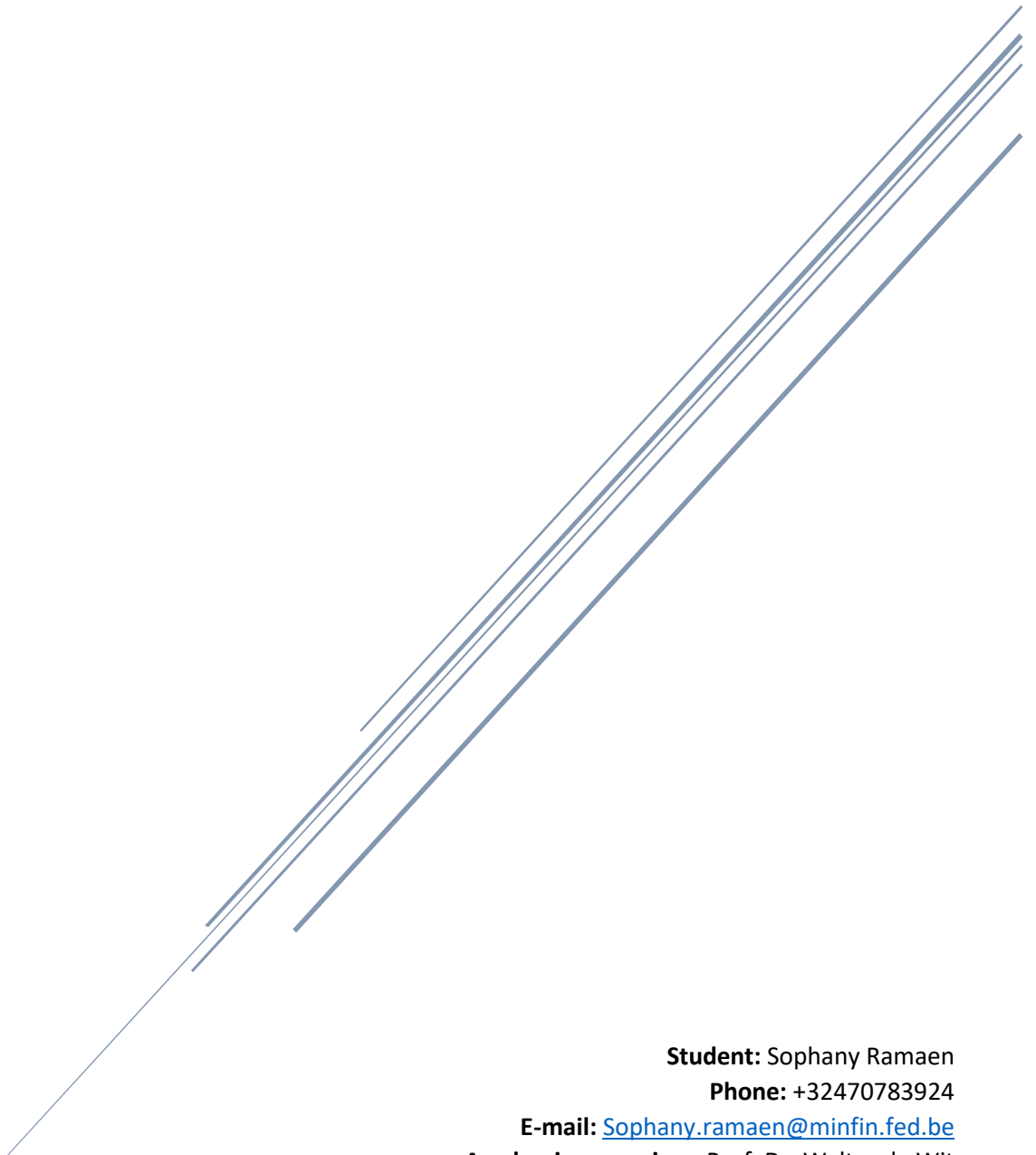


THE ROLE OF EU MEMBER STATES IN THE WORLD CUSTOMS ORGANIZATION

Case study: Belgium

Thesis for the Executive Master Customs & Supply Chain Compliance 2017-2020 at
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Disclaimer: The views and opinions expressed in this thesis are those of the author and do not necessarily reflect the official policy or position of any entity. Assumptions made within the analysis are not reflective of the position of any entity.

Preface

On 1 November 2019, I started as representative of Belgian Customs to the World Customs Organization. For my thesis, I decided to link my new function with two of my interests, being EU studies and customs.

Considering my experiences as a generalist more than an expert and my function in the Department General Policy at Belgian Customs, I decided to approach the customs domain from an overarching point of view and preferred not to dive into a technical topic.

Ask every practitioner in customs about his or her domain and he or she will tell you how complex it is. The legislation is complex, the cooperation with other authorities is complex, the panoply of tasks and missions is complex, etc. That is also what I experienced during the preparation of this thesis. In the process of writing, I realised I needed to scope my topic. By doing so, I decided to take just one thread of the bundle. But it is not a bundle, it is a web. The thread I was holding is connected to multiple others, all connected to other threads and so on. I thought I scoped by holding just one thread, but I ended with a web I needed to structure and explain.

This thesis is not the work of only one person, but many more contributed to it.

First of all I want to thank my supervisor Professor Dr. Walter de Wit and my co-reader Dr. Boriana Rukanova for their precious feedback. They were available when I needed guidance in the process of my thesis.

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Lastly, I thank with whole my heart my dear colleagues and friends for their support, patience and understanding since September 2017.

Executive summary

In the variety of publications in political science, none has been found covering the domain of customs, although the customs union plays an important role in the European integration and is a foundation of the EU. This thesis addressed this gap and approached the customs domain from a political science perspective.

The topic of our research is the policy of the member states at the World Customs Organization (WCO). The WCO is an independent intergovernmental body whose mission is to enhance the effectiveness and efficiency of customs administrations worldwide.

Our main research question is: *'What is the role of member states of the EU at the WCO?'*. To answer this main question, we broke it down into three sub-research questions:

1. What is national competence at the WCO?
2. What is EU competence at the WCO?
3. What is the member states' role in the policymaking of the EU at the WCO?

To answer these questions, we first illustrated the context with an introduction of the WCO by describing its role and its importance in the customs domain. After having given this context, we focussed on a literature review on Europeanisation, the analytical framework we used to structure the complex relationship between the EU and its member states in WCO policymaking. The research methods used are desk research, case study (Belgian Customs) and semi-structured interviews with eleven experts from Belgian Customs, DG TAXUD, WCO, Dutch Customs and Estonian Customs.

The first part of our research provided answers on the three sub-research questions. We listed a non-exhaustive list of national competences at the WCO (provision of technical expertise, elections, donor funding, participation in operations & enforcement and membership of the WCO) and we concluded that the EU competence at the WCO is ensuring the external representation of the EU and the member states by coordinating the positions and expressing them at the WCO. We captured the member states' role in the policymaking of the EU at the WCO in four entry points of influence. These are the moments and fora where the member states can try to project the own preferences into the WCO policy of the EU. Finally, we structured the input above using the framework of Europeanisation with its three dimensions: top down, bottom up and socialisation. The thesis confirms that the Europeanisation framework is valuable to analyse the relationship between the member states and the EU institutions, giving us guidance on all three dimensions of that relationship.

The second part of our research was a case study of Belgian Customs where the findings of the desk research and the literature review were tested. The case study showed that not all dimensions of Europeanisation were clearly present for the WCO policy, such as the socialisation dimension, including the identity construction. Further research could focus on this dimension, and in particular on identity construction and the consequences of a lack of European identity in external representation. Furthermore, it would be interesting to include other member states in future research.

Both parts of our research gave an overview of the relationship between the member states and the EU institutions concerning WCO policy. This helped us to formulate recommendations for Belgian Customs on how to maximise its role and how to seize the opportunities to impact the policymaking process at the WCO level and if necessary, through the intermediate step at the EU level. If the management of Belgian Customs decides to invest resources in WCO policy, following recommendations can be considered:

1. Start to define a national WCO policy with priorities. Having a clearly defined national WCO policy with priorities makes it easier to project these preferences on the EU level. Without a defined national WCO policy, the involvement at the WCO depends on persons and not on the organisation, making it less consistent if persons change functions.
2. Make a link in this WCO policy with past actions, current role and plans. To have a common thread linking past, present and future makes the positions to follow clear both internally and externally. Being consistent in past, present and future actions (independently of the persons involved), makes Belgian Customs a reliable partner. This brings us to the third recommendation.
3. Build coalitions with like-minded member states as a first step to convince the EU and the other member states of the importance of your priorities. Use bilateral meetings and informal contacts to build these coalitions.
4. Take full advantage of the entry points of influence in the process of the drafting of coordination papers. These entry points are crucial to influence the outcomes. Be actively represented at the Customs Expert Group and at the CUWP to advance your cases and defend your positions. Use other channels, such as the CPG and the High Level Working Party of the Directors General of Customs to make your priorities known.
5. Involve the experts of the Customs Expert Group, the CUWP and the other fora to draft, implement and follow up the national WCO policy.
6. Maximise your national competences at the WCO. Participate in operations, provide technical expertise and provide donor funding in line with your national foreign policy.
7. Be active at the WCO. Participate in meetings linked with your priorities and take up roles such as chair or vice-chair of these meetings.
8. And last but not least: work on the relationship with the Commission by building on trust and transparency, to advocate a less prescriptive role of the Commission. This way more space would be given to the member states to share their hands-on experiences in operational customs tasks, contributing to develop best practices and international standards at the WCO.

The structured overview of the relationship between the member states and the EU institutions concerning the WCO policy and the recommendations are not only interesting for Belgian Customs, but for all member states missing detailed understanding of this topic.

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List of abbreviations

Abbreviation	Full name
AEO	Authorised Economic Operator
Coreper	Committee of the Permanent Representatives of the member states
CPG	Customs Policy Group
CUWP	Customs Union Working Party
DG TAXUD	Directorate-general for Taxation and Customs Union
EU	European Union
HS	Harmonised system
MRA	Mutual Recognition Agreement
MS	Member state
OECD	Organisation for Economic Co-operation and Development
RKC	Revised Kyoto Convention
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UCC	Union Customs Code
WCO	World Customs Organization
WTO	World Trade Organization

Chapter 1: Introduction

Many academic articles and books have been written on the relationship between the European Union (EU) and its member states in different domains (e.g. environmental and foreign policy)¹. In the variety of publications in political science, none has been found covering the domain of customs. Even though the customs union represents a great step forward in European integration (Lyons, 2018:34) and is even regarded as a vital ‘foundation’ of the EU (Hobbing, 2011:3). In the Union Customs Code (UCC), one reads: ‘*The Union is based upon a customs union*’ (recital 9 UCC) and the European Economic and Social Committee (2016) called the customs union ‘*the cornerstone of the European Union*’.

We want to address this gap with our research. We approach the customs domain from a political science perspective. More specifically, we use the analytical framework of Europeanisation to structure the complex relationship between the EU and its member states in the customs domain. Europeanisation considers both the top down process and the bottom up process of change in this complex relationship. Customs is a domain where the member states experience a strong impact of the European Union (top down process), not only by the EU legislation regarding customs², but also by several non-legislative instruments such as the Customs 2020 programme (enhancing the cooperation and exchanges between customs administrations), the guidance documents and audits. What is less transparent is the impact of the member states on EU policymaking (bottom up process). In the customs domain the member states are involved at various stages of policymaking. There are multiple committees and working groups. Furthermore, the Customs Policy Group, the meeting of the director generals of all national customs administrations, is an important body in policymaking.

The customs domain itself contains numerous sub-domains and topics. That is why we need to scope our research. The topic of our research is the policy of the member states at the World Customs Organization (WCO). The WCO is an independent intergovernmental body whose mission is to enhance the effectiveness and efficiency of customs administrations. All member states of the European Union are member of the WCO. Since 2007 the EU is member akin.

What we want to research in this thesis is the role of the member states at the WCO, considering that they are part of the EU. Our main research question is: ‘*What is the role of member states of the EU at the WCO?*’. To answer this main question, we broke it down into three sub-research questions:

4. What is national competence at the WCO?
5. What is EU competence at the WCO?
6. What is the member states’ role in the policymaking of the EU at the WCO?

To answer these questions, we first illustrate the context with an introduction of the WCO by describing its role and its importance in the customs domain (chapter 2). After having given this context, we focus on a literature review regarding Europeanisation (chapter 3) and on our research

¹ Examples of comparative works on the relationship between member states and the EU are ‘*The Member States of the European Union*’ by Simon Bulmer and Christian Lequesne (eds.) (2005) and ‘*National and European Foreign Policies: Towards Europeanisation*’ by Rueben Wong and Christopher Hill (eds.) (2011).

² Article 5 (2) of the Union Customs Code defines ‘customs legislation’ as ‘*the body of legislation made up of all of the following:*

- a) *the Code and the provisions supplementing or implementing it adopted at Union or national level;*
- b) *the Common Customs Tariff;*
- c) *the legislation setting up a Union system of reliefs from customs duty;*
- d) *international agreements containing customs provisions, insofar as they are applicable in the Union.’*

methods (chapter 4). Based on desk research, we illustrate how the WCO policy of member states is defined (chapter 5). In chapter 6, we structure the complex relationship between the EU and its member states regarding policymaking at the WCO, using the framework of Europeanisation. Chapter 7 considers the case of Belgium, to confirm or refine the findings of the desk research and the literature review of chapter 5 and 6. We end the thesis with conclusions and recommendations (chapter 8) and our contribution for research and practice (chapter 9).

The analysis in the thesis aims to better understand the relationship between the member states and the EU institutions concerning WCO policy and the role of the member states in the WCO policymaking. This understanding can help the member states to maximise their role and to seize the opportunities to impact the policymaking process at the WCO level and if necessary, through the intermediate step at the EU level. Furthermore, we want to contribute to a first attempt to demonstrate that the customs domain is an interesting topic to research from a political science perspective.

This thesis is linked with the three-pillar approach of the Executive Master in Customs and Supply Chain Management in an overarching way. The topic of the thesis touches upon all three pillars: customs legislation, supply chain management, IT & compliance. These subjects are all extensively discussed at the WCO. In the following chapter, introducing the WCO, the subjects will be presented according to the three-pillar structure.

Chapter 2: The World Customs Organization

This chapter introduces the WCO. We give some general information followed by the work done by the WCO in customs regulation, supply chain and IT & compliance.

The WCO was established in 1952 as the Customs Co-operation Council (WCO, 1967), which is still the official name, and is based in Brussels. It is an independent intergovernmental body whose mission is to enhance the effectiveness and efficiency of customs administrations. 183 customs administrations are member of the WCO³. It is the core international organisation for customs offering its members a forum to hold in-depth discussions, exchange experiences and share best practices on a range of international customs and trade issues (WCO, 2019), such as stimulating the growth of legitimate international trade but also combating fraudulent activities.

The Annual report (WCO, 2019:12) mentions five main categories of work of the WCO: (1) setting standards for a number of diverse but interlinked customs procedures; (2) promoting international cooperation including information exchange; (3) managing risk; (4) building sustainable capacity including the delivery of quality technical assistance; (5) and enhancing the image of customs as a core function of a state service by emphasizing its contribution to national economic prosperity and social development.

Furthermore, the network opportunities of the WCO should not be underestimated. Through the WCO members are part of a global customs community and are provided with an opportunity to interact with and impact each other, even those which one normally has less contact with. The WCO also provides an opportunity to raise awareness for customs matters in other international organisations, such as the Organisation for Economic Co-operation and Development (OECD) and the World Trade Organization (WTO).

We present the work carried by the WCO using the three-pillar structure of the Executive Master in Customs & Supply Chain Management, i.e. customs regulation, supply chain management and IT & compliance. The organisational chart of the WCO can be found in annex 1.

Customs

One of the core tasks of customs administrations all over the world is still to collect customs duties. To calculate the amount of customs duties, three elements are necessary: the classification, the customs value and the origin. For each of them the WCO developed several tools for a harmonised application worldwide.

First, the classification⁴ of the goods is done in most countries in accordance with the WCO harmonised commodity description and coding system, known as the Harmonised System (HS). The HS Committee of the WCO, composed of representatives from each of the contracting parties of the HS Convention, edits the HS and provides an update every 5 years. The last edition entered into force on 1 January 2017. The Committee also prepares Explanatory Notes and Classification Opinions.

³ The list of members can be consulted on the website of the WCO on <http://www.wcoomd.org/en/about-us/wco-members/membership.aspx> (last consultation 04/01/2020).

⁴ All imported and exported goods must be classified for customs purposes. Each product is assigned a classification code.

2018 marked the 30th anniversary of the HS Convention. In May 2019, the WCO organised the Global Conference on the future of the HS, to shape the HS for the 21st century. As a result the WCO is considering starting a major review of the HS.

Second, the rules for the valuation are set in the WTO Valuation Agreement, adopted in 1994. This Agreement introduced a valuation system⁵ based primarily on the transaction value of imported goods (i.e. the price actually paid or payable). The WCO acts as the technical adviser to the Valuation Committee of the WTO. The WCO ensures the uniform interpretation and application of the agreement through guides⁶, case studies, advisory opinions, etc. Whilst these do not have the force of law, they provide persuasive guidance on how the Valuation Agreement should be applied in specific circumstances (Court of Auditors, 2001:3).

Third, origin is the 'economic nationality' of goods in international trade. There are two systems: preferential origin (based on bilateral or multilateral agreements) and non-preferential origin (each country applies its own rules). The WCO offers guidance material to improve the understanding and proper application of rules of origin, shares information on the harmonisation of non-preferential rules of origin and promotes the uniform interpretation of the WTO Agreement on Rules of Origin. The WCO is charged with carrying out the technical work required by the Agreement, which established a harmonisation work programme in relation to non-preferential rules of origin.

At the WCO there is a specific Directorate dealing with commodity classification, customs value, and rules of origin matters: The Tariff and Trade Affairs Directorate. It manages the HS, the WTO Valuation Agreement and the WTO Agreement on Rules of Origin. (WCO, 2019:14)

Supply chain

At the WCO the Compliance and Facilitation Directorate is the one dealing the most with supply chain management. It focuses on enforcement and trade facilitation matters (WCO, 2019:14). It developed instruments and tools to simplify and harmonise customs procedures and promotes best practices in trade facilitation and security (WCO, 2019:24). We briefly introduce some of these instruments and tools.

One of the flagship programmes of the WCO is the Revised Kyoto Convention (RKC). It has helped to shape international trade for the past forty-five years. It is often referred to as the blueprint of a modern customs administration. In November 2018 the WCO invited all members and stakeholders to attend a Global Conference on the Comprehensive Review of the RKC, to make the Convention future proof and to align it to current needs. Currently, the WCO is performing this comprehensive review and expects to finalise it in 2023.

Another instrument in trade facilitation is the SAFE Framework of Standards. In August 2018 the WCO published the 2018 edition of the SAFE Framework of Standards, which provides baseline international standards to secure and facilitate global trade.

Also in August 2018 the WCO published two important guidance documents related to the implementation of Authorised Economic Operator (AEO) programmes and their complementary Mutual Recognition Agreements (MRAs): The Customs AEO Validator Guide and the MRA Strategy Guide.

⁵ Most countries levy customs duties on the value of the goods. The actual amount of duty will depend on the dutiable value determined by customs.

⁶ Guide to the exchange of customs valuation information and Guide to customs valuation and transfer pricing.

A last important tool is the Framework of Standards on Cross-Border E-Commerce. It was established together with representatives from the private sector and published in 2018. These global standards support an effective management and a legitimate movement of global e-commerce trade by providing guidance for governments (in particular customs administrations), the private sector and other stakeholders.

IT and compliance

One of the strategic objectives of the WCO, mentioned in its Strategic Plan 2019-2022, is to consider in all its activities the use of technologies, and to continue to update members on the latest developments in IT solutions for customs procedures and objectives (WCO, s.d.). The Annual report of the WCO (2019:4) mentions new technologies as one of the challenges for customs while simultaneously offering new opportunities for working methods.

The WCO published a Handbook on Data Analysis in 2018 to promote greater connectivity and more harmonious interaction and the Study Report on Disruptive Technologies in 2019.

In 2019 the WCO organised the IT/TI Conference & Exhibition. For the first time, the WCO merged its two major public-private sector events on Customs technology-related initiatives, namely the Information Technology (IT) Conference & Exhibition and the Technology & Innovation (TI) Forum, into one. The conference explored how customs administrations could exploit the most recent as well as some well-established technical solutions in performing their tasks.

After this brief introduction of the WCO and the importance of this organisation in the customs domain, we conclude that the WCO is active in numerous fields of customs, with attention to the supply chain (trade facilitation) and the strategic role of IT.

Chapter 3: Literature review

In this chapter we introduce the reader to the analytical framework of Europeanisation. We use that framework in our research to structure the complex reality of our topic. The chapter provides an overview of the most important sources concerning Europeanisation.

The impact of the EU on member states cannot be denied. According to Limbach (2018:11) and Lyons (2008:23-24), when it comes to the 'Europeanisation' of national administrative law, it is EU customs law that had the pioneering role. Widdershoven (2014:11) mentions the modernised Customs Code as an example of EU laws imposing very detailed rules on the member states. Limbach (2018:12) even states that it is possible that EU customs law could serve as a model of how to meet the challenges of enforcing European administrative law in the EU member states.

What is less obvious is the impact of the member states on EU customs policymaking. In the customs domain the member states are involved at various stages of policymaking. They participate in several EU committees and working groups. Furthermore, the Customs Policy Group, reassembling the director generals of the national customs administrations, is an important body in policymaking. All this shows that member states are not only takers of EU customs policy, but also shapers.

The impact of the EU on member states and the impact of the member states on the EU are very well encompassed in the concept Europeanisation. That is why we chose this analytical framework to describe the role of EU member states in the WCO.

The first academic publications in EU studies on Europeanisation were published in the nineties (Saurugger, 2009:255). One of the first works on Europeanisation is written by Robert Ladrech (1994) *'Europeanization of Domestic Politics and Institutions: The Case of France'*. He defines Europeanisation as (1994:69):

'An incremental process reorienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational logic of national politics and policy-making.'

According to Ladrech (1994), Europeanisation is thus the adjustment of member states' policies as a result of EU membership. This is confirmed by Featherstone (2003:7) and Olsen (2002:4). The reorientation of national policy takes place incrementally (ad hoc adjustments) and top down (the European level influences the national level). This dynamic emphasises that Europeanisation is seen as a process. The EU level does not replace the national state but it does become an important reference point (Wong, 2017:146). The EU pursues policies that must be implemented at national level ('downloading').

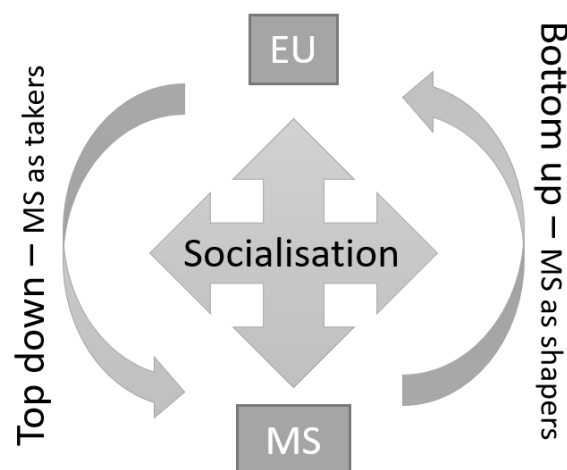
Next to this top down dimension, Wong (2007, 2011, 2017) outlines two other dimensions: bottom up and socialisation process. With this he responds to the main criticism that Europeanisation is only a top down dynamic. Wong brings the mutual influence together in one concept. Also Featherstone (2003:10) acknowledges the bottom-up processes. Europeanisation here means the projection of national preferences, policy ideas and models in the EU (Wong, 2017:147) ('uploading'). The EU is viewed as a means and vehicle for the achievement of nationally defined goals. National governments continue to occupy a key position in decision-making and the implementation of European policy (Börzel, 2003:3). The state is portrayed as being proactive in projecting its preferences, policy ideas and models to the EU, instead of a reactive state being constrained to change its policymaking process. Due to the role of national interests and the instrumental approach of the EU, this tendency shows

similarities with the rational-choice theory. (Wong, 2017:147) Proactively shaping European policies, institutions and processes reduces the ‘misfit’ between European and domestic arrangements (Börzel, 2003:3).

The last dimension according to Wong (2017:147) is the socialisation process. It refers to the reconstruction of identities in Europe. Europeanisation here means the mix of national and European incentives to create a transnational and culturally integrated Europe. The European level acts as a forum for the member states. Through consultations, decision-making, informal rules and the sharing of norms and values, member states learn from each other (‘crossloading’). Research on ‘elite socialisation’ is an example of this. National employees in the EU think more and more in ‘European’ than in ‘national’ terms (Wong, 2017:147).

The socialisation process, the top down and the bottom-up dimension form one whole in the concept of Europeanisation. This is the added value of Europeanisation. On the one hand it recognises that member states accept European decisions, while those same member states are actively involved in the making of those decisions (Gross, 2009:18; Wong, 2007:323).

Figure 1:
Dimensions of Europeanisation



According to Saurugger (2009:258), the definition of Radaelli (2003:30) indicates that Europeanisation is not a linear process, but a circular one, including the different dimensions of downloading, uploading and crossloading:

‘Processes of (a) construction, (b) diffusion, and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, ‘ways of doing things’, and shared beliefs and norms which are first defined and consolidated in the making of EU public policy and politics and then incorporated in the logic of domestic discourse, identities, political structures, and public policies.’

The definition stresses the importance of change and the making of policy without assuming that there is a coherent, rational layer of ‘EU decisions’ from which Europeanisation descends (Radaelli, 2003:30). It highlights the following features of Europeanisation (Bulmer & Radaelli, 2005:341). First, it can derive from different stages and forms of the policy process: policy formulation (construction), putting policy into practice (institutionalisation) and in a much less structured manner (diffusion). Second, it is not simply about formal policy rules but also about less tangible aspects such as beliefs and values. Third, it is about the impact of European policy within states entailing two steps: adoption at EU level and

then incorporation at the domestic level. Finally, Europeanisation is understood as EU-ization (process linked to the EU).

In our research we use the definition of Radaelli because it gives us a well-elaborated framework to structure the complex reality of our topic. It encompasses the circular process. And in our research we also use Europeanisation as solely linked to the EU, even if other authors consider Europeanisation as more than and different from EU-ization (see for example Vink & Graziano, 2007:12). We thus consider Europeanisation as a process, not an end-state. We use it to analyse WCO policy, not to measure it.

Wong & Hill (2011) developed a three-fold conceptualisation of Europeanisation to assess national foreign policy. This conceptualisation leans on the definition of Radaelli and the dimensions (i.e. downloading, uploading and crossloading) of our research topic. That is why we use the framework by Wong & Hill (2011) and Wong (2017:151) to analyse WCO policy. We adapted it to our research. We refer to Annex 2 for the original framework of Wong (2017:151).

Table 1:
Three criteria of Europeanisation (based on Wong, 2017:151)

a) National adaptation/Policy convergence
<ul style="list-style-type: none"> • Has convergence and/or adaptation of national policy to EU norms and directives taken place? • Have national institutional structures and policymaking processes been adapted in response to European integration?
b) Projection of national policy onto EU structures (<i>National projection</i>)
<ul style="list-style-type: none"> • Has the member state pushed for its national WCO policy goals to be adopted as EU goals/policy, and how far has it succeeded? • Has the member state benefited from the 'cover' of the EU? • How indispensable is the EU to the achievement of national WCO policy goals?
c) Internalisation of 'Europe' in national identities (<i>Identity reconstruction</i>)
<ul style="list-style-type: none"> • Has there been a reshaping or hybridization of identities, which privileges a European identity over the national? • What kinds of European norms have arisen among national officials and how do they apply to WCO policy?

The first dimension is about the impact of EU membership on national WCO policy (in particular the impact of European institutions and policy processes), the transformation of a member state to the needs and requirements of EU membership (referred to as 'downloading'). The second dimension is about the impact of the member states and their WCO policy on EU WCO policy outputs, also called bottom-up Europeanisation or 'uploading'. This second facet of Europeanisation refers to the projection of national ideas, preferences and models from the national to the supranational level. Third, Europeanisation in its broadest sense means a process of identity and interest convergence so that 'European' interests and a European identity begin to take root alongside national identities and interests.

Even if it is possible to identify the distinctive processes of 'downloading', 'uploading' and 'crossloading', the differences between them are not sharp (Wong & Hill, 2011:219). Downloading and uploading exist in a constantly circular relationship, whereby member states react individually to propositions discussed collectively, thus contributing to mutations in the positions they might end up downloading. Crossloading is even more difficult to identify. Membership of the EU puts states into horizontal relationships with each other, not easily distinguishable from downloading.

It must be clear to the reader that the literature on Europeanisation is wide with multifaceted interpretations. There has been little agreement in the literature on Europeanisation about the usage of the term (Börzel & Risse, 2007:484). It is out of the scope of this thesis to analyse and review the debate about the definition of Europeanisation. Several authors have tried to classify the multiple definitions of Europeanisation, including Alistair Cole and Helen Drake (2000) in *'The Europeanization of French Polity: continuity, change and adaptation'*, Johan Olsen (2002) in *'The many faces of Europeanization'*, Kevin Featherstone (2003) in *'Introduction: In the Name of 'Europe'*, Paolo Graziano & Maarten P. Vink (2007) in *'Europeanization. New Research Agendas'* and Reuben Wong (2017) in *'The Role of the Member States: the Europeanization of Foreign Policy?'* to name a few for the interested reader.

Despite the criticisms on the conceptualisation multiple authors are convinced of the value and usefulness of the concept for academic research. According to Featherstone (2003:19), by using Europeanisation the researcher can provide a gateway to developments across the continent that are both current and complex. Europeanisation intrigues political scientists because it is a model-building exercise (Bulmer & Radaelli, 2005:340). According to Wong (2017:160), the concept is important in two areas. Firstly, Europeanisation describes changes at both national and European level. These changes can be parallel or intertwined processes. The concept captures better than the traditional integration theories the major changes at the national level. But the challenge is to model the impact of European integration on domestic policy, knowing that at the same time domestic policies has a major impact on EU political change (Olsen, 2002). Secondly, the concept focuses strongly on the relationships between institutions and identities. It shows how both institutional changes and developments change identities and interests, and how the changing identities put pressure on new institutional forms and behavioural patterns. Featherstone and Radaelli (2003:331) believe that Europeanisation is relevant as it connects different levels of analysis and types of actors and exposes asymmetries through institutional settings and policy processes.

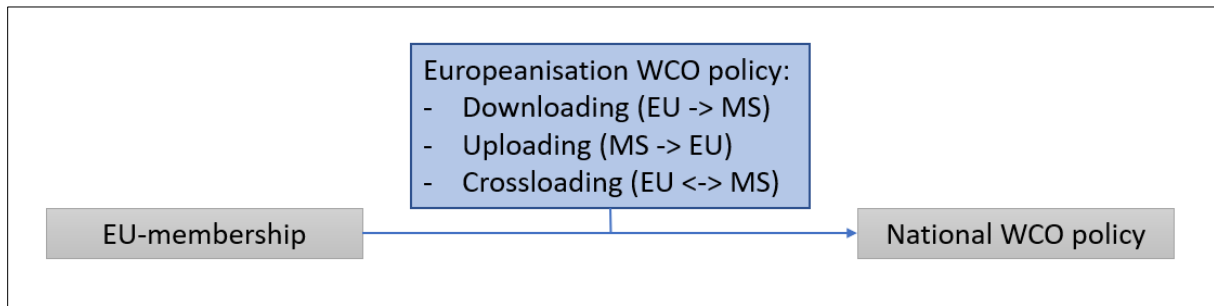
After defining Europeanisation it is also valuable to clarify what Europeanisation is not. Europeanisation is based on ideas from integration theories but is not itself an integration theory (Bulmer & Burch, 2005; Bulmer & Lequesne, 2005; Featherstone & Radaelli, 2003:340, Wong, 2017:160). According to Radaelli (2003:33), Europeanisation is not an integration theory because it is not at the same ontological level. Integration theories belong to the ontological research level where an explanation is sought why states pool their sovereignty and what is the nature of European integration. Europeanisation is situated at the post-ontological level (Caporaso, 1996:30; Radaelli, 2003:33). It examines what happens once the EU institutions are established and what are the effects (Bulmer & Radaelli, 2005:340). This is in line with what Bulmer and Lequesne (2005:12) state:

'Europeanization is concerned with the consequences of this process [European integration] for (chiefly) the member states and politics within them.'

As a result, Europeanisation leads to other, more specific questions such as the role of national institutions in the adaptation process (Radaelli, 2003:33). Europeanisation does not explain or predict European integration but describes it and thus helps to better understand it. Research on Europeanisation requires theoretical approaches developed elsewhere to be adapted in order to offer suitable explanatory frames (Featherstone & Radaelli, 2003:333). Theoretical approaches used in Europeanisation research are integration theories, such as new institutionalism, neofunctionalism, intergovernmentalism and rational choice institutionalism.

To conclude, the conceptual framework of our research is as following:

Figure 2:
Conceptual framework of research



Europeanisation is seen as a process. Being a member of the EU influences the national WCO policy. The dependent variable is the national WCO policy (or domestic change). The way the national WCO policy is influenced, is described by the process of Europeanisation. This process consists of downloading, uploading and crossloading as mentioned earlier. The actors we focus on are the member states and the EU. The relationship with the WCO as an actor is out of scope in this research. This framework will help us to structure the answer to our main research question: *'What is the role of member states of the EU at the WCO?'*. We expect the answer to our main research question not to be straightforward due to the complex relationship between the EU and its member states and the different competences of each at the WCO.

Chapter 4: Research methods

This chapter discusses the methods we used to do our research. We explain the type of research we did, how we collected our data and how we analysed it. But first we refine our research question by defining the term ‘member states’.

The main research question is: *‘What is the role of member states of the EU at the WCO?’*.

With the term ‘member states’ we mean the national customs administrations, as it is these authorities that represent the national policy at the WCO. We are not using the term as a synonym for national governments, as it is used in most research on Europeanisation (such as in Bulmer & Lequesne, 2005). The national customs administrations matter as key actors in WCO decision-making but also in EU decision-making in the Council, the Commission and its supporting structure of committees. They are furthermore key actors in the implementation of European policy by providing the administrative sub-structure on which the EU depends. We recognise that both WCO policy and EU customs policy is shaped by more than only the national customs administrations. Several actors come into play: other border authorities, other government agencies, the private sector, international organisations, etc. However interesting this is, analysing these interactions is too extensive for this thesis. The scope of this thesis is the role of national customs administrations only.

We expect the answer to our main research question not to be straightforward due to the complex relationship between the EU and its member states and the different competences of each of them at the WCO. We therefore use the analytical framework of Europeanisation to structure our answer and formulate three sub-research questions, considering the competences of each and the intermediate EU level for the WCO policy of member states:

1. What is national competence at the WCO?
2. What is EU competence at the WCO?
3. What is the member states’ role in the policymaking of the EU at the WCO?

To answer these questions we used qualitative research methods (desk research, interviews, case study). This type of research methods enables the researcher to gather in-depth insights on topics that are not well understood. This is the case for our topic, as it has not been studied previously in the political science domain. The use of qualitative methods is common in Europeanisation studies. This field of research is led by political scientists coming from the qualitative tradition (Exadaktylos & Radaelli, 2012:23). In a meta-analysis Exadaktylos & Radaelli (2012) conducted, only three of the 46 studies explicitly use proper quantitative methods.

Our research consists of two parts. The first part is explorative in nature and the objective is the mapping of how WCO policy is established by the EU and its member states. We did desk research to answer the three sub-questions. We dived into websites, reports⁷, legislation and documentation of the EU institutions to map the competences of the EU and its member states at the WCO. Additional information was added by conducting semi-structured interviews. We used the analytical framework of Europeanisation for the mapping of WCO policymaking.

After this mapping exercise, we focused on the case of Belgian Customs, the second part of our research. By doing so, we checked what was found in the first part (mapping) to the practice in a member state. The problem-owning organisation is Belgium Customs. The motivation for our case is

⁷ See annex 3 for the list of reports consulted during the desk research.

the access to information and to key persons at Belgium Customs. The period covered in our research is May 2013 until October 2019 because for this period we have at least 2 respondents, so we can perform a crosscheck of their answers.

The case study method is often applied in research on Europeanisation (Martinsen, 2012:142). According to Martinsen (2012:143), this method is well equipped to uncover complex inter-institutional dynamics by providing an opportunity to gain detailed knowledge. The downside of the method is often found to be the small-*n*. To partially remedy this shortcoming we conducted additional interviews with two other member states. These are not extra case studies but only give us a flavour on how other member states perceive their role at the WCO compared to Belgium. We are aware of the limits to generalise conclusions of the case study method, but the benefit of gaining in depth-understanding of the context outweighs these limits.

Concerning reliability, this can be checked through replication. Quantitative studies have the advantage that measurement errors will be cancelled out given the large number of observations, but these errors are less likely in case studies as the researcher is usually familiar with the case (Haverland, 2007:61). According to Haverland (2007:61), case study research scores better on concept validity (i.e. the empirical indicators capture the meaning of the theoretical concept they represent), but worse on external validity (generalisation) compared to quantitative research. In case study research generalisation is typically not sought regarding a population, but to cases that share specific theoretical properties. Concerning internal validity (i.e. the variable of interest has caused the outcome), both quantitative studies and case studies have their own distinctive strengths. Alternative explanations are explored by the large number of cases typically analysed in quantitative studies and by theoretically guided selection of cases in case studies. (Haverland, 2007:62)

According to Voss et al (2002:204), the sources of data for case study research are interviews, personal observation, information conversations, attendance at meetings and events, collection of objective data and review of archival sources. In our research we collected data from websites and reviewed several reports and documents of meetings. We also attended meetings at the WCO and Council to better understand our topic. In addition, we conducted eleven semi-structured interviews with experts at Belgian Customs, at DG TAXUD, at the WCO and at two other member states. The interviewees were chosen due to their function and expertise (see table 2 for the list of interviewees). The questions asked during the interviews were based on the framework we derived from the literature review (see table 1 and figure 2 above) about the three criteria of Europeanisation⁸. The questions were first reviewed by a Belgian Customs officer not involved in the topic, to check if the questions were comprehensible. This feedback led to minor changes in wording. The supervisor and co-reader also reviewed the questions. After their approval we sent the questions to the interviewees, at least several days before the interview took place. In order to avoid socially desirable answers, several questions measured the same aspects (e.g. several questions to check the top down dimension of Europeanisation). In order to have the interviewees speak more freely no voice recording was made. Answers were recorded by note-taking and sent to the interviewees for validation the same or next day of the interview.

⁸ See Annex 4 for the interview protocols and how they link with table 1 and figure 2.

Table 2:
List of interviewees

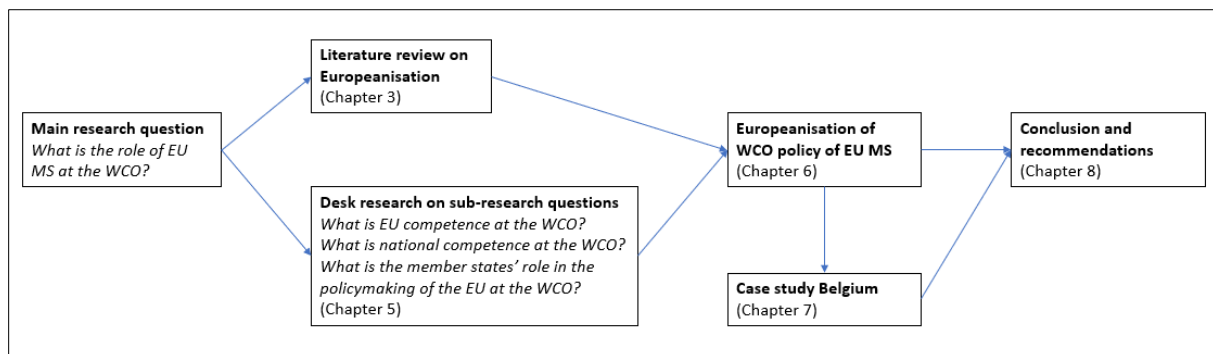
#	Function	Date	Place	Duration
1	Head of Department General Policy at Belgian Customs	06/03/2020	Brussels, office of Belgian Customs	55 min
2	Former representative of Belgian Customs to the WCO	27/02/2020	Brussels, office of Belgian Customs	1h25
3	Former Head of Department General Policy at Belgian Customs	25/02/2020	Brussels, office of Belgian Customs	1h20
4	Former representative of Belgian Customs to the WCO	24/02/2020	Brussels, WCO	1h05
5	Permanent representative of Belgian Customs at the Council	05/03/2020	Brussels, office of Belgian Customs	25 min
6	Head of Sector International Organisations DG TAXUD, European Commission	12/03/2020	Brussels, DG TAXUD	45 min
7	Representative of Dutch Customs to the WCO	26/02/2020	Brussels, WCO	45 min
8	Customs policy counsellor at the Permanent Representation of Estonia to the EU	16/03/2020	Skype call	45 min
9	Director Tariff and Trade Affairs Directorate of the WCO	26/03/2020	Skype call	45 min
10	Executive Officer Member Relations and Support of the WCO	26/03/2020	Skype call	30 min
11	Secretary general of the WCO	27/03/2020	Skype call	1h

In the table and figure below, we summarise our research design.

Table 3:
Research design (table)

Main research question	Sub-research questions	Research method
What is the role of member states of the EU at the WCO?	What is EU competence at the WCO?	Desk research (+ interviews)
	What is national competence at the WCO?	
	What is the member states' role in the policymaking of the EU at the WCO?	
Check the mapping to the practice in Belgian Customs		Case study

Figure 3:
Research design (figure)



It should be noted that our research might have been influenced by the fact that we, as researcher, are part of Belgian Customs. We payed attention to conduct our research as neutral as possible. However, we are aware that our perceptions and interpretations might have affected our results.

The analysis in the thesis aims to better understand the relationships between the member states and the EU institutions concerning WCO policy and the role of the member states in the WCO policymaking. This understanding can help the member states to maximise their role and to seize the opportunities to impact the policymaking process at the WCO level and if necessary, through the intermediate step at the EU level. Furthermore, we want to contribute to a first attempt to demonstrate that the customs domain is an interesting topic to research from a political science perspective. No contributions on the customs domain from a political science perspective have been found. This thesis is also the first contribution on the Europeanisation framework applied in the customs domain.

Chapter 5: WCO policy of member states of the EU

This chapter gives an overview of the WCO policy of member states of the EU. We understand WCO policy of member states of the EU as the decisions regarding WCO topics made by the member states. These decisions can be made directly, through or with the EU. The overview in this chapter is mainly based on desk research with a few additions from the interviews and gives input to answer the sub-research questions:

1. What is national competence at the WCO?
2. What is EU competence at the WCO?
3. What is the member states' role in the policymaking of the EU at the WCO?

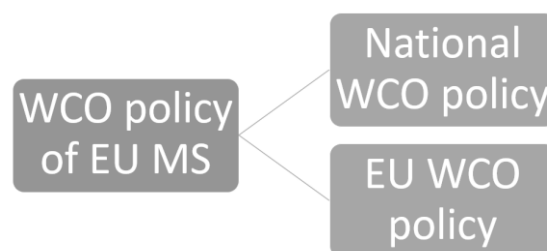
According to Deloitte (2018:143), international organisations, such as the WCO, increasingly play a supporting role for member states, as they are called to cover an ever wider range of customs and non-customs matters. International organisations can support member states in making better use of available insights, instruments, guidelines and best practices.

The reasons of member states for closer collaboration in international organisations are (Deloitte, 2018:43):

- *'To shape and contribute to new agenda's and policy initiatives, creating global standards in international fora,*
- *To support implementation of common norms amongst international trading partners,*
- *To tap into relevant resources, tools, guidelines and best practices, in support of core customs functions,*
- *To benefit from the platform-function provided by the organization, connecting with international (EU and non-EU) peers in a structural manner and acting in a joint manner.'*

We distinguish two main parts of the WCO policy of member states of the EU. First, the WCO policy made solely by the individual member states. Second, the WCO policy made through or with the EU.

Figure 4:
WCO policy of EU member states



5.1 National WCO policy

The member states decide individually on the following WCO-topics:

- Provision of **technical expertise**. Member states can participate in panel discussions or give presentations at events and meetings organised by the WCO to share best practices and experiences.
- **Elections**. The support of candidates for chair or vice-chair of a meeting is decided individually. Member states also vote individually during the WCO management elections. The voting is secret.

- **Donor funding.** The amount of donor funding for e.g. capacity building activities is a decision made by the member states. These decisions are often aligned with the national foreign policy.

- Participation in **operations and enforcement.** Member states can participate in operations organised by the WCO (such as the operations on waste, smuggling, illegal trade of cultural goods) and have direct contact with the WCO on operations and enforcement issues (such as the Container Control Programme in the fight against drugs trafficking).

- **Membership of the WCO.** Member states can decide individually if they support the accession of states as new members of the WCO or not, e.g. the accession of Kosovo.

This is not an exhaustive list. Other decisions at the WCO related to the implementation of customs legislation can be decided by the member states. According to art. 2 paragraph 1 of the Treaty on the Functioning of the European Union (TFEU), implementing EU customs legislation is primarily the responsibility of the EU member states.

However, also for the abovementioned topics there can be close coordination carried out between the European Commission and the member states, in order to reach common goals. An example is the setting up of an informal high-level working group on WCO elections to discuss ideas to better position the EU and its member states in future WCO management elections (post of Director for Tariff and Trade Affairs in 2020, of Deputy Secretary General in 2022 and of Secretary General in 2023). The EU and its members states are not represented at the WCO senior management level and failed in recent elections to get their candidates elected.

The EU also tried to have a coordinated position on the accession of Kosovo to the WCO in 2017. The issue was so political that an agreement could not be reached. Therefore, the EU had no coordinated position and the member states could express their national position at the WCO.

5.2 EU WCO policy

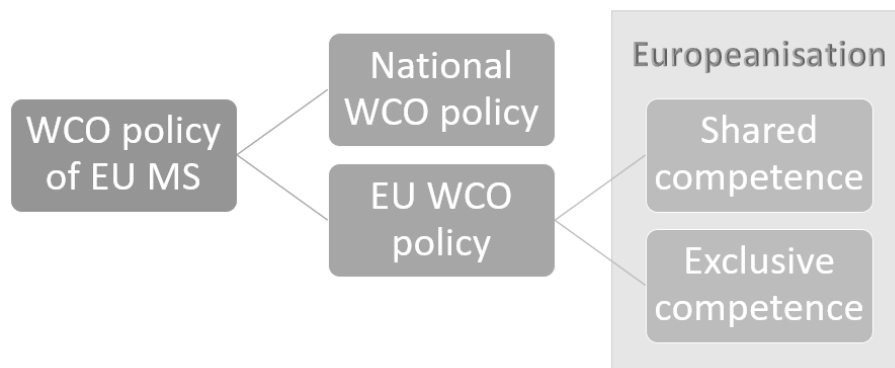
Exclusive and shared competences of the EU

The majority of the WCO policy of member states of the EU is decided through or with the EU. The WCO policy decided *through* the EU is policy of exclusive competence of the EU (such as the customs union and common commercial policy, mentioned in article 3.1 TFEU). According to the European Parliament (2011), as a general rule and in the spirit of the Lisbon Treaty, in cases of exclusive competences the EU should be the pre-eminent actor in multilateral organisations while the member states may also, but need not necessarily, be present as members but usually without an independent role. The European Parliament (2011) also stated that member states should support the positions expressed by the EU speaking on their behalf.

The WCO policy decided *with* the EU is policy of shared competence of the EU (mentioned in article 4 TFEU). In case of shared competence and to the extent that the EU has not exercised its competence or has decided to cease exercising its competence, member states can exercise their competence. According to the European Parliament (2011), in case of shared competences different voting behaviours by the EU and the member states should be avoided.

Whether it is policy of exclusive competence or of shared competence, the EU coordinates the position of its member states at the WCO. Speaking with one voice strengthens the role of the EU and its member states and ensures unity of international representation. It increases the chances of success but also improves the legitimacy and credibility of the EU as an important international actor in the emerging inter-polar world (European Parliament, 2011).

Figure 5:
WCO policy of EU member states (II)



EU member akin of the WCO

The coordination of the position of the EU and its member states became even more important with the WCO membership of the EU (Council of the European Union, 2007).

The EU is granted rights akin to those enjoyed by WCO members since 2007, by a decision of the Council of the WCO (WCO, 2007).⁹ This decision mentions that the rights of the EU at the WCO are subject to some special arrangements and conditions.

First, in WCO Committees whose members are required to be Contracting Parties to a specific convention or agreement, the EU still has the same rights and obligations as it holds under the terms of the Convention or Agreement concerned. For example, the EU as well as the member states are contracting parties to the HS Convention, administered by the WCO in the HS Committee. The EU and the member states are obliged to include the customs provisions of the Convention in their own legal framework.

The voting rules for customs unions are specified in each convention except in the WTO Agreement on Valuation and in the WTO Agreement on Rules of Origin. No voting rules are specified in the working procedures for the Technical Committee on Customs Valuation. In the rules of procedure of the Technical Committee on Rules of Origin, it is stated that the Technical Committee shall take decisions by consensus. For the HS Convention, the EU and its member states exercise only one vote together (art. 6 of the HS Convention). For the Revised Kyoto Convention (RKC), in case of voting the EU has a number of votes equal to the total votes of its member states (art. 6.8 of the RKC). The same applies for the Convention on Temporary Admission (Istanbul Convention).

Second, in all other WCO bodies (such as the Council, the Permanent Technical Committee, the Enforcement Committee) the EU has the same rights and obligations as the members of the WCO with exceptions on voting. Where a vote is held on a matter within its competence, the EU does not have an individual vote but exercises in its own name the votes of all its member states. This means that the

⁹ This is an interim measure, pending the entry into force of an amendment of the Convention establishing a Customs Co-operation Council (the Customs Co-operation Council is the formal name of the WCO), permitting the accession of Customs or Economic Unions. The reason for this interim measure with immediate effect is that the amendment of the Convention is a rather slow process since all the Contracting Parties to the Convention have to send a notification of acceptance of the amendment. According to one of the respondents, only half of the members have sent this notification.

member states cannot individually exercise their voting rights. Where a vote is held on a matter which does not fall within its competence, the EU has no vote. The member states thus individually exercise their voting rights.

The voting rules show that the member states are, for some matters, dependent on the EU. To ensure transparency and compliance with the definition of competences, prior consultation is done to coordinate the positions.

According to the respondents, the WCO is a consensus-built organisation. Voting is rare except for the election of management positions at the WCO and during the meetings of the HS Committee.

*Table 4:
Voting rules for EU and its member states in WCO bodies*

WCO Body	Voting rules for EU and its member states
Technical Committee on Rules of Origin	No voting rules specified in terms of reference
Technical Committee on Customs Valuation	No voting rules specified in terms of reference
HS Committee	EU and its member states together exercise only one vote
RKC Management Committee	EU has a number of votes equal to the total votes of its member states
Istanbul Convention Administrative Committee	EU has a number of votes equal to the total votes of its member states
Other WCO Bodies – EU competence	EU has a number of votes equal to the total votes of its member states
Other WCO Bodies – non-EU competence	EU has no vote. The member states exercise individually their voting rights (e.g. for elections)

Coordination of position of the EU and its member states

The coordination of the position happens through coordination papers. These papers are prepared by the European Commission, Directorate-general TAXUD (DG TAXUD) and presented at the Customs Union Working Party of the Council of the EU (CUWP)¹⁰. The CUWP is one of the working parties of the Council. It does the preparatory work related to customs legislation for the Council. All member states are represented at the CUWP.

The Court of Auditors (2001:5) mentions ensuring a common approach by the EU and its member states as an important part of the work of the Commission at the WCO Committees. Priorities of the Commission (2018:13) are to continue working on international relations and working on more robust supply chains within the WCO. Since the entry into force of the Treaty of Lisbon, the Union's external representation is ensured by the Commission¹¹, regardless of the categories and areas of competence conferred upon the European Union (Commission, 2011).

In 2011 the Council endorsed general arrangements regarding the delivery of EU Statements in multilateral organisations (Council of the European Union, 2011). One of the arrangements is that the EU can only make a statement in those cases where it is competent and where a position has been agreed in accordance with the relevant Treaty provisions. The member states and EU actors will

¹⁰ More information on <https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/working-party-customs-union/> (last consultation 15/11/2019).

¹¹ Except for the Common Foreign and Security Policy, where the Union is represented by the President of the European Council and the High Representative for Foreign Affairs and Security Policy.

coordinate their action in international organisations, in all transparency. They will ensure that there is adequate and timely prior consultation on statements reflecting EU positions to be made in multilateral organisations. Another arrangement is that member states may complement statements made on behalf of the EU whilst respecting the principle of sincere cooperation.

Three procedures can be identified to coordinate a position. The first procedure we discuss is the coordinated position established by a decision of the Council. Second, there is the coordinated position established by the CUPW. Lastly, there is the coordinated position established by the Customs Expert Group.¹²

Coordinated position established by a decision of the Council

When a WCO body is adopting acts having legal effects, the positions to be adopted on the EU's behalf in this body must be established by a decision of the Council, on a proposal from the Commission (article 218(9) TFEU). Article 218(9) TFEU applies in the same way, irrespective of the nature of competence (exclusive or shared). The treaty article makes no distinction on the application of the procedure based on the nature of the competence.

This procedure has only been used twice for a WCO topic, both in relation to the HS Convention (Council of the European Union, 2019b and 2019c).

In both cases the proposal of the Commission was prepared in the Customs Expert Group. The Customs Expert Group is an informal expert group set up by DG TAXUD to provide advice and expertise to the Commission in relation to customs matters (Commission, 2016b). One of the tasks of the Customs Expert Group is the coordination on behalf of the Union of matters dealt with in the bodies set up, or under the auspices of the WCO Conventions. The members of the Customs Expert Group are the member states, chaired by a representative of the Commission, and they decide by consensus. By discussing aspects of the WCO committees it contributes to ensuring a coordinated position of the EU towards major trading partners in the WCO. There are 16 different sections¹³ of the Customs Expert Group. According to the Terms of Reference of the Customs Expert Group (Commission, 2016:6), the following ten sections have the task of WCO coordination:

- General Customs Legislation: informed/consulted in order to ensure consistency with the UCC;
- Data Integration and Harmonisation – EU Customs Data Model: WCO Data Model;
- Authorised Economic Operator: AEO related matters;
- Customs Control and Risk Management: Matters related to customs controls and risk management including exchange of information;
- Tariff and Statistical Nomenclature – subsection HS/WCO: HS Convention;
- Origin: Coordination for WCO Technical Committee on Rules of Origin (WTO Agreement on Rules of Origin);

¹² For completeness of the analysis it should be noted that there are meetings of the WCO bodies that are not coordinated. The WCO bodies concerned are the Integrity Sub-Committee, the Technical Experts Group on Non-Intrusive Inspection and the WCO/UPU Contact Committee. The Commission can decide that no coordination is necessary due to the nature of the agenda (e.g. presentations, debriefings) or if it concerns very technical meetings that support other WCO bodies.

¹³ These sections are the following: General Customs Legislation, Data Integration and Harmonisation – EU Customs Data Model, Authorised Economic Operator, Customs Control and Risk Management, Tariff and Statistical Nomenclature, Tariff Measures, Duty Relief, Origin, Customs Valuation, Customs Debt and Guarantees, Import and Export Formalities, Customs Status and Transit, TIR Convention and other UNECE Customs Conventions, Special Procedures other than Transit, Enforcement of Intellectual Property Rights and International Customs Matters.

- Customs Valuation: Coordination for WCO Technical Committee on Customs Valuation (WTO Agreement on Implementation of Art. VII GATT);
- TIR Convention and other UNECE Customs Conventions;
- Special Procedures other than Transit: WCO Technical Committee – Istanbul Convention, ATA Convention, Container Convention;
- International Customs Matters: WCO and WCO Agreements/Conventions.

The proposal of the Commission then goes to the CUWP. The CUWP discusses the proposal of the Commission until consensus is reached. No voting takes place at the CUWP. Afterwards the consensus goes to the Committee of the Permanent Representatives of the member states (Coreper) as a point 'I', meaning that an agreement is reached and that no further discussion is required. The proposal then goes as a point 'A' to the Council. A-points are issues where an agreement has been reached and that does not need further discussion, only approval by the Council. The role of the Council is coordinating member states' policies and negotiating and adopting EU law (Commission, 2016:4). The Council adopts the position on the EU's behalf by a decision. This is usually done by the Council formation ECOFIN, responsible for customs matters. If a discussion were to arise unexpectedly, the voting rule in the Council to take such a decision is qualified majority. The European Parliament is not involved.

Coordinated position established by the CUWP

If the topics on the agenda of a WCO body are not acts having legal effects, no decision of the Council is necessary to adopt a coordinated position. The proposal is also in this case prepared by the Commission, i.e. the Sector International Organisations, without involvement of the Customs Expert Group. Where necessary the Sector International Organisations reaches out to colleagues both within DG TAXUD and other Commission Services to assist in drafting the proposal based on their expertise. If the Sector International Organisations is aware that a member state has input on a particular topic that would enhance the proposal, it reaches out to that member state to include its input prior to submitting it to the CUWP.

The Sector International Organisations presents then the proposal in the CUWP, where member states can provide comments. Based on this dialogue the final coordination is established. As already mentioned, no voting takes place at the CUWP. In practice, if an agreement is reached, the coordinated position does not pass through Coreper.

Due to the often late availability of working documents of the WCO, it is sometimes not possible to conduct the coordination in the CUWP for reasons of timing. In these cases a written procedure is conducted. Where a member state provide comments, the Sector International Organisations liaises bilaterally with that member state to reach a common understanding prior to submitting a revised draft coordination document to the CUWP, if necessary.

Very little changes to the drafts are suggested by the CUWP. The Commission does not need to mediate between the member states because the divergent opinions are more often between the Commission and a member state and not between the member states themselves.

Coordinated position established by the Customs Expert Group

For some technical topics (such as HS and valuation) that are not acts having legal effects, the coordination on behalf of the Union is done at the Customs Expert Group without passing through the CUWP. For more information on the Customs Expert Group, see the part on 'Coordinated position established by a decision of the Council'.

Guidelines to establish a coordinated position

Discussions started in March 2019 at the CUWP on how the EU should coordinate the position of its member states. To clarify this, guidelines to reach such a coordinated position were discussed in the CUWP. This topic was on the agenda of the CUWP on 14 March, 13 May, 27 May, 3 June, 11 June, 24 June, 15 October, 24 October, 9 December and 18 December 2019 and on 29 January, 12 February and 24 February 2020. This means that the discussion on the guidelines was held at the CUWP during three presidencies of the Council. It started during the Romanian presidency, continued during the Finish presidency and ultimately reached a consensus during the Croatian presidency. Consensus was reached in the CUWP on 24 February 2020. The draft guidelines were approved in the Coreper on 11 March 2020.

The objective of the guidelines was twofold. First, the CUWP wanted to update the guidelines of 2008 '*WCO Membership: ensuring community coordination. Guidelines*', not being compliant with the Treaty of Lisbon. Second, the CUWP wanted to improve the coordination process and to avoid issues as has happened in the past.

The 2008 guidelines were established after the membership akin of the EU to the WCO, to ensure a better EU coordination at the WCO. The new membership required an intensified and more efficient cooperation between the member states and the Commission in order to ensure unity of international representation. In the document a distinction is made between community position (for '*matters falling within exclusive Community competence*'), common position (for '*matters containing elements both of member states' competence and of Community competence*', to preserve the unity of external representation) and close coordination (for '*matters of exclusive member states competence*', in order to ensure the highest possible degree of transparency, where appropriate). The document is a note from the general secretariat of the Council to the CUWP (Council of the European Union, 2008). This has a non-legally binding status.

In addition to the update of the 2008 guidelines, the CUWP wanted to improve the coordination process and to avoid issues as has happened in the past. In 2017 there was an issue at the WCO HS Committee where the HS classification of novelty tobacco products was discussed. The Commission did not seek the CUPW's coordination, mistakenly presuming that the EU position could be made by the Commission alone. As the HS Committee was adopting acts having legal effects, the procedure in article 218(9) TFEU should have been followed, meaning that a decision by the Council was necessary to express the EU position. Therefore no EU position could be reached, and the EU could not speak at the WCO HS Committee.

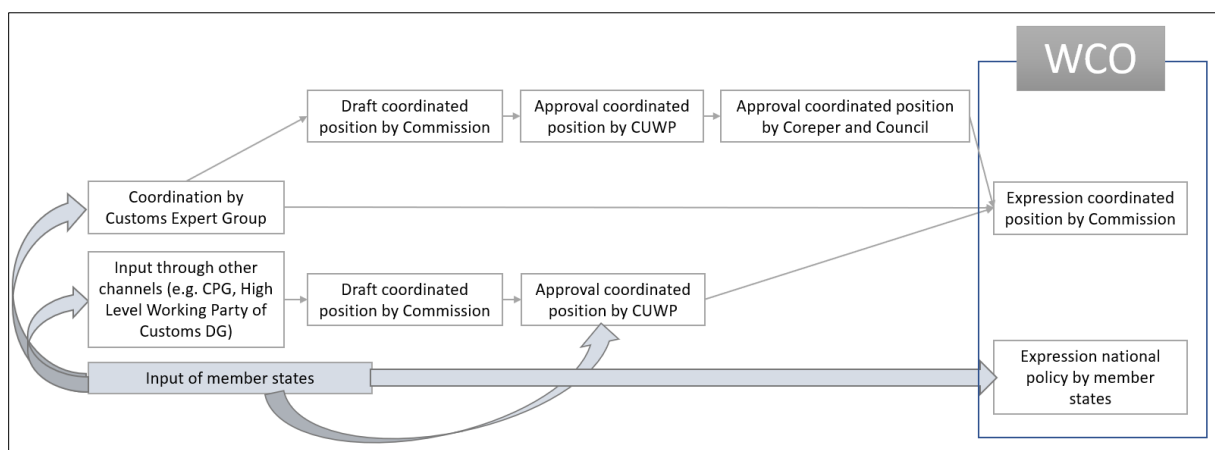
Unlike the 2008 guidelines, the new guidelines do not contain definitions. For the Commission there is no distinction between EU position and common position, because an EU position is applicable for exclusive and shared competences. In both cases the EU can act externally. The EU may in the field of shared competence legislate internally. In this case the EU exercises its competence in accordance with article 2(2) TFEU, with the consequence that the EU would acquire exclusive external competence in accordance with article 3(2) TFEU. In conclusion, there is always an EU position, even in the case of shared competences.

This was not accepted at the CUWP. The deletion of 'common positions' means in practice that on any subject of shared competence, including when member states remain internally competent, the EU would be expected to adopt a position, and the Commission to express it within the WCO. To exercise its external competence is not an automatic right of the EU. Member states may well decide to exercise their external competence themselves on matters for which they remain internally competent.

The Commission expresses EU positions and the member states can only take the floor to support them. The member states cannot express their own views. The decision as to whether the member states or the Commission will express the common position is decided at the CUWP on a case by case basis. In practice, the Commission also expresses the common positions. Here again the member states can only take the floor to support them.

5.3 Conclusion

In 5.2 we provided an answer to the sub-research questions ‘What is EU competence at the WCO?’ and ‘What is the member states’ role in the policymaking of the EU at the WCO?’. The EU, via the Commission, coordinates the positions of the EU and its member states and expresses them at the WCO. The process to establish such coordinated positions is summarised in the figure below. The figure shows that a member state has four entry points to influence the WCO policymaking. First, it can act directly at the WCO for matters under its sole competence. Second, it can participate in the coordination of the positions at the Customs Expert Group. Third, it can participate in the coordination of the positions at the CUWP. Lastly, it can use other channels to provide input for the drafting of the coordinated position, such as the CPG, the High Level Working Party of the Directors General of Customs and bilaterally getting in touch with the Commission.



Chapter 6: Europeanisation of WCO policy of member states of the EU

In this chapter we apply the conceptual framework of Europeanisation to the WCO policymaking of member states of the EU. We use this conceptual framework to structure the complex relationship between the EU and its member states, as described in the previous chapter. The analysis is based on desk research.

We reprise the framework by Wong & Hill (2011) and Wong (2017:151) from Chapter 3 to analyse WCO policy which we adapted to our research.

Table 5:
Three criteria of Europeanisation (based on Wong, 2017:151)

a) National adaptation/Policy convergence
<ul style="list-style-type: none">• Has convergence and/or adaptation of national policy to EU norms and directives taken place?• Have national institutional structures and policymaking processes been adapted in response to European integration?
b) Projection of national policy onto EU structures (<i>National projection</i>)
<ul style="list-style-type: none">• Has the state pushed for its national WCO policy goals to be adopted as EU goals/policy, and how far has it succeeded?• Has the state benefited from the 'cover' of the EU?• How indispensable is the EU to the achievement of national WCO policy goals?
c) Internalisation of 'Europe' in national identities (<i>Identity reconstruction</i>)
<ul style="list-style-type: none">• Has there been a reshaping or hybridization of identities, which privileges a European identity over the national?• What kinds of European norms have arisen among national officials and how do they apply to WCO policy?

We answer these questions on each dimension in the following parts.

6.1 Top down Europeanisation

The top down Europeanisation or downloading dimension is defined by Ladrech (1994) as the adjustment of member states' policies as a result of EU membership. As we already stated, the impact of the EU on member states cannot be denied in the customs domain. According to Limbach (2018:11) and Lyons (2008:23-24), when it comes to the 'Europeanisation' of national administrative law, it is EU customs law that has had the pioneering role. Widdershoven (2014:11) mentions the modernised Customs Code as an example of EU laws imposing very detailed rules on the member states. The impact of the EU on the WCO policy of the member states is therefore not surprising. The fact that they are member of the EU impacts their national WCO policy. For some topics at the WCO, individual EU member states even have no vote anymore (e.g. the voting rules of the HS Committee, the RKC and the Istanbul Convention Administrative Committee). If decisions are made at the WCO in the domain of exclusive competence of the EU or shared competence where member states decided not to exercise their external competence themselves, only the Commission can express the coordinated position (i.e. EU position). The member states can only take the floor to support this EU position. Furthermore, this coordinated position is prepared by the Commission, so the Commission can easily put forward its own agenda. Even for WCO topics under the sole responsibility of the member states, such as the election of the WCO management, the Commission took the initiative to set up an informal

group to reach a common approach. Coordinated positions take priority over national *domaines réservés*.

At the WCO we also see what Wong (2017:146) stated: The EU level does not replace the national state, but it does become an important reference point. Member states equally play a relevant role within the WCO given their status as member, but the EU becomes an important reference point in the national WCO policymaking.

Referring to the framework mentioned above (Wong, 2017), we conclude that there is national adaptation of the WCO policy due to the EU membership. Policy convergence takes place because external representation at the WCO is ensured by coordinated positions and expressed by the Commission, even without any input of the member states. The importance of the EU level for national WCO policymaking has increased since the EU became member akin of the WCO. National WCO policymaking is mainly done at EU level.

6.2 Bottom up Europeanisation

The bottom up Europeanisation or uploading dimension means the projection of national preferences, policy ideas and models in the EU (Wong, 2017:147). This dimension is also present in the WCO policy of member states. Member states are aware that together with the EU and its members states, they have more impact than if they would stand alone. Therefore the EU is viewed as a means and vehicle for the achievement of nationally defined goals. Member states use the EU level as an influence multiplier. If member states want to project their preferences, policy ideas and models to the coordination papers establishing EU or common positions for the WCO, they can be proactive at the CUWP or Customs Expert Group, trying to influence WCO policies of other member states. Reactive states miss the opportunity to project its own preferences linked to its national goals and interests. As Bulmer & Lequesne (2005:3) state, member states matter as key actors in EU decision-making. It is rational and logical for member states to maximise their influence on the shaping of EU policies (Wallace, 2005:42).

As already mentioned, coordinated positions are prepared by the Commission and in a majority of cases proposed to the CUWP. However, these proposals are not invented in a vacuum. The Commission gathers opinions in committees and expert groups. According to Wallace (2005:29), many of these involve 'experts' from the member states precisely in order to ensure that the policy experiences and preferences of the member states are fed into the proposals. By exporting their ideas to the Commission, the active member state hopes that a proposal, formally articulated by the Commission, can incorporate its preferences presented as of collective interest. This way the member state benefits from the 'cover' of the EU.

Referring to the framework mentioned above, we conclude that there is national policy projection onto the EU. Proactive member states can push their national WCO policy goals to be included in the EU coordination papers. The member states benefit from the 'cover' of the EU at the WCO. Support of the EU and of the other member states make it easier for a member state to achieve the national WCO policy goals.

6.3 Europeanisation as socialisation process

The socialisation process or crossloading dimension refers to the reconstruction of identities in Europe (Wong, 2017:147). Europeanisation means here the mix of national and European incentives to create a transnational and culturally integrated Europe. The European level acts as a forum for the member states. Through consultations, decision-making, informal rules and the sharing of norms and values, member states learn from each other.

Socialisation also plays a role in the WCO policymaking of member states. There is a strong coordination reflex regarding WCO policy. As the EU is an important reference point, WCO policy is discussed formally and informally with the Commission and other member states. As already mentioned, several European fora exist to discuss WCO policy: the sections of the Customs Expert Group, the CUWP, but also the Customs Policy Group (CPG) and the High Level Working Party of the Directors General of Customs. The latter one is, like the CUWP, a Council preparatory body for customs matters (Council of the European Union, 2019a). The CPG started as an informal expert group set up by the Commission 56 years ago. It brings together the heads of customs administrations to do the overall policy coordination for the Customs Union (Commission, 2016:4), including for the WCO. In 2018 the Commission formalised and developed the role of the CPG to focus on providing the input to establish overarching coordination of policy and operational aspects and to set clear priorities for the future. The CPG was converted into a formal expert group with clear tasks and rules of procedure (Customs Policy Group, 2018).

Referring to the framework mentioned above, we conclude that there is internalisation of 'Europe' in national identities. The way the positions are coordinated and expressed at the WCO privileges a European identity over the national identity. Even if the member state succeeds in projecting its own goals into the EU coordination, in most cases, it will still be expressed by the Commission at the WCO. Important norms among the EU and the member states for the WCO policy are sincere cooperation (article 4.3 TEU) and the unity of international representation.

Overall, we conclude that Europeanisation is a suitable framework to analyse the complex relationship between the EU and the member states at the WCO. The analysis distinguishes the three dimensions of Europeanisation of WCO policy: national adaptation and policy convergence (top down), projection of national policy onto the EU (bottom up) and internalisation of 'Europe' in national identities (socialisation process).

Chapter 7: Case description Belgian Customs

The previous chapter applied the conceptual framework of Europeanisation to the WCO policymaking of member states of the EU in general. In the current chapter we focus on the case of Belgian Customs. Where the previous chapter was based on desk research, the analysis of chapter 7 is based on the interviews we performed. This offers us the opportunity to check if what we found in documentation matches reality. The period covered is May 2013 until October 2019. We start with introductory information on Belgian Customs. We then apply the conceptual framework of Europeanisation to the WCO policy of Belgian Customs. At the end of this chapter, we provide insights from two other member states. These are not extra case studies but only give us a flavour on how other member states perceive their role at the WCO compared to Belgium. We also provide input from officials at the WCO on how they perceive the role of the EU and the member states at the WCO.

Belgian Customs is one of the administrations of the Federal Public Service Finances (Ministry of Finances). It also deals with excises. VAT and direct taxes are responsibilities of other administrations being part of the Federal Public Service Finances. Belgian Customs collects VAT at import and transfers it to the concerned administration, part of the Federal Public Service Finances. In 2018, Belgian Customs collected €2.672.200.963 import duties (Federal Public Service Finances, 2019). These are 10.5% of the total amount of import duties collected in the customs union¹⁴. This shows that Belgian Customs is relatively important for the collection of import duties in the EU. Belgian Customs counts 3.350 customs officers.

7.1 Top down Europeanisation

The Belgian respondents confirmed that the EU membership impacts the national WCO policy. All Belgian respondents agreed that a majority of the national WCO policy is established on EU level.

‘They [the EU] define the framework/playing field, member states may lay down national emphases.’
Former representative of Belgian Customs to the WCO

The coordinated position papers are seen as important documents. Once an agreement is reached in the preparatory body of the Council, the CUWP, there is no option anymore to express a divergent position.

‘Once that [coordinated position papers] is agreed there [CUWP], you are bound to this frame. I did intervene at meetings with practical, relevant remarks, but not against the positions of the coordination paper.’
Former representative of Belgian Customs to the WCO

The coordination of the positions at the CUWP and respecting these positions during meetings at the WCO are not questioned by the respondents. However, they do challenge the way the positions are coordinated. One respondent labelled the involvement of the Commission as directive. Another respondent mentioned the lack of transparency of the Commission on her decision-making process of the coordinated positions (e.g. no information on the bilateral contacts with the member states). Two other respondents mentioned the late sending of the relevant documents by the Commission to the CUWP, offering little time to investigate the documents and provide feedback.

¹⁴ For facts and figures on the customs union, see https://ec.europa.eu/taxation_customs/facts-figures/eu-customs-union-unique-world_en (last consultation 17/03/2020).

'The way this [the coordination of the positions] happens now is very top down (...). There is little room for discussion, especially as the coordinated positions are often sent very late to the member states. Maybe because until now we were not prepared enough. It is logical that EU positions are determined, but I am questioning the process by which they are established.'

Belgian respondent

Even if the positions are agreed at the CUWP, the respondents still see an added value to be present at the meetings of the WCO. The reasons mentioned by the respondents are: to build a network, to share information, to gain new knowledge and expertise to take back to the own administration and to better follow up the topics discussed at the WCO in order to weigh on the meetings of the CUWP. In addition, being the host country made one of the respondents feel responsible to be present at the WCO.

Because of the importance of the EU in customs matters, Belgian Customs has invested in good collaboration and communication with the permanent representative of Belgian Customs at the Council. This indirectly also impacts the WCO policy of Belgian Customs: due to the good communication, Belgian Customs is better informed about the draft coordinated position papers of the Commission and the discussions held at the CUWP, offering the opportunity to provide timely suggestions and remarks on the papers. It was not the WCO policy that was the trigger to adapt the policymaking process, but the importance of the EU. However, this adaptation offers opportunities to better follow up the WCO policymaking at EU level.

The Belgian respondents gave several examples of when Belgian Customs changed its position to align with the one of the EU. One example was fixing a maximum number of terms for the elected positions at the WCO. For Belgian Customs, fixing a maximum number of terms was not necessary. By voting you could avoid the re-election of a manager. However, the EU considered it appropriate to have a maximum number of terms. Belgian Customs then aligned its position to the one of the EU. For Belgian Customs, it was not worth it to stick to the own position.

Even if the Belgian respondents agreed there is national policy convergence, they also distinguish a different WCO approach among member states. Some member states are seen as active, other member states as absent. The active member states are the ones having a dedicated representative at the WCO and taking up roles at the working groups such as chair or vice-chair. Other member states have the same representative at the EU and at the WCO, leading to less active participation in the WCO.

Considering the WCO policy at EU level, it should be mentioned that the Belgian respondents were not aware of a defined WCO policy at EU level, nor defined WCO priorities of the EU. According to them, there is no overall WCO policy with clearly defined priorities. The EU policy is made on an ad hoc manner, meeting by meeting, through the coordinated positions. It is therefore more a reactive policy. Even if there is no overall WCO policy of the EU, the respondents identified general lines:

'The EU did want to be a loyal partner and one of the driving forces.'

Former representative of Belgian Customs to the WCO

We conclude that the interviews confirm our findings from the previous chapter. There is national adaptation of the WCO policy due to the EU membership (adaptation in positions to align them with the ones of the EU and adaptation in the own policymaking process, to ensure a better communication with the EU level). National WCO policymaking is mainly done at EU level. The EU level does not replace the national state (the respondents see an added value in being present at the WCO meetings), but it does become an important reference point. Policy convergence takes place because external

representation at the WCO is ensured by coordinated positions and expressed by the Commission. However, the WCO approach differs from member state to member state. Finally, the absence of a defined WCO policy at EU level can be a weakness in the external representation of the EU. Having the message clear and known by all, makes speaking with one voice easier.

7.2 Bottom up Europeanisation

The Belgian respondents confirmed that the forum to influence WCO policies of the EU is the CUWP. One respondent also mentioned the CPG and the High Level Working Party of the Directors General of Customs as fora to discuss WCO topics. However, to be able to project the own preferences, policy ideas and models, these should be determined in the first place. For Belgian Customs, this is not the case. There is no defined WCO policy of the organisation, only some topics the representatives themselves considered as priorities, considering the overall policy of Belgian Customs (e.g. Globally Networked Customs, e-commerce, fight against drugs trafficking, exchange of information, governance of the WCO). The absence of a defined WCO policy makes it difficult to react on the coordinated position papers at the CUWP, limiting the interventions to an ad hoc reactive base.

All Belgian respondents agreed that the EU is indispensable to achieve the national WCO policy, considering the Treaty of Lisbon and the exclusive competence of the EU for the customs union. One example mentioned was the exchange of information between countries. The importance of the EU in this topic was emphasised. The respondent believes in the EU as an influence multiplier. Belgian Customs benefited from the 'cover' of the EU in that example, having the own preference included in the proposal and as such presented as of collective interest.

'It is important for the EU to work on this [exchange of information]. It is better to work on this on an international level from the EU than from a member state. Belgium is trying to get attention for this topic at the European level, by advocating international digital platforms to exchange information on a large scale. This concerns external action so we have all interest in coming out as one EU. We should not allow ourselves to be dominated by the Commission but work towards a common position.'

Belgian respondent

'For the exchange of information we went to the EU. There was a European project group on this topic. The Commission's option was to base the exchange of information on treaties and agreements of the EU. We felt that the option of a multilateral instrument at WCO level should also be retained as one of the possible tracks for the future way forward. We stood firm then. And our proposal was included in the working document of the project group as an equivalent track for the way forward.'

Belgian respondent

'We need the EU anyway to influence the WCO agenda, because we are stronger as EU than as member state alone.'

Belgian respondent

Building coalitions with like-minded member states in order to have the own position projected into the EU position was mentioned by several Belgian respondents. According to one of the respondents, this happens not enough for WCO topics.

'If you really want something, you have to be with 3 or 4 countries to support it.'

Former representative of Belgian Customs to the WCO

No respondent mentioned the Customs Expert Group as a forum to discuss WCO topics. However, as we saw in Chapter 5, some sections of the Customs Expert Group have the WCO coordination as one

of their tasks. To clarify this blank spot, we questioned the experts of Belgian Customs participating in the sections of the Customs Expert Group. They confirmed the WCO coordination in following sections:

- Tariff and Statistical Nomenclature – subsection HS/WCO: HS Convention;
- Customs Valuation: Coordination for WCO Technical Committee on Customs Valuation (WTO Agreement on Implementation of Art. VII GATT);
- Data Integration and Harmonisation – EU Customs Data Model: WCO Data Model¹⁵;
- Authorised Economic Operator: AEO related matters¹⁶;
- Customs Control and Risk Management: Matters related to customs controls and risk management including exchange of information¹⁷;
- Special Procedures other than Transit: WCO Technical Committee – Istanbul Convention, ATA Convention, Container Convention;

According to them, the possibility to do WCO coordination is not used in following sections:

- General Customs Legislation: informed/consulted in order to ensure consistency with the UCC;
- Origin: Coordination for WCO Technical Committee on Rules of Origin (WTO Agreement on Rules of Origin);
- TIR Convention and other UNECE Customs Conventions;
- International Customs Matters: WCO and WCO Agreements/Conventions;

In conclusion, the respondents realise that the forum for national policy projection is the CUWP, but due to a lack of resources and a lack of a defined WCO policy, this opportunity has not been fully used by Belgian Customs. Therefore Belgian Customs is not one of the proactive member states pushing its national WCO policy goals to be included in the EU coordination papers. The interviews confirm our findings from the previous chapter, that the EU is seen as indispensable to achieve the national WCO policy and as an influence multiplier. Support from like-minded member states was also mentioned as a way to have the own position projected into the EU position. Finally, the CPG and the High Level Working Party of the Directors General of Customs were also seen as entry points to project national preferences. Unlike we identified in the previous chapter, the committees and the expert groups of the Commission were not mentioned as possible fora to influence the draft proposals of the Commission. An additional questionnaire to the experts of Belgian Customs participating in the Customs Expert Group showed that not all sections of the Customs Expert Group performed their task of WCO coordination.

7.3 Europeanisation as socialisation process

The Belgian respondents confirmed that there is a strong coordination reflex regarding WCO policy. As the EU is an important reference point, WCO policy is discussed with the Commission and other member states. This happens more in formal meetings, such as the CUWP and the CPG, than in informal settings, such as building coalitions with like-minded member states. According to one of the respondents, the latter happens not enough for WCO topics.

The norms and values mentioned by the Belgian respondents are different from the ones we detected during the desk research (i.e. sincere cooperation and the unity of the international representation). The norms and values mentioned are: multilateralism, honesty, integrity, transparency, good

¹⁵ The procedure for coordination is rather new in this Customs Expert Group section, as the procedure for coordination was discussed for the first time in the meeting of this Customs Expert Group section in April 2019.

¹⁶ The coordination is limited to addressing AEO topics in WCO bodies in an information note the Commission sends to the member states. The member states may ask questions or discuss any of the information points.

¹⁷ The coordination happens very rarely.

governance, gender equality (mentioned three times), human rights (mentioned three times), environment, privacy (GDPR), freedom (mentioned three times), equality (mentioned twice), democracy (mentioned twice), rule of law, freedom of speech, international cooperation and fight against criminality. This is a broad range of norms and values, making it difficult to state that there are specific common European norms and values.

On the question which identity they privileged at the WCO, the Belgian one or the European one, the answers diverged. Two respondents answered the Belgian one, still sitting in the room behind the nameplate of Belgium. Two respondents answered the European one. This result does not confirm an emergence of European identity.

One of the respondents also referred to the reputation of Belgians to have a pro-EU attitude. According to that attitude, Belgian Customs aligns its WCO policy to the one of the EU. Nevertheless he and another respondent also pointed to the lack of trust between the Commission and the member states.

To conclude, the interviews confirmed the findings of the previous chapter that there is a strong coordination reflex regarding WCO policy. The European level acts as a forum for the member states. Through consultations, decision-making and informal rules, member states learn from each other. However, the interviews do not confirm the internalisation of 'Europe' in national identities. The coordination reflex originates more from the pressure to respect expected behaviour than from the European identity and shared norms and values. The lack of trust also plays a role in the limited socialisation.

7.4 Input from other member states and the WCO

A representative of two different member states, the Netherlands and Estonia, was interviewed to get their views on the topic. These are not extra case studies but only give us a flavour on how other member states perceive their role at the WCO, compared to Belgium. We also provide input from officials at the WCO on how they perceive the role of the EU and the member states at the WCO.

The interviews showed similarities with the opinion of Belgian Customs. First, the respondents of Dutch and Estonian Customs are not aware of WCO priorities of the EU nor of a broad strategic long-term vision. The EU priorities are defined on an ad hoc base, meeting per meeting, via the coordinated position papers. Second, they also stated that the majority of the national WCO policy is defined at EU level.

'My personal impression is that there is no WCO process but just files. There are no WCO goals and the EU helping to achieve them. It is an ad hoc policy.'

Customs Policy Counsellor at the Permanent Representation of Estonia

Like the Belgian respondents, the Dutch respondent also noted that the level of trust in the Commission differs between member states. Estonian Customs is one of the member states trusting the Commission.

'We feel in safe hands, when not, we react at the CUG [CUWP].'
Customs Policy Counsellor at the Permanent Representation of Estonia

'We suppose that before the Commission presents something to the CUG [CUWP], it had been discussed with Estonian experts at a working group, who know the matter. So the proposition of the Commission is pre-coordinated or sometimes it is just the Commission who decides at these working groups. We suppose that when the Commission proposes something, it has its homework done and represents a majority.'

Customs Policy Counsellor at the Permanent Representation of Estonia

Contrary to Belgian Customs, Dutch Customs has determined and defined an international strategy. There is no specific WCO policy but the WCO is part of this international strategy, containing general principles. Estonian Customs has neither a defined WCO policies nor WCO priorities.

Dutch Customs considers the WCO to be important because it is the only global organisation where details of customs matters can be discussed. Therefore Dutch Customs has an active role at the WCO by chairing working groups, making interventions at meetings and sometimes providing the necessary resources if there is a lack of resources at the WCO to take up an action. Providing chairpersons gives the opportunity to influence the meeting by helping to determine the topics to be discussed and the direction to be taken. Dutch Customs is active in the CUWP to incorporate its own policies in the EU and common positions. They also support the Commission in formulating priorities and positions, as they did at the EU working group on the Revised Kyoto Convention. They have many bilateral contacts with members of the WCO and with officials of the WCO to suggest topics to be discussed at the WCO.

Estonian Customs is not involved at the WCO due to a lack of resources (only four persons working in international relations) and the fact that this is covered by the Commission. They react on the draft coordinated papers presented by the Commission at the CUWP.

According to the Dutch respondent, the more coordination there is between the EU and the member states, the more the EU and the member states sink into a grey middle. The EU of 27 does not want real modernisation.

*'As EU positions are always compromises between now 27 member states, some priorities are lost.
The EU positions do not contribute to the further development of the WCO.'*
Dutch representative to the WCO

Just as Belgian, Dutch and Estonian Customs confirmed, the respondents of the WCO distinguish a different WCO approach among member states. Some member states are driving forces for the WCO to move towards a more active, forward-looking and modern approach. They see how the EU speaks with one voice, expressed by the Commission. But they also see that often the member states remain silent at meetings, at least publicly, and that the EU is dominantly present. Even if they noted that there are less interventions and engagement from the member states, they do not see less presence at the meetings.

'It is true that we hear less the voice of the member states, but no less participation at the meetings.'
WCO respondent

The WCO respondents recognise the importance for a customs union to speak with one voice and the efforts to reach a coordinated position. This can also lead to frustrations among member states not agreeing with the coordinated position. It makes the EU also less agile and able to react swiftly at meetings. In addition, according to the respondents of the WCO, this leads to a lack of hands-on experience and sharing of best practices at the WCO, as the member states and not the EU are responsible for the operational implementation of customs tasks. According to the WCO respondents, the EU is a major voice at the WCO and therefore could enhance modernisation at the WCO.

'The EU representation is on the one hand positive for a harmonised approach but on the other hand we miss the member states' hands-on experience.'
WCO respondent

'In a way, we lost the member states and their input to develop standards on more pragmatic solutions about what is happening on the ground, to share best practices and to develop guidelines.'
WCO respondent

'There is a lot more the EU could do. It could enhance its engagement without silencing the voice of the member states.'
WCO respondent

The interviews with Dutch and Estonian Customs showed similarities with Belgian Customs. There were also differences. Belgian Customs is not as active at the WCO as Dutch Customs, that is chairing working groups and sometimes providing resources to complete actions. Belgian Customs is neither as absent at the WCO as Estonian Customs, lacking resources and trusting the Commission to cover the WCO. Belgian Customs is represented at most of the meetings of the WCO. The interviews with the WCO respondents highlight the role of the Commission in the external representation of the EU. They shared that for the WCO there is also a downside of the strong coordination by the Commission: a lack of sharing of best practices and hands-on experiences from the ground and less agility at meetings.

7.5 Conclusion

We reprise the framework of Wong on the three criteria of Europeanisation in table 6 below. For the Belgian case, we confirm the first criteria: the national adaptation and convergence of the national WCO policy due to the EU membership (adaptation in positions to align them with the ones of the EU and adaptation in the own policymaking process, to ensure a better communication with the EU level). Policy convergence takes place because external representation at the WCO is ensured by coordinated positions and expressed by the Commission. However, the WCO approach differs from member state to member state. Some are seen as active, others as absent.

The Belgian case confirms partially the second criteria. The respondents realise that the forum for national policy projection is the CUWP, but due to a lack of resources and a lack of defined WCO policy, this opportunity has not been fully used by Belgian Customs. Therefore Belgian Customs is not one of the proactive member states pushing its national WCO policy goals to be included in the EU coordination papers. The EU is seen as indispensable to achieve the national WCO policy and as an influence multiplier. Support from like-minded member states was also mentioned as a way to have the own position projected into the EU position, but is not happening often.

For the third criteria, internalisation of 'Europe' in national identities, no evidence has been found in the Belgian case. The coordination reflex originates more from the pressure to respect expected behaviour than from the European identity and shared norms and values. The lack of trust also plays a role in the limited socialisation.

Table 6:
Three criteria of Europeanisation at Belgium Customs (based on Wong, 2017:151)

a) National adaptation/Policy convergence	
<ul style="list-style-type: none"> • Has convergence and/or adaptation of national policy to EU norms and directives taken place? • Have national institutional structures and policymaking processes been adapted in response to European integration? 	<ul style="list-style-type: none"> • Confirmed • Confirmed for policymaking process
b) Projection of national policy onto EU structures (<i>National projection</i>)	
<ul style="list-style-type: none"> • Has the state pushed for its national WCO policy goals to be adopted as EU goals/policy, and how far has it succeeded? • Has the state benefited from the 'cover' of the EU? • How indispensable is the EU to the achievement of national WCO policy goals? 	<ul style="list-style-type: none"> • Only one example, lack of resources and lack of national WCO policy goals • Only one example, lack of resources and lack of national WCO policy goals • Confirmed, indispensable
c) Internalisation of 'Europe' in national identities (<i>Identity reconstruction</i>)	
<ul style="list-style-type: none"> • Has there been a reshaping or hybridization of identities, which privileges a European identity over the national? • What kinds of European norms have arisen among national officials and how do they apply to WCO policy? 	<ul style="list-style-type: none"> • No evidence of privileging a European identity over the national • No evidence of European norms

Chapter 8: Conclusions and recommendations

The importance of the WCO in the customs domain, the supply chain (trade facilitation) and the IT developments has been demonstrated in chapter 2. Customs regulation, supply chain management and IT & compliance also form the three pillars of the Executive Master in Customs & Supply Chain Management. Focussing on the role of the EU member states at the WCO makes this thesis a valuable final piece of work of the Executive Master.

We reprise the main research question of the thesis: *‘What is the role of member states of the EU at the WCO?’* To answer that question, we formulated three sub-research questions:

1. What is national competence at the WCO?
2. What is EU competence at the WCO?
3. What is the member states’ role in the policymaking of the EU at the WCO?

In this chapter we share our concluding remarks on each question and we end with recommendations for Belgian Customs.

What is national competence at the WCO?

In chapter 5 we listed the WCO topics the member states decide on individually:

- Provision of technical expertise;
- Elections;
- Donor funding;
- Participation in operations and enforcement;
- Membership of the WCO.

Other decisions at the WCO related to the implementation of customs legislation can be decided by the member states. The implementation of customs legislation is primarily the responsibility of the EU member states (art. 2 paragraph 1 TFEU).

What is EU competence at the WCO?

In chapter 5 we provided an answer to the sub-research question ‘What is EU competence at the WCO?’. To ensure transparency and compliance with the competences, prior consultation is done between the EU and the member states to coordinate the positions. The EU, via the Commission, coordinates the positions of the EU and its member states and expresses them at the WCO. The EU competence at the WCO is also reflected in the voting rules of bodies of the WCO.

Table 7:
Voting rules for EU and its member states in WCO bodies

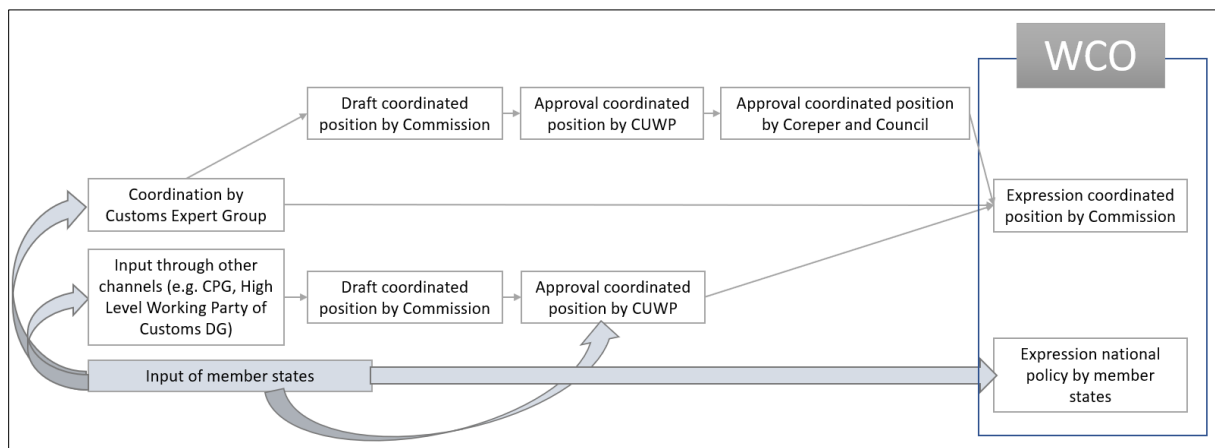
WCO Body	Voting rules for EU and its member states
Technical Committee on Rules of Origin	No voting rules specified in terms of reference
Technical Committee on Customs Valuation	No voting rules specified in terms of reference
HS Committee	EU and its member states together exercise only one vote
RKC Management Committee	EU has a number of votes equal to the total votes of its member states
Istanbul Convention Administrative Committee	EU has a number of votes equal to the total votes of its member states

Other WCO Bodies – EU competence	EU has a number of votes equal to the total votes of its member states
Other WCO Bodies – non-EU competence	EU has no vote. The member states exercise individually their voting rights (e.g. for elections)

What is the member states' role in the policymaking of the EU at the WCO?

The process to establish coordinated positions and the role of the member states at the WCO is summarised in the figure below:

*Figure 7:
Role of the EU and EU member states at the WCO*



In this figure we see that a member state has three entry points to influence the policymaking of the EU at the WCO (upper part of the figure). First, the member state can give input at the Customs Expert Group. All members are represented at the sections of this expert group. The coordination of the positions on technical issues, such as HS, valuation and data model, is done at the Customs Expert Group. Second, the member state can give input at the CUWP when the coordinated position drafted by the Commission is discussed. Third, there are other channels the member state can use to provide input: the CPG, the High Level Working Party of the Directors General of Customs, bilateral discussion with the Commission, etc. The lower part shows the direct influence it can exercise at the WCO for matters under its sole competence.

We end this chapter with eight recommendations for Belgian Customs. Before following these recommendations, the management of Belgian Customs should make an analysis if they want to invest resources in WCO policy. On the one hand it is a general trend to cut resources in public services, therefore choices must be made. On the other hand, according to Deloitte, (2018:143) international organisations, such as the WCO, increasingly play a supporting role for member states as they are called to cover an even wider range of customs and non-customs matters. International organisations can support member states in making best use of available insights, instruments, guidelines and best practices.

If the management of Belgian Customs decide to invest resources in WCO policy, following recommendations can be considered:

1. Start to define a national WCO policy with priorities. Having a clearly defined national WCO policy with priorities makes it easier to project these preferences on the EU level. Without a

defined national WCO policy, the involvement at the WCO depends on persons and not on the organisation, making it less consistent if persons change functions.

2. Make a link in this WCO policy with past actions, current role and plans. To have a common thread linking past, present and future makes the positions to follow clear both internally and externally. Being consistent in past, present and future actions (independently of the persons involved) makes Belgian Customs a reliable partner. This brings us to the third recommendation.
3. Build coalitions with like-minded member states as a first step to convince the EU and the other member states of the importance of your priorities. Use bilateral meetings and informal contacts to build these coalitions.
4. Take full advantage of the entry points of influence in the process of the drafting of coordination papers. These entry points are crucial to influence the outcomes. Be actively represented at the Customs Expert Group and at the CUWP to advance your cases and defend your positions. Use other channels, such as the CPG and the High Level Working Party of the Directors General of Customs to make your priorities known.
5. Involve the experts of the Customs Expert Group, the CUWP and the other fora to draft, implement and follow up the national WCO policy.
6. Maximise your national competences at the WCO. Participate in operations, provide technical expertise and provide donor funding in line with your national foreign policy.
7. Be active at the WCO. Participate in meetings linked with your priorities and take up roles such as chair or vice-chair of these meetings.
8. And last but not least: work on the relationship with the Commission by building on trust and transparency, to advocate a less prescriptive role of the Commission. This way more space would be given to the member states to share their hands-on experiences in operational customs tasks, contributing to develop best practices and international standards at the WCO.

Chapter 9: Contribution for research and for practice

We end this thesis by wrapping up our contribution for research and for practice.

9.1 Contribution for research

With this thesis we wanted to demonstrate that the customs domain is an interesting topic to research from a political science perspective. No contributions on the customs domain from a political science perspective have been found. We used the framework of Europeanisation to structure the complex relationship between the member states and the EU institutions concerning WCO policy. This thesis is the first contribution on the Europeanisation framework applied in the customs domain, making it a unique work in the political science domain. The thesis confirms that the Europeanisation framework is a valuable framework to analyse the relationship between the member states and the EU institutions, giving us guidance on all dimensions of that relationship (top down, bottom up, socialisation) for the WCO policy.

The case study of Belgian Customs showed that not all dimensions of Europeanisation were clearly present for the WCO policy, such as the socialisation dimension. Further research could focus on this dimension, and in particular on identity construction and the consequences of a lack of European identity in external representation. Furthermore this thesis focussed on Belgian Customs, so it would be interesting to expand the research to other member states. As we already saw with the interviews with two other member states, there are similarities and differences regarding national WCO policy. It would be interesting to map these similarities and differences and to compare them with the involvement of the member states at the European and WCO policymaking process.

9.2 Contribution for practice

The Europeanisation framework gives us a structured overview of the relationship between the member states and the EU institutions concerning WCO policy. This understanding helped us to formulate recommendations for Belgian Customs on how to maximise its role and how to seize the opportunities to impact the policymaking process at the WCO level and if necessary, through the intermediate step at the EU level. The structured overview of the relationship between the member states and the EU institutions concerning WCO policy and the recommendations formulated in chapter 8 are not only interesting for Belgian Customs, but for all member states missing detailed understanding concerning that topic.

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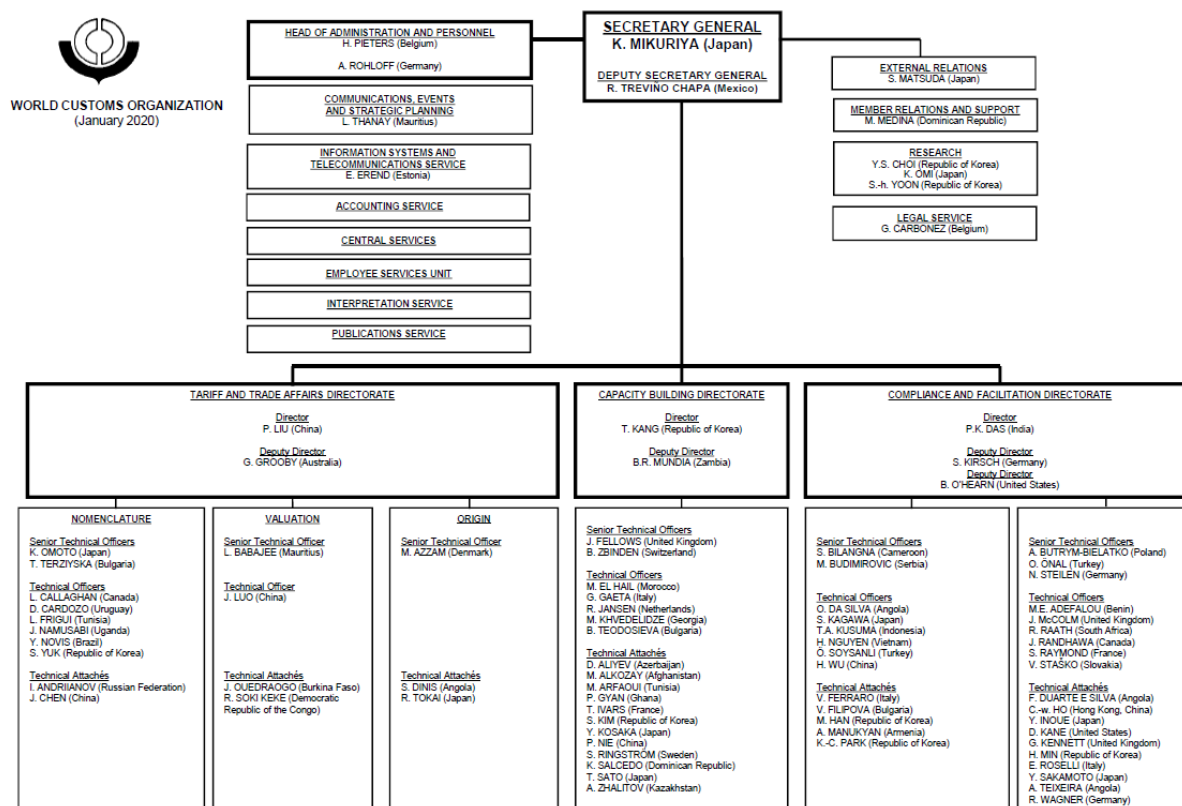
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Appendices

1. Organisational chart of the WCO



2. Conceptual framework of Wong (2017)

Table 8:
Three criteria of Europeanisation (Wong, 2017:151)

a) National adaptation/<i>Policy convergence</i>
<ul style="list-style-type: none">• Has convergence and/or adaptation of national policy to EU norms and directives taken place?• Have national institutional structures and policymaking processes been adapted in response to European integration?
b) Projection of national policy onto EU structures (<i>National projection</i>)
<ul style="list-style-type: none">• Has the state pushed for its national foreign policy goals to be adopted as EU goals/policy, and how far has it succeeded?• Has the state benefited from the 'cover' of the EU?• How indispensable is the EU to the achievement of national foreign policy goals?
c) Internalisation of 'Europe' in national identities (<i>Identity reconstruction</i>)
<ul style="list-style-type: none">• Has there been a reshaping or hybridization of identities, which privileges a European identity over the national?• What kinds of European norms have arisen among national officials and how do they apply to foreign policy?

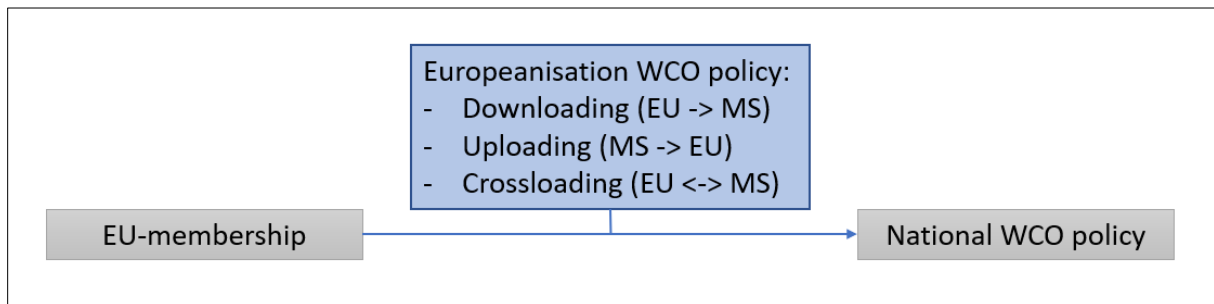
3. List of consulted non-public reports and mails regarding the CUWP

05/03/2020: Mail Commission	3
04/03/2020: Mail Legal service presidency	3
02/03/2020: Mail Presidency	5
24/02/2020: CUWP internal report	5
21/02/2020: Mail member state F	7
20/02/2020: Mail member state R	7
18/02/2020: Mail colleague S	8
18/02/2020: Mail colleague S	8
17/02/2020: Mail colleague S	9
12/02/2020: CUWP internal report	10
11/02/2020: Mail colleague S	15
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29/01/2020: CUWP internal report	16
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27/01/2020: Mail member state E	18
23/01/2020: Mail member state F	19
16/01/2020: Mail Presidency	19
18/12/2019: CUWP internal report	20
Draft Council Guidelines on the Establishment of EU and Common Positions within the World Customs Organisation	20
11/12/2019: Mail member state F	22
09/12/2019: CUWP internal report	22
7. Draft Council Guidelines on the Establishment of EU and Common Positions within the World Customs Organisation	22
15/11/2019: Comments member state G	23
06/11/2019 : CUWP internal report	24
24/10/2019 : CUWP internal report	24
11. Draft Council Guidelines on the Establishment of EU and Common Positions within the World Customs Organisation	24
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30/04/2019: Mail member state D2.....	47
24/04/2019: Mail member state L	47
16/04/2019: Mail Presidency	47
14/03/2019: CUWP internal report	48
13/03/2019: Mail Presidency	49

4. Interview protocols

To design our interview protocols we started from the conceptual framework we derived from the literature review, see figure below:



Our research is focused on the process of Europeanisation, mentioned in the figure. In order to measure this process, we used the table of Wong below (2017:151), adapted to our research topic, i.e. WCO policy. The questions of our interviews were derived from the questions mentioned for each of the three dimensions of Europeanisation.

a) National adaptation/<i>Policy convergence</i>
<ul style="list-style-type: none"> • Has convergence and/or adaptation of national policy to EU norms and directives taken place? • Have national institutional structures and policymaking processes been adapted in response to European integration?
b) Projection of national policy onto EU structures (<i>National projection</i>)
<ul style="list-style-type: none"> • Has the member state pushed for its national WCO policy goals to be adopted as EU goals/policy, and how far has it succeeded? • Has the member state benefited from the 'cover' of the EU? • How indispensable is the EU to the achievement of national WCO policy goals?
c) Internalisation of 'Europe' in national identities (<i>Identity reconstruction</i>)
<ul style="list-style-type: none"> • Has there been a reshaping or hybridization of identities, which privileges a European identity over the national? • What kinds of European norms have arisen among national officials and how do they apply to WCO policy?

Following persons were interviewed:

- Head of Department General Policy at Belgian Customs
- Former representative of Belgian Customs to the WCO
- Former representative of Belgian Customs to the WCO
- Former Head of Department General Policy at Belgian Customs
- Representative of Dutch Customs to the WCO
- Customs policy counsellor at the Permanent Representation of Estonia to the EU
- Permanent representative of Belgian Customs at the Council
- Head of Sector International Organisations DG TAXUD, European Commission
- Director Tariff and Trade Affairs Directorate of the WCO
- Secretary general of the WCO
- Executive Officer Member Relations and Support of the WCO

The following questions were asked (in past tense if the person was not in function anymore) to the (former) representatives of a member state to the WCO (**b, c, e, f**) and the (former) Head of Department General Policy at Belgian Customs (**a, d**):

Timeframe

1. Since when do you perform your function?

General

2. Does your administration have a defined WCO policy? What are the WCO priorities (if any) of your administration?
3. Does your administration succeed to bring them on the table at the WCO? If yes, how did your administration proceed? If not, what were the reasons?

Europeanisation

4. Do you know the WCO priorities of the EU? Are they in line with the own priorities?
5. How are the EU priorities defined?
6. In what way do you feel the involvement of the EU in the WCO policy of your administration?
7. Did your administration adapt its **policymaking process** to that involvement, e.g. in order to make more effective inputs into the EU policymaking process or in order to incorporate EU policy into your administration? If yes, how?
8. Did your administration adapt its **institutional structure** to that involvement, e.g. in order to make more effective inputs into the EU policymaking process or in order to incorporate EU policy into your administration? If yes, how?
9. Can you give an example when your administration changed its WCO policy to converge to the one of the EU?
10. Can you give an example when your administration pushed for its WCO policy to be adopted as EU policy?
11. Can you give an example when your administration tried to influence a position at the WCO? What was the dynamic with the EU?
12. Do you think the EU is indispensable to the achievement of the WCO priorities of your administration?
13. At the WCO, do you feel like an individual member or like a member part of the EU representation?
14. What are the European norms and values among national officials at the WCO?
15. If you consider the whole of your administration's role at the WCO, how much is defined at EU level?
16. Do distinctive patterns in the WCO policy of member states remain?

Others

17. On which WCO topics the member states decide individually?
18. Are you aware of voting issues in the past?
19. How important are the 2008 guidelines for you?
20. What happened at the HS committee in 2017 that raised the need for new guidelines?
(question was only asked to the persons involved in the WCO policy when the issue happened)

The following questions were asked to the Permanent representative of Belgian Customs at the Council:

Timeframe

1. Since when do you perform your function?

General

2. Does your administration have a defined WCO policy? What are the WCO priorities (if any) of your administration?
3. Does your administration succeed to bring them on the table at the WCO? If yes, how did your administration proceed? If not, what were the reasons?

Europeanisation

4. Do you know the WCO priorities of the EU? Are they in line with the own priorities?
5. How are the EU priorities defined?
6. In what way do you feel the involvement of the EU in the WCO policy of your administration?
7. Did your administration adapt its **policymaking process** to that involvement, e.g. in order to make more effective inputs into the EU policymaking process or in order to incorporate EU policy into your administration? If yes, how?
8. Did your administration adapt its **institutional structure** to that involvement, e.g. in order to make more effective inputs into the EU policymaking process or in order to incorporate EU policy into your administration? If yes, how?
9. Can you give an example when your administration changed its WCO policy to converge to the one of the EU?
10. Can you give an example when your administration pushed for its WCO policy to be adopted as EU policy?
11. Do you think the EU is indispensable to the achievement of the WCO priorities of your administration?
12. What are the European norms and values among national officials at the WCO?
13. If you consider the whole of your administration's role at the WCO, how much is defined at EU level?
14. Do distinctive patterns in the WCO policy of member states remain?

Others

15. On which WCO topics the member states decide individually?
16. Are you aware of voting issues in the past at the CUWP on WCO topics?
17. What happened at the HS committee in 2017 that raises the need for new guidelines?
18. Can all bodies of the WCO be considered as established by an agreement (application of article 218(9) of the TFEU)?
19. What is the procedure once the CUWP agreed on a coordinated position according to article 218(9) TFEU?
20. What is the procedure to establish a coordinated position if article 218(9) is not applicable?

The following questions were asked to the Head of Sector International Organisations DG TAXUD, European Commission:

1. Since when are you in charge of the WCO policy of the EU?
 2. Does the EU have a defined WCO policy? What are the WCO priorities (if any) of your administration?
 3. How are this policy and/or priorities defined?
 4. Does your administration succeed to bring them on the table at the WCO? If yes, how did your administration proceed? If not, what were the reasons?
 5. How are the draft coordination position papers established by the Commission?
 6. Does the Commission know the WCO priorities of the member states?
 7. If yes, how does the Commission take into account the member states' priorities?
 8. On which WCO topics the member states decide individually?
 9. Do you perceive distinctive patterns in the WCO policy of member states?
 10. What happened at the HS committee in 2017 that raises the need for new guidelines?
 11. What are the European norms and values among representatives at the WCO?
-

The following questions were asked to the officials of the WCO (i, j, k):

1. Since when do you work at the WCO?
2. Since 2007, the EU is member akin of the WCO. Do you see an evolution on how the member states and the EU participate at the WCO? If yes, can you elaborate?
3. Do you see a difference between the member states of the EU in how they participate at the WCO? If yes, can you elaborate?
4. Do you perceive the EU and its member states as one actor or do you perceive the EU and its member states as separate actors?
5. In your opinion, how can member states of the EU pursue a national policy at the WCO?
6. In your opinion, are there European norms and values the representatives of the EU and its member states at the WCO have in common?