



Asia-Pacific
Economic Cooperation

Customs Cooperation in APEC: Strengthening Regional Cooperation

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Introduction

This policy brief explores APEC's progress in implementing Article 12 of the WTO Trade Facilitation Agreement (TFA), which contains measures on customs cooperation. To contribute towards work in this area, the APEC Sub-Committee on Customs Procedures (SCCP), led by Chile and Russia, has conducted a survey to understand the current situation in APEC pertaining to: (i) existing agreements concerning cooperation and mutual administrative assistance in customs matters; (ii) kinds of information being exchanged; (iii) types of channels of communication; and (iv) scope of cooperation. The key findings from the survey will also be used to describe APEC's progress in implementing Article 12 of the WTO TFA. Before examining its implementation, a brief overview of the agreement is provided.

WTO Trade Facilitation Agreement: Scope and Improvements

The WTO TFA aims to support traders in expediting the movement, release, and clearance of goods. The 12 Articles under the TFA deal with the following key issues (McDougall, 2017):

- Publication and administration of trade regulations (articles 1-5)
- Fees and formalities related with trade (articles 6-10)
- Freedom of transit (article 11)
- Customs cooperation, encouraging greater border cooperation, and exchange of information (article 12)

The TFA also seeks to clarify and improve on existing WTO obligations relating to publication and administration of trade regulations, fees and formalities connected to importation and exportation, and freedom of transit. **Table 1** provides a comparison of the specific trade facilitation measures or requirements in the TFA with the General Agreement on Tariffs and Trade (GATT) 1994 to derive a better understanding of the improvements and/or differences.

Table 1: Comparison of TFA Article Requirements with GATT 1994

Articles	Nature of Requirements	Comparison of TFA with GATT Requirements
Article 1: Publication and Availability of Information	The types of information that governments publish and how to make it easily accessible	<u>Enhanced Requirement:</u> Provide more specificity to information needing to be published <u>New Requirement:</u> Publication of information online, establishment of enquiry points, notifications to TFA Committee
Article 2: Opportunity to Comment, Information Before Entry into Force and Consultation	Provides opportunities to comment on new trade-related measures, requires that these measures be made public as early as possible before their entry into force and that border agencies consult with traders on certain matters	<u>New Requirement:</u> Opportunity to comment on new trade-related measures
Article 3: Advance Rulings	Allows traders the opportunity to receive binding rulings on tariff classification, origin, or other customs treatment before importation	<u>New Requirement:</u> Written ruling by Customs on request of a trader and rights of notification for certain actions
Article 4: Procedures for Appeal or Review	Provides traders certain rights of appeal and review of decisions made by Customs	<u>New Requirement:</u> Provide the right to appeal decisions made by Customs in either a judicial or administrative proceeding
Article 5: Other Measures to Enhance Impartiality, Non-Discrimination, and Transparency	Regulates the issuance of notifications or guidance to concerned authorities enhancing controls and inspection of imported goods, particularly food products, beverages and feedstuffs (including detention and testing)	<u>New Requirement:</u> Introduce certain disciplines to which enhanced control notifications are subject to opportunities for a second test (goods subject to

		laboratory testing), and notification of detention of goods at border
Article 6: Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation and Penalties	Regulates the fees and charges on or in connection with importation and exportation, charged for services rendered, and penalties imposed for violation of the domestic customs laws	<u>Enhanced Requirement:</u> Clarify the reference for calculating costs <u>New Requirement:</u> Pre-publication of fees and charges and publishing new fees and charges “an adequate time” before their entry into force; additional requirements for imposing penalties for violation of customs law
Article 7: Release and Clearance of Goods	Regulates the process of release and clearance of goods, means for fee payments, custom practices regarding the determination of goods subject to control, post-clearance customs verification, publication of average release times, special or preferential customs treatment provided to reliable traders, expedited release of certain goods and perishable goods	<u>Enhanced Requirement:</u> To reduce the number and diversity of fees <u>New Requirement:</u> Advanced lodging of documents electronically by traders to expedite release of goods; release of goods, under a guarantee, for early release; post-clearance audit; creation of a category of “authorised operators;” and new and enhanced procedures for the importation of perishable goods
Article 8: Border Agency Cooperation	Regulates the cooperation and coordination of activities of authorities/agencies responsible for border controls and procedures dealing with the importation, exportation, and transit of goods	<u>New Requirement:</u> Provide for specific obligations for border cooperation such as: alignment of working days and hours; alignment of procedures and formalities; development and sharing of common facilities; joint controls; establishment of one stop border post control
Article 9: Movement of Goods Intended for Import under Customs Control	To allow the movement of goods, under a simplified procedure, within its territory to a (inland) custom office (destination) where the goods would be released or cleared (rather than at the port of arrival)	<u>New Requirement:</u> New provision for movement of goods within a member’s territory
Article 10: Formalities Connected with Importation, Exportation, and Transit	Regulates aspects of formalities and documentation requirements connected with importation, exportation, and transit (including streamlining of submission of documents to a “single window”)	<u>New Requirement:</u> Members to periodically review formalities and documentation requirements with a consideration towards simplification and efficiency, and to choose less trade-restrictive solutions
Article 11: Freedom of Transit	Limits and controls the regulations and formalities that are applied by Customs to traffic in transit, strengthens non-discrimination, and promotes agreements and coordination on transit matters at a regional and bilateral level	<u>Enhanced Requirement:</u> Clarify and enhance several requirements in GATT <u>New Requirement:</u> Allow pre-arrival declaration; endeavour to enhance freedom of transit and appoint domestic transit coordinators; limitation of guarantee requirements
Article 12: Customs Cooperation	Covers the exchange of information between custom agencies to verify goods declarations of traders to promote compliance and cooperation	<u>New Requirement:</u> Members shall provide another, upon request and subject to conditions, information and/or documents concerning specific import or export declarations in a confidential and reciprocal manner

Source: Adapted from McDougall (2017) and <https://www.tfafacility.org/>.

Article 12 of WTO TFA

Article 12 of the TFA is a new requirement or obligation in the WTO and is focused on customs cooperation. It aims to regulate the exchange of information between customs to facilitate smooth and accurate verification of goods declarations, particularly in developing stringent measures for

non-compliant traders. The article lays down the coverage and rules for (voluntary) compliance and law enforcement between customs administrations¹. Limiting conditions are also placed such that information exchange can only be carried out in specific cases and is subject to specific

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https://www.wto.org/english/res_e/publications_e/ai17_e/tfa_art12_oth.pdf

conditions like confidentiality obligations. As a result, Article 12 requires members to exchange information while respecting its confidentiality, enabling an effective customs control to be established across borders (Saeed, 2014).

The purpose of the article is to set out procedures to be followed when customs in one member economy requires information from another to verify export or import declarations (Saeed, 2014). In practice the information would have to be requested in writing and responded to with provision in the form it is available. The article also has provisions for disclosure of reasons for refusal or postponement of request. Moreover, it provides flexibility as it prevents interference with existing or future bilateral, regional or plurilateral agreements for customs information and data exchange among members, including on a secure and rapid basis such as on an automatic basis or in advance of the arrival of the consignment (Saeed, 2014).

Specific emphasis is placed on verifying an import or export declaration when there are reasonable grounds to doubt the truth or accuracy of the declaration (for the purpose of enforcement); in which the requesting member should provide a written request, through paper or electronic means, within 90 days from the date of the request. If requested, members should provide specific and relevant information (or the documents) contained in the commercial invoice, packing list, certificate of origin and bill of lading, to the extent it is available. Hence, it acts as a measure to address challenges related with illicit trade, smuggling, evasion of taxes and duties, illicit financial flows and money laundering, among others.

Implementation of Article 12

Section I of the TFA consists of 12 Articles which have been further divided into 36 measures and 238 items. Out of the 36 measures, Article 12 is the 16th most implemented measure². It has a 61.7% rate of implementation to date (category A), 8.4% of measures have been notified under category B and 11.8% of the measures require capacity building support under category C. However, 18.2% of the

article's measures have not been notified as of November 2018.

In comparison, APEC economies have performed relatively well in implementing Article 12. All APEC members except for one have notified all measures under Article 12. None of the article's measures have been listed under category C; however, three economies have notified requiring more time for the implementation of the article's measures, that is, category B. Of the 147 items (49 each under Article 12) among the three economies, 63 items have been notified under category B while all other items are under category A. Particularly challenging areas in Article 12 for two of these three economies are the channel for exchange of information and the provision of requested information which includes the procedures for responding to requests.

Survey on Customs Cooperation in APEC Economies

Chile and Russia conducted a survey on customs cooperation under APEC SCCP to evaluate the current arrangement and future plans of APEC economies to facilitate greater customs cooperation within the region and in turn support the implementation of Article 12. The survey was responded to by all 21 member economies and concluded that there was a need for more cooperative initiatives to smoothen out the unbalanced cooperative efforts within the region.

Around 51% of the agreements concerning cooperation and mutual administrative assistance in customs among APEC economies were reported to be Customs Mutual Assistance Agreements (CMAA) or Economic Partnership Agreements (EPA), which are bilateral (**Table 2**). Only 12 of the 280 agreements were protocol or regional agreements. A wide disparity between the economies is apparent with the lowest total number of agreements reported being two and the highest being 28. In the 2017 survey, fifteen economies mentioned that they plan to conclude agreements on information exchange regarding customs matters.

Table 2: Number of Agreements Concerning Cooperation and Mutual Administrative Assistance in Customs Matters with Other APEC Economies

Economy	CMAA/ EPAs Bilateral	AEO MRA*	MOU	Protocol /Regional Agreement
Australia (AUS)	1	7	14	
Brunei Darussalam (BD)	1			7
Canada (CDA)	5	6		
Chile (CHL)	7		1	1
China (PRC)	15	6		

² <https://www.tfadatabase.org/implementation/progress-by-measure>

Hong Kong, China (HKC)	12	7		
Indonesia (INA)	3		3	2
Japan (JPN)	13	7	4	
Korea (ROK)	15	13		
Malaysia (MAS)		3	N/A	
Mexico (MEX)	8	3		1
New Zealand (NZ)	11	5		
Papua New Guinea (PNG)			2	
Peru (PE)	6	1	6	1
The Philippines (PHL)	6		6	
Russia (RUS)	9			
Singapore (SGP)	1	10		
Chinese Taipei (CT)	5	4		
Thailand (THA)		3	7	
United States (USA)	16	8		
Viet Nam (VN)	8			
TOTAL	142	83	43	12

Source: SCCP Survey (2017). Note: * based on WCO Compendium of AEO Programmes (2018) and information from economies.

The general scope within these agreements, according to APEC economies, is to provide mutual assistance in information exchange, enable proper application of customs law, facilitate combat of customs offences and ensure security of supplies within the international supply chain. In their submissions, some member economies provided the following explanations:

- **Indonesia:** The scope of these agreements are to achieve customs cooperation and information exchange in the field of customs procedures, including their enforcement against the trafficking of restricted and prohibited goods and the importation and exportation of goods suspected of infringing intellectual property rights.
- **Japan:** "CMAA" provides for a framework which enables the two Customs administrations to mutually provide various assistance, including information exchange, so that each customs administration can properly implement its customs laws and regulations, and realise prompt customs clearance and effective border enforcement on harmful goods, such as illicit drugs and firearms, and goods infringing intellectual property rights.

- **Mexico:** Under these Agreements, Customs Administrations provide assistance through information exchange in order to ensure the enforcement of the customs laws and the accurate assessment of customs duties and other taxes by the Customs Administrations of each economy. The main objective is to assist each other in preventing, investigating and repressing any customs offense and to diminish risk levels in the international trade supply chain. It is important to mention that each Customs Administration carries out a request according to the limitations of its domestic law and regulations.

The kind of information being exchanged by most economies, that is 20 out of the 21, are about customs laws and enforcement actions to prevent offenses. Economies also exchange information on observations and findings resulting from the successful application of new enforcement aids and techniques; techniques and improved methods of processing passengers and cargo; new methods used in committing offenses; and the application of the customs valuation agreement (**Table 3**).

Table 3: Kind of Information Being Provided Under Trade Agreements in Relation to Technical Cooperation and Assistance

Economy	Enforcement actions that might be useful in preventing offenses and, in particular, special means of combating offenses	New methods used in committing offenses	Observations and findings resulting from the successful application of new enforcement aids and techniques	Techniques and improved methods of processing passenger and cargo	Information on their respective customs laws	Application of the customs valuation agreement	Other general administrative matters that may require joint action
AUS	X	X	X	X	X	X	X
BD					X		

CDA	X	X	X	X	X		X
CHL	X	X	X	X	X	X	X
PRC	X	X	X	X	X	X	X
HKC	X	X	X	X	X	X	X
INA	X	X	X	X	X		X
JPN	X	X	X	X	X	X	X
ROK	X	X	X	X	X	X	X
MAS	X				X		X
MEX	X	X	X	X	X	X	X
NZ	X	X	X	X			
PNG	X	X	X	X	X	X	X
PE	X	X	X	X	X	X	X
PHL	X	X	X	X	X	X	X
RUS	X				X	X	X
SGP	X	X	X	X	X	X	X
CT	X	X	X	X	X	X	X
THA	X	X	X	X	X	X	X
USA	X	X	X	X	X		X
VN	X		X		X		
TOTAL	20	17	18	17	20	14	18

Source: SCCP Survey (2017).

Nineteen APEC economies noted that the agreements required their customs administrations to cooperate in facilitating effective coordination between the administrations of their partner economies (Table 4). In addition to this, according

to 16 economies, their agreements required cooperation in development and training programmes for personnel, testing of new equipment and procedures, and development of Mutual Recognition Arrangements (MRAs) on Authorized Economic Operator (AEO) programmes.

Table 4: Areas of Cooperation for Customs Administrations under Trade Agreements

Economy	Initiating, developing or improving specific training programmes for the personnel	Facilitating effective coordination between Customs Authorities including exchange of personnel, experts and posting of liaison officers	Consideration and testing of new equipment and procedures	Developing MRAs on AEO programmes	Any other general administrative matters that may require joint action
AUS	X	X	X	X	X
BD	X	X			
CDA	X		X		X
CHL	X	X	X	X	X
PRC	X	X	X	X	X
HKC	X	X	X	X	X
INA	X	X	X		X
JPN		X		X	
ROK	X	X	X	X	X
MAS	X			X	X
MEX	X	X	X	X	X
NZ		X	X		X
PNG	X	X			X
PE	X	X	X	X	X
PHL	X	X	X	X	X
RUS	X	X		X	
SGP		X	X	X	X
CT	X	X	X	X	X
THA	X	X	X	X	X
USA		X	X	X	X
VN		X	X	X	
TOTAL	16	19	16	16	17

Source: SCCP Survey (2017).

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APEC Member Economies: Australia; Brunei Darussalam; Canada; Chile; China; Hong Kong, China; Indonesia; Japan; Korea; Malaysia; Mexico; New Zealand; Papua New Guinea; Peru; Philippines; Russia; Singapore; Chinese Taipei; Thailand; United States of America; and Viet Nam.

A wide range of customs cooperation related rules and issues are addressed in agreements among APEC economies, however, there is still a lack of channels for “on-line” exchange of information which may hinder cross-border transfers. Only 30% of economies reported having an “on-line” exchange system in place. On the contrary, a majority of the economies (51.4%) reported using email to facilitate information exchange between customs administrations. The World Customs Organization’s (WCO) Customs Enforcement network and the Pacific Transnational Crime Network (PTCN) were mentioned in the survey as some of the platforms for exchanging information among economies or agencies.

Provisions of Cooperation and Exchange of Information among Customs Agencies in RTAs or FTAs

Provisions on customs are not uncommon in trade agreements. Indeed, 58 percent (118 out of 202) of RTAs that were notified to WTO then included provisions on customs and trade facilitation (UNCTAD, 2011). Customs clearance and facilitation provisions were included in 81 agreements while cooperation and exchange of information provisions were provided for in 76 agreements. Most of the agreements related to the latter pertained to cooperation among customs agencies. Some of the agreements also included cooperation between customs and business communities (e.g. Canada–Costa Rica, EPAs by the EU, Japan–Malaysia), or between customs and non-parties to include all trading partners (e.g. Japan–Viet Nam). The scope of cooperation and information exchange in these agreements generally covered: (i) Customs-related measures; (ii) Provision of technical assistance and capacity building; (iii) Development of the joint work programmes; and (iv) Implementation of international standards and instruments (UNCTAD, 2011).

Neufeld (2014), in analysing 217 RTAs’ trade facilitation measures noted the following findings, particularly on measures regulating customs cooperation and exchange of information:

- Divergences are most pronounced in areas of customs cooperation and information exchange. This is due to significant differences and disparities in substantive coverage despite having similar terminology or language.
- Rules on the ‘exchange of information’ are hardly available in the cooperation chapters of RTAs.

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https://www.unescap.org/sites/default/files/publications/TIDwp_02_11.pdf

⁴ <http://www.wcoomd.org/en/topics/wco-implementing-the-wto-atf/atf/customs-cooperation.aspx>

Additionally, many of the cooperation provisions are “fairly weak, unspecific and/or have a very limited scope”.

- Some RTAs use the phrase ‘cooperation’ to reflect the desired level of ambition in a given area to make it less binding.
- Provisions on the exchange of customs-related information are more frequent than those on cooperation. In particular, almost 70% of all RTAs include some sort of language on information exchange.
- Not much is being said on how the exchange should be implemented, but most of the agreements do have some requirements for protecting confidential information.

Duval (2011) provided an example of an agreement that contains specific provisions on customs cooperation. The Korea-USA FTA provides a particularly specific customs cooperation provision (Article 7.5) that indicates “where a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importations, the Party may request the other Party to provide specific confidential information normally collected in connection with the importation of goods” and further provides a detailed definition of “reasonable suspicion of unlawful activity”³.

Administrative cooperation, which is inclusive of customs, is important for developing RTAs since it creates a steady base for implementation of other trade integration instruments. Customs cooperation provides such a platform for greater trade facilitation by enabling successful administration of revenue and security (Zieliński, 2017). Indeed, WCO has highlighted that Article 12 allows flexibility for members in terms of establishing the legal basis for information exchange as members may enter into or maintain bilateral, plurilateral or regional agreements for sharing or exchanging customs information and data⁴. This will be particularly helpful for certain RTAs that apply cumulation of origin rule between its members; such as the Pacific Alliance (Perry 2014)⁵.

Concluding Remarks

Article 12 of the TFA focuses on customs cooperation and information exchange among customs administrations to ensure compliance and counter illegitimate trade. The footnote of Article 12⁶ notes the overall objective of lowering the frequency of non-compliance, and consequently reducing the need for exchange of information in pursuit of enforcement. Wu (2017) further explained that in

⁵ <https://www.cgdev.org/sites/default/files/pacific-alliance-way-forward-latin-american-integration.pdf>

⁶ https://www.tfafacility.org/article-12#_ftn1

practice, customs cooperation could take the form of: exchange of information, assistance relating to controls, assistance relating to surveillance, appearance by customs officials before a court or tribunal abroad, presence of customs officials of one economy in the territory of another, participation in investigations abroad, controlled delivery, and others.

Article 12 encourages members to share information on best practices in managing customs compliance, to cooperate in technical guidance or assistance, and to support capacity building for the purposes of administering compliance measures and enhancing their effectiveness. A significant part of Article 12 provides the details of information exchange protocols such as how to make a request, how to respond to a request, how to protect the data being exchanged, and how to deal with the administrative burden. In particular, the article states that a requesting member shall consider the proportionality between its fiscal interest in pursuing its request and the efforts (resource and cost implications) to be made by the requested member in providing the information.

Customs valuation is an area of interest within customs cooperation. A major part of the cooperation exists when sharing practical lessons learnt from the administration and implementation of the Customs Valuation Agreement between customs administrations. While in general customs valuation deals with determining the customs value of imports, in the case of customs cooperation it deals with the accuracy of that value (Wu, 2017). Article 12 is expected to strengthen the framework of customs valuation which is often considered to be complex and confusing (PWC, 2017)⁷.

Implementation of Article 12 has the potential to reduce the cost and time in trading across borders. According to the World Bank's Doing Business report, cost and time to trade are dependent on two key factors: border and document compliance. Border compliance (which includes Customs clearance and inspection) is responsible for the majority of cost and time spending economies incur when trading (Table 5). In APEC economies, time spent for border compliance reaches an average of 35 hours for export and 45 hours for import. Border compliance costs traders around USD 344 for export and USD 382 for import. These figures constitute around 55-57% of the total time to trade and 81% of the cost to trade in APEC economies. Comparing with OECD average values, there is clear opportunity for improvement by speeding up the process and lowering costs for border compliance. Implementation of TFA Article 12 could

help to address this issue by encouraging better customs cooperation across economies.

Table 5: Trading Across Borders: Time and Cost for Border Compliance (2019)

	Time to export	Time to import	Cost to export	Cost to import
OECD				
Average	12.8 hours	9.5 hours	USD 152.5	USD 108.5
As a % of total	82.1%	69.7%	80.7%	79.2%
APEC				
Average	35.3 hours	44.8 hours	USD 343.6	USD 381.6
As a % of total	57.1%	55.4%	80.9%	81.0%

Source: World Bank, Doing Business 2019; and APEC Secretariat, Policy Support Unit calculations.

Some APEC members already facilitate the exchange of information among their customs authorities regionally through electronic interfaces. For example, the Single Window interoperability among ASEAN and the Pacific Alliance grouping has mechanisms and protocols in place to allow the exchange of information about merchandise value, tariff, origin, and sanitary and phytosanitary (SPS) measures. The AEO scheme is another platform where customs could exchange information through MRA of AEO programmes. Such arrangements will help improve security and smoothen customs clearance, among others.

In summary, four key issues are pertinent to the successful implementation of Article 12:

- 1. Trust among customs agencies:** Trust between the various trade-related entities is necessary to enable the smooth implementation of Article 12 as it involves pursuing compliance in information exchange in a reciprocal manner. While exercising cooperation in Single Window or AEO programmes may not be directly addressed in Article 12, these initiatives could serve as a useful foundation for stronger customs cooperation. Similarly, existing RTAs and FTAs could act as useful catalysts for forging deeper cooperation across different customs administrations. Improved transparency in the process is also expected to increase trust. For example, the Philippines and the USA have established a Trade Transparency Unit⁸ which allows either party to access trade transactions data for analysis.
- 2. Confidentiality of information:** Implementation of Article 12 may involve the

⁷ <https://www.pwc.com/au/tax/taxtalk/assets/alerts/trade-intelligence-aug-sep17.pdf>

⁸ <http://www.loc.gov/law/foreign-news/article/philippines-united-states-agreement-to-launch-trade-transparency-unit/>

exchange of confidential information to help facilitate smoother verification of goods declarations. However, this could be of particular concern to traders who may find it risky to share information that is trade sensitive or may impact their business operations. While there are measures under Article 12 to ensure the protection of confidential information, participating in other privacy agreements may support the feeling of trust among the parties concerned. For example, APEC members' participation in the APEC Cross Border Privacy Enforcement Arrangement (CPEA) may facilitate stronger confidence for cross-border data sharing.

3. **Improving understanding on procedures for exchanging information:** Economies may face challenges in implementing measures pertaining to the channel for exchanging of information and the provision of requested information. Considering that these kind of information is usually time-sensitive, further clarity is useful to understand what happens if the requested information could not be provided in a timely manner. Further discussions could help to attain greater clarity on how to deal with delays or refusal of provision of information.
4. **Strengthening regional cooperation:** Economies should continue strengthening and deepening regional cooperation. For example, APEC could strengthen cooperation with organisations that have been engaged in work on customs cooperation like the WCO and Pacific Alliance. Within APEC, the SCCP plays an important role in pushing customs cooperation forward. In addition to its objectives to streamline and harmonise customs procedures in the region, SCCP has been engaged in encouraging the implementation of the WTO TFA including Article 12. SCCP's work programme includes the APEC Customs 3M Strategic Framework which was endorsed at the 2014 APEC Ministerial Meeting to encourage "mutual recognition of control, mutual assistance of enforcement and mutual sharing of information" to pursue customs cooperation. The WCO's Voluntary Compliance Framework (VCF) aims to improve the level of and facilitate voluntary compliance of traders to reduce Customs' burdens like inspection and improve data quality⁹. Furthermore, the Pacific Alliance's Single Window exchanges information on SPS measures and certificates of origin which facilitates automatic data exchange cooperation among its members. Continuation of similar work and regional

cooperation with organisations like the WCO and Pacific Alliance is recommended for the SCCP to aid in implementing the article.

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