European Parliament

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES

POLICY DEPARTMENT

Customs issues falling under INTA's new remit

INTA

EN

2015

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES
POLICY DEPARTMENT

European Parliament

STUDY

Customs issues falling under INTA's new remit

ABSTRACT

The relation between European Union (EU) trade and customs policies is complex. The customs authorities have an executive function in the administration of trade policy as well as the control of borders, but they also remain accountable to trade policy makers for their performance. Other European Parliament committees touch upon the subject of customs, too. Greater co-ordination may be achieved by encouraging the development of Customs specific performance indicators that can be used for periodic reporting to the European Parliament and elsewhere. A specialist EU Trade Facilitation Agency or Body may be required to monitor the performance of Customs and other border agencies at home and abroad. Such an Agency or Body could also help propagate best practices. The WTO Trade Facilitation Agreement's Article 13 could provide the foundation for such a European Trade Facilitation Body.

EP/EXPO/B/INTA/2015/02
December 2015 - PE 534.991

EN

This paper was requested by the European Parliament's Committee on International Trade.

English-language manuscript was completed on 21 December 2015.

Printed in Belgium.

Author: Dr Andrew GRAINGER, Assistant Professor in Logistics and Supply Chain Management at the Nottingham University Business School, University of Nottingham, UK

Official Responsible: Susana MENDONCA

Editorial Assistant: Elina STERGATOU

Feedback of all kind is welcome. Please write to: susana.mendonca@europarl.europa.eu.

To obtain copies, please send a request to: poldep-expo@europarl.europa.eu

This paper will be published on the European Parliament's online database, 'Think tank'.

ISBN: 978-92-823-8469-5 (pdf)
ISBN: 978-92-823-8470-1 (paper)

doi:10.2861/519192 (pdf)
doi:10.2861/56834 (paper)

Catalogue number: QA-04-15-924-EN-N (pdf)
Catalogue number: QA-04-15-924-EN-C (paper)

Table of contents

1 Introduction

The purpose of this commissioned study is to provide a concise account about the relation between European Union (EU) trade and customs policies. It is guided by the study's terms of reference and should also shed light on the external dimensions of customs rules and procedures with regards to Item 2 of the European Parliament's International Trade Committee's (INTA) new remit (Figure 1).

Figure 1: Extract from the Rules of Procedures of the European Parliament, 8th Parliamentary Term (European Parliament 2015)

- ANNEX VI : Powers and responsibilities of standing committees

III. Committee on International Trade

Committee responsible for matters relating to the establishment, implementation and monitoring of the Union's common commercial policy and its external economic relations, in particular:

1. financial, economic and trade relations with third countries and regional organisations;

2. the common external tariff and trade facilitation as well as the external aspects of customs provisions and management;

3. the opening, monitoring, conclusion and follow-up of bilateral, multilateral and plurilateral trade agreements governing economic, trade and investment relations with third countries and regional organisations;

4. measures of technical harmonisation or standardisation in fields covered by instruments of international law;

5. relations with the relevant international organisations and international fora on trade-related matters, and with organisations promoting regional economic and commercial integration outside the Union;

6. relations with the WTO, including its parliamentary dimension.

The committee liaises with the relevant interparliamentary and ad hoc delegations for the economic and trade aspects of relations with third countries

Compared to the Committee's powers and responsibilities of previous parliamentary terms, Item 2 is a significant addition and introduces concern for trade facilitation and the external aspects of customs provisions and management to INTA's responsibilities. As will be outlined, customs policy, traditionally concerned with the administration and enforcement of trade and border controls, has evolved considerably within the last two decades – here within the European Union as well as elsewhere in the world. This should not be surprising. Trade tariffs have come down significantly. The resulting economic benefits from trade are apparent. Yet, concern for security and the enforcement of border controls remains.

The EU is benefiting from trade with third countries (COM(2010) 612 final) and is reflected in the EU's Common Commercial Policy. Article 206 of the Treaty on the Functioning of the European Union (TFEU)[1] highlights that the EU's Common Commercial Policy seeks to contribute to '... the harmonious development of world trade, the progressive abolition of restrictions on international trade and on

[1] (European Union 2012)

foreign direct investment, and the lowering of customs and other barriers'. It concerns itself with: changes in tariff rates; the conclusion of trade agreements in goods and services; the commercial aspects of intellectual property; foreign direct investment; the achievement of uniformity in measures of liberalisation; export policy; and measures to protect trade such as those taken in the event of dumping or subsidies (Article 207 of the TFEU).

Trade negotiations with third countries or international organisations follow the recommendations made by the Commission to the Council, which in turn provides the Commission with the necessary authorisation. The Council and the Commission are responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules. Upon conclusion of negotiations and producing the final draft regulation, the European Parliament, upon transmission from the Council, is asked for consent – first within the INTA Committee and then within plenary session.

The administration and enforcement of customs procedures, such as those governing the EU's Customs Union and Common External Tariff (2658/87/EEC), is the task of the customs administration in the respective Member States. In addition to collecting customs duties on imported goods, customs administrations are also tasked with enforcing regulations that relate to key EU values and policies concerning, for example, the protection of consumers from dangerous goods, defending intellectual property rights from counterfeited goods, and enforcing a wide range of prohibitions and restrictions that extend to: the trade in arms and dual use goods, endangered species, goods used for torture and capital punishment, cultural heritage, products of the soil and animal origin.

A challenge for customs administrations is that within the last few decades the volume of trade has grown by leaps and bounds. This is the result of: progressive tariff liberalisation; increased foreign direct investment and subsequent globalisation of production; and cost saving innovations in communications, information and transport technologies (e.g. the shipping container). Customs administrations in the EU (and elsewhere) are required to process growing volumes in trade with only finite inspection and control resources at their disposal (Grainger 2012). Yet, customs administrations are also held responsible for ensuring that they do not needlessly disrupt these wealth generating trade flows. To help meet this challenge trade and customs policy makers have taken inspiration from the ideas associated with trade facilitation, which seeks to safeguard regulatory objectives without adding to the cost of business (Grainger 2011).

With increased policy focus on the administrative quality of the trade and customs environment the boundaries between trade and customs policy are now blurring; especially where external trade policy touches upon the costs to business that result from administrative practices and the enforcement of trade and customs controls. The recent WTO Trade Facilitation Agreement (WTO 2014a) as well as the WCO's Revised Kyoto Customs Convention (WCO 1999) and the WCO's SAFE Framework of Standards to Secure and Facilitate Global Trade (WCO 2015c) are particularly good examples of where trade and customs policy overlap.

The institutions of the EU need to consider this development. It is a development they have actively helped foster at home, bilaterally and multilaterally. Before exploring this development in greater detail and any possible solutions to the blurring of boundaries between trade and customs policy, let us first consider the role of Customs and its evolution in the EU in line with this study's terms of reference.

2 The evolution of the EU customs system and its role

In the EU, as is the case elsewhere in the world, customs administrations are the main border agency responsible for cross-border trade in goods. They are expected to: collect customs duties; provide domestic producers with protection; provide supply chain security; prevent the importation of prohibited and unsafe goods; and combat illicit trades such as narcotics. As is emphasised in Luc De Wulf's (2005) 'Strategy for Customs Modernization', these activities must be accomplished effectively and efficiently without compromising trade facilitation or adding to the cost of doing business – and through implementing laws and regulations that are in line with WTO and bilateral commitments. However, as will be outlined, institutional arrangements do vary from one country to the next, including those within the EU. Frequently, customs administrations perform their function in close co-operation with other government agencies, such as those with responsibilities for veterinary and phytosanitary measures or the administration of trade quotas and licencing restrictions.

Since the establishment of the European Customs Union on 1st July 1968 customs duties on inter-EU trade are no longer raised. Customs duties are now only levied on trade with third countries by reference to the EU's Common External Tariff (2658/87/EEC). Since 1993 the Union also abolished any remaining internal customs controls. We now take it for granted that goods can move freely within the Union. With 28 Member States the respective domestic markets have grown into one with over 500 million inhabitants. Customs officers, often located at the ports and borders, are relied upon for the control and administration of trade with third countries, especially with regards to tariff measures. The basis for the European Union's customs legislation is currently provided by the Community Customs Code (2913/92/EEC) and its Implementing Provisions (2454/93/EEC 1993), as amended.

Trade tariffs are set by the Council and the European Parliament, or by the Council based on a proposal from the Commission (TFEU, Article 207). The EU's Common Customs Tariff (2658/87/EEC) of 2014 is comprised of 9379 lines at the 8-digit[2] level. About one quarter of the EU's tariff lines are duty free; approximately 7 % of the lines have been described by the WTO as 'nuisance rates' – where the cost of collection exceeds the revenue generated or does not have any protective effect. 5 % of the tariff lines are subject to tariff quotas. The range of tariff for agricultural goods (HS Chapters 0-24) is between 0 % and 635.4 %; the range for non-agricultural products (HS 25-97) is between 0 % and 39 %. The average Most Favoured Nation (MFN) tariff was 6.4 % though the average rate for non-agricultural products was 4.3 % (WTO 2015c). In practice, importers eligible for tariff preference (which depends on the origin of the goods) are likely to pay significant less. The weighted mean applied tariff[3] of the European Union has been just 1% since 2013 (World Bank 2015).

With such low customs tariffs, the assumed cost of administering them appears disproportionate and the EU has embarked on a considerable customs modernisation effort. This was originally motivated by the desire to reduce the compliance burden and ensure that European business remains competitive on the world stage – the so-called vision for a paperless trade and customs environment (2003/C305/01 ; COM(2003)452 final) which had been elaborated further in a Decision by the European Parliament and Council (70/2008/EC). Apart from reducing the cost of compliance to business, this vision also aims at better integrating the customs administrations of the European Union through electronic means and gave rise to the Modernised Customs Code (450/2008/EC). However, in 2013 the Modernised Customs Code was repealed[4] (before its Implementation Provisions had been finalised) and re-casted as the Union

[2] The so-called Combined Nomenclature or CN-code.
[3] Weighted mean applied tariff is the average of effectively applied rates weighted by the product import shares corresponding to each partner country.
[4] In part, to accommodate the requirements of the Lisbon Treaty.

Customs Code (952/2013/EU), which was adopted by the Council and Parliament on 9 October 2013. Its substantive provisions will apply as of 1 May 2016 once its Implementing Act[5] has been adopted and entered into force. The Union Customs Code will then replace the currently applicable Community Customs Code (2913/92/EEC) and its Implementing Provisions (2454/93/EEC). The complete deployment of all of the electronic systems required by the Union Customs Code shall be carried out not beyond 31 December 2020. In the interim period transitional measures may apply.

Within the period during which the aspirations for the paperless trade and customs environment had been defined, we also witnessed increased political pressures upon customs administrations to give due concern for the enforcement of border controls and to guard against threats that result from modern supply chain management practice. Much of this resulted from the fears born out of the events of 9/11, the Madrid rail bombings and over Lockerbie. These new demands were reflected within the EU's ongoing customs reform aspirations and security was fast-tracked in the form of the Security Amendment to the Customs Code (648/2005/EC) and its Implementing Provisions (1875/2006/EC). These two regulations required traders to provide customs administrations with advance information, put in motion the Authorised Economic Operator (AEO) programme, provided incentives for reliable traders such as AEOs, and introduced a uniform community risk selection criteria for controls via electronic means, amongst other measures.

To some extent the evolving role of the customs function is also captured in the relevant statements about scope. For example, at a European Council meeting in 1990 (90/C262/03) a simple statement about the scope of customs activities was made. Back then, it was agreed that customs administrations will concern themselves with:

1. 'collecting EC customs duties and agricultural levies on goods from third countries;
2. Collecting national excise duties and VAT at importation;
3. Enforcing EC and national licensing and quota regimes;
4. Collecting statistics of international trade;
5. Applying restrictions on exports, and
6. Enforcing import prohibitions and restrictions for the protection of our people (for example… heroin, cocaine and other hard drugs).'

Since this first statement, further attempts at defining the customs function have been made; most prominently on the 40th Anniversary of the Customs Union, the so-called Paris Declaration that was based on the Commission's Strategy for the Evolution of the Customs Union (COM(2008) 169 final) with subsequent endorsements from the European Parliament and from the Council. It holds that 'the Customs authorities of the EU have a pivotal role, in close co-operation with other authorities, allowing them to:

- Support legitimate trade and strengthen competitiveness
- Ensure the correct payment of duties and taxes
- Combat counterfeiting and piracy

[5] A preliminary draft dated 13.01.2014 can be accessed on the Commission's website: http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_code/ucc_implementing_act_2014.pdf

- Support the fight against other types of fraud, organized crime, drugs and terrorism by processing information, identifying changes in trade patterns and undertaking risk assessment to detect fraudulent, terrorist or criminal activity
- Implement trade policy measures (for example, trade preferential agreements, quotas and anti-dumping measures)
- Protect the environment and citizens against all sorts of hazardous goods.'

Rather than focusing on scope, this statement highlights the purpose of Customs. More importantly perhaps, the Commission's Paris Declaration also expands upon the mission of Customs, which is to 'ensure at all times the balance between protecting society and facilitating trade through the control of the supply chain, at the external borders as well as within the EU.'

Since Paris the mission statement of EU Customs has been further refined, and is to be enshrined in EU customs law in the form of Article 3 of the Union Customs Code (952/2013/EU) that is expected to apply from May 2016 onwards. It highlights that customs authorities shall be primarily responsible for the supervision of international trade. Tasks include protecting the financial interests of the Union and its Member States, and protecting them from unfair and illegal trade. It also stresses safety and security and the protection of the environment, where appropriate, in close co-operation with other authorities. Highlighted, too, is the balance between control and facilitation (Figure 2).

Figure 2: Extract from the Union Customs Code concerning the mission of customs authorities (952/2013/EU)

Article 3

Mission of customs authorities

Customs authorities shall be primarily responsible for the supervision of the Union's international trade, thereby contributing to fair and open trade, to the implementation of the external aspects of the internal market, of the common trade policy and of the other common Union policies having a bearing on trade, and to overall supply chain security. Customs authorities shall put in place measures aimed, in particular, at the following:

(a) protecting the financial interests of the Union and its Member States;

(b) protecting the Union from unfair and illegal trade while supporting legitimate business activity;

(c) ensuring the security and safety of the Union and its residents, and the protection of the environment, where appropriate in close cooperation with other authorities; and

(d) maintaining a proper balance between customs controls and facilitation of legitimate trade

2.1 The Common tariff of the EU and the EU budget

One key aspect of EU customs administration throughout its evolution is the enforcement of the Common Customs Tariff (2658/87/EEC, as amended[6]). It sets out the applicable import duties for third countries (i.e. non-members of the European Customs Union) and is now published alongside related trade measures on the European Commission's website[7]– the so-called Integrated Tariff of the European Union (TARIC). It contains all applicable tariff measures (i.e. import duties, tariff preference, autonomous

[6] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:l11003
[7] http://ec.europa.eu/taxation_customs/dds2/taric/taric_consultation.jsp?Lang=en

suspensions of duties, tariff quotas and customs unions) as well as details about agricultural measures, trade defence instruments, prohibitions and restrictions to imports and export, import and export surveillance, amongst other common requirements. A daily electronic message is broadcasted to the Member States to ensure that national customs tariff publications and systems are synchronised across the Union[8].

Although customs tariffs are in decline, the duties continue to be an 'own resource' to the Union. In 2014 almost EUR22billion (10[9]) in customs duties had been collected, which subsequent to the 25 % refund to Member States (in compensation for the collection costs) amounts to EUR 16.4billion – or 11.4 % of the overall EU's budget of close to EUR 144 billion. The Union's remaining income is based on National Contributions from the Member States. These contributions are based on the member's specific Gross National Income (GNI) and a share of the collected VAT revenue[9] (about 0.33 %, with some variances between Member States) minus any Member State specific corrections (Figure 3). The bulk of the EUR 22 billion in customs duties are collected in Germany (20.4 %), United Kingdom (16.5 %), Netherlands (12.1 %), Belgium (9.6 %), Italy (9.6 %), France (8.6 %) and Spain (6.9 %). The remaining Member States' respective collections are under 3 % (Figure 4).

Figure 3: Income of the European Union (2014, million €)

Own Resources of the EU	
Traditional own resources (TOR)	16,429.5
Agricultural duties (100 %)	*0.0*
Sugar levies (100 %)	*-25.2*
Customs duties (100 %)	***21,998.0***
Amounts (25 %) retained as TOR collection costs	***-5,543.3***
National Contributions	
VAT-based own resource	17,667.4
GNI-based own resource	99,075.6
UK correction	-209.3
Lump Sum Reduction Granted for NL & SE	0.0
JHA adjustment for Denmark, Ireland and the United Kingdom	-1.8
TOTAL	116,531.8
Additional Sources of Income	
Surplus from previous year	1,005.4
Surplus from EAGGF-Guarantee	0.0
Surplus external aid guarantee fund	0.0
Other revenue	9,973.4
TOTAL REVENUE	**143,940.1**

[8] http://ec.europa.eu/taxation_customs/customs/customs_duties/tariff_aspects/customs_tariff/index_en.htm
[9] Which, as will be discussed later, may also be collected by Customs, especially where VAT relates to imports.

Figure 4: Customs Duty Collection by EU Member State 2014; in million € and %

EU-28	DE	UK	NL	BE	IT	FR	ES
€ 21,998.0	***€ 4,489.4***	***€ 3,638.8***	***€ 2,653.9***	***€ 2,105.7***	***€ 2,028.9***	***€ 1,900.2***	***€ 1,508.4***
100 %	20.4 %	16.5 %	12.1 %	9.6 %	9.2 %	8.6 %	6.9 %
	SE	**PL**	**DK**	**IE**	**CZ**	**AT**	**FI**
	€ 613.8	***€ 558.8***	***€ 396.7***	***€ 302.9***	***€ 260.5***	***€ 242.4***	***€ 169.9***
	2.8 %	2.5 %	1.8 %	1.4 %	1.2 %	1.1 %	0.8 %
	EL	**PT**	**RO**	**HU**	**SK**	**LT**	**SI**
	€ 162.4	***€ 148.6***	***€ 140.1***	***€ 138.0***	***€ 126.4***	***€ 84.7***	***€ 77.6***
	0.7 %	0.7 %	0.6 %	0.6 %	0.6 %	0.4 %	0.4 %
	BG	**HR**	**LV**	**EE**	**CY**	**LU**	**MT**
	€ 75.0	***€ 54.4***	***€ 34.6***	***€ 29.5***	***€ 23.8***	***€ 18.7***	***€ 13.9***
	0.3 %	0.2 %	0.2 %	0.1 %	0.1 %	0.1 %	0.1 %

2.2 Customs administration in the EU

Although the European Union is a Customs Union and shares a Common Customs Code and an External Tariff, customs administration and enforcement remains the responsibility of the Member States. In addition to the reforms towards a paperless trade and customs environment outlined previously, the removal of internal borders with each and every expansion of the Union has had dramatic effects upon EU customs administrations. Old neighbours have become new members. In many cases what once was an external border is no more, and new external borders for which the new Member States are responsible have taken their place. For many of the EU's customs administrations this has been a rapid change – be it to accommodate new challenges and the requirements of the *Acquis Communautaire,* or pressure to scale down in size in recognition of the changed external boundaries and the efficiencies that come with modern technologies. Thus, within the last decade customs administration may have merged with the tax authority (as was the case in the UK). They may also have been tasked with new roles, such as in Germany, where customs officers are now relied upon to reduce undeclared employment. An overview of current staffing figures is provided in Figure 5.

Figure 5: Approximate Number of Staff by Member State Customs Administration 2014[10]

Germany	34,676	Finland	2,260
France	16,665	Greece	2,055
Poland	15,353	Sweden	2,050
UK[11]	9,186	Austria	1,690
Italy	9,096	Portugal	1,265
Hungary	5,802	Latvia	1,070
Czech Republic	5,421	Slovenia	750
Netherlands	4,845	Estonia	635
Spain[12]	3,829	Denmark	500
Belgium	3,600	Luxembourg	460
Slovakia	3,031	Bulgaria	425
Croatia	2,921	Ireland	397
Romania	2,621	Malta	353
Lithuania	2,289	Republic of Cyprus	305

Source: Extracted from the WCO Annual Report 2014/15 (WCO 2015d)

Reflecting on the reported staff figures it needs to be highlighted that the institutional models for customs administration and subsequent tasks differ amongst the Member States. In some Member States the customs administration is embedded within a ministry – such as the Ministry for Finance. In other Member States, the customs administration it is part of the Revenue Authority (which will also have responsibilities for other taxes, such as income and corporation tax). In some Member States Customs is an agency in its own right (Figure 6).[13] In the UK, customs officers are not only employed by the Revenue Authority, they can also be found within the UK Border Force – a law enforcement command within the Home Office that was established in 2012 to secure the UK border by carrying out both immigration and customs controls for people and goods entering the UK.

[10] For comparison sake, there are more than 840,000 customs officers around the world (WCO 2015d)
[11] This is the total number of staff at the Revenue Authority, not just for its customs related activities. It is unclear whether this number extends to the customs officers employed within the newly formed UK Border Force.
[12] Figures are for 2013
[13] For international comparison, 45% of customs administrations and embed within a ministry, 28% are Revenue Authorities and 25% are Customs Agencies (WCO 2015d)

Figure 6: Institutional Models of customs authorities in the EU

Customs Agency	Czech Republic; Finland; Italy; Sweden
Ministerial Department	Austria; Belgium; Bulgaria, Croatia, Republic of Cyprus; France; Germany; Greece; Latvia; Lithuania; Luxembourg; Malta; Netherlands; Poland
Revenue Authority	Denmark; Estonia; Hungary; Ireland; Portugal; Romania; Slovakia; Slovenia; Spain; United Kingdom

Source: Extracted from the WCO Annual Report 2014/15 (WCO 2015d)

Staff figures are also likely to be dependent on: the scale of trade and Customs related activities; the number of border crossings and ports; land and population size; proximity to the EU's external borders; institutional arrangements; and the degree of administrative efficiency, including automation and centralisation. In most Member States customs administrations are frequently obliged to co-operate with other authorities, especially where the enforcement of prohibitions and restriction requires specialist expertise. Such controls frequently necessitate coordination with the competent veterinary and phytosanitary authorities, border and port police forces, immigration inspectorates, export control organisations, and others. Depending on the Member State concerned co-operation may be guided by formal legal instruments or by less formal instruments such as Memoranda of Understandings (MoUs) and locally agreed operating practices.

Unfortunately, there are very few publically accessible sources that expand upon customs specific performance statistics in detail. Key Performance Indicators (KPIs) are seldom made accessible to the wider public. However, the European Commission has described the scale of customs activities within the EU as daunting. The EU has 'around 450 international airports and its eastern borders stretch almost 10,000km, with 133 commercial road and rail entry points'. Moreover, 'every minute, on average, 4200 tonnes of goods are imported or exported, with over 500 customs declarations, while 70 counterfeit and pirated goods are detained' (European Commission 2014). The Commission website expands on these figures by highlighting that in 2013, 271 million customs declarations had been made (145 million for imports, 108 million for exports and 18 million for transit). Extra-EU trade had a value of EUR 3.4 trillion (EUR 1.7 trillion for imports and EUR 1.7 trillion for exports) and represented a share of 15.8 % of world trade. In tonnage terms this amounted to 2.2 billion (European Commission 2015d).

2.3 Customs at the ports and borders

Customs are first notified by the freight carrier, in the form of the advanced Entry Summary Declaration (ESD). This is required for all imports into the EU with the exception of Norway, Switzerland, Lichtenstein and Andorra, who are exempt from this requirement. The Entry Summary Declaration will normally have to be submitted in an electronic format to the customs administration in the member state where the goods first arrive (the so-called 'customs office of first entry'). The purpose of the Entry Summary Declaration is to give customs officers the opportunity to assess whether they wish to hold and inspect the cargo.

To support the customs assessment of forthcoming imports the Entry Summary Declaration contains details about the type of the cargo, the responsible parties, transport arrangements, and packaging and handling details, amongst others. There are variances in Entry Summary Declaration information requirements, which apply to express consignments, road and rail shipments as well as for trusted 'Authorised Economic Operators'. Specific details on information requirements are outlined in Annex 30a of the Implementing Regulation (2454/93/EEC); as amended)

To enable enough time for assessment by Customs, carriers need to comply with set time frames. For maritime containers, the submission must be made at least 24 hours before loading at the port of departure. For maritime bulk and break bulk cargo, it must be submitted at least 4 hours before arrival at the first port in the European Union. For short-haul flights, it must be made by the time of the actual take-off of the aircraft; for long-haul flights, it must be made at least four hours prior to arrival at the first airport in the customs territory of the Community. In the case of rail and inland waters traffic, the Entry Summary Declaration shall be lodged at least two hours prior to arrival. In the case of road traffic, it shall be lodged at least one hour prior to arrival at the customs office of entry (see Article 184a of the Implementing Regulation 2454/93/EEC).

All inspection decisions by Customs are conducted according to risk management principles. Within the amended Community Customs Code (2913/92/EEC) risk is understood to be the likelihood of an event occurring which: prevents the correct application of community or national measures; or compromises the financial interest of the community and its Member States; or poses a threat to the Community's security and safety, to public health, to the environment or to consumers (Article 4/25). Risk management means the systematic identification of risk and the implementation of measures necessary for limiting exposure to risks (Article 4/26). The analysis of risk is conducted with the support of automatic processing techniques. Risk management assessment criteria are developed at the national, community, and where available, at the international level. The Commission's Committee Procedure (as outlined in Articles 247-249) is used for determining a common risk management framework, and for establishing common criteria and priority control areas (Article 13).

A significant operational benefit of customs risk management is that the quick identification of trustworthy importers and subsequent light touch not only reduces compliance costs, but also frees up scarce Customs' resources. These can be otherwise deployed, for instance by targeting those operators of a lesser repute and those operating clandestinely. Indeed, businesses reliant on expedient customs control (e.g. because they operate on Just-In-Time principles) will have an interest in developing a good compliance record. Apart from improved risk scores, good repute is often conditional for access to special 'customs procedures with economic impact' – such as customs warehousing[14] and inward processing relief[15] – as well as simplified customs procedures – such as inland clearance[16] and duty deferment[17].

Since 2008 operators may apply for Authorised Economic Operator (AEO) status[18]. The award of the AEO status is conditional upon meeting set standards in customs compliance and/or supply chain security (Article 5a) that includes: a good customs compliance record; satisfactory commercial management systems that extend to satisfactory record keeping for customs control purposes; and proven financial solvency. The idea is that AEO status will confer significant operational and economic benefits. At present though, most of these remain available to non-AEOs. Therefore, some EU based multinational companies currently fail to identify any meaningful benefits to participating in AEO programmes (Grainger 2014a). This could change once the Union Customs Code is fully implemented and some of the beneficial customs measures are made exclusive to AEO certified operators. Likewise, with the proliferation of AEO programmes and mutual recognition between the EU and other countries, AEO status may also confer benefits outside of the EU, which could drive further support for the programme (WCO 2012; Widdowson, Blegen et al. 2014).

[14] Customs warehousing allows goods to be stored without having to pay import taxes.
[15] Inward processing relief allows import taxes to be suspended or reclaimed where imports relate to export manufacturing.
[16] Inland (or local) clearance enables customs clearance at a location other than the port or border, for example at the importer's own premises.
[17] Duty deferment enables an importer to make payments on a monthly basis.
[18] Although a small scale pilot scheme was introduced in 2006

It also needs to be highlighted that unlike customs controls, those administered by non-customs agencies (while goods remain under customs control) may not be risk based. Resulting checks and controls can be perceived by affected businesses as a non-tariff barrier. For example, in the case of products of animal origin (such as meat and hides), which are administered by the veterinary and port health authorities while under customs control, inspection targets are set by EU regulations. Thus, Member State port health authorities will not only check all import documents (100 %), they also conduct an identity check at a dedicated facility (the so-called Border Inspection Post). This identity check requires an official to inspect and verify the product against health marks, stamps and other necessary product and or package information. Moreover, a certain percentage of products of animal origin are also subject to physically checks that include sampling for pathogenic micro-organisms or illegal contaminants (such as veterinary drug residues and heavy metals). In the case of poultry, rabbit and game the requirement for a physical check is as high as 50 % and in the case of lamb and beef, 20 % (Grainger 2013).

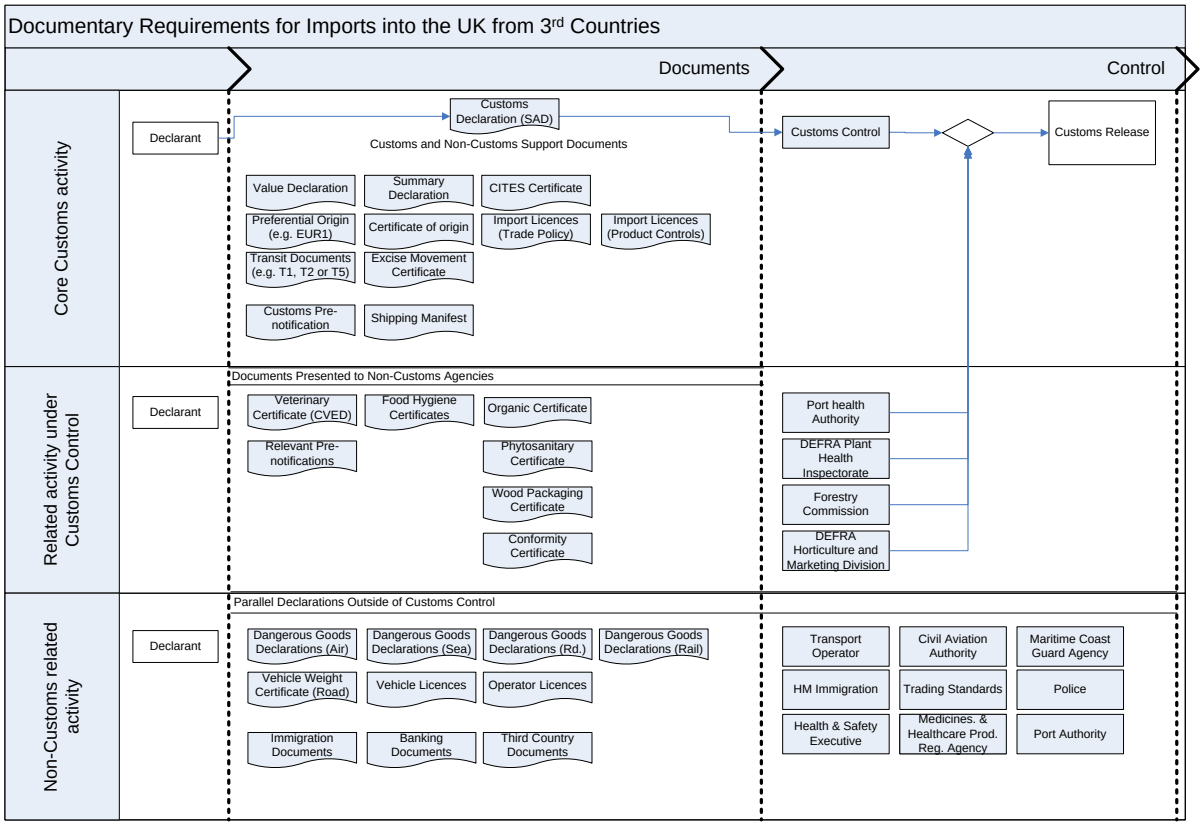
2.4 Placing goods under customs control and releasing goods from customs control

When importing or exporting, traders are required to declare the goods to the customs administration. This will be by using the Single Administrative Document, normally in an electronic format. Goods are under customs control until they have been released for export; or in the case of imports, into free circulation– usually upon the payment of any applicable import duties. It is not uncommon for customs administrations to ask for supporting documents where necessary. These can include the commercial invoice and a valuation statement as well as any tariff preference conferring documents (such as the so-called 'EUR1' or 'EUR-MED' movement certificate), end-use documents (such as the Certificate of Airworthiness), tariff quota licences and supporting documents, and export control licences (e.g. dual use), amongst others.

While under customs control, member state customs administrations are also obliged to ensure that applicable prohibitions and restrictions are met. The list of applicable prohibitions and restrictions is long. They include the checks of import and export licences for goods subject to import and export quotas, and market surveillance measures. They also include measures relating to foreign affairs, security and humanitarian concerns – such as embargoes, denied persons, dual-use, military goods, torture instruments and weapons of mass destruction, goods of cultural significance, endangered species, and phytosanitary and veterinary measures, amongst others. Depending on the specific regulations and the specific institutional arrangements within the member state, the customs administration may be solely responsible for their enforcement or they may collaborate with specialist agencies that in turn rely on Customs' executive powers at the border. In some Member States additional prohibitions and restrictions may apply, for example in the control of arms and in the control of materials that are deemed to cause public offence.

Border management practices do vary from one member state to the next; sometimes even from one port to the next. As a rule, some non-customs agencies may work under Customs' umbrella and apply their checks while goods are under customs control. Others might operate independent of Customs. To give one Member State example, Figure 7 highlights the documentary requirements (or their electronic equivalent) for imports into the UK. Several relate to administrative procedures enforced by non-customs agencies (such as those authorities responsible for veterinary and phytosanitary checks) while goods are under customs control, and 'other controls' that are administered and enforced independently from Customs – such as those concerning dangerous goods and vehicle safety.

Figure 7: Documentary Requirements for Imports into the UK from 3rd Countries', 2007



Source: Grainger (2007b)

While goods are held under customs control, the customs administrations will normally seek proof from the importer or exporter that applicable controls from non-customs agencies operating under customs control have been met – for example by requesting copies of suitably endorsed documents. Co-operation with other authorities may also extend to stopping goods and prosecuting those that are found to be operating in breach of non-customs administered trade controls – for example when deliberately miss-declaring goods to avoid additional non-customs controls. At present, there appear to be very little publically available research about the EU Member States' various border management arrangements.

In most countries, including the European Union, duty reliefs will be available to suitably authorised businesses. The Community Customs Code (2913/92/EEC) refers to them as Customs Procedures with Economic Impact, reflecting their purpose to help place EU based businesses on equal footing with competitors elsewhere in the world in instances where imported goods are incorporated into finished goods for export. Such duty saving procedures include: inward processing relief; manufacturing under customs control; export processing zones; temporary import for re-exportation in the same state; and customs warehousing (Grainger 2000; IFC 2006). The Community Customs Code (2913/92/EEC) also provides for simplified customs procedures. These may, for example, permit suitably authorised traders to make declarations on a monthly basis, or customs-clear goods at the importer's premises with minimal – if any – interference by customs officers at the ports and borders.

Of course, even with the most robust systems in place, operators are prone to inadvertent errors. For example, reference numbers may be mistyped, transport vehicles may be misdirected, or the wrong cargo is placed into the container. Likewise, instances might arise where operators need to change or amend the information declared; for example, because the ship carrying the cargo was rerouted. Depending on the specific circumstances, operators may be able to amend their declarations. Without going into detail, there are options to make corrections or amend declared information. In the case of

errors fines may apply. Where the intention is found to be deliberate, for example to avoid or reduce duty liabilities, the administration may choose to prosecute. Subsequent sentences can be custodial (e.g. BBC 2012). When exercising their discretion customs officers are guided by the applicable customs laws, community guidelines, and their administration's specific guidelines.

2.5 Customs enforcement of intellectual property rights

As touched upon earlier, the EU's Common Commercial Policy also covers the commercial aspects of intellectual property (Article 207, TFEU) and is echoed in the EU's WTO and Bilateral trade negotiations. The customs authorities of the EU Member States, by reference to Regulation (EU) No 608/2013, are responsible for the enforcement of intellectual property rights while goods are under their supervision or control[19], such as when entering or leaving the territory of the EU. Intellectual property rights within scope include: trademarks; design rights; copyright or any related rights; geographical indications; patents; supplementary protection certificate for medical products or for plant protection products; plant variety rights; topography of a semi-conductor; utility models and trade names[20] (Article 2, 608/2013/EU). The regulation does not extend to grey market goods, goods of non-commercial nature contained in travellers' personal luggage, and goods in free circulation moving between Member States.

Under the Regulation 608/2013 intellectual property rights holders may request the customs authority, by submitting a formal application, to enforce their rights at home and, if requested, in other Member States, too. Customs authorities shall grant or reject the application within 30 days. When granting an application, the customs department shall specify the period during which the customs authorities are to take action; and the period of action shall not exceed one year from the day following the date of adoption (Article 11, 608/2013/EU). When submitting the application the right-holder agrees to pay all liabilities and costs under the Regulation (Article 29, 608/2013/EU). This may include the cost of storage, handling and destruction of relevant goods held by the customs authority. Member state customs authorities are obliged to share information swiftly. Such information may relate to seizures, trends and general risk information, as well as the goods and shipments concerned (Article 22, 608/2013/EU).

[19] An obligation upon customs administrations that is also made by the EU's New Generation Free Trade Agreements, such as in the EU-Korea's Agreement's Article 10.67 on "Border measures".
[20] There might be member state exceptions to what types of intellectual property rights are protected. For example, the UK does not feature a "utility model" as an Intellectual Property Right and "trade name" is not recognised as an exclusive Intellectual Property Right (HMRC 2013).

3 Trade rules and customs

This chapter considers the multilateral and bilateral dimensions of EU trade policy with particular focus on customs dependencies meriting the attention of INTA. Of significance is that at these levels trade and customs policy is blurring, too. Let us consider this development by reviewing some of the key instruments that have been identified in this study's terms of reference before expanding on the customs dependencies in EU trade policy.

3.1 International policy level

At the multilateral level there are two principle sources of overlapping trade and customs policy: the World Trade Organisation (WTO) and the World Customs Organisation (WCO). The former provides for the framework of multilateral trade policy in the form of the General Agreement on Tariffs and Trade (GATT). The latter concerns itself with the rules and procedures in the international trade of goods, including safeguards against illegal trade and the enhancement of trade facilitation and supply chain security. While the WTO seeks to liberalise trade and bring down tariff rates for goods, the WCO '… maintains, supports and promotes international instruments for the harmonization and uniform application of simplified and effective customs systems and procedures' (WCO 2015d).

Key instruments include the WTO's GATT and its Annexes, WCO's Kyoto Customs Convention, the WCO's HS system, the WCO's valuation agreement, and the WCO's SAFE Framework. The WTO's recent Trade Facilitation Agreement will (once in force) hold countries accountable to the quality of the trade and customs environment, including the performance of Customs. Indeed, much of the content of WTO Trade Facilitation agreement is familiar and reflected in the WCO's Revised Kyoto Customs Convention (Wolffgang and Kafeero 2014) amongst numerous other international instruments. Let us review them in greater detail.

3.1.1 The World Trade Organisation (WTO)

The Geneva based **World Trade Organization (WTO)** deals with the global rules of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible (WTO 2015a). Its main agreement is the **General Agreement on Tariffs and Trade (GATT)** of 1947, which was updated in 1994. The GATT's overall objective was to prevent a repetition of the protectionist and discriminatory trade policies of the 1930s that are frequently seen as a significant contributory factor to the outbreak of World War II (Stubbs and Underhill 1994; Appling and Archer 1998; Braithwaite and Drahos 2000).

The GATT's purpose, as outlined in the preamble to its Charter, is to promote economic well-being and growth by enabling its members to enter into 'reciprocal and mutually advantageous arrangements' aimed at the 'substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment' in international trade (GATT 1947). Originally signed by 23 member countries, the GATT had 117 signatories by the end of the Uruguay Round in 1994. Following on from the Uruguay Round, member countries agreed to set-up a more permanent body with its own secretariat: the World Trade Organization (WTO). The WTO Agreement, which established the WTO, came into force on 1st January 1995 and its Annex 1A adopts the GATT (1994) in full. The WTO now has 162 members. WTO membership accounts for 98 per cent of world trade (WTO 2015a). The European Union became a member of the WTO when it was first established in 1995. The 28 Member States of the EU are also WTO members in their own right. Several of the EU's Member States have been signatory to the GATT right from the beginning.

In addition to the upper boundaries of national customs tariffs, the WTO also provides for the valuation rules upon which the tariffs are calculated (GATT Article VII). Key principles of the WTO are the Most Favoured Nation (MFN) treatment and National Treatment. The MFN principle holds that countries

cannot normally discriminate against other WTO members and that any concessions to one member have to be extended to all others. However, the WTO permits exceptions to the MFN principle in the case of customs unions and free trade agreements (see GATT Article XXIV) and preferential market access for developing countries. In certain circumstances, WTO members may also introduce antidumping and countervailing duties (GATT Articles VI and XVI) as well as quantitative restrictions. Further rules apply to licencing requirements. The principle of National Treatment holds that imported goods, once entered into the market, and locally-produced goods should be treated equally.

Today, the WTO concerns itself with a broad range of issues concerning the trade in goods and services which include agriculture, textiles and clothing, banking, telecommunications, government purchases, industrial standards and product safety, food sanitation regulations, intellectual property rights, and more. Much of the multilateral trade effort has been successful and tariffs have come down significantly. Subsequent to the establishment of the WTO in 1995, developed countries cut the tariffs on industrial products by 40 % over five years from an average of 6.3 % to 3.8 % (WTO 2015b).

Perhaps it is not surprising that with falling tariffs increasing focus is on the non-tariff area (Grainger 2011). At the 1996 WTO ministerial meeting in Singapore trade facilitation, transparency in government procurement, investment and competition policy were introduced as a new agenda item. While transparency in government procurement, investment and competition policy failed to secure immediate traction, trade facilitation succeed as soon as it had been separated from the other three Singapore issues.

Subsequent to what some observers would describe as a long and winding road (Neufeld 2014), WTO members finally concluded negotiations for a Trade Facilitation Agreement at the Bali Ministerial Conference in December 2013. In line with their decision, on 27 November 2014 the members of the WTO adopted the Protocol of Amendment to insert the new Agreement into Annex 1A of the WTO Agreement (WTO 2014a; WTO 2014b). The WTO Trade Facilitation Agreement will enter into force once two-thirds of members have completed their domestic ratification process. The European Union Institutions are in favour of this agreement and includes the green light from the European Parliament. However, at this stage it is acknowledge that ratification is slow and necessitates some leadership. The EU has thus set a target of up to EUR 400 million over five years to assist developing countries in bringing this agreement into effect (European Commission 2015m).

The focus of the **WTO Trade Facilitation Agreement** is the cost of trade and customs procedures to business. Trade facilitation, as described by some, is the plumbing of international trade (Staples 2002) and very much borne out of the frustrations that shippers and their transport and logistics service providers experience when trying to comply with the applicable trade and customs procedures (Grainger 2011). The Agreement contains thirteen articles (Figure 8) which draw from a broad pick of ideas and recommendations associated with trade facilitation (Grainger 2011). As discussed by Andrew Grainger (2014c), much of the agreement addresses 'common sense' remedies to known trade impediments, such as requiring countries to: publish on easily accessible websites relevant trade and customs compliance requirements, customs tariffs and fees; establish national enquiry points; publish average release times (Article 1); and commit to consultation with the private sector before implementing measures (Article 2).

Many of the thirteen articles are of an administrative nature, specifying: minimum benefits for trusted traders (reminiscent of the WCO's SAFE framework of Standards and its Authorised Economic Operator scheme; Article 7); advance customs rulings (for tariff classification and origin, but also recommended for customs value, duty relief, and quotas; Article 3); the right to appeal (Article 4); pre-arrival processing of customs declarations (Article 7); electronic payment of duties, taxes and fees (Article 7); the adherence to risk based controls (Article 7); post-clearance audits by Customs (Article 7); the implementation of the special customs procedures, such as Inward Processing and Outward Processing Relief (Article 10); and expedited clearance for air cargo and perishable goods (Article 7).

Figure 8: Scope of WTO Trade Facilitation Agreement

1. Publication and Availability of Information	7. Release and Clearance of Goods
2. Opportunity to Comment, Information Before Entry Into Force and Consultation	8. Border Agency Co-operation
3. Advance Rulings	9. Movement and of Goods under Customs Control Intended for Import
4. Appeal or Review Procedures	10. Formalities Connected with Importation and Exportation and Transit
5. Other Measures to Enhance Impartiality, No-Discrimination and Transparency	11. Freedom of Transit
6. Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation	12. Customs Co-operation
	13. Institutional Arrangements

(adapted from WTO 2013)

Several of the Agreement's articles express the aim for authorities to cooperate with each other at home and internationally. This includes: common border procedures and uniform document requirements (Article 10); the adoption of the single window principle (enabling importers to submit all relevant information for declaration to the authorities via one single interface; Article 10); and mechanism for the exchange of information between customs administrations (e.g. copies of the import and export declaration as well as supporting documents such as the commercial invoice and shipping documents; Article 12). The agreement also states that WTO Member States shall not introduce the mandatory use of customs brokers (Article 10). In countries where customs brokers are a licenced profession, applicable rules governing their use must be transparent and objective. Likewise, the introduction of pre-shipment inspection requirements (a costly aspect of trade compliance in some developing countries) is to be discouraged (Article 10).

While the WTO Trade Facilitation Agreement ensures the discipline of the WTO, most of its contents has its origins elsewhere (Grainger 2014b) and includes: the activities of the World Customs Organization; the thirty-five trade facilitation recommendations produced by the United Nations Centre for Trade Facilitation and Electronic Business (UN CEFACT); the International Maritime Organisation's Convention on Facilitation of International Maritime Traffic (FAL) (IMO 1998); and the International Civil Aviation Organisation's Facilitation Annex 9 to the Chicago Convention (ICAO 2002).

The WTO also concerns itself with Intellectual Property Rights in the form of the **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)**.It seeks to narrow the gap in how intellectual property rights are protected amongst WTO members, and help diffuse intellectual property rights related trade tensions. As outlined in 2.5, EU customs authorities may be required to uphold intellectual property rights when specifically requested by the rights holder while goods are under customs control – such as when entered by the importer into the European Union.

3.1.2 The World Customs Organization

The Brussels based **World Customs Organization** is an independent intergovernmental organisation that seeks to enhance the effectiveness and efficiency of customs administrations worldwide (WCO 2015d). The origin of the WCO dates back to 1947 – the same year in which the GATT was created – when the 13 European governments represented in the Committee for European Economic Co-operation

(CEEC)[21] agreed to set up a study group to examine the possibility of establishing one or more inter-European customs unions based on the principles of the GATT. In 1948, the study group set up two committees: an Economic Committee and a Customs Committee. The Economic Committee eventually evolved into the Organization for Economic Co-operation and Development (OECD), while in 1952 the Customs Committee with 17 founding members (all of them European) became the Customs Co-operation Council. With growing membership from outside Europe the Customs Co-operation Council was eventually renamed in 1994 as the World Customs Organisation (WCO).

The WCO now represents 180 customs administrations. Its activities range from setting international standards to facilitate cross-border trade to enhancing security and enforcement. As such, the WCO looks after a number of international instruments. The most noteworthy instruments are the Kyoto Convention for Harmonising Customs Procedures and the WCO's Harmonized Commodity Description and Coding System (HS) for tariff classification.

The Kyoto Customs Convention provides a blueprint for modern and efficient customs procedures and came into force in 1974. A revision followed in the form of the **Revised Kyoto Convention** on the Simplification and Harmonization of Customs Procedures (WCO 1999). This entered into force on 3rd February 2006 after 40 contracting parties of the 1974 version had adopted it; an effort that was partly the result of the EU's new members working towards the requirements of the *acqui communautaire*. The Revised Kyoto Customs Convention, as outlined in its preamble, endeavours 'to eliminate divergence between the Customs procedures and practices of Contracting Parties that can hamper international trade and other international exchanges' (WCO 1999). The convention elaborates on several key principles, including those of:

- transparency and predictability of Customs actions;
- standardisation and simplification of the goods declaration and supporting documents;
- simplified procedures for authorised persons;
- maximum use of information technology;
- minimum necessary customs control to ensure compliance with regulations;
- use of risk management and audit based controls;
- coordinated interventions with other border agencies; and
- partnership with the trade (WCO 2015b).

Comparing the Revised Kyoto (Customs) Convention (1999) with the WTO Trade Facilitation Agreement some commentators will highlight the significant similarities, albeit without the discipline of the WTO. Hans-Michael Wolffgang and Edward Kafeero (2014) refer to the overlap as 'old wine in new skins'; thus, highlighting how customs concerns have been adopted by trade policy. As of 22 June 2015 there are 102 contracting parties to the Kyoto Customs Convention. The European Community signed up to it on 30 April 2003.

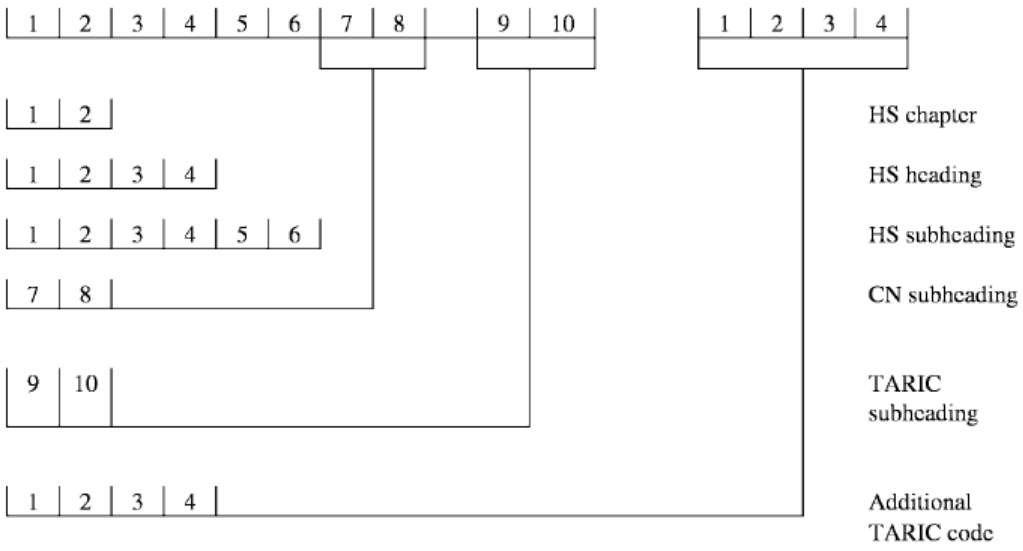
The World Customs Organization also seeks to ensure the consistent interpretation of customs tariff classifications – the so-called **Harmonised System**. This is used by all WTO members to describe the goods upon which tariff negotiations are based and by customs administrations to determine the correct amount of customs duty. The International Convention on the Harmonised Commodity Description and

[21] The CEEC was a body established with US and Canadian aid to help with the implementation of the Marshall Plan and the reconstruction of Europe.

Coding System came into force in 1988, following the official signing in 1983 and registration with the UN (WCO 2006). It draws on an earlier Customs Co-operation Council classification convention from 1959 and now comprises about 5 000 commodity groups; each identified by a six digit code. The HS system is used in 207 countries of which 153 are contracting parties to the HS Convention (WCO 2015a).

The HS Convention is maintained by WCO HS-Committee which meets twice a year to ensure that the contracting parties interpret and apply the HS system uniformly. The HS nomenclature undergoes a major review every five years. The forthcoming 2017 Edition is due to replace the current 2012 Edition on 1 January 2017. Relevant WCO Explanatory Notes and Opinions complement the HS nomenclature and can be purchased from the WCO bookshop[22]. It is important to note that HS codes are not only used for the administration of customs tariffs. They are also relied upon in trade and transport statistics as well as in the determination of preferential origin. The European Union adopts the HS system in full and extends it with a further two digits for export declarations (the so-called Combined Nomenclature (CN) Code) and four digits (that is the CN Code plus two) for imports (sometimes also referred to as the TARIC). An additional four digit TARIC Code applies for sugar and flour contents for imports of certain types of agricultural products (Figure 9).

Figure 9: The Customs Tariff Code in the EU



(European Commission 2015j)

More recently, the WCO has also concerned itself with supply chain security. In June 2005 the WCO Council adopted the **SAFE Framework of Standards to Secure and Facilitate Global Trade** (SAFE of Standards). This was produced following increased concern amongst customs administrations and their political masters after the events of 9/11 (Flynn 2000; Flynn 2002); especially in the USA and the European Union where proposals and initiatives to enhance supply chain security and prevent the misuse of the supply chain for terrorist purposes began to take hold. Indeed, the discussions and subsequent efforts between the USA and EU to cooperate have helped fast track SAFE within the WCO (European Community and United States of America 2004).

In the run-up to the first edition of the SAFE Framework the **USA** introduced a so-called '**Advance Manifest**' reporting regime, which requires carriers to pre-notify US Customs and Border Protection

[22] Trade facilitation champions might criticise that these are not made available for free via the WCO website.

(USCBP) about their cargo within prescribed timeframes prior to its arrival at a US port of entry. These requirements were later supplemented for maritime traffic by the **Importer Security Filing** (ISF) initiative which is required to be undertaken at least 24 hours before loading a vessel departing for a US port. There was also considerable concern that increased border controls would severely impact upon the cost of international trade. To minimise regulatory impediments at the borders the voluntary **Customs-Trade Partnership Against Terrorism** (C-TPAT) was introduced. By adhering to agreed policies, systems, procedures and practices for inward cargo into the USA companies benefit from lower risk scores and subsequent ease at the points of entry (Widdowson, Blegen et al. 2014).

In the European Union (EU), as has already been outlined in Chapter 1, security was added as a fast-track item to the so-called Paperless Trade and Customs Environment initiative and resulted in the **Security Amendment to the Customs Code (648/2005/EC)**. This introduced, among other things, requirements for pre-notification and the AEO concept. While the former requires EU carriers to pre-notify Customs – in the case of maritime cargo 24 hours before loading – in the form of an Entry Summary Declaration, the latter seeks to accredit traders that comply with minimal security management criteria and reward them with preferential treatment in port and border clearance, customs compliance or both.

The measures implemented in the EU echo those that underpin the WCO SAFE Framework. Subsequent to the SAFE Framework's first edition in 2005, it has undergone further revisions in 2007, 2012 and 2015. As stated in the latest version, the SAFE Framework provides a 'strategy to secure the movement of global trade in a way that does not impede but, on the contrary, facilitates the movement of that trade' (WCO 2015c); it highlights that trade facilitation can enhance security, and does not necessary represent a trade-off (Grainger 2008). As such, the SAFE Framework aims to:

- 'Establish standards that provide supply chain security and facilitation at a global level to promote certainty and predictability.
- Enable integrated and harmonized supply chain management for all modes of transport.
- Enhance the role, functions and capabilities of Customs to meet the challenges and opportunities of the 21st Century.
- Strengthen co-operation between customs administrations to improve their capability to detect high-risk consignments.
- Strengthen co-operation between customs administrations and other Government agencies involved in international trade and security.
- Strengthen Customs/Business co-operation.
- Promote the seamless movement of goods through secure international trade supply chains.' (WCO 2015c).

The SAFE Framework rests on three pillars that detail recommendations for: Customs-to-Customs network arrangements; Customs-to-Business partnerships; and Customs-to-other Government Agencies Co-operation. The SAFE Framework's elements provide for: the harmonisation of advance electronic cargo information requirements on inbound, outbound and transit shipments; the consistent use of risk management approaches to security threats; outbound cargo inspections of high risk cargo and/or transport conveyances; and the benefits for businesses who meet minimal supply chain security standards.

Much of the SAFE framework makes reference to the revised Kyoto Customs Convention, especially where it concerns the use of risk management as well as the preferential treatment of suitably authorised operators. What is new, is the ambition to exert customs control not only at the borders, but further up

and down the supply chain – ideally identifying risks before goods move (Grainger 2007a) as well as the use of new technologies and the single window concept (UN/CEFACT 2004). It also provides a reference point for bilateral mutual assistance and customs co-operation agreements (discussed later).

3.1.3 Others

Apart from the WTO and WCO there are **other international organisations** with a strong interest in trade and customs policy. Indeed, many of them have helped set the groundwork for trade facilitation policy (Grainger 2011). Noteworthy organisations are: the United Nations' Centre for Trade Facilitation and Electronic Business (UN/CEFACT) which has produced a long list of trade facilitation recommendations (some dating back to the early 1960s); the United Economic Commission for Europe and the International Road Transport Union who look after the TIR Road Transit Agreement (which is adopted by the EU); the International Chamber of Commerce, which has defined a widely used set of standard terms for how businesses trade with each other, the so-called Incoterms (ICC 2010); the International Maritime Organisation, International Air Transport Association and The International Civil Aviation Organization's efforts in supply chain and transport security amongst others (Figure 10).

Figure 10: International Trade Facilitation Recommendations and Instruments

International Trade Facilitation Recommendations and Instruments
United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT)
Rec. N°1: United Nations Layout Key for Trade Documents; **Rec. N°. 2**: Locations of Codes in Trade Documents; **Rec. N°. 3**: Code for the Representation of Names of Countries; **Rec. N°. 4**: National Trade Facilitation Bodies; **Rec. N°. 5**: Abbreviations of INCOTERMS; **Rec. N°. 6**: Aligned Invoice Layout Key for International Trade; **Rec. N°. 7**: Numerical Representation of Dates, Time and Periods of Time; **Rec. N°. 8**: Unique Identification Code Methodology – UNIC; **Rec. N°. 9**: Alphabetic Code for the Representation of Currencies; **Rec. N°. 10**: Codes for the identification of Ships; **Rec. N°. 11**: Documentary Aspects of the Transport of Dangerous Goods; **Rec. N°. 12**: Measures to Facilitate Maritime Transport Documents Procedures; **Rec. N°. 13**: Facilitation of Identified Legal Problems in Import Clearance Procedures; **Rec. N°. 14**: Authentication of Trade Documents by Means Other than Signature; **Rec. N°. 15**: Simpler Shipping Marks; **Rec. N°. 16**: LOCODE - Code for Trade and Transport Locations; **Rec. N°. 17**: PAYTERMS - Abbreviations for Terms of Payment; **Rec. N°. 18**: Facilitation Measures Related to International Trade Procedures; **Rec. N°. 19**: Code for Modes of Transport; **Rec. N°. 20**: Codes for Units of Measure Used in International Trade; **Rec. N°. 21**: Codes for Passengers, Types of Cargo, Packages and Packaging Materials; **Rec. N°. 22**: Layout Key for Standard Consignment Instructions; **Rec. N°. 23**: Freight Cost Code – FCC; **Rec. N°. 24**: Trade and Transport Status Codes; **Rec. N°. 25**: Use of the UN Electronic Data Interchange for Administration, Commerce and Transport Standard (UN/EDIFACT); **Rec. N°. 26**: The Commercial Use of Interchange Agreements for Electronic Data Interchange**; Rec. N°. 27**: Preshipment Inspection; **Rec. N°. 28**: Codes for Types of Means of Transport; **Rec. N°. 31**: Electronic Commerce Agreement; **Rec. N°. 32**: E-Commerce Self-Regulatory Instruments (Codes of Conduct); **Rec. N°. 33**: Single Window Recommendation; **Rec. N° 34**: Data Simplification and Standardization for International Trade; **Rec. N° 35:** Establishing a legal framework for international trade Single Window**; Rec. N° 40:** Consultation approaches Best Practices in Trade and Government Consultation on Trade Facilitation matters.
The International Civil Aviation Organization (ICAO) and International Air Transport Association (IATA)
IATA **e-freight initiative**; ICAO Convention on International Civil Aviation (**Annex 9**: Trade Facilitation); '**know shipper/known consignor**' concept
International Maritime Organisation (IMO)
Convention on Facilitation of International Maritime Traffic (**FAL**); Safety of Life at Sea Convention (**SOLAS**); International Ship and Port Facility Security Code (**ISPS-Code**)
United Economic Commission for Europe with the International Road Transport Union
TIR (Road Transit) Convention;
International Organization for Standardization
Countless international business standards, including quality management systems (ISO 9000), risk management (ISO 31000) and supply chain security (ISO 28000)
International Chamber of Commerce
Incoterms (standardised trading terms used in international trade); Uniform Customs and Practices for Letters of Credit (**UCP**);
United Nations Conference on Trade and Development
Developer of **ASYCUDA** customs software used in over 90 countries, mostly in developing and emerging countries.

(adapted from: (UN/CEFACT and UNCTAD 2002; Grainger 2011)

3.2 The bilateral and regional level

Echoing the previously reviewed multilateral and international trade and customs policy fora, there is also a blurring of trade and customs issues at the bilateral and regional level. Let us consider those initiatives highlighted in this study's terms of reference in greater details.

3.2.1 The various agreements on customs co-operation and mutual assistance

Starting in 1997 with Korea and the USA, the EU put several international customs co-operation and mutual administrative assistance agreements into place. A key focus of these agreements is to: help create a level playing field for traders exposed to customs procedures at both ends of the trade and to inform on developments in customs legislation and customs rules as early as possible. Other provisions within these agreements may include the exchange of information on technical assistance to third countries. They also seek to provide a means for coordinating positions within international organisations, such as the WCO and WTO. Importantly, they seek to foster greater trade facilitation between the parties of the agreement, including the use of electronic systems and procedures. There is also the possibility of expanding scope as well as the level of customs co-operation (European Commission 2015g).

Depending on the countries concerned, the agreements may expand upon: customs risk management standards and techniques; the sharing of information and mutual assistance; contact points; mechanisms for co-operation in cargo inspections; and the mutual recognition of customs-business partnership programmes, such as the EU's AEO (European Commission 2015i). Additional country specific special interest may come into play, such as the protection and enforcement of Intellectual Property Rights.

A key feature within each agreement is the establishment of a Joint Customs Co-operation Committee (JCCC) which consists of representatives from the EU Member States' customs administrations, the European Commission and of the contracting party. The JCCC may adopt decisions and recommendations to build upon the agreement as well as help resolve issues that have arisen in the respective application of customs rules and procedures. While formal JCCC meetings are used to agree joint decisions and common approaches, they also help facilitate informal channels for ongoing dialogue (European Commission 2015g).

The European Union has signed customs co-operation and mutual administrative assistance agreements with **Korea, Canada, Hong Kong, USA, India, China** and **Japan**. Agreements with **ASEAN** and its members are in progress. Highlights are summarised in Figure 11.

Figure 11: Highlights of the EU's Customs Co-operation and Mutual Administrative Assistance Agreements

ASEAN (in progress)	In May 1997 the European Council authorised the Commission to negotiate customs co-operation agreements with the ASEAN Member States. These negotiations are still ongoing with careful concern for balancing the possibilities of bilateral agreements with ASEAN member countries and the prospects for greater regional integration. The Commission's mandate includes the possibility to exchange information on customs legislation, procedures, and control methods, exchange of officials, joint training exercises, simplification, harmonisation and computerisation of procedures. Agreements could also provide the legal basis for mutual administrative assistance (European Commission 2015k).
Canada	The Customs Co-operation Agreement between the EU and Canada was first agreed in January 1998 (European Community and Canada 1998). In 2013 it has

	expanded further with principle focus on closer co-operation on supply chain security and related risk management, including plans for AEO mutual recognition and IPR border measures (Council of the European Union 2012).
China	The Customs Co-operation Agreement between the EU and China was signed in 2004 (2004/889/EC). A significant outcome of this agreement is the 'Strategic Framework for Co-operation – Enhancing EU-China Customs Co-operation to Promote Legitimate Trade' and subsequent commitment to combat IPR infringements. The respective AEO programmes benefit from mutual recognition. There has also been a pilot project to strengthen end-to-end supply chain security and a shared concern for illicit trade in waste, and the control of drug precursors.
Hong Kong	The EU and Hong Kong's Agreement on Co-operation and Mutual Administrative Assistance in Customs Matters (CCMAA) has been in place since 1999 (European Community and Hong Kong 1999). Since 2002 Customs representatives from the European Union and Hong Kong meet every two years. Agenda items include the sharing of experiences in supply chain security, the enforcement of IPR, and AEO pilots (European Commission 2015e).
India	The agreement with India on customs co-operation and mutual administrative assistance in customs matters was signed on 28 April 2004 (2004/633/EC). The first series of meetings of the Joint Customs Co-operation Committee took place in March and December of 2006. Priority areas include the simplification of customs procedures and difficulties experienced by private sector operators and the sharing of customs experience and expertise (European Commission 2015f).
Japan	The EU-Japan Agreement on Co-operation and Mutual Administrative Assistance in Customs Matters was signed in February 2008 (2008/202/EC). More recently it has resulted in mutual recognition of AEO programmes as well as steps towards the automated exchange of information about AEO (2010/637/EU).
Korea	Korea was the first Asian country with which the EU entered into an agreement on co-operation and mutual administrative assistance in customs matters (European Community and Republic of Korea 1997). Discussions during the EC-Korea Joint Customs Co-operation Committee meetings focus on: customs related trade barriers; the enforcement of intellectual property rights and possibilities for establishing an exchange of officials; border measures for IPR protection; policy coordination in international organisations; and projects for the exchange of personnel and common training (European Commission 2015h).
USA	The EU-U.S. customs co-operation is based on the Agreement on Customs Co-operation and Mutual Assistance in Customs Matters and entered into force in 1997 (European Community and United States of America 1997). It has since been expanded by a follow-on Agreement in 2004 (2004/634/EC), a Joint Statement on Supply Chain Security of 2011 and a Decision on mutual recognition of trade partnership programmes in 2012 (2012/290/EU). As highlighted earlier in the paper, the 2004 Agreement has helped fast-track the 2005 Edition of the WCO SAFE Framework.

In addition to the above, the European Commission's DG Taxation and Customs Union also highlights Association Agreements with **Georgia** and **Moldova** that were signed in June 2014; though arrangements with **Ukraine** have been postponed until December 2015. The Association Agreements

include provisions for Customs Sub-Committees to serve in the dialogue on customs matters. The customs co-operation with Moldova, Ukraine and Georgia is based on respective Strategic Frameworks. These include plans for safe and fluid trade lanes, risk management and fight against fraud, as well as investment in customs modernisation. Priorities for Georgia, Republic of Moldova and Ukraine are: the accession to the Regional Convention on pan-Euro-Mediterranean preferential rules of origin; the Convention on a common transit; and implementation of the Authorised Economic Operator schemes (European Commission 2015c).

3.2.2 EU Trade agreements and unions

The European Union has an active trade policy agenda and highlights that if all its free trade talks could be concluded tomorrow, it could add 2.2 % to the EU's GDP – i.e. EUR 275 billion (European Commission 2013). Agreements currently in place or under negotiation are outlined in Figure 12.

Figure 12: EU Trade Agreements in force, under negotiation or not yet applied

EU Agreements in Force
Europe
Norway, Iceland, Switzerland, Faroe Islands, the former Yugoslav Republic of Macedonia, Albania, Montenegro, Bosnian and Herzegovina, Serbia
Mediterranean
Palestine Authority, Syria, Tunisia, Morocco, Israel, Jordan, Lebanon, Egypt, Algeria
Other Countries
Mexico; South Africa; CARIFORUM States; Chile, Madagascar, Mauritius, the Seychelles, and Zimbabwe; Korea; Papua New Guinea and Fiji; Iraq; Columbia and Peru; Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama); Ecuador
Customs Unions
Andorra; San Marino; Turkey
EU Agreements under negotiation
USA, China[23]; Canada; Japan; Malaysia, Thailand, Singapore[24] and Vietnam (members of ASEAN); South Mediterranean; India; MERCOSUR; African, Caribbean and Pacific Countries (ACP)
Free Trade Agreements finished but not yet applied
Eastern Neighbourhood, Moldova[25], Armenia and Georgia[26]; Ukraine; Singapore; Cote d'Ivoire, Central Africa (Cameroon), the Southern African Development Community, Ghana and the East African Community

Source: (European Commission 2013; European Commission 2015l)

[23] The focus of negotiations is on investment as opposed to trade in goods.
[24] Close to finalisation subject to approval by the European Commission and the agreement of the Council and ratification from the European Parliament.
[25] [25] The trade provisions of the agreements with Moldova and Georgia provisionally apply since September 2014.

These agreements are based on the Common Commercial Policy (Article 207, TFEU) and aim to: open new markets for goods and services (including investment); reduce customs duties and the cost of trade and customs procedures (trade facilitation); provide for the protection on intellectual property rights; and further liberalisation in competition and public procurement. The scope of the respective agreements depends of course in part on the underlying motivation. This, as explained by Stephen Woolcock (2007), can be:

- Political: to enhance EU security by supporting relations with neighbours in the Southern Mediterranean and West Balkans, or enhancing economic and social development, such as in developing countries;
- Commercial: to open up and access growing markets; or
- To promote the European model: by encouraging and supporting similar projects elsewhere, such as in ASEAN, MERCOSUR, CARICOM and SADAC.

While a detailed review of the trade agreements highlighted in Figure 11 is beyond the scope of this study, the EU's trade Agreements do place significant demands upon customs authorities. Key features within these agreements are the provisions that grant tariff preference, including eligibility by reference to **preferential-origin rules**. These can be complex and specific to the trade agreement and HS-heading of the goods concerned. In some cases ***cumulation*** may be permitted where products maintain their origin status after being added to products originating elsewhere – such as within the matrix of **Pan-Euro-Med protocols** (2015/C 214/05), but also in other bilateral and regional trade agreements (European Commission 2015a). In some instances, tariff preference may be **autonomous** (i.e. not reciprocal), such as with the Western Balkans, Moldova, the Association of the Overseas Countries and Territories of the EU, and those least developed countries within the Generalised System of Preference (European Commission 2015b).

Traders who wish to take advantage of preferential trade agreements will have to produce relevant documents. Depending on the agreement this may be the EUR1 or 'EUR-MED' movement certificate, or a GSP Certificate (also referred to as 'Form A'). Each preference conferring document type will have its own requirements and procedures, depending on the countries concerned, the tariff heading, whether it is an import or export, and whether the trader is located in the EU. Depending on the procedures, they may be produced with the help of an agent, produced themselves and approved by Customs, and/or the chambers of commerce[27]. Regular users of EUR1 certificates in the EU, if suitably authorised by an EU customs administration, may certify eligibility for tariff preference themselves by adding a statement on their commercial invoice (a so-called invoice declaration).

New Generation Type Free Trade Agreements are noteworthy, too. In addition to tariff barriers and preferential access, they also extend to services and investment, competition policy, government procurement, intellectual property, transparency in regulation and sustainable development. Their purpose is largely commercial and helps secure reciprocal market opportunities. Of significance to this paper is that they also seek to hold the parties to commitments in customs and trade facilitation. For example, the EU-Korea agreement (2011/265/EU), the first of this type (Horng 2012) arising from the EU's Global Europe strategy (COM(2006) 567 final), highlights requirements to ensure customs procedures are managed efficiently, expedient and appropriate. This, as featured in Chapter 6 of the Agreement,

[27] Preferential trade procedures can indeed be very complex. There are plenty of anecdotes of where companies choose to forego tariff preference. In many instances the compliance burden also extends to the suppliers of those companies importing and exporting. Jagdish Bhagwati, a trade economist, has famously referred to the tangling of overlapping preferential origin rules amongst nations as the 'spaghetti bowl effect'.

includes commitments: in the use of information technology; for co-ordination with other authorities involved in border controls; to ensure that the use of customs brokers is optional; to apply risk management techniques; to ensure advance ruling can be obtained (such as Binding Tariff Informations); for appropriate appeal procedures; amongst many other provisions that are reminiscent of the WCO Revised Kyoto Customs Agreement and the WTO Trade Facilitation Agreement. It also holds the parties to formal customs co-operation in line with the customs co-operation agreements outlined above and their Joint Customs Co-operation Committees.

The New Generation Type Free Trade Agreements may also make reference to the protection of **Intellectual Property Rights**. Their enforcement at the ports and border (while under customs control) may, where requested by the rights holder (as discussed earlier in 2.5) fall upon the responsibility of Customs. **Sanitary and Phytosanitary** (SPS) measures addressed within the New Generation Type Free Trade Agreements are the responsibility of relevant competent authorities in the Member States; these in turn may be collaborating with Customs. As outlined in 2.4, customs administrations check that controls by the phytosanitary and veterinary authorities (including port health) are performed while under customs control, and that appropriate provisions are in place to ensure that veterinary controls are not circumvented (for example, by deliberately misdeclaring goods as goods that are not subject to SPS measures).

3.2.3 Transit and temporary admission

To simplify transit, the EU has also put in place a number of Transit Agreements. These include **Common Transit** procedures with the EFTA countries (of which Norway, Iceland and Lichtenstein remain) and the identical **Community Transit** procedures with San Marino and Andorra as well as the EU's special territories. Relevant procedures draw on the **Convention of Common Transit Procedures** with EFTA countries (87/415/EEC) and are incorporated in the European Union's Community Customs Code (2913/92/EEC) and Implementing Provisions (2454/93/EEC) as well as the Community's electronic New Community Transit System.

The **TIR Convention 1975** (UNECE 2014) provides for the transit from a country of origin to a country of destination in sealed load compartments such as containers and truck trailers. It reduces the requirement for additional controls and checks at the border in transit countries. Any duties and taxes that may become due are assured by the user in the form of a financial guarantee. The EU is one of 68 contracting parties to the TIR Convention. Applicable customs procedures are incorporated in the European Union's Community Customs Code (2913/92/EEC) and Implementing Provisions (2454/93/EEC) as well as the Community's electronic New Community Transit System.

The **ATA System** is part of the WCO's ATA and Istanbul Convention with 63 Contracting Parties, including the members of the European Union, and entered into force in 1963. It provides for the temporary admission of commercial samples, professional equipment and goods for presentation or use at trade fairs, shows, exhibitions and similar events without having to pay any import duties or taxes. Users of an ATA Carnet will have to set-up a financial security with the International Chambers of Commerce World Chambers Federation (ICC/WCF). Applicable customs procedures are incorporated in the European Union's Community Customs Code (2913/92/EEC) and Implementing Provisions (2454/93/EEC).

3.3 EU Trade policy dependencies upon customs

Although the instruments of trade and customs policy are becoming increasingly blurred, a line can still be easily drawn between the two. Customs administrations serve a clear executive function: the supervision of trade. In contrast, the European Union's Common Commercial Policy with regards to trade is exactly that: a mechanism for the EU to define its trade relations with others. Its fruits are the multilateral and bilateral trade agreements. Where these touch upon the trade in goods, Customs is

responsible for their correct administration and enforcement, alongside any other government agency with executive functions at the ports and borders.

The administration of EU trade agreements requires the customs administrations of the EU to work together efficiently, increasing (as has been reviewed) by paperless and electronic means. With each enlargement of the EU the *acquis communautaire* requires accession states to be able to effectively implement the Community Customs Code and Implementation Provisions. What might once have been the policy of EU enlargement and External Affairs becomes a matter of the internal. Similar developments can also be foreseen from greater market integration subsequent to a deepening of multilateral and bilateral trade agreements. Once markets integrate and tariff barriers have been removed, the relationship is likely to focus on the harmonising of trade and customs procedures – as evidenced by the WTO Trade Facilitation Agreement as well as in the EU's new generation Free Trade Agreements.

Of course, as has been outlined, security remains a concern. Trade policy can be an instrument for aligning security objectives, including those security and safety measures concerning consumers and citizens. Indeed, issues relating to the Sanitary and Phytosanitary (SPS) area or the Common Agricultural Policy that touch upon notions of security that include environmental health and self-sufficiency can be particularly thorny. There is, of course, also the perceived threat of terrorism and organised crime and their utilisation of modern supply chains. To this end, customs policy seek to promote ideas and standards to keep us from harm – such as those in the EU Security Amendment to the Customs Code (648/2005/EC) and the WCO's SAFE Framework (WCO 2015c). Customs Co-operation Agreements, as reviewed here, help EU customs authorities coordinate their controls and administrative practices with key trading partners.

The devil is of course in the technical detail. When examining the Community Customs Code and its Implementing Provisions there are a wide range of measures that customs officers need to consider. These include the correct assessment of import duties (a resource of the EU), which in turn is dependent on the correct assessment of the tariff classification (based on the HS system), origin (GATT) and preferential origin (bilateral trade agreements), and valuation (in line with the WTO Valuation Agreement). There are also obligations towards other government agencies, such as to check that import licences are present where goods are subject to quantitative restrictions and tariff quotas. They may, where required, also enforce market surveillance measures as well as collect any applicable antidumping duties. They are also responsible for IPR protection while goods are under their control (e.g. at the ports and borders). Respective Member States may also task their customs administrations with the collection of VAT and Excise duties. Last but not least, they also need to ensure that prohibitions and restrictions are appropriately enforced – often working alongside other border and law-enforcement agencies.

Recognising the pressures of market competition upon businesses within the EU, customs administrations are also required to ensure that they do not disproportionately add to the cost of business. Indeed, one of the key tenets of trade facilitation is that it can help strengthen control without necessarily adding to the cost of business. The European Union's aspiration for a paperless trade and customs environment provides on such example (Grainger 2008). While the need for trade facilitation is in part recognised by the WCO's Revised Kyoto Convention as well as its SAFE Framework of Standards, discipline can now be enforced through trade policy in the form of bilateral trade agreements with a customs and trade facilitation component, as well as through the WTO Trade Facilitation Agreement.

4 Recommendations

This study's terms of reference ask for suggestions that might improve the interaction between trade and customs policy decisions makers, focusing on the specific role of the European Parliament's **Committee on International Trade** (INTA) and its relations with other relevant parliamentary committees.

Much of the EU's customs policy is monitored by the EP's Committee on the Internal Market and Consumer Protection. However, as this rather broad-brush account of trade and customs policy shows, there is a blurring of trade and customs policy. Inevitably, INTA has a clear interest in customs policy and practices.

These, as outlined in this study, concern:

- the administration of provisions within multilateral and bilateral trade agreements (e.g. customs-related matters stemming from WTO rules and Free Trade Agreements); and
- the performance of the customs administrations at home and abroad in so far that they meet the respective agreements' trade facilitation requirements (e.g. customs procedures and practices to help facilitate trade and implementing Free Trade Agreements).

The European Union is a Customs Union and Customs is a topic that lies at its very foundation. Many European Parliament (EP) committees are likely to touch upon it. Issues of transit, but also where customs and transport operations interact, as they frequently do at ports and borders, is a concern to the EP's Committee on Transport and Tourism. This Committee would also have an interest in exploring Customs related issues that are covered by international transport mode specific conventions – such as the International Maritime Organisation's (IMO) International Ship and Port Facility Security (ISPS) Code (IMO 2003) and the International Civil Aviation Organization's (ICAO) International Standards and Recommended Practices, Annex 9 (ICAO 2002).

There is also the Union's budget of which 11.4 % stems from customs duties. This would be the concern of the EP's Committee on Budget. Phytosanitary and veterinary controls, though often delegated to specialist agencies, will normally take place while under customs supervision. This is the concern of the EP's Committee on Agriculture and Rural Development, as are the external aspects of the Community's Common Agricultural Policy.

Controls by specialist agencies performed under the supervision of Customs that concern the environment, public health and medicines, and food safety fall under the remit of the EP's Committee on the Environment, Public Health and Food Safety. Where customs officers need to coordinate with immigration authorities and integrated border management they touch upon the remit of the EP's Committee on Civil Liberties, Justice and Home Affairs. Customs also touches upon the EU's neighbourhood policy where the functioning of smooth trade and the perspectives of EU membership is concerned. Furthermore, Customs help underpin security, especially in the context of controlling modern supply chains.

Last but not least, Customs-Customs relationships provide an example of low-level diplomacy (often informally) that can help extend the EU's influence in other countries. Such matters may be of interest to the EP's Committee on Foreign Affairs. Related customs capacity building initiatives, such as those linked to the WTO Trade Facilitation Agreement, may touch upon the remit of the EP's Committee on Development.

The evolution of Customs with concern for security and protection as well as trade facilitation set against the backdrop of declining tariff-rates, is bound to cause institutional uncertainty. Communication and coordination is essential; bodies tasked with holding Customs accountable need to be aware of the direction in which customs policy is moving. Customs officers do have valuable skills and experience in

the control and administration of goods. Increasingly, they are also concerning themselves with the control of supply chains, recognising the part played by business in orchestrating global production and the movement of goods. Considering staffing numbers amongst customs administrations, it is remarkable how much they can achieve in partnership with suitably incentivised businesses – especially those who have invested in resources and capabilities to ensure a good compliance record.

In light of the above, it is easy to imagine that the challenges that INTA faces with regards to Customs might be shared elsewhere within the European Parliament. However, unlike other policy areas, trade facilitation commitments hold Customs alongside other border agencies (operating in partnership or independently from Customs) accountable to their performance in terms of cost and impact upon business. Thus, it might be advisable for the European Institutions to consider and agree key performance indicators (KPIs) against which they wish to assess the performance of customs administration at home and abroad. At present there is very little public data available. It would be useful for INTA to understand how Customs and other border agencies are performing (at home as well as amongst trade partners) at any point in time.

Considering the level of technical detail associated with customs and trade procedures – in both legal, operational, administrative and technological terms – it may also be advisable to establish a special body or organisation to monitor the performance and activities of customs and border administrations at home and abroad on an ongoing basis. Such body could also help inform upon best practice and coordinate Customs and trade facilitation specific interests within the European Institutions. Reflecting on the provisions of the WTO Trade Facilitation Agreement, especially Article 13 which calls for a National Trade Facilitation Body, there would be a strong case for such a dedicated European Trade Facilitation body.

References

2658/87/EEC. Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff. Offical Journal of the European Communities **L 256 (7.9.1987)**

87/415/EEC. "Council Decision of 15 June 1987 concerning the conclusion of a Convention between the European Community, the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Kingdom of Norway, the Kingdom of Sweden and the Swiss Confederation on a common transit procedure." Offical Journal of the European Communities **L226 (13.8.87)**

90/C262/03. Declaration by the representatives of the governments of the Member States, meeting within the Council, concerning the continuing role of customs services after 1992. **C 262 (17.10.1990)**

2913/92/EEC. "Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code " Official Journal of the European Union **L 302 (19.10.1992)**

2454/93/EEC. "Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code." Offical Journal of the European Union **L 253 (11.8.1993)**

2003/C305/01. "Council Resolution of 5 December 2003 on creating a simple and paperless environment for customs and trade." Offical Journal of the European Union **C 305 (16.12.2003)**

2004/634/EC. "Council Decision of 30 March 2004 concerning the conclusion of the Agreement between the European Community and the United States of America on intensifying and broadening the Agreement on customs cooperation and mutual assistance in customs matters to include cooperation on container security and related matters." Offical Journal of the European Union **L 304 (30.9.2004)**

2004/633/EC. "Council Decision of 30 March 2004 concerning the conclusion of the Agreement between the European Community and the Republic of India on customs cooperation and mutual administrative assistance in customs matters." Offical Journal of the European Union **L 304 (30.9.2004)**

2004/889/EC. "Council Decision of 16 November 2004 on the conclusion of an Agreement between the European Community and the Government of the People's Republic of China on cooperation and mutual administrative assistance in customs matters." Official Journal of the European Union **L 375 (23.12.2004)**

648/2005/EC. "Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code." Official Journal of the European Union **L 117 (4.5.2005)**

1875/2006/EC. "Commission Regulation (EC) No 1875/2006 of 18 December 2006 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (Text with EEA relevance)." Official Journal of the European Union **L 360 (19.12.2006)**

70/2008/EC. "Decision No 70/2008/EC of the European Parliament and of the Council of 15 Januray 2008 on a paperless environment for customs and trade." Official Journal of the European Union **L 23 (26.1.2008)**

2008/202/EC. "Council Decision of 28 January 2008 concerning the conclusion of the Agreement between the European Community and the Government of Japan on cooperation and mutual administrative assistance in customs matters." Offical Journal of the European Union **L 62 (6.3.2008)**

450/2008/EC. "Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code)." Offical Journal of the European Union **L 145 (4.6.2008)**

2010/637/EU. "Decision No 1/2010 of the Joint Customs Cooperation Committee of 24 June 2010 pursuant to Article 21 of the Agreement between the European Community and the Government of Japan on Cooperation and Mutual Administrative Assistance in Customs Matters regarding mutual recognition of Authorised Economic Operators programmes in the European Union and in Japan." Offical Journal of the European Union **L 279 (23.10.2010)**

2011/265/EU. "Council Decision of 16 September 2010 on the signing, on behalf of the European Union, and provisional application of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part " Offical Journal of the European Union **L 127 (14.5.2011)**

2012/290/EU. "Decision of the US-EU Joint Customos Cooperation Committee of 4 May 2012 regarding mutual recognition of the Customs-Trade Partnership Against Terrorism program in the United States and the Authorised Economic Operators programme of the European Union." Official Journal of the European Union L **144 (5.6.2012)**

608/2013/EU. "Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003." Official Journal of the European Union **L 181 (29.6.2013)**

952/2013/EU. "Regulation (EU) No 952/2013 of the European Parliament and the Council of 9 October 2013 laying down the Union Customs Code (recast)." Official Journal of the European Union **L 269 (10.10.2013)**

2015/C 214/05. "Commission notice concerning the date of application of the Regional Convention on pan-Euro-Mediterranean preferential rules of origin or the protocols on rules of origin providing for diagonal cumulation between the Contracting Parties to this Convention." Offical Journal of the European Commuities **C 214 (30.6.2015)**

COM(2003)452 final. (24.7.2003). "Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee - A simple and paperless environment for Customs and Trade." from http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2003:0452:FIN

COM(2006) 567 final. (4.10.2006). "Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 4 October 2006 "Global Europe: Competing in the world" [COM(2006) 567 final – Not published in the Official Journal]." Retrieved 14 October, 2015, from http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52006DC0567

COM(2008) 169 final. (13.06.2008). "Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions of

1 April 2008 entitled Strategy for the evolution of the Customs Union [COM(2008) 169 final- Not published in the Official Journal]." Retrieved 13 October, 2015, from http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:l11052

COM(2010) 612 final. (9.11.2010). "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Trade, Growth and World Affairs Trade Policy as a core component of the EU's 2020 strategy." Retrieved 13 October, 2015, from http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52010DC0612&from=EN

Appling, G. and A. Archer (1998). Creating the International Trade Organisation. D. Moss. Boston, Harvard Business School

BBC. (2012, 9th March). "Ireland garlic scam: Paul Begley jailed for six years." Retrieved 28 July, 2015, from http://www.bbc.co.uk/news/world-europe-17320460.

Braithwaite, J. and P. Drahos (2000). Global Business Regulation. Cambridge, Cambridge University Press.

Council of the European Union. (2012). "Agreement between the European Union and Canada on customs cooperation with respect to matters related to supply-chain security [2012/0073 (NLE)]." Retrieved 14 October, 2015, from http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2011587%202012%20INIT.

De Wulf, L. (2005). Strategy for Customs Modernization. Customs Modernization Handbook. L. De Wulf and J. B. Sokol. Washington, World Bank**:** 3-30.

European Commission. (2013). "Memo: The EU's bilateral trade and investment agreements – where are we?" Retrieved 14 October, 2015, from http://trade.ec.europa.eu/doclib/docs/2012/november/tradoc_150129.pdf.

European Commission (2014). Customs - The EU Customs Union: protecting people and facilitating trade. Directorate General for Communictions. Brussels, European Commission.

European Commission. (2015a). "Arrangements list." Retrieved 14 October, 2015, from http://ec.europa.eu/taxation_customs/customs/customs_duties/rules_origin/preferential/article_779_en.htm#paneuro.

European Commission. (2015b, 2 October). "Autonomous trade regimes." Retrieved 14 October, 2015, from http://exporthelp.europa.eu/thdapp/display.htm?page=cd/cd_AutonomousTradeRegimes.html&docType=main&languageId=EN.

European Commission. (2015c). "Customs cooperation with Georgia, Republic of Moldova and Ukrain." Retrieved 14 October, 2015, from

http://ec.europa.eu/taxation_customs/customs/policy_issues/international_customs_agreements/geomoldukr/index_en.htm.

European Commission. (2015d). "EU Customs Union – unique in the world." Retrieved 13 October, 2015, from http://ec.europa.eu/taxation_customs/customs/policy_issues/facts_and_figures/eu_customs_union_unique_en.htm.

European Commission. (2015e). "Hong Kong: EU – Hong Kong Customs cooperation." Retrieved 14 October, 2015, from http://ec.europa.eu/taxation_customs/customs/policy_issues/international_customs_agreements/hong_kong/index_en.htm.

European Commission. (2015f). "India." Retrieved 14 October, 2015, from http://ec.europa.eu/taxation_customs/customs/policy_issues/international_customs_agreements/india/index_en.htm.

European Commission. (2015g). "International Customs Co-operation and Mutual Administrative Assistance Agreements." Retrieved 14 October, 2015, from http://ec.europa.eu/taxation_customs/customs/policy_issues/international_customs_agreements/index_en.htm.

European Commission. (2015h). "Korea." Retrieved 14 October, 2015, from http://ec.europa.eu/taxation_customs/customs/policy_issues/international_customs_agreements/korea/index_en.htm.

European Commission. (2015i). "Mutual Recognition of AEOs." Retrieved 14 October, 2015, from http://ec.europa.eu/taxation_customs/customs/policy_issues/customs_security/aeo/mutual_recognition_agreement/index_en.htm.

European Commission. (2015j). "TARIC Consultation." Retrieved August 2015, 2015, from http://ec.europa.eu/taxation_customs/dds2/taric/taric_consultation.jsp?Lang=en.

European Commission. (2015k). "Taxation and Customs Union: ASEAN." Retrieved 5th October, 2015, from http://ec.europa.eu/taxation_customs/customs/policy_issues/international_customs_agreements/asean/index_en.htm.

European Commission. (2015l). "Trade: Agreements." Retrieved 14 October, 2015, from http://ec.europa.eu/trade/policy/countries-and-regions/agreements/#_customs-unions.

European Commission. (2015m, 9 September). "The WTO Trade Facilitation Agreement gets the EU Parliament's green light." Retrieved 3 October, 2015, from http://trade.ec.europa.eu/doclib/press/index.cfm?id=1362.

European Community and Canada (1998). "Agreement between the European Community and Canada on customs cooperation and mutual assistance in customs matters." Official Journal of the European Communities **L 7(13.1.98)**.

European Community and Hong Kong (1999). "Agreement between the European Community and Hong Kong, China on cooperation and mutual administrative assistance in customs matters." Offical Journal of the European Union **L 151(18.6.1999)**.

European Community and Republic of Korea (1997). "Agreement between the European Community and the Republic of Korea on cooperation and mutual administrative assistance in customs matters." Official Journal of the European Communities **L 121(13.05.1997)**.

European Community and United States of America (1997). "Agreement between the European Community and the United States of America on customs cooperation and mutual assistance in customs matters." Offical Journal of the European Commuities **L 222(12.8.97).**

European Community and United States of America (2004). "Agreement between the European Community and the United States of America on intensifying and broadening the Agreement on customs cooperation and mutual assistance in customs matters to include cooperation on

container security and related matters." Offical Journal of the European Union **L 304 (30/09/2004)**.

European Parliament. (2015, 28 September 2015). "Rules of Procedure of the European Parliament; 8th parliamentary term - September 2015." Retrieved 13 October, 2015, from http://www.europarl.europa.eu/sides/getLastRules.do?reference=ANN-09&language=EN.

European Union (2012). "Consolidated Version of the Treaty on the Functioing of the European Union." Offical Journal of the European Union **C 326 (26.10.2012)**.

Flynn, S. E. (2000). "Beyond Border Control." Foreign Affairs **79**(6): 57-67.

Flynn, S. E. (2002). "America the Vulnerable." Foreign Affairs **81**(1): 60-74.

GATT (1947). The General Agreement on Tariffs and Trade, WTO.

GATT (1994). The General Agreement on Tariffs and Trade, WTO.

Grainger, A. (2000). "Customs and International Supply-Chains Issues." Logistics & Transport Focus **2**(9): 40-43.

Grainger, A. (2007a). "Supply chain security: adding to a complex operational and institutional environment " World Customs Journal **1**(2): 17-29.

Grainger, A. (2007b). Trade Facilitation and Supply Chain Management: a case study at the interface between business and government. PhD, Birkbeck, University of London.

Grainger, A. (2008). Trade Facilitation and Import-Export Procedures in the EU. Brussels, European Parliament.

Grainger, A. (2011). "Trade Facilitation: a conceptual review." Journal of World Trade **45**(1): 39-62.

Grainger, A. (2012). Trade Facilitation. Ashgate Research Companion to International Trade Policy. Ken Heydon and Stephen Woolcock. Aldershot, Ashgate.

Grainger, A. (2013). Trade and customs procedures: the compliance costs for UK meat imports. ePrints. Nottingham, University of Nottingham**:** 50.

Grainger, A. (2014a). "Customs Management within Multinational Companies." Nottingham University Business School Research Paper **2014-06**.

Grainger, A. (2014b). "WTO-Abkommen zur Handelserleichterung." Aussenwirtschaftliche Praxis **20**(2): 31-34.

Grainger, A. (2014c). "The WTO Trade Facilitation Agreement: Consulting the Private Sector." Journal of World Trade **48**(6): 1167–1188

HMRC (2013). Notice 34: intellectual property rights. HM Revenue and Customs, GOV.UK.

Horng, D.-C. (2012). "Reshaping the EU's FTA Policy in a Globalizing Economy: The Case of the EU-Korea FTA." Journal of World Trade **46**(2): 301-326.

ICAO (2002). International Standards and Recommended Practices: Annex 9 to the Convention on International Civil Aviation, ICAO. **7/02 E/P1/4800**.

ICC (2010). Incoterms 2010. Paris, ICC Publication.

IFC (2006). Streamlinning Customs Procedrues: Exports and Duty-Relief Regimes. Reforming the Regulatory Procedures for Import and Export: Guide for Practitioners. Washington, The World Bank Group**:** 96-107.

IMO (1998). Facilitation Convention (FAL). London, IMO.

IMO (2003). ISPS (The International Ship and Port Facility Security) Code, 2003 Edition. London, IMO.

Neufeld, N. (2014). The long and winding road: how WTO members finally reached a trade facilitation agreement. Staff Working Paper. E. R. a. S. Division. Geneva, World Trade Organization.

Staples, B. R. (2002). Chapter 16 - Trade Facilitation: Improving the Invisible Infrastructure. Development, Trade, and the WTO: A Handbook. B. Hoekman, A. Mattoo and P. English. Washington, World Bank**:** 139-148.

Stubbs, R. and G. R. D. Underhill (1994). Global Issues and Historic Perspectives. Political economy and the changing global order. R. Stubbs and G. R. D. Underhill, Macmillan**:** 145-162.

UN/CEFACT (2004). Recommendation No. 33: Single Window Recommendation. CEFACT. Geneva, UN. **ECE/TRADE/352:** 37.

UN/CEFACT and UNCTAD (2002). Compendium of Trade Facilitation Recommendations UN/CEFACT, UN. **ECE/TRADE/279**.

UNECE (2014). TIR Handbook; Customs Convention on the Intenational Trasport of Goods under Cover of TIR Carnets (TIR Convention 1975), 10th Edition. Geneva, United Nations.

WCO (1999). Revised Kyoto Convention; International Convention on the Simplifications and Harmonisation of Customs Procedures, WCO.

WCO. (2006). "The Harmonized System : The Language of International Trade." Retrieved 5 October, 2006, from http://www.wcoomd.org/ie/En/AboutUs/aboutus.html.

WCO (2012). Compendium of Authorized Economic Operator Programmes 2012 edition. Brussels, World Customs Organisation.

WCO. (2015a, 12 June). "List of Contracting Parties to the HS Convention and countries using the HS " Retrieved 14 October, 2015, from http://www.wcoomd.org/en/topics/nomenclature/overview/list-of-contracting-parties-to-the-hs-convention-and-countries-using-the-hs.aspx.

WCO. (2015b). "The Revised Kyoto Convention." Retrieved 14 October, 2015, from http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv.aspx.

WCO (2015c). SAFE Framework of Standards: to secure and facilitatate global trade (June 2015). Brussels, World Customs Organization.

WCO (2015d). World Customs Organization Annual report 2014-2015. Brussels, World Customs Organization.

Widdowson, D., B. Blegen, et al. (2014). "Review of accredited operator schemes: an Australian study." World Customs Journal **8**(1): 17-34.

Wolffgang, H.-M. and E. Kafeero (2014). "Old wine in new skins: analysis of the Trade Facilitation Agreement vis-à-vis the Revised Kyoto Convention." World Customs Journal **8**(2): 27-37.

Woolcock, S. (2007). "European Union policy towards Free Trade Agreements " ECIPE Working Paper **2007**(3).

World Bank. (2015). "World Data Bank, World Development Indicators: Tariff rate, applied, weighted mean, all products (%)." Retrieved 13 October, 2015, from

http://databank.worldbank.org/data/reports.aspx?source=2&country=&series=TM.TAX.MRCH.WM.AR.ZS&period.

WTO (2013). Negotiating Group on Trade Facilitation - Draft consolidated negotiating text - Revision 16 [TN/TF/W/165/Rev.16]. Negotiating Group on Trade Facilitation. Geneva, World Trade Organization.

WTO (2014a). Agreement on Trade Facilitation (WT/L/931). Preparatory Committee on Trade Facilitation. Geneva, World Trade Organization.

WTO (2014b). Protocol amending the Marrakesh Agreement Establising the World Trade Organization, Decision of 27 November 2014 (WT/L/940). General Council. Geneva, World Trade Organization.

WTO (2015a). Anual Report 2015. Geneva, World Trade Organization.

WTO. (2015b). "Tariffs: more bindings and closer to zero." Retrieved 10 October, 2015, from https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm2_e.htm.

WTO (2015c). Trade Policy Review; Report by the Secretariat; The European Union (WT/TPR/S/317). Geneva, World Trade Organization.

QA-04-15-924-EN-C (paper)
QA-04-15-924-EN-N (pdf)

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES

POLICY DEPARTMENT

Role

Policy departments are research units that provide specialised advice to committees, inter-parliamentary delegations and other parliamentary bodies.

Policy Areas

Foreign Affairs

- Human Rights
- Security and Defence

Development

International Trade

Documents

Visit the European Parliament website:
http://www.europarl.europa.eu/supporting-analyses

PHOTO CREDIT: iStock International Inc.

ISBN 978-92-823-8470-1 (paper)
ISBN 978-92-823-8469-5 (pdf)
doi:10.2861/56834 (paper)
doi:10.2861/519192 (pdf)

Publications Office