 21(4) of the Taiwan Customs Act is implemented by the Regulations Governing the Implementation of Advance Tariff Classification Ruling on Imported Goods.[47]

Validity

An advance tariff classification ruling in Taiwan is valid until the relevant rules are amended and there is no restriction on the validity period. However, the issuing customs office may amend an advance tariff classification ruling[48] but then must inform the holder of the advance tariff classification in writing. The modification usually results from changes to customs regulations, in which case the basis of the advance tariff classification also needs modifying. If the advance tariff classification ruling holder can demonstrate that they have concluded contracts based on goods that were the subject of the ruling, they may be entitled to an extension period, such as a 90-day grace period. However, it is at the discretion of the issuing customs office to decide if this grace period is granted or not.

Binding scope

An advance tariff classification ruling issued by one of the regional customs offices in Taiwan is binding on the other three regional offices.

Refusal to issue an advance ruling

According to Article 6 of Taiwan's Regulations of Advance Tariff Classification Ruling,[49] there are four grounds for refusing, or not accepting, an application for an advance tariff classification ruling. There are two grounds related to the nature of the goods and two related to preventing inconsistencies.

The first ground is that 'goods are hypothetical, during design stage, or not yet produced'. The second ground is 'goods as disqualified inherently for an advance ruling on tariff classification by Customs, such as waste'. These two grounds are both related to the nature of the goods: when a good is not existing (yet) or is just waste, the Taiwanese customs authority can refuse the application because there is no legal meaning in the application for an advance goods classification.

The other two grounds of refusal involve parallel pending cases on the same or similar goods. The application may be refused when the application is identical with the goods being in a pending case in the court, or when the application is identical or similar with the goods being in a pending administrative review case. The underlying rationale for these two grounds of refusal is to prevent possible conflicts with the court decisions or the later review results.

Reasons of invalidation of an advance ruling

There are no invalidation grounds in Taiwan's Regulations of Advance Tariff Classification Ruling. It seems that Taiwan Customs may modify an advance tariff classification ruling when it finds it necessary. Furthermore, according to Taiwan's Administrative Procedure Act,[50] if a decision is based on incorrect information, the decision can be regarded as invalid.[51] The Administrative Procedure Act is the general Act applicable to all administrative decisions, and thus it also applies to an advance tariff classification ruling.

Appeals

The appeal procedure for an advance classification ruling in Taiwan is quite lengthy. If an applicant is not satisfied with the ruling, they can request a review. However, if they are not satisfied with the result of review, they cannot appeal. Instead, they must import the goods first, then appeal the definitive tariff classification decision of classification, which is based on the advance tariff classification ruling. To appeal a definitive tariff classification decision, the importer has to go through a two-phase administrative review first, and then they may bring the dispute to the court.

4.2 Disputed issues in Taiwan

The new amendment in 2015: expanding the scope of application

Prior to 2015, Taiwan Customs could refuse to issue an advance tariff classification ruling if the applicant had imported the same goods before. The underlying reason of such refusal seems to be an administrative efficiency concern. If the same goods had been imported before, it implies that the applicant has accepted the goods classification previously, and thus it is no longer necessary for the applicant to have an advance ruling. However, in 2015 Taiwan's Regulations of Advance Tariff Classification Ruling was amended. The new Article 6 expressly states that an applicant who has previously imported the same goods is still entitled to an advance tariff classification ruling if no such ruling has been issued before. The reason for the amendment[52] to Article 6, provided by the Ministry of Finance, is to reduce possible disputes between the customs authorities and importers.

The appeals procedure

Another criticism of Taiwan's tariff classification advance ruling system is the appeal procedure. After the applicant applies for a ruling, there are two possible results: refusal or issuing. In either case, if the applicant is not satisfied with the result, they can request a review from the central customs authority in

Taiwan. This first-instance review is not part of the judicial remedy. In this review process, the applicant can express their opinion during the first-instance review. If the applicant is not satisfied with the review result, they cannot appeal to the court and must wait until the goods are actually imported and receive the definitive tariff classification decision, and then appeal that decision.

The appeal of that definitive tariff classification decision involves two phases of administrative review. The first phase is dealt with by the regional customs office and the second phase involves the reviewing committee, organised by the Ministry of Finance. Only after the two-phase review process has been completed can the applicant appeal the definitive tariff classification to the court. In other words, if a definitive tariff classification decision is based on an advance tariff classification ruling, the applicant has to go through three phases of review. The function of the review by the customs administration on the advance tariff classification ruling overlaps with the first-phase review of the definitive tariff classification decision undertaken by the regional customs authority.

Each phase has the legal period of 30 days, which can be extended. The long appeal procedure can make the applicant reluctant to appeal or even apply for the advance ruling. Once the applicant has an unsatisfactory advance ruling, it is extremely time consuming to challenge it before they can finally bring the case to court. Such a long process creates an incentive to take the risk of not applying for the advance ruling, and waiting until the goods are imported. In other words, the complicated appeal process might make the system less attractive because there is extra uncertainty involved.

5. Comparisons of the EU, China and Taiwan

After comparing the advance ruling systems of the EU, China and Taiwan, a common feature has been identified: in these three systems, the applicant's procedural rights and legitimate expectations are weighted less than the consistency and efficiency of the customs administrations. There are three indicators showing this common feature: the binding effect scope, the extent of legal expectation, and the protection level of the procedural rights. All these comparisons demonstrate that the legal certainty principle is the ancillary purpose of the system. These comparisons are elaborated below.

5.1 Binding effect

The first comparison is the binding effect of an advance ruling on other national customs authorities. Among these three jurisdictions, Taiwan is a small jurisdiction and every advance ruling issued by a local customs office will be binding upon other local customs offices.

On the other hand, China and the EU both involve numerous local customs offices, and thus the binding effect of an advance ruling for another customs office is an issue. In theory, a BTI issued by an EU member state will be binding upon another member state. However, as indicated in the Sony case in the EU, a BTI has a very strict subjective scope: only the original BTI holder can rely on the BTI in another EU member state. Even when the economic operator is part of a multinational group, a subsidiary of the group may not rely on the BTI issued to another subsidiary nor claim its legitimate expectation while it imports the same goods via the customs office of another member state. Consequently, a BTI itself is only binding upon another customs authority when the BTI holder relies on it.

China has three types of advance rulings for classification. The ones issued by the central customs authorities are binding upon all local customs administrations. However, the advance ruling issued by a regional customs office is not binding on other regional customs offices.

It would seem that the binding effect of advance rulings is limited, especially when such rulings are issued by local authorities. It is a common phenomenon in the EU and China.

5.2 Legal certainty and legitimate expectation

Comparing the advance ruling systems for goods classification in the three jurisdictions, there is a common feature. Although 'pursuing the legal certainty of the importers/exporters' is mentioned as a purpose of the advance ruling system in all three jurisdictions, the case law and the implementation demonstrate that the legal certainty is an ancillary purpose, rather than the main purpose. It seems that the priorities of the advance ruling of goods classification are pursuing administration efficiency and preventing inconsistencies. In other words, the system is designed mainly for the convenience of the customs administration.

In the EU, the BTI decisions do not grant legal certainty to BTI holders as the system originally claimed. In the case law, British Sky Broadcasting group, the court clearly indicates that a BTI holder cannot request a grace period for their BTI because they do not enjoy legitimate expectation on a BTI, if the explanatory notes to CN for relevant goods is changed. In other words, although the explanatory notes to CN are not legally binding in the HS Convention, the explanatory notes to CN will prevail over the EBTI holder's legitimate expectation rights. The court's reasoning seems weighted towards the uniform application of EU customs with HS Convention more than the individual BTI holder's legitimate expectations.

In China, the advance ruling system is expected to make decision making on goods classification more transparent and build trust between customs authorities and individuals. To prevent inconsistencies, the central authority, the GAC, takes the main responsibility of issuing generally binding decisions, either upon an individual's request or spontaneously. An advance ruling decision by a local customs office can only cover non-disputed issues, has limited validity, and is not binding upon other local customs offices. The advance ruling system in China, in fact, has the main function of amending legislation.

In Taiwan, due to the small scale of the jurisdiction, an advance ruling is binding upon all local customs offices. However, the issuing authorities can modify an advance ruling in Taiwan when they think it necessary. The extent of legal certainty and legitimate expectations for holders of advance ruling decisions in Taiwan is lower than in the EU and China, where an advance ruling cannot be 'amended' and can only be invalidated due to numerous reasons provided in the law.

5.3 Applicants' procedural rights

A further common feature in these three jurisdictions is that the applicants' procedural rights are not well protected.

In the application phase, the UCC of the EU expressly lowers the protection level of an applicant's right to be heard. Applicants are not entitled to a right to be heard or a right to appeal.[53] The local customs authorities make BTI decisions based on the written evidence submitted by the applicants and the applicants do not have the right to express their opinion orally. In China and Taiwan, issuing an advance ruling for classification is also based on written evidence submitted by the applicants. The right to be heard is not clearly mentioned by the relevant regulations.

As to the procedural rights in the appeal phase, China's and Taiwan's appeal procedures are not convenient to the applicants. In China, the GAC's decisions are generally applicable nationally and regarded as an extension of legislation. In China, the applicant cannot appeal a generally binding administrative ruling directly. In Taiwan, an applicant has to go through a very long appeal process to challenge an advance classification ruling. There is a common feature in China and Taiwan regarding the appeal of an advance ruling for classification: the applicant must appeal the advance ruling after the goods are actually imported, and such a requirement can delay the appeal process and can cause dissatisfaction for applicants.

6. Conclusion: is an advance ruling system emphasising administrative efficiency still desirable?

Based on the comparison above, I can draw some conclusions. In these three jurisdictions, their advance ruling for goods classification systems all provide opportunities for importers to communicate with the customs authorities regarding the classification. Applicants can get binding advance rulings and reduce their risk for their imports.

However, such advance ruling systems for classification do not provide as high a level of legal certainty and legitimate expectation as international traders might expect. Across the three jurisdictions, it is demonstrated that the holders of such rulings do not have strong legitimate expectations. An advance ruling for classification will be subject to a change in law, and the conditions for the possible extension of an invalid ruling due to law change, or even a change to the explanatory notes to CN, are strict. This is shown clearly in the case law of the EU. Furthermore, the applicants' procedural rights, such as the right to be heard and right to appeal, are derogated in these three jurisdictions.

It is undeniable that classification in customs administration is complex and the quantity of imported/exported goods is huge. Therefore, in the application phase, applicants' right to be heard is inevitably lowered; otherwise the speed of issuing a decision will be delayed. Furthermore, inconsistencies in different customs' decisions can take place even in one jurisdiction, such as China or the EU. Therefore, there are often restrictions on the binding scope of an advance ruling. These concerns are quite normal and can be the reason that these three advance ruling systems for classification provide rules to prevent inconsistencies. At the end of the day, the customs authorities are still responsible for controlling the borders and ensuring that they levy customs duties correctly. It is a tempting idea for customs authorities to regard an advance ruling for classification system as a measure mainly to pursue administrative efficiency as well as uniform application of the customs laws.

Nevertheless, if an advance ruling system cannot provide a sufficient legitimate expectation level, it can deter economic operators from using it. If an advance ruling system cannot provide enough legal certainty, the incentive for economic operators to use it will be less. Such a deterrent effect will be contrary to the original policy goal, which was to encourage international traders to use the advance ruling system for classification.

To sum up, the advance ruling systems for classification in the EU, China and Taiwan all have the similar shortcoming, in that the applicant's legitimate expectation is less protected. It seems that the current advance ruling system pursues legal certainty of the customs authorities rather than for the economic operators. Therefore, in reality, the system pursues more the administration efficiency, not legal certainty for the applicants. In the long-term development, such an imbalanced design can make the system less desirable for the applicants.

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Notes

1 Article 28 of the Treaty on the Functioning of the European Union.

2 As set out in the preamble to and the case law of the European Court of Justice. The background and history of a BTI, see also Valentine 2008.

3 It was adopted by Article 12 of the CCC, which was later succeeded by Article 20 and further amended by Article 33 of the UCC.

4 The new instructions for the new UCC; see 'Interim Administrative Guidelines on the European Binding Tariff Information (EBTI) system and its operation', 15 April 2016, viewed 1 June 2016, ec.europa.eu/taxation_customs/resources/documents/customs/customs_code/guidance_interim_ebti_en.pdf.

5 The full text (in 23 EU official languages) is published at eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.343.01.0001.01.ENG&toc=OJ:L:2015:343:TOC, viewed 1 June 2016.

6 The full text in (23 EU official languages) is published at eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.343.01.0558.01.ENG&toc=OJ:L:2015:343:TOC, viewed 1 June 2016.

7 Article 33(3) of UCC.

8 See the case law Joint Case C-288/09 and C-289/09 British Sky Broadcasting Group plc (C-288/09) and Pace plc (C-289/09) *v* The Commissioners for Her Majesty's Revenue & Customs, [2011] ECR I-02851, Section 2.1.5.

9 C-199/09, Schenker SIA [2010] ECR I-12311.

10 As above, paragraph 24.

11 Case C-153/10 Staatssecretaris van Financiën *v* Sony Supply Chain Solutions (Europe) BV [2011] ECR I-02775.

12 Article 34(4) of UCC.

13 Article 34(4) and Article 27(3) of UCC.

14 Article 34(4) of UCC.

15 Joint Case C-288/09 and C-289/09 British Sky Broadcasting Group plc (C-288/09) and Pace plc (C-289/09) *v* The Commissioners for Her Majesty's Revenue & Customs, [2011] ECR I-02851.

16 As above, paragraph 109.

17 Article 44 of UCC.

18 The Commission of European Union, 'Report of the second phase of the EBTI monitoring of Member States (2009-2010)', October 2014, ec.europa.eu/taxation_customs/resources/documents/common/publications/info_docs/customs/ebti_report-phase2_en.pdf.

19 Article 45(2) of UCC.

20 'BTI shopping' is defined by the Commission in its BTI guidelines as 'BTI shopping is the term used to describe the illegal practice of submitting more than one application, usually to different Member States customs administrations, for the same goods'.

21 EC – Selected Customs Matters, WT/DS315/R, 2006, the panel report is available on the WTO's website.

22 The Commission's Report of the first phase of the EBTI monitoring of Member States (2007-2008) and Report of the second phase of the EBTI monitoring of Member States (2009-2010), ec.europa.eu/taxation_customs/common/publications/info_docs/customs/index_en.htm.

23 Court of Auditors, Special Report No 2/2008 concerning Binding Tariff Information (BTI) together with the Commission's replies, in different official languages, eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52008SA0002.

24 IA Article 16 (4) and Article 17.

25 Limbach 2015, p. 209.

26 IA Article 23.

27 European Commission, Interim Administrative Guidelines on the European Binding Tariff Information (EBTI) System and its operation (effective from 1 May 2016), p. 16, viewed 1 June 2016, ec.europa.eu/taxation_customs/customs/customs_duties/tariff_aspects/classification_goods/index_en.htm.

28 Article 22(6) of UCC, first sub-paragraph.

29 Article 3 of Customs Law of the People's Republic of China. The full English text can be found at the official website of the General Administration of Customs of the People's Republic of China, viewed 1 June 2016, english.customs.gov.cn/Statics/644dcaee-ca91-483a-86f4-bdc23695e3c3.html 《中华人民共和国海关法》

30 See 'The Interim Rules of the General Administration of Customs of the People's Republic of China on Advance Commodity Classification of Import and Export Goods promulgated in the form of Order No. 80 of the General Administration of Customs on February 24, 2000', which is already abolished. See海关总署第80号令《中华人民共和国海关进出口商品预归类暂行办法》

31 'Rules of the General Administration of Customs of the People's Republic of China on the Commodity Classification of Import and Export Goods Adopted at the Executive Meeting of the General Administration of Customs on February 14, 2007, promulgated in the form of Order No. 158 of the General Administration of Customs of the People's Republic of China on March 2, 2007, and effective as of May 1, 2007, 海关总署第158号令《中华人民共和国海关进出口货物商品归类管理规定》

32 The official term is '预归类决定书' in Chinese.

33 The official term is '行政裁定' in Chinese.

34 The official term is '归类决定' in Chinese.

35 The GAC has also published the introduction about the difference between Order No. 80 and No. 158. The GAC expressly indicates a 'decision of commodity classification' is the new public form of the administrative instructions in the past. Available only in Chinese and viewed 1 June 2016, www.customs.gov.cn/publish/portal0/tab49664/info431862.htm.

36 Table 1 is translated from the explanation announcement from General Administration of Customs in China. See www.holyluck.cn/cn/ShowNews.aspx?NewsId=82.

37 The full English text can be found at the official website of the General Administration of Customs of the People's Republic of China, viewed 1 June 2016, english.customs.gov.cn/Statics/644dcaee-ca91-483a-86f4-bdc23695e3c3.html 《中华人民共和国海关法》(viewed on 1 June 2016)

38 The full English text can be found at the official website of the General Administration of Customs of the People's Republic of China, viewed 1 June 2016, english.customs.gov.cn/Statics/bd8abe0c-b785-471b-b6ee-d62ef6a83aec.html 海关总署第158号令《中华人民共和国海关进出口货物商品归类管理规定》

39 The full English text, viewed 1 June 2016, can be found at www.lawinfochina.com/display.aspx?lib=law&id=2414&CGid= 海关总署第92号令《中华人民共和国海关行政裁定管理暂行办法》

40 The National People's Congress's interpretation book on the specific legislation is not the official legal source, but is important to see the underlying rationale and concerns of the legislators. The interpretation of China Customs Law, viewed 1 June 2016 (available only in Chinese), is published at the National People's Congress's website, Article 43 is at www.npc.gov.cn/npc/flsyywd/xingzheng/2002-07/11/content_297435.htm 《中华人民共和国海关法释义》

41 Order No. 158 Article 19 'Article 19: Where there is any mistake in the contents of a Decision of Advance Classification, the regional Customs that has issued the Decision of Advance Classification shall immediately issue a Notice on Revocation of Advance Commodity Classification Decision of the Customs of the People's Republic of China (hereinafter referred to as the Notice; see Annex 3 for its format), and notify the applicant to stop using the Decision of Advance Classification.

Where any change occurs to the rules according to which a Decision of Advance Classification is made, and the Decision of Advance Classification is no longer applicable as a result, the regional Customs that has issued the Decision of Advance Classification shall issue a Notice, or make an announcement, to notify the applicant to stop using the Decision of Advance Classification.' The English version of Article 19 is not precisely translated from the Chinese. It should mean the situation that the rules which are the basis of the decision of advance classification, change.

42 This is regulated by Article 3 and Article 28 of Administrative Reconsideration Law of the People's Republic of China 《中华人民共和国行政复议法》

43 This is regulated by Article 28 of Administrative Reconsideration Law of the People's Republic of China.

44 Interim Measures On The Administration Of The Administrative Rulings Of Customs, Order of the General Administration of Customs of the People's Republic of China (No. 92), Article 20.

'If any party to the import and export activities protests the specific administrative act made by the customs office, and raises objection to the administrative ruling on which that specific administrative act is based, it may file an application for examination of the administrative ruling at the same time it applies for reconsideration of the specific administrative act. The customs office of reconsideration shall, after accepting that application for reconsideration, transfer the application for examination of the administrative ruling to the GAC, which shall make the examination and decision.' The full English text is published at en.pkulaw.cn/display.aspx?cgid=38652&lib=law 《中华人民共和国海关行政裁定管理暂行办法》

45 The four regional customs are Taipei, Taichung, Kaohsiung, and Keelung customs. The organisation of Taiwan Customs, viewed 1 June 2016, eweb.customs.gov.tw/ct.asp?xItem=46680&CtNode=12929.

46 The full English text, viewed 1 June 2016, is available at law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=G0350001 《關稅法》

47 The full English text, viewed 1 June 2016, is available at law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=G0340077 《進口貨物稅則預先審核實施辦法》

48 As above, Article 9: 'Customs may modify the result of advance ruling and notify the concerned Applicant with explanation in written form. If the Applicant is able to prove that a contract has been entered into, the transaction has been conducted according to the contract and the change in tariff classification will cause loss, the Applicant may apply for an extension of the period of the validity of the ruling, but such an extension shall not exceed 90 days.

'In the case where modifying an advance tariff classification ruling change involves import regulations, the imported goods shall be subject to the import regulations in effect at the time of importation'.

49 As above, Article 6: '1. Goods are hypothetical, during design stage, or not yet produced;

2. Subject matter being applied for advance ruling on tariff classification is identical or similar to the disputed goods being dealt with pursuant to the provisions of Act Article 13, 17 or 18 of Customs Act.

3. Subject matter of an advance ruling on tariff classification being applied is identical or similar to the disputed goods is underway of administrative relief; or

4. Application determined as disqualified for an advance ruling on tariff classification by Customs, such as waste'.

50 The full English text of Administrative Procedure Act is available at law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=A0030055 《行政程序法》

51 As above, Administrative Procedure Act Article 111.

52 See Ministry of Finance's gazette, gazette.nat.gov.tw/EG_FileManager/eguploadpub/eg021074/ch04/type1/gov30/num3/images/Eg01.pdf 《進口貨物稅則預先審核實施辦法部分條文修正總說明》 and Taiwanese Parliament's official announcement at lci.ly.gov.tw/LyLCEW/agenda1/02/pdf/08/07/15/LCEWA01_080715_00276.pdf 《立法院第 8 屆第 7 會期第 15 次會議議案關係文書 進口貨物稅則預先審核實施辦法部分條文修正條文》, viewed 1 June 2016, available only in Chinese.

53 Article 22(6) of UCC; DA Article 10.

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A new approach to e-commerce customs control in China: integrated supply chain – a practical application towards large-scale data pipeline implementation

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Abstract

Developments in e-commerce are presenting new challenges in customs control and China's customs agency is developing a new approach to how it addresses these challenges. China Customs has adopted an integrated supply chain approach to secure international trade lanes and to facilitate legitimate trade. We present a case study analysis of an integrated supply chain company that integrates the transaction, declaration, logistics and financial services of e-commerce customers on its platform, and we show how this integration can also be used by China Customs to more effectively manage supply chain risks. We show how this new approach benefits traders, customs and government. We also analyse this case study in the context of the World Customs Organization's (WCO) SAFE Framework.

1. Introduction

As e-commerce continues to grow and develop, it is expected that China Customs will be faced with specific e-commerce challenges. In this paper we present solutions to five of these challenges.

The first challenge for China Customs is that they do not have the resources to adequately control the increasing number of small and medium-sized enterprises (SMEs) that are without 'authorised economic operator' (AEO) status. Ten years ago there were approximately 100,000 companies in China that were either importing into or exporting from China. Most of these companies were large and more likely to be equipped to deal with the many administrative complexities associated with border clearance procedures and logistics. Now, however, there are an estimated one million traders in China, with most of these being SMEs. The anticipated number of traders over the next three to five years is five million.[2] With the boom in cross-border electronic commerce, for example in Europe and the United States (US), it is clear that more and more SMEs will be involved in the international trade of multiple commodity categories.

Table 1: China general goods import and export figure in USD per company categories

Year	USD100,000,000	Export	Export Ratio	Import	Import Ratio	Import&Export	Total Ratio
2014	State Owned	2565	11%	4911	25%	7477	17%
	Foreign Enterprise	10744	46%	9095	46%	19839	46%
	SMs	**10070**	**43%**	**4767**	**24%**	**14837**	**34%**
	Total	**23425**		**19608**		**43033**	
2013	State Owned	2490	11%	4990	26%	7480	18%
	Foreign Enterprise	10443	47%	8748	45%	19191	46%
	SMs	**9129**	**41%**	**4709**	**24%**	**13837**	**33%**
	Total	**22100**		**19503**		**41603**	
2012	State Owned	2563	13%	4954	27%	7517	19%
	Foreign Enterprise	10228	50%	8713	48%	18940	49%
	SMs	**7666**	**37%**	**3814**	**21%**	**11480**	**30%**
	Total	**20489**		**18173**		**38663**	
2011	State Owned	2672	14%	4934	28%	7606	21%
	Foreign Enterprise	9953	52%	8648	50%	18602	51%
	SMs	**6337**	**33%**	**3344**	**19%**	**9681**	**27%**
	Total	**18986**		**17435**		**36421**	
2010	State Owned	2344	15%	3875	28%	6219	21%
	Foreign Enterprise	8623	55%	7380	53%	16003	54%
	SMs	**4797**	**30%**	**2492**	**18%**	**7289**	**25%**
	Total	**15779**		**13948**		**29728**	

Source: Customs-info.com (Year 2015 data not available).

The second challenge is that these new companies (particularly SMEs) lack knowledge and professional expertise about customs regulations and procedures – such as those related to the Harmonised System (HS), valuation, origin, and quarantine – and therefore have a low level of customs compliance. It is quite common that shipments are delayed at the border due to non-compliance, which results in extra supply-chain costs and lead-time for the traders. Also, SMEs generally have low credit ratings and find it more difficult to get loans from banks, and experience delays in receiving their export tax refunds from China's taxation and customs authorities.

The third challenge is that there has been a considerable increase in the number of SMEs that falsely claim tax refunds on the export of non-existent goods (State Administration of Taxation 2015, n.d.). To accelerate the development of exports from China, its taxation authority organised an accelerated release of tax refunds for exported goods. In 2009, although the export volume from China decreased by 16 per cent, the export tax refund increased by 11 per cent. In 2011, China's export volume increased by only 20 per cent, while the export tax refund increased by 26 per cent, which indicates that the extent of fraudulent export tax refund claims may be considerable (Kong 2014).

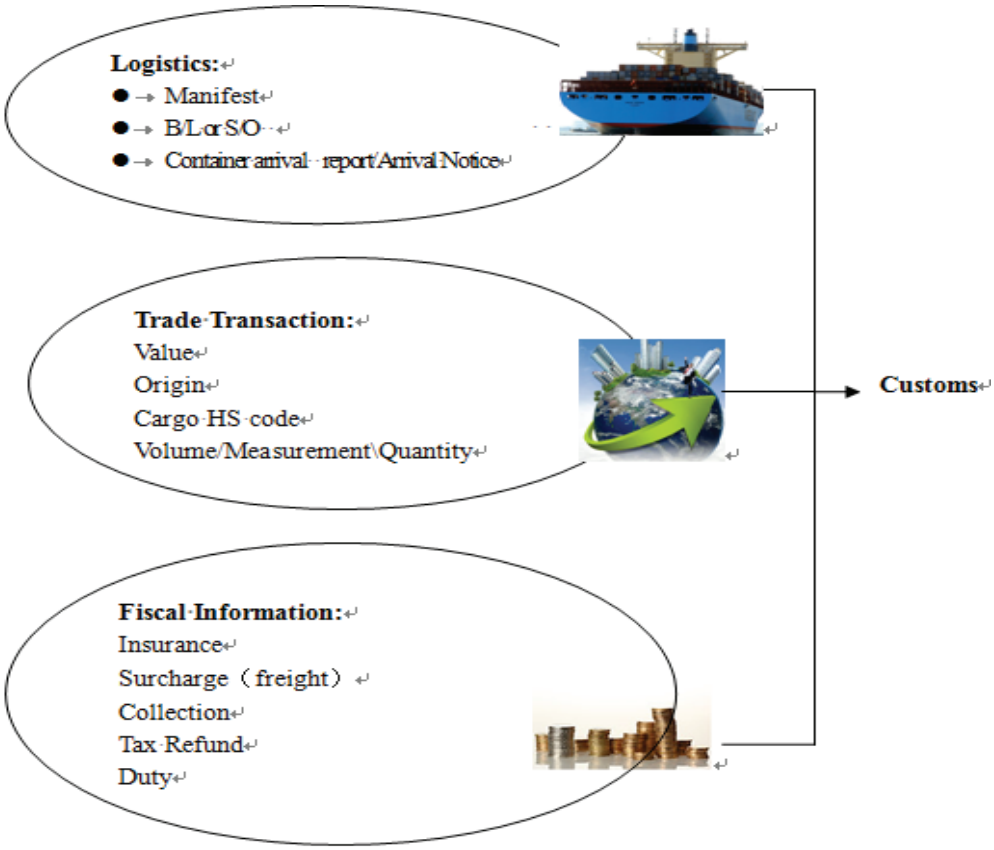
Between 2011 and 2013, the State Administration of Taxation retrieved about USD1.3 billion in tax from fraud, and in the first six months of 2014 retrieved USD0.27 billion[3] Similar cases of tax fraud have also been reported in Thailand (Jinakul & Jinathongpradit 2000), while an investigation in the Netherlands found that about 44 per cent of all value-added tax (VAT) fraud involved false tax claims based on forged invoices for non-existent or exaggerated purchases (Keen 2007). In the United Kingdom (UK) VAT revenue losses through tax evasion jumped sharply in 2005–2006, reaching GBP12.4 billion, or 14.5 per cent of potential VAT revenues. Her Majesty's Revenue and Customs (HMRC) estimated that missing trader and carousel fraud accounted for less than a quarter of these losses (Smith 2007, pp. 167–77). One case in the UK involved a complex GBP176 million VAT scam relating to the fake sale of four million phones, with millions of pounds in VAT payments being claimed through ghost companies (Garside 2012).

The fourth challenge is that customs controls rely on the data contained in import and export declarations, but these declarations often contain inaccurate information about the cargo. Although all parties in international supply chains (such as traders, carriers, brokers, terminal operators and shipping agencies), are obliged by law to provide accurate data and declare all types of information related to goods, carriers,

brokers and agents do not always know what is in a container and they often use the term, 'said to contain' (STC) in the declarations to protect themselves against liability in case of theft or damage to the goods. For example, if a weapon of mass destruction was shipped by container through an international supply chain, it is estimated that it would cost the supply chain approximately AUD1.3 trillion (Eggers 2004, p. 4). It is also observed that information management (in particular the sharing of cargo data by parties in a supply chain), and partner relationship management have significant positive effects on container safety performance (Yang 2013).

The fifth challenge is fragmentation of supply chain information (see Figure 1). Customs does not receive all the supply chain information as, for example, the logistics information, such as the vessel or aircraft manifest, is owned by the carrier; the trade transaction information is owned by the buyer (consignee) and the seller (consignor); while the payment information is owned by the banks. In order to obtain all the relevant information across the whole supply chain, Customs needs to invest resources to collect the fragmented data from the different parties in the supply chain, and then analyse it.

Figure 1: Fragmentation of supply chain information



2. A solution for these challenges

Stakeholders in the supply chain and the inspection authorities, such as Customs, have realised that reducing the burden on business and helping stakeholders with their statutory obligations (such as providing the required customs information and complying with increasingly complex regulatory demands), has become a cornerstone of cross-border trading (Hesketh 2009, 2010; Tan et al. 2011). One way to facilitate this is to adopt the concept of a 'data pipeline' since such data-sharing infrastructure leads to the availability of better quality data in the supply chain (Klievink et al. 2012).

The data pipeline is a concept that forms the basis of a data information interchange platform, but it is still in an experimental phase, and more time is needed to develop certain aspects, such as standards, authorisations, financing structures and data sensitivity (Klievink et al. 2014). If we can find new solutions to combine the data pipeline concept with additional functions and possibilities for e-commerce customs control, it should prove to be more useful for the World Customs Organization (WCO) and its members.

2.1 Principles of a new approach

A proposed new approach is underpinned by four principles, which are outlined below.

Principle 1: Shared responsibility on risk control

E-commerce control should not be the sole responsibility of Customs; enterprises should also be involved. The WCO *SAFE Framework of Standards to Secure and Facilitate Global Trade* (SAFE Framework) states that the cooperation between Customs and economic operators is one of its main pillars, which means that firms should also be able and willing to share the liability and management of risk with Customs. As more inspection leads to congestion and low efficiency, incentives should be developed that encourage firms to improve security upstream in the supply chain (Bakshi & Gans 2010). At the same time, a public-private partnership (PPP) attitude is recommended (Hintsa 2010).

Principle 2: Supply chain information integration

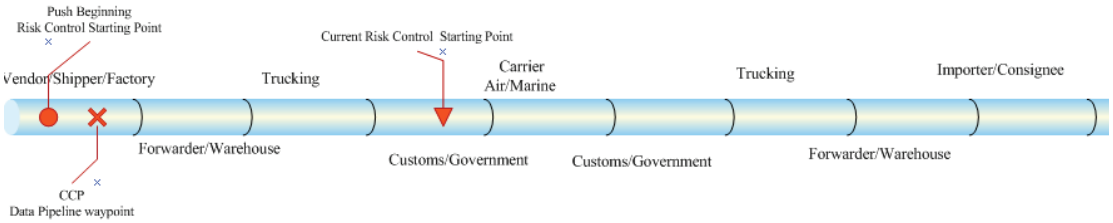
Supply chain information should be integrated, so that Customs has easy access to all relevant supply chain information, rather than having to collect different information from different sources, which is the current situation (Van Stijn 2011). For example, duty collection is an important task for Customs, and it is easy for traders to falsify invoices, which impacts the calculation. Also, regular variations in the price of goods make it difficult for Customs to determine the correct value. When Customs suspects that the declared value is not accurate it needs to verify the authenticity of valuations, which may take at least 20 days (European Commission, Taxation and Customs Union n.d.). In this situation, exporters incur extra costs and their supply chain is delayed due to declaration suspension. However, with the availability of integrated supply chain information, Customs could more easily ascertain the true transaction information, such as price, insurance and freight costs, which would then avoid delays.

Principle 3: Earlier risk control

Implementing risk control measures earlier in the supply chain will help Customs identify compliant traders. The earlier Customs is involved, or obtains the data from the supply chain, the more time Customs has to conduct a risk analysis. The US rolled out the Container Security Initiative (CSI) and Automated Manifest System (AMS) in 2002, and the European Union (EU) started using the advanced entry summary declaration (ENS) for security analysis in 2009.[4] However, this ENS data is only provided at the container-loading points in the ports, while the supply chain starting points occur earlier than loading at the container terminals. The EU's best practice in security can be seen in the Customs Security Programme (CSP), which includes advanced control equipment (such as Non-Intrusive Inspection (NII) facilities); international customs cooperation; Authorised Economic Operator (AEO) status; risk selection; and pre-arrival and pre-departure processes (European Commission, Taxation and Customs Union 2006).

Currently, however, risk controls do not commence at the starting points of supply chains. Data elements from different sources in the supply chain are collected at the consignment completion point (CCP), which is the location where the goods are actually loaded into the container, while the waypoint is where the container is actually packed (Van Stijn 2011). Compared with traditional declaration data filing points – ENS/AMS filing points or the CCP waypoints – the integrated supply chain risk control point starts at the vendor factory, which is earlier in the chain (see Figure 2).

Figure 2: Risk control starting points of integrated supply chain, Data Pipeline CCP, current mode



Principle 4: Supply chain compliance and trade facilitation

The data pipeline is an IT infrastructure which can help traders to improve their supply chain compliance. An integrated supply chain can make data sharing more efficient and help traders improve their supply chain service. For example, a company using an integrated supply chain can readily check such information as the commodity ingredient information (which is vital to the HS code verification), various restrictions such as those relating to the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES), as well as a temporary tariff policy based on their expertise and the data holdings of their IT system. Greater compliance during the supply chain benefits both traders and governments (Hesketh 2010).

3. Case study: OneTouch

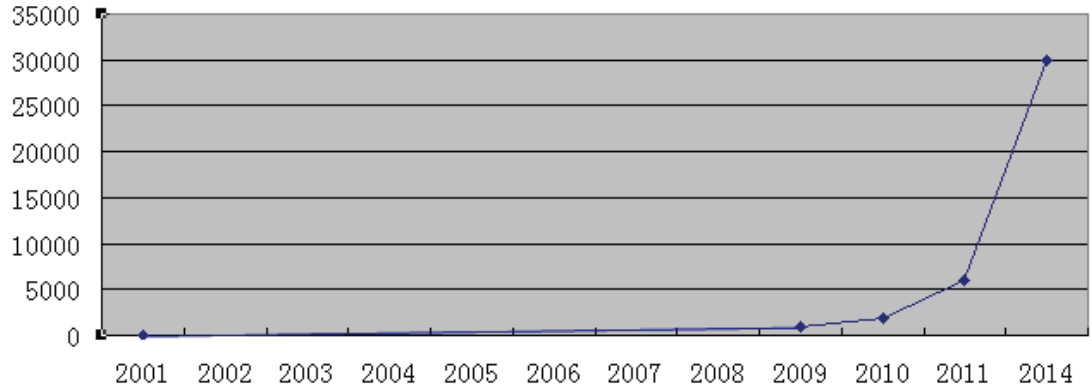
OneTouch is a service provider which offers an integrated supply chain service platform that provides customs clearance, logistics, finance, tax refund (import and export) and related services. OneTouch is an AEO, certified by China Customs (Jing 2014). It developed the first import and export management system in China and advanced its standard import and export service system, OneTouch Standard, which was acclaimed by the China Ministry of Science.[5] OneTouch's system can be linked to both traders and logistics service providers. Based on its AEO certification and powerful IT system, China Customs can place a greater degree of reliance on its data. In 2013 the data error ratio of OneTouch was 0.04 per cent, which is much lower than the AEO's average error level of 3 per cent.[6]

To verify the system's accuracy, China Customs undertakes post-clearance audits, and automated data checking against other sources of supply chain data.

3.1 History[7] and operation

OneTouch started in 2001 as an agency for importers and exporters. In 2010 it was acquired by Alibaba and became an integrated supply chain service, which led to rapid growth. There were almost 4,000 clients in 2011, growing to 30,000 clients in 2014, whereas there had been only seven clients in the set-up stage[8] (see Figure 3).

Figure 3: The trader's volume of OneTouch



Source: www.ebrun.com/20141030/113825.shtml, viewed 12 May 2015; www.chinawuliu.com.cn/zixun/201504/17/300491.shtml, viewed 14 May 2015.

There are several reasons why OneTouch is considered to have been successful. These include a perception that its data is reliable, its provision of credits to traders, and its use of big data.

The purpose of the company's credit services is to encourage more and more traders to use OneTouch services through the use of a foreign trade business-to-business (B2B) credit system. In 2013 data from 1.8 billion batch transactions were held in OneTouch and its credit to traders totalled 55 billion RMB. More than ten banks provide credit to OneTouch, including CITY and DBS banks.[9]

With its use of big data and the availability of more transparent and open supply chain information, OneTouch profits from a variety of supply chain services, including financial, logistics and agency services (including customs broking and forwarding). To show how OneTouch works, two examples are provided: customs clearance and finance.

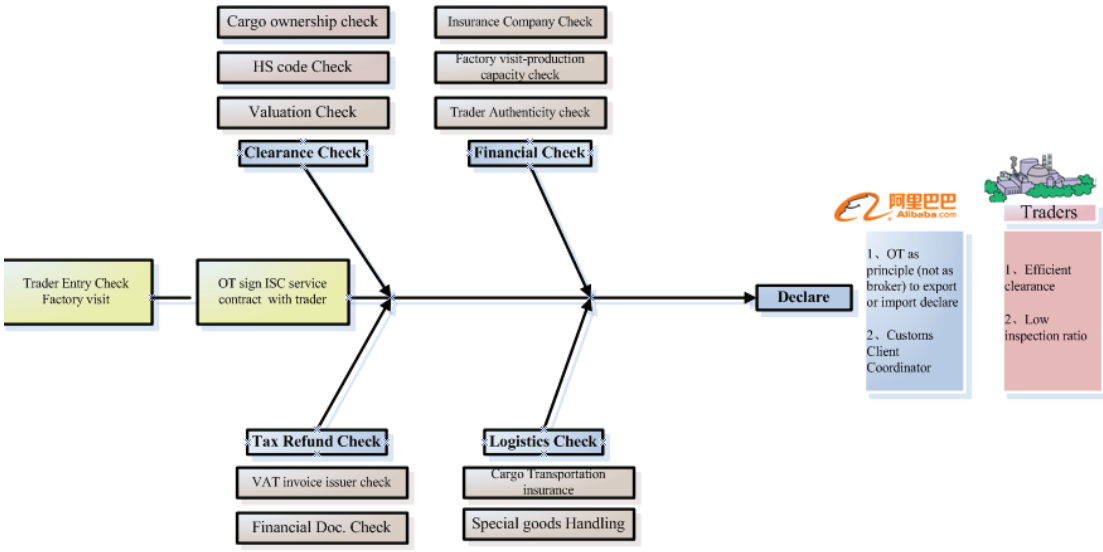
Customs clearance

Before OneTouch signs agency agreements with traders, it risk assesses the entity (see Table 2). It then acts as a principal in relation to the import and export of the trader's goods, rather than as an agency. Furthermore, before declaring goods to Customs, OneTouch undertakes risk assessments from the perspective of finance, logistics, clearance and tax refunds (see Figure 4). The trader enjoys faster clearance and lower inspections since OneTouch is an AEO, which gives it access to a China Customs client coordinator to facilitate the business.[10]

Table 2: Risk Control Matrix

		Stage		
		Advance control	**On control**	**Post control**
Risk Control Centre	Clearance	Cargo ownership check	Data verification (Price/weight)	Data analysis (general post-audit)
		Customs valuation check	Logistics verification (Type/Size/Nature)	Parameter setting (adjust risk parameter)
		HS code check	Container load check (Goods vs. Documents)	Client management (Fix if low risk/ Deny if high risk)
				Business process reengineering
	Tax refund	VAT invoice issuer advance audit	Tax refund check	Tax refund documents check
		Client entry check-visit factory	Trade authenticity check	Abnormal documents check
		Financial document check	Tax check	Client communication
	Financial	Order authenticity check	Collection without export Export without collection Abnormal monitoring	Verification (goods vs money)
		Insurance (not goods insurer but transaction credit insurer) company check-insurance issues	Order check/ Contract check	Insurance claim
		Vendor check-visit factory	Quality control/ Inspection report	Legal options
			Goods control	
			Loan management	
	Logistics	Cargo transportation insurance	Logistics document check Logistics handling	Destination handling
		Special goods handling	Freight settlement	Insurance
			Cargo damage/ Loss handling	

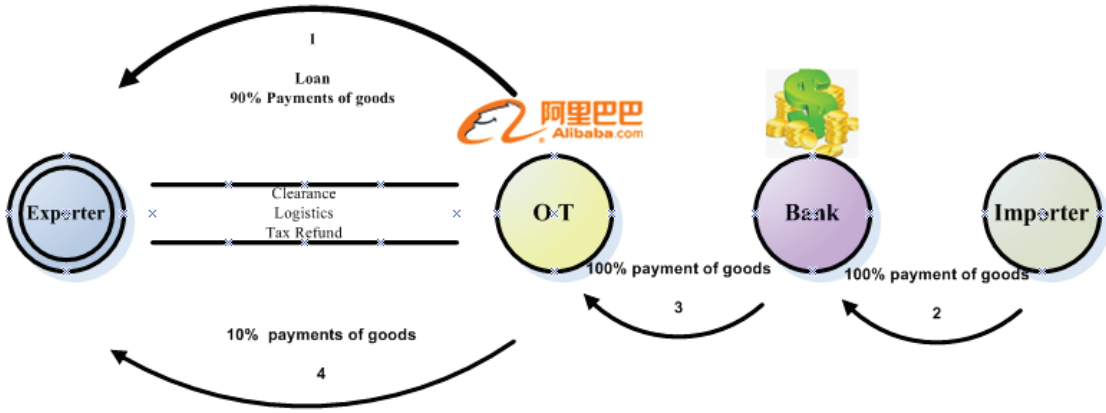
Figure 4: Customs clearance advance control



Finance

The payments for goods are remitted into OneTouch's account, with these funds then paid to the trader within one day of receipt. Vendors are also able to obtain loans from OneTouch before the payments are remitted into OneTouch's accounts (see Figure 5). All such data are readily available to Customs, thereby allowing them to use the financial data to conduct risk assessments.

Figure 5: Financial service provided by OneTouch



By way of the two examples of customs clearance and finance, it can be seen how OneTouch provides combined clearance, finance and logistics services to traders. More and more SMEs are using the services of companies such as OneTouch, with over 63.7 per cent of SMEs indicating that they wish to use this type of service provider to import and export. Figure 6 illustrates the business interface between OneTouch, operators and government authorities, including Customs.

Figure 6: OneTouch company integrated service diagram

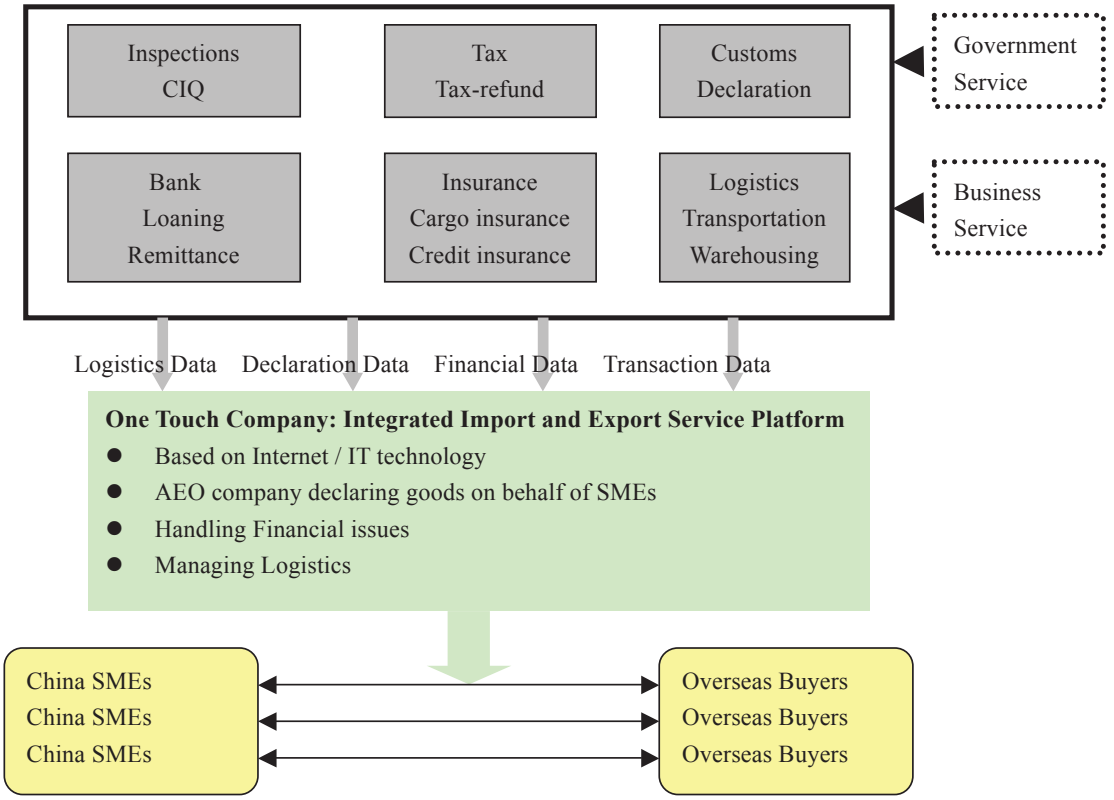


Table 3: OneTouch's rank in the TOP100 biggest export companies in China

Year	One Touch's Rank in the Top100 Biggest Export Company of China
2011	94
2012	9
2013	5
2014	3
2015	2

Source: China Customs Information Website, viewed 17 March 2016, www.haiguan.info/CompanyTaxis/Detail.aspx?id=260.

3.2 Advantages

There are advantages for operators, customs and other government agencies in using companies such as OneTouch.

Operators

(i) Clearance

- **Faster clearance:** Being treated as an AEO company enables operators to achieve quick release via the green channel. Companies such as OneTouch, which have AEO status, use their own name to declare instead of the actual importer or exporter, and conduct a comprehensive risk control process before declaring to China Customs. China Customs can rely on this data, applying 'push to supply chain starting point' measures on the risk management matrix.
- **Increased compliance:** Common declaration practices that include goods being overweight, incorrectly described, prohibited or restricted suggest that vendors' internal controls are unreliable (Hesketh 2010). OneTouch's management and support injects a higher level of compliance into the traders' supply chain.
- **Less inspections:** Operators benefit from the reduced inspection levels resulting from OneTouch's AEO status, the physical inspection ratio being about 1 per cent, compared to the general inspection ratio of around 4 to 5 per cent[11]). Lower inspection ratios mean less bottlenecks and more efficient customs clearance operations for both imports and exports.
- **Fewer personnel:** Since OneTouch controls the whole integrated supply chain service, the clients/vendors do not need to recruit their own foreign trade staff, which saves client's/vendor's human resource and management costs.
- **Lower logistics costs:** OneTouch provides professional logistics services in all main ports in China, which save operators' logistics cost due to the economies of scale.

(ii) Finance

- **Cash flow**: After cargo departure, payment is made in two parts: 90 per cent is paid to traders three days after the bill of lading is issued and the remaining 10 per cent is paid after collection. Once the proceeds of sale are received from overseas, OneTouch deducts 90 per cent automatically and then remits 10 per cent to traders. The initial 90 per cent payments are essentially loans – although traders have difficulty getting loans from banks, this system works because OneTouch holds full transaction data on its database (see Figure 5).
- **Increased collection security:** OneTouch helps operators to check the Letters of Credit terms, thereby providing better business risk control.
- **Faster tax refunds:** The normal export tax refund time is at least three months,[12] but OneTouch can credit operators the 96 per cent tax refund in three days using its own capital.[13] Although China Customs is aiming to reduce the refund time to 20 working days,[14] companies such as OneTouch clearly provide a faster option.
- **Reduced operating costs:** SMEs can spend considerable time and human resources on logistics, clearance and tax refunds, and the smaller the order, the higher the ratio of these costs in the overall costs. One of OneTouch's visions is to incorporate SMEs into the standard import and export service system with lower costs and higher efficiency. Based on such procurements it can reduce logistics costs by 30 per cent.[15]

(iii) Logistics

- **Competitive cos**t: As noted above, through the economies of scale, operators are able to benefit from lower costs on insurance and other logistics services.
- **Crime prevention:** OneTouch uses an 'Internet of Things' (IOT), Location-Based Service (LBS) on its platform to create a more secure trade lane to help operators to combat crime, such as theft.
- **Compliance and trade facilitation:** SMEs improve their supply chain compliance as a result of their service provider's rigorous systems and procedures.

Customs

- **Complete and accurate declaration data**: Declaration data is considered to have a high degree of accuracy, accessible via the OneTouch system that combines financial and logistics information. Customs can use the data pipeline for risk management purposes.
- **Effective and efficient control:** China Customs has a high degree of confidence in the AEO's systems and procedures, enabling it to allocate its resources to unknown traders or high-risk transactions. OneTouch adds value not only on the clearance procedure but also on trader filtering. Using its risk control matrix, it avoids contracts with high-risk clients, which assists Customs in its own management of risk.
- **Anti-terrorism:** Security is a main concern for Customs, and access to platforms such as those operated by OneTouch provides them with additional data to help combat terrorism.

Government

- Through greater reliance on commercial risk control systems, Government direct investment in such systems may be reduced, leading to more effective governance at lower cost.

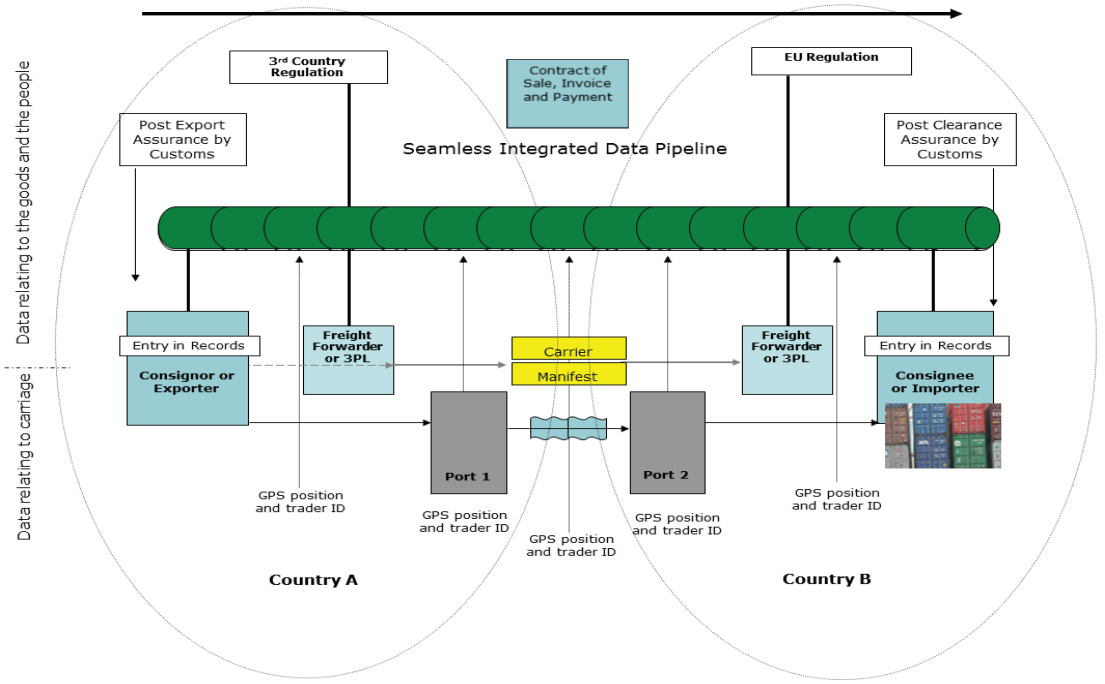
3.3 Risk control

OneTouch uses a risk control matrix to undertake several aspects of risk management usually performed by Customs. The matrix (Table 2) is composed of three stages (advance control, on control and post control) and four parts (clearance, tax refund, financial and logistics).

4. Relation between data pipeline concept and integrated supply chain companies such as OneTouch

The services of integrated supply chain companies (ISCC) can be viewed as a first step towards the implementation of a full data pipeline, such as that shown in Figure 7. A key function of a data pipeline is that it enables Customs to obtain more accurate data about internationally traded goods. This is important because currently the entry summary declaration (ENS) and the import declaration do not always accurately describe the imported goods. Typically this occurs because the party that makes the declaration, such as the ocean carrier that makes the ENS, is not the party in the supply chain that actually loads the goods into the container (see Hesketh 2009, 2010). Hence, a data pipeline can solve this data inaccuracy problem by using a world-wide IT infrastructure, based on IT innovations such as web services and services-oriented architecture, to enable Customs in the country of destination to obtain import declaration data about goods directly from the seller in the country of origin, or the freight forwarder that filled the containers in that country.

Figure 7: Data pipeline (the green bar is the IT infrastructure)



Source: Van Stijn et al. 2011; see also Hesketh 2010; Overbeek et al. 2011; van Stijn et al. 2012.

In the case of a trade lane from China to an EU member state, the ISCC could play a crucial role in enabling such data pipeline visibility for Customs in an EU country as it can provide accurate data from the source party of the supply chain, which is held in their database and able to be shared with Customs. For example, Dutch Customs could obtain both the import declaration and ENS data directly from the ISCC, or indirectly from China Customs via their partnership with the ISCC. To implement a full data pipeline between China and the EU, there must also be a cloud computing environment based on IT technologies, such as web services and service-oriented architectures to transfer the data from the ISCC to Dutch Customs (see Van Stijn et al. 2011). However, this technical aspect is not provided by the ISCC, and hence beyond the scope of this paper.

4.1 ISCC as a landing place for a data pipeline

ISCCs such as OneTouch act as a 'landing place' for a data pipeline, which is typically a community system of a seaport that acts as a national data hub for the exchange of international supply chain data between all parties in the chain.

Since specific customs procedures are quite different between countries, it is more efficient that data pipelines have these landing places both in the country of origin and the country of destination. Typically, port community systems can act as landing places, but a new development is that many industry sectors are developing their own community systems and there are now several community systems that can act as landing places for a data pipeline, depending on the type of goods or modality of hinterland transport from the port (road, river, rail transport). For example, the flower growers in the Netherlands are now developing their own community IT system to exchange their supply chain data within their own community of growers and logistics service providers.

Other examples of landing places are the Neutral Logistics Information Platform (NLIP)[16] in the Netherlands, or TradeXchange[17] in Singapore. The detail of these landing places may be quite different (see Table 4), but that is a topic for future research (which is planned for next phase of the study).

Connecting national landing places, such as OneTouch, NLIP and TradeXchange, would be a very efficient way to implement data pipelines in the future, as the key functionality of national landing places for a data pipeline is the sharing of cargo data among all commercial parties and government inspection authorities.

Table 4: The comparison of three types of landing places for a 'data pipeline'

	TradeXchange	**NLIP**	**OneTouch**
Developer	Port authority	IDVV	Alibaba
Character	Single window platform	A system platform	A real company
Responsibility	N Information sharing	N Information sharing and main focus on logistics	Y Not only information sharing but also sharing the risk control responsibility with Customs
Cash flow	N	N	Y
Business profit	No direct profit	No direct profit	Profit from both traditional logistics service and supply chain financial service
WAYPOINT	N/A	Stuffing (A container is packed)	OT conducts on-site vendor audit before signing contract (earlier than stuffing)
Data visibility	All parties	All parties	Partially

5. Conclusions

ISCC systems and controls such as those employed by OneTouch provide a number of benefits for both industry and government: Since the money flow and logistics flow are under the control of the ISCC, its systems provide a reliable basis for ensuring customs compliance and managing associated risks. Also, due to an ISCC's approach to shared commercial responsibility, the need for Customs to check all SMEs individually is reduced, particularly where an ISCC's risk controls include checking a trader's legitimacy before accepting them as a client.

Further, since an ISCC such as OneTouch can handle both integrated logistics services and financial issues such as collections, tax refunds and loans, it is likely to provide an excellent basis for developing an international data pipeline.

Further, as an ISCC can generate revenues not only from the traditional logistics services but also from supply chain financial services including loans for SMEs, this profit-driven mode is likely to see significant growth.

Importantly, the systems and controls of ISCCs such as OneTouch are able to reduce the burden of SME risk management for Customs, particularly as they share the commercial liability with the individual traders. The use of ISCCs by SMEs results in a more compliant supply chain and hence more efficient and effective clearance arrangements. In summary, the commercial methods adopted by ISCCs which serve to facilitate the management of risk may lead to a new approach to customs control.

Associated with this model are, however, a number of potential risks. A potential risk is related to how much trust Customs should place in a company like OneTouch. Perhaps random checks or some other form of verification would be a reasonable method to mitigate such risk. Linked to this is the need to ensure the maintenance of quality services, data and reporting which to a great extent relies on the expertise of the company's employees.

Another potential risk is the development of a monopoly. However, this is unlikely as several companies similar to OneTouch have now been established in China. Also, given that ISCCs hold client data which in turn may be accessed by Customs, a risk to Customs, ISCCs and traders alike is the possibility of leakage of client data to competitors, with the associated negative commercial impacts.

In future research we plan to collect more quantitative data on the cost savings and profits of supply chain compliance based on ISCC companies, and study how it can be combined with IT innovation for inter-continental transfer of goods data in the supply chain such that parties in other countries can benefit from its accuracy.

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Notes

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Section 2

Practitioner Contributions

Social advance rulings on classification in China: an optimal allocation model of holistic governance

Xinyi Ye, Shujie Zhang and Caihong Hou

Abstract

With the rapid development of international trade, and the diversified change of social needs, Chinese Customs is gradually adjusting its administration by developing Customs-Business partnerships (CBP) to better adapt to the market economy and provide more efficient public services, creating the Collaborative Governance Model (CGM) through market and social resources. As one of the CBP projects receiving much attention from customs administrations and businesses, the social advance rulings system for classification has completed its pilot phase and is continuing to develop, but still faces challenges in optimally utilising and allocating administrative resources. Based on the theoretical perspective of holistic governance, this research identifies and summarises the main types of advance rulings on classification intermediary service models and business characteristics in the context of China. Finally, an optimal allocation model for social advance rulings on classification is proposed.

1. Introduction

Pre-processing of customs clearance can reduce operational costs and enhance international competitiveness, which has led to calls for the development of advance rulings on classification in China. The General Administration of China Customs (GACC) officially launched the policy of advance rulings on classification in 2000, nominating Tianjin as the location for the pilot and specifying basic regulations (GACC 2000). As the demand for these services from foreign trade enterprises continues to rise, 11 Customs Districts, led by Shanghai, launched social advance classification rulings programs on 1 January 2008 in which market and social resources were introduced (CCBA & GACC 2007). Under this arrangement, Customs authorise certain reliable intermediary agencies to implement pre-classification services for foreign trade enterprises so as to improve customs supervision and tax efficiency by establishing Customs-Business relationships for mutual benefit (Zheng 2010).

The practice of social advance rulings on classification contributes to trade facilitation. For Customs, it enhances accuracy in classification, timeliness in clearance, and rationality in law enforcement. For foreign trade enterprises, it guarantees low cost risk and consistency in logistics. For intermediary enterprises, it provides a clear direction for business development, as well as transformation and upgrading. However, as foreign trade enterprises have diverse demands there are multiple trends in pre-classification services, which make the processes more complex for intermediaries; increase control difficulties for Customs, and pose challenges for enterprises in choosing suitable intermediaries.

To further improve collaborative governance between public and private sectors in the field of pre-classification, this paper proposes that the way in which executive bodies target customers should change. This paper also shows how refining communication channels between the public and private

sectors can optimise the process design of commodity classification around 'Export to China' (ETCN) construction, gaining full benefits of social resources and providing references to assist in selecting appropriate intermediaries.

For both Customs and businesses, it is desirable to answer the following questions regarding social advance rulings on classification:

- What is the nature of social advance rulings on classification?
- Why do we need social advance rulings on classification?
- What is the status quo of social advance rulings on classification?
- What are the existing problems in implementing social advance rulings on classification?
- Is it possible to propose an optimal model which overcomes these problems?

2. Holistic governance theory and customs practice

2.1 Theoretical background of holistic governance

As western society entered the post-industrial era in the late 20th century, the profound shift in the social order led to widespread challenges to the traditional bureaucratic model of administration. The United Kingdom vigorously promoted structural reform in the field of public service to cope with the inefficient bureaucracies in the late 1970s, bringing new government reform, oriented by 'New Public Management' (NPM), to the stage of administrative management.

During this time, problems regarding fragmentation and hollowing-out, such as responsibility shifts, government prevarication and ineffective department communications resulting from NPM, started to emerge. Since NPM could not meet the management needs, people began to question the utility of the theory (Zhu 2008). Based on reflection and correction, by means of the development of market-oriented reforms and information technology, Perri 6 (1997) proposed a new government model called 'holistic governance' with the core of crossing organisational boundaries, integrating social resources and achieving policy targets.

2.2 Holistic governance theory

Holistic governance theory relies on advanced information technology and is based on using the strategies of coordination, cooperation, integration and responsibility to meet public demands. It also emphasises the integration of governance hierarchy, governance functions, public and private sectors, accountability mechanisms and information systems.

As 6 (2002) points out, holistic governance is a management style used by government agencies and organisations that are aiming to: achieve adequate communication and cooperation; reach effective coordination and integration; bring the policy objective of each party into line; mutually reinforce executive means for policies; and collaborate closely. The core purpose of the theory is to cross organisational boundaries, integrate resources and achieve policy objectives.

Holistic governance theory can be applied when trying to coordinate and integrate fragmented outsourcing, and foster public demands through public-private cooperation. The theory plays a vital role in the theoretical direction and practical promotion of the supply of public services and the redesign of government functions.

Unlike the traditional hierarchy governance model, holistic governance pays attention to the full range of auxiliary functions possessed by social and market forces, reducing the government's expenditure

burden on public services and improving service quality and efficiency. It doesn't depend on authority and executive orders for coordination, but emphasises using the resource endowments and comparative advantages of every party, thus integrating local resources and achieving mutual benefit and reciprocity.

However, holistic governance doesn't rely entirely on a contract-oriented marketing system and the mechanisms of contractual relationships. It still emphasises the dominant position of the government, which is responsible for expanding the space of public services, coordinating the supply mechanism, managing service procedures and controlling service results. On the basis of government leadership, it can accelerate mutual recognition between regions, break market segmentation, remove administrative barriers, promote optimal allocation of resources, and complement local advantages.

Through the widespread application in various fields of public administration, the concept has proved to be effective in promoting market-oriented reform of public services. Drawing on domestic and overseas practical experience in recent years, the essential principles of holistic governance are summarised below.

2.2.1 Integrating regulatory efforts to promote pluralistic governance

Holistic governance emphasises effective coordination and integration between government agencies and organisations through full communication and cooperation, so that there can be a consistent policy objective and collective means of policy implementation, creating the effect of mutual reinforcement and leading to close cooperation (Christensen & Lægreid 2006).

It focuses not only on government domination and market assistance but also the power of public supervision. The government needs to actively mobilise and coordinate social powers, cultivating the foundations and atmosphere for Customs-Business partnerships (CBP), as well as making up for inadequate government forces. With multi-supervision and subsidiary feedback for governance, the demands of the public can be better met, and the efficiency of public services can be improved.

2.2.2 Promoting information exchanges to enhance mutual trust and cooperation

Holistic governance attaches great importance to the application of information technology. It urges the government to master more information through the use of modern technology, to establish databases for better decision-making, the improvement of public services, and the promotion of electronic reforms (Peng 2005). The networked mode of government administration requires the full use of all stakeholders' exclusive resources and comparative advantages, including those of government agencies, to form changeable network configurations. Conflict arising from different interests and priorities can progress to mutual recognition of these differences through the extensive use of communication, consultation and negotiation mechanisms, thus forming collaborative relationships.

Through the diversified network of information exchange and the delegation of public service supply, each government agency can participate in public affairs and administration, promoting information exchange and market understanding of government departments, social organisations and the public. This also helps to clarify the needs and positive suggestions in respect of public service supply, promoting a diversified mechanism of public service supply.

2.3 How Customs applies holistic governance theory

Chinese society has gone through major transitions and the government is faced with many challenges, including removing the limitations of the original governance patterns and dealing with the diversity and volume of public service needs. The contradiction between the governance pattern and public demands prompted the government to accelerate its reform of public administration and, at present, China's holistic governance reform is functioning well in fields such as business, finance and banking.

China Customs is an example of these reforms. Through integrating the enterprise information and administrative standards required by all the departments concerned with port management, the construction of a 'single window' (which was firstly applied at Shanghai Pilot Free Trade Zone in June 2014), effectively strengthens the regulatory functions of government departments like customs, inspection and quarantine, maritime and frontier inspection. The 'single window' enables 'one platform, one submission and one standard' of enterprise information and improves the information interchange, supervision, mutual accreditation and enforcement, and mutual help between government departments. The integration of customs clearance was also achieved in 2014 in economic zones such as Beijing-Tianjin-Hebei, Yangtze River Delta, Pearl River Delta and Yangtze River Economic Zones, via a coordination mechanism that simplifies customs clearance procedures, boosts inter-regional and inter-departmental customs clearance, and reduces the burden on enterprises.

The transition of China Customs is not confined to cross-sectoral and internal reforms; it also attaches great importance to the introduction of social forces and the integration of public and private supervision resources. Chinese Customs started early in developing public-private partnerships (PPP), however, the achievements of the reform were extremely few due to the obstacles inherent in traditional administrative practices and the fragmented design. In 2004, Shanghai Customs socialised part of its commodity classification work. After four years of preparatory work, the pilot of social advance rulings on classification was officially completed and its comprehensive promotion continues to progress. In 2005, the Customs Processing Trade Department began to utilise the third-party service.

3. The status quo of social advance rulings on classification

Social advance rulings on classification has generated widespread concern from both the Customs and the trade community since the first pilot in 2007. To date, Shanghai Customs District has successfully implemented a number of innovative measures to improve the service level, including selecting 70 practitioners, 25 of whom have been awarded classification through examination, and 15 being recognised as outstanding staff. At the same time, multiple business modes of social advance rulings on classification with different characteristics have emerged in the market, which has resulted in a number of issues that need urgent resolution, including how to:

- define the target customers of different government agencies
- allocate resources efficiently and rationally
- realise resource optimisation and potential exploitation.

This paper presents in-depth research into import and export enterprises, traditional declaration enterprises and new foreign trade service enterprises. The aim of the research was to: understand the application and internal demands required by import and export enterprises; clarify business entities and development trends; investigate the fragmentations currently existing; and make recommendations for improvements. This research involved interviewing customs officers, visiting import and export companies, and undertaking surveys using questionnaires.

3.1 The development status of the executive entities of social pre-classification

According to the current market situation of social advance ruling on classification, business can be broadly divided into two modes: the comprehensive service platform mode represented by Jiangsu Huimaotong Corporation, and the business transformation mode represented by Shanghai Xinhai Customs Brokerage Co. Ltd.

3.1.1 Integrated foreign trade service platform: a case study of Jiangsu Huimaotong Corporation

An integrated foreign trade service platform has emerged in recent years, which is mostly funded by large enterprises with abundant financial resources and rich foreign trade experience. With foreign trade, business-to-business (B2B) service providers as its executive body, and data sedimentation and cloud computing as its technology base, this kind of business aims to provide one-stop foreign trade services for importers and exporters. Typical examples of this mode in China include: Just OneTouch, owned by Alibaba in Shenzhen; Hui Mao Tong, owned by Guotai in Jiangsu; and Tradx, owned by Chunyu in Shanghai.

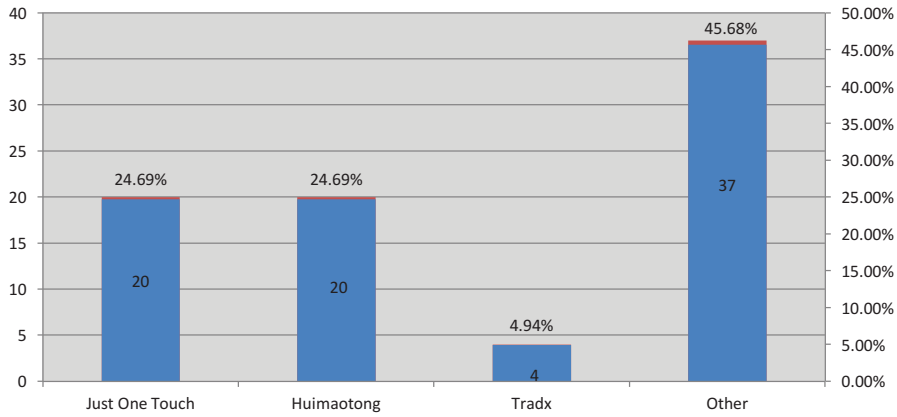
Jiangsu Huimaotong Corporation (Huimaotong), for example, provides one-stop services within the whole supply chain including foreign trade, logistics, and financing for small and medium enterprises (SMEs), foreign trade enterprises and individuals. Acting as the indirect representative unit, Huimaotong uses the internet to generate mass data for its clients (export-import businesses), such as production capacity, delivery, market size, customs clearance and product evaluation. Based on the integration of client data, Huimaotong builds a foreign trade credit system, which provides important reference for the qualification inspection of its clients.

However, since most integrated foreign trade service platform enterprises are still in the preliminary stage of business development, they don't yet possess high credit ratings. The credit grade of Huimaotong is Class B, so it is not able to issue a 'Commodity Pre-classification Opinion' to Customs for lacking of the formal qualification. Hence, it can only provide its clients with advice and reference that do not involve service compensation. Furthermore, most clients of Huimaotong are SMEs with financial difficulties or low Authorised Economic Operator rating, so the types of commodities to be classified can be complicated and come from a wide range.

To understand the development status of integrated foreign trade service platforms, questionnaires were distributed at customs declaration centres in Shanghai Waigaoqiao Free Trade Zone and Jiangsu Zhangjiagang. The questionnaires were randomly distributed to customs declarants, and 68 valid questionnaires were returned.

As seen in Figure 1, the market visibility of integrated foreign trade service platform enterprises is not very high, and most face development issues such as limited customer acquisition and weak marketing promotion. Among foreign trade service platforms in China, Just One Touch and Huimaotong enjoy higher levels of market penetration, with the other platforms gradually increasing their market share.

Figure 1: Platform enterprises and their market share

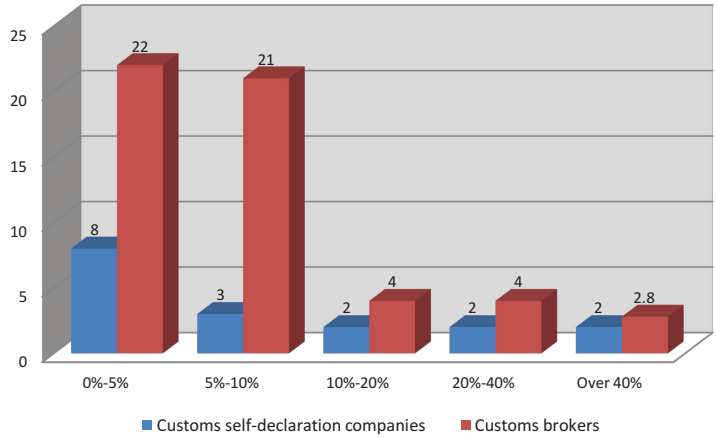


Source: Compiled by the authors.

3.1.2 Traditional transforming foreign trade service enterprises: a case study of Shanghai Xinhai Customs Brokerage Co. Ltd

Because of the diversification of customer demands and limited profit margins for individual businesses, many traditional foreign trade service enterprises move from simplification to diversification, expanding to the entire import and export supply chain. With broad customer resources and considerable profit margins, social pre-classification points to a new operation development direction and attracts a large number of traditional foreign trade service enterprises. They begin taking every effort to obtain the business qualification, occupying the market share and opening up channels for profits.

Figure 2: The proportion of operating costs on customs clearance



Source: Compiled by the authors.

Among the 68 companies surveyed, customs brokers are the main type of enterprise, making up 75 per cent of the total sample; the number of self-declaration companies is 17, accounting for 25 per cent. It can thus be seen that the customs broker companies have dominated the entire declaration market in China.

Due to the large operating costs associated with clearing customs (including human, financial and material resources), customs agents dominate the Chinese declaration market. However, declaration enterprises no longer limit their business to customs declarations but diversify their business and develop other services – some even offering a one-stop shop – so that they can consolidate their market position and client loyalty.

Traditional transforming foreign trade service enterprises utilise the popularity of their core business to attract clients. They may provide comprehensive services for their regular clients based on a long-term and stable cooperation. Those who apply for social pre-classification service and obtain the necessary government approval will be granted the qualification by the Chinese Customs Brokers Association. They can charge the service fee after signing the consignment agreement for commodity pre-classification with their clients, but should accept part liability for losses caused by misclassification and return the service charge at a certain percentage.

Table 1: The commodity classification services of Xinhai

Service item	Applicable range	Utility	Characteristic	Validity
Commodity pre-classification Opinion	Any form of trade	• Upload the number and evidence of commodity classification to H2000 • Serve as a management basis for Customs	Commodity as a unit	One year
Commodity pre-classification Files	Only for: • The record filing for manuals of processing trade • The record filing for HS codes when the credit rating of a business changes from A to B • Other tax-free trade forms	• Upload only the HS codes of the business to the territorial Customs • Customs cannot check the evidence, and treat the file for reference only	Use Enterprise as a unit	One year

Source: Adapted from the official website of Shanghai Xinhai Customs Brokerage Co. Ltd.

Shanghai Xinhai Customs Brokerage Co. Ltd (Xinhai), for example, obtains large numbers of customers for its professional service level in customs declaration. To meet the rapid development of new formats in foreign trade, Xinhai began its business transformation and turned to social pre-classification. Xinhai is among the first batch of private enterprises to be qualified for commodity pre-classification in the Shanghai Customs District, having the authority to submit 'Commodity Pre-classification Opinion' to Customs. Currently it has 37 professional pre-classification practitioners, and has already provided its services to over 2000 companies. To take both investment costs and market acquisition into account, Xinhai chose to join with large enterprises from other outsourcing areas to form Oujian Network Development Co Ltd, which strives to build a comprehensive foreign trade service system. However, Oujian is less visible at present because the integrated network platform between each member company hasn't yet achieved official formation.

3.2 Fragmentation in social pre-classification

The promotion of social advance rulings on classification not only greatly improves the timeliness of customs clearance and the international competitiveness of import and export enterprises, but also contributes to the diversified development in the construction of executive bodies and business modes. However, it also brings challenges to the unity of operational flow and executive systems, and to the way Customs supervises and manages service providers. In order to promote the sustainable development of social pre-classification and maintain the normal operation of import and export clearance, it has become an urgent concern to accurately analyse and mine the fragmentation of every stakeholder in this emerging business.

3.2.1 Fragmentation of Customs

To Customs, the main purpose of introducing social resources to commodity classification and developing CBP is to build a win-win situation where Customs enhances clearance; the import and export enterprises cut their clearance costs; and the service providers broaden their profit space. Through the field research in Shanghai Customs Policy Research Office and Shanghai Waigaoqiao Free Trade Zone, this paper makes the following three points about the fragmentation of Customs in relation to qualification accreditation, follow-up management and policy implementation.

Fragmentation in qualification accreditation

Commodity classification is an important element of a declaration form. To standardise the management of social pre-classification providers, Customs needs to inspect such factors as firm size, credit rating and ability to confirm their qualification. Since the Domestic Clearance Integration System is still being developed, the standards of pre-classification accreditation in different regions are not yet consistent, which to some extent limits the ability of pre-classification providers to expand their business, and the selection available to those who need the service.

Fragmentation in follow-up management

Besides the qualification accreditation to pre-classification providers, Customs also needs to follow up on the implementation status of the businesses. What's more, with the constant emergence of new trade patterns and commodity types, Customs is required to publicise administrative rulings in a timely manner so as to effectively prevent any classification errors by the providers, and improve clearance.

However, Customs has not yet developed a systematic training mechanism and an open information platform, leaving the management and control towards qualified pre-classification providers in a fragmented state. This does not enhance the administrative efficiency of Customs itself, and puts pre-classification demanders at risk of passively breaking regulations.

Fragmentation in policy implementation

The Customs administrative reform should not only focus on practical results but also the extension of unified implementation across the country. In other words, the reform executers should not pursue depth only, but breadth as well. In terms of the current development of social pre-classification in China, the regions of Shanghai, Dalian, Shenzhen and Nanjing are at the forefront. But in other areas, the business of pre-classification is still blank, resulting in regional differences in business development and fragmentation in policy implementation.

3.2.2 Fragmentation of pre-classification providers

Since Chinese Customs launched the market development strategy for commodity classification, many service providers have expressed their wishes to participate for greater profits. As collaborators and executors of customs pre-classification, pre-classification providers occupy a unique position in promoting the development of trade facilitation. With the use of field interviews and market researchers, this paper identifies points about the fragmentation of pre-classification providers in relation to service objectives and service capabilities.

Fragmentation in service objectives

The fragmentation in service objectives is mainly reflected in two areas related to corporate customers: one is the distribution areas, which results in different qualification accreditations and recognition; and the other is the type of business. Some mature pre-classification providers with high credit ratings will filter and audit their service demanders before the settlement of contractual relationships, but most grant whatever is requested, neglecting customer selection, misallocating service resources and influencing the realisation of benefit maximisation in the business of social pre-classification.

Fragmentation in service capabilities

Customs and the Customs Brokers Association are jointly responsible for the service capability audit of service providers applying for qualifications for social pre-classification. This audit mainly consists of two parts: data verification and a job knowledge test. During data verification, pre-classification providers are required to obtain at least an A credit rating. For some businesses with a rich working experience with Customs, the criterion can be broadened. The job knowledge test is uniformly a closed-book test, which tests knowledge rather than hands-on experience. Thus, the defects in the auditing mechanism bring about the fragmentation in service capabilities of different providers.

4. Improvement measures of social pre-classification

To effectively resolve the fragmentation of the social pre-classification mechanism, based on the theoretical view of holistic governance, the business strengths of each executive body are analysed to optimise the allocation of service resources and create a win-win situation. This paper proposes a process-reengineering model for commodity classification based on the use of ETCN, an important media for process optimisation and information interchange of customs clearance in China, using both public and private classification service resources and increasing Customs-Business mutual trust and cooperation.

4.1 Realising the optimal allocation of pre-classification executive bodies

Due to the lack of unified industry control and the variability of business models, the reasonable and effective allocation of pre-classification service resources hasn't been achieved. This has led to the phenomenon that part of the available resources are left idle. This paper presents the following concepts from the perspective of the business characteristics of service providers and the actual requirements of service demanders, thus achieving allocation on demand and efficiency mobilisation.

Customs

As the administrative department in charge of import and export supervision, Customs is the receiver and examiner of an enterprise's commodity classification. In order to ensure commodity classification accuracy and alleviate the conflict between limited administrative resources and growing pre-classification demands, Customs should focus on the business of pre-classification towards new and controversial commodities and release classification decisions in a timely manner, reducing the response time of both intermediaries and enterprises and maintaining the effective operation of the foreign trade market.

Traditional transformation of foreign trade service enterprises

Most pre-classification staff of traditional foreign trade service enterprises have professional qualification certifications and acquire strong operational capacity. They are qualified to submit a 'commodity pre-classification opinion' and receive regular professional training, which is organised jointly by Customs and the Customs Brokers Association. Therefore, considering for the rationality of business design, the traditional foreign trade service enterprises that want to transform their businesses have the capacity to handle commodities with complicated formulations and components, which can give full play to their operational capacity and resource superiority.

Integrated foreign trade service platform enterprises

With a short development time and temporarily low credit ratings, the integrated foreign trade service platform enterprises lack classification professionals and can only offer enterprises pre-classification opinions for reference at present. For these reasons, they can focus on offering pre-classification services towards those commodities with relatively simple composition and low value.

Based on the actual development of each pre-classification executive body, Table 2 presents a comparative analysis between Customs, traditional transforming foreign trade service enterprises, and integrated foreign trade service platform enterprises from the aspects of business qualification, business working time, service integration, service charge, follow-up services and database services. It presents an optimised model for applicable pre-classified commodity types and customer groups, reconfiguring the supply of pre-classification service and promoting supply-demand matching.

Table 2: Optimal model of pre-classification resource allocation

	Customs	Traditional transforming foreign trade service enterprises	Integrated foreign trade service platform enterprises
Business qualification	—	• Most have qualifications • Minority can issue 'Commodity Pre-classification Opinion'	• Temporarily have no qualifications • Only offer opinions for reference
Business working time	Slow	Fast	Average
Service integration	—	• Some provide multiple foreign trade services • Usually limit to old and stable corporate customers	• Provide one-stop services • No limitation for customers
Service charge status	Without charge	Charge	Without charge temporarily
Follow-up services	None	Some provide follow-up services like communication and explanation to Customs	• Directly responsible party for the declaration • Responsible for all clearance operations
Database services	None	Few	Have
Key commodity types of pre-classification	• New-type commodities • Controversial commodities which are difficult to coordinate	• Commodities with complicated formulations and components • Some controversial commodities but can be solved	• Commodities with relatively simple composition • Commodities with low values • Commodities that have achieved unified opinion
Applicable enterprise types	Emerging enterprises	Enterprises with changeable product ranges	Enterprises with stable product ranges

Source: Compiled by the authors.

4.2 Refining the process construction of ETCN—the interactive platform for commodity classification

Using holistic governance as the guide, and computer technologies and electronic platforms as the means, ETCN (the national pre-classification service platform led by the Tariff Policy Department of GACC and CCBA), passed quality acceptance on 28 April 2012, and was formally launched on 30 August 2012.

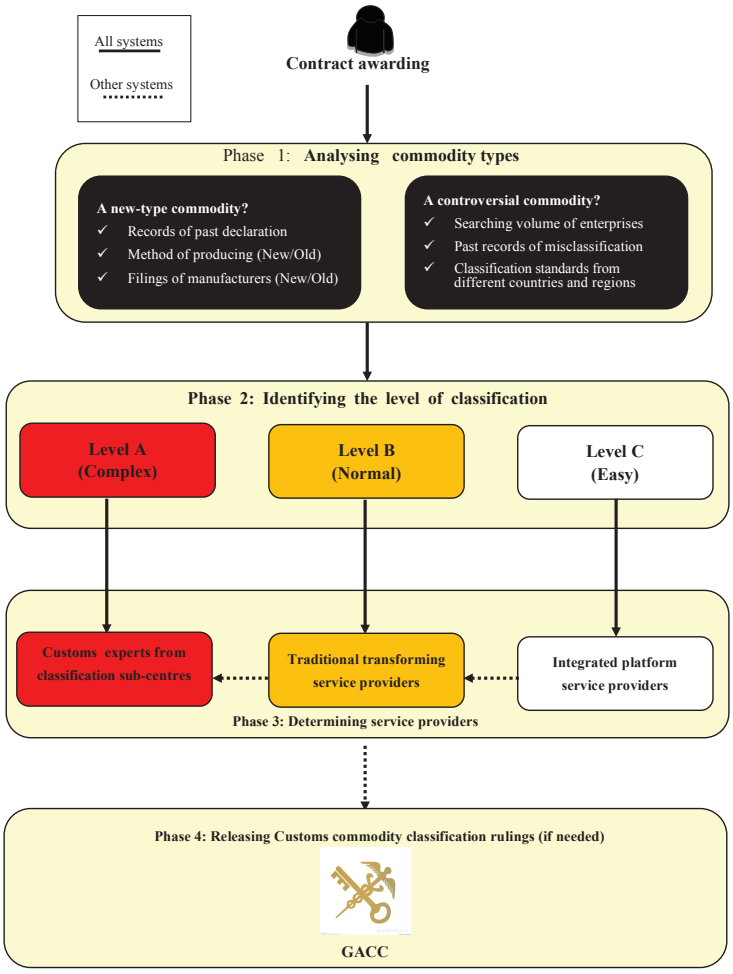
ETCN has the function of providing timely filing towards commodity data that is used for classification. The results of classification can be transmitted to the H2000 system of GACC and the local Customs office network, effectively promoting the pre-processing of examination exercise and the unity of classification results from enterprises and Customs. In addition, the platform is currently the only certified service platform for national commodity pre-classification. It realises the integration of interactive operations, including service demanders, service providers and CCBA, and combines featured items like expert online consultation, clearance site tracking and intelligent classification, promoting business facilitation and information integration.

At present, the platform positioning of ETCN is to serve intermediaries and foreign trade enterprises, providing a network channel for developing contractual and cooperative relationships. However, it does little to promote the holistic governance of commodity pre-classification, especially the decisive process designed for some of the new and controversial commodities.

Holistic governance theory emphasises the application of digital information technology. It advocates that governments use modern technology to master more information and establish information databases, improving the efficiency of government decision-making and the quality of public services, and realising e-government reforms.

In order to consolidate the Customs-Business governance model and promote holistic governance in commodity classification, the construction of ETCN needs further updates and modifications for comprehensive online professional resources and optimised business processes. Figure 3 presents an optimal procedural model for commodity pre-classification for service demanders, service providers and Customs.

Figure 3: The optimised workflow design of ETCN



Source: Compiled by the authors.

4.2.1 Analysing commodity types

ETCN can further divide online pre-classification providers into local customs, traditional transforming foreign trade service enterprises, and integrated foreign trade service platform enterprises and determine their working scope respectively. Combined with multiple factors like novelty, controversy and structural complexity of import and export commodities, the type of the commodities released on ETCN by foreign trade enterprises seeking classification can be analysed through database searching. In this way, the pre-classification work for a certain commodity can be given to certain service providers. Thus, ETCN is able to realise on-demand allocation and strategic alignment of pre-classification services, promote the optimised service supply and give full play to all pre-classification resources.

4.2.2 Introducing customs experts

For those controversial commodities with high search volume and operating difficulty, ETCN can introduce experts from the Customs Classification Sub-Centres for professional advice. However, it is worth noting that ETCN has not yet carried out the online work of customs classification experts for genuine government risks at this stage. The current pre-classification experts on ETCN are mostly enterprise experts with national pre-classification qualifications and rich practical experience. As the examining body of import and export commodity classification in the link of artificial documents examination, the customs classification experts obviously have more professional advantages than enterprise experts. By rationally defining limits for service demanders to have direct consultation with customs classification experts, ETCN can effectively reduce integrity risks while improving operational accuracy and customs clearance efficiency.

4.2.3 Establishing feedback mechanisms

For complicated and new types of commodities for which different local customs have different classification opinions and, therefore, there is no standard classification, ETCN can transmit the specific commodity data and information to GACC to promote the timely release of Customs commodity classification decisions, thereby improving the flexibility of imports and exports and customs clearance operations.

Social pre-classification is an innovative reform to accelerate functional transformation of Customs, enhance the efficiency of customs clearance and open up emerging markets for intermediaries. Faced with various fragmentations appearing in the new development of such businesses, holistic governance theory helps to direct the development of Customs-Business partnerships and provides a solution to the contradiction between supply and demand of Customs public services.

In the process of applying holistic governance theory to commodity pre-classification, the social roles and business models of each party need to be clarified, public and private resources need to be appropriately allocated, and business channels and communication platforms for every stakeholder need to be developed.

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Section 3

Special Report

The unforeseen cost of Brexit – Customs

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"Take back control" was one of the Leave campaign's main battle cries in Britain's referendum on EU membership. But reintroducing customs controls on UK-EU trade will have a cost for both business and government. Although it is not yet clear what Brexit will look like, the added costs from trade-related red tape that will result from leaving the EU are certain. And these costs are likely to be significant without adequate reform to customs procedures.

At present, all goods entering the UK from outside the EU require an import declaration.[1] The most common and practical way of complying is to use the logistics providers carrying the goods as agents. Their fees are often dependent on the specific commercial arrangements, but can range from just a few pounds to £25 plus for declaring a sea container. Once Brexit is in place, UK-EU trade will be subject to similar costs.

According to the World Customs Organisation's latest Annual Report for 2015-16,[2] the UK made 70.5m import declarations and 6.5m export declarations per year. Based on current trade figures[3] it would be fair for UK Customs (HMRC) to expect the number of customs declarations to double once Britain leaves the EU. A corresponding increase in declarations would also arise on the continent since each export declaration at one end of the supply chain is followed by an import declaration at the other. Further analysis is required, but it is easy to imagine an additional cost to UK-EU trade in the order of several billion pounds per year.

Then there is also the risk of physical inspections. Depending on the nature and duration of the inspection, these costs could be anywhere between £52 and £1,540 per consignment.[4] Ports would need to accommodate the increased demands for inspection facilities. This would be at the expense of losing valuable space for commercial activities.

Reams of red tape

It is likely that any post-Brexit agreement with the EU will require businesses to comply with additional documentary requirements – as is, for example, the case for preferential trade between the EU and Norway, Switzerland or within the Customs Union with Turkey.[5] Additional requirements might include documents (or their electronic equivalent) to prove origin[6] – which can be technical and complex – or that goods are free from customs control.

Unfortunately, the adverse impact of trade-related red tape does not stop here. UK businesses require HMRC to give the highest levels of service. The UK's location as a place to do business depends in part on HMRC's ability to clear goods through the ports and borders within hours rather than days. Whether HMRC's infrastructure and supporting electronic systems at ports and elsewhere in the private sector are up to the job is anyone's guess, especially since applicable laws, rules and procedures still need to be agreed.

Additional red tape from other non-customs border agencies, such as for quarantine and health-related controls, remain unclear, too. An extended period of uncertainty about rules and procedures, as well as the necessary supporting systems, is inevitable. This will be further compounded by the fact that putting the systems that support trade and customs in place, tends to take years, rather than months.

Last but not least, there will be resourcing issues for HMRC. According to the World Customs Organisation's Annual Report,[7] the UK has about 5,000 customs staff. But the actual figure of staff with experience in the administration of international trade-related customs procedures is likely to be significantly less. This compares poorly with similar-sized countries, such as France (16,500 customs staff). An extra 5,000 officers, for example, with relevant overheads such as office space and pension contributions, could easily amount to £250m per year (£4.8m per week) for the government to fund.

One further concern is that HMRC has very few experts in key technical areas, such as in "valuation" or "origin" – two prerequisites for determining the correct amount of tariff duties. Business practitioners who I have spoken to and deal with Customs on a regular basis have highlighted that several of these individuals are close to retirement.

With UK-EU trade in goods worth £354 billion, appropriate measures must be put in place. An increase of buffer stock to counter administrative and inspection-related delays at ports and borders is one option; but the resulting costs would undermine competitiveness. Significant investment in staff and a system to accommodate the new trade and customs landscape might be another.

The overall scale of additional costs still needs to be assessed – on behalf of the businesses that will be affected, but also for HMRC's development. As so often, the devil is in the detail. And unless innovative solutions to cutting the red tape resulting from the UK leaving the EU can be found, end consumers are likely to bear much of the cost.

Notes

1 https://www.gov.uk/guidance/importing-goods-from-outside-the-eu

2 http://www.wcoomd.org/en/about-us

3 https://uktradeinfo.com/statistics/buildyourowntables/pages/table.aspx

4 http://eprints.nottingham.ac.uk/2143

5 https://www.gov.uk/government/publications/notice-812-european-community-preferences-trade-with-turkey

6 https://www.gov.uk/government/publications/notice-828-tariff-preferences-rules-of-origin-for-various-countries

7 http://www.wcoomd.org/en/about-us/what-is-the-wco/~/media/WCO/Public/Global/PDF/Topics/Research/Annual reports/AR English Final 2015_2016.ashx

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Section 4

Reference Material

Guidelines for Contributors

The *World Customs Journal* invites authors to submit papers that relate to all aspects of customs activity, for example, law, policy, economics, administration, information and communications technologies. The Journal has a multi-dimensional focus on customs issues and the following broad categories should be used as a guide.

Research and theory

The suggested length for articles about research and theory is approximately 5,000 words per article. Longer items will be accepted, however, publication of items of 10,000 or more words may be spread over more than one issue of the Journal.

Original research and theoretical papers submitted will be reviewed using a 'double blind' or 'masked' process, that is, the identity of author/s and reviewer/s will not be made known to each other. This process may result in delays in publication, especially where modifications to papers are suggested to the author/s by the reviewer/s. Authors submitting original items that relate to research and theory are asked to include the following details separately from the body of the article:

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- bionotes (no more than 100 words for each author) together with a recent, high resolution, colour photograph for possible publication in the Journal
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