

Expansion of Customs-Business Partnerships in the 21st Century

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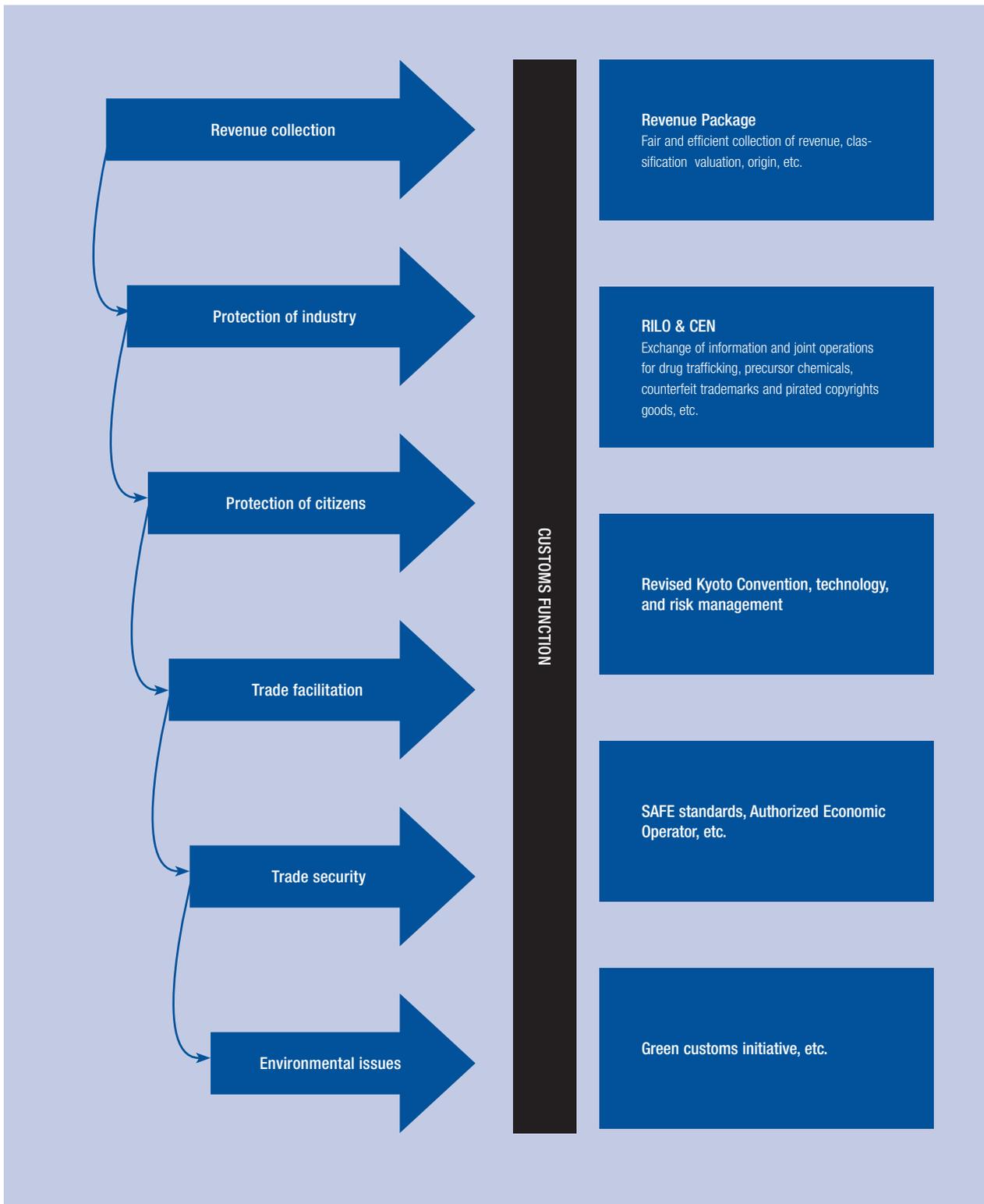
Customs is uniquely placed among border agencies as being empowered to access information on every cross-border transaction and to stop those that are illegitimate. Traditionally, most customs administrations are concerned with collecting duties and taxes at the border, controlling goods entering and leaving national territories, and imposing penalties on unlawful actions. In the face of such regulatory mandates, business often feels frustrated with customs officers when doing business. In addition, business perception indexes frequently consider customs to be among the most corrupt public institutions,¹ and complicated border procedures are considered to be a major non-tariff barrier that hinders business activities. As a result of these factors, as well as other complaints such as unnecessary delays at borders, business and customs officers are often in conflict.²

However, the 21st century has seen an improvement in relations between customs and business worldwide. One noticeable change is that more customs authorities have adopted client-centric policies.³ The main aim of this approach is to make customs more responsive to stakeholders by guaranteeing specific standards for service delivery, providing a substitute for competition and a benchmark for measuring service quality.⁴

The roles and functions of customs have evolved with the ever-changing domestic and international environment. As a result, trade facilitation—which entails the simplification and harmonization of customs procedures—is now one of the key challenges for many customs administrations (Figure 1). Effective and efficient customs administrations contribute to facilitating legitimate trade, which is an engine of sustainable economic development. Accordingly, experiences to date suggest that many customs authorities in both developed and developing countries have recognized that productive interaction with business is essential for effective and efficient customs administrations.

Many customs administrations around the world have endeavored to work together with business. Good partnerships are important for any function of customs authorities, including revenue collection, trade facilitation, protection of industry/citizens, and trade security. These partnerships are equally important to anti-corruption and customs reform as well as modernization efforts. Customs' experiences show that closer cooperation and collaboration with business are beneficial to both customs and business. Benefits to customs may include improved trade security, trade efficiency, and effective enforcement. The trade community is able to benefit from prompt customs clearance, low trade transaction costs, transparency, and predictability of customs procedures. In essence, trade facilitation is a common objective and mutual trust is vital. To this end, customs should be cognizant of the complexity and vulnerability of the international trade supply chain, and understand the needs and priorities of the business. At the same time, businesses should be aware of border regulations and how customs systems operate in order to maintain a high level of compliance with customs laws and regulations.

Figure 1: Evolution of customs functions and international standards and tools



Source: WCO.

A common challenge for customs administrations is to develop and maintain good relationships with business. The next section of this chapter covers international instruments and tools related to customs-business partnerships. The following section highlights key activities undertaken by the World Customs Organization (WCO) to strengthen the relationship of customs with the business community.⁵ Several lessons learned from customs administrations are then presented, and the conclusion follows.

INTERNATIONAL INSTRUMENTS AND TOOLS

International standards can inculcate a common language between customs and business. The WCO has developed and maintains a variety of international customs-related instruments and tools, several of which directly address the partnership between customs and business.⁶ This section summarizes several of the key instruments and tools developed by the WCO for customs-business partnerships.

The WCO strategy document *Customs in the 21st Century* identifies customs-trade partnerships as one of the ten building blocks that serve as fundamentals of modern customs administrations in the 21st century.⁷ In particular, it states that:

*Customs in the 21st Century should enter into strategic pacts with trusted economic operators. Customs needs to understand the concerns of business, while business needs to know the requirements of Customs. Most importantly, there is a need to translate this relationship into a partnership that results in mutually beneficial outcomes.*⁸

The Revised Kyoto Convention (RKC) provides for a series of standards aimed at enhancing the transparency and predictability of customs procedures for business.⁹ Among these are Standard 3.32 concerning special procedures for authorized persons, Standard 9.2 concerning prior publication of new or amended legislation, Standard 9.9 concerning binding rulings,¹⁰ and Standards 10.1 through 10.5 concerning appeals procedures. In particular, the general principles include the mandatory Standard 1.3, which states:

Customs shall institute and maintain formal consultative relationships with the trade to increase co-operation and facilitate participation in establishing the most effective methods of working commensurate with national provisions and international agreements.

Customs and business partnership is the second pillar of the *SAFE Framework of Standards to Secure and Facilitate Global Trade* (SAFE Framework).¹¹

This pillar consists of six standards: partnership, security, authorization, technology, communication, and facilitation. Built on the RKC's *authorized person* concept, the authorized economic operator (AEO) concept entails providing benefits to businesses that have been validated by customs as meeting certain regulatory standards. This is particularly relevant under circumstances where customs relies more on audit-based controls than on transaction-based controls.

Partnerships with business are also stressed in the customs reform and modernization process. In the *WCO Customs Capacity Building Strategy*, the private sector is identified as playing an important role in capacity-building activities.¹² The private sector could use its influence with governments to direct necessary resources to customs reform and modernization efforts, and it could support sound capacity-building initiatives either through training and technical assistance or through direct funding support. The private sector also has a responsibility to provide support by participating in consultative forums or by adopting modern and ethical business standards.

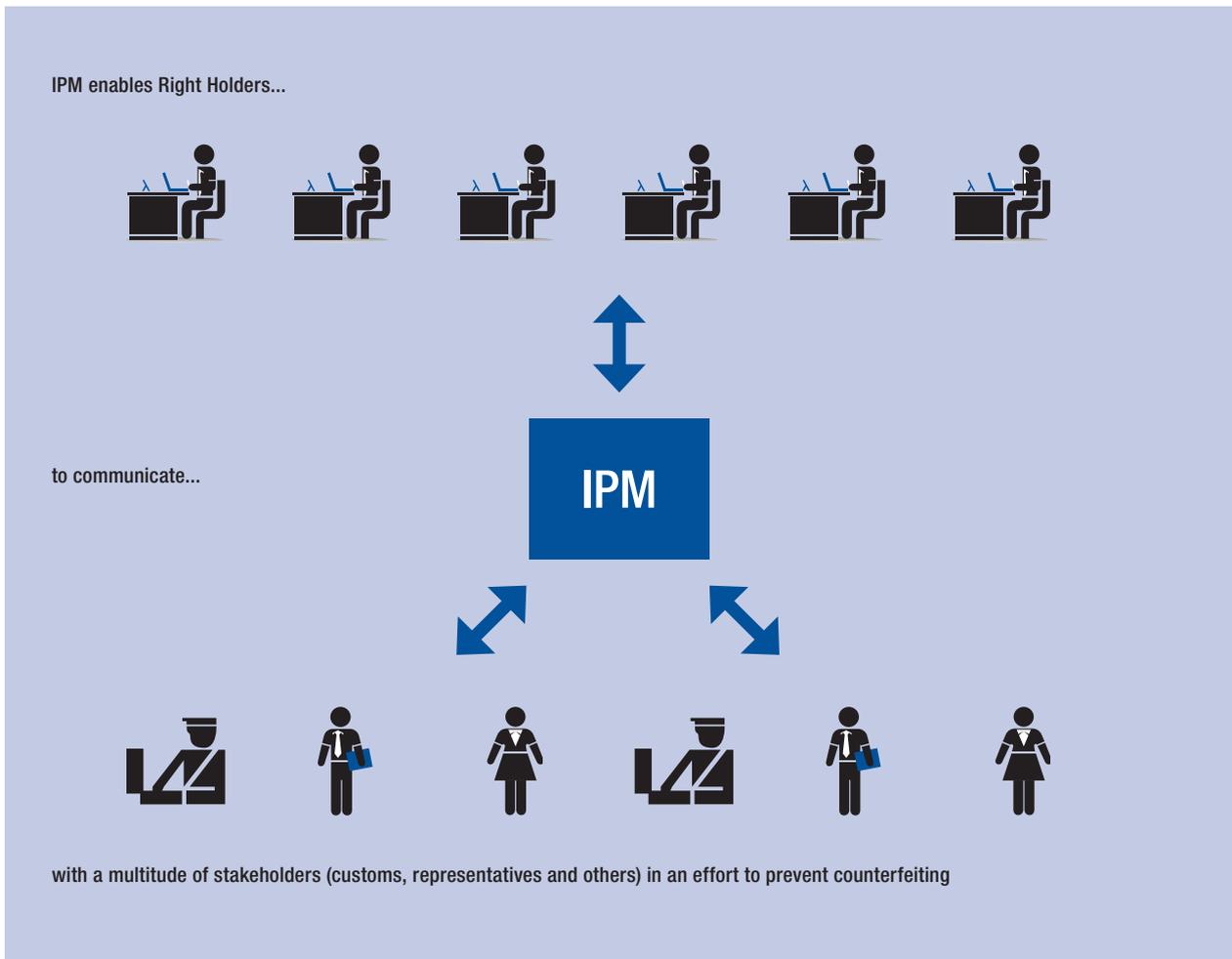
Border enforcement against goods that infringe intellectual property rights (IPRs) is another area in which closer cooperation between customs and business is needed. Seizing infringing goods at the border is an efficient and effective means of protecting IPRs, as international trade reportedly accounts for over half of global counterfeiting and piracy.¹³ A secure tool for communication between customs and IPR holders, called *Interface Public-Members* (IPM),¹⁴ was launched in 2010 to facilitate the exchange of information between customs and IPR holders (Figure 2). The IPM contains numerous functions, including a genuine/fake database that provides frontline customs officers at the border with real-time information to help them distinguish genuine products from fakes and counterfeits.

WCO ACTIVITIES

WCO activities directed at strengthening the relationship of customs with the business community have their origins in the economic declaration of the G-7 London Summit in 1991, in which the WCO was invited to strengthen its cooperation with business associations in order to "improve the capacity of law enforcement agencies to target illicit drug movements without hindering the legitimate circulation of persons and goods."¹⁵ To date, the WCO has signed Memoranda of Understanding (MOUs) with more than 30 business associations, including the International Chamber of Commerce (ICC) and the Global Express Association (GEA). Most of these MOUs have been revised recently to broaden the scope of information-sharing from illegal drug-related areas to include wider operations and performance. In 2011, for example, the ICC and the WCO renewed their understanding about promoting and supporting efficiency in customs control and facilitation. That MOU also sets out a list of agreed activities and improved channels of communication.¹⁶

Given its importance, the WCO selected customs-business partnerships as the theme for International

Figure 2: Interface Public-Members (IPM)



Source: WCO.

Customs Day in 2010, under which the international customs community collectively supported and improved these relationships in order to assist the achievement of key objectives, especially effective customs controls coupled with trade facilitation. Under the theme for 2011, which was “Knowledge,” the importance of sharing and accumulating knowledge for a better understanding between customs and business was emphasized. The theme selected for 2012 is “Connectivity.” Although it covers broader issues than previous themes—in the areas of people, institutions, and information, for example—the customs-business partnership remains an essential element.

The WCO makes a maximum effort to seek the views of the private sector when developing or revising its customs instruments and tools. A number of business associations attend various WCO meetings as observers. In addition, the Private Sector Consultative Group (PSCG),¹⁷ whose membership is composed of private companies and associations related to the trade and transport industries, provides collective advice. In fact, many of the PSCG’s valuable suggestions and proposals have been reflected in new or revised WCO tools and instruments.

Close cooperation on the part of business is a precondition for most of the WCO’s customs enforcement and trade facilitation programs. For example, using a secure communication tool called the “WCO Customs Enforcement Network (CEN) applications,” the customs community—in cooperation with business and relevant international organizations—collectively conducted more than 30 border enforcement operations in the second half of 2011, targeting specific high-risk goods such as narcotics and tobacco, counterfeit trademark and pirated copyright goods, and environmentally sensitive goods. Moreover, in order to facilitate measuring the time required for the release of goods, the WCO’s *Time Release Study Guide* calls for special cooperation and collaboration from the trade and transport community.¹⁸

Last but not least, the WCO has regularly organized many training sessions for business on technical matters such as rules of origin, the classification of goods, and IPR border enforcement. For example, both events of the Open Day for Trade and the Knowledge Academy for Customs & Trade provide opportunities for the private sector to learn more about the WCO, international customs standards, and the international

customs community, leading to improved compliance with customs requirements. In addition, many events are organized jointly with business, or for business. Among others, the Global Congress on Combating Counterfeiting and Piracy is convened every two years jointly by the International Criminal Police Organization (ICPO–INTERPOL), the WCO, the World Intellectual Property Organization (WIPO), the ICC/BASCAP,¹⁹ and the International Trademark Association (INTA). Two annual technology-related events—the IT Conference & Exhibition and the Technology & Innovation Forum— attract hundreds of participants from customs, business, and academia.

LESSONS LEARNED

A public-private partnership (PPP) is generally defined as “a venture between a government agency and one or more private companies in which the private party provides a public service or project and assumes either partial or full responsibility in the area of financial, technical and operational risks.”²⁰ In the customs context, this can be interpreted as meaning that the stakeholder assumes greater responsibility in traditional customs work. Because of the wide assortment of PPP models, a close partnership between customs and business can be achieved in a variety of ways. In many countries, the private sector plays an important role as a stakeholder, as a partner, and as a service provider, and customs is able to benefit from the private sector’s involvement through consultation, collaboration, and contracting.²¹

Consultation

Consulting with business is one of the most prevalent ways to promote customs-business partnerships; this consultation may take place at the national and local levels, and in both formal and informal ways.²² A joint forum or group with representatives of both the public and the private side is common; a public comment system on a specific topic is another method frequently used. The actual voices of users are valuable assets for customs when it comes to assessing and improving customs services. Representatives from the private sector join forums or groups as stakeholders, and an important mechanism for dialogue is provided in order to ensure that interests and strategic directions are mutually understood, where appropriate.

In particular, consultation or dialogue with business plays an important role in customs reform and modernization efforts. In Peru, for example, the success of the customs modernization process can be explained partly by the transformation of a relationship with the private sector into a solid partnership based on dialogue to the benefit of all sides.²³ The role of the private sector in customs modernization programs was also highlighted in connection with the strengthening of capacities in each member state of the East African Community.²⁴

Prior consultation—described as consultation on new or amended customs rules and regulations prior to their entry into force—is another trend, particularly in

developed countries. In this model, business acts as a stakeholder in the development and implementation of customs legislation and policies. When the European Commission develops proposals for customs policy and legislation, consultations with business are institutionalized in its procedures.²⁵ In accordance with these procedures, for example, the European Commission sought contributions from stakeholders when reviewing the EU legislation on customs enforcement of IPRs; the proposed texts, which take those contributions into account, are currently under consideration.²⁶

As one of the WCO’s pilot projects on integrity, Moroccan Customs has established the Observatory to fight corruption and enhance integrity for traders and customs officials.²⁷ The Observatory—with representatives from customs and relevant business associations—is tasked with consolidating complaints from the customs and business sides regarding corrupt behaviors, identifying problems, analyzing those problems, and finding solutions.

Collaboration

Customs-business collaboration at the border is effective in the trade security and customs enforcement in particular. Information provided by business is extremely useful when identifying high-risk cargoes and passengers/crews. For close cooperation, customs administrations often conclude individual partnership arrangements with business through MOUs or in an informal way. Each customs administration has its own programs and operations. Hong Kong Customs, for example, launched the Strategic Control Scheme on Hazardous Waste, under which a joint examination of high-risk shipments is conducted with shipping companies. A substantial amount of illegal hazardous waste has been denied entry thanks to this cooperative arrangement with shipping companies.²⁸

Enhancing voluntary compliance by the private sector also becomes a key strategy of customs administrations. For instance, Irish Customs has created a customer-oriented system coupled with a strategy to maximize voluntary compliance by the business, particularly small-medium enterprises.²⁹ Since creating good will as partners in the private sector is essential in order to improve compliance, regular business perception surveys on customs work have become a benchmarking tool for Irish Customs.

Further examples that rely on voluntary compliance by the private sector are trusted/authorized trader programs and AEO programs. In both types of program, customs shares its responsibilities with those private companies that have a high level of compliance. In trusted/authorized trader programs, those who demonstrate good compliance with customs requirements and meet conditions specified by customs are entitled to benefit from special procedures such as a low frequency of customs intervention, depending on national laws and regulations. Assuming that cargo dealt by the trusted/authorized trader is low risk enables customs to focus its resources on the high-risk cargoes.

Under AEO programs, on the other hand, if AEO status is awarded to economic operators,³⁰ they must meet minimum standards of trade supply-chain security under an accreditation process managed by customs. As of May 2011, 16 AEO programs were operational in 42 countries, including Argentina, Canada, China, Costa Rica, Guatemala, Japan, Jordan, the Republic of Korea, Malaysia, New Zealand, Norway, Singapore, Switzerland, the United States, and 27 EU Member States, although their scope, the type of operator, and the benefits granted vary from program to program.³¹

Considering the financial constraints of governments and their frequent lack of technical capacity and infrastructure, customs-business partnerships often provide a solution in developing and maintaining customs IT systems. In addition, the electronic single-window concept—where a single electronic submission of information fulfills all cross-border regulatory requirements—is considered to be an effective trade facilitation measure. Although in most cases customs administrations manage IT systems for single-window service, either alone or jointly with other government agencies, in several cases a single-window service is run by a private company. The WCO 2011 survey on single-window implementation revealed that the private sector provides the single-window service in 14 percent of the countries surveyed, and its maintenance and operation are funded by a PPP in 10 percent of the countries surveyed.³² Ghana, Mauritius, Senegal, and Singapore are among the countries that have set up a PPP enterprise for a single-window platform.

In another instance of collaboration, in Mozambique an innovative initiative has been launched to optimize revenue collection.³³ Various cooperative mechanisms that act between customs and the informal sector stimulate the informal trade sector to become part of the formal tax environment. Because informal traders with a maximum of 10 employees and not registered with the tax authority account for a significant proportion of Mozambique's economy, this initiative is expected to have a significant positive impact on revenue collection as well as trade facilitation.

Contracting

Governments may choose private-sector services to complement or augment government resources and capabilities. Supporting operations ranging from printing customs legislation and tariffs to designing customs websites, repairing and maintaining facilities and equipment, and conducting research into specific topics are typically outsourced to private companies.³⁴ This option may be more cost effective than in-house operations for reasons of economic scale, expertise, technology, and the stimulation provided by competition in the private sector. In addition, the outsourcing of supporting functions to the private sector enables customs administrations to focus their scarce resources on their core activities.

Through a contract with a government, certain core customs activities may be outsourced to private companies that conduct Preshipment Inspection

(PSI) or Destination Inspection (DI) activities. As their names suggest, PSI activities are conducted in exporting countries in order to verify the quality, the quantity, the price, and/or the customs classification of exported goods,³⁵ while DI activities are carried out, in combination with scanning technology, on imported goods in importing countries. PSI/DI is introduced to enhance customs functions as a stop-gap measure while waiting for customs reform and modernization. According to the WTO, as of November 2011 at least 25 countries, most of which are in sub-Saharan Africa, had contracts with private inspection entities for PSI/DI.³⁶

It is important to note, however, that such services should be considered not as a permanent substitute for the customs authority, but as a temporary measure. Primarily as a consequence of critical assessments of the performance of inspection companies and inefficient capacity-building and training activities, many customs administrations have exited these outsourcing contracts. With its accumulated knowledge, the WCO is able to assist its Members with the process of discontinuing the contracts. There are certain circumstances where the hiring of inspection companies could be justified because of the lack of expertise, as in the case of a post-conflict reconstruction situation. In such cases, contracts with PSI/DI companies as service providers should be accompanied by active planning for an exit strategy within the context of a capacity-building or customs modernization program, and the PSI/DI companies should work in compliance with the WTO Agreement on PSI and relevant WTO's recommendations.

CONCLUSION

Effectively and efficiently facilitating legitimate trade without compromising customs controls is a common challenge shared by all customs administrations. The continuous modernization and reform of customs in the face of the ever-changing circumstances of international trade is also essential. To this end, a good partnership with business is a key to success. However, a variety of options exist for achieving a good partnership with business. One size does not fit all, and all customs authorities should make every effort to find the best solutions for their particular situation. In support of their efforts, the WCO has provided its Members with various opportunities to share their experiences and best practices. It has also developed customs tools and instruments and conducts capacity-building activities and organizes events jointly with business. The WCO will continue to move forward in this direction with its Members.

Customs-business partnerships have expanded and evolved to reach a new phase, which includes more proactive engagement of the private sector in traditional customs work. The result is a shared responsibility with the public sector through consultation, collaboration, and contracting. Customs authorities should work with business in order to achieve their common and respective goals. To this end, more customs administrations have adopted service charters

that place a client-centric approach at the heart of their operations. Performance indicators are introduced to regularly monitor outputs and outcomes to serve as feedback to improve the commitment. With diligent work, the business perception of customs can be improved, a development that is reflected in business perception indexes—including the Enabling Trade Index of *The Global Enabling Trade Report*.

NOTES

- 1 Transparency International 2009.
- 2 Grainger 2011.
- 3 Jeannard 2010.
- 4 Ireland et al. 2011
- 5 The WCO was established in 1952 as the intergovernmental organization dealing with customs matters. It currently represents 177 customs administrations, which together process over 98 percent of world trade. For further information, visit www.wcoomd.org.
- 6 Zhang et al. 2010.
- 7 WCO 2008.
- 8 WCO 2008, p. 7.
- 9 The RKC is the international convention with the formal title of “INTERNATIONAL CONVENTION ON THE SIMPLIFICATION AND HARMONIZATION OF CUSTOMS PROCEDURES (as amended)” (WCO 1999). It entered into force in February 2006, and currently has 77 contracting parties.
- 10 RKC’s Standard 9.9 concerning binding rulings is supported by two WCO Recommendations: *RECOMMENDATION ON THE IMPROVEMENT OF TARIFF CLASSIFICATION WORK AND RELATED INFRASTRUCTURE (25 June 1998)* and *RECOMMENDATION ON THE INTRODUCTION OF PROGRAMMES FOR BINDING PRE-ENTRY CLASSIFICATION INFORMATION (18 June 1996)*. Further information is available at www.wcoomd.org.
- 11 The SAFE Framework is a non-binding instrument, adopted in 2005 and revised in 2007 and 2011. See WCO 2011a.
- 12 WCO 2003.
- 13 Frontier Economics Ltd 2011.
- 14 Further information on IPM is available at <http://ipmpromo.wcoomdpublications.org>.
- 15 Ministry of Foreign Affairs of Japan 1991, para 62.
- 16 WCO 2011b.
- 17 Further information on PSCG is available at www.wcopscg.org.
- 18 WCO 2011c.
- 19 BASCAP (Business Action to Stop Counterfeiting and Piracy) is an initiative launched by the ICC.
- 20 *Public-Private Partnerships: Global Trade Facilitation Partnership for Transportation and Trade (GFTT)*. Further information is available at www.gfptt.org.
- 21 Grainger 2011.
- 22 Grainger 2011; APEC 2006.
- 23 CO 2010a.
- 24 WCO 2010b.
- 25 WCO 2010c.
- 26 EC 2010.
- 27 WCO 2010d.
- 28 WCO 2010e.
- 29 Feehily 2009.

- 30 *Economic operators* include, among others, manufacturers, importers, exporters, brokers, carriers, consolidators, intermediaries, ports, airports, terminal operators, integrated operators, warehouses, and distributors.
- 31 Polner 2011.
- 32 Choi 2011.
- 33 WCO 2010f.
- 34 Grainger 2011.
- 35 Article 1 of the WTO Agreement on Preshipment Inspection.
- 36 WTO 2011.

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