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# Globalization, Trade, and the Impact of Customs Initiatives on Global Supply Chains

by Todd R. Benson\*

## I. INTRODUCTION

The United Parcel Service (UPS) is a major participant in world trade,<sup>1</sup> with a simply stated purpose: “to enable global commerce.”<sup>2</sup> Serving more than 220 countries and territories worldwide,<sup>3</sup> UPS is directly involved with the movement of goods, information, and funds,<sup>4</sup> essential elements of international trade.

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The Author is indebted to his colleagues at UPS, Norm Schenk and Leslie Griffin, who contributed much to the ideas expressed in this Article.

1. *UPS Worldwide Facts*, UPS, <http://www.ups.com/content/us/en/about/facts/worldwide.html> (last visited Dec. 16, 2013).

2012 Delivery Volume: 4.1 billion packages and documents

Delivery Fleet: 96,173 package cars, vans, tractors, motorcycles, including 2,745 alternative-fuel vehicles

[Supply Chain Solutions] Key Services: Logistics and distribution; transportation and freight . . . ; freight forwarding to 195 countries; international trade management and customs brokerage.

*Id.*

2. See, e.g., Jim Kelly, Former Chief Executive Officer, United Parcel Service, Address (May 10, 2005) (on file with Author) (“The company I work for has a very focused and simply stated purpose: to enable global commerce. As such, we have a responsibility to speak out when forces are at work that seek to disable global commerce.”).

3. See *UPS Worldwide Facts*, *supra* note 1.

4. See *UPS Company History 2000-2007*, UPS, <http://www.ups.com/content/us/en/about/history/2007.html> (last visited Dec. 16, 2013) (“Over time, UPS has become a leader in global supply chain management. At UPS, global distribution and logistics involves managing not only the movement of goods, but also the information and funds that move with those goods.”).

Increased globalization and trade means the movement of goods and commodities to virtually anywhere in the world. Because of the benefits from trade and the genuine needs for goods and supply-chain services around the world, there are good reasons to be concerned about factors that impede trade.<sup>5</sup> These factors may be direct impediments such as in import or export restrictions, tariffs, or the need to supply information and documents.<sup>6</sup> Procedural delays are indirect impediments<sup>7</sup> that can result from well-meaning efforts to address security concerns, overly complicated laws and regulations,<sup>8</sup> or the commercial objectives and vested interests of strong local actors.<sup>9</sup> In all cases, impediments increase costs<sup>10</sup> and may have critical implications where timely or just-in-time delivery is a key factor driving profitable business or functional industry, which is just about everywhere. In such scenarios, missed or delayed shipments involve critical components in the supply chain and may result in damaging financial loss, strained business relationships, or project failure. These issues are critical for large industrial actors and even more critical for small and medium-sized enterprises (SMEs), which typically have small margins for error.<sup>11</sup> Examples are myriad;

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5. See Kelly, *supra* note 2.

6. See Evdokia Moisé & Florian Le Bris, *Trade Costs: What Have We Learned? A Synthesis Report* (Trade & Agric. Directorate Trade Comm., Trade Policy Paper No. 150, 2013), available at [http://www.oecd-ilibrary.org/trade/trade-costs\\_5k47x2hjf48-en](http://www.oecd-ilibrary.org/trade/trade-costs_5k47x2hjf48-en) ("Understanding trade costs is essential for formulating policy interventions designed to reduce such costs.").

7. See Moisé & Le Bris, *supra* note 6, at 23. This Article does not address other hidden impediments mentioned by Moisé and Le Bris, such as smuggling, corruption, and bribery. *Id.*

8. See Mario Holzner & Florin Peci, *The Impact of Customs Procedures on Business Performance: Evidence From Kosovo*, 6 *WORLD CUSTOMS J.* 17, 17 (2012), available at [http://worldcustomsjournal.org/media/wcj/-2012/1/Holzner\\_Peci.pdf](http://worldcustomsjournal.org/media/wcj/-2012/1/Holzner_Peci.pdf) ("One of the biggest barriers for enterprises in transition countries is the low level of institutional development in relation to business regulation, as well as the business tax system. The multitude of institutional policies affects the regular functioning of businesses and often plays a destructive role in the growth and performance of [small and medium-sized enterprises (SMEs)]. Another example of the destructive role of state institutions in transition countries is the considerable number of unnecessary laws and regulations which regulate entrepreneurial activities and business operations.") (internal citations omitted).

9. Examples are long delays at borders for road freight, where officials claim the backups are due to concerns about illicit goods (perhaps security-oriented or due to cultural concerns about certain imports), but may in fact result because they are trying to drive logistics companies to set up hubs in their territory.

10. See Moisé & Le Bris, *supra* note 6, at 6 (stating that costs may be direct, indirect, or hidden).

11. See *Top Barriers and Drivers to SME Internationalisation*, OECD CTR. FOR ENTREPRENEURSHIP, SME & LOCAL DEV. (CFE) (2009), <http://www.slideshare.net/omermirza/43357832> ("To ensure a greater depth of understanding on SME internationalization

for instance, in the healthcare field, missed or delayed shipments might have life-or-death or serious health implications where time-sensitive tests, treatment, or medicine is needed for patients. Ideally, customs and other cross-border agencies adopt principles and objectives that accomplish legitimate regulatory purposes, while helping people and strengthening communities by facilitating trade.<sup>12</sup>

## II. CUSTOMS ADMINISTRATIONS INITIATIVES

The policies, administrative procedures, and regulatory measures adopted by customs administrations can have significant impact on global supply chains. Such initiatives affect market access, the ability to obtain trade finance, and costs in all stages of the supply chain.<sup>13</sup> Examples of initiatives that typically result in delays, market-access limitations, or added cost in the supply chain include the following: customs administrations requiring advanced shipment information earlier in the export and import processes,<sup>14</sup> more focus on product compliance with intellectual property rights (IPR),<sup>15</sup> and more emphasis

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barriers, this study focused on the top four barriers identified by the OECD-APEC study as being by far and away the most serious impediments to SME internationalization . . . . These include Shortage of working capital to finance exports; Identifying foreign business opportunities; Limited information to locate/analy[z]e markets; and Inability to contact potential overseas customers. A fifth barrier, lack of managerial time, skills and knowledge, is additionally examined.” (internal quotations omitted); *see also, e.g.*, Comm’n of the European Cmty’s., *Commission Staff Working Document Accompanying the Proposal for a Council Regulation on the Statute for a European Private Company (SPE): Summary of the Impact Assessment 2* (Comm’n of the Eur. Cmty’s., Working Document No. 2099, 2008), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2008:2099:FIN:EN:PDF> (“SMEs account for more than 99% of companies and for almost 70% of private employment in the European Union. Despite the key role of SMEs in the European economy, only 8% of SMEs engage in cross-border trade . . . . Recent surveys and public consultations show that despite their strong potential for cross-border expansion, SMEs face legal and administrative obstacles. . . .”).

12. *See* Scott Davis, Chief Executive Officer, United Parcel Service, Speech to CEO Leadership Series Hosted by U.S. Chamber of Commerce in Washington, D.C. (Feb. 26, 2009), *transcript available at* [www.pressroom.ups.com/About+UPS/UPS+Leadership/Speeches/D.+Scott+Davis/Economic+Crisis+Cannot+Justify+Trade+Restrictions](http://www.pressroom.ups.com/About+UPS/UPS+Leadership/Speeches/D.+Scott+Davis/Economic+Crisis+Cannot+Justify+Trade+Restrictions) (“We are the global conveyor belt for commerce . . . . We see what growth can mean to employment, to the tax base, and to the strength of a community.”).

13. *See* Moïsé & Le Bris, *supra* note 6, at 2.

14. *See, e.g.*, U.S. CUSTOMS & BORDER PROT. SUPPLY CHAIN SECURITY BEST PRACTICES CATALOG: CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM (C-TPAT) (2006), <http://www.livingstarintl.com/resource/supply-chain-security-best-practices-source-cbp>.

15. *See, e.g.*, *How CBP Protects Property Rights*, U.S. CUSTOMS & BORDER PROT. (updated July 25, 2013), [https://help.cbp.gov/app/answers/detail/a\\_id/104/~/ipr\\_how-cbp-protects-property-rights](https://help.cbp.gov/app/answers/detail/a_id/104/~/ipr_how-cbp-protects-property-rights). This is an area that is easy for regulators to misunderstand, particularly the need to focus on the source and main beneficiaries of infringing goods,

on consumer safety<sup>16</sup> than in the past. Examples of emphasis on consumer safety include the following: the development of security-related screening programs such as Air Cargo Advance Screening (ACAS),<sup>17</sup> the early stages of trusted trader programs such as Authorized Economic Operator (AEO),<sup>18</sup> and increased focus on exports and export procedures.<sup>19</sup> These are more than projected trends; all of these types of initiatives already exist and continue to gain momentum.<sup>20</sup>

### III. REGIONAL VARIANCES: A MATTER OF PRIORITIES

In addition to global trends, there are also regional variances in the types of initiatives being pushed by customs administrations, which reflect different priorities and stages of development. Historically, in Asia emphasis is placed on prohibited and restricted commodities and on cost, insurance, freight,<sup>21</sup> and duty collection.<sup>22</sup> In Europe, there is

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which often have their own supply chains, rather than on the destinations or carriers of such goods, which often are not aware of the infringement and where enforcement presents little risk to the counterfeiter. It is often not understood that non-registration of marks in the country of manufacture means that sourcing is “legal” in the origin country.

16. See, e.g., Press Release, U.S. Consumer Product Safety Commission, Standing Guard for Consumers: CPSC & CBP Working at U.S. Ports to Protect Families This Holiday Toy Shopping Season (Nov. 29, 2012), <http://www.cpsc.gov/en/Newsroom/News-Releases/2013/Standing-Guard-for-Consumers-CPSC—CBP-Working-at-US-Ports-to-Protect-Families-This-Holiday-Toy-Shopping-Season/>.

17. See, e.g., U.S. CUSTOMS & BORDER PROT. & TRANSP. SEC. ADMIN., AIR CARGO ADVANCE SCREENING (ACAS) (2012), available at [http://www.tsa.gov/sites/default/files/assets/pdf/acas\\_one\\_page20120727v3.pdf](http://www.tsa.gov/sites/default/files/assets/pdf/acas_one_page20120727v3.pdf). ACAS programs are probably the first priority for customs administrations to ensure shipments are safe to put on aircraft. ACAS identifies high-risk shipments early in the supply chain through advance information collection. *Id.* The process is a comprehensive data-driven program that leverages historical shipping information, government certifications (such as Authorized Economic Operator and Customs-Trade Partnership Against Terrorism), and intelligence reporting. U.S. CUSTOMS & BORDER PROT. & TRANSP. SEC. ADMIN., AIR CARGO ADVANCE SCREENING PILOT PROGRAM 4 (2012), available at [http://www.tsa.gov/sites/default/files/assets/pdf//acas\\_strategic\\_plan.pdf](http://www.tsa.gov/sites/default/files/assets/pdf//acas_strategic_plan.pdf). As such, ACAS supports risk-based decision making by building on the “Trusted Shipper” concept. *Id.*

18. See, e.g., WORLD CUSTOMS ORG., THE AUTHORIZED ECONOMIC OPERATOR AND THE SMALL AND MEDIUM ENTERPRISE (2010), available at <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/~media/93162547322F462A97F8767D0987A901.ashx>.

19. *Overview of the U.S. Export Control System*, A RESOURCE ON STRATEGIC TRADE MANAGEMENT AND EXPORT CONTROLS, <http://www.state.gov/strategictrade/overview/index.htm> (last visited Mar. 3, 2014).

20. See, e.g., *supra* notes 16 & 17.

21. See U.N. ECON. & SOC. COMM’N FOR ASIA AND THE PACIFIC, TRADE FACILITATION IN ASIA AND THE PACIFIC: AN ANALYSIS OF IMPORT AND EXPORT PROCESSES 18-19, 40-41 (2011), available at <http://www.unescap.org/tid/0ublication/tipub2615.pdf>.

strong emphasis on such matters as IPR<sup>23</sup> and data accuracy.<sup>24</sup> In Latin America, the focus tends to be on modernizing processes,<sup>25</sup> basic risk assessment,<sup>26</sup> and duty collection, whereas in the United States and Canada, the focus seems more on consumer product safety and export enforcement.<sup>27</sup> Aspects of each of these areas of focus can of course be found in any country anywhere in the world at any given time.

#### IV. THE BENEFITS OF REMOVING TRADE IMPEDIMENTS

To formulate appropriate policy interventions, it is important to understand market behavior, the costs of trade impediments, and the benefits that can be achieved in eliminating such impediments.<sup>28</sup> While individual consumers and SMEs may not have the resources to navigate complex border procedures, and therefore may not engage in trade at all to avoid incurring cost,<sup>29</sup> by some estimates, removing half of all trade barriers, such as costly border and customs procedures, could stimulate the \$22 trillion world economy by more than \$1 trillion.<sup>30</sup>

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22. HONG KONG SPECIAL ADMIN. REGION GOV'T, HONG KONG: THE FACTS (2013), available at [http://www.customs.gov.hk/filemanager/common/pdf/pdf\\_publications/ced\\_fact\\_sheet\\_e.pdf](http://www.customs.gov.hk/filemanager/common/pdf/pdf_publications/ced_fact_sheet_e.pdf).

23. See European Commission, *Countries and Regions: China* (last updated Nov. 28, 2013), available at <http://ec.europa.eu/trade/policy/Countries-and-regions/countries/China/> (stating that "the [E.U.] wants to ensure that China trades fairly [and] respects intellectual property rights.").

24. See *International Trade: Reference Metadata in Euro SDMX Metadata Structure (ESMS)*, EUROSTAT, [http://epp.eurostat.ec.europa.eu/cache/ITY\\_SPDS/EN/ei\\_et\\_esms.htm](http://epp.eurostat.ec.europa.eu/cache/ITY_SPDS/EN/ei_et_esms.htm) (last visited Jan. 13, 2014).

25. J.F. HORNBECK, CONG. RESEARCH SERV., U.S.-LATIN AMERICA TRADE: RECENT TRENDS AND POLICY ISSUES 7-8 (2011), available at <http://www.fas.org/sgp/crs/row/98840.pdf>.

26. Global Express Ass'n, *Risk-Assessment Software for Customs in Latin America*, available at [www.oecd.org/aidfortrade/48367189.pdf](http://www.oecd.org/aidfortrade/48367189.pdf).

27. See *supra* notes 16-18.

28. See Moisé & Le Bris, *supra* note 6, at 2 ("Understanding trade costs is essential for formulating policy interventions designed to reduce such costs.").

29. See Holzner & Peci, *supra* note 8; see also *Top Barriers and Drivers to SME Internationalisation*, *supra* note 11.

30. Pascal Lamy, Director-General, Speech to the Chittagong Chamber of Commerce in Bangladesh (Feb. 1, 2013), transcript available at [http://www.wto.org/english/news\\_e/sppl\\_e/sppl265\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl265_e.htm); see also Pascal Lamy, Director-General, Address to the International Trade Center: Equipping ITC for the Priorities and Challenges of Today (May 21, 2012), transcript available at [http://www.wto.org/english/news\\_e/sppl\\_e/sppl1230\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl1230_e.htm) ("According to one recent study, implementation of the WTO Trade Facilitation Agreement would halve the total trade costs which today amount to 10[%] of world trade, and which is a bigger handicap for small countries and small traders."); Mohammed Yusuf, *WTO to East Africa: Improve Your Infrastructure*, VOANEWS (May 23, 2013), <http://www.voanews.com/content/wto-to-east-africa-improve-your-infrastructure/1666978.html>.

Improving trade facilitation indicators could nearly lead to a 14.5% reduction in total trade costs for low-income countries, a 15.5% reduction for lower-middle-income countries, and a 13.2% reduction for upper-middle-income countries.<sup>31</sup> Even more than eliminating or reducing customs tariffs and duties, which are a form of economic disincentive,<sup>32</sup> reducing barriers to trade in supply chains could increase world gross domestic product (GDP) six times as much as eliminating all tariffs, raising global GDP by \$2.6 trillion (4.7%) and exports by \$1.6 trillion (14.5%).<sup>33</sup> Moreover, increased trade increases jobs,<sup>34</sup> with many studies indicating the potential to create millions of jobs.<sup>35</sup> Thus, there

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31. Evdokia Moisé & Silvia Sorescu, *Trade Facilitation Indicators: The Potential Impact of Trade Facilitation on Developing Countries' Trade* (ORG. FOR ECON. COOPERATION & DEV., Trade Policy Paper No. 144 (2013)), available at [http://www.oecd-ilibrary.org/trade/trade-facilitation-indicators\\_5k4bw6kg6ws2-en](http://www.oecd-ilibrary.org/trade/trade-facilitation-indicators_5k4bw6kg6ws2-en).

32. See ROBERT C. FEENSTRA, *ADVANCED INTERNATIONAL TRADE: THEORY AND EVIDENCE* (2004).

33. WORLD ECONOMIC FORUM, *ENABLING TRADE: VALUING GROWTH OPPORTUNITIES* (2013), available at [http://www3.weforum.org/docs/WEF\\_SCT\\_EnablingTrade\\_Report\\_2013.pdf](http://www3.weforum.org/docs/WEF_SCT_EnablingTrade_Report_2013.pdf).

34. See Davis, *supra* note 12 (“In my own company, trade is clearly creating American jobs. . . . Each time we add 40 new international packages . . . we create another new U.S. job somewhere in our system. Last year we grew the international portion of our business by more than 10[%], creating thousands of new job opportunities at UPS for U.S. citizens. And these are quality jobs: mostly well-paying, union positions with the full array of benefits. And each of these jobs reflects the importance of global commerce to our customers. UPS is not alone in this area either . . . . The facts point to only one conclusion: global trade generates jobs. Lots of them.”).

35. See WORLD ECONOMIC FORUM, *supra* note 33 (“Even the modern scenario of supply chain barrier reduction yields a global increase in GDP of 2.6%. This increase in income is equivalent to creating over 76 million jobs worldwide, based on global GDP per employed person (a GDP increase of 4.7%, as in the ambitious scenario, is equivalent to creating 137 million jobs.”); see also, e.g., *TTIP and the Fifty States: Jobs and Growth from Coast to Coast*, ATLANTIC COUNCIL (Sept. 24, 2013) <http://www.atlanticcouncil.org/publications/ttip-and-the-fifty-states-job-growth-from-coast-to-coast> (projecting job creation in all fifty states in the event the Transatlantic Trade and Investment Partnership (TTIP) becomes a reality). If these projections are correct, the implementation of TTIP would create 24,660 new jobs in Georgia, and Georgia would rank eighth among the United States in job creation from the same. ATLANTIC COUNCIL, BERTELSMANN FOUND. & BRITISH EMBASSY, *TTIP AND THE FIFTY STATES, JOBS AND GROWTH FROM COAST TO COAST* (2013), available at [http://www.atlanticcouncil.org/images/publications/TTIP\\_and\\_the\\_50\\_States\\_WEB.pdf](http://www.atlanticcouncil.org/images/publications/TTIP_and_the_50_States_WEB.pdf). Many other states would benefit if this analysis is correct as well. *Id.* Concerning overall growth of domestic jobs, the report claims that “[i]f successful, this effort is expected to significantly strengthen the European and American economies by aligning the two regions’ regulatory regimes—without compromising environmental or product safety standards. This will dramatically increase transatlantic trade and investment flows and support hundreds of thousands of related jobs.” *Id.* “The TTIP is estimated to create as many as 750,000 new jobs in the United States alone.” *Id.* at 2.

are significant benefits that can be achieved through eliminating or reducing trade impediments. With such an understanding, it is not far-fetched to state that the world economy, countries, and individual people all benefit from reducing or removing trade impediments.<sup>36</sup>

## V. GUIDING PRINCIPLES

Given the significant benefits from trade, it is worthwhile to consider what steps can be taken to appropriately address impediments and barriers to trade. In doing so, it must be recognized that simply eliminating real or perceived impediments may not always be practical or appropriate. Security concerns, product safety, food safety and quality,<sup>37</sup> hazardous waste,<sup>38</sup> and other legitimate concerns, such as IPR infringement,<sup>39</sup> must somehow be addressed. While recognizing and addressing legitimate regulatory concerns, much still can and must be done to facilitate trade, especially considering the steep cost of regulatory procedures.<sup>40</sup> Simplifying processes and the regulations that govern trade may be accomplished without sacrificing legitimate concerns. Leveraging technology to minimize paperwork and cost is an example of a fair, reasonable, and decent principle with which all should agree.<sup>41</sup>

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36. See Davis, *supra* note 12 (“I have a simple message today, and it’s this—global trade is one of the most important tools we have to help lift us out of the financial crisis. In fact, at the risk of over-simplifying, it may be the most important tool. . . . Increased global trade could be the number one antidote to the current fiscal crisis.”).

37. See U.N. ECON. & SOC. COMM’N FOR ASIA AND THE PACIFIC, *supra* note 21, at 8, 30, 43.

38. U.S. ENV’T PROT. AGENCY, IMPORTING AND EXPORTING HAZARDOUS WASTE, *available at* <http://www.epa.gov/compliance/monitoring/programs/rcra/importexport.html>.

39. European Commission, *supra* note 23.

40. U.N. ECON. & SOC. COMM’N FOR ASIA AND THE PACIFIC, *supra* note 21, at 3 (stating that “costs associated with completing documentary and related regulatory import and export procedures for international trade can account for up to 15[%] of the value of traded goods.”).

41. See *id.* at 17 (noting the importance of information and communications technology (ICT) to trade).



A. *Balance Between Security and Trade Facilitation*

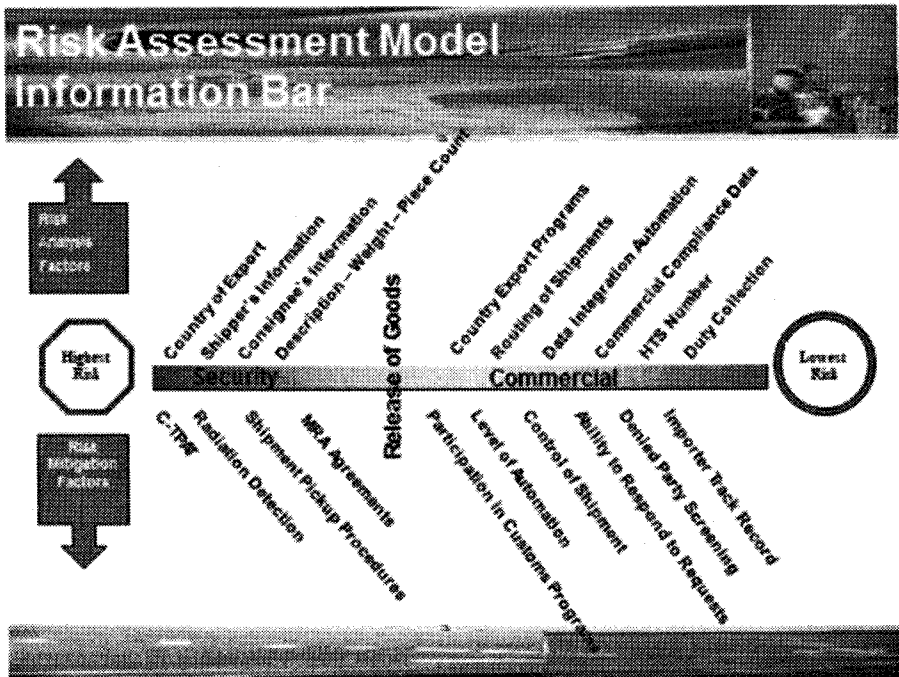


Figure 1 – Risk Assessment: a model – Source UPS

Figure 1 illustrates the numerous concerns associated with cross-border shipment of goods that customs administrations and border agencies may consider from a regulatory perspective.<sup>42</sup> Security

42. The dichotomy between “security” and “commercial” as illustrated in this model is purely from a regulatory perspective. Any impediment from the regulatory process may of course be viewed by individual people and businesses as having a commercial effect.

concerns, such as those associated with transporting goods on an aircraft with people on board, are of critical and immediate importance.<sup>43</sup> Also important, but less critical from a timing standpoint, are considerations such as collection of duties and taxes. An understanding of the issues provides a framework from which to find potential solutions to regulatory bottlenecks affecting trade.<sup>44</sup> From a policy perspective, the fact that different concerns have different levels of associated risk is critical to understand. For example, if a regulator understands that the security aspects associated with putting a shipment on a plane are more critical than collecting the duties and taxes associated with the shipment and that procedures and processes related to duty collection may be successfully accomplished later in time, that regulator is less likely to burden the process with requirements and measures related to duty collection that can come later in time without slowing the process.

Another way to view Figure 1 is as a continuum of factors, including less critical factors where risk mitigation is of less concern from a timing perspective. Where risks are less critical, the range of potential solutions may be wider and subject to a broader divergence of opinion on what should be done. Where this is the case, regulators should take more time to consider options and find solutions that facilitate trade.

### *B. Simplification of Border Regulations and Procedures*

Finding ways to simplify border regulations and procedures can eliminate perceptions of complexity and reduce time and costs associated with cross-border movement of goods.<sup>45</sup> Eliminating unnecessary complexity, redundancy, ambiguity, and conflicts in regulations can reduce time and associated costs involved in attempting to navigate these regulations.<sup>46</sup> Although perhaps a worthy goal in and of itself, achieving clarity does not necessarily mean reducing the size of the

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43. See HONG KONG SPECIAL ADMIN. REGION GOV'T, *supra* note 22.

44. See U.N. ECON. & SOC. COMM'N FOR ASIA AND THE PACIFIC, *supra* note 21, at iii.

45. See Holzner & Peci, *supra* note 8, at 17; see also Moïsé & Le Bris, *supra* note 6, at 2.

46. See Moïsé & Le Bris, *supra* note 6, at 2.

regulations themselves.<sup>47</sup> Simplification of border regulations and procedures should be a guiding principle in regulatory efforts.

*C. Leveraging Automation and Technology Capabilities*

Technology capability and automation of border procedures can significantly streamline processes, enabling greater efficiency and speed and therefore reducing costs.<sup>48</sup> Accordingly, leveraging automation and technology capabilities should be a guiding principle in regulatory initiatives to address cross-border issues. This is an area where multilateral co-operation could provide significant benefits by drawing on existing system templates and expertise for the benefit of all market participants.

*D. Harmonization and Program Standardization*

The harmonization and standardization of procedures and categories of goods can greatly enhance the efficiency of cross-border processes by ensuring all parties are “speaking the same language.” With the goal to “eliminat[e] divergence between the [c]ustoms procedures and practices . . . that can hamper international trade and other international exchanges,” the International Convention on the Simplification and Harmonization of Customs Procedures<sup>49</sup> and its amending protocol<sup>50</sup> is an example of a harmonization initiative that can lead to greater

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47. How large are the United States' customs regulations and statutes? Title 19 of the Code of Federal Regulations covers 1189 pages in two volumes. 19 C.F.R. §§ 141-599 (2013). Title 19 of the United States Code covers 1089 pages in two volumes as well. 19 U.S.C. §§ 1-4112 (2012).

The Harmonized Commodity Description and Coding System, administered by the World Customs Organization (WCO) through its member nations, is a global method of classifying products that are exported and imported for customs purposes. See 19 U.S.C. § 3001 (2012). In the United States, four digits are added at the end of the six-digit coding system to create ten-digit codes in Harmonized Tariff Schedule (HTS), available at <http://www.usita.gov/tata/htm>, for imports, and Schedule B, available at <http://www.census.gov/foreign-trade/schedules/b/>, for exports. See generally 2012 Harmonized Tariff Schedule of the United States Preface, *Introduction to the Harmonized Tariff Schedule 1* (Jan. 1, 2014), [www.usitc.gov/publications/docs/tata/hts/bychapter/1400\\_Preface.pdf](http://www.usitc.gov/publications/docs/tata/hts/bychapter/1400_Preface.pdf). This system is governed by the U.S. International Trade Commission, and exports are governed by the U.S. Census Bureau's Foreign Trade Division. *Id.* The result is a system that is designed to form the backbone for more efficient access and understanding by market participants and more efficient regulation.

48. However, it should be noted that systems must be well-designed to achieve benefits.

49. S. TREATY DOC. NO. 97-23 (1982).

50. See Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures of 18 May 1973, June 26, 1999, <http://www.ifrc.org/Docs/tdr/1273EN.pdf>.

clarity. Where cross-border agencies address similar problems in a similar fashion, market participants enjoy greater certainty, which can eliminate or minimize delays.<sup>51</sup> Harmonization and program standardization may even enable trade that would not otherwise be attempted. Accordingly, harmonization and program standardization are important to properly regulate international transactions.

#### *E. Paperwork Reduction*

Paperwork can be a time and cost factor in all regulatory and trade systems.<sup>52</sup> It can also result in the introduction of human error and risk.<sup>53</sup> Technology and automation can help reduce or eliminate paperwork and the need for costly related resources, including storage.<sup>54</sup> To the extent paperwork can be reduced or eliminated, time and cost associated with the cross-border movement of goods can be reduced and sustainability objectives achieved.<sup>55</sup> Accordingly, reduction of paperwork should be a guiding principle in regulatory initiatives to address cross-border issues.

#### *F. Growth, Service Improvement, and Cost Reduction*

Related to the other guiding principles mentioned above, growth in trade, service improvement, and cost reduction should also be key principles around which cross-border agencies orient their endeavors.<sup>56</sup> As demonstrated above, initiatives designed to facilitate trade growth, improve services to market participants, and reduce costs can have significant benefits.<sup>57</sup> Accordingly, growth, service improvement, and cost reduction should be considered in any regulatory initiative addressing international trade.

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51. U.N. ECON & SOC. COMM'N FOR ASIA AND THE PACIFIC, *supra* note 21, at 42-43, 45.

52. See Moisé & Le Bris, *supra* note 6, at 2.

53. *Id.* at 25.

54. *Id.*

55. *Id.* at 2, 25.

56. *Id.* at 25.

57. *Id.*

## VI. TRADE FACILITATION PRIORITIES AND STRATEGIC OBJECTIVES

“All three elements of the trusted transaction—goods, information and funds—depend on timely deliverables, as promised and planned.”<sup>58</sup>



Figure 2 – Source [UPS]

The strategic objectives that customs administrations and border agencies should consider including measures consistent with the guiding principles described above.

58. See Kelly, *supra* note 2.

### A. *De Minimis*<sup>59</sup>

The establishment of a commercially meaningful economic threshold under which formal cross-border procedures, tariffs, and taxes are unnecessary is a worthwhile strategic objective. Legislation has been introduced in the United States Congress<sup>60</sup> to establish such a threshold for low-value items that can be viewed as unnecessarily limiting commerce or distracting from more important regulatory concerns, especially when procedures associated with clearing customs for small, less valuable items may exceed the value of such items.<sup>61</sup> Studies indicate that raising the *de minimis* threshold would benefit individual consumers, SMEs, and the economies of subject countries.<sup>62</sup>

### B. *Separation of Security and Commercial Trade Compliance*

As described above, the risk considerations for security and commercial trade compliance issues from a regulatory standpoint are very different.<sup>63</sup> Separating compliance requirements for the two, with a view toward overall efficiency, can enable more streamlined processes, with security issues taking precedence up front, leaving less critical issues to be addressed in a manner that does not impede the supply chain.

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59. *De minimis*, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/de%20minimis> (last visited Jan. 15, 2014) (“lacking significance or importance: so minor as to merit disregard”); BLACK’S LAW DICTIONARY 496 (9th ed. 2009) (a Latin phrase that means “trifling” or a matter “so insignificant that a court may overlook it in deciding an issue or case”).

60. *Compare, e.g.*, Customs De Minimis Adjustment Act of 2010, H.R. 5375, 111th Cong. (2010) (proposing to increase the *de minimis* threshold value of articles that may be imported duty-free into the commerce of the United States as established in the U.S. Tariff Act of 1930, 19 U.S.C. 1321(a)(2)(C), from \$200 to \$1,000), and Low Value Shipment Regulatory Modernization Act of 2013, H.R. 1020, 113th Cong. (2013) (proposing to increase the *de minimis* threshold from \$200 to \$800), with William Steel et al., NEW ZEALAND INST. FOR THE STUDY OF COMPETITION AND REG, *A Proposed Pathway Towards Future Reform of New Zealand’s De Minimis Threshold* (2013), available at [http://www.iscr.org.nz/f858,22-567/A\\_Proposed\\_Pathway\\_towards\\_future\\_reform\\_of\\_New\\_Zealands\\_de\\_minimis\\_threshold\\_ISCR\\_Will\\_Steel\\_2013.pdf](http://www.iscr.org.nz/f858,22-567/A_Proposed_Pathway_towards_future_reform_of_New_Zealands_de_minimis_threshold_ISCR_Will_Steel_2013.pdf) (assessing whether New Zealand should lower its *de minimis* threshold).

61. See Press Release, Mike Mullen, Exec. Dir., Express Ass’n of America, Business Coalition Supports Higher *De Minimis* Bill (Sept. 21, 2012), <http://www.postcom.org/public/2012/S3597%20press%20release%2021%20Sep%2012-2.pdf>.

62. Stephen Holloway & Jeffrey Rae, *De Minimis Thresholds in APEC*, 6 WORLD CUSTOMS J. 31, 32 (2012), available at [http://www.worldcustomsjournal.org/media/wcj/2012/1/Holloway\\_Rae.pdf](http://www.worldcustomsjournal.org/media/wcj/2012/1/Holloway_Rae.pdf) (“Most, if not all, APEC economies would benefit by increasing their existing thresholds by a substantial amount.”).

63. See *supra* notes 37-40 and accompanying text.

### C. *Single Window*

There are several different *single window* initiatives taking shape around the world.<sup>64</sup> In general, *single window* is a trade facilitation concept<sup>65</sup> involving the creation of a unified portal or environment through which trade participants engage with a single authority, system, or body for the transmission of documentation and information to fulfill all customs and export-related regulatory requirements.<sup>66</sup> *Single window* can enable efficient data entry related to a shipment from which more than one regulator can draw for various purposes.<sup>67</sup> The entity initiating a shipment need only input data in one place in a standardized manner, rather than seeking to satisfy multiple requirements at multiple agency portals.<sup>68</sup> This enables a speedier and more efficient process for all concerned. Implementation of a *single window* initiative can bring better risk management, improved levels of security, and increased productivity and competitiveness.<sup>69</sup>

### D. *One Government at the Border*

Eliminating the need for trade participants to engage multiple agencies when they trade across borders can go a long way toward eliminating the frustrations, inefficiencies, and costs related to or resulting in trade impediments. This objective is related to *single window* in the sense that both eliminate the need for trade participants to deal with multiple regulators and sets of regulations, resulting in predictable application of rules. Additionally, having one government at

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64. *Single Window Guidelines*, WORLD CUSTOMS ORGANIZATION, available at <http://www.wcoomd.org/en/topics/facilitation/activities-and-programmes/single-window/single-window-guidelines.aspx> (last visited Dec. 17, 2013).

65. ECON. COMM'N FOR EUR., U.N. CENTRE FOR TRADE FACILITATION AND ELEC. BUS. (UN/CEFACT), RECOMMENDATION AND GUIDELINES ON ESTABLISHING A SINGLE WINDOW iv (2005), available at [http://www.unece.org/fileadmin/DAM/cefact/recommendations/rec33/rec33\\_trd352e.pdf](http://www.unece.org/fileadmin/DAM/cefact/recommendations/rec33/rec33_trd352e.pdf) ("The word 'facilitate' means to make easy or easier, and this is precisely the goal of trade facilitation—to make the processes and procedures of international trade as simple and efficient as possible for traders, concerned public authorities and governments. . . . UN/CEFACT Recommendation Number 33 addresses this problem by recommending to [g]overnments and traders the establishment of a 'Single Window' . . . whereby trade-related information and/or documents need only be submitted *once* at a single entry point to [fulfill] all import, export, and transit-related regulatory requirements.").

66. U.N. ECON. COMM'N FOR EUR., THE SINGLE WINDOW CONCEPT (2003), available at <http://unpan1.un.org/intradoc/groups/public/documents/UNECE/UNPAN019892.pdf>.

67. *Id.*

68. *Id.*

69. See ECON. COMM'N FOR EUR., *supra* note 66, at 3.

the border makes better use of human and financial resources, resulting in substantial gains in both productivity and competitiveness.<sup>70</sup>

### *E. Advance Electronic Information Review*

The ability to enter electronic information in advance of a shipment can enable the information to be reviewed prior to arrival at the border. The result can be a streamlined shipment and cross-border process from all relevant regulatory perspectives, identifying issues up front, before other shipments are affected, and eliminating delays. An example of a program based on this concept is the United States Customs-Trade Partnership Against Terrorism (C-TPAT), which seeks to eliminate delays while enhancing security through upfront collection of data elements.<sup>71</sup>

### *F. Streamlined Border Clearances*

Automation can enable a streamlined border clearance process. Where automation enables the creation of “accounts,” trade participants in “trusted-trader” programs<sup>72</sup> can establish a profile based on meeting certain criteria or a pattern of compliance that can justify more streamlined border-clearance treatment.<sup>73</sup> An example, again, is the C-TPAT program in the United States, where compliant activity is rewarded with a score; the higher the score, the more benefits enjoyed.<sup>74</sup> Another example is Mexico’s Tax Administration Service New Certified Companies Scheme (NEEC).<sup>75</sup>

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70. *Id.*

71. See generally U.S. CUSTOMS AND BORDER PROT., C-TPAT: PROGRAM OVERVIEW (on file with author).

72. See generally Zach Rausnitz, *Spotlight: CBP Implements Mutual Trusted Trader Program With E.U.*, FIERCE HOMELAND SECURITY (Feb. 14, 2013), <http://www.fiercehomelandsecurity.com/story/spotlight-cbp-implements-mutual-trusted-trader-program-eu/2013-02-14>.

73. See U.S. CUSTOMS AND BORDER PROT., *supra* note 71.

74. See *id.* (“The program has indicated from its inception that C-TPAT importers are 4 to 6 times less likely to incur a security or compliance examination. . . . Tiered Benefit Levels for importer partners ensure that examination benefits are commensurate with the partner’s status in the program. . . . Minimal program benefits are afforded until after an on-site validation is performed to confirm that the C-TPAT member has in fact adopted tighter security measures. The highest level of program benefits are awarded to those partners that exceed the minimum-security criteria through innovation and dedication to excellence.”) (emphasis omitted).

75. Nick Matyas, *NEEC Is the Mexican Version of the U.S. C-TPAT*, LOGISTICS PORTAL (Mar. 9, 2012, 4:18 PM), [http://logisticsportal.org/community/boards/-/message\\_boards/message1140798](http://logisticsportal.org/community/boards/-/message_boards/message1140798) (The Nuevo Esquema de Empresas Certificadas (NEEC) “is the Mexican version of the U.S. C-TPAT that is modeled after the World Customs Organization’s frame-



### G. Mutual Recognition

As customs agencies establish programs, they should do so with an eye to principles and objectives leading to global consistency. To the extent such programs achieve consistency in practices based on similar principles and objectives, there can be a substantive mutual recognition of programs that can enhance trust and facilitate trade. Examples demonstrating movement in this direction include the 2007 C-TPAT Mutual Recognition Arrangements the United States signed with New Zealand, South Korea, Japan, Jordan, and Canada,<sup>76</sup> as well as with Mexico<sup>77</sup> and the European Union.<sup>78</sup> However, it must be recognized that to a large extent such agreements do not go very far beyond mere acknowledgement of the respective programs. As mutual recognition moves beyond mere acknowledgement toward the creation of a passport-like multiple-use application<sup>79</sup> for Authorized Economic Operators, more tangible benefits will be realized.<sup>80</sup>

## VII. CONCLUSION

Increased globalization and trade can help people and strengthen communities. Impediments to trade that reduce the benefits of trade, including unintended consequences of regulatory activity, must be addressed. Customs administrations can facilitate and enable the benefits of trade by adopting initiatives that balance security and trade facilitation; leverage automation and technology; embrace harmonization and program standardization; reduce paperwork; and seek growth,

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work for secure trade. The program is voluntary and offers participating companies fewer inspections and faster clearances for meeting specified supply requirements at the [United States]-Mexican border.”).

76. Rausnitz, *supra* note 72; see U.S. CUSTOMS AND BORDER PROT., *supra* note 71 (“[U.S. Customs and Border Protection] has numerous Mutual Recognition Arrangements with other countries. The goal of these arrangements is to link the various international industry partnership programs so that together they create a unified and sustainable security posture that can assist in securing and facilitating global cargo trade.”).

77. Press Release, U.S. Customs and Border Prot., U.S. and Mexico Sign Joint Work Plan for Mutual Recognition of Trusted Trader Programs (Jan. 18, 2013), [http://www.cbp.gov/xp/cgov/newsroom/news\\_releases/national/01182013\\_3.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/national/01182013_3.xml) (“Mutual recognition allows for companies enrolled in one program to receive reciprocal benefits from the other with the result of both further securing the international supply chain and facilitating trade between the United States and Mexico.”).

78. Rausnitz, *supra* note 72.

79. The passport is a great example of an application supported by background checks in issuing jurisdictions and maintained by good behavior that enables an account holder to enjoy the benefits of mutual recognition around the world.

80. See *supra* note 18.

service improvement, and cost reduction. Adopting objectives such as meaningful *de minimis* thresholds, separation of security and trade compliance, *single window* trade facilitation, one government at the border, advance electronic information review, streamlined border clearances, and mutual recognition of programs consistent with these principles, can enable the realization of the benefits of trade without sacrificing legitimate regulatory imperatives. Implementation of the trade facilitation concepts discussed in this Article will lead to a more efficient supply chain and global economic growth.

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