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Will implementation of the WTO Trade Facilitation Agreement promote integrity in Africa?

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1.0 Introduction

The World Economic Forum reports states that seven of the ten fastest-growing economies in the world are in Africa and the continent is increasingly moving more into the global limelight as a promising investment destination. However, according to the last Corruption Prevention Index of Transparency International (TI), the African continent, despite recording high level of economic growth rates, is still facing the persistence of widespread corruption inhibiting the transformation of the economic growth into development dividends for all citizens, preventing them from enjoying improved livelihoods and living conditions.

The Africa Survey 2015 (TI and Afrobarometer) also revealed that nearly 75 million Sub-Saharan Africans are estimated to have paid a bribe in 2014-2015 and some were even forcefully required to pay for basic services that they desperately need. Similarly, it has also been reported that corruption is widespread in main borders within Sub Saharan Africa, characterized by delays, bribery, information deficiency, cost of doing business, shortage of manpower, inadequate infrastructure, bureaucratic regulations, coupled with weak judicial institutions which create an environment of unpredictability, arbitrariness, high costs and corruption. Thus, an urgent need exists for border agencies to embed corruption prevention alongside with trade facilitation measures so that the real benefits of market access can be reaped.

In 2013, the World Trade Organization members reached a consensus on a Trade Facilitation Agreement (TFA) at the Bali Ministerial Conference as part of a wider “Bali Package”. According to the OECD, the WTO TFA creates a significant opportunity to improve the speed and efficiency of border procedures, thereby reducing trade costs and enhancing participation in the global value chains that characterize international trade today. According to a recent study by the WTO, implementation of the TFA has the potential to increase global merchandise exports by up to \$1 trillion per year. The

study also found that developing countries will benefit significantly from the TFA, capturing more than half of the available trade gains (WTO 2015).

This paper demonstrates that albeit the implementation of the TFA will enhance trade facilitation and promote integrity, it will not necessarily address the problem of corruption completely in trade. Border agencies will still need to develop and implement robust corruption prevention strategies in order to tackle corruption. These strategies should be based on transparency, accountability integrity and include but not limited to measures such as integrity management, declaration of assets, audit committees, disclosure mechanisms, appropriate checks and balances and robust internal control systems supported by solid legal provisions and appropriate penal provisions. The paper suggests measures at strategic level, authority level and company level for addressing the opportunities corruption.

1.2 Costs of doing business

The United Nations Conference on Trade and Development (UNCTAD) estimates that the average customs transaction involves 20–30 different parties, 40 documents, 200 data elements (30 of which are repeated at least 30 times) and the re-keying of 60–70 per cent of all data at least once. With the lowering of tariffs across the globe, the cost of complying with customs and trade related formalities have been reported to exceed in many instances the cost of duties to be paid. In the modern business environment of just-in-time production and delivery, traders need fast and predictable release of goods. (WTO 2014).

A number of global indexes such as the World Bank's Ease of Doing Business 2016 and Logistics Performance Index 2014 and the World Economic Forum's Global Enabling Trade Index 2014 and World Competitiveness Report 2014 still portray a poor picture of the costs of trading and logistics performance indexes in Africa. Trading across the borders of Sub Saharan countries still requires high

transaction and transportations costs which enormously undermines the regions business competitiveness, market access , industrialization and product exports. The viability of the market depends of the existence and efficiency of institutions essential to the smooth operation of business, such as courts and tribunals, customs and tax administrations, as well as other bodies attached to different ministries that provide administrative services needed by the business world. However, even where these institutions exist, they are often inaccessible as the information and services they deliver are generally hard to obtain. Other international transaction costs stem from internal corruption, as well as the lack of transparency and predictability of commercial operations. (ICTSD 2012).

1.3 Corruption as a Non-Tariff Barrier to trade facilitation

Many studies have pointed to Southern Africa's patterns of trade to explain why its share of the global total remains so small. The often cited reasons for this state of affairs are poor infrastructure, daunting bureaucracy, corruption and other barriers that the business community experience at borders. According to a Transparency International (TI) report (2013), corruption at ports and border points in Southern Africa exists in collusive forms to evade tariffs and taxes and as coercive bribery where port or customs officials extract bribes from companies or individuals for performing routine processes. These types of corruption have a different impact on firms: collusive corruption appears to be cost-reducing while coercive corruption increases costs. Apart from trade and shipping costs, there is also a broad consensus in the literature that port and border corruption has a detrimental impact on revenue collection and can also lead to organized crime and lack of security.

Generally proposed measures to address corruption at ports and borders in literature include simplification and harmonisation of customs and border procedures, extensive use of new technologies, and focus on organisational and institutional development through better human resources management, integrity training and incentive systems. While evidence suggest that

measures such as trade liberalisation may be effective in reducing corruption aimed at tariff evasion, it is likely to displace corrupt activity towards coercive forms of corruption to perform routine processes (Sequeira 2013, cited in TI(2013, P:4).

2.0 The WTO Agreement on Trade Facilitation (WTO TFA)

As a matter of fact, Article V on freedom of transit, Article VII on valuation for customs purposes, Article VIII on fees and formalities, and Article X on publication had already laid a very solid foundation for trade facilitation. As part of a wider ‘Bali Package’ and after some nine years of negotiations, the World Trade Organization (WTO) members reached a consensus on a Trade Facilitation Agreement at the Bali Ministerial Conference in December 2013. The Bali Package is a subset of the Doha Development agenda which commenced in 2001, and results from the Ninth Ministerial Conference of the WTO in Bali, Indonesia from 3 to 7 December 2013. The most significant part of the Bali Package is the Draft Ministerial Decision on trade facilitation as a multilateral commitment to simplify customs procedures by reducing costs and improving speed and efficiency (Trade Law Centre [TRALAC] 2013). As at 18th of March 2016, only 10 African nations (Botswana, Cote D’Ivoire, Kenya, Lesotho, Mali, Mauritius, Niger, Seychelles Togo and Zambia) have ratified the agreement.

2.1 Overview of the main WTO ATF measures and its impact on corruption

2.1.1 Article 1: Publication and availability of information

This measure provides that members should publish and make use of trade-related information in order to enable governments, traders and other interested parties to become acquainted with it. This information includes import, export and transit procedures, rules for classification and valuation of

goods, rate of duties, taxes, fees and related charges. This article is line with the Article X of GATT 1947 which aims at enhancing transparency, predictability and good governance. Information and knowledge of the regulations and rules in place ameliorate the conditions under which traders and operators engage as they can take their business decisions and plan their operations based on same. According, to the World Customs Organization Revised Kyoto Convention, the availability of information on Customs and Trade matters is one of the key elements to effective trade facilitation. This article also makes provision for setting up of enquiry points to disseminate relevant information to interested parties such as fees and charges, laws and regulations which definitely promotes a culture of predictability and responsiveness.

2.1.2 Article 4: Advance Rulings

This measure requires that a Member State shall issue an advance ruling in a reasonable, time bound manner to an applicant that has submitted a written request containing all necessary information. If a Member declines to issue an advance ruling it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision. The expression “binding ruling” (or “advance ruling”) generally designates the option for Customs to issue a decision, at the request of an economic operator planning a foreign trade operation, relating to the regulations in force. The main benefit for the holder is the legal guarantee that the decision will be applied at the moment of the importation or exportation.

Advance ruling may be applied in matters such as those relating to origin, valuation, classification and tariff. The benefits of advance rulings may extend to the following:

- Enhanced certainty and predictability of Customs operations;
- Speedy clearance of goods at the border;

- Reduced disputes between Customs authority and traders on tariff, valuation and origin issues at the border;
- Just-in-time operations conducted more efficiently

Some clear benefits include the establishment of a trusted relationship with the customs, securing a reliable supply chain, mitigating potential exposure from non-compliance and streamlined import clearance.

Box 1: Advance Ruling in Australia

With the aim of providing advance and predictable information to stakeholders in order to facilitate compliance with Customs requirements, a number of Customs administrations have already established a binding ruling programme, in accordance with the provisions of Standard 9.9 of the World Customs Organization (WCO) Revised Kyoto Convention and the WCO recommendations and guidelines. The Australian Customs and Border Protection Service offers advance ruling for:

Tariff Classification- binding ruling in relation to the classification of imported goods.

Origin - Rules of origin advice assists importers and exporters to determine whether goods are eligible for preferential tariff treatment.

Valuation - Valuation advice assists importers with specific issues relating to the assessment of customs value of imported goods.

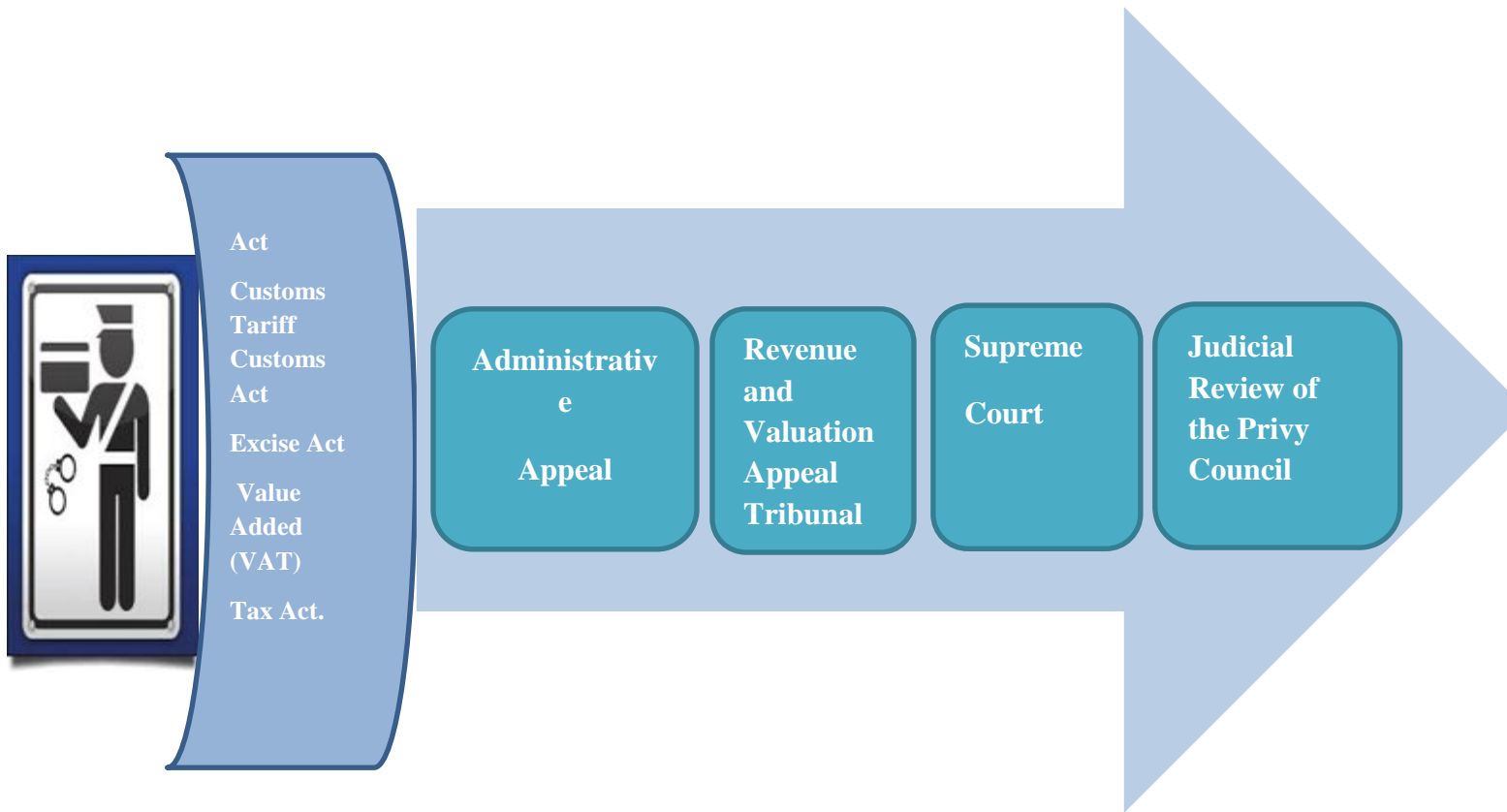
(Source: https://www.wto.org/english/tratop_e/tradfa_e/case_studies_e/ar_auspres_e.pdf.)

It's noteworthy that at the level of the East African Community (EAC), a new section (248A) has been introduced in the EAC Customs Management Act providing for persons intending to import goods to make a written application to the Commissioner for advance rulings on either tariff classification, rules of origin or customs valuation. Likewise, in South Africa the new Customs Duty Act has detailed provisions for advance ruling for Customs purposes.

2.1.3 Article 4: Appeal or review procedures

A fundamental premise of any legal system is that it allows an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision and/or judicial appeal or review of the decision. Basically, this measure makes provision for any person to whom Customs or another relevant border agency issues an administrative decision to have the right, within its territory, to administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision. This mechanism goes beyond to judicial appeal or review of the decision. It is of vital importance in the spirit of democracy that appropriate legal and institutional mechanism are in place to ensure the right of appeal to any person directly affected by a decision or omission of Customs. The right of appeal ensures protection for the individual against decisions of Customs that may not be in compliance with the laws and regulations which they are responsible to administer and enforce. It also ensures protection against omissions by Customs in any matter. At the same time, the review of challenged decisions or omissions by a competent authority and the verdicts of these reviews can be a suitable means of ensuring uniform application of the laws and regulations. The legislations in Mauritius allows for persons affected by an administrative decision by Customs to make appeal at multiple stages and even beyond the Supreme Court (*See figure 1*).

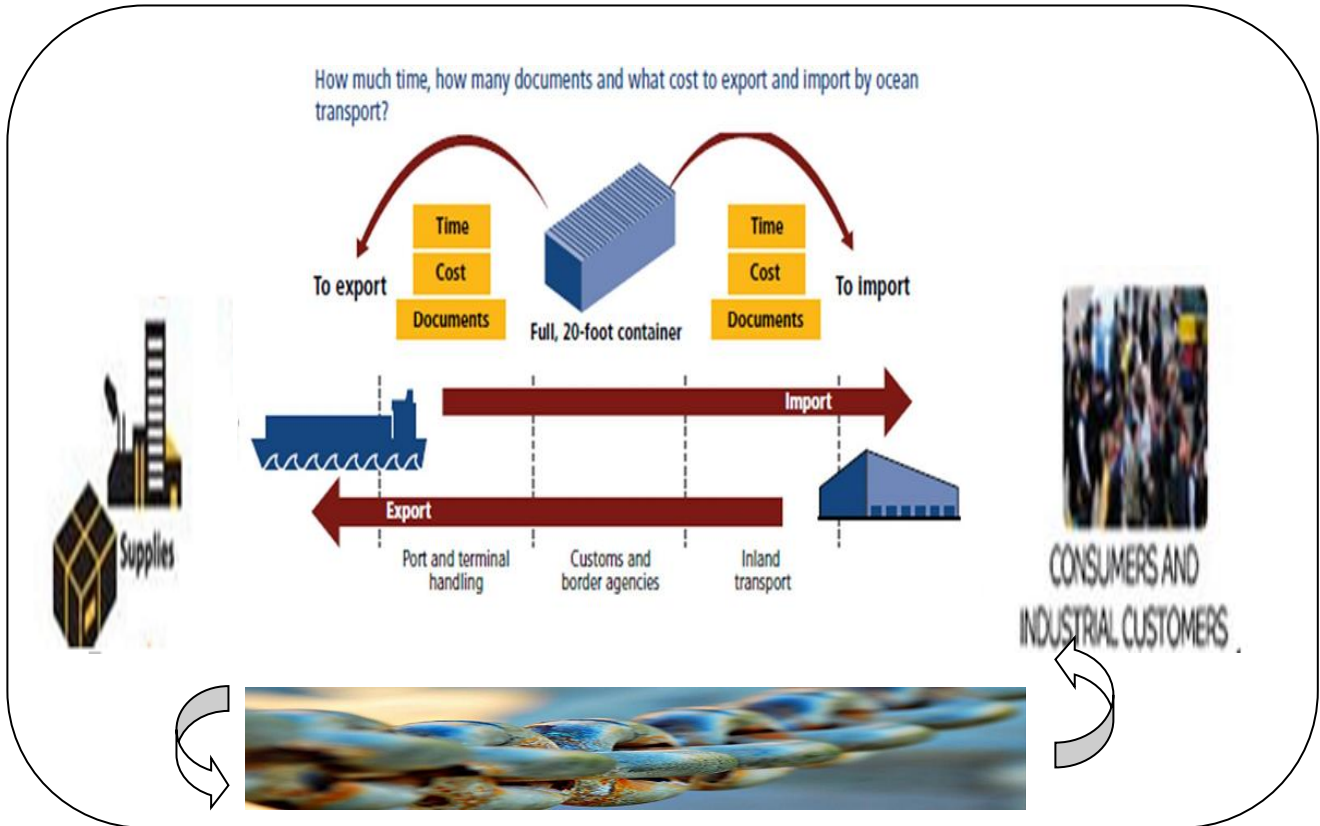
Figure 1: Appeal Procedure in Mauritius



2.1.4 Article 7: Release and clearance of goods

Unlike with improving trade and transport-related infrastructure, which requires costly investment in ports, railroads, roads and information technology, improving efficiency in customs procedures is a relatively an economical and practical measure of introducing administrative reform. As a matter of fact practical trade facilitation reforms, such as the measures in relation to the clearance and release of goods can offer significant potential to reduce trade costs and improve countries' ability to participate in Global Value Chains (*see figure 2*).

Figure 2: Customs processes in the Global Value Chain of goods



(Source: Adapted from the World Bank Doing Business Report)

Article 7 of the WTO agreement proposes various concrete and practical trade facilitation initiatives such as: Pre-arrival processing; Electronic Payment; Risk Management; Post-clearance Audit; Time Release Studies and Authorized Economic Operators concept (WTO 2013, pp. 8-11). A synopsis of the possible impact of the main measures is found below.

- **Electronic Payment**

The adoption of procedures allowing the option of electronic payment for duties, taxes, fees, and charges collected by customs incurred upon importation and exportation will certainly limit scope and incidence of corruption and save the business community and common citizens the hassle to visit multiple offices to make related payment and will certainly promote greater transparency in payment activities. A number of Customs administrations within the Sub Saharan Africa have already implemented e-payment where importers can use their personal accounts and effect payments from their office and receive payment receipts through electronic message. According to the Transparency International, small bribes are often systemic and demands for small bribes are not usually isolated instances. When government functions have ingrained cultures of demanding small bribes for routine actions such as moving goods through Customs, a company can find that it is facing substantial demands in aggregate, even though individual demands are small. The implementation of electronic payment will not only, reduce collusion and extortion and eliminate small bribes and facilitation payments, it will also boost level of confidence in the business community.

- **Risk Management**

Risk management is the right tool that establishes the balance between customs control over non-compliance and legitimate trade. A robust risk management strategy will promote a culture of transparency and predictability through predetermined combination of risk indicators, based on information which has been gathered, analyzed and categorized. According to the Agreement, Members should to the extent possible, adopt or maintain a risk management system for customs control. Members should concentrate customs control and, to the extent possible other relevant border controls, on high-risk consignments and expedite the release of low-risk consignments. According to the WCO Risk Management Guide, risk indicators are specific criteria which, when taken together, serve as a practical tool to select and target movements for the potential for non-compliance with Customs law. It goes without saying that automation of risk management will yield more effective results on trade facilitation and Customs compliance.

- **Post Clearance Audit**

Post clearance audit (PCA) or audit-based controls are defined by the WCO Revised Kyoto Convention as measures by which the Customs satisfy themselves as to the accuracy and authenticity of declarations through the examination of the relevant books, records, business systems and commercial data held by persons concerned. According to the UNECE Trade Facilitation Guide, Administrations that do not use audit-based controls usually concentrate their controls entirely at the border and at the time of import, and often apply a 100 % physical examination approach. This leads not only to unnecessarily long delays at the border but is also a very ineffective and inefficient use of the limited control and inspection staff at the border. In addition, 100% physical examination creates an enabling environment for corrupt practices and fraud. Unlike the transaction based control such as physical inspection and verification of classification, valuation and origin of goods, post clearance audit, not only allows speedy clearance and release to the benefit of the business community, but also allows Customs and Internal Tax Departments of Revenue Authorities detect non-compliance with national laws and related frauds and financial crimes such as money laundering through examination of physical stock, analysis of the financial and non- financial records and balance sheets

- **Authorized Economic Operators**

The TFA provides that additional trade facilitation measures related to import, export, or transit formalities and procedures should be offered to operators that meet certain prescribed criteria. This in line with the WCO SAFE Framework of Standards to Secure and Facilitate Global Trade that provides global standards for launching an Authorized Economic Operator (AEO) programme which is intended to include all economic operators to enhance security and Customs compliance along all points of the supply chain.

In Sub-Saharan Africa, revenue collection is of great importance to many administrations because they collect a high percentage of the state budget, gaining the compliance and membership of these

companies will secure a majority of the revenue. Thus, Customs should identify those companies responsible for the majority of revenue collected by that administration and convince them to adopt such a programme. This will in turn ensure transparency, predictability and certainly in addition to expedited release of goods. In Kenya, for instance, benefits of the AEO programme includes possibility to use the green channel if compliant with regular audits of records; enhanced Customs information sharing ; dedicated unit that liaises with the AEO operator for any queries on real time basis and Recognition of AEO status in the region (reciprocal).

2.1.5 Article 8: Border agency coordination

A number of regional and international reports depicts major border posts with Africa characterized by poor infrastructure, transport bureaucracy, border delays, length queues, cumbersome Customs and administrative procedures, licensing requirements and charges, excessive documentary requirements, road blocks, repetitive border control and a lack of coordination among the multiple government agencies on both sides of borders. These impediments actually breed collusive corruption and small bribes or facilitation payments. According to the Transparency International, the term facilitation payment usually covers payments made to officials to obtain or speed up routine services which the officials are required to provide. Corrupt activities may relate to fraud, abetting illegal foreigners , illegal issuing of documents, illicit trade, customs offences, tax evasion and can filter right through clearing and forwarding agents, traders, agents, helpers, security agents, cleaners, etc.

An empirical study into corruption in ports by Sequeira, Djankov, 2008 states that in principle, Customs officials have greater discretionary power to extract bribes than regular port operators given their broader mandate, the fact that they can access full information on each shipment and each shipper at all times and the monopoly of customs over the flow of goods. The study identify three major consequences of this type of corruption: 1) a diversion effect where firms avoid the most corrupt ports to avoid bribe extraction; 2) the revenue effect, as bribes reduce overall tariff revenues

and 3) the congestion effect, as the “rerouting” of cargos for avoiding bribes creates imbalances in the regional transport network. The study confirms that bribe payments, far from only “greasing” cumbersome bureaucratic procedures, act as a distortionary tax on trade and a significant revenue drain for the government.

Against this backdrop, this measure actually calls for Members to ensure that their authorities and agencies responsible for border controls and procedures dealing with the importation, exportation and transit of goods cooperate with one another and coordinate their activities with a view to facilitating trade. Such cooperation may include alignment of working days and hour; procedures and formalities and establishment of One Stop Border Post (OSBP) control (WTO 2013, p. 12). A myriad of initiatives were implemented and are still currently underway at major border posts within Eastern and Southern Africa a view to facilitate movement of goods and persons such as the One Stop Border Post between Zambia and Zimbabwe, alignment and review of operating hours, establishment of joint border committees in a number of countries and a single agency, for instance in South Africa, to manage border operations.

2.1.6 Article 12: Customs cooperation

This measure can be looked at from the perspective of the Customs-to- Customs and Customs-to-Business pillars of the WCO SAFE Framework of Standards. Through this measure, Members are encouraged to share information on best practices in managing customs compliance, to cooperate in technical guidance or assistance in building capacity for the purposes of administering compliance measures, and enhancing their effectiveness and to ensure that traders are aware of their compliance obligations. Other WCO Instruments relevant to this article are the Nairobi Convention, Johannesburg Convention and the Mutual Administrative Agreements. At an international level, mindful of the fact that the lack of integrity in Customs can distort trade and investment opportunities, undermine public trust in Government administrations and ultimately jeopardize the well-being of all citizens, in 2003,

the WCO and its Members discussed the key factors to prevent corruption and increase the level of integrity in Customs and concluded the Revised Arusha Declaration. Through the declaration, Members stresses for a national Customs integrity programme to be effective the following factors need to be addressed: 1. Leadership and Commitment; 2. Regulatory Framework; 3. Transparency; 4. Automation; 5. Reform and Modernization; 6. Audit and Investigation; 7. Code of Conduct; 8. Human Resource Management; 9. Morale and Organizational Culture and 10. Relationship with the Private Sector. At a regional level for instance, customs cooperation among Member States with the objective to simplify and harmonise Customs laws and procedures and prevent fraud and illicit trade is enshrined in the SADC Protocol on Trade.

3.0 Anti-Corruption Measures for WTO TF A to be more meaningful in enhancing Global Trade

It is acknowledged by Governments and international bodies that the agreement passed by WTO members on trade facilitation measures as part of the ‘Bali Package’ indirectly impact on corruption in customs and other areas. Although this agreement is a major step forward in the fight against corruption and bribery in global trade, when analysed deeply, it is found that in order for it to be more successful, comprehensive anti-corruption and bribery measures should have been included into it or taken up in a parallel agreement with specific focus on anti-corruption. These anti-bribery measures referred to, are not about facilitating market access; it’s about setting clear rules and levelling the playing field. In fact, these measures should be three-fold: (1) at strategic or macro level, (2) regulatory and enforcement authority’s levels and (3) at firm’s level.

3.1 Strategic Level

Firstly, addressing corruption and its negative impacts on global trade, investment and economic growth requires transparency in political governments, the workings of public organisations, the quality of legal systems and the impartial phrasing of government policy. There are a number of agencies outside the executive that need to be rallied to make a dent in corruption in customs/borders. These include the legislature, the judiciary, anti-corruption institutions, national security agencies, stakeholders such as the Chamber of Commerce and Industry, lawyers association and brokers' association, civil society organizations engaged in fighting corruption, the media and the international community. Strategic alliances with many of these players are possible and should be developed. Some of the actions needed to curb corruption in this area would require hard decisions on the part of the government: de-politicization of leadership in border agencies, creating a professional border agency service, increasing salaries, improving the institutional capacity of customs through major investments in information systems, business process reengineering, human resource development and infrastructure.

3.2 Authorities' Level

Border agencies will still need to take up the challenge of building their ethical culture and enhancing public trust in their respective organisations by developing and implementing robust corruption prevention strategies. They have to proceed in a systematic way by carrying out an in-depth analysis of the environment and institutional deficiencies of the particular border services to identify causes and extent of corruption in the institutions. Once the causes have been identified, they need to consider strategies that could help. These strategies should be based on transparency, accountability integrity and include but not limited to measures such as integrity management, declaration of assets, audit committees, disclosure mechanisms, appropriate checks and balances and robust internal control

systems supported by solid legal provisions and appropriate penal provisions. The three pronged approach of prevention, education and investigation is most commonly used for public bodies¹. The main points to be considered are:

3.2.1 Development of an anti-corruption policy

The border agencies should develop and disseminate a comprehensive policy on corruption prevention to clearly state their position for a zero tolerance corruption culture. This policy will set aims and objectives, draw together existing policies and procedures that relate to corruption prevention. This document should be clear about management commitment, the policy intent, the definitions of unethical behaviours and corrupt acts, the responsibilities, the structures in place to fight corruption, reporting and handling of corruption cases, protection of whistle-blowers, and disciplinary measures amongst others.

3.2.2 Corruption vulnerability assessments

This process can be extremely useful as an instrumental step in addressing corruption and understanding the nature of the problem in border agencies. This typically involves process mapping, identifying and classifying risks, checking existing controls and evaluating the adequacy of existing safeguards. Posts, functions or activities that are particularly vulnerable to corruption should be identified - for example, functions that involve discretionary authority or activities that may not be easily supervised. The majority of assessment tools focus on assessing the integrity of an institution as a whole, as opposed to that of individuals. However, there exist “integrity test” focusing on individuals rather than systems and institutions and is more likely to prove relevant to the task of detecting corruption. For example, in Mauritius the revenue department has established the system requiring staff to declare assets on a regular basis to test the public officials’ integrity by checking their wealth, lifestyle and background (i.e., lifestyle check).

¹ The Public Sector Anti-Corruption Framework –ICAC Mauritius (2009)

3.2.3 Awareness Raising and Training

All supervisors and senior managers should be alert to the risk of corruption in their respective areas of responsibility. They need to have an understanding of what corruption is and how it can occur. They should be aware of things that might constitute red flags, or indicators of corruption. Corruption is likely to continue undetected if the relevant managers and supervisors do not remain alert to the possibility of corrupt conduct and are essentially unaware of the corruption risks in their own respective areas of responsibility.

3.2.4 Accountable and transparent Decision Making

Decision-making should be based on the principles of fairness, transparency and accountability. Decisions should be guided by established policies and procedures and should comply with legal requirements. Decisions should be based on acknowledged facts and established criteria. Justifications should be provided in writing and properly recorded for all decisions. Reasons should be provided to affected parties and they should also be informed about the right of appeal and objections.

3.2.5 Supervisory Accountability

Effective supervision and performance checking practices are an essential part of any effective strategy for detecting corruption. They are also an important means of preventing corruption by reducing the opportunities for motivated individuals to engage in corrupt conduct. Managers should be accountable for the work performed in their areas of responsibility. They should have processes in place to ensure that the work performed in their areas of responsibility is correctly carried out and performed in the manner expected by the agency. Managers should also conduct regular work reviews. Work reviews are processes and systems that review transactions and other work performed by staff to ensure that it is correct and consistent with agency policy. Work reviews can be done regularly as part of an agency's on-going programme or randomly in response to a particular concern, such as identification of a new corruption risk or elevation of an existing risk.

3.2.6 System for Reporting and Handling Corruption

Agencies should have measures in place to facilitate the reporting by public officials or members of the public of acts of corruption, misconduct, or conflicts of interest that come to their attention. Officials must be encouraged to report or discuss concerns not only about the conduct of other officials but also pressure and undue influence that might be applied to them by colleagues or others. Officials must be assured that reporting will be treated confidentially and will not adversely affect their career. Ensuring that whistle-blowers do not suffer negative consequences within or outside the agency should be an organizational priority.

Confidential phone lines and other practical measures may be used for encouraging whistleblowing. Poster campaigns and other means to encourage reporting may also be considered. Reports of suspicious activities potentially involving corruption or other forms of misconduct by border protection and law enforcement officials must obviously be followed by diligent investigations. Decisions concerning any aspects of these investigations must be taken independently and lead, as necessary, to disciplinary measures or effective prosecution.

3.2.7 Capacity for investigation of corruption

All agencies involved in border control, immigration control and law enforcement should ideally have an internal capacity to thoroughly investigate and report on any alleged incident of corruption or misconduct on the part of officials and staff. This may be done by internal affairs agencies which exercise varying powers and authority, though, as a rule, their mission is one of oversight, including the investigation of all incidents of alleged corruption. In some instances, they share this responsibility with other external agencies, such as a law enforcement agency, or an anti-corruption body. The selection of members of an effective internal investigation team is crucial to the success of an investigation. Members should possess the specific investigative skills likely to be needed, should have proven integrity, and should be willing to undertake the work. The backgrounds of investigators should be thoroughly checked from time to time, including social and family ties and lifestyles.

3.2.8 Internal Audit

Internal audits have a role to play in both the prevention and the detection of corruption. An internal audit involves an independent, objective review designed to systematically evaluate, and eventually help improve, the effectiveness of risk management, control, reporting and governance processes within an organization. Internal auditing covers not only an organization's finance function, but all the operations and systems in an organization. An internal audit may specifically focus, for example, on an agency's corruption risk prevention and mitigation strategies and programmes. Internal audits are an important way in which an agency can detect fraud and corruption.

3.2.9 Disclosures about Conflict of Interests, Assets and Gifts and Hospitality

There must also be requirements and means for public officials to disclose financial or family interests, gifts and hospitality. Adoption of guidelines: describing conflict of interest situations relevant to the organisation, its avoidance, to whom to report to and elaborating the consequences for any non-disclosure. Systems for the declaration and registration of assets, interests and gifts by all staff and managers, as well as adequate procedures for monitoring the accuracy of those declarations should also be established.

3.2.10 Use of Data Mining, Indicators/red Flags for detection of corruption

As part of an internal audit, a work review or a probe, data analysis techniques can be used to detect corrupt conduct. At the operational level, as part of their supervisory and work review processes, line managers can make use of simple data analysis tools and techniques to extract information that may indicate fraudulent activities in their areas of responsibility. For example, looking for the patterns of non-enforcement or selective enforcement of laws and regulations; unusual patterns or coincidences in the behaviour of officers (including any potential signs of collusion) and certain unusual patterns of border crossing, at certain checkpoints, certain times, or when certain individuals are in charge. Indicators can also be developed and used within border agencies to detect potential incidents of corruption. For example, staff that never takes holidays and therefore does not create opportunities for

others to understand how he performs his functions or the number of complaints concerning an office is either much higher or much lower than the number of complaints normally received about an office of similar size and importance.

Such analyses can help identify patterns, such as unexpected relationships between officials, unexpected frequent contacts among certain officers or suspicious contacts between officers and private businesses, which may reveal the potential presence of fraudulent activity.

A case study on a border agency in Southern African region that has embedded anti-corruption measures in its system has been provided as a benchmark.

Box 2: Anti- Corruption Measures at Mauritius Revenue Authority

The Mauritius Revenue Authority (MRA) is a para-statal organisation that represents the revenue department of Mauritius and it operates under the aegis of the Ministry of Finance and Economic Development of the country. The MRA is responsible for the assessment of liability, the collection and the accountability for tax and the management, operation and enforcement of revenue laws. It was set up in 2006 by bringing together different tax departments such as customs, income tax that were functioning separately. Thus, tax reform came with a new structure in the form of the MRA, based on new models of tax administration. It contained inherent corruption prevention and good governance features. Integrity and ethical behaviour were enhanced through training, compulsory declaration of assets by staff, higher salaries and code of conduct and ethics.

The employees of the MRA are subject to the national anti-corruption law². They are employed by the Board, which is in charge of staff recruitment. Promotion is not automatic. The leading officers of the MRA are employed on a contractual basis. If they do not perform well or are corrupt, it is

² Prevention of Corruption Act 2002-Mauritius

possible not to renew their contracts. In accordance with the MRA Act (2006), all employees must declare their assets and that of their close relatives such as children and spouse. Asset declarations are made under oath and in writing before the Supreme Court. This declaration is very comprehensive must be updated every three years.

The Internal Affairs and Internal Audit Divisions are charged with ensuring that legal regulations are respected by employees. These two divisions report directly to the Board to ensure more independence in their work. The Internal Affairs represent the internal corruption prevention and investigation unit of the organization. This division is charged with ensuring that employees show proper respect for the rules in place within the MRA and legal regulations in force. In addition, it verifies the asset declarations of all employees. The division can receive complaints against employees from members of the public, employees and directors. On identification of a corruption case, it can refer the matter to the national anti-corruption body ³ or to the police for further investigation, along with all necessary information. But the Board can also apply various disciplinary and administrative sanctions before opting for judicial prosecution.

These measures couple with bold trade facilitation initiatives implemented by Mauritius since around 2006 has definitely propelled Mauritius to be at the highest ranks in a number of International benchmarks such as the World Bank's Logistics Performance Index and Ease of Doing Business.

(Source: Information compiled from information available from MRA website and MRA Act 2006)

³ Independent Commission Against Corruption (ICAC)

3.3 Firm's Level

Fighting corruption requires collective actions addressing both supply and demand sides of corruption. Thus, public institutions cannot fight corruption and enhance integrity alone. Active involvement of the private sector is required to ensure a level playing field for all companies. Moreover, in many well-known fraud and corruption scandals such as Enron and Siemens, acquiescence to bribery ultimately came from the top, indicating serious flaws in corporate governance. Therefore, it is up to the board, or the owners in the case of a closed company, to ensure the company's ethical behavior. The ultimate accountability is theirs and so, increasingly, are the risks of personal liability if they do nothing.

In 2014, by building upon existing American, British, Canadian and Brazilian laws that outlaw the bribery of foreign officials, the Center for International Private Enterprise (CIPE) came up with a practical guide to help firms in emerging markets put in place anti-corruption compliance programs. According to the same publication⁴, companies that are transparent and proactive in instituting a robust compliance program, and educating their own suppliers and business partners on anti-corruption compliance, have a much better chance of forming lasting, trusted business partnerships with multinational corporations. For the Southern African region, compliance to such programs becomes more important and highly relevant to firms as it will clearly offer them a competitive advantage in terms of market access and increased trade with developed countries.

⁴ CIPE (2014: P19)

4.0 Conclusion

The 2015 OECD Trade Facilitation Indicators (TFIs) finds that the implementation of the TFA could reduce worldwide trade costs by between 12.5% and 17.5%. Countries which implement the TFA in full will reduce their trade costs by between 1.4 and 3.9 percentage points more than those that do only the minimum that the TFA requires. According to OECD, the WTO Trade Facilitation Agreement (TFA) creates a significant opportunity to improve the speed and efficiency of border procedures, thereby reducing trade costs and enhancing participation in the global value chains that characterise international trade today.

At a Policy Dialogue by European Policy Centre in 2014, former Director-General of the World Trade Organization, Pascal Lamy stated that corruption in international trade is basically a tax on the movement of services and people and therefore a hidden increase of the cost of trade. He clarified that, although corruption and bribery are multifaceted phenomenon and thus must be addressed in a multidimensional way, trade is one major dimension of this problem, and that is why trade regulation could possibly be of great value in the fight against corruption.

The various trade facilitation measures discussed above will definitely promote transparency, predictability, accountability and good governance at large thereby enhancing market access, trade and development. However, tackling the scourge of corruption calls for a more comprehensive, inclusive and coordinated approach in order to be able to tap the opportunities that the WTO TFA offers. It's only then that the WTO TFA can be effectively implemented and its real benefits can be reaped in Africa. While trade facilitation is not synonymous with anti-corruptive work, good governance is nevertheless essential in trade facilitation. This is

simply because there is a strong negative correlation between trade impediments and corruption. The more room for interpretation, maladministration and discretion, the larger the space for corruption.

Mauritius is a concrete example where the country has really benefitted by implementing effective trade facilitation measures and bold anti-corruption strategies. Mauritius tops the Sub Saharan Africa in the World Competitiveness Report 2014-2015 published by the World Economic Forum. The report states that on Overall, the country benefits from relatively strong and transparent public institutions (36th), with clear property rights, strong judicial independence, and an efficient government (26th). Private institutions are rated as highly accountable (14th), with effective auditing and accounting standards and strong investor protection (12th). The country's transport infrastructure is well developed by regional standards (42nd), especially in terms of ports, air transport, and roads.

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