HOW DOES LEGISLATION AFFECT THE FUNCTIONING OF COORDINATED BORDER MANAGEMENT OF AUTHORITIES?

Coordinated Border Management in theory & practice

Author
Michelle Klouth

Date
May 2020

Master Program Executive Master in Customs and Supply Chain Compliance
Faculty Rotterdam School of Management (RSM)
University Erasmus University Rotterdam (EUR)
First Supervisor Prof. Walter de Wit
Co-reader Prof. Dr. Yao-Hua Tan

HOW DOES LEGISLATION AFFECT THE FUNCTIONING OF COORDINATED BORDER MANAGEMENT OF AUTHORITIES?

Coordinated Border Management in theory & practice

Author Michelle Klouth

Program Executive Master in Customs and Supply Chain Compliance

Faculty Rotterdam School of Management (RSM)

University Erasmus University Rotterdam (EUR)

Email mcollingham5@gmail.com

Committee

First supervisor Prof. Walter de Wit

International and European Customs Law, Erasmus University Rotterdam

Co-reader Prof. Dr. Yao-Hua Tan

Information and Communication Technology at the ICT Group of the Department of Technology, Policy and Management of the Delft University

Customs supervisor Justus Becker MSc

Coordinating policy advisor Enforcement Policy & Management

Customs administration of the Netherlands

TABLE OF CONTENTS

PREFACE

This thesis represents the culmination of my Master study at the Rotterdam School of Management. It presents the results of my research into how legislation affects Coordinated Border Management and how both the efficiency and effectiveness of CBM can be improved.

This research helped me expand my knowledge in the area, especially since this is related to my work in customs, but is not an actual part of my current work experience. It has, therefore, provided me with new knowledge and awareness. I especially enjoyed the interviews and I also gained valuable information throughout the process. It gave me the chance to understand the different authorities in a new way.

I would like to thank my university supervisor Prof. Walter de Wit and co-reader Prof. Dr. Yao-Hua Tan for the professional guidance and constructive feedback. I would also like to thank Justus Becker, my company supervisor, coordinating policy advisor Enforcement Policy & Management at the national office of the Customs Administration of the Netherlands. His willingness to offer support during my research was extremely valuable. He helped point me in the right direction to successfully conclude my research.

Furthermore, I would like to thank my colleagues and interviewees for their contributions and willingness to share their knowledge. Thank you all so much for your help and support, it kept me motivated and eager to finish this project. I am also thankful to the Customs Administration of the Netherlands for giving me the opportunity to follow this Executive Master program and the management of the Customs Office Schiphol Cargo, for giving me the opportunity to do the research.

A final and special thanks in this preface goes out to my family, my husband John, who helped with the English proofreading, and my children, Sam and Chloe, who had to put up with me spending so much of my spare time on this thesis. I am grateful that you supported me along the way. I promise to spend more time with you now that I have finished my study.

Michelle Klouth

Haarlem, April 2020

EXECUTIVE SUMMARY

When Customs performs checks at the border on behalf of, or jointly with other responsible authorities they need to cooperate and collaborate with these authorities. For example, when executing controls at the same time and place (a one stop shop) or when sharing data needed to execute controls and develop risk profiles. Both the border control agencies, and businesses need the cooperation of Customs to facilitate effective and efficient controls. The application of Coordinated Border Management (CBM) will lead to coordinated controls and processes and manage the borders effectively and efficiently.

CBM can be accomplished through better coordination between border agencies in policy development and also during operational activities. Factors that play a role are the **legal framework, coordinated controls** and **risk-management**. In order to implement CBM a strong legal framework is necessary which consists of the legal basis for authorities to collaborate. This framework should contain the control powers for authorities and define under which circumstances these are to be used. Tasks that must be fulfilled by the authorities must be clearly defined. Preferably, controls should be conducted at the same time and place, this is called a "one-stop-shop". For effective risk-management cross border regulatory authorities need sufficient, timely and good quality data to perform controls. Risks must be detected as early as possible, ideally before goods cross the border. Customs supervision starts with risk-management. This means that Customs supervision focuses primarily on high-risk goods and businesses so that low risk goods that can be released will not be unnecessarily hindered.

The Dutch government has agreed to coordinate checks at the border and to make them as efficient as possible. CBM from the perspective of Dutch Customs, involves the coordination of the implementation of the statutory duties of various competent authorities, the organization of risk-based supervision and process agreements which are laid down in the annex to the framework agreement. To achieve this, the competent authorities and businesses, work closely together.

The objective of this research is to provide recommendations to the management of Dutch customs to optimize CBM. The main research question of this study is:

> How does the application of legislation by Dutch Customs and competent authorities affect the functioning of Coordinated Border Management in terms of efficiency and effectiveness of the collaboration between these authorities on enforcement controls?

For the case study different experts within three authorities were interviewed: The Health and Youth Care Inspectorate (IGJ), the Netherlands food and consumer product safety authority (NVWA), and Dutch Customs. Additionally, two freight forwarders were interviewed. The interview questions were divided into four subjects: **controls**, **legislation**, **coordination** and **risk-management** with a focus on the flow of medicines and phytosanitary goods. Different research methods have been used to perform this study. Initially, a literature study of the concept CBM was undertaken. Followed by desk research to find out what the Dutch vision is for CBM. Next, legal research into the medicine and phytosanitary legislation was carried out, enabling an overview of the various tasks and legal powers of the authorities to be clarified. Finally, case studies were investigated by means of interviews and SWOT analyses.

Customs has been given a coordinating role by the legislator, and Dutch Customs is actively carrying out this role. This can be seen through the number of factors that play a role in CBM according to the view of World Customs Organisation (WCO), Organization for Security and Co-operation in Europe (OSCE) and the European Commission (COM), which are implemented by Dutch Customs. One of the key factors is having a detailed understanding about the tasks that are required to be performed by Customs for other departments. The framework agreements include a description of these requirements. Three further examples that confirm the view of the above mentioned organizations are: coordinated controls by applying the one-stop-shop principle; having joint inspection facilities; formalized risk-management based on horizontal supervision and sharing of data.

The following differences and gaps in the legislation on medicines were found:

- The definitions "release for free circulation" towards "import" in the Medicine Act. The customs legislation uses the definition "release for free circulation", the directive speaks of "placing on the market" and the Medicine Act uses the term "import".
- The difference between the classification rules (CN) and the definition of "medicine" in the Medicines Act.
- The meaning of a shipment of commercial nature is not defined in the medicine Act.
- The different prohibitions and restrictions on medicines in the national legislation between member states.

The recent revision of the European control regulations for phytosanitary goods showed that this has resulted in harmonisation between the UCC and the phytosanitary EU and national legislation.

In order to improve CBM a legal review of the non-fiscal laws is recommended which could identify legal gaps or inconsistency of concepts in relation to other (national) legislation. These gaps and inconsistencies, due to EU legislation, could be brought to the attention of the relevant EU working group in Brussels. The definition of "import" in the national legislation does not align with the UCC and the relevant directives. It is recommended to raise this issue with the responsible ministry (VWS) and suggest to ammend it so it aligns with the EU directive. Moreover it is important to create awareness for using the customs terminology in an earlier stage, when new non-fiscal legislation is drafted in Brussels. The definition of "medicine" is not in line with the required classification rules Combined Nomenclature.

In the framework agreement the tasks of the authorities and procedures are laid down. Coordination between the authorities takes place at policy, tactical and operational level. The SWOT analyses in this study shows the current level of performance (strengths and weaknesses) and the opportunities for improvement. The most important points for improvement are:

- Create an agreement for novel foods.
- A reduction of the number of physical inspections on phytosanitary goods should be considered.
- Regarding medicines, more input of data for risk-analysis and involve more authorities in sharing data.
- Using the experience of the operational staff when making agreements at policy- and tactical level.
- Investigate data sharing opportunities e.g. data platform.
- The quality of physical inspections by customs on phytosanitary goods should be reviewed.

The activities regarding novel foods, which are not formalised in agreements, should be formalised. It is recommended to investigate the option of sharing data of physical inspections from the inspection agency for the verification of customs declarations. Instead of two inspections by the inspection service and the customs, one (physical) inspection could be sufficient to complete the customs verification.

The following aspects concerning the legislation were linked to the complexity of laws:

- The legal options and restrictions in sharing data give difficulty in understanding.
- The specific non-fiscal legislation is seen as complex by businesses.

The legal options and restrictions in sharing data give difficulties in understanding.
A better understanding of the legislation will reduce the degree of complexity for the implementing parties. It is recommended to improve user's knowledge of the non-fiscal legislation and the legal possibilities to share data. By means of clear instructions and teaching materials, and e-learning modules for officers including practical examples. For companies, clear information that can be found in an easy way on the website, a client manager and also via the customs phone (a Customs information telephone service). Not only general information for common practices, but especially for very specific, uncommon cases.

Finally, it is recommended to have regular contact with the business community about more efficient control approaches and in addition provide feedback about irregularities in controls so authorities and companies can learn from each other.

LIST OF FIGURES AND TABLES

ABBREVIATIONS

Adw	Algemene Douanewet
Adb	Algemeen Douanebesluit
Adr	Algemene Douaneregeling
CN	Combined Nomenclature
CBM	Coordinated Border Management
COM	European Commission
Client Import	NVWA system
DA/IA	Delegated/implementing acts
ENS	Entry Summary Declaration
EU	European Union
FIN	Ministry of Finance
FIOD	Fiscal Intelligence and Investigation Service
IGJ	Health and Youth Care Inspectorate
JIC	Joint Inspection Centre
ILT	Human Environment and Transport Inspectorate
LNV	Ministry of Agriculture, Nature and Food Quality
NVWA	Dutch Food and Consumer Goods Authority
OCR	Official Control Regulation EU 2017/625
OM	Netherlands Public Prosecution Service
OOD	Instructing party - Contractor Committee Customs
OSCE	Organization for Security and Co-operation in Europe
RIVM	National Institute for Public Health and the Environment
RKC	Revised Kyoto Convention
ISZW	Social Affairs and Employment
SPOCs	Single Points of Contacts
SWOT	Strengths, Weaknesses, Opportunities, and Threats
TFA	Trade Facilitation Agreement
UCC	Union Customs Code
VWS	Ministry of Health, Welfare and Sport
WCO	World Customs Organisation

1 INTRODUCTION

The growth and globalisation in trade, different production patterns and trading methods, has lead to an increase of goods crossing the borders. Traders demand faster clearance time while government and society expect protection against health, safety and security risks. Border control agencies are faced with an increasing amount of activity associated with the increase. Likewise, border security has increased since the terrorist attacks of the 11th of September 2001. However, Custom authorities and border control agency resources have not increased. The work has to be done with the same amount of staff. An increase of trade volume can bring new risks and threats. Therefore, a balance must be found between trade facilitation and handling security risks. This means legitimate goods are not held up unnecessarily and Customs must protect the border against terrorists, organised crime and goods which could be harmful to the public.

Border controls primarily consist of: the supervision of customs procedures; revenue collection; food- and product safety; and the enforcement of import and export prohibitions and restrictions. When Customs performs checks at the border on behalf of, or jointly with other responsible authorities they need to cooperate and collaborate with these authorities. For example, when executing controls at the same time and place (a one stop shop) or when sharing data needed to execute controls and develop risk profiles. Both the border control agencies, and businesses need the cooperation of Customs to facilitate effective and efficient controls. The application of Coordinated Border Management (CBM) will lead to coordinated controls and processes and manage the borders effectively and efficiently.

Issues in the coordination between authorities and causes of delays at the border could be:

- multiple inspections by different authorities
- no formalised agreements
- limited knowledge of each others legislation
- specific tasks and mandates not clear
- limited capacity for decision making at headquarters of authorities
- lack of risk-management
- lack of data exchange between authorities (WCO, 2020)

1.1 Problem definition

When goods are being brought into or out of the Union, various authorities have responsibilities in the enforcement of regulation related to the goods or the mode of transport. Dutch Customs is developing Coordinated Border Management (CBM) because as a customs authority it has the legal responsibility (art. 47, sub 1 Union Customs Code[1] (UCC) in the Netherlands to coordinate the controls of these authorities at the EU border. The common objective is to maintain a proper balance between customs controls and facilitation of legitimate trade[2].

The goal of this thesis project is to investigate the collaboration between government agencies and the impact of legislation, to achieve a more efficient and effective coordination at the border. This is done by providing an overview of the various enforcement tasks and legal powers of the authorities. The objective is to provide recommendations to the management of the Dutch customs to optimise CBM.

[1] Union Customs Code: Regulation (EU) No 952/2013 (OJ L 269) of the European Parliament and of the Council of 9 October 2013
[2] Article 3 (d) UCC

An efficient and effective coordination is brought into practice through:
- coordination between border agencies during policy development
- coordination in operational activities
- joint risk management (M. Polner, September 2011)
- single window/one leading organization (ODB, 2017, May)
- the exchange/reuse of data and information (ODB, 2017, May)

1.2 Research Question

How does the application of legislation by Dutch Customs and competent authorities affect the functioning of Coordinated Border Management in terms of efficiency and effectiveness of the collaboration between these authorities on enforcement controls?

1.3 Research sub-questions

1) What is CBM? Which criteria play a role? What does theoretical best practice CBM look like? What is the Dutch vision for CBM? (problem analysis)

2) What is the legal basis for cooperation and what aspects of legislation affect the functioning of CBM? (diagnosis)

3) How are tasks (controls, risk-management) coordinated between the competent authorities? What is the current level of performance? Can it be improved? How can it be improved? (diagnosis)

4) What can be learned from the current collaboration between the competent authorities? What can authorities learn from each other in practice? (evaluation)

1.4 Scope of the research

In this project analysis the following two key areas are considered:
1) The organisation and approach of Customs and other authorities in the Netherlands, with the aim of efficient and effective enforcement of legislation for trade flows entering the European Union (EU).
2) The coordinating role of Customs in the various relations with these other authorities.
Efficiency and effectiveness are necessary for both business (with respect to trade flows) and government (with respect to the usage of public means).
For this study two product groups are viewed:
- medicines
- goods subject to phytosanitary measures (plants, flowers, fruit and vegetables; (hereinafter referred to as phytosanitary goods)

This study mainly focuses on the governmental viewpoint, with respect to the coordination of enforcement controls between authorities. The study will not look into the intra-organisational or cultural aspects of CBM, or the information flow (Single Window). The coordination of other tasks of authorities in cross border trade flows, like administrative tasks (e.g. issuance of licenses), is also out of scope.

To scope the research a definition of the main concept "Coordinated Border Management" is given. This study follows the perspective of the World Customs Organisation (WCO). According to the WCO the definition of CBM is:

> ***"Coordinated Border Management*** *(CBM) refers to a* ***coordinated*** *approach by* ***border control agencies****, both domestic and international, in the context of seeking greater efficiencies over* ***managing*** *trade and travel flows, while maintaining a balance with compliance requirements*[1]*".*

In this definition 'border control agencies' can be seen as the (competent) authorities with legal tasks related goods, or its transport (mode), at the border, as mentioned in art. 47, sub 1, of the UCC):

> "*Where, in respect of the same goods, controls other than customs controls are to be performed* ***by competent authorities*** *other than the customs authorities, customs authorities shall, in close cooperation with those other authorities, endeavour to have those controls performed, wherever possible, at the same time and place as customs controls (one-stop-shop), with customs authorities having the coordinating role in achieving this".*

This research follows the terminology of European legislation, since that is the legal basis for the EU cross border goods flow in the Netherlands.

This thesis project focusses on the cross-border trade flows of the Netherlands. For this project the coordination of tasks (controls, risk-management) and control powers of Customs and two authorities with tasks at the EU border in The Netherlands, i.e Dutch Food and Consumer Goods Authority (NVWA) and Health and Youth Care Inspectorate (IGJ) has been researched.

1.5 Scientific problem and relevance

This research is done to show if CBM could be improved by comparing the theory and legal aspects of CBM with the existing situation in practice. The objective is to provide recommendations to the management of Dutch customs to optimize CBM.

2. RESEARCH METHODS

2.1 Introduction

A conceptual model was used as an aid to set up the research. The conceptual design indicates what, why and how much is being researched. The research model indicates the steps that have been followed in the research. To answer the research questions, multiple methods were used which are described in the following paragraphs.

2.2 Research design

The conceptual model shows the theoretical framework.

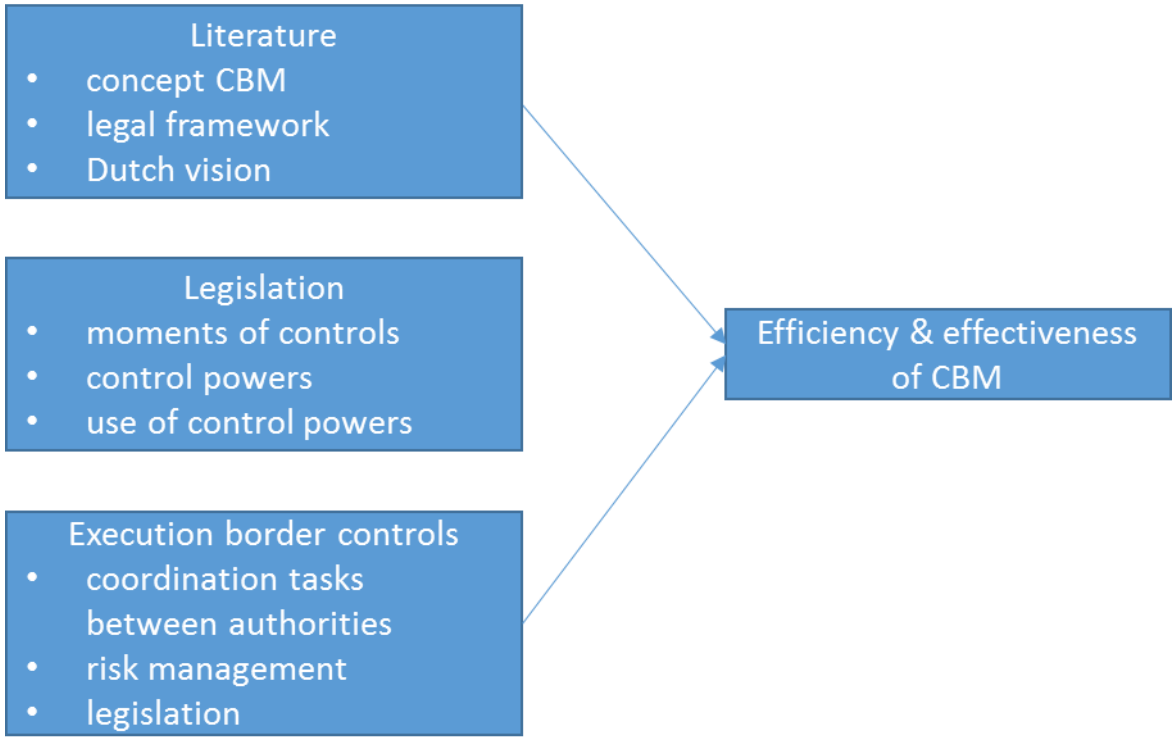

Figure 2.1 Conceptual model

This model shows the causes (left) and consequences (right). On the basis of literature the concept CBM and the legal framework have been researched. Desk research is done to get an insight in the Dutch vision on CBM. On the basis of legal research the effects have been researched of the legislation (moments of controls, control powers and use of control powers) and the execution of border controls (coordination tasks, risk management, applying legislation), on the efficiency and effectiveness of CBM.

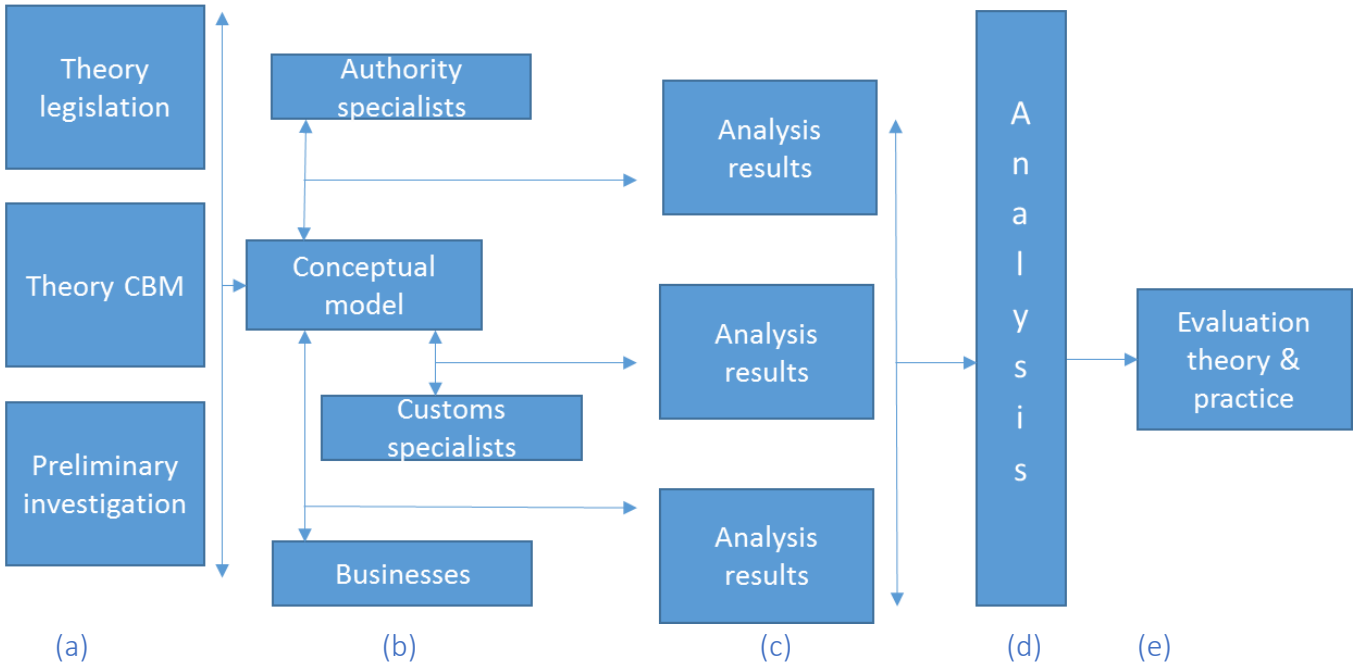

Figure 2.2 Research model (Verschuren & Doorewaard)

The research model gives a visual representation of the data collection, analysis and evaluation process of this study. This model is explained as follows:

(a) A preliminary analysis of CBM within the Customs organization based on conversations with experts (preliminary investigation), attendance at an international congress, internal memos and relevant scientific literature and legislation (CBM theory, legal research of tasks, control powers and concepts). This provides the assessment criteria (conceptual model), with which (b) the effectiveness and efficiency of CBM for two authorities and customs have been evaluated by interviews with experts. A comparison of (c) the results of these interviews and the legal research and literature research (a) results in (d), an overall Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis of the current practice. Which leads to (e) an evaluation of what can be learned from the current collaboration between the competent authorities and what authorities can learn from each other.

2.3 Literature research

A literature study on scientific literature and publications relating to CBM was conducted to find aspects of CBM which could be useful in the legal research and case studies. Literature was found on websites of the following organisations:

- World Customs Organization (WCO)
- European Commission (COM)
- The World Bank and the Organization for Security and
- Co-operation in Europe (OSCE)

Desk research was conducted by reading several internal minutes and memos in order to obtain insight in Dutch Customs vision on CBM and how CBM has been implemented.

2.4 Legal theory research

This method involves describing, analysing, understanding, classifying and evaluating the law. Doctrinal legal research is about the formulation of legal 'doctrines'. It is used to clarify ambiguities within rules, characterised by the study of legal texts. (Chynoweth, 2020) Subsequently, legal research has been undertaken on the legal framework of CBM at international and national level. Furthermore, the concepts "brought into the customs territory of the EU" and "release for free circulation" were studied in both customs and non-fiscal legislation. For the case study, legal research was conducted on a European Union and national level per subject (medicines and goods subject to phytosanitary measures). The objective being to find out what control powers the different authorities have, and if there are legal aspects that could influence CBM in practice, for example the timing of inspections by different authorities (moments of control).

2.5 Case study

Case study research has been recognized as being particularly useful for examining the how and why questions (Yin, 1994). The representativeness of a case study is a potential weakness, but it doesn't outweigh the advantages, for example the in-depth insights.
For this research, the purpose of the case studies is the evaluation of the problem statement. The cases will elaborate on the problem at a more detailed level, illustrate the current situation and provide insights into the recommendations After the literature study the potential variables of CBM were identified and legislation, controls and risk-management were chosen to investigate in three cases. A comparative case-study has been completed for the following stakeholders:

1. Health and Youth Care Inspectorate
2. Dutch Food and Consumer Goods Authority
3. Dutch Customs

The choice was made to do an analysis for each key stakeholder to gain different insights. In the first phase, the cases were examined separately from each other; this can be seen in the SWOT and impact analysis per case (see chapter 5). In the second phase an overall analysis in which the results of all three case studies were taken into account (see chapter 6).

The three case studies involved the following product groups:

1. Medicines
2. Phytosanitary goods

The choice of these product groups is because of the involvement of several competent authorities and the possibility to look for differences in controls, legislation and risk-management. Furthermore, medicines and flowers are part of the Schiphol Smart Cargo Mainport Program. All interested parties have been carefully selected by consulting various sources in advance with knowledge and skills of the authorities and chosen product groups. As the size of the population, the specialists within the authorities, is very small, sampling is not possible.

2.5.1 Interviews

To conduct the case study 12 face-to-face interviews were held using an interview protocol. The academic argumentation for the analysis of the interviews is further described here. The questions are semi-structured interviews to promote the reliability of the research, to make people feel at ease so that socially desired answers are avoided and to be able to use an iterative process with an inquisitive, open attitude. Structured interviews will be less involved (Leen & Mertens, 2015). The interviews were held orally. Besides the interviews with the authorities, also two stakeholders from business have been interviewed to gain knowledge about first-hand experience with the three authorities about the relevant product groups. This was undertaken to gain a more complete picture and because the facilitation of trade is one of the goals of CBM so their contribution is of importance.

The interviews were held with two protocols:

1) Interviews with customs and authority experts (Annex I)
2) Interviews with businesses (Annex II)

The same questions have been asked to all interviewees in the same way, which increases the validity of the interview. The interviews were validated by the interviewed experts.

2.5.2 SWOT analysis

For the results of the interviews a SWOT analysis (Strengths, Weaknesses, Opportunities, and Threats) per authority has been compiled, see chapter 5. An overall SWOT analysis including literature, legal study and the interviews is described in chapter 6. By using the strategic tool "SWOT analysis", this paper has an in-depth analysis of CBM in the Netherlands for the authorities involved in this study

A **SWOT analysis** can be used as a technique for strategic planning for organizations. SWOT stands for:

- ***S****trengths*: characteristics of the business or project that give it an advantage over others.
- ***W****eaknesses*: characteristics of the business that place the business or project at a disadvantage relative to others.
- ***O****pportunities*: elements in the environment that the business or project could exploit to its advantage.
- ***T****hreats*: elements in the environment that could cause trouble for the business or project.

Strengths are the ***internal positive practices*** and Weaknesses are the ***internal negative practices*** of an organisation. Opportunities are the ***external positive chances*** and Threats are the ***external negative risks*** for an organisation.
The objective of a SWOT analysis is to connect internal and external factors to develop appropriate strategies.

3 REVIEW OF RESEARCH LITERATURE & DESK RESEARCH

3.1 Introduction

The literature review will provide an academic input to this study, the purpose of this chapter is to research the academic context of CBM. The objective of the study is to achieve a more efficient and effective coordination at the border. In order to understand the concept of CBM a literature study has been undertaken using a Webster & Watson table (see annex III) for a list of relevant literature containing the different concepts in the research goal and research question.
First a review of relevant academic literature on CBM was carried out, to identify the potential variables of CBM which could be used for developing the interview protocols. Secondly in order to know how and which aspects of CBM are implemented by the Dutch Customs and government authorities a desk study was carried out. This was done by reading memo's and minutes about CBM and related subjects.

In order to be able to answer the research question, it has been split up into sub-questions. A number of sub-questions are answered by means of the literature study. They are:

- What is CBM?
- Which criteria play a role?
- What does theoretical best practice CBM look like?
- What is the Dutch vision for CBM?

The results of the literature study and desk research provides the theoretical framework for the case study.

3.2 What is CBM?

There are different definitions of the concept Coordinated Border Management (CBM). The European Union uses "Integrated Border Management", the World Bank uses "Collaborative Border Management and Comprehensive Border Management is used by the OSCE.

As earlier mentioned, this study follows the perspective of the World Customs Organisation. According to the WCO the definition of CBM is:
***"Coordinated Border Management** (CBM) refers to a **coordinated** approach by **border control** agencies, both domestic and international, in the context of seeking greater efficiencies over **managing** trade and travel flows, while maintaining a balance with compliance requirements[3]".*
"While many organizations refer to this as 'Integrated Border Management', the World Customs Organization prefers 'Coordinated Border Management' as it gives prominence to the principle of coordination of policies, programs and delivery outcomes whilst avoiding any perception of favouring a single solution." (Aniszewski, 2009, p. 6)

CBM can be seen from a government and trade perspective. According to Polner (M. Polner, September 2011), CBM for customs is about describing how improved regulatory efficiency and effectiveness can be realised through a better coordination between border agencies in policy development and also during operational activities, e.g. executing border controls. CBM can bring savings of common use of ICT systems, cross-training and shared resources.

[3] http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/safe-package/cbm-compendium.pdf?la=en

By sharing information between different competent authorities a more efficient risk-management approach can be reached. (Aniszewski, 2009, p. 6)

If border controls are efficiently managed it will benefit trade because it will lead to fewer interventions. Authorities will take into account risk mitigation criteria and focus controls on high risk consignments. Less interventions at the border will lead to lower costs because there is less waiting time. The WCO underlines the importance of the involvement of trade as an essential part of CBM, besides the dialogue between Customs and other border agencies this is also essential between Customs and the business community (World Customs Organization Coordinated Border Management, 2020).

3.3 Categories of CBM

At the border many authorities play a role regarding formalities and inspections of goods entering and leaving the EU. Authorities can be physically present, like the Plant health Inspectorate and the live animal inspection agency and some authorities delegate activities to Customs authorities as part of border patrol activities. All these authorities have different (strategic) objectives. Authorities use different IT systems and require documentation for different purposes. The latter can lead to duplication of documentation and more paperwork. With all these different authorities, which "tend to work independently, there is a risk of overlapping activities" (Miller et al, 2012, p. 41).

The European Commission guidelines for Integrated Border Management (European Commission, 2010, p. 24) and the (Miller et al, 2012, p. 39) both mention three categories of Integrated Border Management:

1) "Intra-service co-operation
   Intra-service cooperation: This refers to procedures, exchange of information and resources within one ministry or agency (European Commission, 2010)
2) Inter-agency co-operation: This refers to cooperation and coordination between different ministries or border management agencies, as well as between the operational
   officers of the different agencies active at the border or ICSs.
3) International co-operation:
   a) Co-operation at the local level between officials on either side of a border.
   b) Co-operation between neighbouring States.
   c) Co-operation at the multinational level."

3.4 How can CBM be achieved in theory?

One of the main objectives of CBM is to ensure effective border controls and facilitate trade. This can be achieved by competent authorities delegating tasks to the customs authority. From a survey study conducted by the ASEM (Asia-Europe Meeting) Working Group on Customs about CBM it was noted that businesses in the Netherlands appreciate the "one-stop-shop" at the border and require reduction of administrative burden and more benefits in practice for Authorised Economic Operators. (ASEM, 2017).

According to the (World Customs Organization, 2015, p. 11) one of the key principles for coordinated border movement of goods is "streamlined checks and clearance". "Regulatory agencies should coordinate efforts to execute control on high-risk cargo". The procedures for executing controls should be clear to the trader and if a shipment needs to be inspected by multiple agencies, this should be conducted simultaneously by all parties involved, or by a lead agency like Customs, authorised to conduct controls on behalf of another agency.

When it is possible, the inspection of the goods could also be performed inland at the company location, instead of at the borders. Another principle is the availability of "necessary equipment and facilities to execute controls" (World Customs Organization, 2015, p. 11). The next three sub paragraphs describes the factors to be taken into account when incorporating CBM.

3.4.1 Coordination & Cooperation

Customs supervises the requirements that are laid down in the non-fiscal legislation (for instance the presence of an authorisation for medicines) on behalf of other ministries . However, not always is the required expertise and technical skills present within customs services, for instance for the phytosanitary inspection. Therefore authorities cooperate when goods are crossing the borders, e.g. customs authorities requiring the approval of the competent authority before releasing the goods. Another form of coordination and cooperation is when the same goods have to be inspected by competent authorities and the customs authorities. Preferable, the control is conducted at the same time and place, this is called "one-stop-shop" laid down in article 47 sub 1 of the UCC. A broader context of the concept "one stop shop" is not only combined controls, but also the utilisation of control findings from another authority which obsoletes the need for a second control. Lastly, customs authorities and competent authorities can exchange information bilaterally, e.g. for risk management purposes, for granting authorisations or post audits.

3.4.2 Risk management

For effective risk-management cross border regulatory authorities need sufficient, timely and good quality data to perform controls. In accordance with Article 46 (5) UCC and Article 36 UCC IA, information related to significant risks identified in any of the other (non-fiscal) policies shall be shared amongst customs authorities. Risks must be detected as early as possible, ideally before goods enter the border. Customs supervision starts with risk-management. This means that Customs supervision focuses primarily on high-risk goods and businesses so that "low risk goods that can be released will not be unnecessarily hindered" (World Customs Organization, 2015, p. 10). The Framework Agreement (Ministry of Health, Welfare and Sport and the Ministry of Finance, 2019) mentions the various forms of supervision Customs makes use of when applying risk management, such as:

- modernisation of Customs supervision, based on agreements with business (horizontal supervision);
- checks on declarations;
- physical checks on goods;
- control actions.

The customs authorities use (semi) automated data-processing techniques to carry out risk-analysis on the declarations. The information for the risk-analysis is obtained from control results, declarations and other sources of information but will also take into account the trader's reliability, for example the AEO status. Before assigning specific control tasks to customs, the type of risks that are at stake and the time to carry out any necessary control should be known. To make controls efficient and effective it should be preferred and using a reference to the various moments of the customs procedures (pre-arrival, upon arrival, when assigning the goods a customs procedure, at exit, or as a pre-audit or post-clearance control).

3.4.3 Legal framework

In order to implement CBM a strong legal framework is necessary which consists of the legal basis for authorities to collaborate. This framework should contain the control powers for authorities and define under which circumstances these are to be used. Tasks that must be

fulfilled by the authorities must be clearly defined. The exchange of information with the other competent authorities must be clearly described. With regard to customs authorities the European Commission outlines the fact that the "conditions under which the powers are to be used should be clearly defined" (European Commission, 2010, p. 37). Also relevant for the implementation of CBM is to identify legal gaps or overlaps regarding to other national legislation that prevents effective CBM. (European Commission, 2010, p. 36)

Furthermore, the European Commission mentions: "a transparent and predictable legal framework is essential to ensure that those who are the subject of regulation know what the rules are (European Commission, 2010)." Therefore, customs legislation should be clear and simplified for businesses aiming to reduce the administrative burden for trade. In the UCC it is also described as a mission of the customs authorities to maintain a proper balance between customs controls and facilitation of legitimate trade[4].

3.5 Dutch Customs vision on CBM

The Dutch government has agreed to coordinate checks at the border and to make them as efficient as possible[5]. The pursuit of cooperation is also laid down in the UCC[6] and the General Customs Act. Customs has been given a coordinating role from the legislator to find a good balance between enforcement and trade facilitation.

In Rotterdam and Schiphol, government authorities and the business community work together[7] to accelerate the flow of goods in the main ports through cooperation between government authorities and the business community. To achieve a safe, fast, efficient handling of goods, all parties work closely together in the areas of control, speed, safety and reliability in the maritime and air logistics chain. This is based on five objectives[8]:"
1. Smart: use smart and innovative methods and tools;
2. Safe: promote the flow of goods that does not harm the safety, health and environment of citizens;
3. Secure: protect the flow of goods against all forms of intentional disruption;
4. Swift: guarantee the predictability and speed of the flow of goods that are transported correctly according to the rules;
5. Sustainable: promote the sustainable growth of the Dutch economy".

There are two joint inspection locations, one at Schiphol Airport and one in the port of Rotterdam. To make the co-inspection facilities more attractive, to businesses, authorities but also within the customs organization, the Dutch Customs choose the name "smartgate". Showing that by using smart and innovative methods, the logistical efficiency of government and business increases and it improves enforcement. Involving and informing the business community about the developments was an essential part to create solidarity.

CBM from a perspective of the Dutch Customs, involves the coordination of the implementation of the statutory duties of various competent authorities, regarding the cross-border flow of goods. Each competent authority has its own statutory duties and must perform those duties without fail. The competent authorities, each from their own perspective, have to deal with companies who should comply with legislation and regulations. Vice versa,

[4] Article 3(d) UCC
[5] Article 8.1Trade Facilitation Agreement
[6] Article 47 Cooperation between authorities UCC
[7] Project Smart Gate
[8] https://www.acn.nl/wp-content/uploads/2017/05/018_019-ACN_LR.pdf

companies have to deal with various contact moments with the various regulators. It is the intention of the Dutch Customs to ensure, through close cooperation between authorities, that cargo controls take place as efficiently and effectively as possible with a balance between government controls and facilitation of trade entering the Netherlands via the seaports or airports.

The Dutch government has entered into an international coordination with the business community in the WTO Trade Facilitation Agreement[9]. The Human Environment and Transport Inspectorate (ILT), NVWA, Customs and the Inspectorate Social Affairs and Employment (ISZW) supervisors are taking part in the Logistics Supervision Table. Their main goal is to accomplish trade facilitation by minimizing controls for companies that comply well and focus attention on those who do not comply[10]. This collaboration is performed without losing sight of the fact that each regulator has their own task of manage its own surveillance domain. This may mean that action must be taken individually within the joint ventures.

3.5.1 First main ports, then nationwide

Rotterdam seaport and Schiphol airport are the main ports in the Netherlands. The cross-border flow of goods in these ports are the largest nationwide. Many regulators concentrate the supervision activities around these main ports. The benefits of cooperation are therefore the largest there. The concept of CBM can also be applied nationally. To keep the development steps manageable, a bottom-up approach was chosen: first get the concept working properly in the main ports, then roll it out nationally and apply it in all regions.

3.5.2 One-stop-shop

When goods enter and leave the EU via the Netherlands, Customs is in principle responsible for performing checks because of their supervisory role on goods with tax obligations. Customs is responsible for import duties and excise duties and non-fiscal duties for other authorities, such as the NVWA (for food, animals and plants) and the ILT for hazardous substances, waste and fireworks.
Customs, in the role of general practitioner, checks non-fiscal restrictions and prohibitions for other authorities, at the EU border. This is performed at the request of various responsible departments (see chapter 4.7) and reports findings and irregularities to the specialist supervisors. For example customs monitors some aspects of compliance of the Medicines Act (being in possession of a authorization) on behalf of the Ministry of Health, Welfare and Sport.

Every competent authority has, from its own legal task and powers, its own logistic moment at which controls can be executed most effectively. The need for shifting checks to the interior remains with Customs, the responsible authorities and the business community. The idea of a one-stop-shop is to carry out the checks that must be carried out at the EU external border as coordinated as possible. This in order to achieve the desired speed in the handling of checks and to minimize the administrative burden on businesses. For phytosanitary goods the health and safety inspection must be carried out at the border by the NVWA, as the competent authority. This is a conscious separation of authority. Customs monitors, via the customs declarations ‘bringing the goods into free circulation’, if these checks have been carried out

[9] Article 8.1 Trade Facilitation Agreement
[10] Visiedocument Toezichttafel Logistiek, november 2015

by the NVWA, so no goods are released without permission. Regarding medicines, Customs have sufficient knowledge and skills to carry out the inspection on behalf of the IGJ.

3.5.3 Coordination

According to Dutch Customs[11] CBM is coordination of:
1. the fulfillment of the general practitioner and specialist role. It should be clear what legal non-tax duties are performed by Customs for other supervising authorities and what knowledge and expertise are required for this. The legal duties of the competent authorities must be known.

2. the organization of risk-based supervision.
Customs provides information to the competent authorities on the basis of legal options and agreements on the exchange of information that are laid down in framework agreements.

3. process agreements about who, what, when and from whom is expected. This concerns, for example, the manner in which each role is performed, the way in which cases (in particular irregularities) are transferred and in which way findings are reported back.

The authorities[12] consider it important to share a common vision on enforcement and compliance that benefits the businesses. The starting points for this are to release the "correct" goods as quickly as possible and to keep the supervisory burden as low as possible; and to act decisively, in accordance with the regulations, for goods where irregularities are found.

3.5.4 Risk-based controls

Customs[13] and competent authorities[14] have a risk-based approach to manage controls: controls on those goods where (higher) risks are present based on knowledge and information about the trade sector and previous controls.

The risk analysis is conducted electronically and verifies for each declaration whether it meets criteria laid down in risk profiles. If the criteria for a shipment are not met, the shipment will not be selected for verification. The shipment can then be released.
When the risk criteria for a shipment are met, a semi-automatic analysis is carried out first as to whether a shipment must actually be checked. This may be a physical or documentary control or a combination.

In order to ensure that inspections are carried out efficiently by specialized competent authorities and with the least supervisory burden, these supervisors will work in a similar manner. Two situations are possible:

1. Independent checks by the competent authority
The competent authority hereby provides the required risk information for a task in advance and a risk profile is drawn up jointly with Customs. This profile also comes into force in the customs system, and the competent authority receives a notification as soon as the profile is affected by one or more shipments.

[11] Nota Smartgate Rotterdam 2017
[12] Toezichtstafel Logistiek (2015)
[13] Article 46 UCC: Risk management and Customs controls
[14] Relevant Regulation per subject.

2. General practitioner-specialist model
As previously described, Customs has the role of first-line supervision. The tasks are laid down in framework agreements. When Customs detects irregularities, a case is transferred to the relevant competent authority in accordance with the agreements.

In both cases it applies that as soon as Customs and or the relevant competent authority has registered the findings and ends the control task in their system, the shipment (if there are no irregularities) can be released.

3.6 Conclusion

CBM is an approach to **manage borders** involving the **different border agencies** in a way that it ensures **efficient and effective processes and procedures**. CBM can be accomplished through a better coordination between border agencies in policy development and also during operational activities. Factors that play a role are **coordinated controls**, like one-stop shop, **risk-management** and the **legal framework**. It is important to businesses that the legislation is clear to ensure **compliance**. CBM can be achieved by having the customs authority perform duties on behalf of the competent authority. CBM from the perspective of Dutch Customs, involves the **coordination of the implementation of the statutory duties** of various competent authorities, the organization of risk-based supervision and process agreements which are laid down in the annex to the framework agreement. To achieve this, all parties involved, the competent authorities and businesses, must work closely together. The following points found in the literature are relevant for CBM:
Coordinated controls:

- inspection at company location
- joint inspection facility
- a one-stop-shop
- risk of overlapping activities between authorities
- good working relationship with traders

Risk-management:

- horizontal supervision
- share data for risk-analysis

Legal basis:

- control powers & conditions when to be used
- exchange of information between authorities
- tasks clearly defined
- clear & simplified legislation
- data protection rules
- identify legal gaps or overlaps regarding other national legislation

4 REVIEW OF LEGAL RESEARCH

4.1 Introduction

To be able to answer the research question, it has been split into sub-questions. The following sub-questions are answered by means of legal research:

- What is the legal basis for cooperation?
- What aspects of the legislation affect the functioning CBM?

The results of the legal research provides, next to the literature study, the theoretical framework for the case study.

The goal of a legal and regulatory framework is that for each competent authority involved in CBM supervision and controls task are legally framed. The European Commission Guidelines (European Commission, 2010, p. 37) defines as follows: "for a Customs administration the legal basis should provide authority to make decisions on administrative matters, effective powers for customs officers, customs penalties, support mutual assistance and flow of information with other border management agencies, and appropriate data protection"
The following points are relevant according to the Guidelines (European Commission, 2010, p. 37):

- "Conditions under which customs officers' (supervision) powers are to be used should be clearly defined.
- Customs controls should be exercised to allow facilitation of legitimate trade, with the possible use of inland rather than border controls, where appropriate.
- Customs legislation should be reviewed with the goal of having a modernised and simplified legislation, reduced administrative burden and enhanced legal security for businesses and citizens".

4.2 The International Legal Framework

This chapter briefly describes a few of the conventions and agreements that are relevant for the international legal framework.

4.2.1 Revised Kyoto Convention (RKC)

The Revised Kyoto Convention is about the simplification and harmonisation of Customs procedures, it provides the principles for coordinated interventions. A few of these principles are:

- a minimum of controls by Customs, to ensure regulatory compliance
- use of risk-management
- coordinated interventions with border agencies
- good relationship with trade

The Handbook (Miller et al, 2012, p. 20) mentions the benefits to be gained by governments and national economies when implementing the Revised Kyoto Convention, these are:

- "lowering the costs of production and importation, and thus possibly prices for consumers;
- increasing economic competitiveness
- attracting international trade and investment
- increasing national revenues

Benefits to the trading community:

- Transparent procedures
- Greater facilitation for compliant traders
- Lower business costs
- Enhanced competitiveness
- Clear guidance on rights and obligations

Benefits to Customs authorities:

- More efficient use of customs resources
- Faster, predictable and efficient customs clearance
- Enhanced customs control
- Increased trade facilitation"

4.2.2 Agreement on Trade Facilitation

The Trade Facilitation Agreement (TFA), entered into force on 22 February 2017 after ratification by two-thirds of the WTO members. It contains measures for customs and competent authorities on trade facilitation and customs compliance. In particular section I, article 1 till 12 are about trade facilitation and customs cooperation. Article 8 defines border agency cooperation: *"Each Member shall ensure that its* ***authorities and agencies responsible for border controls*** *and procedures dealing with the importation, exportation, and transit of goods* ***cooperate with one another and coordinate their activities in order to facilitate trade****."*

4.2.3 WCO SAFE Framework of Standards to Secure and Facilitate Global Trade

The attacks of 9/11 changed priorities for customs organisations. The WCO developed cross border security standards to improve security of the international supply chain without hindering the flow of legitimate trade. In 2005 the first version of the SAFE Framework of Standards to Secure and Facilitate Global Trade was published. The SAFE Framework provides the customs administrations to receive essential control data for export, import and transit shipments. This information must be submitted in advance and electronically enabling a good risk assessment and focus on high risk goods, facilitating low-risk goods by exempting them from physical inspections. (Ireland, 2009)

4.2.4 Union Customs Code

The UCC is entered into force in May 2016 to modernise EU customs legislation. The aim of the UCC is to modernize the legislation, simplify the legislation, have more effective custom controls, a standardized application and a completely digitized communication between all the members. The UCC is elaborated in delegated acts (DA) and implementing acts (IA). The DA are independent acts that the EU can implement without the input of the individual member states and they form a supplement to the UCC. This is different from how the IA works, here the member states do have the freedom to give substance to the acts. The UCC functions autonomous which means member states are obliged to obey the law and takes precedence over national legislation. The UCC does not introduce any prohibitions or restrictions on trade; these are the product of specific policies reflected in the competent non-fiscal legislation.

4.3 The National Legal Framework

To implement CBM border agencies need to have a national legal framework. In the first place according to the Guidelines: (European Commission, 2010, p. 36) "an authority must be legally empowered to fulfil its mandate". The tasks and responsibilities must be laid down in national law and policies. These must "clearly define[15]:

- areas of responsibility and tasks of the agency;
- powers and authorities the agency is vested with to implement its tasks;
- definitions of offences and description of penalties and actions to be taken and which jurisdiction they fall under;
- databases of the agency and access to databases of other agencies;
- data protection rules and principles; and
- delegated responsibilities: tasks which are carried out by other agencies on their behalf (or vice versa)".

The national legislation does not always align with the European legislation. This is due to differences in function, design and content. The EU exists of 27 Member states, the legislation is a joint product of these 27 Member States, which all have different legal systems. (Prechal, 2010)

4.3.1 National legal customs acts

In the Netherlands the national legal customs acts are the "Algemene Douanewet" (Adw), the "Algemeen douanebesluit "(Adb) and the "Algemene Douaneregeling" (Adr). These laws are regulating the designation of customs officers for the non-fiscal tasks regarding the restrictions and prohibitions. The annex of the Adw include all the laws for which the customs authorities are empowered to carry out controls (see table 5.4.1). Enforcement officers of the competent authorities are designated in the specific national legal acts (see table 5.2.1 & 5.3.1). Although the customs authorities are empowered to carry out controls, it is neccesary that they also have a task to do this controls. The tasks are written down in the framework agreement.

4.3.2 Framework agreements

The Adw[16] lays down that the Minister of Finance concludes framework agreements with Ministers of other departments regarding the quantitative and qualitative deployment of officers with regard to customs controls mentioned in the appendix of this Act. It is therefore the legal obligation to conclude a framework agreement in order to frame the powers by specifying the task of the customs authorities. This is the reason there are framework agreements. Customs is the only authority in the Netherlands with an obligation to conclude framework agreements therefore it is part of the national legal framework (Becker, 2020). When writing the relevant annex for the framework agreement, the terms from the various types of legislation are linked and the enforcement choices made by the responsible ministry (in coordination with Customs) are expressed in the Customs terminology framework.

In summary, the Adw gives the contol powers and the framework agreements specifies the tasks. The reason to separate this in legislation and agreements is to act fast on current affairs when it is neccesary, e.g. the ebola crisis (Becker, 2020). An appendix of the framework

[15] European Commission. 2010. *Guidelines for Integrated Border Management in European Commission External Cooperation. P:36*
[16] Article 1:3 (5) Algemene Douanewet

agreement only needs a signature of the instructing party and the contractor (customs) so a new task can be arranged quite quickly while adapting the legislation can take much longer.

4.4 Relationship between policy departments and Customs

The Dutch Customs carries out various enforcement tasks on behalf of eight policy departments:

- Ministry of Finance
- Ministry of Economic Affairs and Climate
- Ministry of Agriculture, Nature and Food Quality
- Ministry of Infrastructure and Water Management
- Ministry of Foreign Affairs
- Ministry of Justice and Security
- Ministry of Health, Welfare and Sport
- Ministry of Education, Culture and Science

These departments are responsible for both European and national laws and regulations in their policy area. The ministries or "instructor" indicate for each customs task what needs to be enforced and what the intended objectives are (Dutch Customs Authority, 2020).

The responsible department makes clear to Customs what policy obligations there are and what wishes they have, this is written down in the annual enforcement strategy plan. The departments are thus partly responsible for enforcement. Customs shall be responsible as the contractor for the manner in which the controls are carried out and enforced.

In order to manage this, there is a Instructing party - Contractor Committee Customs (OOD). At policy level, there is discussion between the eight contracting departments and Customs on enforcement and priorities.
The OOD discusses the enforcement strategy plan. If clients have more enforcement requirements than Customs can foresee, the OOD will either prioritize or allocate additional financial resources to Customs (Dutch Customs Authority, 2020).

4.5 Moments of enforcement controls

Goods are under customs supervision from the moment they are brought into the Union until they are released for free circulation or taken out of the territory of the Union or are destroyed[17]. Enforcement can take place at various moments in the logistical chain. Controls can be executed (amongst others) when goods are:

1) brought into the customs territory of the Union;
2) placed under the customs procedure "release for free circulation" or exported from the EU;
3) on the EU market*.

*In the third case, Customs has the ability to do a post-release control[18].

Firstly, the moment of enforcement is determined by the legal options as laid down in the relevant EU legislation. For instance, there is a ban on releasing the goods for free circulation, as in the case of the prohibition of importing cat or dog fur (based on regulation). The supervision must then be taken into account when the release of the goods for free circulation

[17] Article 134 (1) UCC
[18] Article 48 UCC

takes place and not at any other time[19]. Otherwise it could lead to an incorrect use of powers. Secondly, when speaking about directives, it is up to the Member States to implement the moment of enforcement in their national legislation.

4.5.1 Goods brought into the customs territory of the Union

It is laid down in the customs legislation that goods must be brought into the Union by specified routes and presented at a designated customs office or other approved place[20]. The goods shall be in temporary storage from the moment they are presented to customs[21]. Based on customs legislation there are a number of gradations of the legal concept "goods brought into the customs territory of the Union":

- Goods on board a ship or aircraft but not unloaded in the Netherlands. If the Netherlands is the first office for EU entry than an entry summary declaration (ENS) is submitted for the risk analysis safety & security.
- Goods on board a ship or aircraft but not unloaded in Netherlands. The Netherlands is not a first office and has no information about the goods.
- Goods are unloaded but remain in temporary storage followed by a re-export notification.
- Goods are unloaded, first in temporary storage and then placed under a special arrangements (processing, customs warehouse, temporary importation, end-use, transit).
- Goods are unloaded, first in temporary storage and then declared for free circulation.

When goods are physically brought into the customs territory of the Union they shall, from the moment of their entry, be subject to customs supervision and may be subject to customs controls. This also the first moment that goods can be subject to prohibitions and restrictions on the grounds of the protection of the health and life of humans, animals or plants and the environment[22]. Customs supervision ends when goods are released for free circulation or taken out the territory of the Union or are destroyed[23].

4.5.2 Release for free circulation

For the performance of customs duties, the concept of import in this context is understood to mean the release for free circulation within the meaning of article 201 of the UCC: "non-Union goods intended to be put on the Union market or intended for private use or consumption within the customs territory of the Union shall be placed under release for free circulation".

In the context of medicines, the Directive 2001/83/EC of the European Parliament and of the council of 6 November 2001 lays down that "no medicinal product may be **placed on the market** of a Member State unless a marketing authorization has been issued by the competent authorities of that Member State"[24]. This concept is explained by the European Commission (COM) as: "a product is placed on the market when it is made available for the first time on the Union market". This does not include products which are introduced from a third country in the EU customs territory in transit, placed in free zones, warehouses, temporary storage or

[19] R. Roelofs. 2010. Niet - uniforme wet- en regelgeving verhoogt problematiek bij handhaving
[20] Article 135 (1) 139 (1) UCC
[21] Article 144 UCC
[22] Article 134 UCC
[23] Article 134 (1) UCC
[24] Article 3, Directive 2001/83/EC of the European Parliament and of the council of 6 November 2001

other special customs procedures (temporary admission or inward processing)[25]. It shows that medicines can be placed in a customs warehouse and from there (i.e. from anywhere within the customs territory of the Union) can be placed under another customs procedure like transit, or re-exported. Only when medicines are released for free circulation they are considered to be" placed on the market" and at this moment enforcement by Customs can take place. In the court case Top Logistics B.V. versus Bacardi LTD[26] it was confirmed that goods from third countries cannot be placed on the Union market if they are not in free circulation within the meaning of Article 24 EC (now Article 29 of the Treaty on the Functioning of the European Union TFEU, Court).

So on Union level the legislation refers to the concept "placing on the market[27]". Since this is laid down in a directive, it leaves it up to the member states to convert this concept in their national legislation. In the Dutch national legislation, the Medicines Act, the marketing authorisation is elaborated in an authorisation at product level[28]. In addition, a manufacturer's authorisation is required for import[29]. In the Medicine Act "**import**" is defined as follows: "bringing medicinal products or active substances from a third country into the territory of the Netherlands"[30]. This definition differs from customs legislation and the Directive as described above. In fact, here the definition of import must be seen as, from customs legislation point of view, "brought into the customs territory of the Union". So from a customs legislation point of view, there is no "import" when goods are under customs supervision, for instance in temporary storage. This is confirmed by the judgment in the Class International court case[31] which stated that the merely physical introduction of the goods into the territory of the Community cannot be regarded as 'importation' within the meaning of Article 5(3)(c) of the Directive 89/104 relating to trade marks. Only if goods are released for free circulation and import duties are paid, it can be seen as import. In the meaning of the national Medicine Act, the definition "import" could be seen as a moment of arrival but not as release for free circulation. Therefore, the national legislation is more stringent (an earlier point in time of placing goods on the market) than the Directive. The Directive (although using a different term) is in line with the definition of placing the goods into free circulation as laid down in the UCC. Any inland transport movement after arrival is 'import' for the purposes of the medicine Act and must therefore be an approved medicine checked by the competent authority. From a customs legislation point of view, the termination of (temporary) storage does not automatically result in 'import', as the medicines may also be placed under a customs procedure other than release for free circulation after temporary storage[32]. In that case, customs supervision does not yet end[33].

In summary, in the context of the Medicine Act each destination (inland movement) from arrival is considered as 'import and thus the moment of enforcement. From a customs legal

[25] Commission Notice 2016/C 272/01 "The Blue Guide on the implementation of EU product rules 2016", OJ C 272, 26.7.2016.
[26] GHSGR 30 oktober 2012, ECLI:NL:GHSGR:2012:BY1494
[27] Articles 2, 6, Directive 2001/83/EC of the European Parliament and of the council of 6 November 2001, Article 3, Regulation (EC) No 726/2004 of the European Parliament and of the council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency.
[28] Article 40, Geneesmiddelenwet 8 februari 2007
[29] Article 18, Geneesmiddelenwet 8 februari 2007
[30] Article 1, Geneesmiddelenwet 8 februari 2007
[31] Class International, C-405/03, EU:C:2005:616, points 43 en 44
[32] Articles 149, 150 UCC
[33] Article 134 (1) UCC

point of view, the medicines can be transported under customs supervision to any place in the Union. The moment of enforcements starts when goods are placed under release for free circulation. The different interpretation creates a lack of clarity in the legal framework and this is undesirable when the enforcement tasks need to be coordinated in view of CBM.

In the context of phytosanitary goods the Regulation 2016/2031 on protective measures against pests of plants recently became applicable. It prohibits the introduction, movement, holding or release in the Union territory. The term "introduction in the Union territory" can be aligned with the term used in the customs legislation "goods brought into the customs territory of the Union". The EU regulations are elaborated in national legislation, the new Plant Health Act, which is intended to replace the current act of 1951, has not yet entered into force[34], refers to Regulation (EU) 2016/2031. During this research, the Official Control Regulation EU 2017/625 (OCR), simultaneously with the connected Regulation (EU) 2016/2031, came into force on 14 December 2019. The OCR provides an integral and uniform system for official controls throughout the agricultural sector food chain, it contains the frameworks for the delegation of official control tasks, use of ICT and cooperation with other authorities such as Customs. The purpose of this European harmonised control system is to prevent or reduce risks not only for plants but also for humans and animals. The Regulation requires checks to be carried out by the competent authorities in order to ensure compliance with European regulations, including the Plant Health Regulation (Overheid, 2020). The OCR refers to the concepts in the UCC. For example article 44 lays down that the competent authorities may also perform official controls on goods that are placed under one of the customs procedures defined in point (16)(a), (b) and (c) of Article 5 of the UCC and in a temporary storage defined in point (17) of Article 5 of the UCC.

4.6 Conclusion

The international and national legal framework provides the legal base for CBM. The RKC, TFA and SAFE WCO Framework all have in common modern and efficient Customs procedures to promote trade facilitation. When implementing Revised Kyoto Convention there are benefits for government and trade. The benefits to customs authorities and businesses are amongst others **efficient customs clearance** and **increased trade facilitation.** This could lead to attracting international trade if the conditions are more beneficial than in other countries.

European and national legislation does not always align. This is due to differences in function, design and content. The **European legislation is a joint product** of the Member States, which all have **different legal systems**.

The national legislation (Adw) provides the Dutch Customs authority the **control powers, whereas the framework agreements specifies the tasks.** Attention should be paid by the policymakers, e.g. the responsible ministry, to **differences in concepts between the EU customs legislation and the specific EU and national laws.** Two examples are discussed here: legislation concerning medicines and phytosanitary goods. A **legal review** of the legislative framework should aim for **using the same concepts and identify gaps** in relation to other national legislation. Amendments must be compliant with related or superior

[34] The new proposal for phytosanitary regulations did not enter into force on 14 December 2019, because the Plant Health Act was delayed in its parliamentary treatment. The Plant Diseases Act is currently still applicable but by means of a temporary arrangement (see: https://zoek.officielebekendmakingen.nl/stcrt-2019-66654.html) is linked to the EU Regulation 2016/2031 (with all the concepts contained therein) which has been in force since 14-12-2020.

legislation. When writing the relevant framework annex this is taken into account, **the terms from the various types of legislation are linked** and the enforcement choices made by the responsible ministry or competent authority **are expressed in the Customs terminology framework**.

To ensure a **proper enforcement by customs authorities of non-fiscal legislation**, this should, as far as possible, **reflect the terminology**, procedures and requirements laid down in the **Union customs legislation**. It is important for customs and authorities to know what is intended by the regulation with **'release for free circulation'** and **'brought into the EU'**. If goods are absolutely not allowed to enter the territory of the Union or if goods cannot be declared for free circulation, there are still a large number of "procedures' between them. Especially if customs must act, it is important to know what is allowed or not, with regard to the goods.

Relating to risk-management it is an issue when goods are not allowed to be brought into the Union. For goods carried in containers, the Entry Summary Declaration (ENS) must be completed 24 hours before loading at the port of departure and the customs authority in the Union has the option to give a 'no-load'. However, the risk analysis is only safety and security related and not whether or not a medicine can be placed on the market in, e.g. the Netherlands. After all, that medicine may be permitted in another Member State, **so it is not possible to draw up generally applicable Union rules upon entry into the Union**. It can be concluded that it is not possible to refuse the entry in advance and that the medicines (legal or not) do enter the territory of the Netherlands. This is also confirmed by the case study for this research where one of the respondents (Respondent 2. , 2020) stated this as a risk.

For the Medicines Act, the European directive is the basis. The definition "placing on the market" is not defined in the EU customs legislation The different interpretation creates a lack of clarity in the legal framework. This is undesirable when the enforcement task needs to be **effectively coordinated in view of CBM**. The term "import" is not defined in the EU customs legislation. The description of the concept of "import" within the meaning of the medicines legislation should be equated with 'termination of customs supervision' or 'release for free circulation' within the meaning of the customs legislation. This is the moment when enforcements starts.

Significant progress has been made by revising the European control regulations for phytosanitary goods. **For the new Plant Health Act, new EU regulations have recently become applicable to replace the old directive.** Contrary to a directive, a regulation is a binding legal act applicable throughout the EU. A directive must first be transposed into national law by the Member States, therefore, **a regulation leads to the same result in all Member States of the Union**. There can no longer be any national legislation that interprets or supplements it. This has led to harmonisation between the legislation, an example is that this new control regulation makes regular references to the UCC. With the new control regulation it has become clear that phytosanitary legislation also applies when goods are still under customs supervision. The main concepts in the new Plant Health Act refers to the definitions and descriptions in articles of Regulation 2016/2031, therefore there will be in alignment between national and EU legislation. It should therefore be clear to authorities and trade, that in case phytosanitary non-Union goods are under customs supervision, for example placed under (temporary) storage, they have to comply to the restrictions and prohibitions in the non-fiscal laws and regulations even when the goods have not yet been "released for free circulation". It is important that these **concepts are clear** because these are also **the moments**

when enforcement is performed by the competent authorities i.c. by Customs. In order to **coordinate activities efficiently,** these **moments of controls** should be **clear.**

5 CASE DESCRIPTION AND ANALYSIS

5.1 Introduction

To be able to answer the research question, it has been split up into sub-questions. The following sub-question is answered by means of an overall analysis of the legal powers and a case study.

- How are tasks (controls, risk-management) coordinated between the competent authorities?
- What aspects of the legislation affect the functioning CBM?
- What is the current level of performance?
- Can it be improved?
- How can it be improved?

For the case study different experts within three authorities were interviewed: The Health and Youth Care Inspectorate (IGJ), the Netherlands food and consumer product safety authority (NVWA), and Dutch Customs. Additionally, two freight forwarders were interviewed. The interview questions were divided into four subjects: **controls**, **legislation**, **coordination** and **risk-management** with a focus on the flow of medicines and phytosanitary goods.

This chapter will start with a brief explanation about the concerning legislation and the framework agreement followed by an analysis of performance in practice.
A SWOT analysis (Strengths, Weaknesses, Opportunities and Threats) is undertaken per interviewed competent authority.
Strengths and ***Weaknesses*** are related to the current situation, the "as-is". These are based on observations and facts.
Opportunities and ***Threats*** are related to potential future scenarios, based on external factors, the "to-be".

5.2 Health and Youth Care Inspectorate

The Health and Youth Care Inspectorate (IGJ), is part of the Ministry of Health, Welfare and Sport (VWS). This authority supervises healthcare and youth care services in the Netherlands and the international market for medicines.

5.2.1. Legislation Medicines

The national legislation on medicines is written down in the Medicine Act. According to article 18 (1) of the Medicine Act it is prohibited to import medicinal products without an authorisation unless they are intended for personal use or when the Health and Youth Inspectorate has granted a dispensation. In addition, Article 38 (1) of the Medicine Act prohibits the preparation, import, stockpiling, delivery, export or other introduction into or outside the territory of the Netherlands of active substances without registration.
Customs derives its control powers from the Adw. When a criminal offense is detected, Customs makes use of it powers of investigation[35]. Customs can provide the IGJ data on the basis of Article 1:33 Adw.
The IGJ derives its powers from the Medicine Act, the General Act administrative law (Awb) and the Special Investigating Officer Health Care and Youth Inspectorate Decree[36].

[35] Besluit buitengewoon opsporingsambtenaar 2017
[36] Besluit buitengewoon opsporingsambtenaar inspectie gezondheidszorg en jeugd

In the schedule below the duties and competencies of the Health and Youth Care Inspectorate and Customs are shown.

Legislative department	Measure	Competent authority	Duties Customs supervison	Duties Health and Youth Care Inspectorate	Supervisory powers Customs	Supervisory powers Health and Youth Care Inspectorate	Framework Agreement
Ministry of Health, Welfare and Sport	Medicinal products for human use	IGJ & NVWA (Medicine Act, article 100)	declaration for release for free circulation/ entry into the territory of the EU*	In case of no authorisation & goods in free circulation	Adw, article 1:1 (5) Adw, article 1:3 (5) & the Annex Adw	Medicine Act, article 100 Awb Decision Boa[37]	Yes
Ministry of Foreign Affairs	Tiered priced medicines	IGJ & NVWA (Medicine Act, article 100)	declaration for release for free circulation/ entry into the territory of the EU*	In case of no authorisation & goods in free circulation	Adw, article 1:1 (5) & the Annex Adw)& 133 EG-convention	Medicine Act, article 100 Awb Decision Boa	Yes

*only for postal and courier shipments

Table 5.1 Overview tasks and powers IGJ

5.2.2 Legislation risk analysis on medicines

Regarding risk-management, the UCC, article 47 (2), refers in general to the exchange of data between authorities and customs. Furthermore, the framework agreement describes risk analysis and how it is performed.

5.2.3 The Framework Agreement on medicines

In the Netherlands, various authorities are responsible for supervision and enforcement of the Medicines Act. The supervision focuses on both regular and irregular (illegal) production, distribution and trade. Customs and the Health and Youth Care Inspectorate cooperate in the supervision and enforcement of the import and export of medicines in and out of the Netherlands. The cooperation is about monitoring if the importer is in the possession of a manufacturer's authorisation[38] or registration[39]. The task of Customs is to enforce the prohibitions and restrictions referred to in the Medicines Act. According to the framework (Ministry of Health, Welfare and Sport and the Ministry of Finance, 2019), this is undertaken during the execution of the regular customs supervision controls on goods, at the external border of the European Union. It has been explicitly agreed with the Ministry of HWS that Customs only has a task with the release for free circulation, with the exception of

[37] Besluit buitengewoon opsporingsambtenaar Belastingdienst/Douane 2017
[38] Article 18(1) Geneesmiddelenwet 8 februari 2007.
[39] Article 38(1) Geneesmiddelenwet 8 februari 2007.

postal parcels and courier items (because release for free circulation and entry for free circulation are not separated in time).
In relation to this cooperation, it is the task of the IGJ, in the event of irregularities, to investigate the possibilities for enforcement and shall take over the goods that have been halted or give intructions to Customs for settlement.

In relation to risk-management, it is agreed that customs periodically provide the Health and Youth Care Inspectorate with relevant data for analysis in relationship to the Medicines Act. Conversely, the IGJ shall provide relevant data to Customs for the purpose of risk detection, risk analysis and evaluation. This is of importance for Customs to perform their enforcement task on medicines.

5.2.4 SWOT analysis Health and Youth Care Inspectorate

The SWOT analysis a summary of the interviews with the experts shown below.

Respondent	*Organisation*	*Expertise*
1	Freight forwarder	Customs compliance manager
2	Customs Administration of the Netherlands	Senior advisor intelligence VGEM domain, Dutch Customs.
5	Netherlands food and consumer product safety authority	Inspector Auditor, special food and drinks.
6	Customs Administration of the Netherlands / Schiphol Airport	Expert determination of medicines.
7	Customs Administration of the Netherlands / Schiphol Airport	Expert determination of medicines.
8	Health and Youth Care Inspectorate	Coordinating specialist senior inspector of opium law and medicines.
9	Health and Youth Care Inspectorate	Senior advisor coordinator team detection and fines.
11	Customs Laboratory	Head chemist

Table 5.2 List interviewed experts

		Strengths	Weaknesses
As is	Controls	Inspection at company location (S1)	Response time is low because lack of staff (W1)
		Very competent staff (S2)	Limited capacity to handle shipments intercepted by customs (W2)
	Legislation	Clear and well defined procedures (Framework Agreement)(S3)	Lack of clarity about concept "shipment of commercial nature" (W3)
		Commodities and Medicines Act are complementary (S4)	Legal restrictions on providing information (W4)
		Legislation offers the opportunity for CBM (S5)	Ignorance of the staff about providing information (W5)
	CBM	Designated single points of contact (SPOCs) (S6)	Some procedures are not documented, therefore unclear (W6)
		Joint inspections and publicity (S7)	Transfer of cases from customs to HYCI is sometimes unclear (W7)
			Different view on supervision than customs (W8)
	RM	Data is shared with customs (S8)	No "own" risk profiles on companies and countries (W9)
		Opportunities	Threats
To be	Controls	IGJ and NVWA can act together during an inspection (O1)	Not enough financial resources and capacity T1)
		make use of joint inspection location (O2)	Internet sales (T2)
	Legislation		Enforcement of law difficult in practise, due absence of penalisation (T3)
	CBM	Better alignment on mutual tasks with the NVWA (O3)	Framework agreement is made on a policy level between ministries (T4)
			Issues on work floor not considered (T5)
	RM	Discuss risk-management with customs more frequently (O4)	
		Exchange information on risk cases worldwide (O5)	

Table 5.3 SWOT IGJ

A short explanation is given to clarify the statements in the SWOT table.

Strengths:

- ***Controls***
  Physical inspections can be moved to a company location (Respondent 8. , 2020), this is done for high-value medicines/raw materials of regular (large) pharmaceutical companies. This is an advantage for businesses because there is no intervention at the border and also the circumstances e.g. clean room, cooled facilities are present to keep the quality of the goods.
- ***Legislation***
  Given the fact the NVWA can establish the product is a food product and the IGJ can establish whether or not it is a medicine they act as one so both laws are covered and when necessary one of them can confiscate the shipment. (Respondent 8. , 2020)
  Legislation offers the opportunity for CBM, for example both customs and IGJ are designated in the law as supervisors for medicines. (Respondent 9. , 2020)

- ***Coordination***
  With regard to the substance ketamine both the IGJ and customs have designated single points of contact (SPOCs) (Respondent 6. , 2020), this is important to quickly interact when the rules are infringed and this is a health risk for animals or people.
  There are clear and well defined procedures agreed between Customs and the IGJ , documented in the Framework Agreement attachment (Respondent 6. , 2020) (Respondent 7. , 2020). It is important that responsibilities in terms of legal tasks and powers are known to all authorities involved in the same control process.
  Joint inspections take place at Schiphol Airport. For instance a global operation, called Pangea, targets the online sale of counterfeit and illicit medicines, this is an international campaign led by Interpol, in which more than 100 countries participate. For customs and IGJ, there is a dual purpose; the cooperation and findings. And communication to the outside world, demonstrating the enforcement of the law to the public (Respondent 9. , 2020).
- ***Risk-management***
  IGJ maintains risk profiles on substances, this data is shared with customs (Respondent 8. , 2020), in order to improve the risk analysis on goods brought into free circulation.

Weaknesses:

- ***Controls***
  The response time is low because of lack of staff and there is limited capacity to handle medicine shipments which are intercepted by customs (Respondent 1. , 2020) this is a matter of concern.
- ***Legislation***
  At the IGJ authority there is much discussion regarding the lack of clarity around what is considered as a shipment of commercial nature. (Respondent 6. , 2020) (Respondent 7. , 2020), this concept has to be clear for the staff for when and how they interact.
  Within the IGJ, the exchange of information is seen as a difficulty between the supervision and the inspection teams because of legal restrictions. (Respondent 8. , 2020)
  On the other hand there are almost always possibilities to provide data between the organisation itself and other authorities but the problem is often that the staff don't know exactly how it is arranged and therefore think it can't be provided. (Respondent 9. , 2020).
- ***Coordination***
  From a customs point of view, a number of procedural agreements are not documented and/or unclear. For example mixed shipments with both human and animal medicines where it is unclear with which authority customs need to interact with, the IGJ or NVWA (Respondent 6. , 2020) (Respondent 7. , 2020).
  From a customs point of view the transfer of cases is sometimes unclear, like who takes over what, why and within what time frame (Respondent 9. , 2020).
  According to customs the IGJ has a different view on supervision than customs, with regard to the granting of the authorisation and compliance with the regulations (Respondent 1. , 2020). This can lead to conflicts with the controls and supervision being executed in different ways.

- ***Risk-management***

IGJ does not have their own risk profiles on companies and countries like customs. (Respondent 8. , 2020) It is mentioned that there is a low collaboration in risk-management (Respondent 2. , 2020).

Opportunities:

- ***Controls***

  Currently the IGJ makes no use of the shared inspection facility (The JIC) at Schiphol Airport because the control is initially carried out by customs and occasionally by the Health and Youth Inspectorate. (Respondent 7. , 2020)

  The IGJ and NVWA can both act as enforcement agency, the advantage is that there is a second inspector present during a control (Respondent 8. , 2020), so that they can verify each other (four eyes principle).
- ***Coordination***

  A better alignment on mutual tasks (e.g. ketamine) between the IGJ and the NVWA is mentioned (Respondent 8. , 2020), to improve the coordination with Customs. The customs officer must know who to contact.

  The communication with IGJ – team Supervision can be improved with regard to the way in which cases (in particular irregularities) are transferred and in which way findings are reported back.

  The motivation from IGJ in the feedback is usually not present. If there is a motivation, it is sometimes unclear (Respondent 6. , 2020) (Respondent 7. , 2020)
- ***Risk-management***

  According to the IGJ it could be beneficial to discuss risk-management with customs experts on a frequent base (Respondent 8. , 2020).

  A suggestion given by the IGJ was to exchange information on risk cases between customs authorities and health and safety authorities on a worldwide level (Respondent 8. , 2020), because the pharmaceutical industry is complex and authorities could learn from each other to respond better to risks at the border.

Threats:

- ***Controls***

  A threat could be that there are not enough financial resources and capacity (Respondent 8. , 2020) to execute the controls needed for enforcement of the regulations.

  The internet sales of counterfeited or medicines below EU-standards is a threat. Internet criminals use websites to illegally offer medicines
- ***Legislation***

  Enforcement of the law could be difficult in practice, e.g. it is forbidden when a medicine is present but it is not penalized. (Respondent 8. , 2020)
- ***Coordination***

  The mutual agreement between the IGJ and customs is made on a policy level between the ministries, on the work floor you encounter other issues. (Respondent 8. , 2020)

5.2.5 Impact analysis

In the SWOT analysis all strengths, weaknesses, opportunities and threats are equal. In an impact analysis it is shown which items have a more positive impact for CBM, and the likelihood of occurrence. This can be an aid to the authority for prioritizing improvement activities.

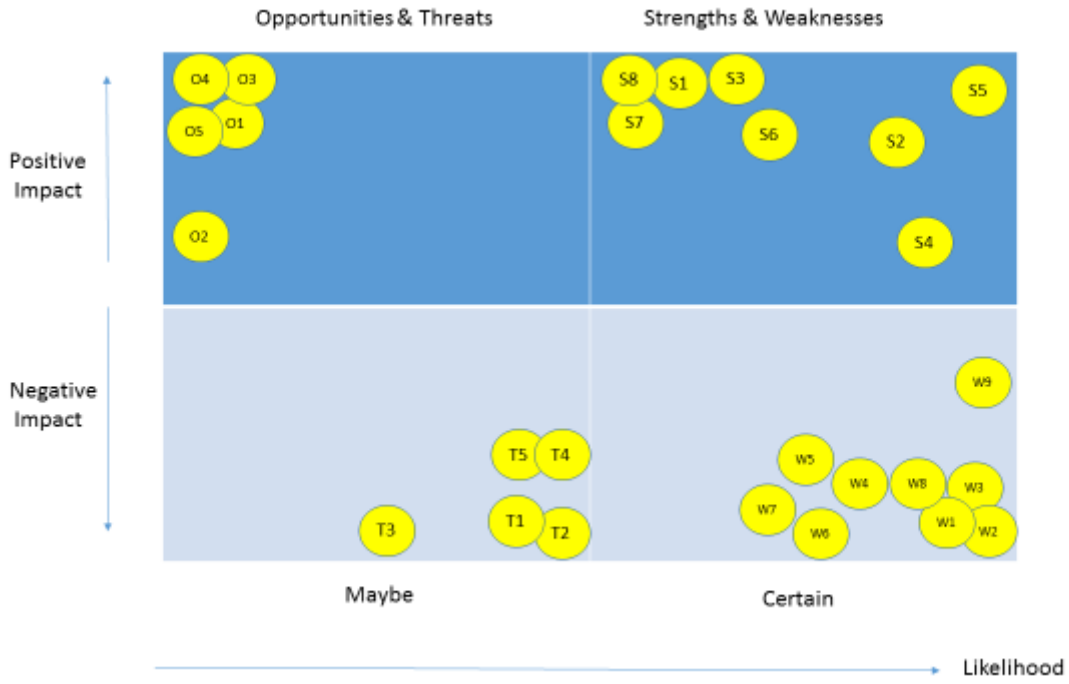

Figure 5.1 Impact analysis IGJ

In this impact analysis it is shown that the 'strength items' S1, S3, S5 and S8 have a very positive impact on CBM, but only one item (S5 = SPOC for the substance ketamine) is currently standard practice. Therefore, it is an interesting question how to shift the other three items (S1 = inspection at company location, S3 = clear and well defined procedures and S8 = data sharing with customs, to the top right corner (likelihood high). Due to their high positive impact, such a shift would lead to significant improvement for the CMB process.
With regard to the weaknesses, it is shown that a lot of improvement can be made trying to decrease the likelihood and focus on the weaknesses in the right corner which have a high level of negative impact.
There are four opportunities with a potential positive impact and possibilities to move these items to the right hand corner should be considered (to make them more likely to happen and turn them into strengths).
The most important threats are T1 and T2, but T3 also has a strong negative impact but is less likely to happen.
It should be noted that the positioning of the items on the impact analysis chart is a subjective approach, based on the experience and observations of the author, following the interviewed authorities and company experts described in Annex IV.

5.3 Dutch Food and Consumer Goods Authority

The Dutch Food and Consumer Goods Authority (NVWA) safeguards the health of animals and plants, animal welfare and the safety of food and consumer products and enforces nature legislation.

5.3.1. Phytosanitary legislation

The national legislation exists of the Plant Health Act[40], Plant Health Decree and Plant Health Act Provision[41]. It prohibits the introduction of plants and plant products into the Union. Member States should ensure that a phytosanitary consignments subject to inspection remains under customs supervision from the moment the goods are brought into the Union and after also by the responsible authorities. In the Netherlands, these are the NVWA and the inspection services on behalf of the NVWA.
The NVWA has supervisory powers on the basis of the "Decree NVWA designation of Plant Diseases Act supervisors' and on the basis of the Mandate decision. Besides the NVWA has investigative authority under the Economic Offenses Act and the Code of Criminal Procedure. Customs derives its control powers from the Adw and the designation of Customs in the Plant Diseases Act[42]. Customs officials do not perform investigation activities in the event of suspected violations of the Plant Diseases Act. Customs can provide information to the NVWA on the grounds of Adw.

5.3.2 Novel Foods

This research focusses on medicines and phytosanitary goods. However, it emerged from the interviews that the NVWA also have a task in detecting products that may contain active substances but are not classified as medicines because of the permissible quantity of active substances. This is seen as the "grey area" of medicines. These products, called novel foods, may however, pose risks to public health. The novel food definition, which is laid down in the Novel Food regulation describes the various situations of foods originating from plants, animals, microorganisms, cell cultures, minerals, etc., and specific categories of foods (insects, vitamins, minerals, food supplements, etc.) (European Commission, 2020). For this category of products NVWA works closely together with the IGJ and also with Customs. The latter has no task but, when these goods are places under the customs procedure free circulation, they fulfil a signalling role.

[40] The Plant health Act still has to enter into force.
[41] Plantgezondheidswet; Plantgezondheidsbesluit, Regeling plantgezondheidswet
[42] Besluit aanwijzing toezichthouders Plantgezondheidswet

In the figure below the duties and competencies of the NVWA regarding phytosanitary goods, medicines and novel foods are shown.

Targeted goods	Subject	Legislative department	Name of the Measure	Competent authority	Duties Customs supervison	Duties competent authority	Supervisory powers Customs	Supervisory powers authority	Agreements Convenant
Medicines	HEALTH	Ministry of Health, Welfare and Sport	Medicinal products for human use	IGJ & NVWA Medicine Act, article 100)	declaration for release for free circulation/ entry into the territory of the EU*	In case of no authorisation for a medicinal product.	Adw, article 1:1 (5) ADW, article 1:3 (5) & section A of the Annex Adw	Medicine Act, article 100	Yes
Medicines	SAFETY	Ministry of Foreign Affairs	Tiered priced medicines	IGJ & NVWA Medicine Act, article 100)	declaration for release for free circulation/ entry into the territory of the EU*	In case of no authorisation for a medicinal product.	Adw, article 1:1 (5), section A of the Annex Adw)& 133 EG-convention	Medicine Act, article 100	Yes
Plants and plant products	HEALTH	Ministry of Agriculture, Nature and Food Quality	Plant Health Directive - Organisms harmful to plants or plant products	NVWA Besluit aanwijzing toezichthouders Plantenziektenwet	Monitoring acceptance and release after inspection NVWA / Customs formalities / sealing	Physical inspection & document check.	Adw, article 1:1, lid 5 article 1:3, lid 5 & section A of the Annex Adw	Besluit aanwijzing toezichthouders Plantenziekten wet, art 1	Yes
Novel foods	HEALTH	Ministry of Health, Welfare and Sport	Novel foods	NVWA (Commodity Act, art 25) Regeling aanwijzing toezichthoudende ambtenaren	No task		Adw, article 1:1, lid 5 article 1:3, lid 5 & section A of the Annex Adw	Commodity Act, article 25	No

Table 5.4 Overview tasks & powers NVWA

5.3.2 Framework agreement phytosanitary goods

The appendix in the framework agreement governs the cooperation between the Ministry of Agriculture, Nature and Food quality (LNV) and Customs regarding phytosanitary inspections of plants and plant products. The responsibilities, tasks and supervisory powers are written down in the framework agreement[43]. The task of the NVWA is to supervise compliance with phytosanitary legislation and is responsible for the adequate control of diseases and pests as listed in Annex II of Regulation (EU) 2019/2072 . The NVWA delegates inspection duties to the inspection services department. The NVWA officers are responsible for investigating offenses that are punishable under the Economic Offenses Act[44].
The task of Customs is to monitor that the declaration for a customs procedure of phytosanitary products, that are subject to inspection, are only accepted or released after approval by the NVWA or the relevant inspection service. In certain cases, Customs performs the documentation check (D-check).
Phytosanitary products cover a large volume of goods. Enforcement consists of a combination of risk analysis, document checks (using automated checks by links between the Customs declaration system and the NVWA system), and the exchange of data. It is agreed that based on risk signals from the NVWA, customs provides customs information to the NVWA. The NVWA can use this information to select phytosanitary shipments for inspection.
Note: the involved parties are in the process of updating the Annex.

[43] Bijlage 6 behorende bij het convenant tussen het Ministerie van Economische Zaken en het Ministerie van Financiën de samenwerking inzake de fytosanitaire controles op planten en plantaardige producten
[44] Wet op de Economische Delicten

5.3.3 Process of border inspections Flowers

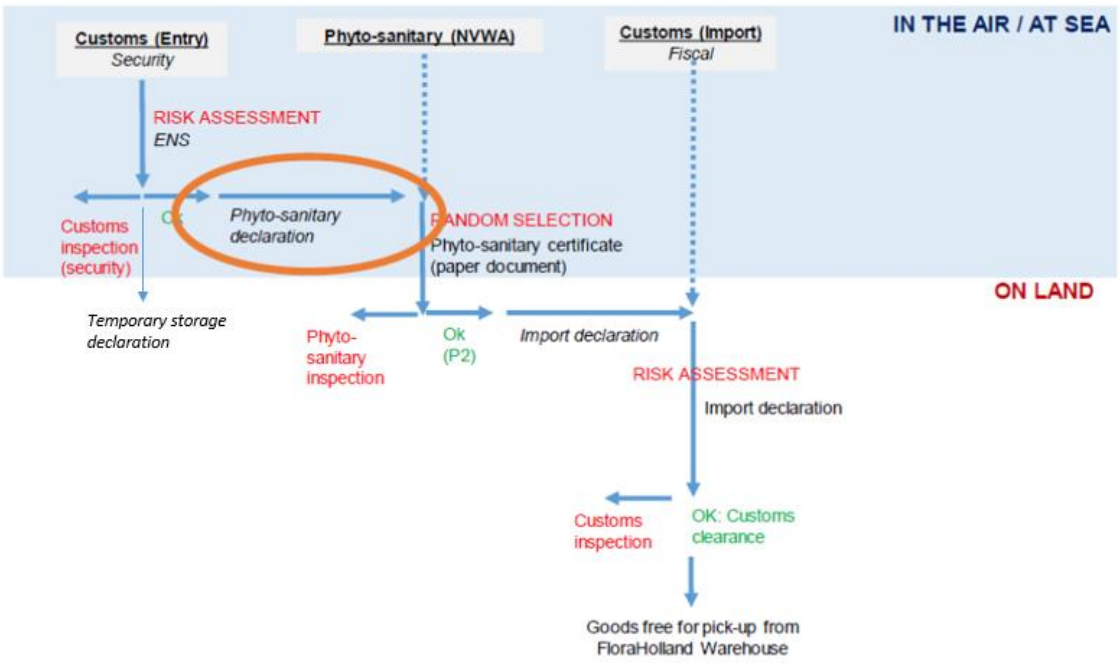

Figure 5.1 Sequential dependency of the three inspections for importing flowers (AS-IS situation) (Lazar, Tan, & Yue, 2017)

This figure shows that there are three inspection moments. When goods are brought into the customs territory of the Union an entry summary declaration (ENS) must be submitted to the custom authorities[45]. The ENS should be submitted at the latest 4 hours before arrival[46] of the airplane at the destination airport. An automatic risk analysis is carried out for security and safety purposes[47]. The first inspection takes place if the risk assessment is positive, then a physical inspection or scan control takes place, directly after the airplane has landed.

The non-Union goods brought into the customs territory of the Union are in temporary storage from the moment they arrive and are presented to customs,[48] until they are placed under a customs procedure or re-exported. A temporary storage declaration has to be submitted[49], based on this declaration the goods can be stored in a temporary storage facility or in other places designated or approved by the customs authorities[50].

The second inspection is initiated by submission of a phytosanitary import declaration to the NVWA. The NVWA selects a random sample from the flowers for inspection on the phytosanitary risk aspects e.g. flower diseases, bugs etc. This sample will be physically inspected by the NVWA when they are in temporary storage. Inspection can only take place at NVWA-approved locations. The flowers that are not selected for a physical inspection are released in the NVWA system called Client Import. For these goods a clearance message, the

[45] Article 127 (1) UCC
[46] Article 106 UCC DA
[47] Article 128 UCC
[48] Articles 139 and 144 UCC
[49] Article 145 UCC
[50] Article 147 UCC

so-called P2 code, is sent by the NVWA to the party that submitted the phytosanitary import declaration (Lazar, Tan, & Yue, 2017).

Note: Not visible in this figure is the customs procedure "transit" which can also occur after temporary storage. By lodging a transit declaration an automatic risk analysis is carried out and a possible inspection, for instance by a random sample selection, is initiated.

The third inspection is initiated when the goods are placed under release for free circulation[51] by lodging an import declaration via the customs declaration system called AGS. This declaration includes the P2 code provided by the NVWA. Customs monitors that the declaration is only accepted or released after approval by the NVWA which is validated by the P2 code. An automatic risk analysis is carried out, primarily based on financial aspects. When the risk criteria for a shipment are affected, a manual analysis is first carried out, based on the judgement of a customs officer, as to whether a shipment must actually be physically checked. Goods in the high risk category are exposed to additional checks, for example verification of the classification tariff code. The result of a physical check is that it slows down the logistic process.

Although it is out of scope for this research, there are developments regarding CBM and the use of electronic certificates. The use of an Electronic Phytosanitary Certificate improves the process efficiency, both for NVWA and Customs. Previous research has been conducted[52] and has shown that a so called "E-phyto" improves digital information sharing with and between the inspection agencies, supports automated checks done by NVWA and results in an improvement of border control procedures.

[51] Article 201 UCC
[52] CORE Final report on phase two developments of the Kenya demonstrator, 2014

5.3.4 SWOT analysis Dutch Food and Consumer Goods Authority

The SWOT analysis a summary of the interviews with the experts shown below.

Respondent	*Organisation*	*Expertise*
1	Freight forwarder	Customs compliance manager
3	Customs Administration of the Netherlands / Schiphol Airport	Intelligence employee dossier phytosanitary goods National Dutch Customs tactical team.
4	Netherlands food and consumer product safety authority	Coordinating Inspector, phytosanitary goods, team main ports.
5	Netherlands food and consumer product safety authority	Inspector Auditor, special food and drinks.
10	Customs Administration of the Netherlands / National Office	Policy advisor VGEM domain, Enforcement and policy department.
12	Freight forwarder	Manager customs air freight

Table 5.5 interviewed experts

		Strengths	Weaknesses
As is	Controls	Phytonairy inspections are on time (S1)	Informal procedures about transfer shipment (non-medicines) between customs & NVWA (W1)
		Physical (phyto) inspections done by competent staff (S2)	Service level on (phyto) inspections not met in weekends (W2)
	Legislation	Agreement with the IGJ on "grey area"medicines (S3)	Concepts in the phytosanitairy acts and the customs regulation were not aligned (W3)
		Commodities and Medicines Act are complementary (S4)	Poor publication of new legislation and informing authorities (W4)
		Legislation offers the opportunity for CBM (S5)	
	Coordination	Periodic meetings with company to improve(phyto) inspection process (S6)	With Customs there is no agreement on so called grey area “medicines” (W5)
		Because of coordination with company reduction of (phyto)inspection time (S7)	The NVWA does not want to outsource too much of its own tasks (W6)
		Domestic legislation lays down collaboration between NVWA and customs (S8)	
		Regularly meetings with the IGJ (S9)	
	RM		No risk profiles on novel foods e.g. products with medicine claim when brought into EU (W7)
		Opportunities	**Threats**
To be	Controls	Improve service level of phyto inspections in weekends (O1)	Not enough financial resources and capacity T1)
		Give training to customs staff (O2)	Internet sales of medicines (T2)
	Legislation	New European Directives on phytosanitairy goods, more alignement legal text (O3)	The legislation itself does not take into account the fact that there are several authorities involved (T3)
		Regulation more in line with logistical flow (O4)	
	Coordination	Better alignment on mutual tasks with the IGJ (O5)	Framework agreement is made on a policy level between ministries (T4)
		Make use of data from trade via a data-platform (O6)	Phytosanitairy law does not encounter the logistical process e.g. part shipments (T5)
	RM	Mutual risk-analysis grey area medicines. (O7)	

Table 5.6 SWOT NVWA

A short explanation is given to clarify the statements in the SWOT table.

Strengths:

- ***Controls***
  Trade recognises that the inspection agency who does the phytosanitary inspections on behalf of the NVWA, are in general on time and executed by competent inspectors. The working relationship is very good. (Respondent 1. , 2020)

- ***Legislation***
  Given the fact the NVWA can establish the product is a food product and the IGJ can establish whether or not it is a medicine they act as one so both laws are covered and when necessary one of them can confiscate the shipment. (Respondent 8. , 2020)
  Legislation offers the opportunity for CBM, for example: both customs and NVWA are designated in the law as supervisors for phytosanitary products.

- ***Coordination***
  The NVWA and IGJ have a mutual framework agreement on the "grey area" of medicines. This agreement covers "novel foods", these are products which do not qualify as a medicine because the active substances are too low but can be a risk for human health.
  There are regular meetings with the IGJ. (Respondent 5. , 2020)
  The design of domestic legislation and regulation allow CBM to be implemented, the Health Act and Food Law both mention the collaboration with Customs. (Respondent 5. , 2020)

  One of the interviewed companies has periodic meetings with the phytosantairy inspection agency. The execution of the inspections is discussed, to ensure that the inspector can do his job properly and efficiently. This works very well and shows good results in practice. The company also benefits from this because it reduces the inspection time and during busy periods this is very efficient. (Respondent 1. , 2020)

Weaknesses:

- ***Controls***
  Both NVWA and IGJ have a task regarding "novel foods" (which are not phytosanitary products). Novel foods, for instance food supplements, could contain active substances which can be seen as medicines if they exceed the allowed quantity and are otherwise a product regulated by the Commodities Act. There are only informal procedures about the transfer of cases between Customs & NVWA because there is no framework agreement. A product for which it has been established that (because of the quantity of active substances) it is a medicine, is covered by the framework agreement on medicines (see paragraph 5.2.3).

  For phytosanitary inspections there is a formal agreement with businesses which ensures phytosanitary inspections are executed within one day. The service level of one day is not met during weekends. (Respondent 1. , 2020)

- ***Legislation***
  The publication and communication of new legislation could be improved. (Respondent 5. , 2020)
  Definitions in the phytosanitary act and the customs regulation were not aligned. This has recently (during this research) changed because of the new OCR which came into force. (Respondent 1. , 2020)

- ***Coordination***
  With Customs there is no mutual Framework Agreement on the so called grey area of "medicines" known as "novel foods". (Respondent 5. , 2020) Because of the lack of a framework agreement there is no clarity about the operational procedures for novel foods. (Respondent 1. , 2020)
  One of the respondents mentioned that the NVWA might not want to outsource too much of its own tasks. (Respondent 1. , 2020)
  Goods are checked by the inspection agency and by customs (apart from the Schiphol area). (Respondent 1. , 2020).
  Companies have to send required data to the NVWA (Client) system and to Customs for the import declaration via the AGS system. (Respondent 1. , 2020)

- ***Risk-management***
  There are no risk profiles on medicines when they are brought into the Union, only when these goods are declared for free circulation. As for novel foods, there is no mutual risk-assessment since Customs has no task but only a signalling function to the NVWA e.g. at the moment when the import declaration is checked by an officer. (Respondent 2. , 2020) (Respondent 5. , 2020)

Opportunities:

- ***Controls***
  For trade it is very important that perishable goods are not held up for too long. Improving the service level of inspections during weekends would be beneficial for trade. (Respondent 1. , 2020)

- ***Regulation***
  The NVWA is willing to give training to customs officers about the determination of novel foods and the possible health risks. (Respondent 5. , 2020)
  The new European directives on phytosanitary goods offer more alignment between the legal texts. (Respondent 1. , 2020)
  The regulation has to be focused more on practice (see the example of the part shipments below) and must take into account the logistic flows. (Respondent 1. , 2020)

- ***Coordination***
  In relation to the import of flowers one of the respondents from trade mentioned a faster clearance as an opportunity to improve trade facilitation. If authorities e.g. the NVWA and Customs could get access to reliable, accurate and complete data from the source that is already available via a data-platform this would lead to a more fluent flow of goods. As a result the interested parties would be informed more rapidly about planned inspections. Also the amount of checks could be reduced because the data is trustworthy. (Respondent 1. , 2020)

- ***Risk-management***
  The risk-management of medicines could be improved by regularly discussing the risks for so called grey area "medicines" also known as novel foods. The IGJ, NVWA, RIVM and Customs all have knowledge and data on medicines.

Threats:

- ***Controls***
  Limitation of capacity and time (Respondent 5. , 2020).
- ***Regulation***
  The legislation itself does not take into account of the fact that there are several authorities involved (Respondent 5. , 2020).
  Phytosanitary law doesn't encounter the logistic process like part shipments, the law requires that a shipment comes in as a whole. In practice, however, shipments are frequently split across multiple flights. This demonstrates a mismatch between the regulation and the logistic reality. According to the interviewee it is factually, not possible to comply with the phytosanitary regulation. (Respondent 1. , 2020). [Note: in practice the phytosanitary certificate can be presented 48 hours after the goods have been inspected.] This only applies when the shipment is not selected in the NVWA system Client, then the shipment can entry in multiple parts. If the shipment is selected for an inspection it will have to be complete including the phytosanitary certificates. So the practical solution will only work if the shipment receives an immediate release code (P2).

5.3.5 Impact analysis

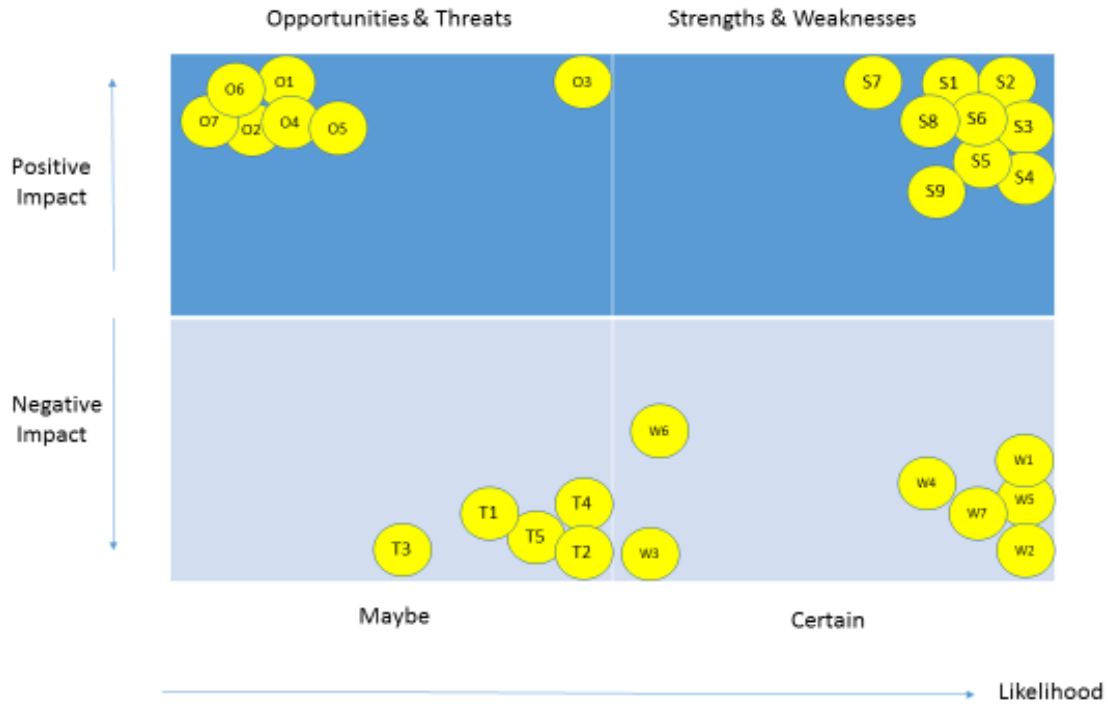

Figure 5.2 Impact analysis NVWA

In this impact analysis it is shown that almost all strengths have a very positive impact on CBM. One item S7, (Because of coordination with the company there is a reduction of the inspection time) is highly positive, but it is not universally adopted by customs.
With regard to the weaknesses, it is shown that a lot of improvement can be made trying to decrease the likelihood of the weaknesses in the bottom right-hand corner which have a high

level of negative impact. These are W2 (the service level on phytosanitary inspections is not met in weekends), W5 (there is no framework agreement with Customs on so called grey area "medicines") and W7 (there are no specific risk profiles on medicines when brought into the EU).
There is only one opportunity with a high positive impact and very likely to happen (O3) and one should look for possibilities to move the other items from the left to the right corner, for instance O7 (to conduct a mutual risk-analysis between the NVWA, IGJ and Customs on the so called "grey area" of medicines).
The most important threats are T2 (internet sales), T4 (framework agreement is made on a policy level between ministries) and T5 (phytosanitary law does not encounter the logistical process e.g. part shipments) because of their high level of negative impact on CBM and the likelihood is high.
It should be noted that the positioning of the items on the impact analysis chart is indicative, based on a subjective view formed by the author, following the interviews with authorities and company experts described in Annex IV.

5.4 The Dutch Customs and Tax Administration

The Dutch Customs and Tax Administration is part of the Ministry of Finance. Dutch Customs contributes to a safe society in the Netherlands and the European Union. One of their strategic goals is to protect society with respect to safety, health, environment and economy. Dutch Customs also works with the Ministry of Health, Welfare and Sport. One of their tasks is to ensure the quality of the medicines. Dutch Customs interacts furthermore with the Ministry of Agriculture, Nature and Food Quality in order to ensure the health of fytosanitary products.

5.4.1 Overview tasks and powers

The table below shows the duties and competencies of Dutch Customs with regard to phytosanitary goods and medicines.

Targeted goods	Subject	Legislative department	Name of the Measure	Duties Customs supervison	Supervisory powers Customs	Agreements Convenant	One stop
Medicines	HEALTH	Ministry of Health, Welfare and Sport	Medicinal products for human use	declaration for release for free circulation/ entry into the territory of the EU*	Adw, article 1:1 (5) ADW, article 1:3 (5) & section A of the Annex Adw	Yes	Yes
Medicines	SAFETY	Ministry of Foreign Affairs	Tiered priced medicines	declaration for release for free circulation/ entry into the territory of the EU*	Adw, article 1:1 (5), section A of the Annex Adw)& 133 EG-convention	Yes	Yes
Plants and plant products	HEALTH	Ministry of Agriculture, Nature and Food Quality	Plant Health Directive - Organisms harmful to plants or plant products	Monitoring acceptance and release after inspection NVWA / Customs formalities / sealing	Adw, article 1:1, lid 5 article 1:3, lid 5 & section A of the Annex Adw	Yes	No
Novel foods	HEALTH	Ministry of Health, Welfare and Sport	Novel foods	No task	Adw, article 1:1, lid 5 article 1:3, lid 5 & section A of the Annex Adw	No	n.a.

Table 5.7 Overview tasks & powers Dutch Customs

5.4.2 SWOT Dutch Customs and Tax Administration

The SWOT analysis a summary of the interviews with all the experts (see table annex IV).

		Strengths	Weaknesses
As is	Controls	Designated single points of contact (SPOCs (S1)	Informal procedures about transfer shipment (non-medicines) between Customs & NVWA (W1)
		Customs specialists are asset in communication between authorities (S2)	Skills/knowledge of customs officers during inspections not sufficient (W2)
		Controls are executed timely (S3)	To accept the boundary of tasks (W3)
		Inspection at company location (S4)	
		Good level of knowledge about medicines (S5)	
		Training programm for custom experts non-fiscal tasks (S6)	
	Legislation	Agreement on medicines & phyto goods (S7)	No formal task regarding the Commodity Law (W4)
		Legislation offers the opportunity for CBM (S8)	The manual (soft law) not up to date with new policy on medicines (W5)
			Unclearity about providing information about "novel foods" (W6)
			Concept “goods of a commercial nature" not clear (W7)
	Coordination	The co-located facility (JIC) at Schiphol is useful for other authorities (S9)	With Customs there is no agreement on "grey area“ medicines (novel foods) (W8)
		Legislation lays down collaboration between NVWA and Customs (S10)	The NVWA does not want to outsource too much of its own tasks (W9)
		Acces to NVWA system (S11)	Difficult to share information about medicines with other authorities (W10)
			Authorities not enough involved in the design co-located facility (W11)
			Double inspections on phytosanitairy goods (W12)
	RM	Offering reduced checks for companies (S12)	Risk management only discussed at a higher level, not with work floor (W13)
		Improving risk profiles to prevent unnecessary controls (S13)	Recording of data not detailed enough for good analysis (W14)
			Low collaboration in risk-management (W15)
		Opportunities	Threats
To be	Controls	Modernization of legislation, more alignment between customs laws and other legislation. (O1)	Brexit (T1)
		Developing app for determination medicines (O2)	Internet sales (T2)
	Legislation	Regulation more in line with logistical flow (O3)	Classification rules (CN) not in line with the Medicines Act (T3)
			Goods of a commercial nature is not defined in the Medicine Act (T4)
			National law on specific cases (T5)
			Legal restrictions sharing data (T6)
			Phytosanitairy law does not encounter the logistical process e.g. part shipments (T7)
			Experimental medicines are not covered by the legislation (T8)
	Coordination	Create a task for controls on grey area “medicines” (O4)	Framework agreement is made on a policy level between ministries (T9)
		Make use of skills/ knowledge inspection agency for phyto goods (O5)	
		Create national platform to exchange information (O6)	
		Reduce inspections on phytosanitary products by applying one-stop-shop (O7)	
		Make agreement to share risk information on medicines with the RIVM (O8)	
		A SPOC per customs region office (O9)	
		Make use of data from trade via a data-platform (O10)	
	RM	Share data with other authorities for risk discovery (O11)	Not enough imput from authorities to develop risk profiles (T10)
		Less inspections for companies that deliver reliable data through a data-platform (O12)	Difficult to cover the risks of medicines (T11)
		Mutual risk-analysis medicines (O13)	No task when goods brought into the Union (T12)

Table 5.8 SWOT Dutch Customs

A short explanation is given to clarify the statements in the SWOT table.

Strengths:

- ***Controls***

  There is an education program for the SPOCs (Single Point Of Contact) "medicines" and this has proved useful (Respondent 6. , 2020) (Respondent 7. , 2020).

  Physical examinations regarding the import of goods can be moved inland. This is done with high-value medicines/raw materials from regular (large) pharmaceutical companies (Respondent 6. , 2020) (Respondent 7. , 2020).

  In the interviews it was mentioned by the other authorities that customs has well trained staff. The average level of knowledge of customs officers is very good considering the volume of subject matter. This refers to customs specialists on medicines (Respondent 9. , 2020).

  In the opinion of the interviewed companies, controls are executed on time. (Respondent 1. , 2020) (Respondent 1. , 2020)

- ***Coordination***

  With regard to Ketamine both the IGJ and Customs have designated single points of contact (SPOCs). This works very well for efficient and effective communication about (confiscated) consignments. The input of Customs specialists on non-fiscal tasks is an asset in the communication between the different authorities. (Respondent 6. , 2020)

  There is a framework agreement on medicines & phytosanitary goods in which the tasks for customs are described which makes it possible for customs officers to execute (part of) controls on behalf of other ministries.

  Regarding phytosanitary controls, according to the interviewed freight forwarder, the Customs Schiphol Cargo office has an agreement with the NVWA for the region Schiphol and Aalsmeer. This agreement includes that there is only one physical inspection by the inspection agency on behalf of the NVWA, and not an additional one by Customs. Note: it is not confirmed by Customs there is such an agreement or one-stop shop arrangement. The co-located facility (JIC) at Schiphol is useful for other authorities. (Respondent 4. , 2020) (Respondent 5. , 2020)

- ***Risk management***

  Customs is continuously looking for ways to improve risk profiles to prevent unnecessary controls. (Respondent 1. , 2020)

  Customs is developing an app for the determination of medicines and uses the data for risk analysis. (Respondent 1. , 2020)

  Companies appreciate the possibility to apply for reduced checks. This is the case when there are controls on a specific client or product and a (temporary) risk profile is active. If the company can show that this product type is already checked three times and no irregularities were observed, they can apply for this facilitation. (Respondent 1. , 2020)

Weaknesses:

- ***Controls***
  The interviewees from trade were not positive about the way controls are performed by Customs. In their opinion the skills and knowledge of customs officers who execute controls is not sufficient (Respondent 1. , 2020) and it is not always known how and what goods they are investigating (Respondent 1. , 2020). The authorities said phytosanitary controls are too complex for customs officers (Respondent 3. , 2020) (Respondent 4. , 2020).

  Another remark that was made is that goods are checked multiple times by customs. At first on the basis of the ENS when goods are in temporary storage and are selected for the scan. Subsequently, the same goods could be selected for an inspection under the transit procedure and finally, the same goods can be selected when they are placed under the customs procedure release for free circulation (Respondent 1. , 2020).

- ***Regulation***
  The Customs manual, which is seen as soft-law, lags behind with the new policy on medicines.
  Within the IGJ but also within Customs there is discussion about the concept "goods of a commercial nature" (Respondent 6. , 2020) (Respondent 7. , 2020) (Respondent 1. , 2020) and what must be considered as commercial nature[53].
  According to the interviewed authority there is confusion about the legal abilities to share and provide information related to the selected goods by Customs, e.g. when Customs transfers goods to the NVWA to take over the investigation. (Respondent 5. , 2020)
  By the interviewee it is seen as a shortcoming that Customs has no formal task, meaning laid down in a framework agreement, regarding novel foods, covered by the Commodity Law. (Respondent 5. , 2020) (Respondent 1. , 2020) The Customs officers need a lot of education to keep up with possible risks, the determination of goods and the specific requirements of new legislation.

- ***Coordination***
  At the moment it is considered difficult to share information about medicines with other authorities like the Doping authority and the National Institute for Public Health and the Environment (RIVM). (Respondent 1. , 2020) According to a respondent from Customs there could be a lack of understanding on the part of Customs regarding the limited capacity of the IGJ to handle irregularities and investigate the possibilities for enforcement or give intructions to Customs to handle these shipments. (Respondent 1. , 2020) The location of the joint inspection centre at Schiphol is not convenient for all parties (Respondent 1. , 2020). Authorities were not sufficiently involved in the design of the co-located facility at Schiphol as a result of which it is not always suitable for certain controls or inspection services. (Respondent 3. , 2020) (Respondent 4. , 2020)
  According to one of the main freight forwarders in perishables, phytosanitary goods are physically checked by the inspection agency and again by customs and this should not be necessary. The freight forwarder also submits the required data to the NVWA (Client) and Custom (AGS) systems. (Respondent 1. , 2020) authorised . It is not clear if Customs can use the data of physical inspections from the inspection agency for the verification of a customs declaration, therefore a separate inspection is necessary (Respondent 4. , 2020).

[53] Customs has recently (during this study) written policy on this matter.

- ***Risk management***
  Now risk management is discussed in a meeting at a higher level, not with staff from the work floor. (Respondent 8. , 2020) The recording of data needs to be more detailed so that other authorities can use it for their risk analysis. (Respondent 1. , 2020) It is also mentioned that it is difficult to cover the risks of medicines by means of profiles because of the different definitions of the concept of medicine used by the Medicines Act and the Combined Nomenclature (CN). (Respondent 1. , 2020)
  Because of the current situation, products that are a medicine according to the Medicines Act but are not considered as such for the CN, the risks are spread over more than one chapter of the CN and therefore the picture is less clear. (Respondent 1. , 2020). The collaboration in risk-management is not enough for an optimal risk-management process, this is related to the input of the IGJ (Respondent 2. , 2020).

- ***Controls***
  In the executions of tasks customs sometimes finds it difficult to accept the point of view of the IGJ when we decide a product is not seen as a medicine. (Respondent 8. , 2020)
  Difference in opinion between policy makers and the work floor (letting through dangerous goods with health risk because there is no task for customs). (Respondent 1. , 2020)

Opportunities:

- ***Legislation***
  In December 2019 the new Control Directive came into force, this has led to modernization in the legislation, more alignment between customs laws and other legislation. (Respondent 1. , 2020)

- ***Coordination***
  For the verification of import declarations, Customs could make more use of the skills and knowledge of the inspection agency, this prevents a second physical inspection (Respondent 1. , 2020). It is experienced by the interviewee that outside the Schiphol region, double inspections of consignments are taking place by the KCB and Customs. The inspectors of the KCB at the behest of the NVWA, have a lot of knowledge about phytosanitary products. Customs could use this information for handling declarations. Therefore, the inspection authority could take over a part of the customs control. This process can be improved outside of the Schiphol region, and thereby reduce the physical inspections by Customs (12, 2020).

  The new European directives on phytosanitary goods, give more alignment between the legal texts. (Respondent 1. , 2020)

  Both Customs and NVWA mentioned the opportunity to create a formal task for Customs, by means of a framework agreement, to execute controls on so called grey area "medicines" called novel foods. According to the customs specialist on medicines there is a need for a national platform to exchange information about cases and best practices on medicines. For example an exchange between IGJ, NVWA, Customs, Fiscal Intelligence and Investigation Service (FIOD), Police and Public Prosecution Service (OM) to discuss best practices and learn from each other (Respondent 6. , 2020).

The interviewee of the Customs laboratory suggests to create an agreement for sharing data for the purpose of risk analysis on medicines with the National Institute for Public Health and the Environment (RIVM) (Respondent 1. , 2020).

To limit the burden in the logistical flow, the business interviewee suggested more collaboration and coordination between Customs and trade. For example a contact (SPOC) per customs region office for large companies that has offices nationwide and organising regular meetings between customs (client manager) and the company. Another aspect that could be improved is contact at an operational level (Respondent 1. , 2020). Furthermore, making use of the data (piggy-backing) of goods from trade that are already available via a data-platform. This can lead to a more fluent flow of goods because companies would be informed about planned inspections at an earlier stage. (Respondent 1. , 2020). Piggybacking is re-using supply chain for governmental purposes (Tan, 2013, p. 35).

- ***Risk management***
  It is seen as an added value to share information about medicines which are also valuable for other authorities, the data can be used for risk analysis. (Respondent 1. , 2020)
  From a trade perspective it is seen as an opportunity to reduce the controls by adapting risk profiles when trusted traders deliver reliable and timely data through a data-platform. (Respondent 1. , 2020)

Threats:

- ***Legislation***
  National law on specific cases could be a threat for regulatory compliance, for example the requirements like authorisations that are sometimes necessary even when the goods have no destination in the Netherlands. An example is that the Convention against torture and other cruel inhuman or degrading treatment or punishment, can be applicable on specific cases like euthanasia drugs. Not everybody, even customs officers, or freight forwarders are aware of these restrictions. (Respondent 8. , 2020) (Respondent 1. , 2020)
  In the context of supervision, exchanging information with customs is easy, when talking about the investigation process, the transfer of information in practice is sometimes experienced as a bit more difficult. (Respondent 8. , 2020)
  In the interviews a few examples were given about current situations of legal issues. The legislation does not always fit the way customs officers would like it to, for example experimental medicines could be dangerous but are not covered by the current legislation. (Respondent 1. , 2020)
  The classification rules (Combined Nomenclature) are not in line with the Medicines Act. Customs uses the CN for the tariff classification of goods. The objectives of the legislation are different, the aim of the Medicines Act is protection against health risk. For the CN, it is important to levy the right amount of import duties. (Respondent 1. , 2020)

  The concept of goods of a commercial nature is not defined in the Medicine Act. (Respondent 1. , 2020) Finally, definitions in the customs legislation ‘entry into the Union’ and ’release for free circulation’ are not in line with the non-fiscal laws.

  At the moment there are a lot of restrictions in sharing data between Customs and trade (Respondent 1. , 2020) The Manual Information system Guideline (MIG), contains the requirements for systems. This guide is very strict, it would help enormously, according to

the interviewee, if this would be more flexible so that companies can use their own systems to share data in an optimal way with Customs.

- ***Controls***
  A large number of new staff have been recruited due to Brexit, therefore the quality of the knowledge and skills are logically less well developed as those of experienced officers (Respondent 1. , 2020).

- ***Risk management***
  Before goods are brought into the Union, a risk-analysis took place on safety and security. With regard to medicines customs has no task, with the exception of post and couriers, to execute controls when goods brought into the customs territory of the Union, they only have a task when goods are placed under release for free circulation[54]. The risk in this is that goods can disappear "out of sight" (Respondent 2. , 2020).

5.4.3 Impact analysis Customs

In the SWOT analysis all strengths, weaknesses, opportunities and threats are equal. In an impact analysis it is shown which items have a more positive impact for CBM, and the likelihood of occurrence. This can be an aid to the authority for prioritizing improvement activities.

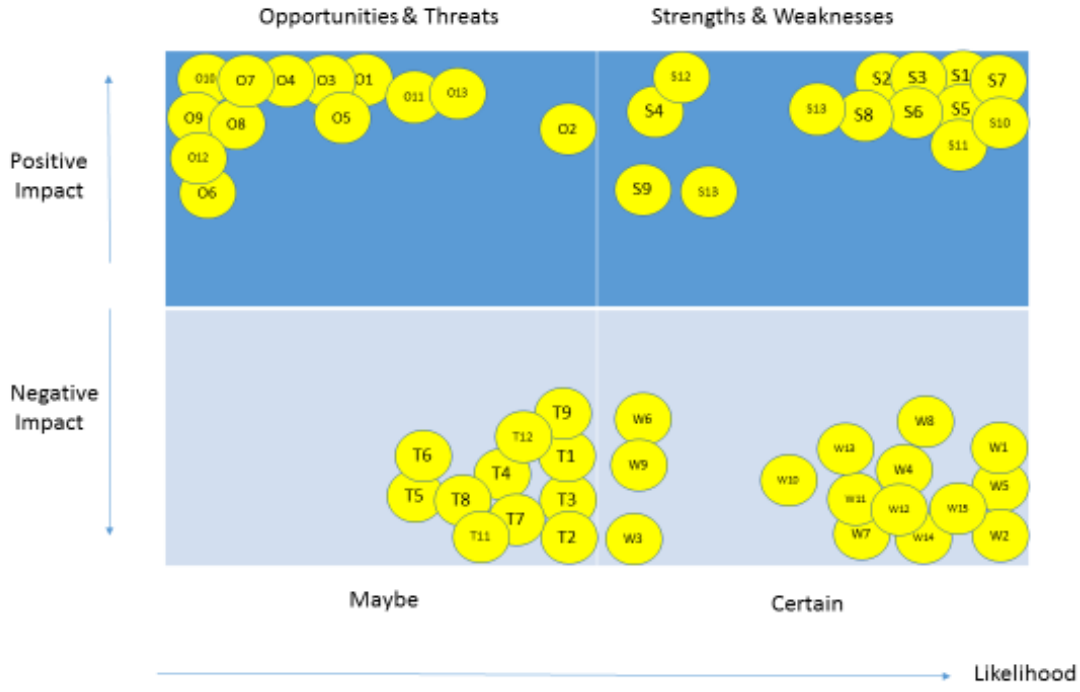

Figure 5.3 Impact analysis Customs

In this impact analysis it is shown that the strengths S4 (Inspection at company location) and S12 (Offering reduced checks for companies) have a very positive impact on CBM, but are

[54] The Medicines Act gives the opportunity to act when goods are brought into the Union but the Dutch Customs made a policy-based decision to only conduct physical inspections when goods are brought under the customs regime of free circulation (interview respondent 2)

currently not standard practice. Therefore it is an interesting question how to shift those two items to the top right corner (likelihood high). Due to their high positive impact, such a shift would lead to significant improvement for the CMB process.
With regard to the weaknesses, a lot of improvement can be made by decreasing the likelihood of the weaknesses in the bottom right-hand corner which have a high level of negative impact. For example W2 (Skills/knowledge of customs officers during inspections not sufficient).
There are a lot of opportunities with a positive impact and one should look for ways to move these items to the top right-hand corner, for example O7 (Reduce inspections on phytosanitary products by applying a one-stop-shop) and O10 (Make use of data from trade via a data-platform).
The most important threats are T2 (Internet sales of medicines) and T3 (Classification rules (CN) not in line with the Medicines Act). Item T11 (difficult to cover the risk of medicines) also has a strong negative impact but is slightly less likely to happen.
It should be noted that the positioning of the items on the impact analysis chart is indicative, based on a subjective view formed by the author, following the interviews with authorities and company experts described in Annex IV.

5.5 Conclusion

In the framework agreement the tasks of the authorities and procedures are laid down. Coordination takes place at policy- **and** operational level. Attention should be paid to bringing these different work experiences and insights together. The experiences of the work floor are of great importance in order to achieve a valuable risk analysis. In addition, **more coordination between policymakers and task practitioners** is important for an **effective and efficient collaboration**. It is also important that an adopted policy stance is supported and or accepted by the task practitioners so they perform their task correctly.
What emerged from this case study and also from the legal research, is that **customs legislation and non-fiscal legislation is not always aligned with each other**. With regard to medicinal products, the following examples have been given:

- the differences between the definitions of goods brought into the customs territory of the Union and release for free circulation
- the meaning of a medicine in the classification rules (Combined Nomenclature) is not in line with the definition in the Medicines Act.

Coordination of risks finds place at different levels (policy, tactical and operational level) between the authorities. At policy level, there could be **more input regarding the risk of medicines**, also **sharing more data** (not only between the three authorities mentioned in this research) but also with other government authorities like RIVM. Also **alignment between the legislation** (see point 2 above) **can lead to better risk-management**. The fact that medicines that are illegal in the Netherlands and may be permitted in another Member State, makes it **difficult to draw up generally applicable Union rules** upon entry into the Union. Therefore on a tactical level, risk profiles are being applied in a later stadium, when placed under free circulation. It can be concluded that it is not possible to refuse the entry in advance and that the medicines (legal or not) do enter the territory of the Netherlands. In case of illegal medicines they should be stopped when placed under free circulation. There is however a risk that these goods will be removed from customs supervision before that happens.

The interviews also showed that for the grey area of medicines, the so-called novel foods, there is **no agreement and this complicates the execution and coordination of tasks**. It should be clear who (the IGJ, NVWA or Customs) may do what, at what moment (brought

into the EU or import). Also the sharing of information between the authorities involved should be described.

From the perspective of trade it is important that all **authorities are easy to communicate *with*** and therefore SPOCs are useful. Opportunities for **sharing data** are mentioned, but **legislation** (the MIG guidance) **is seen as an obstacle**. Furthermore, the **reduction of physical inspection** is seen as a **facilitation** with a high positive impact. For the verification of import declarations of flowers, Customs could make more use of the inspection results of the NVWA, *this* **prevents a second physical inspection**.

6 OVERALL ANALYSIS

6.1 Introduction

To be able to answer the research question, it has been split up into sub-questions. The following sub-questions are answered by means of an overall analysis of the legal powers. Subsequently a multi-organisational SWOT analysis has been completed, including the aspects of the literature study, to focus on CBM issues and challenges to optimize CBM.

- What aspects of the legislation affect the functioning CBM?
- What is the current level of performance?
- Can it be improved?
- How can it be improved?

6.2 Overall overview tasks & powers

Targeted goods	Subject	Legislative department	Name of the Measure	Competent authority	Duties Customs supervison	Duties competent authority	Supervisory powers Customs	Supervisory powers authority	Agreements Convenant
Medicines	HEALTH	Ministry of Health, Welfare and Sport	Medicinal products for human use	IGJ & NVWA Medicine Act, article 100)	declaration for release for free circulation/ entry into the territory of the EU*	In case of no authorisation for a medicinal product.	Adw, article 1:1 (5) ADW, article 1:3 (5) & section A of the Annex Adw	Medicine Act, article 100	Yes
Medicines	SAFETY	Ministry of Foreign Affairs	Tiered priced medicines	IGJ & NVWA Medicine Act, article 100)	declaration for release for free circulation/ entry into the territory of the EU*	In case of no authorisation for a medicinal product.	Adw, article 1:1 (5), section A of the Annex Adw)& 133 EG-convention	Medicine Act, article 100	Yes
Plants and plant products	HEALTH	Ministry of Agriculture, Nature and Food Quality	Plant Health Directive - Organisms harmful to plants or plant products	NVWA Besluit aanwijzing toezichthouders Plantenziektenwet	Monitoring acceptance and release after inspection NVWA / Customs formalities / sealing	Physical inspection & document check.	Adw, article 1:1, lid 5 article 1:3, lid 5 & section A of the Annex Adw	Besluit aanwijzing toezichthouders Plantenziektenwet, art 1	Yes
Novel foods	HEALTH	Ministry of Health, Welfare and Sport	Novel foods	NVWA (Warenwet, artikel 25) Regeling aanwijzing toezichthoudende ambtenaren	No task		Adw, article 1:1, lid 5 article 1:3, lid 5 & section A of the Annex Adw	Commodity Act, article 25	No

Table 6.1 Overview tasks & powers IGJ, NVWA and Customs

6.3 Overall SWOT analysis

A SWOT analysis can be useful for supporting the implementation of CBM. To calculate the benefits to invest in CBM and to demonstrate the relevance of CBM. An analysis of strengths, weaknesses, opportunities and threats is helpful to focus on CBM issues and challenges and it shows what is going well already and where more investment may be required.

		Strengths	Weaknesses
As is	Controls	SPOCs for authorities & trade (S1)	Limited capacity for controls (W1)
		Good customs clearance times (S2)	**Informal activities, undefined in agreements (W2)**
		Controls are executed timely (S3)	
		Inspection at company locations (S4)	
		Technically skilled an competent staff (S5)	
	Legislation	**Strong & clear legislative framework (S6)**	**Unclarity legal competences sharing/ providing data amongst staff (W3)**
		UCC stimulates mutual risk management and data sharing (S7)	Manuals (soft law) not up to date with new policy or legislation (W4)
	Coordination	**Co-located facilities (S8)**	Different views of authorities on supervision (W5)
		Effective collaboration between authorities (S9)	**Double inspections on certain goods (W6)**
		Access to systems of other authorities (S10)	**Overlapping activities between authorities (W7)**
		Clear and well defined procedures in Framework agreements (S11)	
		Joint inspections (Operation Pangea) (S12)	
	RM	Reduced checks for compliant companies (S13)	Risk management developed & discussed at policy level, not with work floor (W8)
		Improving risk profiles to prevent unnecessary controls (S14)	Recording of data not detailed enough for good analysis (W9)
		Comprehensive RM & compliance improvement approach (S15)	**Low collaboration in risk-management (W10)**
		Opportunities	Threats
To be	Controls	Education by experts from authorities (O1)	Brexit (T1)
		Reduce inspection times (O2)	Internet sales (T2)
		Good working relationship with traders (O3)	Controls to complex (T3)
			Financial resources not enough T4)
			Corona virus (T5)
	Legislation	**Modernization of legislation, more alignment between customs laws and other legislation (O4)**	**Non-fiscal legislation not in line with customs legislation (T6)**
		Regulation more in line with logistical flow (O5)	Limitation of international trade through national legislation (T7)
		Global standarization for legislation (O6)	**Legal restrictions sharing data / General Data Protection Regulation (T8)**
			Legislation does not encounter the logistical process (T9)
			Huge range of laws and regulations (T10)
			Non-compliance because laws to complex (T11)
	Coordination	Use of data obtained by other authorities (O7)	Framework agreement is made on a policy level between ministries (T12)
		Reduce inspections by applying one-stop-shop (O8)	Some goods not covered by a framework (T13)
		More agreements for sharing data (O9)	
		Better alignment on mutual tasks authorities (O10)	
		Use data from trade via a data-platforms (O11)	
	RM	**Share more data with other authorities for risk discovery (O12)**	
		Reduced checks for companies that deliver reliable data through a data-platform (O13)	
		More collaboration between authorities (O14)	
		Exchange information on risk cases worldwide (O15)	
		More investment in RM (O16)	

Note: the items in bold are the aspects that were also found back in the literature.

Table 6.2 SWOT CBM

6.4 Impact analysis

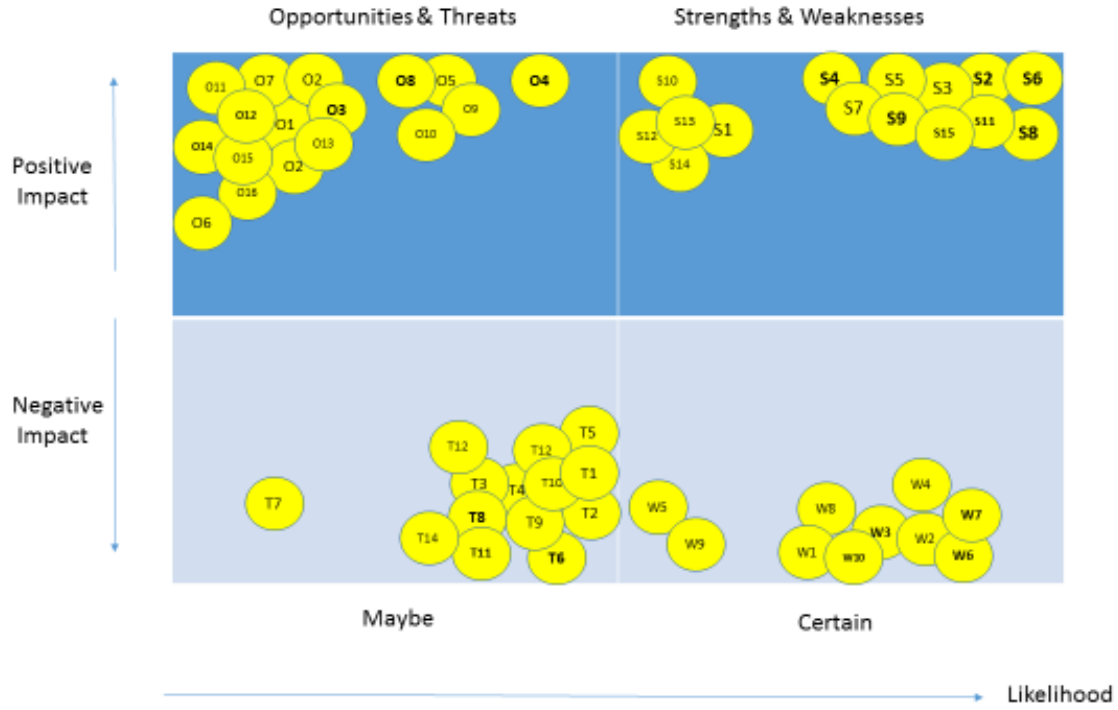

Figure 6.1 Overall impact analysis CBM
Note: the items in bold are aspects that were also found in the literature.

In this impact analysis it is shown that the 'strengths': S10, S13 and S4 have a very positive impact on CBM, but only the items on the very right-hand side (S6, S2 and S3) are currently consistently seen in practice. Therefore, it is an interesting question how to shift the other items: S10 = access to systems of other authorities, S13 = reduced checks for compliant companies and S4 = inspection at company location, to the top right corner (likelihood high). Due to their high positive impact, such a shift would lead to significant improvement for the CMB process.

Regarding the weaknesses, it is shown that a lot of improvement can be made decreasing the likelihood of the weaknesses in the bottom right-hand corner which have a high level of negative impact. This is recommended for the items W6,W2,W7, W3 and W10, which are: double inspections on certain goods; informal activities which are not formalised in agreements; overlapping activities between authorities; unclear legal competences sharing/ providing data amongst staff; a low collaboration in risk-management. Four of these items (W2, W3, W6 and W7) are also factors playing a role when implementing CBM (see conclusion 3.7)

There are several opportunities with a high positive impact such as O7, O11 and O12. One should look for possibilities to move these items to the top right-hand corner (increase the likelihood). These items are as follows: Use data from trade via data-platforms (O11); data obtained by other authorities (O7) and: share more data with other authorities for risk discovery (O12).
There are quite a few threats with a high likelihood. On the subject of legislation the items T6, T8 and T11 are threats mentioned in the interviews and are factors that play a role when implementing CBM, found in the literature (see conclusion 3.7). These threats are: non-fiscal legislation not in line with customs legislation (T6), non-compliance because laws are seen as

too complex (T11), legal restrictions sharing data / General Data Protection Regulation (T8). Another important threat is T9, legislation does not encounter the logistical process (T9). It is important that mitigation or avoidance of these threats is carefully considered in an effort to improve CBM.

It should be noted that the positioning of the items on the impact analysis chart is the result of a subjective approach, based on the experience and observations of the author, following the interviews with authorities and company experts described in Annex IV.

6.5 Conclusion

In view of the results of the SWOT and impact analysis the following issues in legislation have an impact on CBM:

- informal activities which are not formalised in agreements;
- overlapping activities/tasks between authorities;
- unclear legal competences in sharing or providing data amongst staff;
- non-fiscal legislation not in line with customs legislation;
- in the operation legislation is seen as being too complex;
- legal restrictions because of the General Data Protection Regulation;
- legislation does not encounter the logistics process.

Informal activities which are **not formalised in agreements** should be formalised in a (new) framework agreement. When there are **overlapping tasks between authorities** it should be clear to all parties, including Customs, i.e. who does what and when. There are **legal restrictions to share and or provide data** laid down in amongst others, the General Data Protection Regulation. This is seen, to some of the interviewed experts, as an obstacle in the collaboration with other authorities. When it concerns information sharing for a customs task as described in the framework agreement, the duty of confidentiality of Adw does not apply and the information can be shared en this is clear. However, if it is not a customs task, each request for information will be assessed separately and that's where the ambiguity arises. According to the literature, a legal framework should contain **data protection rules**, however the legal **competences in sharing or providing data should be clear** for all staff members. In principle competences and restrictions of sharing (non-fiscal) data are laid down in the Adw and in the framework agreements. If this is not described in the relevant framework agreement this should be amended and clarified. The framework agreements must be **explained** to officers in the operational process. In addition staff can be educated via e-learning modules. When **non-fiscal legislation is not in line with the customs legislation**, th**is should be aligned. A legal review could** identify legal gaps or inconsistency of concepts in relation to other (national) legislation. During operational activities, legislation is seen as being too complex. It can be considered complex for several reasons. Firstly, a law is often not written in one sitting, but it is a framework structure of actual legislation, with its own amendments, consolidations and removals. Secondly, policymakers are not involved in the implementation and can therefore have a more abstract picture of the implementation, which means that they do not, for example, take the logistic actions into account. Thirdly, non-tax legislation is combined with customs legislation, developed by different ministries, in which a different terminology is used. The aim should be to have **clear and simplified legislation** so users can understand it more easily.

The following points are laid down in legislation but could use more attention in practice:

- applying the one-stop-shop principle
- improve collaboration in risk-management

The case study showed that **dual inspections** could possibly be avoided by **reusing data** of other authorities. Furthermore, the **collaboration in risk-management** could improve through more **consultation and coordination within the relevant authorities**.

7. CONCLUSIONS AND RECOMMENDATIONS

This final chapter addresses the main conclusions and provides an answer to the primary research question. This chapter concludes by providing recommendations for Dutch Customs regarding CBM. The conclusions and recommendations may also be of interest for the IGJ and NVWA.

7.1 Conclusions

The goal of this thesis project was investigating how to achieve a more efficient and effective coordination between government agencies at the border and to find out how legislation affect this. This was undertaken through a literature study of the concept CBM. A desk research is executed to find out what de Dutch vision is for CBM. Next, legal research into the medicine and phytosanitary legislation was carried out, enabling an overview of the various tasks and legal powers of the authorities to be clarified. Finally, case studies were conducted by means of interviews and SWOT analyses.
The following sub research questions were formulated to find an answer to the main research question. In addition, some of the sub research questions have been formulated to obtain the research objectives of this study.

What is CBM?
Which criteria play a role?
What does theoretical best practice CBM look like?
What is the Dutch vision for CBM?

The literature study has shown that CBM is an approach to manage borders involving the different border agencies in a way that it ensures efficient and effective processes and procedures. CBM can be accomplished through a better coordination between border agencies in policy development and also during operational activities. Factors that play a role are: the legal framework, coordinated controls and risk-management. A strong legal framework exists of clearly defined control powers, tasks and the conditions of when to be used. Furthermore, it contains data protection rules but also the possibility for exchanging information between authorities for purposes such as risk-management. It is important to authorities and as well to businesses that the legislation is clear and understandable. Then officers can execute their tasks correctly and businesses can be compliant. Coordinated controls can be achieved through approaches such as the “one-stop-shop”, or joint inspection facilities. Involvement of businesses is also mentioned as an important aspect. This could lead to a better coordination of the control and inspection process. Attention should been given regarding overlapping activities between authorities, since the results of the case study have shown that this overlap can lead to a lack of clarity around delegation and execution of tasks.

CBM can be achieved in theory by having the customs authority perform duties on behalf of the responsible ministry. From a perspective of Dutch Customs, CBM involves the coordination of the implementation of the statutory duties of various competent authorities, regarding the cross-border flow of goods. Customs has been given a coordinating role by the legislator and Dutch Customs is actively carrying out this role. This can be seen through the number of factors that play a role in CBM according to the view of WCO and COM, which are implemented by Dutch Customs. One of the key factors is having a detailed understanding about the tasks that are required to be performed by Customs for other departments. The framework agreements include a description of these requirements. Furthermore, the legal

framework provides authorization for the customs officers like effective powers needed to perform their tasks for other authorities and under which conditions these powers can be used. Three further examples that confirm the view of the above mentioned organizations are: coordinated controls by applying the one-stop-shop principle; having joint inspection facilities; formalized risk-management based on horizontal supervision and sharing of data.

What is the legal basis for cooperation and what aspects of the legislation affect the functioning of CBM? (diagnosis)

The international and national legal framework provides the legal base for CBM. The RKC, TFA and SAFE WCO Framework all have in common modern and efficient Customs procedures to promote trade facilitation. When implementing Revised Kyoto Convention there are benefits for government and trade. The benefits to customs authorities include efficient customs clearance and attracting international trade. The national legislation (Adw) provides the Dutch Customs authority the control powers, whereas the framework agreements specifies the tasks.

Due to differences in function design and content, the European and national legislation does not always fits seamlessly. The reason for this is that European legislation is a joint product of the 27 Member States with different legal systems. European legislation complements the national legislation. Differences could lead to difficulties in executing controls and enforcing legislation which affect the functioning of CBM.

The following juridical differences and gaps that affect CBM were found regarding medicines:

1. The definitions “release for free circulation” towards “import” in the Medicine Act. The customs legislation uses the definition “release for free circulation”, the directive speaks of “placing on the market” and the Medicine Act uses the term “import”.
2. The difference between the classification rules (CN) and the definition of “medicine” in the Medicines Act.
3. The meaning of a shipment of commercial nature is not defined the medicine Act.
4. The different prohibitions and restrictions on medicines in the national legislation between member states.

1) With regard to the execution of tasks and control powers, Customs can be confronted with different definitions in the EU legislation like “introduction in the Union territory” and “placing on the market”. The reason for this is because a Directorate-General (DG) other than DG Taxation and Customs Union (TAXUD) drafts legislation concerning entry or import. To ensure a proper enforcement by customs authorities of non-fiscal legislation, this should, as far as possible, reflect the terminology, procedures and requirements laid down in the Union customs legislation. It is important for customs and competent authorities to know what is intended by the regulation with “introduction in the Union territory” and **“**placing on the market”. If goods are absolutely not allowed to enter the territory of the Union or if goods are not allowed to be declared for free circulation, there are still a number of “procedures” between them. For example, Customs cannot act if the goods are on board thus not unloaded or is not the first office of entry. In the latter, no ENS is submitted and Customs does not have information about the goods. If goods are not allowed to be declared for free circulation this means the goods are still under customs supervision and can be placed in a customs warehouse or placed under transit. Especially if customs has to act, it is important to know what is allowed or not with regard to the goods. Variations in definitions in the non-fiscal legislation should be avoided by approaching the ministries during negotiation of regulations at the Council in Brussels and review their draft regulations by the Ministry of Finance. For the Medicines Act, the European directive is the basis. The description of the concept of "import" within the meaning of the medicines legislation should be equated with 'release for

free circulation' within the meaning of the customs legislation. A good example of harmonisation of legislation is the new Plant Health Act. New EU regulations have recently become applicable to replace the Directive. This has led to alignment between the phytosanitary and customs legislation. With the new Control Regulation it is clear to authorities and trade that phytosanitary non-Union goods have to comply to the non-fiscal laws and regulations from the moment they are brought into the Union. It is important that these concepts are clear because these are also the times when enforcement is performed by the competent authorities.

2) Products that are a medicine according to the Medicines Act are not considered as such for the CN. This leads to classification in another category and has consequences for the risk analysis as described in the conclusion of the next sub-research question (point 7).

3) As a result of recently changed policy, Customs must distinguish private consignments and shipments of commercial nature. The new policy prescribes that private consignments should not be enforced. It should be clear to customs officers if and when supervision takes place.

4) When goods are brought into the Union the risk analysis is only safety and security related and not whether or not a medicine can be placed on the market of a member state. Dutch Customs has no enforcement task when medicines are brought into the Union. Safety and security checks are implemented as a result of the terrorist attacks of the 11th of September and apply to counter-terrorism, futhermore national risks regarding medicines are not executed on the basis of the ENS. So because of the differences in national legislation of the member states, it is not possible to draw up generally applicable Union rules upon entry into the Union. It can be concluded that it is not possible to refuse the entry in advance (the first moment of entry) and that the medicines (legal or not) do enter the territory of The Netherlands. This can occur when these medicines are not selected for a physical inspection when they are placed under free circulation or previously are removed from customs supervision.

A legal review of the legislative framework should aim for using the same concepts and identify gaps in relation to other national legislation. Awareness should be created for letting these gaps arise. The terminology in the national legal framework should be compared with the European legislation. When writing the relevant annex in the framework agreement this is taken into account. The terms from the various types of legislation are linked and the enforcement choices made by the responsible ministry are expressed in the Customs terminology framework. This ensures that CBM can be applied in practice but it would preferable that the legislation itself provides that clarity.

How are tasks (controls, risk-management) coordinated between the competent authorities?
What is the current level of performance?
Can it be improved?
How can it be improved?

In the framework agreement the tasks of the authorities and procedures are laid down. Coordination between the authorities takes place at policy, tactical and operational level. The SWOT analyses in this study shows the current level of performance (strengths and weaknesses) and the to-be situation (opportunities and threats). Alongside maintaining strengths, for improvement one should look for opportunities, reduce weaknesses and avoid threats. The most important points for improvement are:

1. **Create an agreement for novel foods**
   The interviews also showed that for the grey area of medicines, the so-called novel foods, there is no agreement and this complicates the execution and coordination of tasks, who (the IGJ, NVWA or Customs) may do what and at what moment (when goods are brought into the EU or placed under release for free circulation), such as the sharing of information between the authorities involved.
2. **A reduction of the number of physical inspections on phytosanitary goods should be considered**
   From the perspective of trade the reduction of physical inspection is seen as a facilitation with a high positive impact. For the verification control of import declarations of flowers, Customs could make more use of the inspection results of the NVWA, this prevents a second physical inspection. This is an opportunity for both Customs and NVWA to improve the import clearances significantly and therefore enhance CBM.
3. **Regarding medicines, more input of data for risk-analysis and involve more authorities in sharing data**
   At tactical level, there could be more input of data from the IGJ regarding the risk of medicines. Also sharing more data (not only between the IGJ, NVWA and Customs) but also with other government authorities e.g. RIVM will benefit risk analysis.
4. **Using the experience of the operational staff when making agreements at policy- and tactical level**
   The experiences of the work floor are of great importance in order to achieve a valuable risk analysis. Attention should be paid to bringing these different work experiences and insights together. In addition, more coordination about control tasks between policymakers and task practitioners within and between authorities is important for effective and efficient collaboration.
5. **Investigate data sharing opportunities e.g. data platform**
   The information flow is out of scope of this research and therefore it is not further discussed.
6. **The quality of physical inspections by customs on phytosanitary goods should be reviewed**
   Further research could indicate if more companies have the same experience and if so, what is causing this.
7. **Alignment between the classification rules (CN) with the Medicines Act**
   In addition, alignment between the classification rules (CN) with the Medicines Act can lead to improved risk-management. For example, in the current situation a medicine (according to the Medicine Act) is classified as a food supplement for the tariff, this concerns a large mass and it is therefore more difficult to eliminate the medicines for risk

analysis purposes. The preferred to-be situation is, that medicines (according to the Medicines Act) are also classified under the heading 'medicines' in the CN tariff.

8. **Detect overlapping tasks and provide clear instructions**
   See the answer on the main research question below (point 2).
9. **Educate officers about legal possibilities to share data**
   See the answer on the main research question below (point 3).

Furthermore, it is important that all authorities are easy to communicate with and therefore SPOCs are useful.

The following main research question has been formulated:

> How does the application of legislation by Dutch Customs and competent authorities affect the functioning of Coordinated Border Management in terms of efficiency and effectiveness of the collaboration between these authorities on enforcement controls?

This research examined whether there are any legal difficulties encountered by the authorities in carrying out their activities and has shown that the following (legal) aspects affect the functioning of CBM. Firstly, the customs legislation lays down the moment of controls, two important moments are: when goods are brought into the customs territory of the Union, and when goods are released for free circulation. When Customs performs controls on behalf of other ministries it has to apply the relevant legislation. It is of importance whether the objectives set in the non-fiscal legislation are realistic from a practical point of view. They should be compatible with basic customs principles or customs control empowerments as it will otherwise not be feasible for customs authorities to enforce such legislation. The legal research has shown that the Medicine Act does not align with the UCC. For this reason the framework agreement links the various types of legislation and the enforcement choices made by the responsible ministry are expressed in the Customs terminology framework. However it is essential that the legislation itself is relevant and effective. To make controls efficient and effective it should be preferred using a reference to the various moments of the customs procedures (pre-arrival, brought into the Union, when placing the goods under a customs procedure, at exit, or as a pre-audit or post-clearance control).
The recent revision of the European control regulations for phytosanitary goods showed that this has resulted in alignment between the UCC and the phytosanitary EU and national legislation. By revising the phytosanitary directives for regulations the positive effect is that it leads to the same result in all Member States of the Union because it is a binding legal act.

Secondly, the interviews revealed that there are overlapping tasks and powers between authorities in relation to medicines (ketamine) which resulted in uncertainty about reporting to the competent authority. In the interest of efficient and effective CBM it should be clear to all parties, including Customs, who, what, when and from whom, what is expected. This concerns the way in which cases (in particular irregularities) are transferred and in which way findings are reported back.

Thirdly, there are legal restrictions to share, and/or provide data because of the General Data Protection Regulation and this is seen as an obstacle in the collaboration with other authorities. According to the literature, a legal framework should contain data protection rules and information sharing must be targeted at certain areas. For Customs, competences of sharing data are laid down in general in the Adw. Which information can be shared is laid down in the framework agreements. Items not described in the concerning framework are following a different procedure. The results of the research has shown that the legal competences in sharing or providing data is not always clear to all staff members within the different authorities. For instance with novel foods where Customs has no official task but only a signalling function. Certain customs specialist know these rules and officers operational in the inspection process should ask them for advice on the data sharing options. However, defining a task for customs provides more clarity. Yet the ministry decides whether or not Customs should perform a role.

Fourthly, It appeared that the terminology in the Combined Nomenclature does not correspond to the Medicines Act. It can be explained by the different objectives of legislation. The goal of the non-tax legislation is protection against health risk, for the tax legislation it is to levy the right amount of import duties. This means that for the Medicines Act a product does not have to be effective, only the claim that it is a medicine is sufficient to establish that it is a medicine. On the basis of the tariff classification, the same product is not seen as a medicine, but could be a food supplement. This complicates the risk analysis at the customs procedure of release for free circulation. There should be alignment and uniformity of definitions so that customs does not have to apply two different methods when carrying out controls, and risk profiles will be easier to establish.

It should be aimed for to have clear and simplified legislation. This will benefit CBM because it is easier to comply with legislation if one can understand the meaning of the law. Harmonisation between customs- and non-fiscal legislation will help engaging customs authorities to act in the most uniform and efficient way, ensuring a better protection of the EU borders and facilitating trade. A uniform and efficient enforcement by customs can reduce the administrative burden for businesses.

The results from this research indicate two other points that deserve more attention in practice. There is a need for applying the “one-stop-shop” principle concerning phytosanitary goods. The case study showed that dual inspections could possibly be avoided by re-using data of other authorities. Secondly, the collaboration in risk-management regarding medicines could improve through more consultation and coordination within the relevant authorities.

7.2 Contribution for Research

This research is conducted to show if CBM could be improved by comparing the best practices from theory and legal aspects of CBM with the existing situation in practice. Literature from the WCO, EC, The World Bank and OSCE have been consulted and are applied in the case studies. EU and national legislation has been analysed to develop an overview of the legal competences, tasks, powers and moments of controls.

7.3 Contribution for Practice

What can be learned of the current collaboration between the competent authorities? And what can authorities learn from each other in practice?

This research paper shows the factors that are relevant for CBM and what can be learned from the current collaboration between the competent authorities.

The following measures are advised to improve CBM. The shortlist below is a contribution of how CBM is experienced in different authorities and by business and are useful in follow-up actions or related research.

General	IGJ	NVWA	Customs
Improve coordination risk-management	Improve input for risk-analysis to customs	Improve service level on phyto inspections in weekends	Sharing more data regarding medicines with other authorities
Use knowledge of operational level developing policy and agreements	Improve response time controls and feedback to customs/NVWA	Request for agreement on novel foods	Request for agreement on novel foods
Align customs legislation with non-fiscal legislation	Joint inspections with NVWA	Give training to customs staff on novel foods	Find solution for lack of risk profile for illegal medicines which are brought into the EU
Reachable by phone/e-mail for customers and authorities	Better alignment on mutual tasks with NVWA	Better alignment on mutual tasks with IGJ	Investigate possibilities for data platform with companies
Educate staff about legal options/restrictions sharing data	Establish procedures for customs when IGJ and NVWA both can act	Joint inspections with IGJ	Explore reduction of inspections by using data of NVWA
Exchange of information on risk cases worldwide		Establish procedures for customs when IGJ and NVWA both can act	Improve inspection skills/ knowledge
Amend the Medicine Act to Customs terminology framework			Update instructions on time
Examine the differences in the perception of supervision (audits on authorisations)			Improve collaboration with IGJ and NVWA on risk-management (mutual risk-analysis)

Table 7.4 Evaluation CBM

7.4 Recommendations

The following aspects concerning the legislation were linked to the complexity of laws:

- The legal options and restrictions in sharing data give difficulties in understanding.
- The specific non-fiscal legislation is seen as complex by businesses.

The legal options and restrictions in sharing data give difficulty in understanding. A better understanding of the legislation will reduce the degree of complexity for the implementing parties. It is recommended to improve user's knowledge of the non-fiscal legislation and the legal possibilities to share data. By means of more instructions and teaching materials, and e-learning modules for officers including practical examples. For companies, clear information that can be found in an easy way on the website, a client manager and also via the customs phone (a Customs information telephone service). Not only general information for common practices, but especially for very specific, uncommon cases. Presentations to the business community about specific product groups are also a possibility, especially when new regulation has to be implemented. Clearly state in instructions in which cases information can be shared. The other possibility is to adapt the legislation, but this is a complicated and long-term process.

According to the interviewed businesses, customs officers struggle with executing controls on phytosanitary goods correctly. It is recommended to have regular contact with the business community about more efficient control approaches and in addition provide feedback about irregularities in controls so authorities and companies can learn from each other.

In order to improve CBM a legal review of the non-fiscal laws is recommended which could identify legal gaps or inconsistency of concepts in relation to other (national) legislation. These gaps and inconsistencies, due to EU legislation, could be brought to the attention of the relevant EU working group in Brussels. The Medicine Act does not align with the UCC, Combined Nomenclature[55] or relevant directives, it is recommended to raise this issue with the responsible ministry (VWS) and suggest to ammend it so it becomes in line with the EU directive. Moreover it is important to create awareness for using the customs terminology in an earlier stage, when new non-fiscal legislation is drafted in Brussels.

The informal activities regarding novel foods, which are not formalised in agreements should be formalised.

It is recommended to investigate the option of sharing data of physical inspections from the inspection agency for the verification of customs declarations. Further research can be focused on the legal and practical possibilities to achieve this.

[55] This issue has already been brought to the attention of DG Taxud.

8. LIST OF REFERENCES

Aniszewski, S. (2009). Coordinated Border Management - A concept paper. WCO Research Paper No.2, 19.

ASEM. (2017). ACTION 3: Coordinated Border management.

Becker, J. (2020, March 5). Ir. (M. Klouth, Interviewer)

Chynoweth, P. (2020, March 31). Research. Retrieved from The University of Edinburgh: http://www.csas.ed.ac.uk/__data/assets/pdf_file/0005/66542/Legal_Research_Chynoweth_-_Salford_Uni..pdf

Dutch Customs Authority. (2020). Handhavingsplan Douane. Rotterdam.

Dutch Customs. Handboek Douane VGEM. Geneesmiddelen, onderdeel 10.02.00.
Dutch Customs. Handboek Douane VGEM. Fytosanitair, onderdeel 20.04.00.

European Commission. (2010). Guidelines for Integrated Border Management in European Commission External Cooperation. Brussels.

European Commission. (2020, April 12). Retrieved from European Commission Food Safety: https://ec.europa.eu/food/safety/novel_food/legislation_en

Ireland, R. (2009). The WCO SAFE Framework of Standards: Avoiding Excess in Global Supply Chain Security Policy. WCO Research Paper No. 3.

Lazar, P., Tan, Y.-h., & Yue, T. (2017). Case Flower Power, Implementing a Digital Trade Infrastructure at Royal Flora Holland. RSM.

M. Polner. (September 2011). Coordinated border management: from theory to practice. World Customs Journal.

Miller et al. (2012). Handbook of Best Practices at Border Crossings. Organization for Security and Co-operation in Europe (OSCE).

Ministry of Health, Welfare and Sport and the Ministry of Finance. (2019). Annex II of the framework agreement on medicines.

ODB, O. D. (2017, May). Improvement plan.

Overheid. (2020, March 20). Zoek officiële bekendmakingen. Retrieved from https://zoek.officielebekendmakingen.nl/blg-893346.pdf

Prechal, S. B. (2010). Methoden van omzetting van EU-recht in het Nederlands recht. Raad van State.

Roelofs, R. (2010). Niet - uniforme wet- en regelgeving verhoogt problematiek bij handhaving. Een extra complicerende factor bij het spanningsveld tussen handhaving en facilitatie.

Tan, Y.-H. B. (2013). Exploring barriers and stepping stones for system based monitoring: insights from global supply chains. Faculty of Technology, Policy and Management, Delft University of Technology.

The World Bank. (2011). Border Management Modernization. Washington: The World Bank.

Verschuren, P., & Doorewaard, H. (n.d.). het ontwerpen van een onderzoek. Boom.
WCO. (2020, March 8). CLIKC. Retrieved from WCO learning portal: https://clikc.wcoomd.org

World Customs Organization. (2015). Coordinated Border Management Compendium. Brussels: WCO.

World Customs Organization Coordinated Border Management. (2020, March 1). Retrieved from World Customs Organization: http://www.wcoomd.org/en/topics/facilitation/activities-and-programmes/coordinated-border-management.aspx

Yin, R. (1994). Case Study Research. Beverly Hills, CA: Sage Publications.

Interviews

Respondent, 1. (2020, January 13). Business. (M. Klouth, Interviewer)
Respondent, 2. (2020, January 16). Customs. (M. Klouth, Interviewer)
Respondent, 3. (2020, January 17). Customs. (M. Klouth, Interviewer)
Respondent, 4. (2020, January 17). Authority. (M. Klouth, Interviewer)
Respondent, 5. (2020, January 23). Authority. (M. Klouth, Interviewer)
Respondent, 6. (2020, January 24). Customs. (M. Klouth, Interviewer)
Respondent, 7. (2020, January 24). Customs. (M. Klouth, Interviewer)
Respondent, 8. (2020, January 27). Authority. (M. Klouth, Interviewer)
Respondent, 9. (2020, January 30). Authority. (M. Klouth, Interviewer)
Respondent, 10. (2020, February 4). Customs. (M. Klouth, Interviewer)
Respondent, 11. (2020, February 13). Customs. (M. Klouth, Interviewer)
Respondent, 12. (2020, February 28). Business. (M. Klouth, Interviewer)

9. APPENDICES

Annex I Interview Protocol Authorities

Interview protocol used for authority experts

Institutions:

_____

Interviewee (Title and Name):

_____

Interviewer:

_____

Opening statement

- First of all, I would like to thank you for supporting me in my Thesis project of the Executive Master Program, Customs and Supply Chain Compliance, at the Rotterdam School of Management.
- Subject of the Thesis project: What opportunities does CBM offer to coordinate (legal) tasks and intensify cooperation with competent authorities and what benefits may be achieved in enforcement controls of these authorities?
- I am aiming to interview the following stakeholders: Customs Administrations of the Netherlands, , the Netherlands Food and Consumer product Safety Authority (NVWA), Experts of the Netherlands Shipping Agents (VNC) council and, …
- I have selected you, with the help of a stakeholder analysis, for this interview, based upon your involvement in one, or more, subjects, handled with in this thesis.
- Your answers will have no impact on the supervision by the enforcement authorities.
- Your privacy will be safeguarded, the outcome of the interview data will be analyzed, no names will be included in the text or appendices.
- I have planned this interview to last no longer than one and a half hour. During this time, I have several broad-sensed and in-depth questions that I would like to cover.
- Because I need a transcript of the interview for analysis, I would like to record the interview. This recording will only serve the purpose of transcribing the interview and will not be shared with third parties. It is required by law that permission is requested when using recording equipment. I will ask you again for permission when the recorder is turned on.

Introduction

The research question is: "*How does the application of legislation by Dutch Customs and competent authorities affect the functioning of Coordinated Border Management in terms of efficiency and effectiveness of the collaboration between these authorities on enforcement controls?"*

The goal of the thesis project is to investigate the collaboration between government agencies to achieve a more efficient and effective coordination at the border.

Main questions:

- What is CBM and how can CBM be achieved in theory?
- What are the laws and regulations concerning the non-fiscal tasks of the competent authorities?
- What are the proces steps during controls? Which tasks and how are tasks coordinated between the competent authorities?
- Evaluation: What can be learned of the current collaboration between the competent authorities at Schiphol Airport? And what can authorities at Schiphol Airport learn from each other in practice?

Questionnaire:

A. Interviewee Background of the interviewee

1. What is your current function, position, or role in the organization?

B. General questions for all interviewees

General

2. Which tasks does the NVWA/ IGJ/ ILT have concerning phytosanitary products / medicines/ dangerous substances? (brief and on headlines)

Risk management

3. How is risk management organised in general and for phytosanitary products / medicines/ dangerous substances? (electronically/ manually?)
4. Which data is used for risk selection? What is the origin of the data and who is owner?
5. How are risk profiles being made/developed?
6. What is going well in the execution of risk management? What could be improved (can you describe the ideal situation)? Why?
7. What is preventing you from implementing CBM? Waar loop je juridisch tegen aan bij de implementatie van CBM?

Controls

8. What are the proces steps during controls? Which tasks and how are tasks coordinated between the competent authorities?
9. How are goods selected for controls?
10. How are controls planned?
11. Is there a response time (e.g. within 120 minutes) to execute the control?
12. How are the involved parties (holder of the goods, customs, authorities) informed?
13. What are the procedures when goods are inspected and in compliance with regulations?
14. What are the procedures when goods are not in compliance with regulations?
15. Is there a (legal) maximum term for holding up goods?
16. Is there a communication procedure/ arrangements with Customs?
17. Are these procedures clear?

18. What is going well in these procedures / controls?
19. What could be improved (or describe the ideal situation)? (Technical, practical, policy/regulation).
20. What training does the staff (customs, inspection agency) need, and is the actual training sufficient?
21. Can physical examinations take place inland (instead of at the border)?
22. Do you make use of a co-located facility (JIC/RIT) for inspections? When? Why? And How?

Regulatory Transparency

23. Does the design of domestic legislation & regulation allow CBM to be implemented?
24. What is preventing you from implementing CBM? Waar loop je juridisch tegen aan bij de implementatie van CBM? Zijn er juridische lastigheden die CBM in de weg staan?
25. There is a difference between the definition of import in the Geneesmiddelenwet and the UCC. De definitie van invoer uit de Gnw die daarbij wordt gehanteerd luidt: ***"het vanuit een derde land (niet zijnde een EER-land) binnen het grondgebied van Nederland brengen van geneesmiddelen".***

    Voor de taakuitoefening van de Douane, wordt onder het begrip invoer in dit kader verstaan: '***het in het vrije verkeer brengen in de zin van artikel 201 van de DWU'***. ***"Niet-Uniegoederen die bestemd zijn om op de markt van de Unie te worden gebracht of bestemd zijn voor particulier gebruik of consumptie binnen het douanegebied van de Unie, worden geplaatst onder de regeling in het vrije verkeer brengen".***

    De Douane controleert **bij een aangifte voor het vrije verkeer**:
    - of de aangegeven goederen geneesmiddelen of werkzame stoffen zijn
    - de vereiste fabrikantenvergunning of registratie van de fabrikant of groothandelaar van werkzame stoffen door raadpleging van de EudraGMDP-database er sprake is van een vrijstelling of ontheffing.

    Ondervindt men in de uitvoering hier hinder van bij controles en/of risico-analyse?
26. Does legislation contribute to the coordination/ collaboration between authorities?

    a)"draagt de wetgeving bij"?

    b)"de wetgeving maakt het (slechts) mogelijk"

    c)"de wetgeving spoort autoriteiten aan om samen te werken maar laat het 'hoe open"
27. What is needed to be successful in the execution of legislation regarding to coordination/ collaboration? Why? Bevoegdheden? je 'waar loop je juridisch tegen aan bij de implementatie van CBM? Zijn er juridische lastigheden die CBM in de weg staan?
28. What is going well? Why? How?
29. What could be improved? Why? How?

Annex II Interview Protocol Trade

Interview protocol used for representatives of trade

Institutions:

_____

Interviewee (Title and Name):

_____

Interviewer:

_____

Opening statement

- First of all, I would like to thank you for supporting me in my Thesis project of the Executive Master Program, Customs and Supply Chain Compliance, at the Rotterdam School of Management.
- Subject of the Thesis project: What opportunities does CBM offer to coordinate (legal) tasks and intensify cooperation with competent authorities and what benefits may be achieved in enforcement controls of these authorities?

- I am aiming to interview the following stakeholders: Customs Administrations of the Netherlands, , the Netherlands Food and Consumer product Safety Authority (NVWA), Experts of the Netherlands Shipping Agents (VNC) council and, …
- I have selected you, with the help of a stakeholder analysis, for this interview, based upon your involvement in one, or more, subjects, handled with in this thesis.
- Your answers will have no impact on the supervision by the enforcement authorities.
- Your privacy will be safeguarded, the outcome of the interview data will be analyzed, no names will be included in the text or appendices.
- I have planned this interview to last no longer than one hour. During this time, I have several broad-sensed and in-depth questions that I would like to cover.
- Because I need a transcript of the interview for analysis, I would like to record the interview. This recording will only serve the purpose of transcribing the interview and will not be shared with third parties. It is required by law that permission is requested when using recording equipment. I will ask you again for permission when the recorder is turned on.

Introduction

The research question is: "*How does the application of legislation by Dutch Customs and competent authorities affect the functioning of Coordinated Border Management in terms of efficiency and effectiveness of the collaboration between these authorities on enforcement controls?"*

The goal of the thesis project is to investigate the collaboration between government agencies to achieve a more efficient and effective coordination at the border.

Main questions:

- What is CBM and how can CBM be achieved in theory?
- What are the laws and regulations concerning the non-fiscal tasks of the competent authorities?
- What are the proces steps during controls? Which tasks and how are tasks coordinated between the competent authorities?
- Evaluation: What can be learned of the current collaboration between the competent authorities at Schiphol Airport? And what can authorities at Schiphol Airport learn from each other in practice?

Questionnaire:

A. Interviewee Background of the interviewee

II. What is your current function, position, or role in the organization?

C. Questions for trade

Controls on medicines/ plants and flowers / dangerous substances

1. What do you expect from Customs and from the other inspectorates / authorities involved (‘in general’ and ‘with respect to the casus’)
2. In which way and by whom are you informed about an physical inspection?
3. By which authorities are controls conducted for medicines, plants and flowers and dangerous substances?
4. What are the proces steps during these controls?
5. Which tasks and how are tasks coordinated between the competent authorities?
6. Are your expectations met (see Q1)? What is going well? Why?
7. What could be improved? Why?
8. In what way does the coordination and collaboration between Customs and other authorities contributes to efficiency and effectiveness from your point of view*?*
9. If you could change anything, what would you change / is the ideal situation (to have a seamless flow of goods)? (focus at top 3 - 5 prio)
   -In your own organisation
   -With enforcement partners / other authorities
   -With companies (what companies: owners, customs declarant vs logistics parties etc)
10. Do you think the officers who conduct the examination are well trained?
11. What is going well? Why?
12. What could be improved? Why?
13. What is the average time that is taken for the examination of the goods?
14. Do you think this is acceptable? Why?

Regulatory Transparency & compliance

15. Is for your operation (in your opinion) the legislation about importing/ exporting …goods into the EU clear and understandable?
16. What are the rules? How does your company actualise its knowledge on rules? Are the rules clear for all employees in your organisation?
17. Can your company comply to those rules?

18. What is easy or takes less effort to comply?
19. What is difficult or takes effort to comply?
20. If you could change anything regarding regulation, what would you change / is the ideal situation?
    -In your own company,
    -With trade partners
    -With government
21. Do you have to duplicate regulatory formalities for the authorities? (zelfde gegevens overleggen aan verschillende autoriteiten). And to what extent would such duplication be a burden?

Annex III Webster & Watson table

Academic literature on Coordinated Border Management.

Articles	Concepts					
	CBM	Legal	Risk man.	Controls	Collaboration	Efficiënt
1 Border Management Modernization	X		X	X	X	
2 Improving Border Agency cooperation	X					
3 Collaborative border management	X				X	
4 Collaborative Border Management: A New Approach to an Old Problem	X				X	
5 Coordinated border management: from theory to practice	X	X			X	X
6 Coordinated Border Management Compendium	X	X	X		X	X
7 Coordinated border management: unlocking trade opportunities through one stop border posts	X	X				
8 Handbook of Best Practices at Border Crossings	X	X	X	X	X	
9 Guidelines for IBM	X	X	X	X	X	
10 CBM – a concept paper	X		X		X	

1) Gerard McLinden, David Widdowson, Tom Doyle, Border *Management Modernization*, The World Bank.

2) COMCEC Coordination Office. September 2016. *Improving the Border Agency Cooperation Among the OIC Member States for Facilitating Trade*.

3) Tom Doyle, *Collaborative border management*, World Customs Journal, 2010, Volume 4, Number 1

4) Gerard McLinden, *Collaborative Border Management: A New Approach to an Old Problem*, The World Bank, 2012 number 78.

5) Mariya Polner, *Coordinated border management: from theory to practice.*
World Customs Journal, September 2011 Volume 5, Number 2.

6) *Coordinated Border Management Compendium*
World Customs Organization, 2015

7) Erich Kieck, Coordinated border management: unlocking trade opportunities through one stop border posts. World Customs Journal, Volume 4, Number 1.

8) OSCE, *Handbook of Best Practices at Border Crossings – A Trade and Transport Facilitation Perspective*

9) European Commission. 2010. *Guidelines for Integrated Border Management in European Commission External Cooperation.*

10) Stefan Aniszewski, CBM – a concept paper World Customs Journal, June 2009 Research Paper No 2

Annex IV Table Interviewed authorities and company experts

Respondent	*Organisation*	*Expertise*
1	Freight forwarder	Customs compliance manager
2	Customs Administration of the Netherlands	Senior advisor intelligence VGEM domain, Dutch Customs.
3	Customs Administration of the Netherlands / Schiphol Airport	Intelligence employee dossier phytosanitary goods National Dutch Customs tactical team.
4	Netherlands food and consumer product safety authority	Coordinating Inspector, phytosanitary goods, team main ports.
5	Netherlands food and consumer product safety authority	Inspector Auditor, special food and drinks.
6	Customs Administration of the Netherlands / Schiphol Airport	Expert determination of medicines.
7	Customs Administration of the Netherlands / Schiphol Airport	Expert determination of medicines.
8	Health and Youth Care Inspectorate	Coordinating specialist senior inspector of opium law and medicines.
9	Health and Youth Care Inspectorate	Senior advisor coordinator team detection and fines.
10	Customs Administration of the Netherlands / National Office	Policy advisor VGEM domain, Enforcement and policy department.
11	Customs Laboratory	Head chemist
12	Freight forwarder	Manager customs air freight

Table IV Interviewed authorities and company experts