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INTERNATIONAL BORDER AGENCY COOPERATION

A Practical Reference Guide

October 2020

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ACRONYMS AND ABBREVIATIONS

ACV	Agreement on Custom Valuation
AEO	Authorized economic operator
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
B2B	Business-to-business
B2C	Business-to-consumer
CBP	U.S. Customs and Border Protection
CCC	Customs Cooperation Council
CEN	WCO Customs Enforcement Network
CENcomm	Customs Enforcement Network Communication Platform
CMAA	Customs Mutual Assistance Agreement
EAC	East African Community
EDI	Electronic Data Interchange
EFTA	European Free Trade Association
EPA	Economic Partnership Agreement
FTA	Free trade agreement
GATT	General Agreement on Tariffs and Trade
GNC	Globally Networked Customs
ICAO	International Civil Aviation Organization
ICT	Information and communications technology
IPPC	International Plant Protection Convention
IPR	Intellectual property rights
ISO	International Organization for Standardization
KORUS	Korea–United States Free Trade Agreement

MLAT	Mutual legal assistance treaty
MOU	Memorandum of understanding
MRA	Mutual recognition arrangement
Nairobi Convention	WCO International Convention on Mutual Administrative Assistance for the Prevention, Investigation, and Suppression of Customs Offenses
NCTS	New Computerized Transit System
NTFC	National Trade Facilitation Committee
OECD	Organization for Economic Cooperation and Development
RFID	Radio-frequency identification
RKC	Revised Kyoto Convention
RTA	Regional trade agreement
SPS Agreement	WTO Agreement on the Application of Sanitary and Phytosanitary Measures
SW	Single window
SWI	Single window interoperability
SWS	Single window system
TBT Agreement	WTO Agreement on Technical Barriers to Trade
TFA	WTO Trade Facilitation Agreement
TIN	Trader Identification Number
TIR	Transports internationaux routiers (international road transport)
TIR Convention	Convention on the International Transport of Goods Under Cover of TIR Carnets
TRIPS	WTO Agreement on Trade-Related Aspects of Intellectual Property Rights
UN/CEFACT	United Nations Center for Trade Facilitation and Electronic Business
UNCTAD	United Nations Conference on Trade and Development
USMCA	United States–Mexico–Canada Agreement

WCO World Customs Organization

WTO World Trade Organization

FOREWARD

Since 2003, USAID has commissioned a series of handbooks and issue papers to provide detailed guidance to border agencies wishing to better facilitate trade while maintaining or improving control and protecting revenue. These materials, initiated under the FASTrade project, were conceived as self-help guides, offering practical recommendations on issues such as border management, customs integrity, and supply chain security.

Over the course of the World Trade Organization (WTO) negotiations that led to the conclusion of the Trade Facilitation Agreement (TFA), USAID's Office of Trade and Regulatory Reform (TRR) supported the process by sponsoring and facilitating WTO self-assessments in more than 20 countries and by continuing to publish its handbooks on customs reform, culminating in *A Comprehensive Approach to Trade Facilitation and Capacity-Building*. This handbook suggested a methodology for managing the TFA's overall implementation through a sequenced and integrated, multi-agency approach.

One of the signature elements of the TFA, which entered into force in February 2017, is the clear link between commitments made by WTO developing countries and the availability of donor assistance for implementation of those new obligations. These “flexibilities” constitute an agreement by donor countries to provide support for TFA implementation in order to assure that both developing and developed countries realize the significant economic benefits of the TFA. In keeping with this understanding, USAID has continued to provide technical assistance and capacity-building support for TFA implementation and continues to disseminate best practices guides in the realm of trade facilitation.

International Border Agency Cooperation: A Practical Reference Guide is USAID's latest contribution to supporting the implementation of the TFA. Cooperation and communication among border agencies is a fundamental tenet of the TFA. It is essential that Customs authorities, other border agencies, and national stakeholders—including in the private sector—work collaboratively to plan and implement methods of cross-border cooperation that are appropriate for them.

Every effort has been made to ensure that this Guide is consistent with and complements accepted guidelines and best practices related to international border agency cooperation. Hopefully, it will help foster an environment in which trade can flow in a more time- and cost-efficient manner.

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EXECUTIVE SUMMARY

The World Trade Organization (WTO)'s recently adopted Trade Facilitation Agreement (TFA) calls for various types of cross-border cooperation and communication between Customs and the other border agencies of WTO members.¹ Other multilateral and bilateral international agreements also authorize international cooperation between border agencies.

This Reference Guide is designed to help Customs authorities, other border agencies, and national stakeholders in developing countries to plan and implement methods of international cooperation that are appropriate for them. In addition to being authorized by the TFA and other international agreements and instruments, such cooperation is important for four reasons:

- 1) Enhanced trade facilitation from expedited processing of imports and exports benefits traders and the national economy as a whole;
- 2) Improved revenue collection from more efficient border operations makes more financial resources available to the national government;
- 3) More efficient and effective law enforcement combats dangers to society such as criminal enterprises, narcotics smuggling, and terrorism; and
- 4) More efficient use of national resources by sharing personnel and facilities with adjacent foreign border agencies benefits all participating countries.

In sum, improved cooperation among border agencies from different countries is a “win” for all sectors of a nation: government, business, and private citizens.

This Guide is divided into three main parts. The first part discusses the importance of international border agency cooperation and reviews current cooperation practices, including new digital technologies. Border agencies primarily utilize three approaches to international cooperation:

- 1) “*Ad hoc*” arrangements depending on need. (These may be informal or based upon bilateral agreements.)
- 2) Coordinated border management arrangements based upon bilateral and multilateral agreements and data exchange protocols developed by international organizations.
- 3) Coordinated border management arrangements driven by membership in one or more regional trade agreements (RTAs) that require border integration.

Individual countries may employ one, two, or all three of these approaches in their border agency relationships with foreign counterparts. Case studies are provided to illustrate the benefits of cross-border cooperation among border agencies.

¹ “Cooperation” should be understood to include communication as well.

The second part of the Guide summarizes the provisions of the WTO's TFA and other international agreements that provide for international border agency cooperation. These vary in legal standing from WTO agreements and World Customs Organization (WCO) conventions and agreements to regional and bilateral trade treaties to simple bilateral memoranda of understanding, with some agreements merely authorizing cross-border cooperation and others mandating these practices. The provisions of the TFA and other WTO agreements are especially consequential because they mandate or encourage a variety of significant cross-border policies and practices, including customs cooperation, freedom of transit, uniform procedures and documents at borders, the use of single windows, cooperation between all border agencies, cooperation on intellectual property rights enforcement, cooperation regarding customs valuation, and the mutual recognition of authorized economic operators, conformity assessments, and sanitary and phytosanitary requirements.

The third part of the Guide discusses actionable methods for improving international border agency cooperation. These include:

- 1) Evaluating the benefits of international border agency cooperation and developing a national plan;
- 2) Providing for private sector participation in the planning and implementation process;
- 3) Finding a national advocate for the plan;
- 4) Providing the proper legal basis for international cooperation, such as enacting new legislation or promulgating new regulations;
- 5) Establishing a workable supra-national coordination mechanism to implement the plan;
- 6) Locating and obtaining technical assistance when required; and
- 7) Measuring the results of the plan and adjusting it where necessary.

The authors of this Guide hope that planners and other stakeholders in developing economies find the information and case studies in the Guide useful in planning and implementing their own international border agency cooperation programs.

I. INTRODUCTION

This Guide is a practical reference manual for Customs authorities, other border agencies, and national stakeholders in developing countries that are seeking to improve communication and cooperation with foreign border agencies regarding trade transactions. The Guide includes:

- 1) A summary of best practices (procedures and technologies) currently used in international border agency cooperation, along with pertinent case studies;
- 2) An overview of the provisions in the WTO's Trade Facilitation Agreement (TFA) and other international agreements and instruments requiring, or authorizing, international border agency cooperation; and
- 3) Actionable recommendations to help developing countries to develop and improve their national strategies regarding international cooperation.

This Guide focuses primarily on cooperation with foreign border agencies relating to *licit* international trade in goods. Cooperation with foreign border agencies relating to the investigation and prosecution of smuggling, money laundering, and other trade-based criminal activities (illicit trade) are for the most part a separate topic or “track,” covered by separate international agreements and cooperation protocols (e.g., the WCO's Customs Enforcement Network, the United Nations Convention on Transnational Organized Crime). However, the Guide does reference cooperation pertaining to criminal activities in connection with digital systems and the routine review of trade transactions, as well as when covered by legal instruments authorizing cooperation.

BORDER ADMINISTRATION SOLUTIONS FOR THE 21ST CENTURY

The first two decades of this century have witnessed a dramatic increase in computing power, the introduction and widespread use of smartphones, and a rapid increase in cellular bandwidth and mobile networks. Data that formerly existed only in analogue format, stored on paper, are now digital and accessible instantaneously. Rapidly expanding and evolving new digital technologies are reshaping international trade in goods. Information and communications technology (ICT) such as high-speed computing, instantaneous Internet communication, artificial intelligence (AI), the Internet of Things (IoT), 3D printing, and blockchain, are creating new products, new markets, and new forms of trade, and substantially altering global supply chains.²

As a result of new digital technologies, more and more trade in goods is taking place on the Internet in business-to-business (B2B) and business-to-consumer (B2C) transactions. It is estimated that in 2016, e-commerce transactions amounted to \$27.7 trillion, of which \$23.9 trillion were B2B transactions.³ Many of these transactions take place across borders or are related to international supply chains.

² World Trade Organization, *World Trade Report 2018* (Geneva: World Trade Organization, 2018).

³ *Ibid.*, p. 8.



South Africa is digitizing cargo inspection by connecting high-tech scanners to a Customs case management system, helping border authorities keep pace with the mounting number of international shipments.

WCO

For businesses, most international transactions now occur using online platforms. For consumers, the availability of Internet-enabled devices is shifting many purchases online, and the shipment and delivery of small packages through postal and international express courier services is becoming the norm. Even in less developed economies, digital technologies are now employed and Internet and cellular systems are able to support B2B and B2C transactions.

The growth of cross-border digital transactions makes the systematic, rapid sharing of information by border agencies—both within a country and between countries—imperative.⁴ Increased international trade flows also make essential other forms of international border agency cooperation, including equipment sharing, joint inspection facilities, and mutual recognition of authorized economic operators, sanitary and phytosanitary inspections, and standards regimes.

⁴ Within a country, information is ideally shared between Customs and other national border agencies through a “single window” (SW) Internet platform, mandated by Article 10(4) of the TFA. A SW or single window system (SWS) can also incorporate commercial services such as banking and logistics providers and be expanded to provide the basis for cross-border information sharing and cooperation through linkages with the SWs of other countries.

Moreover, as international connectivity continues to expand, border agencies are increasingly becoming aware of the essential role that international border agency cooperation can play in combating the spread of epidemics and pandemics, such as influenza and coronavirus. Cooperation among border health inspection officials is of paramount importance in combating the spread of pandemics. For example, the International Civil Aviation Organization (ICAO) can coordinate communications among international airports, which host a number of specialized border agencies, in the event of a pandemic. During the recent COVID-19 pandemic, ICAO disseminated the travel restrictions imposed by national governments to all international airports.

The following sections discuss the systems and technologies for international border agency cooperation; demonstrate why improved cooperation pertaining to trade in goods is essential in the global digital economy; review the international agreements and other instruments requiring or authorizing this cooperation; examine best practices for improving international border agency cooperation; and enumerate and explain actionable recommendations to help stakeholders improve cooperation. The Guide also identifies methodologies for measuring and tracking the benefits ensuing to national governments from improved cooperation, as well as sources of financial and technical assistance for developing and implementing international cooperation plans.

In response to the COVID-19 pandemic, the U.S. Centers for Disease Control and Prevention activated an Emergency Operations Center to coordinate with the World Health Organization and airport personnel.



CDC

II. PRACTICES FOR IMPROVING BORDER AGENCY COOPERATION

A discussion of border agency cooperation must be rooted in an understanding of what constitutes national borders. Historically, national borders were the limit of a country’s sovereignty beyond which its control of people and goods no longer applied. Sovereignty was traditionally defined by a geographical limit (a land border on maps, sometimes also indicated by a fence or other barrier and signs, and territorial waters indicated on nautical charts). In modern times, however, “borders” have become more complex. For example, an international airport is considered a national border even though it may be located well within the geographic boundaries of a country. Similarly, special economic zones located geographically within national borders are considered to be outside a country’s customs territory.⁵ Some countries operate passenger and cargo preclearance programs where their officials are located on the territory of the country of departure or exportation.⁶ And for legal purposes, a national government may in some cases assert jurisdiction and control over citizens and other persons located outside its national borders if their actions affect circumstances within those borders.⁷

Customs officers from Thailand and Myanmar co-inspecting goods at the Mae Sai border checkpoint.



WCO

⁵ These are also known as foreign trade zones (in the United States), export processing zones, free zones, free ports, free economic zones, and free economic territories.

⁶ As one example, the United States has extensive preclearance sites in Canada for aviation and road transport.

⁷ Common instances where a country might pursue persons located abroad are when such persons have committed foreign corrupt practices or international tax fraud.

THE PROBLEM OF MULTIPLE BORDER AGENCIES

Countries typically have a multiplicity of national agencies with regulatory or law enforcement functions, each with a different mission. Border agencies typically include the following:

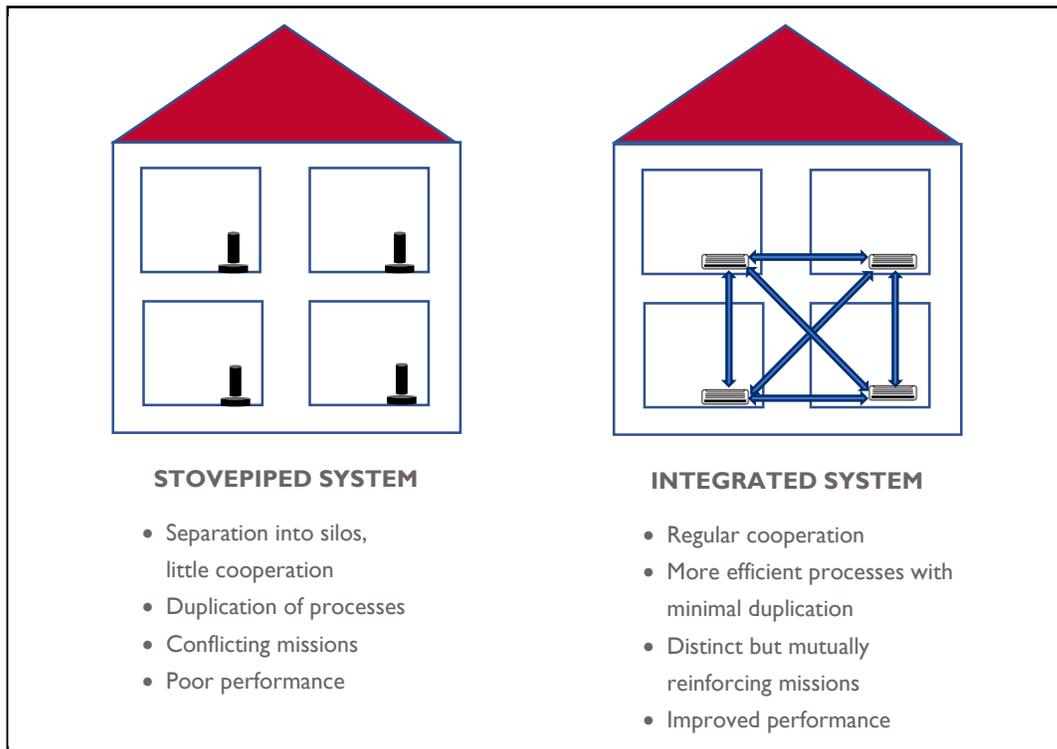
- **Customs agencies** are generally responsible for overseeing goods and passengers entering and exiting countries and making sure that they comply with relevant laws, assessing any duties and taxes due, and collecting trade statistics. “Customs” is often a term used for all border agencies and functions.⁸
- **Immigration agencies** verify the identity of persons entering or leaving a country and confirm their legal status by checking passports and visas.
- **Border police** may carry out immigration checks and police the physical border.
- The **Coast Guard** is responsible for protecting and policing ocean boundaries.
- The **Transport Ministry** is responsible for collecting road taxes, weighing trucks and inspecting them for safety, and enforcing transport permit and licensing requirements.
- **Quarantine or national health agencies** are charged with preventing the spread of infectious diseases, monitoring health regulations, and disinfecting persons and vehicles.
- **Sanitary and phytosanitary agencies** are responsible for inspecting food and pharmaceutical products for diseases, contaminants, and toxins harmful to human, animal, and plant life. For example, animal and fishery inspection agencies work to prevent the spread of animal and marine diseases.
- **Standards and consumer protection agencies** check to assure that products conform to standards and are safe for consumers.
- **Radiology agencies** use detectors to prevent the entry or exit of radioactive material.
- **Ecological agencies** are responsible for monitoring imports that may adversely affect the environment.

In addition to government agencies with different missions at a border, many other stakeholders are involved with border transactions. These include exporters, importers, and other traders; customs brokers and freight forwarders; express couriers and other logistics firms; air, road, rail, and marine transport firms; ports and airports; special economic zones and dry ports; and banks, insurance firms, and other financial institutions.

⁸ The WCO defines Customs as “the government service which is responsible for the administration of customs law and the collection of duties and taxes and which also has the responsibility for the application of other laws and regulations relating to the importation, exportation, movement or storage of goods.” See “International Convention on the Simplification and Harmonization of Customs Procedures,” which entered into force on February 3, 2006. http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv.aspx.

In the absence of good coordination and communication, a profusion of border agencies with different missions at the border can result in significant problems. Importers and exporters may be forced to obtain approvals from multiple agencies with conflicting or duplicative missions or resubmit required information to these agencies as part of the approval process. They may also find it challenging to coordinate logistics and trade finance arrangements while dealing with delays in regulatory approval and attempting to meet the contractual requirements of their customers. This “Tower of Babel” at the border may be exacerbated by the use of paper-based approval systems and payment of customs duties, taxes, and other fees by cash. The lack of coordination and communication among border agencies is sometimes referred to as “stovepiping.”

FIGURE I. STOVEPIPED VS. INTEGRATED SYSTEMS



Stovepiped border systems inevitably result in significant delays and other costs. Economies with poor national border agency coordination and communication are invariably identified by poor performance on trade facilitation surveys, such as the World Bank’s annual *Doing Business* “Trading across Borders” ranking and the World Bank’s biennial *Logistics Performance Index* assessment.⁹ Border inefficiencies are not only responsible for poor trade facilitation performance; they often result in poorer revenue collection, inefficient law enforcement, and a climate conducive to corruption.¹⁰ In contrast, in an “integrated” system, institutionalized, regular cooperation among border agencies with distinct but mutually reinforcing missions can significantly improve these metrics.

⁹ For more information about these two sets of indicators, see www.doingbusiness.org and www.lpi.worldbank.org.

¹⁰ See Tom Doyle, Enrique Fanta Ivanovic, Gerard McLinden, and David Charles Widdowson, eds., *Border Management Modernization* (Washington, D.C.: World Bank, 2011).

OVERCOMING NATIONAL BORDER AGENCY COMMUNICATION LAPSES

Improvements in *national* border agency communication are closely related to improving *international* border agency cooperation. Poor national border agency coordination and communication makes international cooperation between border agencies more difficult and substantially reduces its benefits. Trade and law enforcement information is not shared among national border agencies, or only shared on an *ad hoc* basis. Reasons for this lack of border agency cooperation may include inter-agency competition for budgets and personnel, concern that other border agencies have inadequate safeguards for securing information, and suspicion of corruption in other border agencies. Inefficiencies and delays result from multiple submissions of documents and data by traders and carriers to various border agencies. In addition, countries encounter similar coordination problems at the national and international levels, though international solutions are complicated by the need to deal with different sovereign governments and legal systems.

This section discusses solutions for national border agency coordination and communication as a preview to solutions for international border agency cooperation. The processes and communication tools used for national border agency coordination and communication can usually be adapted to international cooperation. Integrated or coordinated border agencies can more effectively work with their foreign counterparts, while ICT systems and single windows can be adapted for systematic cross-border exchange of trade and law enforcement information.

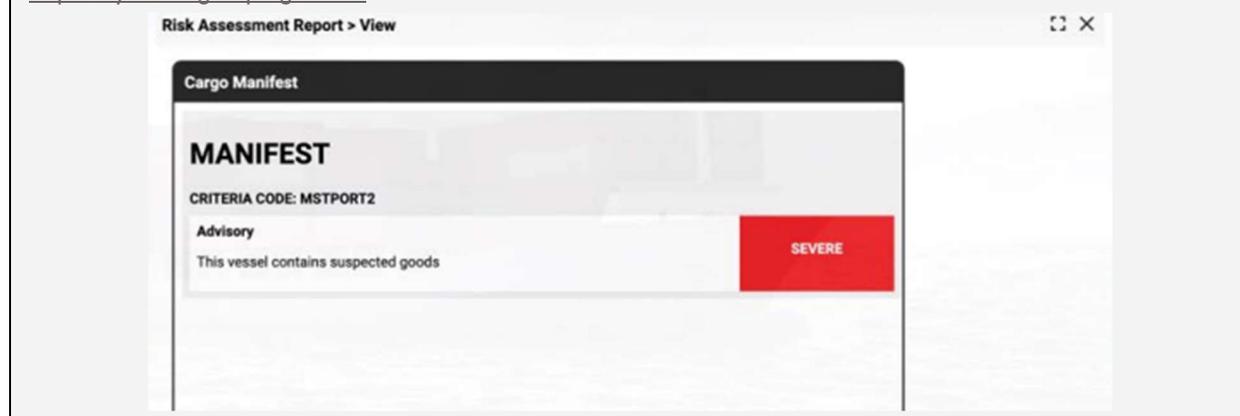
ICT SYSTEMS FOR CUSTOMS

Countries initially addressed the national border agency communication problem by adopting ICT systems at their Customs agencies. Today, almost every national Customs agency operates an ICT

The ASYCUDA system

Currently over 90 developing countries, territories, and regions use the ASYCUDA ICT management system for customs administration. ASYCUDA was developed by UNCTAD specifically to automate customs administration in smaller developing economies. ASYCUDA utilizes international codes and standards developed by the ISO and the WCO's data model, and Electronic Data Interchange (EDI) between traders and Customs. An example Risk Assessment Report produced by the ASYCUDA system used by several Caribbean countries is shown below.

Source: United Nations Conference on Trade and Development, "About ASYCUDA." ASYCUDA. Accessed May 22, 2020. <https://asycuda.org/en/programme/>.



system for processing imports and exports. These range from relatively simple systems in small developing countries to sophisticated, web-based ICT systems in advanced economies. Other border agencies also developed ICT systems for some of their functions but these were not necessarily compatible with the Customs systems, so coordination and communication problems remained.

INTEGRATED OR COORDINATED BORDER MANAGEMENT

Coordinated border management can be viewed as having two dimensions: the flow of information and the physical flow of goods and people. According to the World Customs Organization, the key principles for the coordinated flow of information are (1) regulatory transparency; (2) streamlined submission; (3) information sharing; and (4) information protection (confidentiality), where appropriate. The key principles for the coordinated flow of goods and people are (1) streamlined checks and clearance; (2) congestion management; (3) manpower availability; and (4) infrastructure availability.¹¹

Some countries have addressed their coordination and information sharing problems by combining many separate border agencies and functions into one border agency. For example, the Canadian Border Services Agency (CBSA) combined in one agency the customs administration formerly housed in the Canada Customs and Revenue Agency, the intelligence, interdiction, and enforcement program from Citizenship and Immigration Canada, and the port-of-entry inspection program from the Canadian Food Inspection Agency. However, in the absence of a single platform for electronic information-sharing and

Using a coordinated border management approach, Ireland's Customs Freight Team carries out a security scanning operation in cooperation with Dublin Port Authority representatives.



WCO

¹¹ *Ibid.*

complete management integration, such a reorganization may only marginally improve border agency coordination and communication. Canada largely surmounted this problem by developing a single window system linking CBSA with other Canadian border agencies.¹²

Other countries have addressed the problem of multiple missions by focusing on close coordination among border agencies rather than organizational integration. An example of this approach is the relationship between German Customs and the German Federal Police (BPOL). German Customs is primarily a fiscal organization, whereas BPOL, with trained police officers, focuses on the cross-border movement of people, transportation security, and counterterrorism. Because of their very different missions, coordination—rather than integration—was deemed to be the most appropriate solution.¹³

National Trade Facilitation Committees (NTFCs)—public-private trade policymaking platforms—are often an important vehicle for successful coordinated border management. NTFCs are authorized by the WTO TFA to coordinate and foster the development and implementation of trade facilitation reforms, including those related to cross-border management or inter-agency cooperation. The role of NTFCs is discussed further in Section V below.

NATIONAL SINGLE WINDOWS

As a next step toward resolving the national border agency coordination problem, the concept of a single window (SW) evolved as one potential solution. A SW is an electronic interface usually built upon a customs ICT system that allows traders to submit all information and documents regarding import, export, and transit-related regulatory requirements through a single platform. This information is then shared with all national border agencies, expediting the approval process for imports and exports and lowering processing costs. The WTO's TFA encourages the adoption of SWs to establish a single interface point for all transactions involving imports, exports, and transit shipments.¹⁴ SWs generally evolve in five stages. Stage 1, discussed above, is the introduction of paperless customs through the use of an ICT system, such as ASYCUDA, which also provides for electronic payment of duties, taxes, and fees. Stage 2 is the adoption of a regulatory SW for border operations. This involves the incorporation of other national border agencies into the system. Stage 3 entails the incorporation of airports, seaports, dry ports, and the logistics community into the system. Stage 4—a fully integrated SW—adds banks, insurers, other financial firms, and other service providers to encompass entire supply chains within a country. Stage 5 expands national SWs to include connection with the SWs of other nations, permitting the seamless cross-border exchange of documents and data relating to trade transactions and enforcement matters.¹⁵

¹² These include the Canadian Food Inspection Agency, Canadian Nuclear Safety Commission, Department of Fisheries and Oceans, Foreign Affairs and International Trade Canada, Environment Canada, Health Canada, Natural Resources Canada, Public Health Agency of Canada, and Transport Canada. See Canada Border Services Agency, *Single Window Framework: E-Commerce Solutions and Partnerships to Facilitate Secure Trade* (Government of Canada, 2008).

¹³ World Customs Organization, *Coordinated Border Management Compendium* (Brussels: World Customs Organization, 2015).

¹⁴ See Art. 10(4) in "Agreement on Trade Facilitation," entered into force February 22, 2017. https://www.wto.org/english/docs_e/legal_e/tfa-nov14_e.htm.

¹⁵ Countries do not necessarily progress through these stages in a linear fashion. For example, in Mauritius Stage 4 occurred before Stages 2 and 3. See UNNExT, UNESCAP, and UNECE, *Single Window Planning and Implementation Guide* (New York/Geneva: United Nations, 2012). https://www.unescap.org/sites/default/files/0%20-%20Full%20Report_5.pdf.

A typical example of a small middle-income developing country in the process of moving to a Stage 2 SW is Botswana, a member of the Southern African Customs Union (SACU). Botswana Unified Revenue Service (BURS) is in the process of implementing an electronic SW system for processing all imports and exports. This system is based upon a highly regarded SW system developed in Singapore. By mid-2019, the BURS SW was in the early stages of implementation and reportedly only about 30 percent of traders used it. In addition, many national border agencies were not yet participating. Botswana has indicated to the WTO that it will require technical assistance for full implementation of an SW system and estimated that full implementation will not occur until December 2027.

Although SACU is the oldest customs union in the world, dating to 1910, a lack of interoperability between Botswana and its other four members—South Africa, Namibia, Lesotho, and Swaziland (recently renamed Eswatini)—hampers information exchange among the members. Namibia, Lesotho, and Eswatini use the ASYCUDA system, while South Africa and Botswana use their own systems. The technical problems of interoperability have been reportedly resolved but legislative, administrative, and privacy concerns remain obstacles to information exchange.¹⁶ It may be necessary for SACU to adopt customs union customs legislation to resolve these problems, as the European Union did.

In contrast to Botswana, Singapore, a developed economy specializing in international logistics, has a fully operational Stage 4 SW, called the Networked Trade Platform (NTP), launched in September 2018. The NTP replaced two earlier systems: TradeNet, Singapore’s SW for customs and regulatory border agencies to interface with traders, and TradeXchange, a business-to-business network. Singapore is now exploring linking the NTP to the SW platforms of its major trading partners, such as China and the Netherlands. Singapore is also investigating using blockchain technology to improve security.¹⁷ Singapore is a member of the Association of Southeast Asian Nations (ASEAN). ASEAN members are moving toward the adoption of national SWs and ultimately a regional SW to facilitate the exchange of information among all ASEAN countries.

INTERNATIONAL BORDER AGENCY COOPERATION

“The Customs Cooperation Council is the international legal instrument from which the WCO derives its authority. It exists to promote cooperation amongst Governments in Customs matters and ‘cooperation’ implies communication and networking. The concept of global connectedness amongst Customs administrations is fully consistent with that principle.”

– World Customs Organization, *Globally Networked Customs*, p. 1

¹⁶ Dalton Nxumalo and Mabuya Magagula, “Customs Systems Interconnectivity: The Challenges and Opportunities for Customs Administrations in the SACU Region,” *WCO News*, February 2018, https://mag.wcoomd.org/uploads/2018/04/wconews_85.pdf, pp. 50–53.

¹⁷ Barbara Matamala, *Compendium of Best Practice Technology Solutions for Single Window Interoperability* (Singapore: Asia-Pacific Economic Cooperation, 2019). www.apec.org/Publications/2019/11/Compendium-of-Best-Practice-Technology-Solutions-for-Single-Window-Interoperability.



Over 300 participants from developing countries attend the first International Forum for National Trade Facilitation Committees, organized by the United Nations, the WCO, the WTO, and others in January 2017.

WTO

In the modern era, cooperation among Customs agencies from different countries dates from the creation of the Customs Cooperation Council (CCC) by international convention in 1952. Originally, the CCC had mainly a European focus but over time, membership grew to encompass most national Customs organizations around the world. To reflect this its name was changed to the World Customs Organization (WCO) in 1994. Today the WCO has 183 national Customs administration members representing about 98 percent of world trade.

The WCO's work involves the development and adoption of international conventions and other instruments for the nomenclature and classification of goods (e.g., the Harmonized System Nomenclature); the adoption of international conventions and other instruments for the standardization of procedures and best practices (e.g., the Revised Kyoto Convention, the SAFE Framework of Standards); mutual assistance for the prevention, investigation, and prosecution of customs offenses (e.g., the Nairobi Convention, the Customs Enforcement Network); capacity-building programs; and cooperation with the WTO and other international organizations regarding trade facilitation, customs valuation, rules of origin, and a range of other issues.

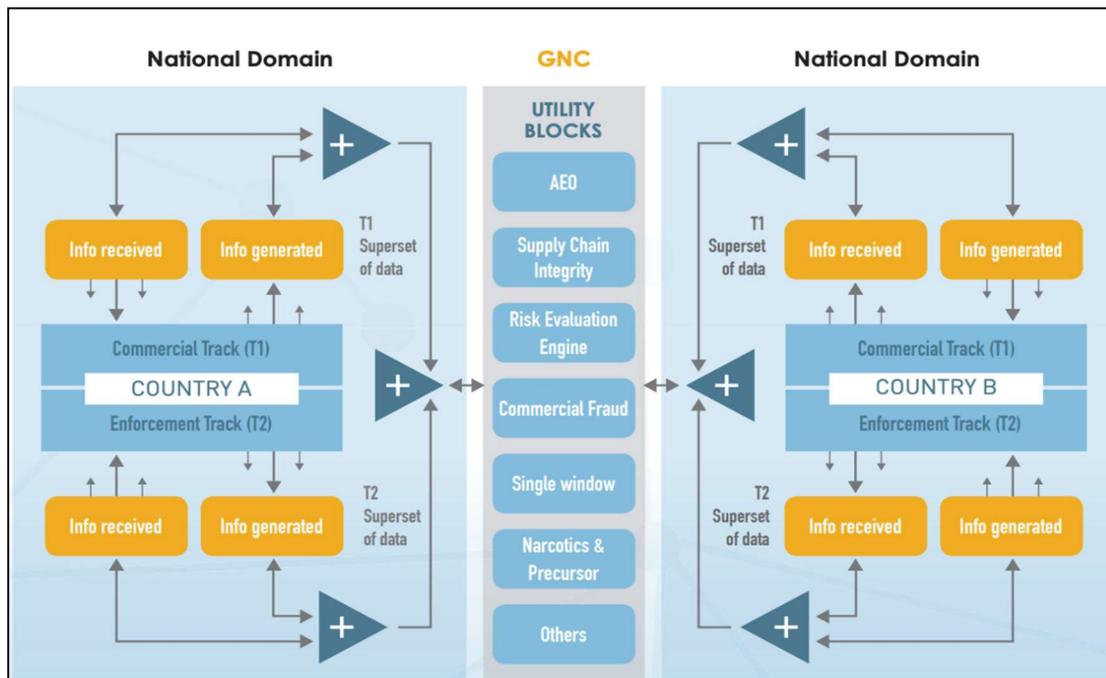
EXCHANGE OF TRADE DATA

Information exchanges between Customs and other border agencies have taken place for many years, but these for the most part have not been systematic. Rather, in some cases they have depended on cross-border personal contacts between national Customs administration officials investigating potential

customs fraud or other violation of law or other customs issues. To “rationalize, harmonize and standardize the secure and efficient exchange of information” among WCO members, the WCO developed the Globally Networked Customs (GNC) concept.¹⁸ In today’s digital economy, a wide variety of trade data are instantaneously available in electronic format. Complex international supply chains entail a vast exchange of data between a multitude of trade partners, both private sector and governmental. The purpose of GNC is to facilitate the reuse of such data.

GNC broadly categorizes trade data into two tracks. One track consists of commercial data, such as trader identity and invoice shipping information. The second track is law enforcement information such as smuggling, customs fraud, concealment schemes, and other highly sensitive exchanges that may be handled via the WCO’s Customs Enforcement Network (CEN) system. Commercial data can be exchanged on a routine basis whereas law enforcement data constitute a much smaller subset of information typically exchanged based upon requests from individual countries. GNC encourages countries to make data available to one another based upon mutual agreements.

FIGURE 2. GNC AND SW EXCHANGE OF INFORMATION



Source: World Customs Organization, *Globally Networked Customs* (Brussels: World Customs Organization, 2017). http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/activities-and-programmes/gnc/gnc_handbook.pdf?db=web.

More specifically, GNC calls for systematic cross-border exchanges of information between Customs administrations based upon subject or “utility block.” Each utility block (UB) reflects a core customs activity. Therefore, separate UBs exist for transit of goods, customs valuation, mutual recognition of authorized economic operators, commercial fraud, and other areas. Using UBs will allow Customs

¹⁸ World Customs Organization, “Globally Networked Customs,” World Customs Organization. Accessed August 5, 2020, <https://www.wcoomd.org/en/topics/facilitation/activities-and-programmes/gnc.aspx>.

administrations to facilitate the exchange of information. The intent is for each UB to be implemented in the same manner and become a standardized template for information exchange. However, each information exchange agreement may have unique features depending on the policy and legal requirements of the exchange partners.

Improved risk assessment is another major expected benefit of GNC. Under the GNC framework, an exporting country’s Customs agency initiates the data exchange process with another country by sending trade transaction data to its counterpart in the country of importation/entry. Customs in the country of importation can use the data prior to the arrival of merchandise to conduct a risk assessment of the transaction to determine whether a physical inspection should take place.

GNC is informed by the information exchange provisions of the TFA, SAFE, and the Revised Kyoto Convention, and by bilateral MRAs, MAAAs, MOUs, and other agreements (described in Section IV). However, at the present time, the majority of GNC’s concepts have yet to be realized in practice.

INFORMATION-SHARING IN CUSTOMS UNIONS

Customs unions are a special case of the cross-border exchange of trade information. As noted previously, SACU currently does not have interoperability among all of its members’ ICT systems for routine exchanges of customs information. In contrast, the Organization of Eastern Caribbean States (OECS) customs union does have interoperability among the border agencies of its members. Figure 3 below details the cross-border policies and procedures shared by OECS members that necessitate effective information-sharing.

FIGURE 3. OECS CROSS-BORDER POLICIES AND PROCEDURES

POLICIES	PROCEDURES
 <p>Prohibition on import duties between Member States</p>	 <p>Integrated risk management for security and compliance across customs union</p>
 <p>Common customs tariff and harmonized border charges across Member States</p>	 <p>Harmonized port procedures for handling, storage, and delivery of goods entering customs union</p>
 <p>Harmonized import formalities across Member States (technical regulations, SPS measures, customs procedures)</p>	

Source: World Trade Organization, “Border Cooperation for the OECS Customs Union and Free Circulation of Goods,” presented at the WTO Regional Workshop: Supporting Strategic and Effective Implementation, Gros Islet, St. Lucia, January–February 2019.



France, Luxembourg, Belgium, and Germany established a quadripartite Police and Customs Cooperation Center to coordinate among their border agencies.

WCO

The members of the European Union exchange customs information through an ICT system that is partially centralized at the European Commission and partly operated by the individual members. Electronic information exchanges have formats and procedures that are harmonized between EU members. Each EU member operates its own national ICT system processing customs data in the trade environment. The European Commission maintains common reference data (e.g., the common external tariff), coordinates applications, and compiles statistics. Therefore, the economic operators system in the EU consists of centrally stored data distributed for national operations, and trade information exchanged among members is processed at the national level.¹⁹

A fully centralized ICT system is desirable for a customs union as it results in economies of scale and requires traders to use only one system within the union. “To allow a rapid, direct, and secure exchange of control information...a secure electronic system is needed—one that allows the dissemination and exchange of [data] across all regulatory control points [in the customs union].”²⁰ However, as the EU experience indicates, it may be politically difficult for a customs union to develop and operate a centralized ICT system. If each member of a customs union has its own ICT system, there will be interoperability challenges.

¹⁹ Tom Doyle and Frank Janssens, “Information and Communications Technology in Support of Customs Unions: A Case Study of the European Union,” in Tom Doyle, Enrique Fanta Ivanovic, Gerard McLinden, and David Charles Widdowson, eds., *Border Management Modernization* (Washington, D.C.: World Bank, 2011), pp. 251–262.

²⁰ *Ibid.*, p. 257.

The importance of privacy for commercial trade data

Commercial information provided to border authorities in conjunction with a business's trade transactions is frequently highly sensitive. Its public disclosure can reveal the identity of suppliers, customers, prices, and the total value of business conducted. The information can then be used by competitors to harm the businesses providing this information. On the other hand, privacy can be maintained if commercial information is made public as part of aggregated statistics where individual traders and their specific transactions cannot be identified.

CROSS-BORDER SINGLE WINDOW INTEROPERABILITY

Single window interoperability is defined as the exchange of specified foreign trade-related information in a structured format between two or more SW systems in different countries.²¹ Once a government has adopted a fully integrated SW linking all border agencies and stakeholders, such as the Singapore model discussed above, it may link its SW with the fully integrated SWs of other governments, providing the potential to share not just customs information but also relevant data from other border agencies and stakeholders. Each SW can thereby seamlessly exchange data without replicating the ICT structure of its foreign SW partner.

As previously mentioned in connection with Globally Networked Customs, data may be routinely exchanged for commercial transactions or, in the case of criminal matters, provided upon request. Information exchange must be predicated on the existence of an appropriate international agreement or agreements specifying the terms of the exchange. In addition, an understanding must exist that exchanged information will be used appropriately. In operating an information exchange, SWs must also ensure appropriate data privacy protection in accordance with national laws and hold proprietary trade data in confidence.

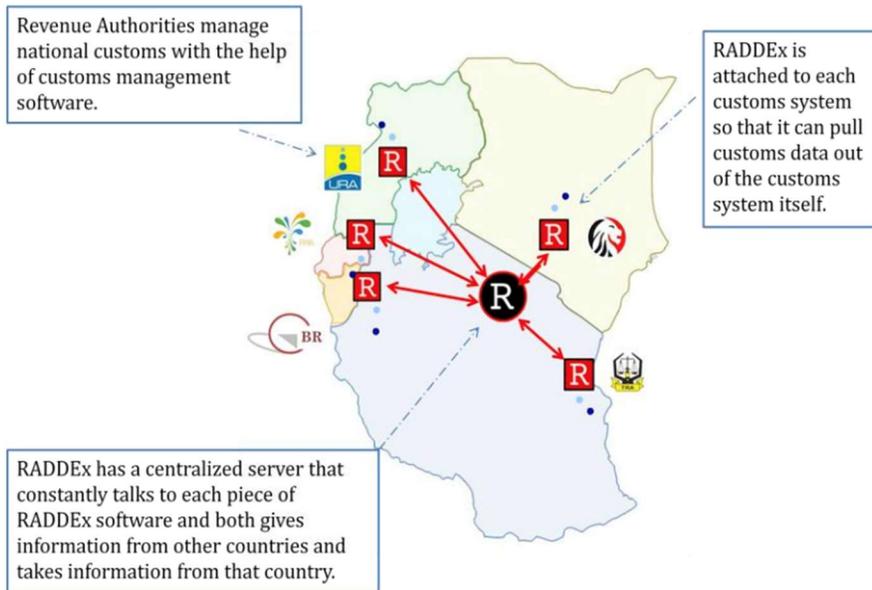
Since 2005, ASEAN has been planning a regional SW among its members. The SW became operational as a distributed system on January 1, 2018, and currently connects some ASEAN national SWs for some functions.²² For example, Indonesia, Malaysia, Singapore, Thailand, and Vietnam can process preferential certificates of origin using the regional SW.

Another example of regional SW is the Revenue Authorities Digital Data Exchange (RADDEx) operated by the East African Community (EAC) customs union. RADDEx is currently on its second version (RADDEx 2.0) and is operational in Burundi, Kenya, Rwanda, Tanzania, and Uganda. It is a centralized system with the central service located at the EAC Secretariat in Arusha, Tanzania, and satellite servers in the five member countries. As a "single-purpose" SW dedicated to revenue, RADDEx 2.0 is limited to revenue authorities and does not currently include non-revenue border agencies.

²¹ United Nations Economic Commission for Europe, United Nations Centre for Trade Facilitation and Electronic Business. *Single Window Interoperability: Recommendation No. 36* (New York/Geneva: United Nations, 2017). http://www.unece.org/fileadmin/DAM/trade/Publications/ECE-TRADE-43IE_Rec36.pdf.

²² A "distributed system" is a system whose components are located on different networked computers that then communicate by passing messages to one another.

FIGURE 4. INFORMATION-SHARING THROUGH RADDEX



Source: USAID East Africa Trade Hub, “Revenue Authorities Digital Data Exchange (RADDEX) – Customs Technology that Reduces the Cost of Doing Business” (USAID, 2013).

OTHER TYPES OF BORDER AGENCY COOPERATION

In addition to data and information exchange, there are a variety of other forms of cross-border cooperation that facilitate trade, improve revenue collection and law enforcement, and result in more efficient utilization of resources. These include but are not limited to coordinated border facilities, international transit systems, and the mutual recognition of food and agricultural safety certifications. Examples of these types of cooperation are discussed below.

COORDINATED BORDER FACILITIES

Joint border facilities are becoming increasingly popular. There are two types: separate border stations from different countries may be located in close proximity at national borders, or the border stations of two countries may be merged into one border station with a fully integrated border clearance process.²³ Juxtaposed or combined facilities have many advantages. Hours of operation are harmonized, formalities are simplified, direct cooperation between the border agencies in the screening of people and goods is encouraged, and economies of scale are realized. Joint border facilities have evolved from divided stations straddling a border into single stations under the jurisdiction of both border countries.

²³ Michel Zarnowiecki, “Borders, Their Design, and Their Operation,” in Tom Doyle, Enrique Fanta Ivanovic, Gerard McLinden, and David Charles Widdowson, eds., *Border Management Modernization* (Washington, D.C.: World Bank, 2011), pp. 64–68.

Case Study: Joint Border Committees in East Africa

Barriers to cross-border trade have been a major problem in East Africa. Two major transit corridors serve the region: the “Northern Corridor” from the port of Mombasa in Kenya to Bujumbura in Burundi, and the “Central Corridor” from the port of Dar es Salaam, Tanzania to Kigali, Rwanda. In the East African Community (EAC), reportedly up to ten border agencies operate at regional border crossings, each conducting their own inspections and assessing their own fees. Consequently, it can take days for a truck conveying goods to cross a border between EAC member countries.

To address this problem, USAID, working from 2009–2014, supported the development of 16 joint border committees (JBCs) at eight key inland border crossings as one of a number of initiatives to facilitate trade at regional borders. The JBCs are groups of local government agencies and private sector stakeholders concerned with border management working to implement international best practices. At the important Malaba border post between Kenya and Uganda, the JBC reportedly reduced transit time from four days to as little as two hours. This reduction was estimated to have saved \$44.2 million to \$58.3 million per year in truck operators’ compliance costs along the Northern Corridor alone. The eight border crossings at which JBCs functioned only represented a fraction of all intra-EAC border crossings and did not include any border crossings with non-EAC countries. Nonetheless, the creation of JBCs at these key border crossings was an important step toward reducing the time and cost of transporting goods across borders and improving the overall functioning of transit corridors in the region.

Source: Stephen Creskoff/Pragma, *Evaluation of SSA Regional Hubs* (USAID, 2018).

Kenya President Uhuru Kenyatta and Uganda President Yoweri Museveni launch a One-Stop Border Post at Busia along the Kenya-Uganda border, February 2018.



EAC



An officer from the Canada Border Services Agency monitors a commercial vessel off the coast of Nova Scotia.

WCO

Case Study: Cross-Border Information-Sharing by the Canada Border Services Agency

The Canada Border Services Agency (CBSA) is currently completing the rollout of a fully integrated single window that will have the capability of routinely exchanging information with the SWs of foreign border agencies. CBSA engages in numerous forms of cooperation with foreign border agencies, including customs information sharing. Information sharing is specifically authorized by bilateral mutual legal assistance treaties (MLATs), customs mutual assistance agreements (CMAAs), and memoranda of understanding (MOUs). Canada prefers MLATs and CMAAs because MOUs are not enforceable agreements.

MLATs provide Canada a legal basis for cooperation and mutual assistance in criminal matters with a view to improving the investigation, prosecution, and suppression of crimes, including customs offenses. MLATs are negotiated, implemented, and administered by Canada's Department of Justice.

CMAAs provide a legal basis to share customs information to prevent, investigate, and prosecute customs offences, and to provide reciprocal mutual assistance to foreign border agencies. CBSA may provide information regarding proven law enforcement techniques; new and emerging trends, means, or methods of committing customs offences; and risk assessment activities. CBSA's CMAAs are based on the WCO's Model Bilateral Agreement on Mutual Administrative Assistance in Customs Matters. In accordance with this model, under CMAAs both parties retain flexibility to account for differing legal and regulatory systems, facilitating cooperation where such differences exist. CMAAs are negotiated and administered by CBSA.

CBSA may also engage in customs information-sharing arrangements in the form of MOUs. These are similar in purpose and scope to CMAAs but not legally binding.

Source: Government of Canada, "Customs Cooperation Case Study for Canada," submitted by Canada for the WTO Symposium on Practical Experience of Implementing Trade Facilitation Reforms, Geneva, July 2012, https://www.tfafacility.org/sites/default/files/case-studies/12_customs_cooperation_case_study_for_canada_-_final_-_june_12_2012.doc.

Case Study: Border Agency Cooperation between Norway, Sweden, and Finland

“In 1960 and 1969 respectively, Norway signed agreements with Swedish and Finnish authorities, establishing a border agency cooperation system. Border cooperation between Norway, Sweden, and Finland is based on the simple idea of division of labor: the national border authorities of each country are allowed to provide services and exercise legal powers not only on behalf of their home state, but that of their neighboring states as well. For example, when goods are exported from Norway, either a Swedish, Finnish, or Norwegian Customs office may take care of all paperwork related to exportation from Norway and importation into the before-mentioned countries. This is also the case when goods are imported into Norway. It should be noted that the borders between Norway and Sweden (1630 km) and Norway and Finland (736 km) generally lie in sparsely populated rural areas.

The infrastructure and allocation of customs offices at remote places along the long Norwegian-Swedish and Norwegian-Finnish borders reflect the fact that, by virtue of the existence of these agreements, it is unnecessary to establish Customs offices and deploy Customs officers on both sides of the border. It is decided through bilateral negotiations which country or countries will manage a border post, as well as the allocation of costs.

The Border Agency Cooperation Agreements have established a joint control zone of 15 km on both sides of the Swedish border, and 7 km on both sides of the Finnish border. Within this control zone, both Norwegian and Swedish/Finnish customs officials can carry out necessary controls... Calculations made in 1995 showed that if the agreements had not existed, Norway would have to have built ten new Customs offices, and had at least 100 more Customs officers at any given time. Additionally, the calculations showed that the administrative costs for both traders and authorities would have been significantly higher.”

Source: Government of Norway, “Case Study on Border Agency Cooperation,” submitted by Norway for the WTO Symposium on Practical Experience of Implementing Trade Facilitation Reforms, Geneva, November 2011, <https://www.tfafacility.org/case-study-type/article-case-study>.

Customs officers from Norway patrol the country’s borders with Sweden and Finland.



WCO

INTERNATIONAL TRANSIT SYSTEMS

International transit occurs when national borders are crossed. Transit most often involves the movement of goods on land by road or rail but can also take place by vessel and by air. International transit requires cooperation between the border agencies on the transit route. These always include Customs authorities but, depending on the nature of the merchandise, can also include other border agencies, such as food and animal inspection services, truck and other transport safety inspectors, and ecological inspectors.

Trucks pass through the Nur Joly checkpoint at the border of Kazakhstan and China.



UNCTAD

There are three key features of an international transit system:

- 1) Customs in the country of origin must securely seal the shipment by sealing appropriately designed vehicles (e.g., specially designed closed trailers, shipping containers);
- 2) The shipper must post a financial guarantee covering the value of taxes and duties that would be due in the transit country if the goods enter commerce there; and
- 3) Transit Customs administrations use an information system to manage the goods in transit and reconcile information on entries into and exits from the customs territory. This is invariably a single document with multiple copies for each country transited, known as a “carnet,” that

accompanies the shipment and allows Customs in transit countries to verify compliance with the transit regime.²⁴

Traditionally the container seals used in international transit were mechanical. Today, mechanical seals compliant with ISO 17712, designed and constructed with tamper-indicative features, are used on many containers. Electronic seals using radio-frequency identification (RFID) technology, both passive and active, provide enhanced security for more valuable contents by locking trailers and containers and producing a shipment audit trail by wirelessly transmitting information about unauthorized attempts to open, damage, or tamper with the seal.²⁵ Containers shipped by ocean are also commonly tracked using battery- or solar-powered GPS systems. Likewise, carnets are now frequently electronic.

A container ship docks in Hamburg, Germany.



DMITRY ANIKIN

²⁴ Jean-François Arvis, “Transit Regimes,” in Tom Doyle, Enrique Fanta Ivanovic, Gerard McLinden, and David Charles Widdowson, eds., *Border Management Modernization* (Washington, D.C.: World Bank, 2011), pp. 285–296.

²⁵ United Nations Economic Commission for Europe, United Nations Centre for Trade Facilitation and Electronic Business, “Smart Containers: Real-time Smart Container Data for Supply Chain Excellence,” ECE/TRADE/C/CEFACT White Paper (October 2019). http://www.unece.org/fileadmin/DAM/cefact/GuidanceMaterials/WhitePapers/WP-SmartContainers_Eng.pdf.

The Customs Convention on the International Transport of Goods under Cover of TIR Carnets (the TIR Convention) is currently the only widespread Customs international transit system.²⁶ In summary, the system works as follows: international road transport (TIR) operators purchase a TIR guarantee and load their goods into an approved container or load compartment. Goods are then inspected at the point of departure, a seal is affixed, and the goods are cleared for transit. TIR electronic pre-declarations are sent to the transit countries and the country of destination. When the cargo arrives at the border of a transit country, the transit country Customs agency inspects the seals and documents and, if they are in order, transit continues. The container arrives at the country of destination with the load compartment remaining under seal. The TIR Convention currently has 76 contracting parties and operations cover Europe, Russia, China, and the Middle East. Full computerization of the TIR system is in process.

Case Study: International Transit in the European Union

The EU Customs Union operates three forms of transit arrangements that require international border agency cooperation: (1) “union transit,” encompassing the 27 members of the EU, the United Kingdom, Andorra, and San Marino; (2) “common transit” with the four European Free Trade Association (EFTA) countries (Switzerland, Norway, Liechtenstein, and Iceland), Serbia, North Macedonia, and Turkey; and (3) TIR transit with the countries not covered by union transit and common transit but that actively use TIR. These include the Russian Federation, China, and Middle Eastern countries.

The EU’s New Computerized Transit System (NCTS) must be used for union transit and common transit regardless of the mode of transport (road, rail, sea, or air) unless the commercial document also serves as the transit declaration. Within the EU, the TIR system is partially integrated into NCTS. However, TIR is still primarily a paper-based system that uses TIR carnets for road transport; goods must be accompanied by the TIR carnet.

NCTS offers traders many advantages, including reduced time for customs processing, greater flexibility regarding the time and place for presenting declarations, earlier completion of transit procedures, cost reductions through the elimination of paper-based processing, harmonization of transit procedures, and early application of risk management criteria to shipments to reduce delays.

Source: WTO Committee on Trade Facilitation, “European Union Customs Transit including Arrangements with Neighboring Countries under the Common Transit Convention,” published May 2, 2018, https://www.wto.org/english/tratop_e/tradfa_e/comm_e/meet26june_eu_nonpaper_2_e.pdf.

FOOD SAFETY CERTIFICATIONS

Exportation of food products is of great economic importance to many developing countries. However, agricultural and food products that are traded internationally face sanitary and phytosanitary (SPS) inspections and testing procedures as part of the import clearance process. The Codex Alimentarius Commission is the body established by the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO) to develop food standards under the joint FAO/WHO Food Standards Programme.

²⁶ “Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention),” entered into force March 20, 1978. <http://www.unece.org/fileadmin/DAM/tir/handbook/TIRConventionENFRRU.pdf>.



Through USAID's East Africa Trade and Investment Hub, more than 1,795 firms received capacity-building assistance to export, including with regard to food safety.

USAID

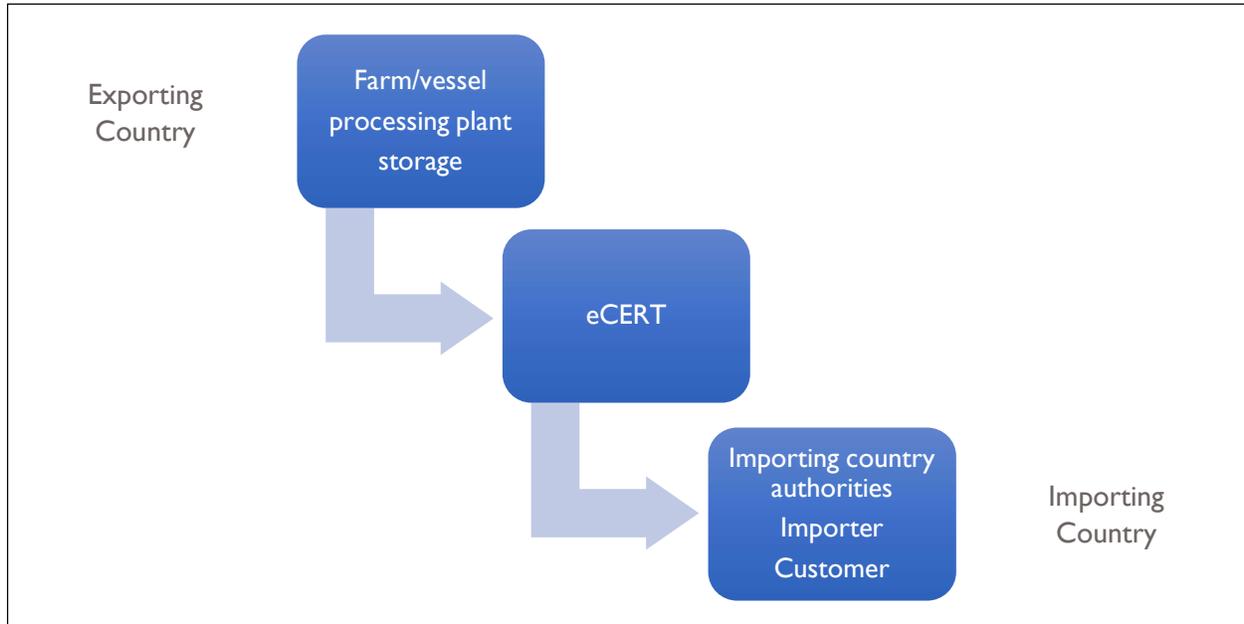
Food-exporting countries face a range of requirements imposed by importing countries. Market access is often conditioned on exporters meeting risk management and international standards provided by the Codex Alimentarius Commission, the International Plant Protection Convention, and the Office International des Epizooties. Criteria applied include product and process standards, producers and production facilities, production methods, storage and transport facilities, and required certifications. Food safety certifications are normally required for fresh and processed food. The mutual recognition of food safety certifications is an important facilitator of international trade in food products.²⁷

Food imports usually fall into three categories: (1) products that are not allowed to enter the territory due to lack of appropriate certificates or for posing plant, animal, or human health risks; (2) products that are restricted unless applicable special requirements are met such as disinfection standards or special permits; and (3) non-prohibited food products that can be imported with no requirements or with SPS certificates.

²⁷ Once market access has been obtained, responsibility for food safety lies primarily with the importers and distributors unless frequent health violations trigger public intervention.

Many SPS certificates have been converted into electronic documents using eCERT. An SPS eCERT is an UN/CEFACT standard for the secure electronic transmission of SPS certification data from the exporting country to the importing country. eCERT eliminates paper processing, reduces the possibility of fraudulent certificates, and increases administrative transparency.²⁸

FIGURE 5. TRANSMISSION OF eCERT FROM EXPORTING COUNTRY TO IMPORTING COUNTRY



AGRICULTURAL SAFETY CERTIFICATIONS

Historically, the Plant Protection Organizations of exporting countries have issued health and safety certifications for agricultural products such as grains, cut flowers, vegetables, fruits, seeds, and plants in the form of paper phytosanitary certificates to importing-country authorities. In 2012, the International Plant Protection Convention (IPPC) approved an international system of electronic certification, called ePhyto, to replace paper certificates. The system operates based upon a central hub allowing all parties to exchange information. Users can exchange protocols with any member of the hub regardless of where they are located, as content and systems are standardized. Developing countries can participate in the system without having to invest financial resources in creating systems for integration with the protocol.

²⁸ U.S. Customs and Border Protection, “eCERT General Information and Requirements,” U.S. Department of Homeland Security. Accessed May 22, 2020. <https://www.cbp.gov/trade/quota/ecert/requirements>.

III. THE PAYOFF: BENEFITS OF IMPROVED INTERNATIONAL COOPERATION

Improved cooperation between national border agencies can have major benefits. The primary impact is likely to be improved trade facilitation. Studies have also indicated that international border agency cooperation is likely to increase trade volumes, which in turn will increase collection of border duties, taxes, and fees.²⁹ In addition, cooperation may help countries improve the enforcement of national laws and more efficiently utilize national resources.

ENHANCED TRADE FACILITATION

The regular exchange of information internationally between border agencies speeds the border clearance of imports, enhancing trade facilitation.

Trade facilitation has been defined generally as “the simplification, harmonization, and modernization of export and import processes,” or more specifically, as reductions in the time and cost of trading goods internationally.³⁰ The WTO has estimated that full implementation of the provisions of the TFA may increase world exports of goods by as much as \$1 trillion per year.³¹ A World Bank study has estimated that each day saved in border agency procedures can increase trade from 1 to 7 percent.³² It follows that improved trade facilitation by more efficient border agency processing can have a significant positive effect on a nation’s economy.

A key to assessing improvements in trade facilitation is accurate measurement of trade facilitation performance. An economy’s performance with respect to trade facilitation can be measured by international assessments, including the World Bank’s *Doing Business* “Trading Across Borders” annual metric, the World Bank’s *Logistics Performance Index* biennial survey, the OECD’s *Trade Facilitation Indicators*, the World Economic Forum’s *Enabling Trade Index*, and individual time release studies applied to border agencies.³³ Most assessments of trade facilitation consider too many factors to be able to determine whether improved border agency cooperation has had a significant positive effect on trade facilitation. However, time release studies are specific enough to isolate the impact of improved cooperation on border agency functioning. Periodic time release studies can track the reduction in time and cost of border agency processing resulting from improved international border agency cooperation.

²⁹ See, for example, Pete Minor, Terrie Walmsley, and Erin Endean, *Impact of WTO Trade Facilitation Agreement on Tariff Revenues and Border Fee Proceeds* (USAID, 2018). <https://www.usaid.gov/sites/default/files/documents/1865/TFA-Economic-Revenue.pdf>.

³⁰ The first definition is from World Trade Organization, *World Trade Report 2015* (Geneva: World Trade Organization, 2015), p. 34. The second is drawn from Simeon Djankov, Caroline Freund, and Cong S. Pham, “Trading on Time,” *Review of Economics and Statistics* 92, no. 1 (2010): 166–173.

³¹ World merchandise exports amounted to \$16 trillion in 2016. See World Trade Organization, *World Trade Statistical Review 2017* (Geneva: World Trade Organization, 2017). https://www.wto.org/english/res_e/statis_e/wts2017_e/wts2017_e.pdf.

³² Djankov, Freund, and Pham, “Trading on Time.”

³³ For each of these datasets, see www.doingbusiness.net, www.lpi.worldbank.org, www.oecd.org, and www.report.weforum.org, respectively. Time release studies were pioneered by manufacturing businesses. For border agencies, a version developed by the WCO is designed to quantify the time taken by customs administrations (and other border agencies) when processing imports and exports. They are performance measurement systems recording the actual time taken to perform certain tasks.



A woman examines a customs declaration submitted upon entry into Vietnam.

USAID

IMPROVED REVENUE COLLECTION

Robust cross-border cooperation between border agencies improves revenue collection in a number of ways. Three of the more important are outlined below.

- 1) **Valuation of merchandise.** ICT systems can match the stated export value in the country of exportation with the declared import value, making it more difficult for importers to undervalue merchandise to avoid duties and taxes. This can make a significant difference in the amount of duties and taxes, such as VAT, collected. In addition, Customs administrations can exchange information regarding the valuation methodology claimed by the importer, allowing Customs in the importing country to use the appropriate transaction value of identical or similar merchandise when the actual transaction value is not available. When the importer uses computed value methodology (an alternative customs valuation methodology applied by the WTO Agreement on Customs Valuation) in its claims, Customs in the country of importation may be able to verify the claimed factors of production with the assistance of Customs in the country of exportation.³⁴
- 2) **Description of the merchandise.** Minor differences in the description of goods can affect the application of tariff nomenclature and thus the applicable duty and tax rates of imports. A particular concern is when exporters seek to avoid excise taxes by altering the tariff nomenclature to make

³⁴ Note that while valuation databases can be used for investigative purposes, the Agreement on Customs Valuation, Article 7(c), prohibits using the domestic market price of goods in the country of exportation as an alternative means of valuation.

their imports appear to be goods that are not excisable under the importing country's excise tax provisions. By exchanging export and import data, exporting and importing countries can verify the description (applicable tariff nomenclature) of merchandise. When border agencies from an exporting country provide information to an importing country about an exporter's business and exports, they can be invaluable in helping the importing country detect tax avoidance schemes.

- 3) **Risk.** ICT systems can exchange information about the risk relating to particular goods and/or exporters and importers. This information includes whether the goods and/or traders have been involved in customs violations in the country of exportation. These and other risk factors are indispensable to an effective risk management program and helps Customs in the country of importation identify fraud regarding the quantity and quality of the merchandise, the value claimed, and possible smuggling of illegal substances. An adverse risk profile normally triggers an intensive physical inspection of the imported goods coupled with a follow-up investigation of the importer in order to assure proper revenue collection and compliance with law.

Dubai Customs uses a single window system that processes and analyzes data collected from multiple border agencies to facilitate trade and mitigate risk.



WCO

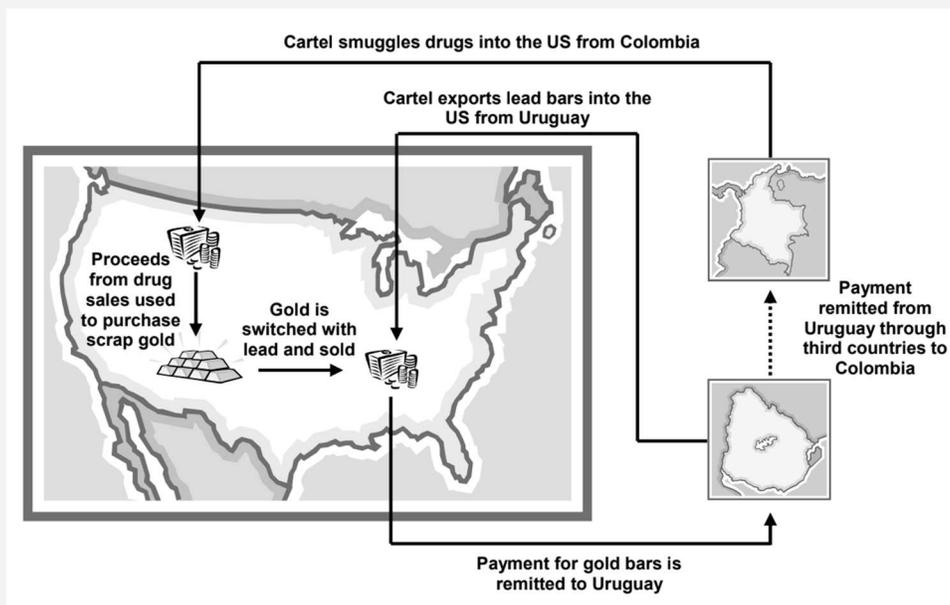
Improved revenue collection based upon improved international border agency cooperation can be measured both *directly* by accumulating and totaling cases where increased revenue collection resulted from international cooperation, and *indirectly* using import and tax collection data by comparing historic revenue collection trends to collections after improvements in border agency cooperation. An example of direct measurement would be an instance where the exporting country's Customs administration, when queried, provided a transaction value higher than that claimed by the importer, resulting in the upward revision of customs value and increased collection of duties and taxes on the importation. These cases, accumulated over time, can result in an aggregate improvement. Indirect measurements are more difficult because of a variety of variables affecting trade in goods. Indirect measurements would involve a statistical attribution that isolates improvements resulting from international cooperation, such as the electronic connection of single window systems between countries, and adjusts for all other variables affecting national revenue collection by the Customs agency.

STRENGTHENED LAW ENFORCEMENT

Strengthened law enforcement is one of the major benefits of improved border agency cooperation. Criminal schemes can be better detected through regular sharing of trade data and close cooperation among foreign border agencies during investigations. This improves revenue collection and reduces other economic losses that result from criminal activities.

Case Study: Colombian Drug Cartel Drug Smuggling

A Colombian drug cartel smuggled drugs into the United States. Proceeds from drug sales were deposited in banks in amounts under \$10,000 to avoid reporting requirements. This cash was used to buy scrap gold, which was then shipped to cooperating jewelers and recast as low-value hardware items such as nuts and bolts. The hardware items were next enameled black and shipped to Colombia, where they were melted down and recast as gold bars. The gold bars were then exported to the United States, where they were sold and used to repatriate additional cash from drug sales.



Source: Financial Action Task Force, *Trade Based Money Laundering* (Paris: FATF/OECD, 2006), p. 13.

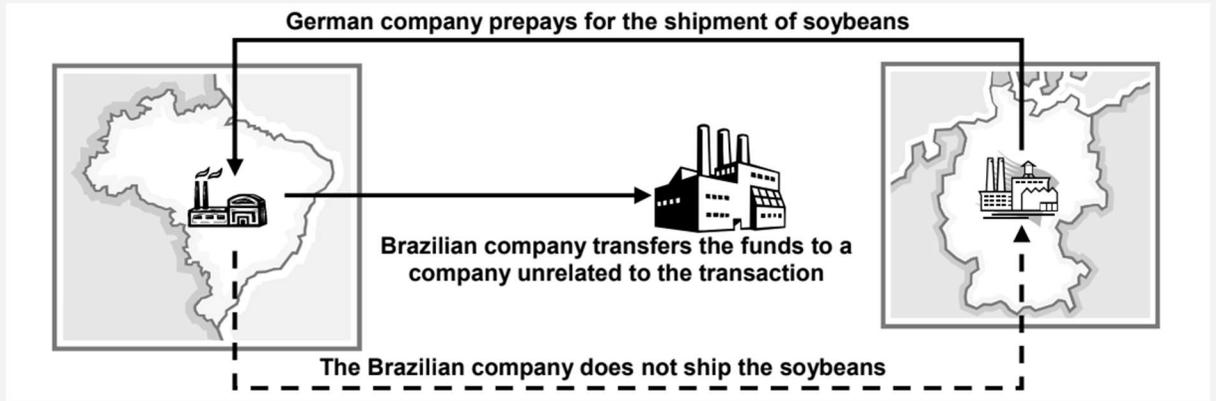
CONSERVATION OF RESOURCES

Another significant benefit of improved international cooperation involves the collaborative use of border agency resources. The previously discussed case study of cooperation among Norway, Sweden, and Finland showed that if the cooperative arrangements had not been implemented, Norway would have had to build ten new customs offices and increase its border staff by at least 100. Calculations also showed that administrative costs for both traders and border agencies would have been significantly higher. Sweden and Finland likely realized similar savings.³⁵

³⁵ Government of Norway, "Case Study on Border Agency Cooperation," submitted by Norway for the WTO Symposium on Practical Experience of Implementing Trade Facilitation Reforms, Geneva, November 2011, <https://www.tfacility.org/case-study-type/article-case-study>.

Case Study: The Soybean Money Laundering Scam

A Brazilian company signed a contract to export soybeans to a German company. The German company prepaid the Brazilian company for the shipment and the Brazilian company immediately transferred these funds to a third party unrelated to the transaction. The soybeans purchased by the German company were never shipped. Risk management determined that the size and nature of the shipment of soybeans was inconsistent with the Brazilian company's normal business operations. Solving these cases is much more difficult without the international cooperation of border agencies.



Source: Financial Action Task Force, *Trade Based Money Laundering* (Paris: FATF/OECD, 2006), p. 9.

Namibian and Angolan border personnel meet to plan a joint law enforcement operation.



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IV. INTERNATIONAL AGREEMENTS AND INSTRUMENTS GOVERNING BORDER AGENCY COOPERATION

There are a variety of international agreements and other instruments that authorize international cooperation among border agencies. These range from international treaties, typically requiring the ratification of national legislatures, to bilateral memoranda of understanding between national border agencies that essentially can be unilaterally terminated without legal consequences. In all cases, however, agreements and instruments authorizing or mandating cross-border cooperation must be consistent with data privacy and other applicable requirements of national law. Moreover, in most legal systems, international agreements are not self-executing. This usually means that WTO agreements and bilateral and regional trade agreements must be implemented by national legislation in order to be enforceable within signatory countries.³⁶

The World Trade Organization's General Council presides over a meeting of WTO member countries in 2019.



WTO

³⁶ For example, in most countries, national legislation must be enacted in order for the provisions of the WTO Agreement on Subsidies and Countervailing Measures to have domestic legal effect. See C. Economides, "The Relationship Between International and Domestic Law," *Science and Technique of Democracy* no. 6 (1993). [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD\(1993\)006-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD(1993)006-e).

The following table provides a non-technical overview of the principal international agreements and other instruments that authorize international cooperation among border agencies. The provisions of the WTO’s Trade Facilitation Agreement are most significant because most countries are either WTO members (164 as of mid-2020) or WTO observers applying WTO agreements (24 as of mid-2020). However, other WTO agreements as well as other multilateral agreements such as the Revised Kyoto Convention, regional trade agreements, and bilateral agreements are also important. Memoranda of understanding may be employed when formal agreements do not exist.

TABLE 1. OVERVIEW OF INTERNATIONAL AGREEMENTS AUTHORIZING INTERNATIONAL COOPERATION AMONG BORDER AGENCIES	
TYPE OF COOPERATION	AGREEMENT
Customs agency cooperation (exchange of information, data exchange, single window interoperability)	TFA Art. 12 RKC GA 6.7, 7.4 SAFE RTAs CMAAs MLATs MOUs
Freedom of transit (prohibition of fees except for actual cost of services rendered, advance filing of documents and data, appointment of national transit coordinators)	TFA Art. 11 RTAs TIR Convention
Common border procedures and uniform documents	TFA Art. 10 RKC, GA 3.3-3.5 RTAs CMAAs MOUs
Single windows (SWs)	TFA Art. 10 RTAs
Border agency cooperation (alignment of working hours, procedures, sharing of facilities, joint controls, joint facilities)	TFA Art. 8 RTAs CMAAs MOUs
Mutual recognition of authorized economic operator programs	TFA Art. 7 SAFE MRAs

Enforcement of intellectual property rights	TRIPS Art. 69 RTAs
Mutual recognition of conformity assessments	TBT, Art. 6 RTAs MRAs
Equivalence of sanitary and phytosanitary measures	SPS, Art. 4 RTAs MRAs
Preclearance agreements	Treaties MOUs

WTO TFA

Trade facilitation—the simplification, modernization, and harmonization of export and import processes—has recently emerged as a critical issue for the world trading system and for economic development in developing countries. After almost a decade of negotiations, WTO members reached agreement on the Trade Facilitation Agreement (TFA) at the Bali Ministerial Conference in 2013. When two-thirds of WTO members ratified the agreement, it entered into force on February 22, 2017.

The TFA contains, among other things, important provisions for international cooperation among Customs and other border agencies as well as providing for technical assistance and capacity-building for the implementation of its provisions.³⁷ These provisions are summarized below.

ARTICLE 12: CUSTOMS COOPERATION

Article 12 sets forth the terms of international cooperation between Customs agencies. Article 12 forms the basis of existing mechanisms of cross-border Customs cooperation, including the various data exchange systems such as Globally Networked Customs and single window system interoperability discussed in the previous section. Its terms are limited to Customs agencies and therefore do not expressly include international cooperation between non-Customs border agencies.

Article 12(2), “Exchange of Information,” states that WTO members should exchange information defined in subparagraphs 6.1(b) and 6.1(c) when requested by another member to verify an import or export declaration. This includes specific information in import and export declarations, documents supporting import and export declarations, commercial invoices and packing lists, certificates of origin, and bills of lading. The requested member must indicate the level of protection and confidentiality required of the requesting member.

³⁷ For example, the WTO has indicated that certain TFA provisions, such as Articles 1 and 8, that apply to SPS agencies could be thought of as “SPS Plus,” as they “go beyond” the Agreement on Sanitary and Phytosanitary Standards (SPS Agreement, discussed later). See World Trade Organization, “The Relationship between the Trade Facilitation Agreement and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement),” published October 11, 2018, https://www.wto.org/english/tratop_e/sps_e/tf_sps_e.pdf.

Article 12(4), “Request,” sets forth procedures regarding information requests, including the matter involved, the requesting member’s purpose for seeking the information, the specific information requested, and the provisions in the requesting member’s domestic law that govern the protection of confidential information and personal data.

Article 12(5), “Protection and Confidentiality,” sets forth the level of protection and confidentiality required to be applied to the information shared. All information and documents provided are to be treated as confidential and must be given at least the same level of protection as is provided under the domestic law of the requester.

Article 12(6), “Provision of Information,” authorizes electronic responses and mandates that requests must be responded to within 90 days, to the extent possible.

Article 12(7), “Postponement or Refusal of Request,” sets forth the reasons justifying postponement or refusal of requests received. These include but are not limited to the provision of information being contrary to the domestic law of the requested member.

Articles 12(8)– (10) provide various additional limitations on the provision of information and other cooperation.

Article 12(11), “Unauthorized Use or Disclosure,” provides remedies in the event of a breach in the conditions of use or disclosure of exchanged information.

Article 12(12), “Bilateral and Regional Agreements,” makes clear that Article 12’s provisions do not limit information-sharing arrangements under bilateral, regional, or plurilateral agreements. This means that specific information-sharing agreements between countries and their respective Customs agencies, such as provisions in bilateral or regional trade agreements, mutual administrative assistance agreements (MAAAs), and memoranda of understanding (MOUs), take precedence over the provisions of TFA Article 12 if the provisions conflict with each other.³⁸

ARTICLE 11: FREEDOM OF TRANSIT

Article 11 specifies basic principles regarding the international transit of goods, including, among other things, prohibitions on: (1) any fees on transit except for those commensurate with the cost of actual services provided; (2) any unnecessary delays or restrictions; and (3) the application of technical regulations and conformity assessment procedures. Article 11’s provisions are necessary for the efficient operation of TIR transit, discussed in the previous section, and other international transit systems. The provisions most relevant to international border agency cooperation include:

- Article 11(9), providing for the advance filing and processing of transit documentation and data prior to the arrival of goods;
- Article 11(16), providing for cooperation between border agencies to enhance freedom of transit; and

³⁸ “Agreement on Trade Facilitation.”

- Article 11(17), requiring the appointment of a national transit coordinator to handle enquiries and proposals from other border agencies regarding the good functioning of transit operations.³⁹



A truck subject to the TIR transit system crosses the Mozambique–Malawi border.

USAID

ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION, EXPORTATION, AND TRANSIT

Article 10 does not directly deal with the international cooperation of border agencies but two of its provisions are of great significance to it.

Article 10(4), “Single Window,” provides for the establishment of a “single window” enabling traders to submit documentation and data to all participating authorities through a single entry point and to receive responses via the same platform. Although not expressly stated in Article 10(4), in practice single windows are almost always based on an ICT system. (Article 10(2) does refer to electronic copies and Article 10(7) to electronic filing and processing.) As discussed in the prior section, a country’s single

³⁹ *Ibid.*

window can be electronically linked to the single windows of other countries either in a customs union or on a bilateral basis in order to routinely exchange information.

Article 10(7), “Common Border Procedures and Uniform Documentation Requirements,” requires WTO member countries to utilize common procedures and documents at all national border points. With all national border points “speaking the same language,” border agencies can more easily coordinate and align with their foreign counterparts.⁴⁰

ARTICLE 8: BORDER AGENCY COOPERATION

Article 8 directs WTO member countries to require their border control agencies to cooperate with one another and coordinate their activities to facilitate trade. While Article 12 applies only to Customs cooperation and exchange of information, Article 8 is broader and applies to Customs and other border agencies.

Article 8(1) mandates each WTO member to require its national border agencies to cooperate and coordinate with one another in order to facilitate trade.

Article 8(2) specifies the WTO members that have common borders to cooperate and coordinate trade procedures at border crossings. This may include alignment of working hours and days, harmonization of procedures and formalities, the development and sharing of common facilities, the use of joint controls, and the establishment of one-stop border post control. The Norway border control case study, reviewed in the prior section, is an example of border agency cooperation where countries share all border inspection functions.⁴¹

As previously mentioned, a document prepared by the WTO Secretariat suggests that WTO members should treat certain provisions of the TFA as “SPS Plus” provisions that expand on the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement). For the purposes of border agency cooperation, TFA Article 8, Border Agency Cooperation, is particularly relevant for national SPS agencies.

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

Article 7(7), “Trade Facilitation Measures for Authorized Operators,” requires WTO members to establish an authorized operator (AO) program⁴² that provides additional trade-facilitating measures to qualifying commercial operators. These can include fewer data requirements, a lower rate of physical inspections, faster clearance times, deferred payments of duties and taxes due, and clearance of goods at the premises of the AO.

Article (7)(5) urges members to “afford to other members the possibility of negotiating mutual recognition of authorized operator schemes.” Mutual recognition of AO certification eliminates the

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² The TFA requires members to implement an Authorized Operator regime. This is more limited than the full WCO Authorized Economic Operator scheme, which requires additional components including mutual recognition and the security pillar.

necessity of the commercial operator from obtaining AO certification in every country in which it operates and also reduces the administrative burden on Customs agencies operating AO programs. The Canada case study in the previous section is one example of mutual recognition of AO certification.⁴³



Thirteen East African Customs officials attend a WCO-sponsored training on intellectual property rights enforcement, May 2019.

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OTHER WTO AGREEMENTS AND INSTRUMENTS

International border agency cooperation is also authorized by other WTO agreements and policy statements. These range from Customs cooperation regarding the enforcement of intellectual property rights to the mutual recognition of sanitary and phytosanitary (SPS) and technical barriers to trade (TBT) certifications.

TRIPS, ARTICLES 51 AND 69: ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Intellectual property rights (IPR) include patents, copyrights, trademarks, service marks, trade dress, industrial designs, trade secrets, and geographical indications. The owners of IPR may be granted exclusive rights to use their IP for specified periods of time by national governments. IPR are an important component of international trade and can be extremely valuable; they are thus susceptible to infringement or other misappropriation by third parties.

⁴³ *Ibid.*

Although the enforcement of IPR is primarily a matter of national legislation and law enforcement, the reluctance of some countries to adopt strict enforcement measures led to the adoption of the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).⁴⁴ TRIPS Article 51 permits rights holders to petition national Customs authorities to suspend the release of imported goods that are suspected of counterfeit trademarks or pirated copyrights. TRIPS also provides for international cooperation regarding IPR infringements by national governments and their IPR and Customs agencies. TRIPS Article 69 provides in pertinent part that:

Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights... They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.⁴⁵

This provision authorizes, but does not require, the exchange of information relating to counterfeit trademark goods and pirated copyright goods.



An expert from the Uganda Revenue Authority delivers a presentation on the “Arm’s Length Principle” of customs valuation to members of his staff.

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⁴⁴ “Agreement on Trade-Related Aspects of Intellectual Property Rights,” entered into force January 1, 1995. https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm.

⁴⁵ *Ibid.*

TBT AGREEMENT, ARTICLE 6: MUTUAL RECOGNITION OF CONFORMITY ASSESSMENTS

Article 6 of the WTO's Agreement on Technical Barriers to Trade (TBT Agreement) provides for the recognition of conformity assessments by the standards agencies of other WTO members.⁴⁶ In particular, Article 6.3 states that:

Members are encouraged ... to be willing to enter into negotiations for the conclusion of agreements for the mutual recognition of results of each other's conformity assessment procedures. Members may require that such agreements ... give mutual satisfaction regarding their potential for facilitating trade in the products concerned.

The mutual recognition of conformity assessments facilitates international trade and also results in a more efficient use of national conformity assessment resources.

SPS AGREEMENT, ARTICLE 4: EQUIVALENCE

Article 4 of the SPS Agreement stipulates that:

Members shall accept the sanitary or phytosanitary measures of other members as equivalent, even if these measures differ from their own ... if the exporting member objectively demonstrates to the importing member that its measures achieve the importing member's appropriate level of ... protection. For this purpose, reasonable access shall be given, upon request, to the importing member for inspection, testing and other relevant procedures... Members shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures.⁴⁷

This has led to "equivalence" agreements based upon the procedures followed by the U.S. Food Safety and Inspection Service mentioned in the previous section and other importing country programs. Equivalence determinations and agreements facilitate international trade in food products, benefiting the economies of developing countries exporting those products.

Case Study: The United States' "Equivalence" Process

"Equivalence" is the process of determining whether a country's food safety inspection regime provides the same level of protection as that applied by the importing country. Upon request, the U.S. Food Safety and Inspection Service (FSIS) evaluates an exporting country's food safety inspection system to determine equivalence. This involves document reviews and onsite audits. The exporting country is not required to develop and implement the same procedures as the importing country; it must only demonstrate that its procedures provide an equivalent level of protection, i.e., that the WTO's SPS Agreement standards are met. The FSIS website, www.fsis.usda.gov, lists countries and foreign establishments eligible to export food products to the United States.

⁴⁶ "Agreement on Technical Barriers to Trade," entered into force January 1, 1995. https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm.

⁴⁷ "Agreement on the Application of Sanitary and Phytosanitary Measures," entered into force January 1, 1995. https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm.

WCO AGREEMENTS AND INSTRUMENTS

The World Customs Organization has developed multilateral agreements and model bilateral agreements authorizing various types of international cooperation between Customs authorities. These agreements generally can be divided into agreements regarding the routine exchange of information and other types of day-to-day Customs cooperation, and agreements relating to investigations of customs offenses. They are summarized in this section.

The legal status of the WCO's multilateral agreements differs from WTO agreements whose breach may lead to WTO dispute resolution proceedings and enforceable consequences in the event of an adjudicated breach.⁴⁸ WCO multilateral agreements apply only to the operation of Customs administrations and there are normally no legal consequences if signatories fail to comply with their provisions.⁴⁹ The WCO's model bilateral agreements, on the other hand, are generally enforceable based upon normal legal principles relating to bilateral agreements between countries. However, a simple memorandum of understanding (MOU) between two Customs administrations normally can be canceled at any time by either party without legal consequences.

REVISED KYOTO CONVENTION

The WCO's Revised Kyoto Convention (RKC) went into effect in 2006 and currently has 121 contracting members. It contains several provisions that mandate cross-border cooperation between Customs agencies.

RKC General Annex Standard 3.3 provides that:

Where Customs offices are located at a common border crossing, the Customs administrations concerned shall correlate the business hours and competence of those offices.⁵⁰

Transitional Standard 3.4 further provides that:

At common border crossings, the Customs administrations concerned shall correlate the business hours and the competence of those offices.⁵¹

Transitional Standard 3.5 further provides that:

Where the Customs intend to establish a new Customs office or to convert an existing one at a common border crossing, they shall, whenever possible,

⁴⁸ However, Article 20 of the TFA provides various grace periods regarding the application of the WTO dispute settlement mechanism for developing and least-developed members.

⁴⁹ The Revised Kyoto Convention, General Annex, Chapter 1, Standard 1.2, does require that the provisions of the RKC be "specified in national legislation." However, there are no penalties provided in the event this is not done. See "International Convention on the Simplification and Harmonization of Customs Procedures," entered into force February 3, 2006. http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv.aspx.

⁵⁰ "International Convention," chap. 3.

⁵¹ *Ibid.*

cooperate with the neighboring Customs to establish a juxtaposed Customs office to facilitate joint controls.⁵²

These provisions are similar to the provisions of TFA Article 8.

General Annex Standard 6.7 provides that:

The Customs shall seek to cooperate with other Customs administrations and seek to conclude mutual administrative assistance agreements to enhance Customs control.⁵³

Customs mutual assistance agreements (CMAAs) are primarily for the purpose of sharing information about customs offenses and providing related assistance. These agreements can be both bilateral and regional in coverage.

Lastly, General Annex Standard 7.4 provides in pertinent part that:

New or revised national legislation shall provide for: ... the right of the Customs ... as appropriate, to exchange such information with other Customs administrations and all other legally approved parties by means of electronic commerce techniques.⁵⁴

This provision specifically authorizes international electronic data exchanges between Customs agencies and for these practices to be incorporated in national legislation.



WCO Secretary General Dr. Kunio Mikuriya congratulates emissaries from the Republic of the Congo on the country's accession to the Revised Kyoto Convention, December 2017.

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⁵² *Ibid.*

⁵³ "International Convention," chap. 6.

⁵⁴ "International Convention," chap. 7.

OTHER WCO AGREEMENTS AND INSTRUMENTS

In addition to the RKC, the WCO has developed other instruments supporting international cooperation between Customs agencies.

The WCO's SAFE Framework of Standards to Secure and Facilitate Global Trade was promulgated primarily as a deterrent to international terrorism. Currently, 171 countries have indicated an intention to apply SAFE's standards to trade transactions. Pillar 1 of SAFE provides for Customs-to-Customs cooperation. This includes, among other things, the exchange of information regarding high-risk consignments, use of the WCO data model to assure interoperability of ICT systems, mutual recognition of Authorized Economic Operator programs (AEOs), and the provision of advance electronic information for risk assessment. Pillar 3 of SAFE is focused on coordinated border management with the objective of ensuring that government responses to the challenges of supply chain security are efficient and effective, and ultimately moving towards global standards for the secure movement of goods in a manner that facilitates trade.⁵⁵

The WCO's SAFE Working Group meets to finalize the 2018 edition of the SAFE Framework of Standards, February 2018.



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⁵⁵ World Customs Organization, *WCO Safe Framework of Standards* (Brussels: World Customs Organization, 2018). <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/safe-framework-of-standards.pdf?la=en>.

The recently concluded Cross-Border E-Commerce Framework of Standards stipulates in Standard 12 that:

Customs administrations should expand Customs cooperation and partnerships to the cross-border e-commerce environment to ensure compliance and facilitation.⁵⁶

With regard to the detection and prosecution of customs offenses, the WCO's Nairobi Convention, Article 2, states that Customs administrations shall provide each other mutual assistance in the investigation of customs offenses. The specific types of assistance are specified in the Convention's annexes, and contracting parties have the option of accepting or not accepting specific annexes.⁵⁷ There are currently 52 contracting parties but a number of major trading countries, including China, Germany, Japan, and the United States, are not parties.

OTHER INTERNATIONAL AGREEMENTS

A variety of other multilateral and bilateral international agreements authorize the cross-border exchange of information and other forms of cooperation between national border agencies. Of these, regional trade agreements (RTAs) are most significant but even simple memoranda of understanding play significant roles.

REGIONAL TRADE AGREEMENTS (RTAs)

There are hundreds of RTAs currently in effect.⁵⁸ According to a WTO study, 69.6 percent of RTAs have measures relating to the exchange of customs information, and 59.4 percent have measures relating to cooperation on customs and other trade facilitation matters.⁵⁹ Examples of these include the Economic Partnership Agreement between the European Union and the East African Community, Mercosur, the Recife Agreement, the Central-American Trade Facilitation Strategy, and RTAs between the United States and Canada and Mexico (USMCA) and the United States and Korea (KORUS).⁶⁰ Among developing countries, ASEAN has been particularly active in developing border agency information exchanges and other types of cooperation, mainly through the development of an ASEAN single window.

⁵⁶ World Customs Organization, *Cross-Border E-Commerce Framework of Standards* (Brussels: World Customs Organization, 2018). http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/activities-and-programmes/ecommerce/wco-framework-of-standards-on-crossborder-ecommerce_en.pdf?db=web.

⁵⁷ "International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offenses," entered into force May 21, 1980. <http://www.wcoomd.org/-/media/wco/public/global/pdf/about-us/legal-instruments/conventions-and-agreements/nairobi/nairengl.pdf?la=en>.

⁵⁸ The WTO defines a regional trade agreement as any reciprocal trade agreement between two or more partners not necessarily in the same region.

⁵⁹ Nora Neufeld, *Trade Facilitation Provisions in Regional Trade Agreements: WTO Staff Working Paper ERSD-2014-01*, World Trade Organization, January 16, 2014. https://www.wto.org/english/res_e/reser_e/ersd201401_e.pdf.

⁶⁰ See, e.g., Art. 16 (Special Provisions on Administrative Cooperation), and Art. 18 (Customs Valuation) of the Economic Partnership Agreement between the European Union and the East African Community. "Economic Partnership Agreement between the East African Community Partner States, of the one part, and the European Union and its Member States, of the other part," finalized October 16, 2014. https://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153845.pdf.

CUSTOMS MUTUAL ASSISTANCE AGREEMENTS (CMAAs)

The WCO has developed a model mutual assistance agreement, the Model Bilateral Agreement on Mutual Administrative Assistance in Customs Matters, which can be used by national Customs agencies to share information and cooperate in other ways regarding the investigation and prosecution of customs offenses.⁶¹ CMAAs are regularly used by Customs agencies on a bilateral and regional basis to improve their law enforcement efforts. Notably, CMAAs may be used by some countries to assure a higher level of security and privacy protection regarding the exchange of information than is the case with *ad hoc* exchanges. An example of the terms of a typical CMAA can be found in the Agreement between the United States of America and India.⁶² The Canadian case study discussed in the previous section is an example of how CMAAs are used to share information and otherwise cooperate regarding customs offenses.

MUTUAL LEGAL ASSISTANCE TREATIES (MLATs)

A mutual legal assistance treaty (MLAT) is an agreement between two or more countries to collect and exchange information pertaining to the enforcement of criminal laws and related matters. MLATs encompass not only investigations relating to border agencies but all criminal enforcement matters in a country. Each party typically designates a central authority, usually a country's Ministry of Justice, as its contact point. MLATs are extensively used by many countries; the United States currently has 70 MLATs in effect.⁶³ However, some MLATs exclude certain subjects, such as assistance with tax fraud, and an MLAT without a corresponding extradition treaty may make it impossible to extradite people accused of a crime.

MUTUAL RECOGNITION ARRANGEMENTS (MRAs)

A mutual recognition arrangement (MRA) is an international agreement between two or more countries that recognizes the regulatory determinations of the other signatory countries. MRAs can save substantial time and regulatory resources and expedite trade. For border agencies, examples include the recognition of conformity assessments of national standards agencies and the recognition of the inspections and laboratory results of SPS inspection agencies. As one example, the MRA between the U.S. Food and Drug Administration and the EU allows the drug safety inspectors of each party to rely on the inspections of the other party.⁶⁴

In customs matters, MRAs pertain to the mutual recognition of AEO programs. Mutual recognition in this context means that the Customs agencies involved accept each other's provisions regarding the

⁶¹ See World Customs Organization, *Model Bilateral Agreement on Mutual Administrative Assistance in Customs Matters* (Brussels: World Customs Organization, 2004). <http://www.wcoomd.org/en/topics/enforcement-and-compliance/instruments-and-tools/-/media/DFAAF3B7943E4A53B12475C7CE54D8BD.ashx>.

⁶² "Agreement Between the Government of the United States of America and the Government of the Republic of India Regarding Mutual Assistance Between their Customs Administrations," signed December 15, 2004, *Treaties and Other International Act Series 05-711*, <https://www.state.gov/wp-content/uploads/2019/02/05-711-India-Customs.EnglishOCR.pdf>.

⁶³ See, e.g., Jennifer K. Elsea, *Mutual Legal Assistance Treaty with the Russian Federation: A Sketch*, Congressional Research Service, July 24, 2018. <https://fas.org/sgp/crs/row/LSB10176.pdf>.

⁶⁴ For more information on this MRA, see "Mutual Recognition Agreement (MRA)," Food and Drug Administration, accessed May 14, 2020, <https://www.fda.gov/international-programs/international-arrangements/mutual-recognition-agreement-mra>.

audit process for AEO certification and agree to accord comparable border procedure simplifications for the qualifying organizations of the partner country. In other words, when two Customs agencies jointly recognize each other's security standards and audit controls, control tasks are simplified. Countries entering into AEO MRAs apply differing criteria depending on their specific needs and requirements.⁶⁵ Some economies look primarily at the volume of trade. Others, like Canada, apply an analysis that takes into account not only trade volume but also other factors such as: (1) the status of the partner's AEO program in terms of maturity, size, and scope of membership; (2) risks entailed (terrorism, narcotics, intellectual property violations, etc.); (3) national priorities; and (4) existing bilateral agreements with the potential partner (e.g., a CMAA).⁶⁶

A memorandum of understanding (MOU) is an agreement between two or more parties regarding a mutual course of action. It is used in situations where the parties do not wish to conclude a legally enforceable agreement. Government agencies can use MOUs to define relationships with other government agencies or private parties. Customs and other border agencies use MOUs to define processes for information exchanges or other forms of cooperation when a legally binding agreement is not desired or it is important to enter into an agreement quickly.

PRECLEARANCE AGREEMENTS

Some countries, such as the United States, enter into preclearance agreements to clear passengers and cargo on the territory of foreign countries in order to expedite passenger traffic and facilitate trade. These can take the form of a formal treaty or an MOU. An example of a formal treaty is the preclearance agreement between the United States and Canada.⁶⁷ The United States also currently has preclearance agreements with Aruba, the Bahamas, Bermuda, Ireland, and the United Arab Emirates.

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⁶⁵ María Elena Sierra Galindo and Gloria María Domínguez Rodríguez, *AEO in APEC Economies: Opportunities to Expand Mutual Recognition Agreements and the Inclusion of SMEs* (Washington, D.C.: Inter-American Development Bank, 2020), p. 38.

⁶⁶ *Ibid.*

⁶⁷ "Agreement on Land, Rail, Marine, and Air Transport Preclearance between the Government of Canada and the Government of the United States of America," signed March 16, 2015, <https://www.treaty-accord.gc.ca/text-texte.aspx?id=105453>.

The table below indicates the number of bilateral CMAAs and RTAs, AEO MRAs, MOUs, and protocols/regional agreements entered into by Customs authorities in APEC countries.

TABLE 2. APEC AGREEMENTS CONCERNING CUSTOMS COOPERATION AMONG APEC ECONOMIES				
NATION	BILATERAL CMAAs/RTAs	AEO MRAs	MOUs	PROTOCOLS/ REGIONAL AGREEMENTS
Australia	1	7	14	
Brunei Darussalam	1			7
Canada	5	6		
Chile	7		1	1
China	15	6		
Hong Kong, China	12	7		
Indonesia	3		3	2
Japan	13	7	4	
Korea	15	13		
Malaysia		3		
Mexico	8	3		1
New Zealand	11	5		
Papua New Guinea			2	
Peru	6	1	6	1
The Philippines	6		6	
Russian Federation	9			
Singapore	1	10		
Chinese Taipei	5	4		
Thailand		3	7	
United States	16	8		
Vietnam	8			

Source: Akhmad Bayhaqi, Satvinderjit Kaur Singh, and Lina Meneses Espinoza, "Customs Cooperation in APEC: Strengthening Regional Cooperation," *APEC Policy Support Unit: Policy Brief 27* (2019). <https://www.apec.org/Publications/2019/08/Customs-Cooperation-in-APEC--Strengthening-Regional-Cooperation>.

INFORMAL PRACTICES

In addition to formal agreements, cross-border cooperation between border agencies regularly takes place on an informal basis, either in bilateral meetings or during the course of participation in regional or international organizations. Customs liaison officers are regularly assigned to a country's embassies in key foreign countries to serve as liaisons with relevant local government officials; this may also be the case with other border agencies. The WCO and regional organizations, such as the APEC Customs Sub-Committee and the Regional Conference of Customs Directors General of the Americas and the Caribbean, also serve as venues for bilateral cooperation. As is discussed in the next section, informal meetings between the border agencies of trading partners are recommended as the best way to initiate planning for more formal methods of international cooperation.

Delegates from 15 APEC economies convene for the second meeting of the APEC Sub-Committee on Customs Procedures, August 2018.



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V. RECOMMENDATIONS FOR BORDER AGENCIES

This section reviews the three primary methods by which international border agency cooperation has been developed and then outlines a “best practices” plan that can be tailored to fit each country’s particular border agency requirements. Special consideration is given to the needs of developing economies.

CURRENT APPROACHES

International border agency cooperation has evolved in three ways: the bilateral “*ad hoc*” approach, the coordinated border management approach, and the RTA approach. Historically, the *ad hoc* approach predated the other two methods and may still be the approach most widely employed. In contrast, the coordinated border management and RTA approaches reflect and are based upon the latest developments in international cooperation and ICT tools.

THE BILATERAL “AD HOC” APPROACH

Under a bilateral “*ad hoc*” approach, each individual border agency assesses the benefits of cross-border cooperation with its foreign counterpart(s) having the same mission and proceeds unilaterally with its foreign counterpart(s) on an informal basis. As such a relationship develops, legal instruments, such as CMAAs and MOUs, may be used to formalize the relationship. Historically, most border agency cooperation has employed this approach.

Communications generally occur on a bilateral basis by email, telephone, or personal meetings, and are frequently dependent on personal relationships. Cooperation takes place both bilaterally and in the context of international organizations such as the WCO. Other national border agencies are usually not involved and are not routinely informed of information shared, although in criminal enforcement matters, a country’s Ministry of Justice often takes the lead and may utilize negotiated MLATs and extradition treaties.

The disadvantages of this method include the following:

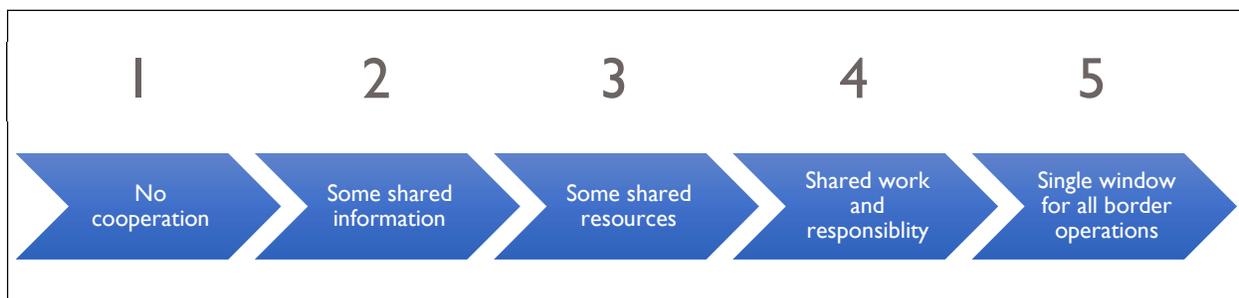
- 1) Border agency cooperation policy may not be established and maintained as part of overall national government policy.
- 2) Information is not systematically shared with other border agencies that may need the information obtained for their own operations.
- 3) Because of the informal nature of cooperation, national privacy policies required by law may not be consistently implemented.
- 4) Private sector stakeholders may be excluded from the planning and implementation process and their needs and concerns may not be taken into consideration.
- 5) Problems with interoperability may prevent the efficient sharing of information by national ICT systems.

THE COORDINATED BORDER MANAGEMENT APPROACH

Under a coordinated border management approach, improved international border agency cooperation is a component of a national program that culminates in a robust single window encompassing national border agencies and other national public and private sector stakeholders.

Coordinated border management refers to a coordinated approach by border agencies, both national and international, in order to seek greater efficiencies in managing trade, collecting revenue, and enforcing national laws.⁶⁸ Coordination of national border agencies generally evolves along five general stages—from a situation where border agencies do not collaborate and share information, through a stage where there is some collaboration and sharing of information, to fully integrated national border agencies connected by an electronic single window. The following figure depicts this evolution.

FIGURE 6. THE EVOLUTION OF NATIONAL BORDER AGENCY COORDINATION



In some developed economies, a coordinated border management approach has led to the consolidation of some or all border agencies into one institution; for instance, the aforementioned consolidation of Canada Customs, Citizenship and Immigration Canada, and the Canadian Food Inspection Agency into the Canada Border Services Agency (CBSA). Over several years, Canada then developed a single window to integrate approximately 40 border programs, including CBSA, the Canadian Nuclear Safety Commission, the Department of Fisheries and Oceans, Environment Canada, Transport Canada, and Public Health Canada, into a coordinated national border agency approach where all applications and information are processed on one ICT platform.

In coordinated border management, the cross-border exchange of data requires interoperability at both national and international levels. Achieving technical interoperability requires three components: common terminology, minimum data sets, and uniform standards. Agreement on these elements should precede the systems for processing data.⁶⁹ Internationally recognized terminology standards include those developed by the WCO and the United Nations (UNTDDED, UN/EDIFACT, UN/CEFACT). Minimum data set standards have been developed by UN/CEFACT. Messaging standards include XML, EDIFACT, and commercial systems such as IBM MQ.

⁶⁸ See World Customs Organization, *Coordinated Border Management Compendium*.

⁶⁹ Lauro Vives, Akhmad Bayhaqi, and Satvinderjit Kaur Singh, *Study on Single Window Systems' International Interoperability: Key Issues for Its Implementation* (Singapore: Asia-Pacific Economic Cooperation, 2018), p. 64.

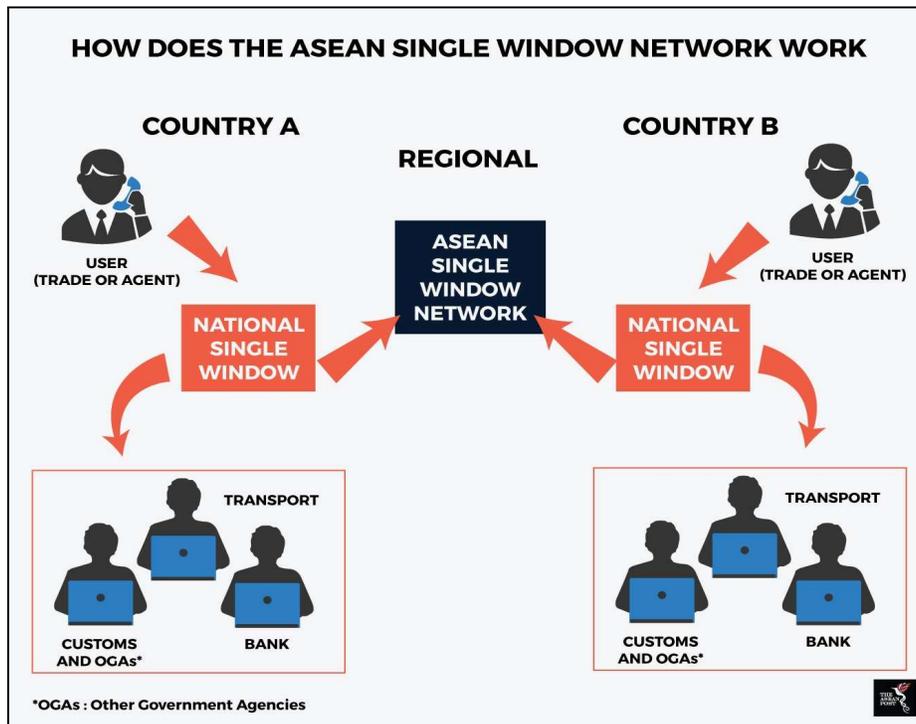
THE RTA APPROACH

Under an RTA approach, regional trade agreements (RTAs)—bilateral and regional free trade agreements and customs unions—provide an institutional impetus for robust international cooperation among national border agencies. This can be viewed as a combination of a “bottom-up” approach, as national border agencies apply coordinated border management principles and develop national single windows, and a “top-down” approach because the RTA drives cross-border cooperation.

One example of this process is the development of the ASEAN single window. As part of its regional integration plan, ASEAN is in the process of developing a region-wide SW based upon the SWs of its members. Its purpose is to promote economic integration within ASEAN by providing for the electronic exchange of border trade information among ASEAN members.

The wide difference in available resources among ASEAN members has posed a challenge to the successful completion of the ASEAN SW. However, by the end of 2019, the regional SW was reportedly operational for all members and electronic certificates of origin authorizing preferential tariff treatment to ASEAN-origin goods were being exchanged. In the future, the regional SW is planned to include ASEAN customs declaration documents, electronic phytosanitary certificates, electronic animal health certificates, and electronic food safety certificates.

FIGURE 7. THE ASEAN SINGLE WINDOW



Source: Angaindrankumar Gnanasagarar, “Delivering the ASEAN Single Window,” *ASEAN Post*, January 26, 2018, <https://theaseanpost.com/article/delivering-asean-single-window>.



A Peruvian Customs officer inspects a truck for smuggled goods.

WCO

A second example of the RTA approach to international cooperation is the system under development by the Pacific Alliance, a regional integration initiative including Chile, Colombia, Mexico, and Peru that came into force in 2016. All four members had previously made significant progress on their own national SWs, which enabled the development of a multi-country SW. The Pacific Alliance SW is intended to be the only method of exchanging trade-related information and documents among the parties. Initially, the SW exchanged SPS certificates and certificates of origin.⁷⁰

A third example of the RTA approach, reviewed previously, is the Revenue Authorities Digital Data Exchange (RADDEx 2.0) operated by the East African Community. RADDEx 2.0 is currently limited to the exchange of information by EAC revenue authorities and is therefore not a comprehensive SW system.⁷¹

⁷⁰ *Ibid.*, pp. 30–32.

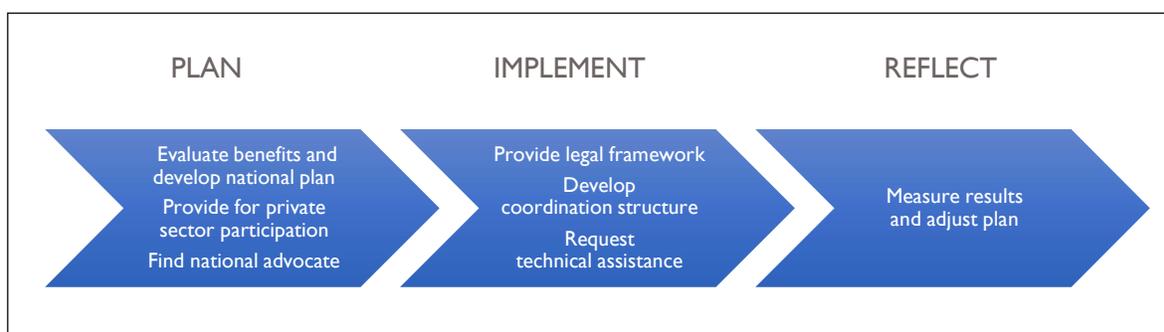
⁷¹ *Ibid.*, pp 33–34.

Because regional SWs implemented by RTAs are in their infancy and limited to members of specific RTAs, most systematic information exchanges and cooperation still take place using the ad hoc and coordinated management approaches.

A SIMPLIFIED PLAN FOR BORDER AGENCY COOPERATION

The steps below outline a simplified plan for implementing international border agency cooperation. *These steps assume that a robust national coordinated border agency system and a national SW have already been adopted by the countries involved.* If this is not the case, the first order of business is to develop a national coordinated border management program and a national SW, while at the same time developing international cooperation in national high-priority areas. These processes are conceptualized in the figure below.

FIGURE 8. THREE STAGES OF BORDER AGENCY POLICY PLANNING



STEP 1: EVALUATE THE BENEFITS OF IMPROVED INTERNATIONAL BORDER AGENCY COOPERATION AND DEVELOP A NATIONAL PLAN

As a start, each individual border agency should assess its needs for improved international border agency cooperation and the benefits and costs that will ensue. Customs, normally the lead border agency, should also be the lead government stakeholder engaging in this analysis. However, border agencies responsible for food and drug safety, immigration, border police, transport, product standards and consumer protection, animal and fishery inspection, and environmental protection should also assess their needs for improved cooperation. The resulting assessments should then be combined to develop an overall national plan in order to assure proper coordination and avoid duplication. This may not be easy to accomplish and will require advocacy at the highest level of government (see Step 3 below).

Assessments should attempt to quantify the benefits and costs of improved cooperation. Specific benefits may include increased revenue collection, improved trade facilitation, improved law enforcement, more efficient use of national resources, and better protection of a nation's health and safety. Costs may include the resources required to implement cooperation plans.

STEP 2: PROVIDE FOR PRIVATE SECTOR PARTICIPATION IN PLANNING AND EXECUTION

Although the initial policy process is typically limited to Customs and other border agencies, no assessment of international border agency cooperation can be complete without the full participation of concerned private sector stakeholders, including exporters and importers, transport and logistics firms,

freight forwarders, brokers and other service providers, and financial and insurance firms serving traders. Private sector stakeholders should realize benefits, including improved trade facilitation and increased public safety, and may identify costs that can be avoided with proper consultation and planning, such as the incompatibility of ICT systems or placement of joint border inspection facilities in inconvenient locations.

Albania's National Trade Facilitation Committee brings public and private sector stakeholders together to advance reform and resolve trade disputes.



USAID

Consultation with private sector stakeholders, sometimes called “the trade,” should take place primarily through National Trade Facilitation Committees, a public-private sector institution required of every WTO member by the Trade Facilitation Agreement, Article 23(2):

Each member shall establish and/or maintain a national committee on trade facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of the provisions of this Agreement.⁷²

⁷² “Agreement on Trade Facilitation.”

However, other consultative mechanisms, including the dissemination of information through websites and media, hearings by national legislatures, and public announcements and events held by border agencies, may also be employed, as appropriate.

The WCO's Revised Kyoto Convention, General Annex Standard 1.3, also requires that

The Customs shall institute and maintain formal consultative relationships with the trade to increase cooperation and facilitate participation in establishing the most effective methods of working commensurate with national provisions and international agreements.⁷³

This provision has been interpreted as requiring regular consultations with the trade at all levels of a Customs administration, from Customs headquarters to small border posts. Experience has proved that a program of robust consultation makes the trade partners more effective in carrying out border agency missions and generally increases administrative efficiency.

STEP 3: FIND A NATIONAL ADVOCATE FOR PROMOTING INTERNATIONAL COOPERATION

Experienced legislators know that, in order to enact new legislation, it is important to have a strong sponsor and then build a coalition. This principle also applies to marshaling government and private sector stakeholders to support improved international border agency cooperation. Normally Customs would take the lead in this process but because of the important revenue and trade facilitation benefits that can ensue, sponsorship by the Ministry of Finance, or even the President or Prime Minister, may be more appropriate and effective.

Ministries of Foreign Affairs may also be strong supporters of international cooperation. Bilateral relationships between countries typically involve common interests and conflicting interests. International cooperation regarding revenue collection, trade facilitation, law enforcement, and sharing resources involves strong common interests even if there are conflicts in other areas. Cooperation in one area can lead to improved trust and more constructive relations in other areas. Lastly, Ministries of Justice may be strong supporters of international cooperation pertaining to the investigation and prosecution of criminal offenses.

STEP 4: PROVIDE THE LEGAL FRAMEWORK FOR INTERNATIONAL COOPERATION

The proper legal basis for international border agency cooperation must exist in all collaborating countries. Otherwise, stakeholders may not consent to proposed collaborations. If the proper legal basis does not currently exist, stakeholders may need to enact new legislation or promulgate new regulations. The following table identifies issues that should be considered when evaluating the legal frameworks in which national border agencies operate.

⁷³ "International Convention," chap. I.

TABLE 3. LEGAL ISSUES TO BE CONSIDERED IN NATIONAL LEGISLATION
1. Implementation of TFA provisions regarding international cooperation
2. Privacy and protection of commercial information
3. Intellectual property rights protection
4. Liability issues for misuse of data
5. Ownership of data
6. Dispute resolution
7. Data retention, archives, and audit trails
8. Identification, authentication, and authorization procedures
9. Protection of sensitive law enforcement and national security information

Source: Partially derived from Lauro Vives, Akhmad Bayhaqi, and Satvinderjit Kaur Singh, *Study on Single Window Systems' International Interoperability: Key Issues for Its Implementation* (Singapore: Asia-Pacific Economic Cooperation, 2018), p. 66.

Commercial trade data can be made public if they are disaggregated in a manner in which individual traders cannot be identified. There must generally be at least three traders of a commodity to prevent disclosure of the market share of individual traders. Sensitive national security and law enforcement information should never be made public.

STEP 5: DEVELOP AND IMPLEMENT A COORDINATION STRUCTURE

The first step in planning for international border agency cooperation is to establish a coordination structure including all relevant stakeholders. The WCO, in its *Coordinated Border Management Compendium*, has suggested a model for developing cross-border coordination that is depicted in the figure below. This model presumes either an RTA with multiple members or multiple adjacent countries willing to cooperate together. In many cases, however, the supra-national coordinating committee will be bilateral, reflecting either a bilateral RTA or an arrangement with only one adjacent or non-adjacent trading partner.

For members of RTAs, creating the supra-national coordinating committee will be relatively easy. The committee may be created from or coordinated with existing RTA committees dealing with customs, SPS, TBT, and other border matters. For countries that are not members of the same RTA, the supra-national committee may have to be created by using an MOU or another international legal instrument.

Each country's national steering committee ideally will be that nation's National Trade Facilitation Committee (NTFC). However, if the NTFC is not functioning for some reason, an appropriate coordinating body—perhaps the national Customs administration—will have to assume the coordination role. The supra-national committee should then develop an overall implementation plan and each national steering committee should concurrently develop their respective national plans.

After the coordination mechanism is in place, plans for implementation can be developed with appropriate collaboration and consultation with all parties. Issues such as the interoperability of national

ICT systems, the compatibility of national legal frameworks, the negotiation of appropriate international agreements for cooperation, and the budgeting of financial resources to carry out implementation plans must be addressed. Experience indicates that strong public-private partnerships in participating countries will strengthen the implementation process.

FIGURE 9. WCO MULTI-COUNTRY COORDINATION MODEL



Source: World Customs Organization, *Coordinated Border Management Compendium* (Brussels: World Customs Organization, 2015). p. 15.

STEP 6: REQUEST TECHNICAL ASSISTANCE FOR IMPLEMENTATION, IF REQUIRED

The most expeditious and effective method for a country to request technical assistance is through the country’s existing bilateral relationships with bilateral or multilateral aid providers. National aid agencies such as the United States Agency for International Development (USAID) (the sponsor of this Guide), the United Kingdom’s Department for International Development (DFID), Germany’s GIZ, the European Commission’s Directorate-General for International Cooperation and Development (EuropeAid), the Japan International Cooperation Agency (JICA), and many others, regularly provide technical assistance and project funding to developing-country border agencies. Multilateral donors active in trade facilitation and border reform include the Asia-Pacific Research and Training Network on Trade, the Global Facilitation Partnership for Transportation and Trade, the OECD, UNCTAD, UNECE, the WCO, and the World Bank. Important public-private implementing organizations include the Global Alliance for Trade Facilitation and Trademark East Africa.

In addition, the WTO has established a WTO Trade Facilitation Agreement Facility (TFAF) supported by multilateral and national donors to help developing country members with TFA implementation, including, of course, the provisions regarding international border agency cooperation described in Section IV above. The TFAF offers:

- Help in assessing specific needs of developing countries and identifying donors to meet them;

- Operation of an information-sharing platform to coordinate the demand and supply of TFA-related technical assistance;
- Assistance in helping members access aid from donors; and
- Direct funding in exceptional cases where countries have failed to receive the help they need.

In situations where developing countries have had limited success in obtaining technical assistance from the donor community, the WTO can serve as a resource to “match-make” between assistance-seeking countries and donors. The TFAF also offers grants for the purpose of proposal preparation in order to facilitate donor engagement.



A panel discusses the WTO’s Trade Facilitation Agreement Facility at the 2018 Global Forum on Inclusive Trade for Least-Developed Countries.

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STEP 7: MEASURE THE RESULTS AND ADJUST NATIONAL PLAN ACCORDINGLY

As the recent COVID-19 pandemic has illustrated, it is difficult if not impossible to manage a public initiative successfully without empirical data to measure the extent of a problem and the results of public policies designed to remediate the problem. This principle is equally applicable to assessing the results of international border agency cooperation. Public resources should not be expended on border agency cooperation unless they produce quantifiable benefits exceeding the costs of the program.

The tangible benefits to be measured fall into four categories.

- 1) **Enhanced trade facilitation.** International border agency cooperation can facilitate reductions in the time and cost of trading goods internationally. An initial USAID-sponsored study conducted by David Hummels in 2001, along with several World Bank studies, estimated that each day saved in border agency procedures can increase trade from 1 to 7 percent.⁷⁴ Although economy-wide trade facilitation surveys such as the World Bank’s *Doing Business* “Trading Across Borders” annual metric and *Logistics Performance Index* biennial survey may be too general to allow quantification of trade facilitation improvements resulting from individual cross-border cooperation projects, the WCO’s time release studies are specific enough to measure improvements at the border resulting from coordinating border post times, joint border facilities, and the adoption of interoperable ICT systems allowing cross-border communication.⁷⁵ Accordingly, time release studies should be designed and employed to measure trade improvements.⁷⁶ Statistical correlation and economic modeling can also be used to indirectly relate international cooperation to improvements in trade and GDP.
- 2) **Improved revenue collection.** Countries can increase revenues collected from duties and taxes by improving international border agency cooperation. Such revenue increases can be measured both directly and indirectly. A direct measurement would entail the systematic collection and aggregation of the amounts collected in all instances where international cooperation resulted in additional revenue. An indirect measurement could involve a statistical analysis that isolates improvements resulting from international cooperation. A more detailed discussion of these methods is provided in Section III.
- 3) **Strengthened law enforcement.** More effective law enforcement is one of the major benefits of improved cooperation between border agencies. Criminal schemes can be better detected and prosecuted through regular sharing of trade data and close cooperation between foreign border agencies during investigations. This increases revenue collection and reduces other economic losses that result from criminal activities. Improved law enforcement resulting from international border agency cooperation can be initially measured by increases in successful prosecutions and by the collection of related revenue and penalties. Longer term, however, improved law enforcement should deter violations.
- 4) **Conservation of resources.** The case study of border agency cooperation among Norway, Sweden, and Finland, discussed in Section III, showed that if the cooperative arrangements had not

⁷⁴ David Hummels, “Time as a Trade Barrier,” *GTAP Working Paper No. 18* (2001); John S. Wilson, Catherine L. Mann, and Tusenehiro Otsuki, “Trade Facilitation and Economic Development: A New Approach to Quantifying the Impact,” *World Bank Economic Review* 17, no. 3 (2003): pp. 367–389; Djankov, Freund, and Pham, “Trading on Time.”

⁷⁵ However, the “Trading across Borders” indicator can be disaggregated into time and cost to export and import (border and documentary compliance), which could then be linked to improvements in cross-border cooperation. The LPI survey for a country can be disaggregated into six factors: customs, infrastructure, international shipments, logistics competence, tracking and tracing, and timeliness. Improvement in some of these factors may also be linkable to improvements in cross-border cooperation. According to the 2019 WTO Aid-for-Trade Review, countries that have taken a full and effective implementation approach to the TFA also showed improvements in *Doing Business* and LPI metrics.
https://www.wto.org/english/res_e/booksp_e/aid4trade19_e.pdf

⁷⁶ Time release studies are referenced in Article 7.6 of the TFA as a tool for WTO members to measure and publish the average release times of goods.

been implemented, Norway would have had to build ten new customs offices and increase its border staff by at least 100. Calculations also showed that administrative costs for both traders and border agencies would have been significantly higher. Improved efficiency in the use of border resources can be measured by the reductions in border personnel, the number of border stations, and the amount of equipment (such as X-ray scanners) that result from having coordinated border times, joint border posts, preclearance agreements, modern inspection technologies, and related practices.⁷⁷

⁷⁷ Government of Norway, “Case Study.”

VI. CONCLUSION

This Guide reflects international cooperation practices as of mid-2020. But international cooperation among border agencies reflects underlying realities that are not static. New economic and political developments like the COVID-19 pandemic, the ensuing disruption of international trade, and the continued implementation of regional trade agreements; and technological developments, such as the increased utilization of 3D printing, blockchain, and AI, are bound to affect the need for international border agency cooperation in the future. This Guide should therefore be viewed only as a starting point and should be updated regularly by reference to the ongoing work of international organizations such as the WTO, the WCO, ASEAN, and APEC, and the TFA case studies compiled by the WTO.

The long-term trend is clear. As global trade becomes even more interdependent, and as digital technologies continue to advance, improved international cooperation among border agencies will increase in importance. And as demonstrated by the case studies in this Guide, improvements in international border agency coordination result in significant improvements to trade facilitation, revenue collection, law enforcement, and resource conservation. International border agency cooperation is a winning proposition for all legitimate interests concerned.

Customs officers use an X-ray machine to scan suspicious parcels in Hong Kong.



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