PSCG ANNEX TO
WCO ORIENTATION PACKAGE FOR DECISION MAKERS
JUNE, 2013

ABOUT THIS ANNEX

This Annex is a companion document to the WCO's Orientation Package for Decision Makers. It presents the views of the WCO Private Sector Consultative Group on the strategic role of Customs in supporting and growing a country's prosperity, and provides a response to the question of what business wants from Customs. The Annex provides information for Customs Directors General and senior government decision makers about the impacts of border management on business, and identifies priorities which highlight the importance of transparency, predictability, efficiency and engagement of the private sector in encouraging both direct and indirect business investments.

Who We Are

The PSCG is a group of thirty companies and associations representing all elements of the supply chain across all regions of the world. PSCG members do business in every country of the world (where not restricted by law). The group can be thought of as *"Makers, Movers & Shakers":* the makers are the companies which develop, manufacture and sell goods and services, the movers are those that ensure products move efficiently to markets around the world, and the shakers are the facilitators who act collectively to support and strengthen facilitation of global trade.

The PSCG in Numbers

The following figures illustrate the reach of the PSCG, and the contribution made by its member companies to the global economy. The "makers" in the PSCG collectively had revenues of more than $1.2 trillion in 2012. Many of these companies do business directly in more than 100 countries and several have a presence in 150 or more countries, as well as contract manufacturing in other countries. These large global businesses also have extensive relationships and networks in the Small and Medium Enterprise (SME) sector, with SME suppliers, customers, distributors, service providers and business partners.

WHAT IS INTERNATIONAL TRADE?

International trade can be defined simply as the exchange of goods and services between countries. This type of trade gives rise to a world economy in which prices, or supply and demand, affect and are affected by global events. International trade allows and promotes the expansion of markets for desired and essential goods and services. It is the reason why consumers and businesses can make an informed and economically-driven choice in selecting a Japanese, German or American car, or a Scandinavian, Indian or Brazilian consultancy service. As a result of international trade, the world market contains greater competition and therefore more competitive prices, which theoretically brings a more competitively priced product home to the consumer and to businesses.

Trading in the global market gives businesses, consumers and countries the opportunity to be exposed to goods and services that may not otherwise be available in their own countries. Almost every kind of product can be found on the international market: food, clothes, spare parts, oil, jewellery, wine, stocks, currencies and water. Services are also traded: tourism, banking, consultancy and transportation. Products ***sold to*** the global market – exports, and products ***bought from*** the global market – imports, are subjected to the controls and requirements of each country's agencies responsible for the safe and secure facilitation of such cross-border trade – hence the role played in *trade facilitation* by such agencies, including national Customs, cannot be underestimated, and the need for strong dialogue between agencies and trade is absolutely critical.

International trade drives increased efficiency and encourages countries to participate in the global economy, promoting the opportunity for export growth and also for foreign direct investment (FDI). In such an environment, economies can theoretically grow more efficiently and can more easily become competitive economic participants, with the proviso that the country being invested in can satisfy the investor's stipulated conditions for such inward investment. Again, the trade facilitation agencies of that country play a critical role in the process of creating, sustaining and promoting such conditions.

Trade Controls – Good or Bad for Business?

International trade has two contrasting views regarding the level of control placed on trade: free trade and protectionism. Free trade is the simpler of the two theories: an approach to transacting business with no restrictions on trade. The main idea is that supply and demand factors, operating on a global scale, will ensure that production happens efficiently - nothing should therefore be required to protect or promote trade and growth because market forces will "do so automatically". In contrast, protectionism holds that regulation of international trade is important to ensure that markets function to support national goals. Market inefficiencies are claimed to hamper the benefits of international trade, thus protectionism exists in many different forms, the most common being tariffs, subsidies, preferences and quotas. These strategies are cited by administrations as attempts to correct inefficiencies in the international market, which can sometimes cause conflict between the business sector and government trade regulatory bodies.

It is the perspective of business that as it opens up the opportunity for specialisation and, therefore, more efficient use of resources, international trade has the true potential to maximize a country's capacity to produce, supply and acquire goods and services. So as trade does its part to promote the culture of "open for business", what expectations does business have of the government agencies whose role it is to assure the safe and secure facilitation of trade whilst complying with all domestic and international legislation for the movement of goods across borders?

What Facilitation Measures Does Trade Expect From Government Agencies?

In the two decades since the *dot-com boom,* international trade has trebled in volume and value. The true paradox is that the available Government resources to facilitate such increases have been minimised, whilst increased transparency, process efficiency and procedural uniformity are now expected of the agency networks deemed responsible for facilitating trade. Businesses will always claim that getting their goods to market in a fast and cost-efficient manner is the key to their delivering shareholder value and remaining competitive – hence their increasing demands for effective and timely clearance of their goods at the border.

Business appreciates also that the remit of agencies such as Customs has gone way beyond that of the traditional role of collecting duties and taxes, with such additional responsibilities now extended to include:

- the management of complex governance requirements,
- risk-assessing threats from terrorism, and
- handling increasing environmental compliance requirements.

But business expects that, whilst agencies execute controls and other activities that serve a broader set of government objectives, the efficient and timely clearance of goods must remain a priority within any government's trade facilitation activities.

The introduction of the WCO's SAFE Framework of Standards in 2006 provided the scope for Customs agencies and trade to support each other in ensuring compliant import and export transactions, secure and efficient international transportation and ultimately, secure trade. Business welcomed, and continues to support, the principle of a multi-layered cargo risk management strategy and pre-departure targeting of potentially high-risk cargo. Business also continues to support the establishment of AEO programmes. The compliant trader seeks such engagement and also welcomes (even expects) any associated benefits from being a "low-risk" trader-expedited Customs clearance at import being the most obvious. But businesses appreciate that the cost of participation in such programmes should not outweigh the benefits, and this is particularly the case for SMEs with limited resources, and also where mutual recognition of programmes is not extended beyond borders. The question as to whether trade security initiatives have a positive or negative impact on trade facilitation remains largely unanswered – businesses continue to struggle with unilateral adoption of programme implementation, and countries face the challenge of balancing trade facilitation and national security.

Modernisation and the Future – Dialogue is Key!

Customs modernisation in the form of increased automation and streamlined documentation initiatives via the use of technology continues in the face of the ever-changing demands of peer agencies and trade – all within the context of a market that consistently generates unexpected incidents that demand new ways of transacting business.

In the face of such a dynamic market, trade and Customs are urged to maintain a continuous dialogue – global businesses can leverage great knowledge silos via their own corporate networks and those of the trade associations to which they belong. It is vital that such associations, advisory bodies and working groups have a vehicle to offer their input to new policy and legislative initiatives.

Companies seeking to remain competitive will do all in their power to maintain a healthy, compliant supply-chain, and will engage with all relevant agencies responsible for the management of the cross-border movement of their goods. In our ever-expanding global economy the exchange of goods and services demands the exchange of healthy dialogue and debate between businesses and government agencies to ensure that our companies and our countries remain *Open for Business.*

KEY PSCG PRIORITIES: WHAT BUSINESS WANTS

The WCO Orientation Package for Decision Makers offers Customs administrations a powerful instrument for securing greater support of initiatives for Customs reform and modernization, as well as Customs-business partnerships. This could be of unique importance to governments which are committed to raising the global competitiveness of national economies and narrowing the gap between current Customs procedures and modern requirements of international business. The PSCG believes that identifying existing practices which illustrate Customs administrations' commitment to transparency, predictability, efficiency and engagement of the private sector is a helpful step. These are real examples of "what business wants".

TRANSPARENCY

The Value of Published Customs Rulings (Classification and Valuation)
Rulings published by Customs provide insight into how Customs interprets its own laws (which, in the case of valuation, should reflect the WTO valuation rules). Publishing rulings provides transparency to importers and avoids special one-off arrangements for specific importers – which may lead to a real or perceived corruption of the Customs service in situations where one importer receives a beneficial private ruling that other importers are not aware of, or cannot take advantage of. Published rulings also provide a form of checks and balances on Customs that ensures consistent treatment (predictability) for importers. For example, if Customs publishes two rulings concerning a similar set of facts and circumstances with different conclusions, the conflict between rulings would be quickly detected by traders and brought to Customs' attention by affected importers. Customs would be forced to review and reconcile the matter to return to a state of predictability. Finally, published rulings are more efficient for Customs and the trade since a well written ruling describing a particular situation can be used and referenced by numerous importers that operate with the same or similar facts and circumstances.

The Need for Intellectual Property Enforcement and Respect for the Role of Rights Holders
The OECD in 2008 reported that the economic impact of counterfeiting and piracy is estimated to be over $250b. In the United States, Customs seizures in 2011 were up 24% over the previous year. Companies are investing in the areas of detection, prevention and compliance. This includes efforts to help educate customers, distribution partners and Customs on the detection of mis-branded and counterfeit products.

The Effectiveness of a Small Business Lens Checklist
The objective of a small business lens is to reduce regulatory costs on small businesses without compromising health, safety, security and the environment. It is important because it ensures that regulators are sensitive to the needs of small businesses - when designing regulations, regulators must demonstrate to ministers that they have done what they can to minimize the impact on small business. Regulators must complete a checklist that drives consultation with small business to understand their realities at the earliest stages of design. They have to demonstrate to ministers that due consideration was given to reduce the burden associated with the option imposed upon small business. If a less burdensome option is not adopted, regulators have to justify why. The Small Business Lens has been implemented in Canada and is also featured as a tool in the Canada-United States Regulatory Cooperation Council Joint Action Plan, in which Canada and the United States have agreed to share approaches and tools to assess and account for the needs of small businesses when developing regulations.

PREDICTABILITY

Business wants to know what to expect when conducting cross border transactions. The importation of goods is a key step in any company's end to end business process and supply chain. The length of clearance time, coupled with consistency of actions and steps are vital to businesses as they fine-tune their business models. Major variances result in increased inventory holding which raises costs and the risk of missing commitments to customers.

The Benefits of Opportunities to Adjust/Correct After Release of Goods
Several Customs administrations provide importers with various methods to obtain release of shipments without perfect information about the value of the goods. For example, when importers know there is an "assist" or a royalty involved in a transaction that may affect the value for duty purposes, but they are not aware of the final amount of the assist or royalty, many Customs

administrations have rules that allow the importer to enter the shipment using an estimated value on condition that the importer correct (or "perfect") the entry when the information is known. This provides predictability of delivery and efficiency by allowing the goods to proceed. Customs takes on no risk because they typically hold security bonds that can be accessed in the event that the importer does not correct the entry within prescribed time limits. Examples of such entry programmes include "sight entries" followed by "perfecting entries", reconciliation entries, or post entry adjustments and are available in many countries.

The Need to Promote Consistency During Negotiation and After Implementation of Free Trade Agreements

The PSCG has several recommendations which would contribute to greater consistency in the negotiation and implementation of free trade agreements. The three recommendations below are important as they support the underlying intent of all free trade agreements as well as contributing to the realisation of an agreement's full potential:

- Free trade agreements should provide for modern business practices such as third party/country invoicing and electronic processes.
- Rules of Origin should be flexible by providing for 'co-equal' rules, i.e. agreements would cater for both Change Tariff Classification (CTC) and Regional Value Content (RVC) with manufacturers/exporters/sellers having the choice of which rule to use. This adds no administrative complexity for either business or Customs as only one rule is ever claimed – a CTC rule which is transparent through the PSR (Product Specific Rule) or the RVC rule which is generally a simple formula.
- Operational/certification procedures should be clear, not open to interpretation and based on risk management precepts with minimal documentary requirements.

EFFICIENCY

The Value of Multi-Agency Harmonisation/Single-Windows

The PSCG would like to emphasize the importance of multi-agency operational harmonisation and the utility of programmes designed to simplify the import and export process, such as "single window". The opportunities for multi-agency harmonisation, both internal (agency-to-agency) and external (cross border Government-to-Government), could, when appropriately structured, provide significant benefits to Governments and traders. Similarly, the notion of simplifying the data submission and collection burden on traders through the utilization of a "single window" approach would also provide significant benefits to traders and Governments. For example:

> ***Serbia-Kosovo Collaboration***
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> In late 2011 to 2012 the European Commission brought the senior delegations of the Kosovo and Serbia governments to the table in Brussels to discuss a resolution of the difficulties between the two countries. Included in these talks were the Director Generals of both the Kosovo and Serbian Customs administrations. The talks were politically driven and at stake was the eventual admission to the European Union for both countries. Included in these talks was Integrated Border Management a subject previously irreconcilable given the history of the region. However both Kosovo and Serbia were able to agree on solutions to take Integrated Border Management forward and the result was an agreement for all Frontier Agencies to adopt a 'Single Window' approach. This agreement is now working and regarded as a success by both Customs and trade and the safeguarding of the integrity of both sovereign states. It is a testament to the political will of both countries.

Trans-Kalahari Corridor

There is a current partnership project with the U.S. Agency for International Development and Customs agencies of Botswana and Namibia (the Trans-Kalahari Corridor project) to develop a Regional Single Window (RSW), which is basically a single platform and entry point for data and Customs reporting software for multiple countries. The RSW automates Customs connectivity and increases compliance between the Customs authorities of Botswana, Namibia, and South Africa. Using RSW, data can be sent from a shipper or carrier to Customs for the entire region in one move. Agencies can then send and confirm this data between them. This means companies only submit information once even if covered goods move across multiple borders of countries taking part in the RSW. The goal of the Trans-Kalahari Corridor project is to facilitate economic growth and development in the region as well as raise food and health security since these sectors are very important to the region.

Positive Efforts to Resolve Customs Valuation Conflicts with Tax Laws

A good practice seen in several countries recently is collaboration and cooperation with tax authorities. Both Customs and income tax collection agencies require that related party sales be appraised and valued at an "arm's length equivalent" value. Companies often spend considerable resources to analyze the nature of the transaction(s) and determine a reasonable arm's length price. Once a pricing model is found acceptable by tax authorities, it should be "predictable" that Customs will accept the same transfer pricing model as a basis for appraisal with any appropriate adjustments required by Customs valuation laws. The transparency between agencies (sometimes in different countries) also creates checks and balances. Tax authorities often believe that transfer prices are inflated to lower profits (and therefore lower income tax payable) in their country. Conversely, Customs may suspect transfer prices are artificially low to lower duty payments. Communication and agreement between agencies signifies that a fair and reasonable approach to transfer pricing confirmed a predictable and transparent "arm's length" pricing model. Efficiency is gained when there is agreement and trust between agencies that allows one agency to conduct the transfer pricing analysis that is accepted by other agencies. Importers benefit because they are able to use one pricing strategy for multiple purposes making record keeping more efficient.

Implementation of Centres of Excellence

Prioritization and concentrated training of Customs officers by industry (electronics, pharmaceutical, automotive, etc.) enables improved targeting while facilitating legitimate trade. In recognition of this, the United States has set up “Centres of Excellence” which bring together under one virtual roof Customs specialists according to industry group so that the administration can concentrate expertise and engage with traders in these sectors to better understand industry specific issues and deploy programmes that are more effective because they are specific to industries.

Implementation of AEO Benefits

The PSCG believes strongly in the AEO concept and participated along with WCO members in developing a harmonized AEO application. We know that traders want and need to eliminate the uncertainties of engagement with Customs. AEO should be a pathway to achieving this cooperation to the benefit of both. Thus Customs administrations should encourage and facilitate rather than raise barriers and uncertainty in the AEO admission process, and should extend tangible benefits to economic operators with AEO status. Facilitations and simplifications should recognise AEOs’ enhanced investment and commitment to security by offering more than is available to standard traders. The PSCG’s list of recommended AEO benefits is part of the WCO SAFE Package. The pursuit of AEO mutual recognition agreements and their non-discriminatory application to all AEO status traders, irrespective of their role in the supply chain, is another priority urged by the PSCG.

Advance cargo risk assessment strategy and filing mechanisms
The SAFE Framework of Standards establishes appropriate mechanisms for governments to obtain data required for conducting advanced risk assessment for goods transported across borders. Obtaining advance data at source from the parties that have this information in the normal course of their business activities remains a key PSCG request and the PSCG welcomes the fact that from its very outset SAFE has espoused this principle. The PSCG urges that countries adhere to this approach whenever introducing advance cargo risk assessment policies.

Simplification through Paperless Filings
Electronic paperless filing is possible in several countries and is a best practice that should be encouraged. It allows for more efficient use of Customs' resources by allowing the possibility of centralized processing, while reducing the administrative burden on traders.

The importance of a Focus on Account-Based-Processing
Canada's Customs Self-Assessment (CSA) program and the United States' Importer Self-Assessment (ISA) program, are designed for low-risk, pre-approved importers, using approved carriers and registered drivers and are intended to simplify the entire border crossing process for CSA participants. In Canada, at the border, transactional cargo information is not required; rather, identification of the importer, carrier and driver are the only 3 pieces of information needed to have goods proceed. CSA importers use their own business systems and processes to forward trade data and also to report revenue from the importation of commercial goods. The CSA program simplifies many of the import border requirements so that low-risk shipments can be processed more quickly and efficiently at the border, saving businesses time and money. It also allows the Canada Border Services Agency to better focus its resources on identifying high-risk shipments that pose a potential threat to health, safety or economic well-being.

ENGAGEMENT OF THE PRIVATE SECTOR IN DECISION MAKING

Implement Consultative Committees which Benefit Both Customs and Trade
Both the Revised Kyoto Convention and the SAFE Framework of Standards recognize the value of meaningful consultation with trade. Consultative committees should provide for participation of business representatives as well as Customs and other government agencies, with clear Terms of Reference and procedural rules which set out criteria for participation and leadership of the committee. The initial focus should be on building trust between parties, with a willingness to make changes based on each other's input. Information should be shared by Customs before final decisions are made. There are a number of successful models of Customs-business consultative committees in place today. For example:

> ***Partnership in Brazil: Business Process Mapping***
> In Brazil, an alliance of 75 business associations is working with Customs to modernize Customs processes. These associations, which represent the various private sector stake-holders, first work together to design a map that shows the existing processes (pointing out the major problems and the opportunities for improvement), then the alliance designs how the process could be. At this point the Brazilian Customs designates a team of high-level Customs officials to work with the alliance in designing a map of how the process should be. This map then becomes the basis for a report, which Customs and the alliance prepare jointly, recommending the necessary changes in procedures, systems and regulations for implementing the necessary changes. This partnership recently completed work on modernizing Brazil's Temporary Admission and Export procedures.

Partnership in New Zealand: Engagement in Strategic Planning

Customs invited participants from the public and private sectors in New Zealand to contribute to a refresh of Customs' future direction and strategy. This was part of a process involving key stakeholders, agency and industry partners, customers, management, and staff in co-creating an imaginative future purpose and philosophy for Customs. The aim was to get a broad range of inputs in developing Customs' future directions, recognising that Customs' future success as an organisation will depend on its ability to work with others to deliver value to New Zealand and its citizens. The process has resulted in a new purpose and philosophy for Customs, including a strategic intent to make compliance easy to do and hard to avoid.

Understanding Business Processes and How Supply Chains Work

The PSCG is currently working on a project designed to provide Customs with an enhanced understanding of the true complexities of today's business supply chains. The intention of this work is to help raise Customs' awareness of the varying degrees of business criticality through the overall supply chain, and to help shift the historic focus of Customs from purely point-to-point intervention to broader trade facilitation. The PSCG has members in a variety of industry sectors, each with its unique challenges in today's global trade environment, so we will highlight common as well as diverse needs of these modern business models in dealing with Customs and border management.

As this project is being developed, PSCG members have recognized that Customs and trade need to work together to facilitate efficient and effective supply chains, incorporating security, data integrity and logistics efficiency. Building on that foundation, members in a variety of industry sectors are providing input in response to the following framework:

- Consider the key distinguishing pieces of your business - offering specific examples of what distinguishes your business from others, from a Customs perspective. This may include:
    - Intrinsic value versus face value
    - Sales channel business to government
    - Security
    - Seasonality
    - Geographic Base
- Identify when are the truly critical times when business-to-Customs engagement is vital, that is, where can Customs help business and where can business help Customs?
    - Incoterms
    - Pre-clearance requirements
    - Data and declarations
    - EPZ (economic processing zones) classifications
    - Import classifications
    - Trade security –the ability to use other audit data as the basis of a trade security audit
- Consider multi agency interaction – how business needs to interact with so many more agencies than purely Customs at the border, and how Customs can better assist in this process

CONCLUDING REMARKS

Globalization has dramatically complicated manufacturing supply chains. Multi-step manufacturing is commonplace and the number of suppliers to finished goods manufacturers, both large and small, has increased to accommodate regional and global needs. At the same time, pressures to minimize capital costs require supply chains to be agile, flexible and highly reliable. These forces demand efficient border processes and a need for policymakers and Customs administrations to be highly sensitive to the needs of business in order to assure national prosperity.

The WCO Orientation Package for Decision Makers offers Customs administrations a powerful instrument for securing greater support of government decision makers for Customs reform and modernization and Customs-business partnerships. The valuable information in the Package, including this PSCG Annex, may be of special importance to governments in raising the global competitiveness of national economies and narrowing the gap between current Customs procedures and modern requirements of international business.

The PSCG supports efforts by the WCO and its member administrations to promote the Orientation Package worldwide, with strong participation of leading government, Customs and business officials.

MEMBERS OF THE PRIVATE SECTOR CONSULTATIVE GROUP

AAEI (American Association of Exporters and Importers)
BASC (Business Alliance for Secure Commerce)
Boeing Co.
BP
De La Rue
Deutsche Post DHL
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FIATA
Fonterra Co-operative Group Limited
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GEA (Global Express Association)
Hutchison Port Holdings
IATA (International Air Transport Association)
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IBM Corporation
ICC (International Chamber of Commerce)
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