

TRADE FACILITATION IN AFRICA: CHALLENGES AND POSSIBLE SOLUTIONS

Creck Buyonge and Irina Kireeva¹

There is always something new out of Africa.

Pliny the Elder, Natural History

23 AD – 79 AD

If you're not part of the solution, you're part of the problem.

African Proverb

Abstract

Africa's economic *development* partly depends on reduction of trade transaction costs, which are currently unacceptably high. Therefore, many African governments, working together with international organisations like the United Nations Conference on Trade & Development (UNCTAD), the World Bank, World Customs Organization (WCO) and the World Trade Organization (WTO), have in recent years implemented initiatives that have led to improvement of trade facilitation. In this regard, customs reform and modernisation initiatives in Africa inevitably include elements of trade facilitation. In addition to government initiatives, the private sector has recently organised itself to address the challenges of trade facilitation in Africa. Entry of the private sector requires a convergence of interests with government so as to reduce the existing disconnect in government-private sector relations. This article highlights the progress made in trade facilitation, existing challenges, and customs compliance management imperatives for businesses operating in Africa.

1. Introduction

For the purposes of this article, the term 'trade facilitation' can be defined as 'the simplification and harmonisation of international trade procedures'. These procedures include the 'activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade'.² Clearly, this definition relates to a wide range of activities including but not limited to import and export procedures (for example, customs or licensing procedures), transport formalities, payments, insurance, and other financial requirements. However, recently, the definition of trade facilitation has been broadened to include the transparency and professionalism of customs authorities, harmonisation of various standards and conformity to international or regional regulations. In a narrower sense, trade facilitation concerns the movement of goods in cross-border trade.

Over several decades a lot of work on trade facilitation has been carried out by the United Nations Conference on Trade and Development (UNCTAD), the United Nations Economic Commission for Europe (UNECE) and the World Customs Organization. UNCTAD estimates that the average customs transaction involves up to 30 different parties, 40 documents, 200 data elements (30 of which are repeated at least 30 times) and the re-keying of 60–70% of all data at least once.³ This is particularly true of Africa not only due to lack of adequate infrastructure in many countries, but also due to a past characterised by poor national governance structures.

With the lowering of tariffs across the globe, the cost of complying with customs formalities has been reported to exceed, in many instances, the cost of duties to be paid. In the modern business environment of timely production and delivery, traders need fast and predictable release of goods. An APEC study estimated that trade facilitation programs would generate gains of about 0.26% of real GDP to APEC,⁴ almost double the expected gains from tariff liberalisation, and that the savings in import prices would be between 1–2% of import prices for developing countries in the region.

Some recent studies have tried to determine how time delays affect international trade. Djankov, Freund and Pham Cong (2006) assert that on average, each additional day that a product is delayed prior to being shipped reduces trade by at least one per cent. Another important insight from that work is that the use of averages as indicators of trade facilitation in Africa can be very deceptive because of the large variations across African countries. For example, while it takes 16 days to get a product from the factory to the ship in Mauritius, it takes 116 days in the Central African Republic.⁵

On the other hand, Soloaga, Wilson and Mejia (2006) evaluate the impact of changes in trade facilitation measures on trade for main industrial sectors in Mexico, using four indicators of trade facilitation: port efficiency, customs environment, regulatory environment, and e-commerce use by business (as a proxy for service sector effectiveness).⁶

Finally, the Global Facilitation Partnership for Transportation and Trade⁷ conducted the Logistics Perception Index (LPI) in 2006. The LPI survey uses an anonymous, web-based questionnaire which asks the respondent to evaluate their country of residence, as well as eight countries they are dealing with on several logistics dimensions including domestic and international transportation costs, timeliness of shipments, transport and IT infrastructure, Customs and other border procedures, and logistics competence.⁸

The International Chamber of Commerce (ICC) issued a position paper in January 2007, which indicates that there is a growing convergence of interest in trade facilitation from various intergovernmental organisations, donor organisations and the private sector, and articulation of clear steps to be taken to improve the trade facilitation environment.⁹ ICC identifies these steps as adoption of the WCO Framework of Standards to Secure and Facilitate Global Trade in June 2005, the coming into force of the WCO Revised Kyoto Convention in February 2007, and the emerging text of the WTO trade facilitation talks.

2. A New Dawn for Africa?

African leaders saw the new millennium as an opportunity to break from a past characterised by escalating poverty levels, underdevelopment and continued marginalisation from meaningful access to developed country markets for goods originating from the continent. In July 2001, the 37th Session of the African Union formally adopted the New Partnership for Africa's Development (NEPAD) as 'a multi-dimensional and long term strategy for Africa's development'.¹⁰ One of the NEPAD objectives is to place African countries on a path of sustainable growth and development, and full integration into the global economy. NEPAD priorities include building and improving infrastructure, and accelerating intra-Africa trade. In short, both the diagnosis and the response to Africa's challenges are known, and there is a continental strategy to make it happen.

The Commission for Africa in its 2005 Report stated:

Customs urgently need reform. Africa suffers from the highest average customs delays in the world, 12 days on average. Estonia and Lithuania require one day for customs clearance; Ethiopia averages 30 days. Customs procedures are often Byzantine in their complexity... Customs delays add to over 10 per cent to the cost of exports.¹¹

In practical terms from a customs perspective, it is noticeable that most African customs administrations are in the process of reforming and modernising. Trade facilitation is becoming more and more attractive

for African leaders due to the need to reduce the costs of doing business and create an environment conducive to enhanced investment for economic growth.

Trade facilitation is a fairly new issue that is currently under discussion from the World Trade Organization (WTO) perspective. Along with other ‘Singapore issues’, included in the Doha Round of negotiations, it caused a stalemate at the Ministerial meeting in Cancun, often referred to as ‘the Cancun deadlock’.

The main reason for the initial unwillingness of African developing or least-developed countries to negotiate on trade facilitation was the understandable fear that implementation of any such agreement would require considerable investment of the governments of these countries in infrastructure, change of operational procedures and human resources. It is at the same time unlikely that the developed countries would need to change anything for implementing any of the trade facilitation measures to be included in such a multilateral trade facilitation agreement.

African countries are now very keen to explore the possibilities provided by trade facilitation whether in the context of the WTO negotiations, regional or country-specific initiatives. New trade facilitation initiatives in Africa address both physical infrastructure (roads, ports, telephone connectivity, etc.) and administrative hurdles.

This position finds support from an August 2006 Report commissioned by the Business Action for Improving Customs Administration in Africa (BAFICAA),¹² an *ad hoc* grouping of multinational companies that are active in Africa. The 2006 Report admits that unstable electricity supplies, congested borders and bureaucratic customs procedures ‘make it a challenge to run a business in Africa’.¹³ At the same time, the Report acknowledges the recent gains made in customs reform and modernisation and the feeling from business that these gains were less than the optimum. Recommendations towards a customs-business partnership in order to improve the trade facilitation environment whilst increasing compliance and revenue collection are provided.

According to the World Bank, administrative hurdles (for example, customs and tax procedures, clearances and cargo inspections) contribute to 75% of trade facilitation delays.¹⁴ In this case, it is logical to conclude that certain actions by governments and the private sector to remove these administrative barriers are urgently needed. Moreover, where possible, the assistance of intergovernmental and international organisations like the World Customs Organization, United Nations Economic Commission for Africa, the Africa Development Bank and the Bretton Woods institutions, can significantly improve the situation with customs procedures.¹⁵

Customs reform and modernisation programs, which have been carried out mainly in countries that have adopted the integrated revenue agency model, facilitate benchmarking of procedures and adoption of customs management quality audits.¹⁶ This approach could make a significant part of the NEPAD peer review mechanism on the part of African fiscal agencies in general and customs administrations in particular. At the WTO level, African countries should make the customs modernisation agenda a priority during the negotiations towards a possible Trade Facilitation Agreement, and incorporate inclusion of this issue in seeking to obtain aid for trade from such blocs as the EU.¹⁷

3. What is the business perspective on improvements of customs procedures?

The BAFICAA Report is unique since it identifies a business perspective on customs developments different from the previous studies on the trade facilitation environment which have been done by the International Monetary Fund, World Bank, individual government agencies, or even research institutions. In terms of scope, the study covered 20 countries in three sub-regions of Sub-Saharan Africa:

- East Africa, including Kenya, Uganda, Tanzania and Zambia

- West Africa with Benin, Côte d'Ivoire, Ghana, Togo, and Nigeria
- Southern Africa with Botswana, Mozambique and South Africa.

3.1 The 'Great Disconnect' or lack of coherence

Private sector respondents to the questionnaire administered in these countries gave the same evaluation or *verdict of the existence of a great disconnect or lack of coherence* on the character of customs officials. In particular:

- (a) The most senior officials were helpful and understood the problems faced by businesses.
- (b) The frontline officials were officious, indecisive, susceptible to petty corruption, and suspicious of business, even the most transparent and compliant.

In addition to such a *disconnect* between the strategic and the operational levels in Customs, there was a remarkable difference between officials in Eastern Africa, who were generally more business-friendly and understandable than their counterparts in West Africa with the exception of Togo.¹⁸

3.2 Relations between Customs and business

Firstly, as would be expected, most customs administrations find it difficult to sustain genuine dialogue with business, and the relationship is mutually antagonistic because compliance with customs laws and procedures is often involuntary.¹⁹ Kenya was cited as an exception rather than the rule among the countries surveyed, where customs officials went out of their way to call private sector representatives for meetings. This relationship means that changes in legislation or customs procedures are usually made suddenly without consultation or dialogue with the businesses.

The revenue authorities of Kenya, Uganda, Tanzania and Rwanda have made taxpayer consultation an important part of their approach to achieve voluntary compliance. In addition to holding regular seminars and workshops, Kenya, Tanzania and Rwanda hold an annual event called Taxpayers' Day,²⁰ which is used to highlight the importance of voluntary tax compliance and to award individuals and companies that performed exceptionally well in various categories. In Uganda, such events are held monthly. Indeed, the study mentioned Rwanda as a country with a good track record in taxpayer consultation and promotion of integrity, although the questionnaire was not administered in Rwanda.

Secondly, relevant information in hard copies or soft publications may not be easily accessible in Help Centres specially established for these purposes. Côte d'Ivoire and Senegal were cited as the only countries where Customs made practical use of the website. Thirdly, risk management is respected more in its absence than its use, as officials routinely override electronic 'Green Channel' assessments and prefer to conduct one hundred per cent verification. In Kenya, importers have complained that after introduction of container scanners, the dwell time of goods at the port has not reduced significantly due to the existing high levels of verification even after electronic scanning has been carried out.

The interviews conducted during the study revealed that there was much less engagement between Customs and businesses in West Africa, compared to East and Southern Africa. Incidentally, most customs administrations in West African countries are paramilitary outfits, while in East and Southern Africa they are civilian.²¹ There is closer customs cooperation and consequent facilitation for countries within the more integrated regional economic blocs such as the Common Market for Eastern and Southern Africa (COMESA), the East African Community Customs Union (EACCU), the Southern Africa Development Community (SADC) and the West African Economic & Monetary Union.²²

However, even within these economic blocs, there are variations. For example, Kenya adopted the SIMBA 2005 IT System,²³ which is different from ASYCUDA,²⁴ the most widely used customs IT System in Africa.²⁵ Kenya phased out pre-shipment inspection for customs purposes in July 2005, while Tanzania

has sub-contracted destination inspection to a pre-shipment company, and there is no requirement for any kind of inspection in Uganda.

3.3 Insufficient state of supporting infrastructure

The problems of delays in ports are seen as due to inefficient and ineffective port management rather than lack of the necessary equipment. Africa's key ports, such as Durban (South Africa), Lagos (Nigeria), Mombasa (Kenya) and Tema (Ghana) are heavily congested. The congestion at ports is exacerbated by inefficient rail services – of which Kenya and Uganda Railways Corporations were once legendary.²⁶ Abidjan (Côte d'Ivoire) is efficient, yet expensive.

Land border crossings are overfilled. However, those borders that have been established for a long time (such as Beitbridge between South Africa and Zimbabwe and Malaba between Kenya and Uganda) seem to have developed a capability to handle higher throughput.

Incidentally, processing at airports, which is normally expected to be more efficient due to the higher freight charges and value of goods, is also not better as it routinely takes days to clear goods. The airports experience lack of inspection equipment like scanners.²⁷ Storage for perishable or dangerous goods may also be absent or rudimentary.

3.4 Contribution of various agencies to customs delays

Where interaction with Customs is mediated by customs brokers, business people usually get the impression that delays are largely caused by customs authorities. This may be partly true in the case of delays caused by pre-shipment inspection companies sub-contracted by Customs to carry out verification of values, quantities and quality of goods. In other cases, customs usually have limited control over the activities of other government agencies responsible for checking goods standards, phytosanitary and health inspection.

Unless reform and modernisation of Customs is done in tandem with modernisation in these agencies, the gains from Customs may not benefit businesses to the optimum. This does not mean that businesses do not always see the value of the interventions made by other agencies.²⁸ On the contrary, the intervention of Kenya Bureau of Standards in Pre-shipment Verification of Quality has significantly reduced importation of counterfeit goods into Kenya.

3.5 Corruption in Customs

*When there is no enemy within,
the enemies outside cannot hurt you.*

African Proverb

Corruption can be defined as the abuse of public power for private gain. Corruption occurs when a public official or employee uses his or her power to solicit or extort bribes. Actions of private persons, bribing and influencing public officials to gain an undue competitive advantage or secure a profitable government contract form another side of corruption.

In Customs, one of the major corruption risks is a high rate of duty to be paid. Sometimes it is easier and cheaper for businessmen to bribe a customs officer than to discharge all duties or to avoid paying customs duties by wrongly declaring goods at customs. Wrong declaration of goods at customs brings risks, that customs officer might reveal the cheating during inspection of cargo.

Many countries have concluded various Free Trade Treaties with other countries, which resulted in cuts of customs duty rates. Duty reduction has also been undertaken as part of negotiations of Economic

Partnership Agreements with the European Union or WTO commitments. Intensifying the existing internal systems of control and outward audit can ensure the elimination of corruption risk.

Putting a limitation on the freedom of action of officers is essential for elimination of corruption risk. If customs procedures are not defined clearly and are complicated, or if there are no clear terms of reference for customs officers, or the procedure of running some activities is not clearly defined, then the freedom of action of officers is virtually unlimited.

It is presumed that bribes which are paid to customs officers are aimed at committing some illegal actions. In some countries in Africa, as in other continents with poor governance and accountability mechanisms, bribes are often paid for legal actions or for the activities that are normally expected to be conducted by the officers as part of their duties. These are the so-called 'facilitation fees'. Payment of such fees pushes up the costs of doing business, and reduces the credibility of citizens in government.

Many multinational companies have adopted Codes of Ethics that prevent their officials from paying bribes, even for minor 'facilitation fees' to customs officials. They generally manage to clear their goods without any illegal payments. For small and medium size enterprises and local companies lacking proper governance structures and Codes of Ethics, such payments to customs are common, especially in countries with Byzantine regulations and low automation, for example, the Democratic Republic of Congo and Nigeria. Clearly, automation of customs processes leads to greater transparency, less human interaction and as a result, diminishes corruption.

The BAFICAA Report indicates that significant improvements were seen in Kenya after introduction of a Customs IT system in 2005. It is important to emphasise that where corruption is known to be present in the African customs administrations surveyed, it is practically never systemic and well organised and mostly tends to exist at the individual levels rather than institutional. In the future, it may be expected that some form of corruption will continue to exist in Customs, particularly in those countries which cannot afford to pay decent salaries to customs officials.²⁹

3.6 The problems of illicit trade and Customs

Goods often enter the African market without payment of duties and taxes as a result of collusion between importers, customs brokers and Customs. This is particularly so in Western Africa. Another aspect of illicit trade is importation of counterfeited goods, which was cited in Benin, Tanzania, Togo and Zimbabwe. Anti-counterfeiting activities have had a significant impact in Kenya, Nigeria, Uganda and Zambia. Increased checks as a deterrent to smuggling often led to higher costs on compliant businesses.

The phenomenon of illicit trade and counterfeiting has been estimated by the OECD to cost billions in lost profits to companies and revenue to governments, and represents between 5 to 7 per cent of global trade.³⁰ Although the WCO has formulated a Model Law on Intellectual Property rights incorporating measures expected to be implemented by customs officials at the border, this has not been adopted at the national level in many African countries where counterfeiting is rampant.³¹

4. Customs compliance management imperatives for businesses operating in Africa

4.1 Creation of the appropriate customs compliance strategy

To minimise the risk of doing business in Africa, companies need to develop a very good understanding of the unique characteristics of the countries in which they are located, given the variations between the different countries in the continent.

Up to 75% of the delays experienced by business can be controlled through actions by customs authorities, other government agencies and the private sector. The private sector appears to be in the shadow, silently complaining without taking any action on its part to improve the situation.

Numerous opportunities for engagement are now opening up in many African countries, and it is up to the private sector to position itself to gain more from this situation. Singly and within coalitions, the private sector can actually provide impetus to customs reform. This obvious fact is often overlooked in Africa due to the poor past record of government transparency and accountability, and the mutually adversarial relationship between Customs and the private sector.

African customs officials are generally well-educated, with a good understanding of the laws they enforce. On the other hand, the level of education and professionalism of the customs brokers that represent importers and exporters does not always match the expectations from customs authorities.³² This unequal relationship allows manipulation by customs officials of the laws and procedures, which aims at intimidation of brokers with a view to paying facilitation fees for private gain, or to maximising revenue collection to meet set targets, both to the detriment of business people.³³

A number of multinational companies operating in Africa have hired customs experts to assist them in managing compliance, or they retain customs consultants. These consultants ensure correct choice of tariff classification, proper valuation and declaration of origin. They are also responsible for ensuring correct procedures in relation to the import and export process, movement of goods in transit, and other customs procedures such as warehousing. Further, customs experts protect the company from future risks through prompt and accurate revenue payments and provision of adequate security. Finally, they conduct the necessary background checks on contractors such as transport companies because fraud on the part of suppliers could lead to imposition of punitive penalties.

While such resources cannot replace the necessity for formal consultative mechanisms between the private sector and business, it is only through interaction of customs professionals with customs officials that the acceleration of the ongoing reform and modernisation programs can be achieved.

Most countries lack 'a critical mass' of customs specialist expertise, meaning that decisions that may be expected to be made at the regional level are unnecessarily escalated to headquarters. Decisions take even longer if applications are made by clearing agents as they often lack the knowledge necessary to make a convincing case on behalf of importers and exporters. In Kenya, the major accounting and audit firms have in the last few years recruited customs experts to provide compliance and technical customs consulting services for local companies and overseas companies seeking to invest in the country.

4.2 Level of automation in Customs

Automated systems in Customs provide one of the most important tools for facilitation of trade procedures. Customs automation results in increased transparency in the assessment of duties and taxes, substantial reduction in customs clearance times, and predictability, all leading to direct and indirect savings for both government and traders.

The higher the level of automation of customs procedures in a country, the greater the possibility of detailed inspections, detection of fraud, and firm action including prosecution in court. Early versions of 'ASYCUDA',³⁴ the preferred customs IT system in Africa, have limited functionality compared to contemporary versions such as 'ASYCUDA++'.

One of the findings of the Tanzania Time Release Study revealed that there was higher customs processing efficiency in stations where 'ASYCUDA++' has been implemented such as Mwalimu Julius Nyerere International Airport (Dar es Salaam) compared to other stations that were still operating with 'ASYCUDA 2.7'. 'ASYCUDA++' supports electronic data interchange. Implementation of new customs

IT systems is often done without adequate internal and external consultation. In Kenya's experience with the implementation of 'SIMBA 2005' in July 2005, a significant segment of the private sector was found unprepared with consequent disruption of business and profits. A number of clearing agents had not paid the requisite fees for training and internet access by July 2005. A court case initiated by one company on behalf of 790 others to compel the Kenya Revenue Authority to revert to the old system was not successful.³⁵

Most of the employees of the clearing agents' organisations did not have the knowledge and ability to use computers and technology efficiently. So understandably it was quite a challenge for most of the clearing agents to comply with the requirements for exchange of electronic information with Customs while learning basic IT skills. An important lesson that should be learned is to invest in developing the IT skills of the staff of companies if customs technological developments are to lead to improved levels of trade facilitation.

4.3 Ways to combat fraud and bribery – integrity solutions

Very often, clearing agents connive with customs officials to demand facilitation fees and other payments from importers and exporters, especially when all documentation is not in order. Integrity in African customs administrations has improved in tandem with improved transparency and accountability of African governments.

In the past, many companies operating in Africa, including multinational corporations, routinely paid bribes to public officials as 'facilitation' payments. With the OECD's work against foreign corruption practices by multinational companies from OECD Member States and enactment of enabling legislation in these countries, things are gradually changing. It is now important for companies to develop and implement the Codes of Ethics specifying clearly what is acceptable and unacceptable in dealings with government officials and third party service providers like clearing agents since fraud and corruption is not confined to Customs.

Integrity is one of the cross-cutting elements in the reform and modernisation of customs administrations as a result of public-sector reform activities in individual countries, requirements for government transparency and accountability by bilateral and multilateral donors and international financial institutions, and compliance with the World Trade Organization and the World Customs Organization standards.

5. Practical advice on expediting customs clearance

The Kenya and Tanzania Time Release Study findings point out an important role for companies and third party service providers in expediting clearance of goods, specifically through prior lodgement of documents. It has been noted that prior lodgement alone cuts down the processing by up to half.

It must be admitted that many African customs administrations do not have robust risk management systems enabling discriminatory treatment of importers and exporters on the basis of the risk they pose to loss of revenue or compliance with regulatory requirements.

The mutual distrust between Customs and the private sector does not help the situation. One of the ways in which companies can minimise the risk of delays due to non-compliance is to understand and abide by legal and regulatory requirements so that they can take advantage of existing and future fast-track treatment to companies that comply with the requirements for greater disclosure of information, electronic interface with Customs and a sound financial position among other possible elements.

Since the speed with which goods are cleared from customs control partly depends on the work of third party logistics providers, it is important for companies to vet the ethical practices and competence of such providers. Customs brokers in Africa are, as a rule, small and medium sized enterprises, often

with insufficient working capital and equipment, so they use funds entrusted to them by one company to finance different importations. This causes delays that are unavoidable in such situations (and many times unfairly) attributed to Customs.

The financial stability of customs brokers or other third party providers is therefore one of the issues to be carefully considered in their selection. Others are:

- **Competence of managerial and operational staff**

Within the East African Customs Union Partner States (Burundi, Kenya, Uganda, Tanzania and Rwanda), there is an agreement by the customs administrations and revenue authorities that customs brokers undergo required, uniform training to enable them to obtain practising certificates issued by Customs as a condition for their licensing. Continuous professional development will also be undertaken for those agents with practising certificates, in collaboration with the International Association of Freight Forwarders (FIATA).³⁶ Minimum academic requirements for entry and evidence of good performance in qualifying examinations for operational staff would therefore be a good indicator.

- **Membership in a national association of freight forwarders**

In some countries (such as within the EAC Partner States) membership in a national association is a prerequisite for licensing with Customs. If a clearing agent firm is not a member of a national association, it is a clear sign such a company might be having problematic issues with Customs, and has therefore not been recommended for initial licensing or renewal. However, membership should not be construed as evidence of a firm's integrity or professional standing at the present moment.

- **Agreements with other third party service providers**

Clearing and forwarding companies provide transportation services within the same firm, or through an arrangement with third parties. Even if the qualifications of the clearing firm could be impeccable, engaging dubious transporters may cause delays if the truck is seized by Customs for one offence or another. For example, a truck conveying goods that have been cleared legally through Customs that are, however, commingled with others which have been smuggled. This may cause the delay of all the goods if the truck and the goods are seized. Increasingly, it is becoming important to examine the whole supply chain to assure yourself of the safe arrival of your goods.

- **Reputation within Customs**

Customs brokers interact with Customs on a day-to-day basis whether face-to-face or electronically. Therefore, usually customs officials have a good understanding and insight into the competence and integrity of potential agents. It might help to do background checks on a potential agent to reduce risk of loss by agent.

- **Period of operation**

Keeping all factors constant, a company that has been in operation for a long time without a break is likely to have more sound governance and reputation in comparison with a complete beginner. Since most clearing firms in many countries in Africa are in the small and medium enterprise category, it would be quite risky to entrust the job of clearing large quantity, high value goods to a firm that may not have the capacity to deliver.

6. Recordkeeping in Customs for more transparency and clarity

What does one do when there are customs problems? Whether these problems concern tariff classification, valuation, origin determination or interpretation of a point of law, an expert opinion on the matter and

recommendations as to the problem resolution are required. Inevitably, customs authorities rely on the law (enacted by Parliament), regulations (made by the Government, the Minister or Ministries) to further implement the law, rules made by judicial authorities (providing recommendations for interpretation of the law), and administrative guidelines issued by customs authorities to make decisions on particular cases. The existing legal framework is outside the influence of the customs brokers, although many importers and exporters rely on customs agents' mediation and expertise not realising that solutions provided by them may simply be illegal (that is, suggesting bribery, fraud, falsification of documents, etc.).

Therefore, the reform and modernisation programs in Customs currently under implementation in many African countries should be seen as a part of wider public sector reforms to entrench the rule of law and improve service delivery to citizens. In this regard, customs practices are changing, now relying more and more on mutual understanding of the problems and consultation and negotiation with clients for their resolution rather than the past practices where the word of a customs official was considered to be the final one and the only way to overcome it was to engage in illegal activity.

In Kenya, the private sector is getting increasingly involved, giving preference however, to taking issues to court for determination rather than implementing decisions by the authorities without questioning them. Recent decisions by the courts on applications for judicial review on matters of customs valuation and tariff classification show that the courts are inclined to take a firm stand where it appears that Customs is exceeding its discretionary power, or is not giving the trade sufficient opportunity for redress.

Uganda has enacted a law on tax appeals, which provides that the Chairman of the Tax Appeals Tribunal shall be a judge of the High Court.³⁷ Requirements for appeal are part of the raft of proposals under discussion towards a World Trade Organization Agreement on Trade Facilitation. Recent developments at the WCO – specifically, the adoption of the Framework of Standards – are also having an impact on the development of mechanisms for redress in case of disagreement with Customs.

It could be suggested to keep a record of all issues that have arisen with Customs over the years and their resolution. These records would help to make convincing arguments and to facilitate resolution of disagreement as the more informed both customs authorities and the trade representatives are, the higher the chances of quicker and fair resolution of disputes in similar situations.

In addition to tracking issues, monitoring of the customs services by keeping statistics as evidence would also facilitate the transparency of Customs. Where there are delays, the recommendations for service improvement can be provided on the basis of the records kept. In addition, this would help reduce the mutual hostility between customs authorities and business representatives.

Traditionally, administrations in Africa have signalled support for a risk management approach to customs work, while in practice, the implementation of customs initiatives based on risk management has been very low. Currently, one of the principles of the reform and modernisation work in many African countries is the use of risk management, which presumes discrimination of clients on the basis of compliance record. Keeping a good record of compliance is one way of ensuring prompt resolution of issues when they arise.

7. Security of trans-border shipments

The aftermath of the September 11, 2001 bomb attacks in the USA from a customs and trade perspective has been greater emphasis on security of the international trade supply chain, not just cargo security. In common with developed countries, many developing countries including those in Africa are focusing attention on controlled access to and use of port and airport facilities in line with International Maritime Organization (IMO)³⁸ and International Civil Aviation Organization (ICAO)³⁹ requirements.

Most countries in the East and Southern Africa region have ratified a significant number of IMO conventions, although the pace of ratification has not been matched with implementation.⁴⁰ From August 2005 to August 2006, IMO through its Integrated Technical Cooperation Program (ITCP) implemented various activities in the areas of infrastructure, transport and ICT and governance, peace and security in support of NEPAD.

These developments inevitably have an impact on the security arrangements and technological equipment requirements expected of the trade due to the integrated nature of modern supply chains. Efforts have been made to introduce electronic cargo tracking of shipments, specifically in the East and Southern Africa regions. For example, there is a component for integrating electronic cargo tracking systems for Kenya, Uganda, Tanzania and Rwanda under the World Bank's East African Trade & Transport Facilitation Project running from 2006 till 2009.

The actual impact of this project on the ground is expected to be for a longer term. For the moment, importers and exporters have to contend with poor roads, rail and pipeline infrastructure with associated delays and security implications.

How then does one reduce the risk of loss of goods in transit in the current situation? Firstly, each day of delay in the clearance of goods increases the risk of loss of goods due to pilferage, spoilage or other ways. It is therefore important to clear the goods as quickly as possible. Secondly, adequate insurance for the goods in question is advisable, although this would be prohibitive for those countries undergoing conflict. Thirdly, prudent choice of agents and transporters reduces the risk of loss of goods. Finally, movement of trans-border shipments is usually restricted to designated routes by regulation. Customs and other security agencies usually maintain checkpoints along these routes. Explanation should be sought from any transporters reported to have strayed from the designated route, unless the importer/exporter is complicit in such movement.

8. Conclusions

Customs administrations in Africa are going through a period of rapid change, which requires a paradigmatic shift in customs operation. There are ongoing positive developments by Customs to reform and modernise procedures and processes, as well as commendable initiatives by the private sector to take a more proactive approach to improve customs administration for the benefit of governments and business.

The increasing positive engagement of business with Customs has helped identify major trade facilitation weaknesses that if addressed, can help reduce transaction costs in Africa. These include the lack of a service ethos across all customs management levels, adversarial relationship between Customs and business, insufficient or inefficient supporting infrastructure, lack of a facilitation culture in other government departments, corruption and illicit trade. The challenges present opportunities for businesses to engage with Customs to bring about the desired change.

However, businesses need to create customs compliance strategies that reflect an understanding of the Customs business in specific countries. While investments in infrastructure can be expensive, delays can be minimised through cooperation between business, Customs and other government agencies. It is also important to take advantage of information and communication technologies, especially since many administrations are now automating their systems. Human factors will also determine the amount of customs-related delays that can be experienced – specifically the integrity of employees and customs officials.

Due to emerging supply chain security concerns at the global level, businesses across the world, including in many countries in Africa, are required to have more transparency in their operations including mechanisms for vetting third party service providers. The International Maritime Organization,

World Customs Organization and the International Civil Aviation Organization have all adopted global security and facilitation standards that have a great impact on the operations of business, Customs and other government agencies. Many countries are well on the way to complying with these requirements, and businesses not only need to be aware of the developments, but should prepare themselves for implementation. While the challenges that remain are enormous, it is clear that there is progress, and even greater progress is to be expected in the future.

Endnotes

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- 2 See SITPRO 2007, Guide to the WTO Trade Facilitation Negotiations, www.sitpro.org.uk.
- 3 Trade and Development Report 2004, <http://www.unctad.org>.
- 4 Asia-Pacific Economic Cooperation, <http://www.apecsec.org.sg/apec.html>.
- 5 Djankov, S, Freund, C & Pham Cong, S 2006, *Trading on time*, World Bank, Washington, DC.
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- 8 Source: www.gfptt.org/uploadedEditorImages/00000310.pdf, viewed 30 January 2008.
- 9 International Chamber of Commerce 2007, *The international business perspective on capacity building to improve trade facilitation*, [www.iccwbo.org/uploadedFiles/ICC/policy/customs/pages/The_Business_Perspective_on_Capacity_Building\(1\).pdf](http://www.iccwbo.org/uploadedFiles/ICC/policy/customs/pages/The_Business_Perspective_on_Capacity_Building(1).pdf) viewed 30 January 2008.
- 10 NEPAD 2004, NEPAD: an introduction, NEPAD Secretariat.
- 11 Commission for Africa 2005, *Our common interest*, London, UK; for more information consult www.commissionforafrica.org, viewed 30 January 2008.
- 12 The current corporate sponsors of BAFICAA are Unilever, British American Tobacco and Diageo. The initiative is receiving financial support from the Commonwealth Business Council.
- 13 McTiernan, A 2006, *Customs and business in Africa: a better way forward together*, BAFICAA.
- 14 World Bank 2005, *Doing business in 2006: creating jobs*.
- 15 See Evdokia Moise (n.d.) for information on the benefits and costs of trade facilitation, www.oecd.org/ech/tradepolicy, viewed 30 January 2008.
- 16 The Revenue Authorities of Kenya, Tanzania, Rwanda and Uganda are jointly implementing a Quality Management Manual with priorities on review and benchmarking of internal processes and procedures, adoption of a client and public focus, human resource quality, organisational structure and functioning. This approach is borrowed from the ISO categories of quality with specific adaptation to revenue administration. Kenya Revenue Authority is working towards achieving ISO certification.
- 17 See also Endnote 11.
- 18 See in particular Endnote 14 on Quality Management Manual implementation by the Revenue Authorities of Kenya, Tanzania, Rwanda and Uganda.
- 19 It should be noted that traditionally most tax compliance is *ipso facto* involuntary, thus creating a hostile and unfriendly environment. The dialogue is rarely genuine for lack of common interest. Yet, there are some exceptions or at least attempts to change the situation. For example, taxpayer education and sensitisation in East Africa (in particular, in Kenya, Uganda, Tanzania and Rwanda) found to be a civic approach that inculcates a friendly atmosphere. It all culminates into an annual event called Taxpayer's Day in recognition of a voluntary spirit amongst some of the taxpayers.
- 20 Celebrated on 2 November, for more information consult <http://www.kra.go.ke/news/newsurataxweek121205.html>, viewed 30 January 2008.

- 21 On a visit to Senegal in 2002, one of the authors of this paper (Creck Buyonge) was surprised to learn that the customs administration of Senegal, a uniformed force, did not employ women. However, there was very close cooperation between Customs and business.
- 22 In French, Union Economique et Monétaire Ouest Africaine (UEMOA). UEMOA is a grouping of the following Francophone countries that was established by a Treaty signed in January 1994: Benin, Burkina Faso, Côte d'Ivoire, Mali, Niger, Senegal and Togo. In May 1997, Guinea-Bissau became its eighth member state. UEMOA is a customs union and a monetary union between some of the members of the Economic Community of West African States (ECOWAS). In addition to those in UEMOA, ECOWAS comprises Cape Verde, the Gambia, Ghana, Guinea, Liberia, Nigeria and Sierra Leone (15 member countries in total). The founder members of the East African Community Customs Union are Kenya, Uganda and Tanzania. In December 2006, Burundi and Rwanda were admitted into the Union. Members of COMESA are Angola, Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe. Finally, SADC comprises Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.
- 23 For more information consult <http://www.kra.go.ke/pdf/publications/manifestmanual.pdf>, viewed 30 January 2008.
- 24 For more information consult <http://www.asycuda.org/>, viewed 30 January 2008.
- 25 SIMBA 2005 is an open system, developed with technical assistance from Senegal and using Senegal's Gainde 2000 as a platform. This study in South-South cooperation does not roll back the hopes for interconnectivity between the various IT systems in use by African countries. The United States Agency for International Development (USAID) East and Central Africa Global Competitiveness Hub (ECA Trade Hub) have done a proof of concept on the interoperability of Kenya's SIMBA and Uganda's ASYCUDA – and it worked! As of March 2007, the customs administrations of the Kenya and Uganda revenue authorities were piloting a system of electronic exchange of data to support enforcement. The vision of the Revenue Authorities Data Exchange (RADEX) project is to extend it in order to cover other countries and use IT to track goods movement instead of manual escorts.
- 26 In December 2006, the Kenya and Uganda governments finalised the joint concession of the two railways to one private sector operator (Rift Valley Railways) for 5 years for transportation of passengers and 25 years for cargo with the support of a World Bank credit under the East African Trade & Transport Facilitation Project. It is still too early to gauge the impact of this change on the efficiency and effectiveness of the railways operations in the two countries.
- 27 This is in spite of the fact that as part of the quality program implementation by 2004, all EA Revenue Authorities had purchased and installed scanners at all airports.
- 28 The Report mentions a case of one country where Air Force personnel were present in sea ports. In another case, a Democratic Republic of Congo government agency set up an office in Mombasa to collect levies on Congo-bound goods in transit, apparently without the authorisation or knowledge of the Government. While the traders understood the levy collected in Mombasa as an advance payment, they were charged again for the same goods on importation to Congo. These contradictions will often be encountered in countries in conflict, or those emerging from war.
- 29 While in transit from one African country to Angola, one of the authors of this article (Creck Buyonge) was met at the airport by customs officials to facilitate transit. There were all sorts of unauthorised persons at the only luggage belt, where one had to pay a fee to get a boarding pass even after purchasing an airline ticket or for transfer of the passenger's luggage from one terminal to another. This country was just emerging from war, and government officials had not been paid their salaries for years.
- 30 OECD 1998, 'The economic impact of counterfeiting', cited in Robert J Shapiro & Kevin A Hasset 2005, *The economic value of intellectual property*, USA for Innovation, www.usaforinnovation.org, viewed 30 January 2008.
- 31 WCO, Model provisions for national legislation to implement fair and effective border measures consistent with the agreement on trade-related aspects of Intellectual Property Rights, available at <http://www.wcoipr.org/wcoipr/gfx/ModelLawfinal.doc>, viewed 30 January 2008.
- 32 The development of a private sector customs resource is one of the recommendations of the BAFICAA report, as a result of the observation that customs brokers in Africa are often part of the problem of delays, not the solution.
- 33 It should be borne in mind that most customs administrations in Africa are within integrated revenue agencies, meaning that the motivation to maximise revenue is very high as the key measure for their success is the revenue they collect vis-à-vis set targets. For a recent evaluation of the revenue authority model, see Kidd, WJ & Crandall, M 2006, 'Revenue authorities: issues and problems in evaluating their success' (October 2006), IMF Working Paper No. 06/240, available at <http://ssm.com/abstract=944078>.
- 34 The acronym ASYCUDA is derived from Automated SYstem for CUstoms DAta. ASYCUDA was developed by UNCTAD for use by developing country members. See also Endnote 22.
- 35 Buyonge, C 2005, 'People and technology: preliminary lessons from Kenya's implementation of a new customs information technology system', Paper presented at the Government of Mozambique/Commonwealth Secretariat Workshop on Best Practices in Information Technology and Trade Facilitation Systems, 17-18 August 2005, Maputo, Mozambique (available in the Mozambique Customs website).

- 36 FIATA, in French 'Fédération Internationale des Associations de Transitaires et Assimilés', in English 'International Federation of Freight Forwarders Associations', in German 'Internationale Föderation der Spediteurorganisationen', was founded in Vienna, Austria on 31 May 1926. This trade association representing freight forwarding and logistics firms, for more information consult <http://www.fiata.com/>, viewed 30 January 2008.
- 37 Government of Uganda 1997, The Tax Appeals Tribunals Act, Acts Supplement to the Uganda Gazette No. 81, Vol. XC of 31 December 1997. Section 4(2) of the Act states: 'A person is not qualified to be appointed Chairperson of the Tribunal unless he or she is qualified to be appointed a Judge of the High Court'.
- 38 The IMO amended the Safety of Life at Sea (SOLAS) Convention and International Ship and Port Security Code (ISPS) after September 11 to provide for various security protocols for port facilities and the qualifications of staff that are working in such facilities.
- 39 New ICAO rules require advanced despatch of passenger information to the destination airport before departure of aircraft, and greater attention to the physical security of airport facilities through perimeter fencing and presence of armed security to reduce chances of terrorist attacks.
- 40 Muindi, J-P 2001, 'Implementation of IMO Conventions, Resolutions and Codes in the Eastern and South African Region' during the 14th international symposium on the transport of dangerous goods, Johannesburg, South Africa 3-5 September 2001, www.pmaesa.org/documentation.

Creck Buyonge



Creck Buyonge has been Manager, Centre for Customs & Excise Studies (CCES) regional office for Africa based in Nairobi, Kenya since July 2007 and alternately, is Managing Director for Africa, Trusted Trade Alliance. Before joining CCES, Creck was a Deputy Commissioner of the Kenya Revenue Authority (KRA) Customs Services Department. He is a founding member of the WCO East and Southern Africa Regional Steering Group, and was elected Vice Chairperson of the Permanent Technical Committee of the WCO for 2006-07.

Irina Kireeva



Irina Kireeva is a lawyer at O'Connor and Company, a law firm based in Brussels. Since joining this international company in March 2002, Irina has been dealing with a variety of international trade issues, including WTO law in the areas of agriculture, sanitary and phytosanitary measures, technical barriers, customs regulation, intellectual property and regional integration.