

Re-examining border clearance in the age of e-commerce

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Abstract

Traditional customs clearance processes for goods arriving in ports or at border crossings involve declaration, inspection, revenue collection, and release procedures focused in time and space at the point of arrival. This paradigm for government management of cross-border trade in goods has been incrementally impacted in the 21st century by change drivers ranging from heightened concerns about security and safety risks in international supply chains to the increasingly sophisticated use of prearrival data collection and IT automation in border management processes.

Over the past decade, the rapid growth of online retailing, sometimes referred to as e-commerce, has led to an exponential increase in goods, often individually packaged, shipped directly from the seller to consumer. Existing border clearance models for international goods shipments were established in the context of an environment dominated by business-to-business commercial shipments of cargo for further distribution (for example, by retailers) in the country of destination. The rapidly expanding volume of cross-border direct-to-consumer shipments generates large numbers of small package consignments, presenting a challenge for existing goods clearance models in many countries. Contemporary border clearance processes may not be ideally suited to the rapidly expanding volumes of such shipments, and the limited reporting requirements often associated with such consignments may make effective risk management and revenue collection very difficult for governments.

Border management modernisation initiatives spearheaded by multilateral organisations have generated some clarity in confirming that e-commerce's effects do challenge traditional border clearance models, highlighting many of the underlying issues, but they have not generated a clear path forward on policy solutions. As a result, individual countries have been re-examining their national border clearance processes and are starting to take actions to tackle the e-commerce border clearance challenge on their own, highlighting the need for further multilateral work in this area to develop a consensus on policy measures to address the border management concerns identified.

1. Contemporary border goods clearance

Clearance processes for goods arriving in ports or at border crossings generally involve multistep declaration, risk analysis, inspection, revenue collection, and release procedures focused in time and space at the point of arrival of a shipment in the destination country (Pomerantz & Topik, 2018). In most countries, existing border clearance models for international goods shipments have developed in the context of a trading environment dominated in recent decades by business-to-business (B2B) commercial shipments of bulk, containerised or palletised cargo for further processing or distribution (for example, by retailers) in the country of destination (David, 2017). International trade in goods in today's global economy is largely based on standards set by multilateral post-World War II conventions and treaties (Organization for Security and Co-operation in Europe, 2012, pp. 10–29). The bulk of today's international trade takes place in a highly complex environment involving financial, fiscal, legal, logistical, and regulatory aspects, and the movement of a shipment from origin to destination typically involves a multiplicity of commercial and governmental actors who must perform a choreographed sequence of tasks to ensure the shipment's arrival. The 'Buy-Ship-Pay' model developed by the United Nations Economic Commission for Europe (UNECE) provides an easy-to-understand reference for how commercial trade happens and the categories of actors involved, which include a number of intermediaries and service providers (UNECE, 2012).

A very important step in this chain of events, and the one this paper is focused on, is the shipment's border clearance in the country of arrival, a task performed by the agency in the importing country charged with border management responsibility, often the national customs authority (UNECE, 2012). A commercial shipment's clearance in most cases requires submission of declaration data (whether in documentary or electronic form, sometimes well in advance of the shipment's physical arrival) to the responsible agency, which uses the data provided to determine whether duties, taxes or other fees are payable, whether other mandatory legal requirements apply, whether an inspection is required, and then issues a release for the shipment, which may occur in certain cases conditionally prior to full and final clearance. The efficiency and cost of border clearance has been widely recognised as a critical factor for the underlying business drivers of trade, and therefore for trade facilitation generally (McClinden et al., 2010, p. 90).

The prevailing paradigm of government regulation and management of cross-border trade in goods has been incrementally impacted since the inception of the 21st century by several interrelated factors driving change. Change drivers range from heightened policy concerns about security and safety risks in international supply chains (Urciuoli, 2018) to the increasingly sophisticated use of prearrival data collection and IT automation by governments. Innovation in national border clearance processes may also be driven by bilateral and multilateral arrangements, notably the Revised Kyoto Convention (RKC) (WCO, 2006) and the treaties administered by the World Trade Organization (WTO), including the recent WTO Agreement on Trade Facilitation (TFA) (WTO, 2017). National border clearance policies are further influenced by policy frameworks developed by the World Customs Organization (WCO), such as the SAFE Framework of Standards (WCO, 2005) and its associated security-focused documents and updates incorporated into the 'SAFE Package' (WCO, 2020a).

While these factors have led to modernisation and incremental innovation in the primarily commercial B2B-focused national border clearance processes for cargo over the past two decades, there has only recently been recognition that the rapid emergence of online commerce, especially direct business-to-consumer (B2C) commercial arrangements¹ generating a proliferation of cross-border parcel shipments, presents potentially significant management challenges to the prevailing border clearance processes in place in many countries.

2. E-commerce is driving broad policy changes

The advent of widespread use of the internet in the last decade of the 20th century facilitated a rapid expansion of online shopping, and augmented the traditional brick-and-mortar mode of retailing with a growing variety of internet-based ‘storefronts’ and marketplaces, sometimes referred to as the e-commerce ‘revolution’ (Burt & Sparks, 2003). This phenomenon has had widespread impacts on traditional distribution channels for goods (historically predicated on large-value B2B arrangements), and has led to a rapid increase in both lower value B2B as well as B2C transactions, with goods (as well as digital products and services) purchased online (sometimes via a third-party ‘platform’ website) and delivered directly from the source (for example, the seller) to the customer, individually packaged, and often utilising postal or other parcel delivery channels which bypass the more traditional B2B forms of distribution logistics (Organization for Economic Cooperation and Development, 2019).

While the rapid growth of e-commerce retail was initially focused within the domestic markets of major developed countries, the cross-border component is significant, and is growing at an even faster rate than the domestic component (United Nations Conference on Trade and Development, 2020a). Interestingly, research shows that direct-to-customer cross-border purchases may be a much more significant component of e-commerce activity (in those developing countries where border clearance is cost-effective) than in developed countries (KPMG International, 2017, p. 9), possibly because online sources provide access to an assortment of products which are otherwise not available via developing country domestic retail outlets. Recent reporting from the WTO (WTO Secretariat, 2020) and anecdotal reporting from private sector sources indicates that the rate of growth in the e-commerce retailing sector may have increased significantly as a consequence of the COVID-19 pandemic (Adobe, 2020; Goldman Sachs, 2020).

The rapid growth of e-commerce – generated economic activity over the last two decades has attracted the broad attention of global policymakers, both in domestic as well as multilateral contexts (Coppel, 2000). Two topical e-commerce – related policy discussions, both quite well-developed in terms of providing actionable guidance to policymakers, are particularly relevant for a re-examination of the phenomenon’s impacts on border clearance paradigms: consumption-based taxation and anticompetition. The former deals with taxes levied on consumer sales transactions, and unique collection challenges associated with the B2C context, while the latter focuses on the potential anticompetitive effects posed by the e-commerce phenomenon itself as well, as to concerns related to the role of the marketplace/platform operator vis-a-vis sellers and consumers. Both discussions merit a brief background overview of aspects relative to the border clearance context before we dive deeper into that in the next section.

Most national revenue systems had some form of consumption taxation on commercial sales transactions prior to the advent of widespread online sales, often a form of value-added/goods and services (VAT or GST) or sales tax, the burden of which ultimately falls largely on the consumer/purchaser of the product (whether a good or a service). This tax is generally collected by the commercial parties involved in the transaction (typically distributors and retailers), who are obligated to register with the government and periodically remit the tax collected (Charlet, 2010). In most jurisdictions with a VAT/GST, this type of tax is also applied to imports, and collection is handled as part of the import process (Organization for Security and Co-operation in Europe, 2012, p. 106): for many developed countries import VAT/GST is a much more significant source of revenue than are import customs duties.

The change in the traditional retail paradigm associated with the move to e-commerce and online marketplaces (sometimes with a large number of sellers operating in a virtual mode) highlighted a number of challenges for revenue authorities in determining, applying and collecting such taxes. These challenges are heightened in international markets and in places where tax rates applicable may vary from place to place within a multistate domestic market (as in the United States) or in a multicountry

common market such as the European Union (EU). The challenges also apply to cases where the parties acting as seller, distributor and buyer may be geographically dispersed or involve B2C transactions with consumers in configurations not conducive to effective collection of taxes due. These issues and their implications for policy have been widely discussed and addressed in the context of the United States (US) domestic (Gamage et al., 2019) and EU common markets (Deloitte and European Commission, 2015). The need to address e-commerce – related tax issues at the international level is increasingly dominating the attention of the Organisation of Economic Cooperation and Development (OECD) as an essential component in forward-looking multilateral tax policy strategies among the world’s most developed economies (OECD, 2015). A report admirably addressing the VAT/GST revenue collection challenges related to online platform sales, together with potential policy options moving forward—many of them directly relevant and closely linked to any re-examination of the border clearance process—was recently published (OECD, 2019).

The global success and rapid expansion of online e-commerce giants such as Amazon, Ebay, and others has also generated concerns related to anticompetition policy. Online platforms operate as ‘two-sided markets’ (Rochet, 2003), as intermediaries between suppliers/sellers and customers/consumers, a phenomenon long identified as having implications for the regulation of fair competition (Evans & Schmalensee, 2013). An online platform may be structured as a ‘marketplace’, a forum for independent sellers and buyers to do business, or also be engaged directly in selling on its own behalf (potentially competing with independent sellers using the same marketplace), as well as providing related services involving delivery (Hagiu & Wright, 2015). In recent years, the success of B2C-focused web storefronts in gaining a dominant role (Stoller, 2019, p. 444) in online retailing, and leveraging that role to expand into related sectors, notably including order fulfilment and related logistics services, has generated much attention and motivated the close attention of policymakers (Crémer, 2019).

Specifically, the ability of major online platforms to function as a ‘gatekeeper’, as well as to exert a significant level of control (for example, via contractual terms and conditions) over suppliers utilising their marketplace as well as on consumer/purchasers has been studied and noted as raising anticompetition concerns (Khan, 2018). It has been given high priority in policymaker circles in the European Union (European Commission, 2020). Further, the ability of the platform to control delivery (via provision of logistics services and leveraging the associated control over logistics providers) has been noted as a potential source of anticompetitive outcomes, as has the ability of the platform to collect, amalgamate and utilise to its own advantage the universe of data (whether originating from suppliers, customers, or its control of the origin-to-destination supply chain) generated across the entirety of its business (Khan, 2017). These considerations are directly relevant for any re-examination of border clearance – related policy options to address the e-commerce challenge.

3. E-commerce and border goods clearance

Before we move on to discuss the challenge to cross-border goods clearance paradigms presented by e-commerce – generated shipments, it is important to define the limits of the concept of ‘e-commerce’ in terms of its border clearance – related scope. It is surprisingly difficult to find a generally accepted, everyday definition of ‘e-commerce’. One useful one which has been widely cited is ‘doing business over the Internet, selling goods and services which are delivered offline as well as products which can be ‘digitised’ and delivered online, such as computer software’ (Coppel, 2000); a more refined definition comes from the broader work of the OECD, an organisation which has done a great deal of work on investigating the economic and tax-related implications of e-Commerce. The OECD definition is:

An e-commerce transaction is the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders. The goods or services are ordered by those methods, but the payment and the ultimate delivery of the

goods or services do not have to be conducted online. An e-commerce transaction can be between enterprises, households, individuals, governments, and other public or private organisations. To be included are orders made over the web, extranet or electronic data interchange. The type is defined by the method of placing the order. To be excluded are orders made by telephone calls, facsimile or manually typed email (OECD, 2002).

Both the above definitions of the e-commerce concept are equally applicable to online shopping in the domestic, international, or cross-border environment. It is, however, essential to note here that the products in this definition's scope can be tangible or intangible (for example, involving data or software), and either goods or services. E-commerce is embedded within the larger concept of digital trade, which encompasses digitally delivered software, e-books, data or database services as well as (digitally enabled) transactions leading to physically delivered goods and services (López González & Jouanjean, 2017). Because contemporary border clearance paradigms are currently focused on tangible goods only, this paper is primarily focused on that component of the larger e-commerce transaction universe which results in the physical movement of tangible goods from one country, across one or more national borders, into another country.

As we noted at the outset, the dominant model of border goods clearance evolved in an international trading environment primarily focused on B2B transactions, often involving bulk, containerised or palletised cargo shipments of considerable volume and value, travelling in the maritime, land transport, or air cargo modes. For the sake of convenience, we will refer to these as 'standard cargo' shipments, cleared at the border through what we will refer to as the 'standard cargo channel'. Over the past two decades, this channel has been the subject of much attention in terms of border management policy and the operational priorities of border agencies.

The WCO, with a membership comprising the customs and border management agencies of most countries around the globe, is uniquely focused on the border clearance process, in particular that relating to international trade in goods. It counts among its evolving missions (Widdowson, 2007) the development of international standards to support its members in building their capacity to achieve customs goals such as facilitating legitimate trade, securing revenue collection, and protecting society (WCO, 2020b). The WCO is responsible for administering the RKC (WCO, 2006), an international convention focused on customs procedures, including those related to border clearance, which has been acceded to by the majority of its member countries. The WCO has launched numerous initiatives over the past two decades, many aligned closely with its 'Customs in the 21st Century' framework (WCO, 2008), to assist its member countries in enhancing border management capacity to handle higher trade volumes while better targeting potential security, safety, and traditional enforcement issues (such as collection of customs duty and tax revenue on imports). The WCO approach is advance data driven, demands enhanced intra- as well as intergovernmental operational coordination to manage cross-cutting safety and compliance mandates, and presupposes significant upgrades in information technology (IT) among its members to enable effective use of data-driven automated risk management on cross-border goods consignments. The WCO's approach for modern border management is largely aligned with guidance from experts and multilateral organisations, including the World Bank (De Wulf & Sokol, 2005; McInden et al., 2010), and also has much in common with the principles of the recent WTO TFA (WTO, 2017), a treaty binding on the large majority of WTO (and WCO) member countries which have ratified it.

It is, however, important to note that virtually all countries have at least two broadly delineated border clearance regimes. These regimes can be categorised as channels, applicable for the declaration, inspection, revenue collection, and clearance of inbound cross-border goods shipments—the first, noted above, for standard cargo shipments (whether containerised or not, via the various transport modes), generally B2B in nature and of significant value or volume. This standard cargo channel is the one which has been in primary focus under the multilateral initiatives referenced in the previous paragraph, and in

national modernisation initiatives affecting border clearance processes. A second channel, which often has separate subvariants in each country for defined shipment categories, for example postal and courier, (OECD, 2015, p. 192) is referred to here for convenience as the ‘parcel clearance channel’ or ‘parcel channel’. Shipments accessing the parcel clearance channel are often postal or express courier deliveries of a value below a defined threshold (often referred to as ‘*de minimis*’), and with characteristics (for example, size, weight) which do not otherwise disqualify them under applicable national restrictions from using this channel (OECD & EU IPO, 2018, pp. 17–24). In most cases, countries initially introduced international parcel delivery under their accession to the Universal Postal Union (UPU), under terms aligned with that organisation’s binding conditions and standards, which have specific provisions governing international parcels (UPU, 2020). As a result, international parcels (delivered via postal or other, for example, express courier avenues) destined to consumer (or business) addressees have long been an option for deliveries to most countries (WTO Secretariat, 2010), both for noncommercial (for example, personal gifts) and for commercial (B2B & B2C) purposes.

Often noncommercial, usually low-value, and in many cases, destined for delivery directly to a consumer, international parcel shipments were seen by policymakers in decades past as of lower priority in terms of customs duty/tax revenue. As the cost and bother of putting them through a standard customs border clearance process could greatly outweigh the potential return (Hintsa et al., 2014), special clearance treatment could be justified. As a consequence, many international postal or express courier shipments are processed through the parcel border clearance channel, thereby enjoying streamlined clearance procedures (often involving simplified declarations) requiring notably less documentation and data than would be applied to a shipment using the standard channel in the same country (Holloway & Rae, 2011). They often further benefit from national ‘*de minimis*’ provisions involving duty- and tax-free treatment (Global Express Association, 2019). Lending conceptual support and operational guidance to this second, parcel-focused clearance channel, the WCO has issued guidelines (WCO, 2018a) for its member countries encouraging the expedited release of eligible international shipments, and Article 7 of the WTO’s Trade Facilitation Agreement also incorporates provisions related to the streamlined release of eligible ‘expedited shipments’ (WTO, 2017) applicable to the parcel clearance channel.

While shipments cleared through standard cargo channels have been, and indeed remain, the predominant factor (by volume and value) in goods trade statistics (UNCTAD, 2016), the growth rate of parcel shipments in both domestic and international contexts over the past several years has been relatively higher, growing to a total of an estimated 87 billion parcel shipments globally by 2018 (Pitney Bowes, 2019). From a border clearance perspective, the parcel clearance channel is the one which has been primarily impacted by the explosion of shipments, many B2C in nature, generated by e-commerce merchandising. In light of the availability in most countries of a parcel border clearance channel offering expedited border clearance with streamlined declaration requirements, and furthermore, in many cases offering preferential import duty and VAT/GST tax treatment, it is not surprising that e-commerce retailers have elected to take advantage of this channel for international B2C deliveries, driving exponential growth in parcel volumes (US Customs and Border Protection, 2018). It is also not surprising, perhaps, that this exponential growth has led to a recent wave of concerns among border authorities and in the press that e-commerce – driven growth in international parcel shipments is accompanied by the widespread and unauthorised use of the parcel clearance channel to import dangerous, unauthorised, high-value, counterfeit (OECD & EUIPO, 2018), or otherwise illicit, goods (Horwitz, 2019). This is a situation which governments recognise as a significant challenge (US CBP, 2018, p. 4). The rapid increase in cross-border online sales leading to direct B2B or B2C deliveries has also led to a recognition in government circles that widespread (and sometimes creative) use of available *de minimis* arrangements in the parcel channel (OECD, 2015, p. 120) can lead to a significant loss of import-related revenue and create distortive competitive effects (European Court of Auditors, 2019).

On its main ‘Cross-Border e-Commerce’ webpage (WCO, 2020c), the WCO lists the following three main categories of e-commerce – related ‘Challenges faced by Customs administrations’:

- trade facilitation and security
- fair and efficient collection of duties and taxes
- protection of society—criminal exploitation of e-commerce.

Regarding the first category, specific concerns listed include:

- ensuring speed and efficiency in the clearance process for an increasing volume of transactions
- managing change from a few large/bulk shipments into many low-value and small shipments
- managing risks posed by limited knowledge on importers and the e-commerce supply chain (new class of sellers and buyers/occasional shippers and buyers)
- ensuring data quality (accuracy and adequacy of the data received)
- defining the role and responsibility (liability) of e-commerce operators to assist governments (e-vendors/intermediaries).

These concerns appear to stem largely, directly or indirectly, from a combination of factors unique to direct international retail sales (in particular B2C sales) and the differential border clearance treatment granted to shipments using parcel clearance channels. Border clearance-related concerns do not appear to be connected to the online nature of e-commerce per se, but rather to the vastly increased volume of the direct international shipments generated by it. Indications are that while the standard cargo channel in many countries has been updated in recent decades to take account of modern advance data-focused border management practices (for example, those incorporated in the WCO ‘Customs in the 21st Century’ framework referenced previously), the parcel clearance channel, in particular as it relates to postal shipments, often relies on older processes from the 20th century. This factor, along with simplified declaration requirements associated with many *de minimis* regimes (GEA, 2019), makes risk management by border management authorities difficult, in part due to the limited availability of shipment-related data (whether received in advance electronic form or not). As a result, enforcement of parcel clearance channel eligibility criteria or discovery of illicit parcel contents by means other than direct physical inspection may be impractical, especially as parcel volumes increase.

The flexible allocation of roles and responsibilities which characterises cross-border e-commerce configurations, with sellers/platform operators in one (or more) country/countries and the customer in another, may not always be in alignment with longstanding national legal provisions defining import-related roles and responsibilities, particularly in the B2C context.² These legal regimes, developed and optimised for the standard cargo channel and the B2B commercial environment, set the framework for assigning import clearance-related revenue and compliance liability (for example, accuracy in declarations, compliance with parcel channel restrictions, and mechanisms for revenue collection). They may not be clearly applicable (opening the door to evasion) nor practically enforceable for shipments using the parcel channel, even where infractions are identified at or after the time of clearance. Similar concerns have been cited and extensively analysed in relation to VAT/GST revenue collection in the cross-border e-commerce context, underlining the need to take them into account in policy measures addressing the cross-border challenges presented by the growth in e-commerce (OECD, 2019).

4. E-commerce and border clearance: multilateral efforts

Recognising that the proliferating volume of international shipments generated by e-commerce sales was creating border clearance challenges for governments, several multilateral organisations have embarked on initiatives, all ongoing, to assist their member countries in analysing e-commerce – related challenges and developing effective and implementable policy responses. The WTO has had a focus on e-commerce since 1998, recognising that it could be a positive factor in the global growth of trade. It has a web portal (WTO, 2020) tracking the history of its relevant activities, among others, the moratorium, in place since 1998 and last renewed in late 2019 (Congressional Research Service, 2020) on the imposition of customs duties on electronic transmissions. This is generally interpreted to include digital products such as digital music, videos, videogames and the like. Recognising the increasing importance of e-commerce in global trade, a number of key WTO member countries issued a joint statement (WTO Member Delegations, 2019) calling for negotiations on trade-related aspects of electronic commerce. While discussions have been delayed for a number of reasons, including the COVID-19 crisis, and have not yet led to consensus outcomes, this topic is seen as a high priority for the WTO Secretariat, which recently issued an update on the topic (WTO Secretariat, 2020).

The OECD has had a focus on e-commerce, and its implications for policymakers, for the last two decades (Coppel, 2000), primarily in the context of taxation and associated revenue collection policies and practices, but also extending to areas of enforcement concern such as counterfeit goods (OECD & EUIPO, 2018). Its earlier work in the area of VAT/GST collection on imports of low-value goods (OECD, 2015, pp. 181–208) has been expanded more recently (OECD, 2019) and is highly relevant to the border clearance context. In particular, it is relevant in relation to policy decisions for effective revenue collection options in B2C configurations, taking account of the various roles (in particular, the role of platforms) and their implications for effective revenue collection in the e-commerce supply chain.

As the multilateral body tasked with coordination and administration of the RKC, the primary convention governing customs procedures (WCO, 2006), it became increasingly clear within the WCO that the e-commerce revolution necessitated a re-examination of border clearance processes in a broader sense, not just in relation to import revenue collection. In response, the WCO set up a Working Group on E-commerce (WGEC) in 2016, and the WCO staff developed a ‘Study Report on Cross-Border E-Commerce’ (WCO, 2017a), derived in part from the results of a survey of members. The WCO Policy Commission subsequently issued a resolution (‘Luxor Resolution’) outlining governing principles (WCO, 2017b) to guide the organisation’s e-commerce work. The WGEC, a group of volunteers, was open to participation by WCO member country customs administration officials, representatives of the global private sector trade community, other multilateral organisations, e-commerce stakeholders (these included some of the major e-commerce platform operators) and academia, with an ambitious mission ‘to develop collaborative solutions supporting the needs and expectations of all stakeholders in the E-Commerce supply chain’ (WCO, 2018b, p. 3).

The WGEC and its subgroups met multiple times through early 2020, and played the initial role in formulating the WCO Cross-Border Framework of Standards (‘Framework’) which was adopted by the WCO Council (WCO, 2018b). The Framework is comprised of introductory material and 15 ‘standards’ arranged under eight categories referencing and largely (but not entirely) aligned with the eight ‘principles’ set out in the Luxor Resolution. The Framework is complemented by a more extensive Technical Specifications document (WCO, 2019a), containing a large number of ‘technical specifications’ categorised under the 15 standards from the Framework, as well as a brief ‘Definitions’ document. These, along with other documents designed to augment and support the Framework, were published as part of a larger compendium known as the WCO E-Commerce Package (‘E-Commerce Package’) with several other supplementary documents in 2019 (WCO, 2019b).

The Luxor Resolution's list of 'principles' is addressed to customs and border management authorities, and includes many clearly prescriptive statements to address their priorities, some phrased as requirements, for dealing with e-commerce – related challenges (which, while not specifically listed in the Luxor Resolution, roughly correspond to the WCO 'Challenges faced by Customs administrations' cited in the previous section above). In contrast, the Framework provides broad-based descriptive and background information relevant to e-commerce in the cross-border context, and its 'standards' are characterised by the use of much softer and more aspirational language (for example, 'should explore', 'should consider') (WCO, 2018b, pp. 14–15), encouraging a balancing of interests among 'E-Commerce stakeholders'. This tone is also carried over to the Technical Specifications document (WCO, 2019a), which is focused on providing additional background and guidance for each 'standard'. The Technical Specifications, while somewhat more prescriptive than the Framework, also rarely rise to the level of prescription contained in the Luxor Resolution. While both the Framework and the Technical Specifications mention the RKC, the WTO and 'international organisations' in passing, and sometimes refer to existing guidelines of the WCO or other international bodies, they do not cross-reference either the 'standards' or the 'technical specifications' to specific prescriptions of binding multilateral arrangements (for example, the WTO Trade Facilitation Agreement, the RKC, and the UPU Convention) or to relevant specific policy recommendations of the OECD or UN agencies such as UNCTAD (UNCTAD, 2020b). This factor, in combination with the sometimes broad and aspirational nature of the 'standards' and 'technical specifications', may present a challenge for policymakers in deriving practical and actionable options for e-commerce – related border clearance policy at the national level.

Further challenges in the practical application of the Framework and the Technical Specifications are definitional in nature. The 'Definitions' document contained in the Package (WCO, 2019b) contains four defined terms, including *inter alia* the following:

Cross-Border E-Commerce: All transactions which are effected digitally through a computer network (e.g., the internet), and result in physical goods flows subject to Customs formalities.

This definition goes to the heart of the matter, the universe of transactions to which the Framework and the Specifications are intended to apply. The Luxor Resolution indicates a primary (but not exclusive) focus on 'business-to-consumer (B2C) and consumer-to-consumer (C2C) transactions' (WCO, 2017b, p. 1), while the relevant wording in the Framework (WCO, 2018b, p. 8) 'characterises' its subject along those same lines, as follows:

For this Framework of Standards, cross-border E-Commerce is characterised as follows:

- Online ordering, sale, communication and, if applicable, payment
- Cross-border transactions/shipments
- Physical (tangible) goods
- Destined to consumer/buyer (commercial and noncommercial).

This Framework sets standards mainly for B2C and C2C transactions. However, Members are encouraged to apply the same principles and standards to business-to-business (B2B) transactions.

Going back to the Package's 'Definitions' document, however, and its definition of 'Cross-Border E-Commerce' cited above, it is notable that it does not mirror the Luxor Resolution's stated primary purview of B2C and C2C transactions, nor the Framework's 'characterisation' which mentions B2B transactions as well. Instead, the definition's first focus is on broadly defining the transactions in scope, as being 'effected digitally through a computer network (e.g., the internet)', with the second clause capturing the 'cross-border' aspect by adding the condition '...and result in physical goods flows subject to Customs formalities.' This definition is not in line with widely used definitions of 'e-commerce', such as the widely accepted OECD definition (OECD, 2002) for an e-commerce transaction discussed

in an earlier section ('...sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders'). The 'Definitions' document's wording replaces 'conducted' with 'effected' and dispenses with the 'sale or purchase' and 'receiving or placing orders' aspects at the core of the OECD definition. Why this is the case is not clear, but it does appear to have the effect of broadening the coverage of 'Cross-Border E-Commerce' under the Framework and Package to encompass *any* transaction (commercial or not) 'effected digitally' (the meaning of 'effected' is not itself defined) which 'results in physical goods flows subject to Customs formalities' ('subject to Customs formalities' is also not itself defined).

The Framework and the larger set of documents encompassing the Package do not otherwise attempt to strictly differentiate 'Cross-Border E-Commerce' goods flows from other cross-border goods flows, whether by reference to a breakdown by standard cargo/parcel clearance channels (for example, as discussed elsewhere in this paper) or by reference to pre-existing WCO instruments. While the Luxor Resolution mentions 'issues stemming from...mainly small B2C and C2C E-Commerce shipments' and the need to deal 'with the increasing volumes of small shipments/parcels' (WCO, 2017b, pp. 1, 4), it does not otherwise define what constitutes 'small', nor does it reference shipment value as a defining criterion. The Framework also infrequently references 'small' or 'smaller' consignments or shipments as being in focus, usually adding the qualifier 'low-value' as well (WCO, 2018b, pp. 9, 14–15). The 'Definitions' document, cited above, does provide a definition for 'low-value shipment' as those 'Goods classified under categories 2 and 3 in the WCO Guidelines for the Immediate Release of Consignments by Customs', these being defined in that document (WCO, 2018a, p. 3) as:

Category 2 — Low-value consignments for which no duties and taxes are collected (*de minimis* threshold)

Category 3 — Low-value dutiable consignments (simplified declaration)

As such, the 'low-value shipment' definition appears to be a flexible concept varying according to national law, in line with national *de minimis* provisions. Nevertheless, as the defined 'low-value shipment' term is rarely referenced in either the Framework or the Specifications, and has no explicit linkage to the primary 'Cross-Border E-Commerce' definition, it is not useful in elucidating the intended scope of cross-border clearance activity addressed by the Framework and the larger Package.

In sum, as per the 'Definitions' wording, as long as 'physical goods flows subject to Customs formalities' arise from a transaction which is 'effected digitally through a computer network', the respective shipments would appear to be deemed 'Cross-Border E-Commerce' in scope of the Framework and Package, regardless of mode, clearance channel, underlying category (for example, B2B or B2C), value or size. In light of the advanced level of computerisation utilised in both private- as well as public-sector aspects of international trade, it seems probable that virtually all cross-border consignments in 2020 arise in some way from transactions utilising computer networks, and are thereby arguably 'effected digitally'. This implies that virtually every cross-border shipment is within the scope of the Framework and its supporting documents. It is not clear whether the WCO's intent in launching its e-commerce initiative (ostensibly tailored to challenges related to the exponential growth of e-commerce) was that the outcomes, (for example, the Framework and other documents in the Package) should be overlaid on the WCO's large body of existing instruments related to the 'Customs in the 21st Century' framework, including those dealing up to now primarily with shipments being cleared through what we have referred to as the standard cargo channel. Nevertheless, in light of the above definitional aspects of the Package, the texts of the key documents resulting from the WCO's e-commerce efforts so far leave the door open to the interpretation that they are intended to be applied to virtually all cross-border goods trade.

Clearly, the WGEC's proceedings served to identify a number of critical e-commerce – related border clearance issues and focus areas to be addressed, and the documents of the Package provide a compendium of information and considerations which are useful for policymakers re-examining existing processes

in light of the proliferation of e-commerce – generated shipments requiring clearance. Nevertheless, the absence of a clearly delineated scope of application of the Framework and Package, together with the largely missing direct alignment with and cross-referencing to prescriptive and binding instruments (for example, the RKC, UPU Convention³ or the WTO Trade Facilitation Agreement) and the relevant work of other international organisations (for example, the OECD) combines with their largely aspirational tone to make them sometimes insufficient in providing actionable policy guidance to national border management authorities. Without going into an in-depth examination of the deliberations of the WGEC and the proceedings of the WCO’s governing bodies, it is impossible to identify the full scope of what was considered, the policy options that were looked at, and to determine why the documents published as outcomes are not as clearly focused as, for example, the SAFE Framework (WCO, 2005) was, even in its first version. Perhaps the WGEC’s stated mission (‘to develop collaborative solutions supporting the needs and expectations of all stakeholders in the E-Commerce supply chain’) (WCO, 2018b, p. 3) was simply too broad to deliver clearly prescriptive consensus outcomes from such a diverse base of stakeholder interests.

It appears that it may have been this difficulty in achieving consensus which led to the WCO Policy Commission and Council failing to endorse three important planned 2019 Package documents addressing guidance for three rather critical e-commerce – related areas of concern, those being ‘Reference Dataset for E-Commerce’, ‘Revenue Collection Approaches’, and ‘E-Commerce Stakeholders: Roles and Responsibilities’. As a result, the WGEC was called back in early February of 2020 to hold a final session to further consider these documents, prior to their submission for approval by the WCO governing bodies (the documents had not yet been published as part of the Package as of the date of this writing). The WCO has indicated that it intends to continue e-commerce – related work under the auspices of its Permanent Technical and Enforcement Committees in future (WCO, 2020d).

5. Emerging national initiatives

While actively involved in the multilateral discussions which led to publication of the WCO’s Framework and Package, several major trading economies began efforts to re-examine e-commerce – related challenges in the context of their own national border clearance processes, with resulting initiatives beginning to be announced at about the same time as the Framework was being completed. In late 2017, Australia announced a number of legislative changes related to implementation of the collection of GST revenue on ‘Low-Value Goods’ as defined under Australia’s pre-existing *de minimis* arrangement (the associated exemption for customs duty was, however, retained), extending its tax-registration requirements to certain nonresident e-commerce suppliers/platforms, imposing GST collection obligations on them, and instituting modified information requirements (OECD & EUIPO, 2018, p. 24). This initiative was launched after a government-commissioned comprehensive analysis (Australian Government Productivity Commission, 2017) of e-commerce business models, roles and responsibilities, operational realities in border clearance, and available collection models, conducted in line with principles adapted from the OECD policy analysis framework (OECD, 2015).

Motivated by the rapid growth of cross-border e-commerce, and with a desire to preserve e-commerce – generated economic growth while at the same time fostering an EU-wide level playing field, the EU Commission embarked on a wide-ranging examination of policy options (Deloitte and European Commission, 2015), including in relation to effective import VAT/customs duty collection (European Court of Auditors, 2019). These efforts culminated in a series of legislative and regulatory changes which are scheduled for full implementation in 2021 (Papis-Almansa, 2019). These changes involve innovative provisions dealing with import VAT collection (including registration and remittance of VAT by intermediaries and seller/platforms outside the EU) and harmonisation and limitation of pre-existing *de minimis* exemptions for VAT and customs duty on imports. They also involve new, stricter,

reporting and declaration procedures designed to enable governments to better enforce revenue and other import compliance requirements (EU Commission, 2019) which are particularly relevant to low-value shipments utilising the parcel clearance channel.

The US has seen rapid growth in e-commerce – related parcel imports, especially since the 2015 enactment of an expanded *de minimis* duty exemption for directly delivered B2C consignments (Gillis, 2019). This, combined with pre-existing simplified declaration requirements for certain types of low-value consignments, made importation via the parcel channel quite attractive for e-commerce retailers (US CBP, 2018, p. 4). In response to concerns related to evidence of abuse of this channel for ‘illicit drugs, items that infringe on intellectual property rights, and other dangerous goods’ (US CBP, 2018, p. 6), the US border management agency developed a strategy (US CBP, 2020a) to address the situation, primarily through means of improved risk management through enhanced consignment-related advance data as well as heightened enforcement authority (Presidential Executive Order, 2020). As part of this strategy, the US has instituted a pilot project to collect consignment-related advance data from major e-commerce players, including platform operators and express forwarders (US CBP, 2020b).

The above list is not exclusive; other countries from China (Yu, 2018) to New Zealand (Satherley, 2019) are actively re-examining their border clearance procedures to address e-commerce – related challenges, and many are implementing policy responses which have yet to be fully rolled out. In some countries, particularly those with a VAT/GST on imports, the primary motivation for these initiatives is clearly more effective revenue collection and preserving a level competitive playing field with retailers (whether online or brick-and-mortar) in the domestic environment, while in others (for example, the US, which does not have a VAT tax) it is primarily preventing the introduction of illicit (for example, counterfeit or prohibited) goods. Regardless of the underlying primary motivation, all of these national initiatives are also focused, at least in substantial part, on controlling misuse of the parcel clearance channel and associated national *de minimis* provisions. This is achieved through a combination of enhanced requirements for the provision of (advance) shipment data and establishment of registration, reporting, and revenue collection methods tailored to e-commerce business models, and applied to platform operators or other intermediaries involved in the e-commerce supply chain.

6. Prospects for progress

The growing number of e-commerce – related multilateral and national policy initiatives, including those noted above, demonstrate that the e-commerce revolution is generating consequences which are driving broad policy changes, some beginning to directly impact clearance-related processes for cross-border goods movements. More broadly, e-commerce – related developments touching on competition and taxation policy, the latter particularly in relation to VAT/GST, have been the subject of much study and analysis, leading to a growing and multilateral consensus on available options for policymakers. In both fields, studies have collected detailed information on the roles and responsibilities of sellers, platform operators, consumers and other e-commerce actors, and identified policy options capable of addressing government priorities (for example, collecting tax revenue owed, and preventing anticompetitive practices) without unduly impeding e-commerce. These studies, along with policy options and government initiatives derived from them, cover a wide range of economic activity, but a significant number of them are directly relevant to the cross-border goods context, and often explicitly address issues related to border clearance (for example, means of controlling market access, data collection capabilities, modes of revenue collection on imports, and enforcement considerations).

Against this broader backdrop, the analysis of e-commerce in the border clearance context is by its nature a narrower one. As previously noted, most cross-border trade in goods is B2B in nature, and uses standard cargo channels. Whether that trade arises in an online commercial environment or not, the cargo flows that result are handled using established (standard channel) clearance procedures at the national

level, usually in accord with standards set by the RKC and informed by WCO initiatives linked to the ‘Customs in the 21st Century’ framework. Notably, the e-commerce – related border concerns which are cited in this paper, and which the national initiatives outlined above are ostensibly intended to address, do not seem to arise from standard cargo, the dominant subset of cross-border goods trade (the absence of standard cargo channel-related measures in the national e-commerce – related initiatives outlined in the previous section can be seen as evidence of this). Instead, the e-commerce – related concerns in focus for border clearance policymakers appear tied, in a very large part if not entirely, to cross-border commercial consignments generated by online ordering mechanisms, usually B2C in nature, usually packaged in parcels, addressed for direct delivery by a foreign party to a named recipient in the destination country, and which utilise (legitimately or not) a nationally defined parcel clearance process (and often claiming *de minimis* treatment).

In light of the multilateral and national efforts undertaken so far, e-commerce – focused border clearance challenges and concerns appear to arise in part from the need to adapt existing import clearance frameworks to the flexible and shifting roles and responsibilities associated with e-commerce sales, and in part to risk assessment and enforcement difficulties associated with parcel clearance channel procedures (including simplified data requirements and national *de minimis* provisions) in a high-volume environment. If that is the case, a path forward to develop policy options addressing the first category of concerns might be to apply deeper analysis of e-commerce – related roles and responsibilities (for example, as was done in the OECD, EU, and Australian studies cited previously) to the specific context of the parcel clearance environment and its underpinnings in binding international instruments like the UPU Convention and the RKC. The second category of concerns is to an extent already being addressed by national and multilateral efforts (for example, the WCO-UPU joint effort) to obtain better data for risk management earlier, but might also benefit from further examination of data sourcing and control in the platform/seller environment. For both categories, the goal should be to identify innovative and widely implementable policy options which take account of the business realities of cross-border e-commerce and address the concerns and challenges within the border clearance framework set by applicable binding international conventions (for example, RKC, the WTO Trade Facilitation Agreement, and the UPU Convention) and standards and best practices identified by the WCO. Options should also be informed by and aligned with initiatives to address e-commerce – related VAT/GST and anticompetition concerns, since border clearance-related measures will need to be compatible with them to be implementable.

The WCO’s focus on operational border management issues, together with its role in administering the RKC, would appear to put it at the centre of any multilateral effort to continue to re-examine the above challenges and concerns and refine border clearance-related policy options to address them. Its work to date on the Framework and broader Package give a broad knowledge base to work with in moving forward. As the WCO’s work on e-commerce continues, consideration should be given to narrowing the scope of work specifically to address governmental e-commerce – related challenges and concerns in the context of parcel clearance, to adopting e-commerce – related analytical frameworks developed in the competition and tax policy sectors, and to ensuring ongoing alignment with the e-commerce – related initiatives of the OECD, the WTO and other multilateral organisations.

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Notes

- 1 It should be noted that in some contexts direct sales arrangements between individuals are separated out into a sub-category of ‘C2C’, or ‘consumer-to-consumer’ transactions; to the extent such transactions are essentially commercial in nature, they are incorporated in the broader category of B2C for purposes of this paper.
- 2 From the perspective of border clearance, these provisions are closely linked to the concept of ‘declarant’ under Chapter 3 of the RKC General Annex.
- 3 In parallel to the WGEC discussions, the WCO and the UPU conducted joint efforts focused on upgrading data-sharing on postal consignments for border clearance purposes; these efforts culminated in the Guidelines on the Exchange of Electronic Advance Data (UPU & WCO, 2019).

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