

**SARAH MELLISA NTABAZI**

COMBATING CORRUPTION IN CUSTOMS THROUGH  
TRADE FACILITATION: CASE OF EAST AFRICAN  
COMMUNITY

A Research paper submitted in partial fulfillment of the requirements for the LLM Degree in  
International Trade and Investment Law, University of Pretoria, South Africa

Supervisor: Professor Daniel B. Bradlow

(University of Pretoria)

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**STUDENT NO.29723354**

## Declaration

I, SARAH MELLISA NTABAZI, declare that this dissertation is my original work. It has not been submitted before to any other university or institution. Where works of other people are used, references have been provided. I hereby present this work in partial fulfillment for the award of the LLM Degree in International Trade and Investment Law in Africa.

Signed

.....

Sarah Mellisa Ntabazi

31 May 2010

Pretoria,

South Africa

**S.M.NTABAZI**

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CASE OF EAST AFRICAN COMMUNITY**

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<b>APEC</b>	Asian Pacific Economic Community
<b>BCI</b>	Business Climate Survey Index
<b>CEN-SAD</b>	Community of Sahel-Saharan States
<b>CET</b>	Common External Tariff
<b>COMESA</b>	Common Market for Eastern and Southern Africa
<b>CU</b>	Customs Union
<b>EABC</b>	East African Business Council
<b>EAC</b>	East African Community
<b>EACCU</b>	The East African Community Customs Union
<b>EACCMA</b>	East African Community Customs Management Act
<b>ECCAS</b>	Economic Community of Central African States
<b>ECOWAS</b>	Economic Community of West African States
<b>EU</b>	European Union
<b>FDI</b>	Foreign Direct Investment
<b>GATT</b>	General Agreement on Tariffs and Trade
<b>GDP</b>	Gross Domestic Product
<b>GSP</b>	Generalised System of Preferences
<b>ICC</b>	International Chamber of Commerce
<b>IGAD</b>	Inter-Governmental Authority on Development
<b>LDC</b>	Least Developed Country
<b>NTB</b>	Non Tariff Barrier
<b>NTM</b>	Non Tariff Measures
<b>OECD</b>	Organization on Economic Community Development

<b>REC</b>	Regional Economic Community
<b>RIA</b>	Regional Integration Arrangements
<b>RKC</b>	Revised Kyoto Convention
<b>RTA</b>	Regional Trade Agreement
<b>SADC</b>	Southern African Development Community
<b>TF</b>	Trade Facilitation
<b>TI</b>	Transparency International
<b>UN</b>	United Nations
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>WEF</b>	World Economic Forum
<b>WBI</b>	World Bank Institute
<b>WCO</b>	World Customs Organisation
<b>WTO</b>	World Trade Organisation

## ABSTRACT

*“The World Customs Organization Arusha Declaration for customs integrity proposes two elements to improve integrity: simplification of procedures, including automation, and adequate human resource management. The declaration, along with the Integrity Development Guide, a set of comprehensive integrity tools specifically designed to help customs administrations implement the principles contained in the Arusha Declaration, casts light on customs reform and modernization from the angle of fighting corruption, as improving integrity should be a cornerstone of any capacity building activities.”*

Kunio Mikuriya, Deputy Secretary General, World Customs Organization  
In J.Edgardo C and S.Pradhan (eds) (2007) 367, *The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level*, Washington DC, World Bank.

Customs inefficiencies are well known to impede the integration of developing countries into the global economy. There are a number of bottlenecks to trading across borders. Among these bottlenecks, with their attendant costs, are: Excessive documentation, inadequate procedures and lack of audit-based controls; lack of risk assessment and management techniques; lack of modern infrastructure; lack of automation and use of computerized procedures; and lack of transparency. All these couples together create an environment rife with corruption as traders seek to process their transaction at whatever cost. Paying bribes then becomes the order of the day and result into an added cost to trading.

In this era of globalization, an enormous demand has been placed on customs administrations especially in Africa to simplify their procedures so as to enable firms to participate meaningfully in international and regional trade. The complexity and costs of transactions, including corruption must be eliminated, thus the urgent need for trade facilitation.

This study seeks to emphasize the potential of trade facilitation as a policy measure that can reduce the prevalence and negative effects of corruption in customs. While obviously not a cure-all for the wide variety of corrupt transactions taking place in customs administrations, this study will show that trade facilitation can nonetheless be of considerable help in dealing with corruption in customs.



# COMBATING CORRUPTION IN CUSTOMS THROUGH TRADE FACILITATION: CASE OF EAST AFRICAN COMMUNITY

## Chapter 1

### Introduction

#### 1.1 Background to the study

Trade has been identified to be potentially much more important than aid in helping developing countries.<sup>1</sup> International trade can have a significant positive effect on economic growth and development<sup>2</sup> such as helping in the creation of self-sustaining economies; competitive industries; high employment and improved incomes; increased innovation and technological advancements; advanced infrastructure and improved quality of the products for export, which all play a pivotal role in reducing poverty.<sup>3</sup> It is clear that increased participation in international trade and investment can serve as an engine for economic growth and development.<sup>4</sup> It is also worth noting that international trade played a major role in the industrial development of North America and Australia in the 19<sup>th</sup> Century, and of the East Asian ‘Tiger’ economies. India and China too, benefited from international trade at various points in the second half of the 20<sup>th</sup> Century.<sup>5</sup> These examples are evidence that trade is relevant for sustained industrial development.

Despite the apparent benefits of trade, intra-regional trade in Africa is miniscule. It is widely accepted that trade in African countries is said to be faced with several obstacles, which include (a) the small size of most African economies; (b) low per capita income, which is a proxy for the level of demand; (c) high trade costs resulting from high transport costs due to deficient physical and non-physical infrastructure, including inefficient border procedures; (d) lack of automation systems and; (e) inadequate human resource.<sup>6</sup> In addition, institutional factors such as poor and non transparent regulatory mechanisms leading to high incidence of

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<sup>1</sup> Stighitz JE and Charlton A, (2005)2. (Authors, book published in 2005, reference from page 2).

<sup>2</sup> Stighitz JE and Charlton A, (2005)2. (Authors, book published in 2005, reference from page 2).

<sup>3</sup>The ‘Leutwiler Report’, the GATT and the Uruguay Round, with an introduction by Arthur Dunkel,1987 Martinus Nijhoff Publishers, Boston, at p.11.

<sup>4</sup> Trebilcock MJ & Howse R (1999) 4.(Authors, book published in 1999, reference from page 4).

<sup>5</sup> Stighitz JE and Charlton A, (2005)2. (Authors, book published in 2005, reference from page 2).

<sup>6</sup> Commission for Africa, *Our Common Interest*, Report of the Commission for Africa, March 2005 at <http://www.uneca.org/commreport.pdf>. (accessed on 12/09/09).

*corruption*, poor economic policy and political tensions have been identified to have a negative effect on the flow of intra-African trade, and Africa's participation in trade globally.<sup>7</sup>

The African continent's poor trade performance is partly a result of high tariff barriers<sup>8</sup>. But as discussed above, it is generally agreed among trade and development experts that tariffs comprise only a small share of impediments to African trade.<sup>9</sup> It is certain, that the bulk of problems that constrain intra-regional trade have to do with non-tariff barriers (NTBs) that stifle the movement of goods and services across borders.

One issue, therefore, that has been identified as crucial to bolstering intra-African trade is trade facilitation (TF) : the process of reducing obstacles to trade at borders, including red tape, *corruption*, onerous customs procedures, restrictive visa systems, and complex data requirements for imports and exports,<sup>10</sup> all of which increase the cost of trading across the borders of Africa. These costs and inefficiencies provide a compelling case for implementing TF measures to make participation in international and regional trade easier and cheaper.

The cost of the vast amount of red tape that exists in moving goods across borders is estimated to exceed the actual level of import tariffs. A study by Asian Pacific Economic Community (APEC) reveals that simplifying customs formalities and procedures would generate almost twice the gains expected from tariff liberalization.<sup>11</sup>

The WTO has achieved remarkable success in the direction of trade liberalization and removal of barriers in terms of tariffs, and to some extent Non-Tariff barriers (NTB's). However, the time has come for the World Trade Organisation (WTO) to explore areas beyond tariffs and NTB's that impede trade. TF to a large degree can be viewed as an

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<sup>7</sup> UNCTAD Economic Development in Africa Report 2009 p.39-40 at [http://www.unctad.org/en/docs/aldcafrica2009\\_en.pdf](http://www.unctad.org/en/docs/aldcafrica2009_en.pdf) (accessed on 15/09/09).

<sup>8</sup> Kasto J(1996) 10.(author, Kasto J, book published in 1996, reference from page 10)

<sup>9</sup>Soko,M, *Why Trade Facilitation is key to boosting intra-African Trade*, at [http://www.mthente.co.za/resources/reports-and-articles/academic-articles-written-by-mthente-and-associates/AfricaGrowthAgenda\\_Soko\\_SepNov.pdf](http://www.mthente.co.za/resources/reports-and-articles/academic-articles-written-by-mthente-and-associates/AfricaGrowthAgenda_Soko_SepNov.pdf). (accessed on 12/09/09).

<sup>10</sup> OECD 2005: Organisation for Economic Co-operation and Development, Policy Brief, October 2005. *The Costs and Benefits of Trade Facilitation*. <http://www.oecd.org/dataoecd/58/25/35459690>, (accessed on 6/09/09).

<sup>11</sup> Ibid.

extension of the efforts of trade liberalization and is definitely one area that all countries will have to cooperate in for their mutual benefit, and the multilateral framework of the WTO provides an excellent forum to explore this issue.<sup>12</sup> TF measures need to complement trade liberalization if countries are to increase their external competitiveness and become better integrated in the world economy.<sup>13</sup>

Over the last decade, the concept of Trade Facilitation has received unprecedented attention and is at the heart of numerous initiatives within the customs world. Indeed, it has become a substantive item within WTO trade round negotiations; it is frequently referred to in supply chain security initiatives, and is a feature within many customs modernisation programs.<sup>14</sup>

As part of the July 2004 Package, the WTO General Council decided to commence negotiations on TF in order to increase the transparency of trade regulations (GATT Article X); simplify, standardize, and modernize import, export, and customs procedures (GATT Article VIII); and improve the conditions for transit (GATT Article V).

In addition to negotiation through multilateral trade instruments like the GATT, TF is sought through the establishment of Free Trade Areas (FTA).<sup>15</sup> Undoubtedly, the European Union (EU) is one of the most advanced with a fully functioning customs union that now has 27 member states.<sup>16</sup>

Besides the EU, there are several other regional groupings that frequently include provisions to facilitate trade by harmonising and standardising trade procedures and the administration of border controls. Examples of such groupings include the European Free Trade Associations (EFTA), the North American Free Trade Agreement (NAFTA), the Association of Southeast Asian Nations (ASEAN), Mercosur in Latin America, the Common Market for Eastern and Southern Africa (COMESA) and the East African Community (EAC).

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<sup>12</sup> Grainger (2008) 2 *World Customs Journal* 17 at 19.

<sup>13</sup> De Wulf, L & Sokol JB (eds) (2005) (Editors published in 2005, reference from page 27)

<sup>14</sup> OECD 2005: Organisation for Economic Co-operation and Development, Policy Brief, October 2005. *The Costs and Benefits of Trade Facilitation*. <http://www.oecd.org/dataoecd/58/25/35459690>, (accessed on 6/09/09).

<sup>15</sup> Van Houtte H (2002) 48. (Author, Van Houtte H, book published in 2002, reference from page 48)

<sup>16</sup> Lasok D & Cairns W (1983) 2. (Authors, book published in 1983, reference from page 2).

In addition to FTAs, Regional Integration Arrangements (RIAs) or Regional Trade Agreements (RTAs) constitute an increasingly significant feature of the world trade system. Africa is not an exception to this phenomenon. Estimates show that more than half of total world trade occurs through regional trade blocs/agreements and that world trade under RIAs<sup>17</sup>. By December 2006, a total of 211 RIAs had been notified to the WTO, of which 14 were in Africa. Among the African RIAs eight are regional economic communities (RECs). These are the Arab Maghreb Union (UMA), Community of Sahel-Saharan States (CEN-SAD), COMESA, EAC, Economic Community of West African States ECOWAS), Economic Community of Central African States (ECCAS), Inter-Governmental Authority on Development (IGAD), and Southern African Development Community (SADC).

RTAs nowadays include TF provisions. The institutional setting of regional agreements seems well designed to pursue a TF agenda. This requires not only the elimination of distortionary and inefficient rules and practices, but mostly carrying on an ambitious and positive agenda of reform by implementing internationally compatible modern legislation, systems and skills.<sup>18</sup>

Regional Trade Agreements can bring consistency to regulations and procedures between trading countries – something that proponents of TF have often supported.<sup>19</sup> The importance of TF in an RTA cannot be underestimated because it is a source of major gains in trade.<sup>20</sup>

The signing of the EAC Treaty establishing the current EAC on 30 November 1999, which came into force on 7 July 2001 upon its ratification by the Republics of Kenya, Uganda and Tanzania, and with Rwanda and Burundi joining on 1 July 2007, underscores East Africa's drive towards streamlining and reducing transaction costs in the region. As is indicated in the treaty, the main objective of the current EAC is to promote cooperation in “political,

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<sup>17</sup> OECD (2005), *Regional Integration Agreements*, OECD Publication, Paris. at <http://www.oecd.org/dataoecd/39/37/1923431.pdf>, (accessed on 14/12/09)

<sup>18</sup> Jayanta Roy, *Trade Facilitation: The World Bank Experience*, Paper presented at the Trade Facilitation Symposium, WTO, Geneva. March 2008, <http://siteresources.worldbank.org/.../BeyondSAFTAFeb2010Chapter5.pdf>. (accessed 18/12/09)

<sup>19</sup> Grainger A.(2007) *Trade Facilitation and Supply Chain Management a case-study at the interface between business and government*, at [www.tradefacilitation.co.uk](http://www.tradefacilitation.co.uk) (accessed on 14/12/09)

<sup>20</sup> Mark Pearson, “The COMESA Experience with Trade Facilitation: Benefits and Challenges of Regional Approaches to TA/CB, OECD; Regional Forum on Trade Facilitation, Yaounde, Cameroon, 27-28 Sept, 2006. <http://www.afdb.org/.../09484259-EN-INTRA-AFRICAN-TRADE-AND-REGIONLA-INTEGRATION.PDF> (accessed on 12/11/09).

economic and social fields” by encouraging economic development (including trade liberalization, monetary and financial integration; the free movement of persons, capital, goods and services); science and technology (including infrastructure, health and education); as well as political and legal matters<sup>21</sup>. It envisages deepening regional integration by establishing a Customs Union (CU), common market, a monetary union and, ultimately, a political federation among the partner countries<sup>22</sup>

The East African Community Customs Union, (EAC-CU) has been established as part of EAC in 2005. The overall goal of the EAC -CU is to deepen the integration process through liberalization and promotion of intra-regional trade.<sup>23</sup> TF is high priority for the EAC and has therefore been included in the EAC-CU protocol.<sup>24</sup>

Regional trade among the EAC member countries has shown a steady increase. One can class the EAC economies as fairly open given their high import and export GDP ratios.<sup>25</sup> Their overall trade imbalances can be accounted for by higher import ratios relative to their export ratios. A 2008 EABC survey on trade performance in the region reveals that Kenya is the largest regional exporter of intermediate and finished goods to all the EAC members. Kenya’s export to EAC region is evenly distributed in Uganda, Tanzania and Rwanda estimated at 26% on average. Kenya is a significant destination of Tanzania’s exports estimated at 44%. Her exports to Uganda are much lower estimated at 28%. On Uganda’s part, her main export destination is Rwanda which imports almost 36%, followed by Tanzania at 25% and Burundi at 21%. Tanzania’s export’ to Rwanda and Burundi are even at 14%.<sup>26</sup>

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<sup>21</sup> Article 5.1: EAC Treaty, 2001

<sup>22</sup> Article 5.2 : EAC Treaty, 2001

<sup>23</sup> EABC, *Study of Impact of EAC Customs Union on Businesses*, Executive Summary, August 2008, Final Report at [http://www.rtfp.org/media/eabc\\_study\\_on\\_impact\\_of\\_eac\\_cu\\_-\\_executive\\_summary\\_-\\_270808\\_final\\_bk.pdf](http://www.rtfp.org/media/eabc_study_on_impact_of_eac_cu_-_executive_summary_-_270808_final_bk.pdf). (accessed on 05/12/09).

<sup>24</sup> Article 6: Protocol on the Establishment of the East African Community Customs Union.

<sup>25</sup> World Bank (2004) *Global Economic Prospects 2005: Trade, Regionalism, and Development*, World Bank, Washington, D.C.

<sup>26</sup> EABC, *Study of Impact of EAC Customs Union on Businesses*, Executive Summary, August 2008, Final Report at [http://www.rtfp.org/media/eabc\\_study\\_on\\_impact\\_of\\_eac\\_cu\\_-\\_executive\\_summary\\_-\\_270808\\_final\\_bk.pdf](http://www.rtfp.org/media/eabc_study_on_impact_of_eac_cu_-_executive_summary_-_270808_final_bk.pdf). (accessed on 05/12/09).

Further, the survey results show that Burundi's exports within the EAC region is cockeyed towards Rwanda at 58%. Her export to Kenya, Uganda and Tanzania are evenly distributed at 14 %. For Rwanda her main export destination in the region is Kenya at 56% with the rest of the countries receiving 11% each.<sup>27</sup>

According to this survey's findings, businesses within the EAC region predominantly import from the rest of the world. Share of imports from this category ranges between 43% in Burundi to 75% in Tanzania. Europe is a significant source of imports for the EAC countries, with the share in total imports ranging between 7% and 14%. However, businesses report significant import from each other as showed above. Companies in Burundi, Rwanda and Uganda use considerable imports from the EAC region estimated at 43%, 32% and 22% in that order. Imports from Kenyan and Tanzanian businesses were rather low estimated at 6% and 5% of total imports, respectively. Imports from the COMESA region (non EAC countries) were reported by companies in Kenya and Rwanda while the rest of the EAC countries reported nil. SADC region (Non COMESA/EAC countries) was reported as a source of imports by companies in all the five EAC countries, with most of imports coming mainly from South Africa. Key importers under this economic block are Kenyan and Tanzanian businesses who reported imports at 18% and 17% respectively.<sup>28</sup>

Customs and border control agencies play a vital gate-keeping role in the interface between national and international markets. It is recognized that the increases in world trade of recent decades have placed increasing demands on customs.<sup>29</sup> Customs need to adjust to new ports of entry and additional hours of service, and their job is made more complex by a plethora of regional and bilateral trade agreements. In a broad context, national customs administrations are in charge of implementing a country's trade policy at the border. This involves, for example, levying tariff duties, verifying conformity of imported goods with regulatory requirements, and preventing the importation of prohibited or unsafe goods (e.g. illegal weapons or expired medicines).

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<sup>27</sup> Ibid

<sup>28</sup> Ibid

<sup>29</sup> Lane, M (1998), *Customs Modernisation and the International Trade Superhighway*. Westport, Conn.: Quorum Books

On the other hand, since customs has the final say as to whether or not a given consignment qualifies for preferential treatment, there will be an increase in the combination of power, opportunity and incentive which customs must also continue to contend with. Whilst the question of corruption has hitherto been regarded as a wholly one-sided affair, with customs viewed as the sole cause of corruption, a fairer approach would be to recognize the duality of the problem. Corruption, when tolerated becomes a tradable service with a complete set of consumers and suppliers (and may even be operated like a system of supply and demand) for customs and importers respectively.<sup>30</sup>

International trade researchers have highlighted the key role played by well run institutions in shaping international trade and production patterns.<sup>31</sup> Corruption in the area of customs has been shown to severely affect economic development, more precisely the flow of trade between developing countries. For instance, the 2006 World Bank-IFC Enterprise Survey for Uganda indicates that more than half of firms expect to make informal payments to public officials to get things done. 80% of companies report paying bribes to speed up bureaucratic processes especially in obtaining licenses, permits and in customs clearance.<sup>32</sup>

Furthermore, corruption data from the World Economic Forum (WEF), in line with past results as already stated, finds that higher levels of corruption are associated with lower levels of bi-lateral trade.<sup>33</sup> Higher corruption rates have been found to inhibit trade,<sup>34</sup> as well as investment and growth.<sup>35</sup> For instance, an Executive Opinion Survey carried out annually by the World Economic Forum (WEF), covering almost 6000 enterprises in over 100 countries, found that firms consider bad leadership and corruption as major obstacles to their operations.

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<sup>30</sup> Bolhofer (2008) 2 World Customs Journal 31 at 34.

<sup>31</sup> Anderson, J.E. & Marcouiller, D (2002), *Insecurity and the Pattern of Trade: An Empirical Investigation*, Review of Economics and Statistics, MIT Press vol.84(2), 342-352. at <http://fmwww.bc.edu/EC-P/WP418.pdf>. (accessed on 11/01/10).

<sup>32</sup> Anti-corruption Resource Centre, 2006, *Overview of corruption in Uganda* at <http://www.enterprisesurvey.org/ExploreEconomies/?economyid=193&year=2006>, (accessed 15/08/09).

<sup>33</sup> Batra, G et al (2003), *The Firms Speak: What the World Business Environment Survey Tells Us About Constraints on Private Sector Development*, <http://www.worldbank.org/wbi/governance/pubs/challenges.html> (accessed on 15/08/09).

<sup>34</sup> Anderson, J.E. & Marcouiller, D (2002), *Insecurity and the Pattern of Trade: An Empirical Investigation*, Review of Economics and Statistics, MIT Press vol.84(2), 342-352. at <http://fmwww.bc.edu/EC-P/WP418.pdf>. (accessed on 11/01/10).

<sup>35</sup> *Corruption: The Facts*, Foreign Policy, No. 107, Carnegie Endowment for International Peace: Washington, D.C., Summer 1997. <http://www.worldbank.org/wbi/governance/pubs/corrfacts.html>. (accessed on 15/12/09)



Indeed, corruption is identified as the primary obstacle to the operation and growth of firms in developing countries according to the World Business Environment Survey.<sup>36</sup>

Beyond questions of security and public safety, customs officers can have considerable de facto power to influence the operations of trading firms. In some cases at least, that power can be abused in order to obtain significant economic benefits.<sup>37</sup> The main reasons for giving a bribe range from the need to jump a queue of trucks, evading tariffs to missing important clearance documentation. For others, it is to protect cargo on the docks and avoid costly storage. Customs officials can more easily extract a bribe from a high tariff good, from a differentiated product without a set price in international markets and from containerized cargo by threatening to stop and inspect the container;<sup>38</sup> or to simply request additional documentation.<sup>39</sup> High duties combined with unsimplified customs procedures generate an untrustworthy environment of systematic tax evasion, fraud, under-collection and corruption.

On the other hand, reformed customs procedures (like automation of processes) reduce levels of evasion, under-declaration, fraud and collusion with Customs officials thereby reducing incidents of corruption.<sup>40</sup> The more automation of processes, the less opportunity there is for individual manipulation by people in customs or in business.<sup>41</sup>

While customs administration must manage multiple roles and responsibilities, their diligent efforts to achieve predictable and transparent Customs processes are frequently harmed by integrity deficiencies. Accordingly, customs and trade increasingly recognize that it is in their

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<sup>36</sup> Batra, G et al (2003), *The Firms Speak: What the World Business Environment Survey Tells Us About Constraints on Private Sector Development*, <http://www.worldbank.org/wbi/governance/pubs/challenges.html> (accessed on 15/08/09).

<sup>37</sup> *Corruption: The Facts*, Foreign Policy, No. 107, Carnegie Endowment for International Peace: Washington, D.C., Summer 1997. <http://www.worldbank.org/wbi/governance/pubs/corrfacts.html>. (accessed on 15/12/09).

<sup>38</sup> Sequeira, Sandra; and Simeon Djankov, 2009, *On the Waterfront: An Empirical Study of Corruption in Ports*, Working Paper, <http://www.gov.harvard.edu/student/sequeira/Corruption.pdf> (Forthcoming) (accessed 09/01/10).

<sup>39</sup> Rosie-Ackerman, S (1999) 58. (author, Rosie-Ackerman, book published in 1999, reference from page 58).

<sup>40</sup> Marcus Hellqvist, (2008), *Trade Facilitation from a Developing Country Perspective*, Paper by National Board of Trade/SWEPRO <http://www.kommers.se/upload/Analysarkiv/Publikationer/Trade%20facilitation%20Developing%20country%20issue.pdf>. (accessed on 12/12/09).

<sup>41</sup> De Wulf, L & Sokol JB (eds) (2005) (Editors published in 2005, reference from page 27)



common interest to fight corruption to foster sustainable and stable business growth and this paper intends to show how trade facilitation can assist in achieving this goal.

## 1.2 Statement of the problem

Customs and border control agencies which play a vital gate keeping role at the interface between national and international markets are frequently perceived corrupt. Although this may not be entirely true, this image negatively affects the overall investment climate of the country and the processing of international trade transactions. Corruption which is fostered by the lack of transparency in border procedures and predictability of trade-related operations increases both the cost and uncertainty of trading. The East African Business Council (EABC) based in Arusha, in its 2008 report on the Business Climate Survey Index (BCI) in the five EAC member states revealed that corruption and unnecessary delays were still major obstacles at custom points.<sup>42</sup> While obviously not a cure for all the wide variety of corrupt transactions taking place in many economies, this study intends to show that TF as a policy measure can nonetheless be an effective tool in reducing corruption in customs.

## 1.3 Research questions

This study seeks to answer the following research questions:

- 1) How does TF address the problem of corruption in Customs?
- 2) What efforts of trade facilitation are reflected in the legal and institutional frameworks of the EAC?
- 3) What are the limitations and constraints of implementing trade facilitation in the EAC?

## 1.4 Significance of the study and limitations

The dramatic increase of both the volume and complexity of trade is not only an issue for the EAC, but worldwide, increase in trade has made it demanding to keep trading procedures simple, predictable and transparent to allow commerce to flow as freely as possible. Coupled

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<sup>42</sup> Mbogori Charles, *Why EAC: Reflecting on the EAC Business Environment*, Paper presented during the 1<sup>st</sup> East African Investment Conference, 2008, [http://www.news.eac.int/index.php?option=com\\_docman&task=doc...gid](http://www.news.eac.int/index.php?option=com_docman&task=doc...gid) (accessed on 15/07/09).

with this is the lukewarm attitude to fight corruption in customs administration that continues to plague the smooth functioning of international trade.

The scope of this research covers three main areas: first, though TF has gained considerable policy attention over the last few years, there is very meager information available that is directly related to the topic. Second, it covers the region that makes the EAC. However, it will draw inspiration from other economic blocks and international instruments which will inform the arguments. Thirdly, in order to limit the research to a manageable scope, only trade facilitation measures in the narrow sense – as discussed in the WTO Council for Trade in Goods<sup>43</sup> have been considered. Particularly attention is drawn to Articles VIII and X of the GATT, 1994.

### **1.5 Research Methodology**

The study is primarily based on desktop research which is mainly a review of library literature. Various secondary sources such as journals, work papers, reports, written publications and news paper reports are to be consulted. The research will further draw from international and domestic instruments related to the topic and resolutions and reports from the WTO, WCO and other international bodies.

### **1.6 Literature review**

In the more recent past, a number of papers have been produced discussing specific aspects of TF. Most of these papers deal with either the economic impact of trade facilitation, such as expected costs and benefits, or are case studies analysing the trade facilitation capacity building needs and initiatives of particular countries.

For instance, studies by Wilson, Mann and Otsuki<sup>44</sup> indicate the quantitative impact of TF on trade flows, investment and government revenue. They incorporate country-specific measures

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<sup>43</sup> A compilation of all proposals made by WTO Members in relation to trade facilitation can be found in document G/C/W/434 of 15 November 2002, prepared by the WTO Secretariat) and detailed in the TCWP document "Trade Facilitation Principles in GATT Articles V, VIII and X: Reflections on Possible Implementation Approaches" TD/TC/WP(2003)12/FINAL, <http://www.oecd.org/dataoecd/16/10/41334871.pdf>. (accessed on 18/03/10).

<sup>44</sup> Wilson, J., et al (2003), "Trade Facilitation and Economic Development: Measuring the Impact" World Bank Policy Research Paper 2988, March 2003 at <http://www.worldbank.org> (accessed on 8/09/09).

of TF (port efficiency, customs environment, regulatory environment, and e-business) into a gravity model).

Studies of the OECD,<sup>45</sup> which place these estimates in a general equilibrium context using the Global Trade Analysis Project (GTAP) framework estimate that a reduction in transactions costs equals to 1% of the value and world trade would yield aggregate welfare gains of about US\$ 40 billion. Some empirical studies try to measure how time delays affect international trade. Hummels<sup>46</sup> estimated that each day saved in shipping time is equivalent to about a 0.8% reduction in ad valorem tariffs. Such work does not address the utility of specific TF measures, but shows that customs clearance measures and other TF initiatives have obvious time implications.

Further, this discussion draws on literature reviews, information provided and studies conducted by customs and trade experts from relevant international and regional organizations (e.g., WTO, World Bank, OECD, WCO, UNCTAD; APEC, COMESA and EAC among others. It relies on monitoring reports of trade facilitation in selected countries; past OECD work on trade facilitation; and business surveys regarding the customs environment in Africa in general and the East African region in particular.

Furthermore, this study will be guided by works of people like; Andrew Grainger<sup>47</sup> who suggests that occasionally ‘trade facilitation’ is also used more literally, and is extended to mean the improvement of transport infrastructure (that is, transport facilitation), *removal of government corruption*, reduction of customs tariffs, removal of inverted tariffs, resolution of non-tariff trade barriers, export marketing and export promotion.

Luc de Wulf and José B. Sokol<sup>48</sup>, hold the view that certain trade facilitation measures that simplify customs processes like automation reduce the opportunity for individual manipulation by people in customs. This implies that the more human contact is removed from the process, the less opportunity there is for distortions. He therefore supports the

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45 OECD (2002) Business Benefits of Trade Facilitation, Document TD/TC/WP (2001) 21/Final, Paris, at <http://www.oecd.org/dataoecd/24/6/42222094.pdf>. (accessed on 14/04/10).

46 Hummels,D.(2001),”Time as a Trade Barrier”, Purdue University, July 2001.

47 Grainger (2008) 2 *World Customs Journal* 17 at 19.

48 De Wulf,L & Sokol JB (eds) (2005) (Editors published in 2005,reference from page 27)

argument that transparency and a decline in corrupt practices can be achieved through TF. The above arguments and scholarly position shall inform this study.

Edward Kafeero,<sup>49</sup> who examines the legal framework and the scope of the EAC TF measures, applauds the importance of a proper legal framework in enhancing TF and also recommends reforms in the EAC customs laws. Whereas, he gives a detailed analysis of TF with regard to the WTO wider perspective, he is not conclusive on what the EAC should do to ensure that the existing laws and regulations are implemented. This study contends that Africa's problem is not so much in the lack of law but the lack of effective implementation. This study therefore intends to propose more effective ways of implementing the existing laws.

Creck Buyonge and Irina Kireeva<sup>50</sup> who discuss the challenges facing TF in Africa drawing examples from some EAC countries like Uganda and Kenya identify corruption as one of those challenges impeding trade in Africa. They further discuss possible ways of solving the hurdles facing Africa's trade, and will inform the general discussions of this study.

Indeed, there are several works addressing some trade facilitation initiatives but, a few of them highlight the effectiveness of TF in addressing the problem of customs corruption.

This study therefore seeks to contribute in this area by providing more detailed interpretations and implications of TF.

## **1.7 Definition of concepts**

### **Trade facilitation**

The term Trade Facilitation (TF) has various but rather inter-related definitions that have been given by different organisations and trade agreements. For example in the context

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<sup>49</sup> Kafeero (2008) 2 *World Customs Journal*, 63 at 64.

<sup>50</sup> Buyonge, C and Kireeva, I (2008) 2 *World Customs Journal*, 41 at 45.

WTO and the OECD, TF means: ‘The simplification and harmonisation of international trade procedures’; trade procedures being the ‘activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade’.<sup>51</sup>

Other definitions that exist go a little further. For instance, in the United Nations Centre for Trade Facilitation and Electronic Business report,(UN/CEFACT) it is defined as ‘the simplification, standardization and harmonization of procedures and associated information flows required to move goods from seller to buyer and to make payment’.<sup>52</sup> The United Nations Economic Commission for Europe (UN/ECE), defines TF as a ‘comprehensive and integrated approach to reducing the complexity and costs of the trade transaction process, and ensuring that all these activities can take place in an efficient, transparent, and predictable manner, based on internationally accepted norms, standards and best practices’.<sup>53</sup> This definition is related to that of the International Chamber of Commerce (ICC).<sup>54</sup> By comparison many bilateral and regional trade agreements have a broader understanding of TF, to include any procedures, processes or policies capable of reducing transaction costs and facilitating the flow of goods in international trade.<sup>55</sup> TF therefore becomes the other name for reduction in transaction costs through the simplification of trade procedures including customs and administrative procedures that impede or increase the cost of moving goods across international borders<sup>56</sup> and this is the definition that is deemed fit to guide this study.

## Customs

<sup>51</sup> WTO 1998, *WTO: a training package: what is trade facilitation?*

[http://www.wto.org/english/thewto\\_e/whatis\\_e/eol/e/wto02/wto2\\_69.htm#note2](http://www.wto.org/english/thewto_e/whatis_e/eol/e/wto02/wto2_69.htm#note2) (accessed on 11/12/09).

<sup>52</sup> OECD (2006) *Aid for Trade: Making It Effective*, <http://www.oecd.org/dataoecd/23/15/37438309.pdf> (accessed on 14/12/9).

<sup>53</sup> UN/ECE (2002), *Trade Facilitation In a Global Trade Environment (Advance copy), Forum on Trade Facilitation, Committee For Trade, Industry and Enterprise Development*, TRADE/2002/21, 21 March 2002, at <http://www.unece.org/forums/forum02/docs/02tr21.pdf> (accessed on 17/12/2009).

<sup>53</sup> Wilson, J., et al, (2003), *Trade Facilitation and Economic Development: Measuring the Impact*, World Bank Policy Research Working Paper No. 2988, <http://www.ideas.repec.org/d/iposujp.html> , (accessed on 14/12/09).

<sup>54</sup> <http://www.iccwbo.org/policy/customs/id587/index.html>, (accessed on 5/09/09).

<sup>55</sup> Wille, P. and J. Redden, 2007. “A comparative analysis of trade facilitation in selected regional and bilateral trade agreements and initiatives”, pp. 27-76, Chapter II in ESCAP, *Trade facilitation beyond the multilateral trade negotiations: Regional practices, customs valuation and other emerging issues – A study by the Asia-Pacific Research and Training Network on Trade*, (UN, New York) <http://www.unescap.org/tid/artnet/pub/tipub2466.pdf> (accessed on 10/04/10)

<sup>56</sup> UNCTAD Economic Development in Africa Report 2009 p.39-40 [http://www.unctad.org/en/docs/aldcafrica2009\\_en.pdf](http://www.unctad.org/en/docs/aldcafrica2009_en.pdf). (accessed on 15/09/09).

Customs is used to refer to that government agency that is entrusted with enforcement of laws and regulations to collect and protect import-revenue and to regulate and document the flow of goods in and out of the country.<sup>57</sup>

The Revised Kyoto Convention further defines ‘Customs’ as the government Service which is responsible for the administration of Customs law and the collection of duties and taxes and which also has the responsibility for the application of other laws and regulations relating to the importation, exportation, movement or storage of goods,<sup>58</sup> and this study will draw on this definition.

### **Corruption**

The term corruption as used in this work shall refer to the predominant interpretation used in most literature like that of Daniel Kaufmann to refer to “the abuse of public office for private gain,”<sup>59</sup> Transparency International (TI), the Berlin-based NGO and an influential anti-corruption pioneer also defines corruption as “The misuse of entrusted power for private gain.”

### **1.8 Chapter overview**

This work is organized in four chapters. Chapter one highlights the background, structure and the basic arguments that inform the study.

The second chapter will deal briefly with the trade policy of the EAC, its customs policy and the problem of corruption as an impediment to trade in the region. It will also look at the possible trade facilitation interventions that can be applied in addressing the problem of corruption. Chapter 3 will discuss efforts so far taken to include TF measures in the EAC regulatory structure and the prevailing problems that hinder the advancement of TF. The fourth chapter will analyze the limitations and constraints facing the implementation of TF in developing countries from the perspective of international organizations like the WTO, UNCTAD and World Bank. Proposed recommendations and conclusion will also be in this chapter.

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<sup>57</sup> <http://www.businessdictionary.com/definition/customs.html>, (accessed on 5/09/09).

<sup>58</sup> Chapter 2 General Annex of the Revised Kyoto Convention.

<sup>59</sup> Rosie-Ackerman,S (1999)2. (Author, Rosie-Ackerman, book published in 1999, reference from page 2).

## CHAPTER 2

### TRADE FACILITATION: BENEFITS; AND HOW IT REDUCES CORRUPTION IN CUSTOMS

#### 2.1 Introduction

This chapter lays the foundation for the study and treats trade development in the EAC and need for TF in particular in depth. The Chapter also identifies the objectives and benefits of TF generally and further examines the causes and the impact of corruption in customs on trade development. It also examines how TF can be an effective tool in curbing corruption in customs at border points in the EAC. World Trade Organization (WTO) and World Customs Organization (WCO) principles on trade facilitation are the two policy frameworks that guide concern and the basic arguments in this chapter.

#### 2.2 Trade Development and TF in the EAC

Trade within the EAC is still faced with many challenges, ranging from inadequate physical infrastructure; the need for reconciliation and harmonization of tariffs and border practices; persistent interference with ground transport; institutional weaknesses like those within state bodies charged with negotiating trade agreements; and above all, the rampant corrupt practices in the customs departments that manage trade across borders.<sup>60</sup>

Notwithstanding the above challenges, intra – regional trade within the EAC remains important for the economic development of the countries in the region. Prior to the full establishment of the customs union in September 2004, intra-regional trade had been liberalised to some extent with Kenya applying a preferential tariff reduction of an average of 90 percent on imports from the other two EAC members (Tanzania and Uganda). The tariff regimes of Tanzania and Uganda have since then also been liberalised.<sup>61</sup> Bilateral trade flows of the EAC member countries show that Kenya had significant trade surpluses with both Tanzania and Uganda in 2002. However, all three EAC countries had a large trade deficit with the rest of the world.<sup>62</sup>

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<sup>60</sup>Hamilton BA , *Cross Border Trade in East African Countries: Shared Issues and Priorities for Reform*, Report presented under the Business Climate Legal and Institutional Reform Project (BizCLIR), June 2009. <http://www.bizclir.com/cs/publications/overview.pdf>. (accessed on 15/09/09)

<sup>61</sup> Busse M & Shams R (2005) 6 *Estey Centre Journal of International Law and Trade Policy* 62 at 66.

<sup>62</sup> Busse M & Shams R (2005) 6 *Estey Centre Journal of International Law and Trade Policy* 62 at 68.



To strengthen their access to international markets, the countries that constitute the East African community today, (i.e. Burundi, Kenya, Rwanda, Tanzania, and Uganda), have each joined the WTO, and agreed, to a set of core trading rules between nations and to use the WTO as a forum for resolving trade disputes. Under the WTO's Generalized System of Preferences (GSP), as well as a number of bilateral agreements, a wide range of manufactured products from the EAC are allowed access and preferential duty treatment in the developed markets of the United States, Japan, Canada, New Zealand, Australia, and Switzerland, Norway, Sweden, Finland, and Austria, as well as other European countries.<sup>63</sup> However, the potential of regional trade in the EAC, which is dominated by agricultural goods and some locally manufactured products representing significant opportunities in the region, is still faced with the challenges that are of increasing concern among policymakers and business people in the region.

In an effort to improve on regional trade, the treaty of 1999 establishing the EAC, later ratified in July 2000 aimed at widening and deepening political, economic, and social cooperation among the member states.<sup>64</sup> As a result, the governments of the member states agreed to remove internal tariffs<sup>65</sup> and to eliminate all non-tariff barriers<sup>66</sup> that impede trade among those three countries. In late 2004, Kenya, Tanzania, and Uganda ratified a Customs Union (CU) Protocol which came into effect in early 2005. With the establishment of the CU came the introduction of the Common External Tariff (CET)<sup>67</sup> and internal tariffs for extra-regional imports and intra-regional trade. Rwanda and Burundi joined the EAC only recently in 2007 and of the five member states, only Burundi does not yet apply the CET. This was for the enhancement of the Community's objectives which is to further liberalise intra-regional trade in goods on the basis of mutually beneficial trade arrangements among the partner

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<sup>63</sup>Diodorus Buberwa Kamala, *The Achievements and Challenges of the New East African Community Cooperation*, an open lecture May 3, 2006. <http://www2.hull.ac.uk/hubs/pdf/memorandum58.pdf>. (accessed on 12/12/09).

<sup>64</sup>Article 3: EAC Treaty 2001.

<sup>65</sup> Article 11.1: EAC Customs Union Protocol 2004.

<sup>66</sup> Article 13.1: EAC Customs Union Protocol 2004.

<sup>67</sup> Article 12: EAC Customs Union Protocol 2004.



states.<sup>68</sup> A CET is said to be the backbone of a customs union which makes it a credible trading unit in the eyes of the outside world.<sup>69</sup>

The EAC countries however, still face formidable challenges in pursuing reforms. For instance, of the five member states, four of them still rank at the bottom quartile of countries recently surveyed by the World Bank's Doing Business project with respect to "Trading Across Borders"—which describes the relative time and costs spent at a border. Tanzania ranks in the third quartile.<sup>70</sup>

Furthermore, all EAC member states face veritable crises in corruption and conflicts of interest. Of 180 countries surveyed by Transparency International in 2008, only Tanzania and Rwanda ranked in the third quartile, with Burundi, Kenya, and Uganda falling among the 25 countries perceived as most corrupt in the world.<sup>71</sup> A 2008 Business Climate Index Survey conducted by the East African Business Council (EABC) revealed that money lost over a year, in carrying out trading business in the EAC, in form of bribes amounted to some US\$9.8M.<sup>72</sup> This includes bribes paid at roadblocks, customs and weighbridges. Such practices are unheard of in more developed economies that are often less tolerant of petty corruption.

It should be noted that a nation's customs service represents the first line of interest for traders. This therefore puts any nation's customs department at the centre of every international trade transaction.<sup>73</sup> In East Africa, as elsewhere, customs is the principal state authority charged with enforcing import tariffs, protecting borders from the importation of illegal goods, smuggling of drugs and weapons among others.<sup>74</sup>

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<sup>68</sup> Article 3.a: EAC Customs Union Protocol 2004.

<sup>69</sup> Lasok D & Cairns W (1983) 1.(Authors, book published in 1983, reference from page 1).

<sup>70</sup> World Bank, Doing Business 2009 (2008), and accompanying literature at [www.DoingBusiness.org](http://www.DoingBusiness.org) (accessed 10/12/09)

<sup>71</sup> Transparency International Corruption Perceptions Index (2008), at [http://www.transparency.org/news\\_room/latest\\_news/press\\_releases/2008/bpi\\_2008\\_en](http://www.transparency.org/news_room/latest_news/press_releases/2008/bpi_2008_en). (accessed 10/12/09)

<sup>72</sup> East African Business Council, The Business Climate Index- Survey, October 2008. At [http://www.eac.int/trade/index.php?option=com\\_docman&task=doc..](http://www.eac.int/trade/index.php?option=com_docman&task=doc..) (accessed on 10/12/09)

<sup>73</sup> McLinden, G. (2005). 'Integrity in customs'. In L. de Wulf and J.B. Sokol (eds) *Customs Modernization Handbook*. Washington DC: World Bank, pp. 67-89.

<sup>74</sup> Ferreira, C. et al, (2007), 'Challenges of Combating Corruption in Customs Administration', In J. Edgardo C and S. Pradhan (eds) *The Many Faces of Corruption*, Washington DC: World Bank, pp. 367-386.

Thus it is within this sphere that the TF procedures offer the highest trade gains and it is here, that all countries, (developed and developing alike), should start their TF process.<sup>75</sup> The fairness and efficiency of these TF efforts have a major impact on a country's reputation as a viable trade partner. When time spent at the border is needlessly belabored or rife with corruption, trade will be encumbered and the desirability of the country as a trading partner will be diminished.<sup>76</sup>

In each of the EAC countries, strengthening trade is the priority of government and many improvements have been made toward developing mature, export-oriented industries among others for trade to flourish. During the 2007 Africa Business Forum, the EABC acknowledged that simplifying customs procedures and accelerating clearance times will result in more trade for businesses as well as more revenue for the Governments,<sup>77</sup> consequently improving the economic livelihoods of the people.

### 2.3 Benefits of Trade Facilitation

It is important to emphasize that many of the various definitions of TF refer to reducing the time and *costs*<sup>78</sup> of the trade transaction process.

TF is a diverse and challenging subject with potential benefits for both business and government at national, regional and international levels. It involves political, economic, business, administrative, technical and technological as well as financial issues all of which converge with customs at the border, and which must be taken into consideration when a country or region develops its trade facilitation strategy.<sup>79</sup> Any measure that eases a trade

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<sup>75</sup> Marcus Hellqvist, *Trade Facilitation from a Developing Country Perspective*, Report written for the National Board of Trade/SWEPRO Secretariat. 8 April, 2003, <http://www.kommers.se/upload/Analysarkiv/Publikationer/Trade%20facilitation%20Developing%20country%20Issue.pdf>. (accessed on 04/12/09.)

<sup>76</sup> Lane Michael, (1998), *Customs and Corruption*, Working Paper, Transparency International, Berlin, at <http://www.siteresources.worldbank.org/.../PreventingCorruptioninPublicFinanceManagement.pdf>. (accessed on 12/08/09).

<sup>77</sup> Africa Business Forum, *Business Action For Improving Customs Administration In Africa (BAFICCA)*, 2007 Report, at <http://www.businessactionforafrica.org/.../OverviewBAFICCAJuly2007.pdf>. (accessed on 12/01/10).

<sup>78</sup> Wilson, J., et al (2003), "Trade Facilitation and Economic Development: Measuring the Impact" World Bank Policy Research Paper 2988, March 2003 at <http://www.worldbank.org> (accessed on 8/09/09).

<sup>79</sup> UNCTAD, *Trade Facilitation Handbook Part II, Technical Notes on Essential Trade Facilitation Measures*, 2006. At UNCTAD/SDTE/TLB/2005/2 [http://www.globalevent.mn/.../document\\_12c04f46afb0ff0b6dfa9f1c5814f45a.pdf](http://www.globalevent.mn/.../document_12c04f46afb0ff0b6dfa9f1c5814f45a.pdf). (accessed 15/12/09)

transaction and leads to time and cost reductions in the transaction cycle fits into the category of TF.<sup>80</sup>

In the economic literature, the impact of TF is usually modeled as a reduction in transaction costs.<sup>81</sup> Estimates of such costs vary significantly and it is useful to distinguish between direct and indirect costs. Direct costs include the cost of preparing documentation and complying with various customs procedures and other regulations, while indirect costs include the opportunity costs associated with time and delays in moving goods from the buyer to the seller.<sup>82</sup> Studies surveyed by OECD<sup>83</sup> suggest that indirect costs have been estimated to account for about 80% of total trade transaction costs and that trade transaction costs generally amount to 2% to 15% of the value of goods.

Wilson and Mann<sup>84</sup> emphasize that TF impacts primarily on economic activity by reducing transaction costs. Cumbersome customs procedures and formalities impose costs (whether direct or indirect) on importers both in monetary and in non-monetary terms as time, (although ultimately time means money since people pay a lot of money to save time.<sup>85</sup>)

Trade liberalization and the resulting lowering of tariff barriers in several rounds of multilateral trade negotiations, has shifted attention to more critical issues like non-tariff barriers and obstacles to trade, particularly cumbersome procedures and administrative delays.<sup>86</sup> In many instances, costs related to non-tariff barriers and cumbersome customs formalities have been said to exceed the cost of duties to be paid.<sup>87</sup>

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<sup>80</sup> Eduardo Bianchi, Instituto Políticas y Estrategias de Comercio Internacional (IPECI), July 2004, Final Report, at <http://www.caf.com/attach/17/default/perspectivas5.pdf>. (accessed 08/04/10).

<sup>81</sup> Supra note 19, Wilson, J., et al.

<sup>82</sup> SWEPRO (2002), *Trade Facilitation, Impact and Potential Gains*, Swedish Trade Procedures Council (SWEPRO), National Board of Trade, August 2002, at <http://www.kommers.se/.../Trade%20Facilitation%20Impact%20and%20Potential%20Gains.pdf>. (accessed on 14/04/10).

<sup>83</sup> OECD (2002) *Business Benefits of Trade Facilitation*, Document TD/TC/WP (2001) 21/Final, Paris, at <http://www.oecd.org/dataoecd/24/6/42222094.pdf>. (accessed on 14/04/10).

<sup>84</sup> Supra note 19 Wilson, J., et al

<sup>85</sup> Hummels, D. (2001), "Time as a Trade Barrier", Purdue University, July 2001.

<sup>86</sup> Trebilcock MJ & Howse R (1999) 4. (Authors, book published in 1999, reference from page 4).

<sup>87</sup> World Trade Organization (2002) *Trade Facilitation: Overview of Trade Facilitation Work*. World Trade Organization, [www.wto.org/english/tratop\\_e/tradfa\\_e/tradfac2\\_e.htm](http://www.wto.org/english/tratop_e/tradfa_e/tradfac2_e.htm) (accessed on 12/02/10)

Bureaucratic customs and administrative procedures often represent more serious barriers to the participation of particularly Small Medium Enterprises (SMEs) in international trade than tariff barriers.<sup>88</sup> SMEs are more common in developing countries and Low Developed Countries (LDCs) –a category where all EAC countries fall. TF is therefore an issue of greater significance to developing countries especially the land locked ones.<sup>89</sup> In the EAC, three of the partner states (Burundi, Rwanda and Uganda) are land locked.

TF is said to spread its benefits to all participants in economic activity. It represents lower transaction costs to exporters and importers, transparency and predictability; better information, a cost sensitive environment, robust control and higher revenues to governments while consumers, benefit by way of lower prices and tax efficiency.<sup>90</sup>

TF is particularly important for SMEs which have high compliance costs and on which the impact of inefficient and uncertain government regulations can be greatest because of their relatively small scale operation.<sup>91</sup> The fact that the greatest part of the business and employment sector of most developing countries are SMEs further increases the positive effects of TF. It is also a fact that SMEs are the major job-creators, particularly in developing countries.<sup>92</sup> Analysts have shown that the reason why many SMEs – who, as a whole, account for up to 60 % of GDP creation in many countries – are not active players in international trade has more to do with red tape than tariff barriers.<sup>93</sup>

Furthermore, SMEs are often severely limited by cumbersome trade procedures and even if they might have the possibility of hiring a commercial third party to assist them in the management of international trade transactions, the reduction of an already strained

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<sup>88</sup> International Trade Centre /UNCTAD/WTO (2005), *Business and the WTO Negotiations on Trade Facilitation, Geneva*, Technical Paper, at [http://www.intracen.org/btp/issues/trade\\_facilitation/.../trade\\_facilitation.pdf](http://www.intracen.org/btp/issues/trade_facilitation/.../trade_facilitation.pdf). (accessed on 05/05/10)..

<sup>89</sup> Trade and Human Development Unit at the UNDP Office in Geneva, *Trade, Trade Facilitation and Transit Transport Issues for Landlocked Developing Countries*, Publication supported by UNCTAD and Mission of Paraguay in Geneva, at [http://www.undp.org/poverty/docs/projects/Mongolia\\_LLDCs\\_publication.pdf](http://www.undp.org/poverty/docs/projects/Mongolia_LLDCs_publication.pdf). (accessed on 15/09/09).

<sup>90</sup> Eduardo Bianchi, *Argentina's National Experience with Trade Facilitation*, Final Report for the International Working Group on the Doha Agenda II, July 2004 at <http://www.comercio.gov.ar/descargas/CVBianchi2008diciembre.doc>. (accessed on 12/09/09).

<sup>91</sup> Hummel, D (2007) 21 *Journal of Economic Perspectives* 131 at 135.

<sup>92</sup> International Labour Organization, [www.ilo.org](http://www.ilo.org) <http://oracle02.ilo.org/dyn/employment.portal>. (Accessed on 12<sup>th</sup>/12/09)

<sup>93</sup> World Bank, *Doing Business Report(2009)*

profitability and loss of independence will limit even this possibility.<sup>94</sup> Simplification of trade procedures may therefore significantly improve SMEs possibility to get involved in international trade as well as increasing their competitiveness.<sup>95</sup>

TF contributes to the overall trade and development strategy by optimizing the use of trade infrastructure and complimenting the trade promotion efforts by improving a country's capacity to trade in a timely and cost-effective manner. It also facilitates the development and management of trade relations by making trade regulations and procedures more transparent and consistent with internationally accepted measures and standards.<sup>96</sup>

Foreign direct investors will pay attention to a country's ease and cost effectiveness of importing and exporting goods and services before making an investment decision.<sup>97</sup> Therefore, a country that has committed itself to facilitating trade will tend to secure more Foreign Direct Investment (FDI) and become more integrated into the regional and global production networks.

Thus, TF assumes even greater importance now in the arena of international trade and given recent trends in the structure of goods (and services) traded and the sophistication of such products i.e. goods are In this environment, where manufacturers rely on the uninterrupted reception of the necessary components to meet production contingencies, business cannot afford to have imported or exported goods tied up for long periods because of unnecessary or over-complicated trade procedures and requirements.<sup>98</sup> TF is therefore expected to reduce uncertainties in trade transactions and a more inclusive participation of the private sector in international trade.

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<sup>94</sup> UN. Economic and Social Commission for Asia and the Pacific (ESCAP), "Trade Facilitation Framework: a guiding tool, <http://www.unescap.org/publications/detail.asp?id=934>, (accessed 16/04/10).

<sup>95</sup> Marcus Hellqvist, *Trade Facilitation from a Developing Country Perspective*, Report written for the National Board of Trade/SWEPRO Secretariat. 8 April, 2003, <http://www.kommers.se/upload/Analysarkiv/Publikationer/Trade%20facilitation%20Developing%20country%20Issue.pdf>. (accessed on 04/12/09.)

<sup>96</sup> Asian Development Bank (2009), *Designing and Implementing Trade Facilitation in Asia and the Pacific*, November 2009 at <http://www.unescap.org/publications/details.asp?id=1352/pdf>. (accessed on 15/05/10).supra note 39

<sup>97</sup> OECD (2005), Organization for Economic Cooperation and Development, Policy Brief: *The Costs and Benefits of Trade Facilitation*, Paris October 2005, at <http://www.oecd.org/dataoecd/58/25/35459690.pdf>, (accessed on 12/02/10).

<sup>98</sup> UN/ECE 2002, *Trade facilitation in a global trade environment* (Advance copy), Forum on Trade Facilitation, Committee for Trade, Industry and Enterprise Development, TRADE/2002/21, 21 March 2002, at <http://www.unece.org/forums/forum02/docs/02tr21.pdf>, (accessed on 19/12/09)

Studies have shown that red tape leads to adverse trade results.<sup>99</sup> Excessive documentation associated with exports results in lower trade-to-GDP ratios, while more signatures for permits and licenses in trade lead to greater corruption thus creating a grand urgency for TF.<sup>100</sup>

Given this background, it is important to meet this basic challenge i.e. making trade as easy and quick as possible to harmonize global supply chains and production process while ensuring that governments are able to efficiently administer customs and safeguard national health and security.

## 2.4 Corruption in customs: an increased cost of trading

In most developing countries and LDC's today, corruption is widespread and is part of the everyday life. Society has learned to live with it, even considering it, fatalistically, as an integral part of their culture especially in business dealings.<sup>101</sup> In practice, it is the environment in which public servants and private actors operate that causes corruption. Developing countries are characterized with public administration which is often bureaucratic and inefficient.<sup>102</sup> They are also characterized by a large number of complex, restrictive regulations coupled with inadequate controls that corruption helps to get around. This situation is more manifest in customs administration thus acting as a serious bottleneck to trade development especially in developing countries.<sup>103</sup>

According to the Bribe Payers Index of 2008, the customs administration is perceived by business executives as one of the most corrupt sectors of government in many African

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<sup>99</sup> OECD (2009), *Overcoming Border Bottlenecks: The Costs and Benefits of Trade Facilitation*, OECD Trade Policy Studies, OECD Paris, at [http://www.oecd.org/document/55/0,3343,en\\_2649.../00.html](http://www.oecd.org/document/55/0,3343,en_2649.../00.html). (accessed on 12/01/10).

<sup>100</sup> Trade and Human Development Unit at the UNDP Office in Geneva, "Trade, Trade Facilitation and Transit Transport Issues for Landlocked Developing Countries", Publication supported by UNCTAD and Mission of Paraguay in Geneva, at [http://www.undp.org/poverty/docs/projects/Mongolia\\_LLDCs\\_publication.pdf](http://www.undp.org/poverty/docs/projects/Mongolia_LLDCs_publication.pdf), (accessed on 15/09/09).

<sup>101</sup> Hors, Irene, *Fighting Corruption in the Developing countries and Emerging Economies: The Role of the Private Sector*, Study by OECD Development Centre, OECD Observer No.220, April 2000 (to be published). <http://www.oecd.org/dataoecd/24/6/42222094.doc>. (accessed on 12/08/09).

<sup>102</sup> Lavallée, E., et al (2008). *Corruption and Trust in Political Institutions In Sub-Saharan Africa*, Afrobarometer Working Papers 102 (October). <http://www.afrobarometer.org/papers/AfropaperNo102.pdf>, (accessed on 15/09/09).

<sup>103</sup> Zuleta, JC et al, (2007), 'Combating Corruption in Revenue Administration: The Case of VAT Refunds in Bolivia', In J.Edgardo C and S.Pradhan (eds) *The Many Faces of Corruption*, Washington DC:World Bank



countries.<sup>104</sup> This is supported by the Afrobarometer survey, covering 18 sub-Saharan African countries, which revealed that the most discredited institutions are the police and tax administration; including customs.<sup>105</sup> Case studies from individual countries and regions across the continent provide a grim picture of the situation. A recent paper by Edward Kafeero<sup>106</sup> concludes that corruption is rampant within the East African Community customs. Some stakeholders, he writes, seem to be so much used to corruption that they consider it normal. Hence, customs efficiency in many developing countries is hampered by “normalized” corruption. This creates a major disincentive and obstacle to trade expansion.

#### 2.4.1 Causes of corruption in customs

At the centre of TF lies the role of customs and other controlling governmental bodies. Customs is at the centre of every international trade transaction and is often the first window through which the world views a country.<sup>107</sup> Customs administrations play a vital role in the economic welfare of a country. For that reason, dysfunctional customs administrations can easily harm trade relations and curtail foreign investment.<sup>108</sup>

The administration of trade regulations and customs procedures requires that every government employs staff and customs officials of high level of integrity and professionalism in their dealings with members of the public, traders and other government officials. However, day to-day realities in the business world, especially in the less developed economies indicate that complicated and unclear procedures continue to tempt customs officials and operators to take discretionary actions and exercise favoritism or engage in corrupt transactions.<sup>109</sup>

Three types of corruption have been identified in customs: Routine corruption or facilitation payments in which private operators pay bribes to obtain a normal or hastened completion of

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<sup>104</sup> Transparency International [TI]. 2008. *Bribe payers index 2008*. TI International Secretariat: Berlin. [http://www.transparency.org/news\\_room/latest\\_news/press\\_releases/2008/bpi\\_2008\\_en](http://www.transparency.org/news_room/latest_news/press_releases/2008/bpi_2008_en), (accessed on 15/09/09).

<sup>105</sup> Lavallée, E., M. Supra note 52

<sup>106</sup> Kafeero, E. (2008) 2 *World Customs Journal* 63 at 64.

<sup>107</sup> McLinden, G. (2005). ‘Integrity In Customs’. In L. de Wulf and J.B. Sokol (eds) *Customs Modernization Handbook*. Washington DC: World Bank, pp. 67-89.(supra note 14)

<sup>108</sup> Ferreira, C. et al, (2007), ‘Challenges of Combating Corruption in Customs Administration’, In J. Edgardo C and S. Pradhan (eds) *The Many Faces of Corruption*, Washington DC: World Bank, pp. 367-386

<sup>109</sup> Zuleta, J.C et al, (2007), ‘Combating Corruption in Revenue Administration: The Case of VAT Refunds in Bolivia’, In J. Edgardo C and S. Pradhan (eds) *The Many Faces of Corruption*, Washington DC: World Bank (supra note 53)

customs operations; then there is fraudulent corruption, in which the trader or agent seeks ‘blind eye’ or active collusive work with customs in order to reduce fiscal obligations or enlarge external earnings; and criminal corruption, where criminal operators pay bribes to permit a totally illegal, lucrative operation like drug trafficking.<sup>110</sup> All these forms of corruption are rampant at border custom points.

Since customs are part of every single international transport operation and trade transaction, they are charged with the duty of enforcing import tariffs, keeping out contraband and guarding against incoming products that violate intellectual property laws, among other functions.<sup>111</sup> Customs are in daily contact with traders and are put directly into the vortex of organized crime.<sup>112</sup> Criminals and fraudulent businesspeople find reason to use whatever means possible from extensive bribery to intimidation and violence to promote their illegal transactions.<sup>113</sup>

Customs is vulnerable to corruption because the real-time nature of its work gives most of its officials, even at junior level, great discretion.<sup>114</sup> They work in situations in which they have sole authorization and responsibility to make important decisions on the level of duty or taxes. This allows them the freedom to choose to accept or reject an import or export declaration or arbitrary embargo on an otherwise acceptable shipment for inspection.<sup>115</sup> In such situations, careful supervision and accountability is difficult.

For example, the EAC Customs law<sup>116</sup> provides: “ For purposes of carrying out the provisions of the Customs Management Act, every officer shall in the performance of his or her duty, have all the powers, rights, privileges and protection of a police officer of the partner state in which such officer performs his or her duty.” In passenger clearance, no person is allowed to remove any baggage from the baggage hall unless the proper officer authorises such removal<sup>117</sup>, the form of the declaration is at the discretion of the proper

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<sup>110</sup> Rose-Ackerman, S (1999)20. (Author, book published in 1999, reference from page 20).

<sup>111</sup> De Wulf, L & Sokol JB (eds) (2005)5. (Editors published in 2005, reference from page 5)

<sup>112</sup> Widdowson, David (2006) *Raising the Portcullis*, presentation to the WCO Conference on Developing the Relationship between WCO, Universities and Research Establishments, Brussels, March 2006, at [http://incu.org/docs/WCO\\_Conference\\_Report\\_March\\_2006.pdf](http://incu.org/docs/WCO_Conference_Report_March_2006.pdf), (accessed on 03/04/10)

<sup>113</sup> Ferreira, C. et al, (2007), ‘Challenges of Combating Corruption in Customs Administration’, In J. Edgardo C and S. Pradhan (eds) *The Many Faces of Corruption*, Washington DC: World Bank, pp.367-386 (supra note 58)

<sup>114</sup> Buyonge C. (2008)2 *World Customs Journal* 53 at 56.

<sup>115</sup> Klitgaard, R, (1998), *Controlling Corruption*, Berkeley: University of California Press

<sup>116</sup> Section 9: East African Community Customs Management Act, 2004.(EACCMA)

<sup>117</sup> Section 45:3 EACCMA, 2004.



officer<sup>118</sup> and the duty free allowance for passengers' baggage and personal effects is to a certain extent made at the discretion of the proper officer.<sup>119</sup> The exercise of discretion is fraught with the danger of abuse and leads to perceived and real corruption in customs.

In addition, customs administration, probably more than any other public bodies are inevitably faced with classic circumstances that sustain institutional corruption.<sup>120</sup> Opportunities are bound to arise since customs officials on duty meet face-to-face with members of the trading community who have a strong incentive to influence the decisions made by the officials. A lethal combination of administrative monopoly coupled with the wide discretion, particularly in an environment without an efficient post-clearance control and accountability system, the chance that such practices will ever be detected becomes minuscule.<sup>121</sup>

As Klitgaard<sup>122</sup> observed, corruption occurs when there is a monopoly plus discretion and no accountability. Moreover, because of its monopoly over the flow of goods, a customs agency can easily interfere with a firm's ability to do business. For this reason, the potential for corruption in the customs environment cannot be overstated.<sup>123</sup> A decision by a customs official to accept a fraudulent declaration can reduce significantly the duties and taxes owed and provide high rents both for the trader and the customs official, with the spoils divided at the expense of the treasury.

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<sup>118</sup> Section 46.1: EACCMA 2004.

<sup>119</sup> Fifth Schedule Part B Item 5 (1) and (7) of the EACCMA, 2004.

<sup>120</sup> CMI Working Paper. (2009) *The pursuit of integrity in customs: Experiences from sub-Saharan Africa*. CMI authors: Odd-Helge Fjeldstad., at <http://www.cmi.no/.../publication/?3473=the-pursuit-of-integrity-in-customs.pdf>, (accessed on 12/10/09).

<sup>121</sup> Customs Integrity Issues , Speech by Dr.Leonid Lozbenko, Deputy Secretary General WCO, 9<sup>th</sup> International Anti-corruption Conference (IACC), October 1999, Durban SA at [http://www.9iacc.org/papers/day4/plenary/dnld/d4pl\\_lozbenko.pdf](http://www.9iacc.org/papers/day4/plenary/dnld/d4pl_lozbenko.pdf), (accessed on 12/10/09)

<sup>122</sup> Klitgaard, Robert, 1998, *Controlling Corruption*, Berkeley: University of California Press

<sup>123</sup> Lane, Michael. 1998. *Customs and Corruption*. Working paper, Transparency International ,Berlin <http://www.siteresources.worldbank.org/.../PreventingCorruptioninPublicFinanceManagement.pdf>, (accessed on 12/10/09)

Moreover, unlike tax administrators, customs agencies operate in geographically dispersed and remote posts, with relatively few staff.<sup>124</sup> Such circumstances make it difficult to supervise individual customs officers.

Furthermore, even new staff transferred to offices permeated by corruption understandably finds it difficult to refuse participation in illegal schemes due to intimidation and fear of being harmed.<sup>125</sup>

A customs administration infected with corruption is hence going to be seriously dysfunctional and the impact of corruption will be felt throughout the society.

#### **2.4.2 Effects of corruption in customs**

Corruption tends to impose transaction-like costs on firms beyond the normal and official cost thereby increasing *the cost of trading*.<sup>126</sup> This is because corruption, though always illegal but incurred by business organizations, means additional costs that negatively affects trade. There are other costs imposed on firms in terms of identifying the individuals from whom permissions must be obtained, determining the appropriate size of bribe and the mechanisms for paying the bribe and so on.<sup>127</sup> These are all additional costs incurred by the importer making the burden of doing business enormous.

Customs operations pose several challenges for public sector management as well. In most countries, customs agency is one of the largest public sector agencies with extensive office network and large number of staff. The business community frequently perceives customs as one of the most serious constraints to business investment because of the corrupt tendencies of its officials.

The Transparency International Global Corruption Barometer identifies customs as the third most corrupt government agency after the police and the tax administration.<sup>128</sup> Corruption in

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<sup>124</sup> Ferreira, C. et al, (2007), 'Challenges of Combating Corruption in Customs Administration', In J. Edgardo C and S. Pradhan (eds) *The Many Faces of Corruption*, Washington DC: World Bank, pp.367-386 (supra note 58)

<sup>125</sup> Mikuriya, Kunio. 2005. "Integrity: a Cornerstone for Economic Development and Security." Speech at Global Forum IV on Fighting Corruption and Safeguarding Integrity, Brasilia, June 6-9 at <http://www.scribd.com/.../The-Many-Faces-of-Corruption-Tracking-Vulnerabilities-at-the-Sector-Level>. (accessed on 12/01/10)

<sup>126</sup> Italics for emphasis

<sup>127</sup> Alam M.S. (1990) 27 *The Journal of Development Studies* 647 at 650.

<sup>128</sup> Transparency International 2005 Report, TI International Secretariat: Berlin. [http://www.transparency.org/news\\_room/latest\\_news/press\\_releases/2008/bpi\\_2008\\_en](http://www.transparency.org/news_room/latest_news/press_releases/2008/bpi_2008_en), (accessed on 15/09/09).

customs agencies differs from that of other government bureaus, in that it may not even be understood as such by commodity importers and exporters. Bribes requested by customs officials to facilitate the clearance of import or export flows easily become tacitly accepted as another aspect of the cost of doing business and thus a normal part of the overall clearance expenses of customs brokers. These expenses are then routinely passed on to the customer through increased service fee. This then makes customs administrations so susceptible to institutionalized corruption.<sup>129</sup>

From a business standpoint, corruption both reduces the predictability of customs operations and raises the cost of cross-border trade. In business sectors that depend on expeditious clearance processes, such as courier services and just-in-time manufacturing, substantial illicit payments may be required to operate a business efficiently. In one transition country, the representative of an international express delivery service explained how he had to “employ” a number of customs agents to meet operational targets.<sup>130</sup> Traders reluctant to engage in corrupt practices are disadvantaged by way of delays in import clearance, extensive physical inspections, and the use of administrative discretion that works against the importer.<sup>131</sup>

The implications of corruption in customs on a nation’s capacity to benefit from the expansion of the global economy are obvious. Data obtained from the World Bank’s Investment Climate Surveys, 2003, indicate that 40% of firms included in the 80 country survey rate Customs/ Trade regulation as a major constraint to business investment.<sup>132</sup> For example, according to the 2008 EABC Business Climate Index survey, more than 35 per cent of business leaders indicated that corruption at customs is a major obstacle to doing business in the region.<sup>133</sup> Border corruption can therefore be particularly dangerous to a country’s

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<sup>129</sup> McLinden, G. (2005). ‘Integrity In Customs’. In L. de Wulf and J.B. Sokol (eds) *Customs Modernization Handbook*. Washington DC: World Bank, pp. 67-89.(supra note 14)

<sup>130</sup> Africa Business Forum ,Business Action For Improving Customs Administration In Africa (BAFICCA), 2007 Report, at <http://www.businessactionforafrica.org/.../OverviewBAFICCAJuly2007.pdf>. (accessed on 12/01/10).

<sup>131</sup> Ibid.

<sup>132</sup> World Bank , 2003. Investment Climate Survey Database, <http://www.enterprisessurvey.org> (accessed on 15/12/09)

<sup>133</sup> Reported by Ismail Musa Ladu, 13 August 2009,the Daily Monitor at [www.monitor.co.ug](http://www.monitor.co.ug).

economy. Traders who collude with officials to smuggle become “free riders” who are then able to sell goods at greater profit than their law abiding competitors.<sup>134</sup>

A sharp shortfall in the expected amount of customs duties and tax revenues collected is a clear signal that corruption is rampant. Pressure points include the collection of import duties—that is, customs duties, excises, and Value Added Tax (VAT)—as well as the expected operation of the domestic tax system. Imported goods that bypass the VAT levy rarely enter the formal economy. With the tax burden lowered by this, it means traders in the “gray” economy enjoy a comparative advantage over compliant importers. This occurs when the market is stocked with smuggled goods, thus distorting price signals and often forcing compliant local producers and importers out of legitimate business and into the shadow economy. This also means that corrupt practices in customs directly influence the size of a country’s informal economy and can effectively lower the ratio of tax revenue to Gross Domestic Product (GDP).<sup>135</sup>

In many developing countries like those of the EAC, customs’ collections continue to represent a large portion of government revenue.<sup>136</sup> Therefore delays in processing of imports and exports can cause significant losses, congestion at the ports and borders, and ultimately increase the cost of doing business which in turn adds to the cost of imported and exported goods. Corruption also affects the competitiveness of a country’s firms and scares away potential foreign investment.<sup>137</sup> The presence of widespread corruption can therefore destroy the legitimacy of a customs administration and severely limit its capacity to achieve its government’s objectives.

Competition to attract international trade and investment continues to grow unabated worldwide. The trading community is acutely aware of transaction costs and the need for predictability and efficiency in customs clearance to increase business profitability. Pervasive corruption in a customs agency can also have direct economic consequences for a country in the form of a lower ranking in global investment climate surveys. Since International trade

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<sup>134</sup> Rose-Ackerman, S (1999)20. (Author, book published in 1999, reference from page 20).(supra 60)

<sup>135</sup> Ferreira, C. et al, (2007), ‘Challenges of Combating Corruption in Customs Administration’, In J. Edgardo C and S. Pradhan (eds) *The Many Faces of Corruption*, Washington DC: World Bank, pp.367-386(supra note 58)

<sup>136</sup> Sherman SL & Glashoff H (1988) 23.(Authors, book published in 1988, reference from page 23).

<sup>137</sup> Lane, Michael. 1998. *Customs and Corruption*. Working paper, Transparency International, Berlin <http://www.siteresources.worldbank.org/.../PreventingCorruptioninPublicFinanceManagement.pdf>, (accessed on 12/10/09) (supra note 73)

also provides the conduit for economic growth by enhancing technology transfer, corruption in customs can significantly reduce this potential by inhibiting such transfers.<sup>138</sup>

In addition to increasing the cost of trading, corruption in customs takes on new significance in the current environment of heightened concern about the security of international trade. Customs play a vital role in combating illicit trade in high risk and prohibited goods, including drugs, weapons and explosives. For example in Germany, 70 percent of the total amount of drugs seized every year can be attributed to detection by customs officers.<sup>139</sup> Sophisticated systems and procedures designed to detect weapons of mass destruction, for example, will offer little protection if they can be circumvented simply by bribing the customs officials.<sup>140</sup>

Corruption in customs does not only increase the cost of trading but also violates the public trust, and can result in severe economic damage to a nation. Corruption in customs opens a door to organized crime, drains national revenue in the loss of duty and results in additional losses of revenues and taxes as businesses avoid corrupt customs.<sup>141</sup>

## **2.5 WTO/WCO Trade Facilitation Principles and how they address the problem corruption in Customs department**

TF has consequently been added to the WTO's agenda, with many countries now re-assessing their legislative and administrative approaches to the regulation of international trade. Specifically, the Singapore Ministerial Declaration directed the Council for Trade in Goods to "undertake exploratory and analytical work, drawing on the work of other relevant international organizations, on the simplification of trade procedures in order to assess the scope for WTO rules in this area".<sup>142</sup>

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<sup>138</sup> Walsh, James. 2003. "Practical Measures to Promote Integrity in Customs Administrations." In *Changing Customs: Challenges and Strategies for the Reform of Customs Administration*, ed. Michael Keen. Washington, DC: International Monetary Fund.

<sup>139</sup> Zuleta, JC et al. (2007), 'Combating Corruption in Revenue Administration: The Case of VAT Refunds in Bolivia', In J. Edgardo C and S. Pradhan (eds) *The Many Faces of Corruption*, Washington DC: World Bank. (supra note 53)

<sup>140</sup> Ferreira, C. et al. (2007), 'Challenges of Combating Corruption in Customs Administration', In J. Edgardo C and S. Pradhan (eds) *The Many Faces of Corruption*, Washington DC: World Bank, pp. 367-386. (supra note 58)

<sup>141</sup> Michael H. Lane, 1998, "Customs Modernization and the International trade Superhighway" p. 35

<sup>142</sup> Paragraph 21 of the Singapore Ministerial Declaration, adopted on 13 December 1996. At [http://www.wto.org/english/thewto\\_e/minist\\_e/.../wtodec\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/.../wtodec_e.htm). (accessed on 12/08/09).

Following extensive consultation with commerce and industry, the WTO identified a number of broad areas of concern at the international level.<sup>143</sup> These include: excessive government documentation requirements; lack of automation and insignificant use of information-technology; lack of transparency; unclear and unspecified import and export requirements; inadequate Customs procedures; particularly audit-based controls and risk-assessment techniques, and lack of co-operation and modernization amongst Customs and other government agencies, which impedes efforts to deal effectively with increased trade flows.<sup>144</sup>

The concerns identified by the WTO serve to highlight a number of potential weaknesses in the way governments, and more specifically customs administrations, approach the task of monitoring and regulating international trade. According to the WTO, the costs of import tariffs are often exceeded by the losses incurred by the international trading community as a result of slow clearance procedures, opaque and unnecessary documentary requirements and lack of automated procedural requirements.<sup>145</sup>

The Doha Ministerial Declaration included the following decision in relation to TF:

Recognizing the case for further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations. In the period until the Fifth Session, the Council for Trade in Goods shall review and as appropriate, clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 and identify the trade facilitation needs and priorities of members, in particular developing

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<sup>143</sup> Statement by the Chairman of the Council for Trade in Goods on 18 March 1998, summarising the outcome of the WTO Trade Facilitation Symposium held in Geneva, 9-10 March 1998. At [http://www.customscentre.canberra.edu.au/.../International trade Facilitation The Customs Imperative.pdf](http://www.customscentre.canberra.edu.au/.../International%20trade%20Facilitation%20The%20Customs%20Imperative.pdf). (accessed on 12/08/09).

<sup>144</sup> International Trade Centre UNCTAD/WTO *Business and the WTO Negotiations on Trade Facilitation*, Geneva Technical Paper 2005 at, [http://www.intracen.org/btp/issues/trade\\_facilitation/.../trade\\_facilitation.pdf](http://www.intracen.org/btp/issues/trade_facilitation/.../trade_facilitation.pdf). (accessed on 12/08/09).

<sup>145</sup> World Trade Organization (2002) *Trade Facilitation: Overview of Trade Facilitation Work*. World Trade Organization, [www.wto.org/english/tratop\\_e/tradfa\\_e/tradfac2\\_e.htm](http://www.wto.org/english/tratop_e/tradfa_e/tradfac2_e.htm). (accessed on 12/08/09)

and least-developed countries. We commit ourselves to ensuring adequate technical assistance and support for capacity building in this area.<sup>146</sup>

The Articles referred to relate to Freedom of Transit (Article V), Fees and Formalities connected with Importation and Exportation (Article VIII) and Publication and Administration of Trade Regulations (Article X).

The Fifth Ministerial Conference, which was held in Cancún, Mexico in September 2003, was unsuccessful in achieving agreement on these matters. However, it was subsequently decided that negotiations on TF would continue, and on 31 July 2004 the General Council agreed to adopt the ‘July Package’ that was to guide the next phase of the WTO Doha Round negotiations. It included:

Trade Facilitation: taking note of the work done on trade facilitation by the Council for Trade in Goods under the mandate in paragraph 27 of the Doha Ministerial Declaration and the work carried out under the auspices of the General Council both prior to the Fifth Ministerial Conference and after its conclusion, the General Council decides by explicit consensus to commence negotiations on the basis of the modalities set out in Annex D to this document.<sup>147</sup>

The issues of concern identified by the WTO have also been high on the agenda of the WCO as evidenced by the provisions of the revised International Convention on the Simplification and Harmonization of Customs Procedures (the Revised Kyoto Convention). The Convention, which came into force on 3 February 2006, is described by the WCO as the international blueprint for prudent, innovative Customs management, and is designed to maintain the relevance of Customs procedures at a time when technological developments are revolutionizing the world of international trade and travel<sup>148</sup>. The Convention serves to

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<sup>146</sup> Paragraph 27 of the Doha Ministerial Declaration, adopted on 14 November 2001.

<sup>147</sup> Paragraph (g) of the decision adopted by the General Council of the WTO on 1 August 2004. [http://www.wto.org/english/.../draft\\_text\\_gc\\_dg\\_31july04\\_e.htm](http://www.wto.org/english/.../draft_text_gc_dg_31july04_e.htm). (accessed on 12/08/09).

<sup>148</sup> World Customs Organization (2002) *Kyoto 2000: The International Convention on the Simplification and Harmonization of Customs procedures (Revised) - Pathway to Efficiency and Effectiveness in the Customs Environment*. World Customs Organization, Brussels. At [http://worldcustomsjournal.org/.../The\\_changing\\_role\\_of\\_Customs\\_evolution\\_or\\_revolution.pdf](http://worldcustomsjournal.org/.../The_changing_role_of_Customs_evolution_or_revolution.pdf). (accessed on 03/04/10).



implement customs- related principles developed by the WTO, such as Articles V, VIII and X of the GATT 1994.<sup>149</sup>

The General Annex stipulates the core principles for all customs procedures and practices to ensure that these are uniformly applied by customs administration.<sup>150</sup> These include:

- a) Standardization and simplification of goods declaration and supporting documents,
- b) Minimum necessary control,
- c) Risk management and audit based control,
- d) Fast track procedures for authorized persons and entities,
- e) Coordinated interventions with other agencies,
- f) Maximum use of ICT,
- g) Transparency and predictability and
- h) Availability of appeals processes.

Central to the new governing principles of the Convention is a required commitment by customs administrations to provide transparency and predictability for all those involved in aspects of international trade. This is also in line with WTO provisions that require Members (of which all EAC countries are), to ensure that their trade-related laws, regulations, decisions and rulings are administered in a “uniform, impartial and reasonable manner” as per Article X:3(a) of GATT 1994 (Publication and Administration of Trade Regulations).

It is considered that the GATT Articles and the Standards of the revised Kyoto Convention are fully compatible. As stated by the WCO:

All the legal provisions and the principles in the WCO instruments are compatible with, and complementary to, the three GATT Articles referred to in the context of trade facilitation in the Doha Ministerial Declaration. There is a clear recognition that customs procedures and their implementation exert a great impact on world trade and the international movement of goods across borders.

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<sup>149</sup> Kunio M.(2005). ‘Legal Framework for Customs Operations and Enforcement Issues’. In L. de Wulf and J.B. Sokol (eds) *Customs Modernization Handbook*. Washington DC: World Bank, pp. 51-66

<sup>150</sup> General Annex of the Revised Kyoto Convention at [http://www.customs.gov.pg/PDF\\_files/Information/RKC.pdf](http://www.customs.gov.pg/PDF_files/Information/RKC.pdf). (accessed on 15/08/09)



The GATT Articles set out the high principles for formalities and procedures for movement of goods, transit of goods and publication, in addition to administration of trade regulations. On the other hand, the instruments of the WCO - including the Kyoto Convention; through its legal provisions and implementation guidelines, - provide the basis and practical guidance and information for the implementation of these high principles.<sup>151</sup>

For decades, corruption has been an issue of concern for all stakeholders at both domestic and international level. TI, the UN<sup>152</sup> and WTO and other international bodies are also addressing bribery and corruption in business and government worldwide.

Despite the above efforts, customs is still, more often, cited as one of the most inefficient and corrupt sectors of government and yet there is little material available that provides practical solutions to the problems associated with predicting, controlling and eliminating the vice of corruption in the customs environment.<sup>153</sup>

In response to this, the international customs community through the WCO, commenced work in mid to late 1980's to formulate a comprehensive integrity anti-corruption strategy. The WCO hosted an extensive dialogue on customs corruption in Tanzania in 1992 that resulted in the unanimous adoption of the Arusha Declaration on Integrity in customs by WCO members.<sup>154</sup> Since that time, the Arusha Declaration has become the principal anticorruption framework for the WCO's 174 members' customs administration.<sup>155</sup> This declaration (Arusha) was later comprehensively revised after realizing the slow progress in stemming corruption in customs. The revised Arusha Declaration was unanimously endorsed by the WCO Council in June 2003.

The existence of conventions and instruments administered by the WCO provides certainty to international trade and diminishes opportunities from which corrupt practices can flourish. If the trade documentation correctly describes the goods, correctly values the goods and

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<sup>151</sup> Trade Facilitation Issues in the Doha Ministerial Declaration Review of the GATT Articles, Article X: Communication from the WCO to the Council for Trade in Goods dated 11 July 2002.

[http://www.wto.org/english/tratop.../tradfa\\_overview2002\\_e.htm](http://www.wto.org/english/tratop.../tradfa_overview2002_e.htm). (accessed on 12/08/09).

<sup>152</sup> The UN Declaration against Corruption and Bribery in International Commercial Transactions, 1996 <http://www.unodc.org/pdf/crime/commissions/11comm/6e.pdf>. (accessed on 10/12/09).

<sup>153</sup> De Wulf, L & Sokol JB (eds) (2004) 67. (Editors, book published in 2004, reference from page 67)

<sup>154</sup> Lane, MH (1998) 55. (Author, book published in 1998, reference from page 55).

<sup>155</sup> All East African Countries are members of the WCO

correctly certifies the origin of the goods then there is little room for dispute and the consignment should benefit from swift release from customs control.<sup>156</sup>

It all adds up to much greater consistency and transparency making it extremely difficult for individuals to impose arbitrary interpretations for personal benefit. To a very great degree, this dis-empowers would be corrupt officials.

The Revised Arusha Declaration on Integrity in Customs (2003) consists of 10 distinct but related elements considered essential for the development and implementation of a comprehensive and sustainable anticorruption and integrity enhancement program. It is closely aligned with a range of internationally agreed on customs instruments, standards and best practice approaches including the Revised Kyoto Convention. Some of the 10 elements of the Revised Declaration include, regulatory framework, transparency, automation, risk management, reform and modernization and code of conduct among others.<sup>157</sup>

The significance of the Arusha Declaration in the fight against corruption was emphasized by Kunio Mikuriya, Deputy Secretary General of the WCO when he said:

The World Customs Organization, Arusha Declaration for Customs Integrity proposes two elements to improve integrity: simplification of procedures, including automation, and adequate human resource management. The declaration, along with the Integrity Development Guide, a set of comprehensive integrity tools specifically designed to help customs administrations implement the principles contained in the Arusha Declaration, casts light on customs reform and modernization from the angle of fighting corruption, as improving integrity should be a cornerstone of any capacity building activities.<sup>158</sup>

Similarly, institutional analysis of corruption is clear on where the remedies lie. These include transparency, accountability and merit-based human resource management in public

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<sup>156</sup> Customs Integrity Issues , Speech by Dr.Leonid Lozbenko, Deputy Secretary General WCO, 9<sup>th</sup> International Anti-corruption Conference (IACC), October 1999, Durban SA at [http://www.9iacc.org/papers/day4/plenary/dnld/d4pl\\_lozbenko.pdf](http://www.9iacc.org/papers/day4/plenary/dnld/d4pl_lozbenko.pdf), (accessed on 12/10/09)

<sup>157</sup>Ferreira,C. et al, (2007), 'Challenges of Combating Corruption in Customs Administration', In J.Edgardo C and S.Pradhan (eds) *The Many Faces of Corruption*, Washington DC: World Bank,pp.367-386.(supra note 58)

<sup>158</sup> Ibid

administration, which, if implemented, makes it possible to curb corruption.<sup>159</sup> Simplification of state intervention in economic activity also helps. A study of the customs administration in Senegal found that using econometric tests helps in reduction in import taxes, simplification of their structure, implementation of reforms, reducing the discretionary powers of customs officials and computerization of procedures helped to reduce the level of fraud by 85% between 1990 and 1995.<sup>160</sup>

### 2.5.1 Transparency

Transparency is a fundamental principle of the WTO and it is enshrined in articles X of the GATT and III of the GATS.<sup>161</sup> WTO members are legally obliged to publish their trade regulations in order to allow their scrutiny through review of administrative decisions affecting trade, to notify changes in trade policies to its peers, among others.<sup>162</sup>

Transparency is a key issue for all customs administrations. It is essential in international trade in order to allow commercial operators to fully understand the conditions and constraints for entering and operating in a market. It implies the systematic availability and ready accessibility of information on the applicable border requirements and procedures to all interested persons.<sup>163</sup>

Increasing accountability and maintaining an open and honest relationship with clients and stakeholders is crucial to maintaining public trust and confidence in the performance of customs functions. Traders must be able to expect a high degree of certainty in their dealings with customs authorities.<sup>164</sup> These can only be achieved when customs laws, regulations and procedures, and administrative guidelines are made public, are easily accessible and are applied in a consistent manner.<sup>165</sup>

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<sup>159</sup> Hors, Irene, "Fighting Corruption in Developing Countries and Emerging Economies: the Role of the Private Sector", study by the OECD Development Centre 2000, [www.oecdobserver.org](http://www.oecdobserver.org) and <http://www.allbusiness.com/government>. (accessed on 15/09/09)

<sup>160</sup> Ibid

<sup>161</sup> UNCTAD Economic Development in Africa Strengthening Regional Integration for Africa' at Development <http://www.twnafrica.org/index.php?...unctad...regional-integration...unctad>. (accessed on 11/11/09)

<sup>162</sup> Ibid

<sup>163</sup> Costs of Introducing and Implementing TF measures, TD/TC/WP(2004)36/FINAL <http://www.unescap.org/tid/artnet/pub/wp306.pdf>. At (accessed 11/12/09)

<sup>164</sup> *ibid*

<sup>165</sup> Article X:3 GATT 1994.

Information of wide-ranging nature, including information about operational aspects, administrative implementation guidelines, or available special procedures, can usually be obtained by a variety of means such as the official publication of laws and regulations, judicial decisions, consolidated paper and online publications, customs handbooks, the press and trade publications, as well as enquiry points. The transparency and predictability of applicable requirements can be further enhanced by the comprehensive, accurate, prompt and cost-efficient provision of information and advice related to a company's specific operations, including advance rulings on tariff classification, value or origin, and motives behind administrative decisions or actions.<sup>166</sup>

If accurate and detailed information on trade-related laws, regulations, procedures, formalities and documentation are not publicly available, it is extremely difficult for traders, particularly the small or infrequent ones to comply. This further, gives the enforcing agencies room to alter procedures and requirements at will (either to facilitate or impede trade), creating opportunities for collusion between agents and traders where customs agents extract rent(bribes) from traders, which then results in loss of public revenue and a lot of costs to the business community.<sup>167</sup>

Besides, the discrepancies sometimes experienced especially in developing countries between the legal interpretations of different customs administrations and officials means companies can never predict what interpretation of a rule will apply at any particular time. For instance, in the EAC, ambiguous provisions in the Customs Management Act (CMA) result in excessive officer discretion, particularly with respect to penalties. Since the CMA provides for only maximum amounts,<sup>168</sup> fines in practice often prove excessive and vary widely across the EAC. In Kenya, penalties ranging from US\$250 to US\$2,000 for inadvertent errors were cited during the BizCLIR diagnostic.<sup>169</sup>

Consistent interpretations of laws are therefore much needed since importers can only be expected to self declare their liabilities in an environment where the interpretation of the laws

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<sup>166</sup> OECD paper TD/TC/WP(2004)36/FINAL <http://www.oecd.org/dataoecd/0/28/42024340.pdf>. (accessed on 14/03/09).

<sup>167</sup> International Chamber of Commerce 2007, "The International Business Perspective on Capacity Building to Improve Trade Facilitation, [www.iccwbo.org](http://www.iccwbo.org) (accessed on 20/01/2010).

<sup>168</sup> Part XVIII of the East African Community Customs Management Act, 2005

<sup>169</sup> Supra n.16

is consistent and procedures are standardized, and in a situation where each transaction is treated in the same way as the previous one.<sup>170</sup>

Lack of transparency and uniformity further encourages discretionary and corrupt behavior by customs officials. *Predictability*<sup>171</sup> is essential for companies trading in a global environment and a lack of transparency and predictability is likely to deter companies from conducting business in such an environment.<sup>172</sup> A transparent and consultative process of developing rules and procedures not only results in a simplified, practical and efficient system that works in the region but enhanced transparency also reduces corruption. During the Africa Business Forum of 2007, Business Action for Improving Customs in Africa (BAFICCA) in its deliberations noted that a faster, more predictable and efficient customs meant, higher government revenues, a better investment climate, *less bribery and corruption*<sup>173</sup>, a better environment for legitimate business and a more difficult environment for illicit businesses and illegal practices.<sup>174</sup>

The East African Business Council has also gone ahead to demand that East African governments set up structures that will promote transparency and bolster business transactions between government and the private sector. Speaking during the just concluded Africa Growth Opportunity Act (AGOA) forum in Kenya, the East African Business Council Executive Director, Charles Mbogori, said e-government builds accountability by eliminating gate keepers and standardizing service delivery. He further emphasized that, "Publishing government information online makes it possible to track decisions and actions and thus serve as an additional deterrent to corruption."<sup>175</sup>

The Global Competitiveness Report (GCR) data on irregular payments on exports and imports can provide an indication of the quality of rules and the lack of publication and administration in trade policy. It is thus difficult to disentangle the impact of effective publication of trade rules and regulations from that of efficient administration. Efficient

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<sup>170</sup> Michael Keen, Changing Customs: Challenges and strategies for the reform of Customs Administration" IMF Paper at <http://www.imf.org/external/pubs/ft/pam/pam55/pam55.pdf>. (accessed on 13/02/10).

<sup>171</sup> Italics for emphasis

<sup>172</sup> Supra note 125

<sup>173</sup> Italics for emphasis

<sup>174</sup> Africa Business Forum-Business Action for Africa June 2007, Enhancing African Trade: Trade Facilitation and Customs Improvement. BAFICCA –Lessons from East Africa

<sup>175</sup> EABC 2009 AGOA Forum, [www.eabc.info](http://www.eabc.info) and [www.agoa.gov](http://www.agoa.gov) (accessed on 4/12/09)

administration of existing rules and regulations may be measured in terms of corruption or its absence.<sup>176</sup>

The customs legal and regulatory framework has already been identified as a core risk area for corrupt practices. Simplification of the customs code and streamlining secondary legislation are perhaps the most important ways to limit the opportunity for corruption. Such actions can also increase economic efficiency. For example, lowering and harmonizing tariff rates, eliminating special exemptions, providing clear rules for the classification of goods, and reducing the number and type of supporting documents to be provided for customs clearance clarifies and brings transparency to the obligations of importers and reduces their compliance costs. Transparency also requires availability of up-to-date and easily accessible information on customs laws and procedures.<sup>177</sup>

In addition, a clear and efficient administrative and judicial dispute resolution mechanism is a necessary tool for ensuring the correct application of the legal framework. Importers will feel protected from having to participate in corrupt practices if they are sure that there is a clear-transparent system for redress. Moreover, the outcome of the dispute resolution process should be made widely available internally as well as to the trading community to reduce future opportunities for bribe extraction.<sup>178</sup>

Lack of transparent and publicly available trade-related rules are among the most cited Non Tariff Barriers to international trade. The publication of rules and regulations and administration based on the published rules, are the basis for reducing the costs associated with goods crossing international borders. Ultimately, transparency, predictability and fairness in a country's dealings with the international trade community are the hallmarks of modern trade facilitation.

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<sup>176</sup> ADB, Designing and Implementing Trade Facilitation in Asia and the Pacific November, 2009 at <http://www.unescap.org/publications/details.asp?id=1352>. (accessed on 15/04/10)

<sup>177</sup> Michael Keen, Changing Customs: Challenges and strategies for the reform of Customs Administration" IMF Paper at <http://www.imf.org/external/pubs/ft/pam/pam55/pam55.pdf>. (accessed on 13/02/10).

<sup>178</sup> Zuleta, JC et al, (2007), 'Combating Corruption in Revenue Administration: The Case of VAT Refunds in Bolivia', In J.Edgardo C and S.Pradhan (eds) *The Many Faces of Corruption*, Washington DC:World Bank. (supra note 53)

## 2.5.2 Automation

Automated systems in customs are one of the most important tools for simplifying international trade procedures. GATT Article VIII “Fees and Formalities connected with Importation and Exportation”. Paragraph 1(c) recognizes “the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements”. Proposals from WTO members related to clarification of, and improvements to, Article VIII consider the introduction of automation of customs and other border agency procedures.<sup>179</sup>

Customs automation mainly results in increased transparency in the assessment of duties and taxes, substantial reductions in customs clearance times, and predictability. All these factors will eventually lead to direct and indirect savings for both government and the trading community. Governments will benefit through the increased collection of duties and taxes. There will be less fraud due to the uniform application of laws and regulations, the automated calculation of duties and taxes as well as built-in security.<sup>180</sup>

Customs automation and computerization is an effective way of minimizing the potential for arbitrary or illegal customs actions. It is an excellent resource for monitoring the performance of port personnel. For example the number of declarations that a customs officer designates as “red” or “green” could be tracked with individual officers held accountable for their actions. Automated systems could provide the foundation for a much needed ‘single window’ through which all state agencies with border functions could view standardized border information. This would simplify import transactions and reduce costs.<sup>181</sup>

Computerization of core customs processes can also improve efficiency and effectiveness and remove opportunity for corruption. Well designed and implemented systems can minimize unnecessary face-to-face contact between officials and clients and reduce opportunities for

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<sup>179</sup> The WTO reference document for this topic is TN/TF/W/43 (see latest revisions) Chapter H 1

<sup>180</sup> UNCTAD Trust Fund for Trade Facilitation Negotiations, Technical Note No.3, at <http://r0.unctad.org/ttl/technical-notes.htm> (accessed on 15/02/2010).

<sup>181</sup> Hamilton BA , *Cross Border Trade in East African Countries: Shared Issues and Priorities for Reform*, Report presented under the Business Climate Legal and Institutional Reform Project (BizCLIR), June 2009. <http://www.bizclir.com/cs/publications/overview.pdf>. (accessed on 15/09/09).



the improper exercise of discretion. Automated systems can also be configured to maximize the level of accountability and provide reliable audit trail for later evaluation and review.<sup>182</sup>

Better automation in East Africa customs administration would improve the quality of trade statistics; give more accurate statistics on transactions, markets and other aspects of the trade process desirable for potential investors both domestic and foreign.<sup>183</sup> For instance, in Uganda, automation of customs processes was strengthened through the introduction of Automated System for Customs Data (ASYCUDA++)<sup>184</sup> program in compiling data, which include a detailed breakdown of the time required for the various steps of the clearance process and for each of the color channels.<sup>185</sup> Kenya chose the SIMBA integrated systems with the capacity to link all actors and documents involved within the tax and customs systems.<sup>186</sup> Scanners were introduced at the Mombasa port and a “one -stop” document processing centre was also established at the Kenya Revenue Authority to reduce the clearing time for import-export documents from five to one day. Private sector users of the new systems report that there is less need to pay undocumented fees, as there are fewer “officials” handling their documents and fewer documents being handled.<sup>187</sup>

Further research has supported the argument that Trade facilitation involving automation of customs procedures (combined with training of customs officials) can lead to real improved controls, reduced administrative costs, and can overcome technical constraints, reduce

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<sup>182</sup> CMI Working Paper. (2009) *The pursuit of integrity in customs: Experiences from sub-Saharan Africa*. CMI authors: Odd-Helge Fjeldstad., at <http://www.cmi.no/.../publication/?3473=the-pursuit-of-integrity-in-customs.pdf>, (accessed on 12/10/09). (supra note 70)

<sup>183</sup> Hamilton BA , *Cross Border Trade in East African Countries: Shared Issues and Priorities for Reform*, Report presented under the Business Climate Legal and Institutional Reform Project (BizCLIR), June 2009. <http://www.bizclir.com/cs/publications/overview.pdf>. (accessed on 15/09/09). supra note 1

<sup>184</sup> ASYCUDA is a computerised customs management system that covers most foreign trade procedures. It handles manifests and customs declarations, accounting procedures, transit and suspense procedures. ASYCUDA generates trade data that can be used for statistical economic analysis. The ASYCUDA software is developed in Geneva by UNCTAD

<sup>185</sup> De Wulf, L & Sokol JB (eds) (2005) 13. (Editors, book published in 2005, reference from page 13)

<sup>186</sup> Customs automation and process Reform: Lessons from Kenya BIZCLIR Issue 12, March 2007 at [http://www.bizclir.com/galleries/bestpractices/01.128.08BP12\\_Kenya.pdf](http://www.bizclir.com/galleries/bestpractices/01.128.08BP12_Kenya.pdf). (accessed on 10/11/09)

<sup>187</sup> Hamilton BA , *Cross Border Trade in East African Countries: Shared Issues and Priorities for Reform*, Report presented under the Business Climate Legal and Institutional Reform Project (BizCLIR), June 2009. <http://www.bizclir.com/cs/publications/overview.pdf>. (accessed on 15/09/09). (supra note 1)



opportunities for corruption, and promote a culture of cooperation between government and business.<sup>188</sup>

Creck Buyonge<sup>189</sup> in support of automated systems in customs emphasises that it provides 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.<sup>190</sup>

Computerisation, more than any other change in customs administration, is said to provide for an opportunity to implement standardised procedures that leave little need for face to face contact or opportunity for the use of an official's discretion.<sup>191</sup>The clearance process can also easily be audited and trailed which forces customs staff to follow well defined rules and procedures.

Although, not a total remedy in itself, automation as a TF principle, can go a long way in reducing corruption in customs. Automation of customs processes leads to greater transparency, less human interaction and as a result, diminishes corruption.<sup>192</sup>Computerisation therefore remains the most important technical instrument for implementing an anti-corruption program.<sup>193</sup>

## Conclusion

It is against this background that TF remains an effective tool in addressing the malady of corruption in customs. TF aims at reducing the cost of trading by increasing transparency and simplifying procedures. Corruption in customs has been identified as a transactional cost that increases the cost of trading, which can be addressed by TF through reducing paperwork, number of signatures required and individuals who are involved in these transactions.

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<sup>188</sup> Oliver Morissey and Chris Milner, "Trade Facilitation in developing countries", CREDIT Research Paper 08/05 at <http://www.ideas.repec.org/p/not/notcre/08-05.html>. (accessed 12/04/09).

<sup>189</sup> Buyonge C & Kireeva I (2008)2 *World Customs Journal* 51 at 55.

<sup>190</sup> Ibid

<sup>191</sup> Bolhöfer CE (2008)2 *World Customs Journal* 31 at 33.

<sup>192</sup> Buyonge C & Kireeva I (2008)2 *World Customs Journal* 51 at 55.(supra note 146)

<sup>193</sup> Purohit MC,(2006) 42.(Author, book published in 2006, reference on page 42).

Regulatory reform and availability of information on rules and regulations, automation of trade procedures and upgrading of infrastructure might therefore provide a second-round boost to trade through reduced corruption. No quick fix solutions currently exist but a combined effort by the public sector, private sector and government to implement all the proposed Revised Arusha Convention on Integrity principles will go a long way in addressing this problem.

## CHAPTER 3

### A LEGAL FRAMEWORK FOR TRADE FACILITATION AS RECOGNISED INTERNATIONALLY AND AS REALISED WITHIN THE EAC

#### 3.1 Introduction

This chapter examines TF efforts developed in the EAC and the need for a legal framework to support such efforts. The position in this study is that a strong legal framework very essential in any customs reform plan. Assuring legal stability during and after a trade facilitation commitment will ensure that the fruits of any customs reform will have long lasting effects especially against the backdrop of persistent corruption in the customs department in the EAC as well as other parts of the world. Attention is first drawn to the international legislation that governs TF and how the same is reflected in the general legal framework of the EAC customs.

#### 3.2 Why a legal framework?

Customs, as discussed earlier is at the forefront of agencies that intervene in international trade. Hence, the manner in which customs operates highly affects international trade either negatively or positively. In other words, the manner in which customs operates can either complicate or simplify international trade especially of goods.<sup>194</sup> It is widely accepted that a modern customs service has to strive for transparency, predictability and fairness in its dealings with the international trade community.<sup>195</sup> Ultimately, this calls for the integration of the concept of TF in the day-to-day customs management.

TF is not only a cross-sectoral discipline involving traders from all industries and various government ministries but it also depends on the condition of a country's infrastructure; be it

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<sup>194</sup> Widdowson, David (2005) *International Trade Facilitation: The Customs Imperative*, presentation to the APEC Workshop on the WTO Trade Facilitation Negotiations, Kuala Lumpur, March 2005. At [http://www.customscentre.canberra.edu.au/.../International trade Facilitation The Customs Imperative.pdf](http://www.customscentre.canberra.edu.au/.../International%20trade%20Facilitation%20The%20Customs%20Imperative.pdf). (accessed on 12/02/10).

<sup>195</sup> Peter Baish, *Customs and Border Agency Best Practices* [http://www.bizclir.com/cs/expert\\_opinions/expert\\_opinions?view.pdf](http://www.bizclir.com/cs/expert_opinions/expert_opinions?view.pdf). (accessed on 15/08/09).

roads, ports or customs facilities or a country's human resource and revenue base, and its institutional and regulatory capacity.<sup>196</sup>

Consequently, customs operations require a solid and modern legal framework within which duties can be discharged.<sup>197</sup> Such a framework should provide for customs related legislation to promote transparency and predictability (e.g. timely dissemination of information, advance rulings, independent audit, and appeal processes), provide for modern customs and procedures that also includes risk management, audit-based control and adequate automation; simplified customs procedures, promotes customs integrity; and meets international standards.<sup>198</sup>

Without an effective legal framework that guarantees transparent, predictable and prompt customs procedures, investors and other businesspersons will find it highly painstaking to conduct business or invest in a country in this competitive international business environment.<sup>199</sup> It is therefore of critical national interest for every country to maintain its customs activities at high levels of effectiveness, buttressed by a legal system that meets not just internationally accepted standards, but also standards judged by their simplicity in aiding trade.<sup>200</sup>

Important to note also, is that it is impossible to form a reasonable judgment of customs efficiency and integrity without a broad assessment of the quality and clarity of the regulations that these officials are obliged to interpret and implement religiously. Vague, outdated and ambiguous regulations are, at best, reasonable grounds for inefficiency and, at worst, breeding grounds for dishonest practices like corruption.<sup>201</sup> There is, therefore, the need for a modern legal framework.

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<sup>196</sup> UNCTAD, Trade Facilitation Handbook Part II, Technical Notes on Essential Trade Facilitation Measures, 2006. UNCTAD/SDTE/TLB/2005/2 at <http://www.unctad.org/Templates/Download.asp?docid=7058&lang...> (accessed on 15/09/09).

<sup>197</sup> Mikuriya, K. (2005). 'Legal Framework For Customs Operations and Enforcement Issues'. In L. de Wulf and J.B. Sokol (eds) *Customs Modernization Handbook*. Washington DC: World Bank, pp. 51-66.

<sup>198</sup> Ibid

<sup>199</sup> Asian Development Bank(2009), *Designing and Implementing Trade Facilitation in Asia and the Pacific*, November 2009 at <http://www.unescap.org/publications/details.asp?id=1352/pdf>. (accessed on 15/05/10).

<sup>200</sup> UNCTAD, Trade Facilitation Handbook Part II, Technical Notes on Essential Trade Facilitation Measures, 2006. UNCTAD/SDTE/TLB/2005/2 at <http://www.unctad.org/Templates/Download.asp?docid=7058&lang...> (accessed on 15/09/09).

<sup>201</sup> Trade Facilitation Tool Kit Review 3 at [http://www.siteresources.worldbank.org/INTTLF/.../TF\\_Toolkit\\_Rev3.pdf](http://www.siteresources.worldbank.org/INTTLF/.../TF_Toolkit_Rev3.pdf) (accessed on 12/09/09).

### 3.3 International Regulation of Customs and TF Measures

The three important intergovernmental organizations that develop and monitor international standards and best practices for trading across borders are the UN, the WTO, and the WCO.<sup>202</sup> Important to note, is that all five members of the EAC are members of these international bodies.<sup>203</sup>

In order for TF to function and generate the potential benefits, it must be based on globally accepted standards, rules and methods.<sup>204</sup> The main objectives of TF are to simplify and standardize documents, procedures and operations with a view to harmonizing local (regulatory and commercial) customs and practices in line with multilateral agreements; either binding (e.g. WTO rules and WCO conventions) or voluntary business standards (e.g. recommended customs and practices of the International Chamber of Commerce (ICC)).<sup>205</sup>

In joining the WTO, member states must implement and adhere to its conventions and rules for free and fair trade. One of the most important of these is the WTO Agreement on Customs Valuation (ACV), which mandates that the customs value of imported goods, to the greatest extent possible, should be the transaction value. Besides, there the rules of origin that have been under development for a number of years. Unfortunately, WTO members have so far failed to reach an agreement on the definition of rules of origin, despite efforts undertaken in the WCO since 1995.<sup>206</sup> Having harmonized rules of origin for non preferential purposes, this measure would go a long way in saving time and costs to traders and customs officers and provide for greater certainty and predictability of trade.<sup>207</sup>

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<sup>202</sup> Grainger (2008) 2 *World Customs Journal* 17 at 18.

<sup>203</sup> CMI Report, *Fast Tracking East African Integration: Assessing the Feasibility of a Political Federation by 2010*, Thomas Nzioki Kibua and Arne Tostensen, CMI 2005:14 at <http://www.cmi.no/.../file/2088-fast-tracking-east-african-integration.pdf>. (accessed on 12/09/09).

<sup>204</sup> Marcus Hellqvist, *Trade Facilitation from a Developing Country Perspective*, Report written for the National Board of Trade/SWEPRO Secretariat. 8 April, 2003, <http://www.kommers.se/upload/Analysarkiv/Publikationer/Trade%20facilitation%20Developing%20country%20issue.pdf> (accessed on 04/12/09.).

<sup>205</sup> ICC's Commission on Commission on Facilitation of Trade at <http://www.unece.org/forums/forum02/docs/02tfbroch.pdf>. (accessed on 03/10/09).

<sup>206</sup> Trade Facilitation Reforms in the service of Development TD/TC/WP(2003)11/FINAL at [http://www.vi.unctad.org/files/studytour/strussia10/files/.../OECD\\_TF%20Reform.pdf](http://www.vi.unctad.org/files/studytour/strussia10/files/.../OECD_TF%20Reform.pdf). (accessed on 09/10/09).

<sup>207</sup> De Wulf, L & Sokol JB (eds) (2005) (Editors published in 2005, reference from page 27).

As part of the July 2004 Package, the WTO General Council decided to commence negotiations on TF in order to increase the transparency of trade regulations (GATT Article X). This would also simplify, standardize, and modernize import, export, and customs procedures (GATT Article VIII); and improve the conditions for transit (GATT Article V).<sup>208</sup> At present, these constitute the core of multilateral rules on trade facilitation.<sup>209</sup>

In addition, chief among the GATT's international conventions, standards and recommended practices are the Harmonized System of Nomenclature, the International Convention on Temporary Admission (Istanbul Convention) and the Convention on Mutual Administrative Assistance (CMAA).<sup>210</sup> These rules govern essential aspects of international trade like standard, best practices for efficient and simplified processing of goods and conveyances; classification of goods for revenue collection using the Harmonized System; standardized trade statistics, cooperation and information exchange rules between customs services of various countries; and common facilitative treatment of goods that transit a country.<sup>211</sup>

Furthermore, in the regulation of the customs environment, of particular importance, is the WCO's International Convention on the Simplification and Harmonization of Customs Procedures also known as the Revised Kyoto Convention (RKC).<sup>212</sup> This convention reflects the current economic and technological changes necessary for a modern customs administration, conforming to international standards and practices while also incorporating best practices of member administrations.<sup>213</sup> The RKC provides both the legal framework and a range of agreed on standards that can be used to harmonize customs policies and procedures worldwide.<sup>214</sup> It is an excellent means for facilitating trade, ensuring economic growth, and improving the security of the international trade system. It lays out principles for modern and

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<sup>208</sup> The General Agreement on Tariffs and Trade (GATT) governed the multilateral trading system from 1948 to 1995, when the World Trade Organization (WTO) superseded it. GATT 1994 constitutes an integral part of the WTO Agreement.

<sup>209</sup> UNCTAD, Trade Facilitation Handbook Part II, Technical Notes on Essential Trade Facilitation Measures, 2006. UNCTAD/SDTE/TLB/2005/2 at <http://www.unctad.org/Templates/Download.asp?docid=7058&lang...> (accessed on 15/09/09).

<sup>210</sup> De Wulf, L & Sokol JB (eds) (2005) at p.28.

<sup>211</sup> De Wulf, L & Sokol JB (eds) (2005) at p.30.

<sup>212</sup> The Revised Kyoto Convention was adopted by 114 Customs administrations attending the World Customs Organization's 94th Session in June 1999. It came into force on February 3, 2006, three months following India's becoming the 40th signatory to the Protocol of Amendment; 61 countries had formally consented to the Convention as of April 2009. (WCO 2006)

<sup>213</sup> Michael H. Lane, 1998, Customs Modernisation and the International Trade Superhighway, p.33

<sup>214</sup> Mikuriya, K. (2005). 'Legal Framework For Customs Operations and Enforcement Issues'. In L. de Wulf and J.B. Sokol (eds) *Customs Modernization Handbook*. Washington DC: World Bank, pp. 51-66, at p.54.

efficient customs procedures, namely transparency, simplification, harmonization, use of information technology, risk management to facilitate legitimate trade while maintaining effective control, partnership with stakeholders including government agencies, enhanced security and revenue collection, partnership among the private sector and other customs administrations.<sup>215</sup>

Standard 1.2 of the Revised Kyoto Convention (RKC) states that:

“The conditions to be fulfilled in customs formalities to be accomplished for procedures and practices in this Annex and in the Specific Annexes shall be specified in national legislation and shall be as simple as possible.”

Therefore, the RKC advocates transparency and simplification from the outset, which are fundamental principles of TF. Whereas the RKC is a practical blueprint for modern and efficient customs procedures throughout the EAC, its only Uganda that has to date acceded to the RKC (June 27, 2002).<sup>216</sup>

In addition to the above, agreements such as those on import licensing, technical barriers to trade, sanitary and phytosanitary measures and pre-shipment inspection also contain a number of provisions relevant to TF.<sup>217</sup>

### **3.4 International Measures adopted to Combat Corruption in Customs**

In view of the problems posed by corruption, the United Nations Convention against Corruption which was adopted in 2003 and came into force on 14 December 2005, contains a provision inviting states to take note of this Code and other “relevant initiatives of regional, interregional and multilateral organizations”<sup>218</sup>

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<sup>215</sup> Speech by Kunio Mikuriya, WCO Deputy SG “Trade Facilitation: benefits and capacity building for customs” UNECE forum on Trade Facilitation, 14-15 May 2003, Geneva at [http://www.intracen.org/btp/issues/trade\\_facilitation/.../trade\\_facilitation.pdf](http://www.intracen.org/btp/issues/trade_facilitation/.../trade_facilitation.pdf). (accessed on 14/04/09).

<sup>216</sup> Hamilton BA, *Cross Border Trade in East African Countries: Shared Issues and Priorities for Reform*, Report presented under the Business Climate Legal and Institutional Reform Project (BizCLIR), June 2009 at <http://www.bizclir.com/cs/publications/overview.pdf>. (accessed on 15/09/09).

<sup>217</sup> OECD, *The Economic Impact of Trade Facilitation*, TD/TC/WP(2005)12/FINAL at <http://www.oecd.org/ech/tradepolicy/facilitation.../pdf>. (accessed on 15/02/10)

<sup>218</sup> (Article 8, para.3).

Within the framework of its integrity programme, the WCO has produced an Integrity Self-Assessment Guide, a Model Code of Conduct, an Integrity Development Guide, and an Integrity Action Plan, which is continuously updated. In addition to these global efforts, there have been many undertakings to improve integrity in customs at national and regional levels. One of the main examples is the Maputo Declaration, adopted in March 2002 by the Heads of Customs across Africa.<sup>219</sup>

Besides, there is also information on codes of conduct for customs officials adopted in various countries in the Compendium on Integrity Best Practices, issued by the WCO in May 2005<sup>220</sup>,

The Model Code of Ethics and Conduct, developed by the WCO, serves as a guide for these countries. The need for the adoption of such codes was also recognized by the WCO in its Declaration of the Customs Co-operation Council Concerning Good Governance and Integrity in Customs, in June 2003 (Revised Arusha Declaration). It includes, inter alia, a specific recommendation stating that “A key element of any effective integrity programme is the development, issue and acceptance of a comprehensive code of conduct which sets out in very practical and unambiguous terms the behavior expected of all customs personnel. Penalties for non-compliance should be articulated in the code, calibrated to correspond to the seriousness of the violation and supported by appropriate administrative and legislative procedures.”<sup>221</sup>

The WCO Model Code of Ethics and Conduct provides for disciplinary action for the most serious offences committed by customs officials. It states: “All officials of customs must comply with the law. The special responsibilities of customs means that offences relating to legislation, that customs administers, or has an interest in, are regarded most gravely when committed by customs officials. Customs officials who commit offences involving, in particular: prohibited drugs; fraud; seeking or accepting bribes; or illegal importation or

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<sup>219</sup> More information on Maputo Declaration is available at [http://www.r0.unctad.org/ttl/technical-notes/TN07\\_IntegrityofOfficials.pdf](http://www.r0.unctad.org/ttl/technical-notes/TN07_IntegrityofOfficials.pdf). (accessed on 09/10/09).

<sup>220</sup> WCO Integrity Tools at [http://www.wcoomd.org/sw\\_valelearningoncustomsvaluation\\_cbintegritytooloverview.htm](http://www.wcoomd.org/sw_valelearningoncustomsvaluation_cbintegritytooloverview.htm). (accessed on 09/10/09).

<sup>221</sup> Paragraph 7 of the Revised Arusha Declaration at [http://www.uino.gov.ba/download/.../Revised\\_Arusha\\_Declaration.pdf](http://www.uino.gov.ba/download/.../Revised_Arusha_Declaration.pdf). (accessed on 09/10/09).



exportation of goods will be subject to disciplinary action, regardless of any penalties applied as a result of criminal proceedings.”<sup>222</sup>

Other multilateral initiatives to promote rules of conduct for public officials in customs administrations are: Global Forum I on Fighting Corruption (1999); Global Forum II on Fighting Corruption (2001); Global Forum III on Fighting Corruption (2003); Global Forum IV on Fighting Corruption (2005).<sup>223</sup>

Transparency is also reinforced by strong and effective guarantees of public access to information. The African Anti-corruption Convention obligates its member states to enforce this right as a critical means of combating corruption.<sup>224</sup>

### **3.5 Trade facilitation: Measures adopted in the EAC Legal Framework**

One of the fundamental pillars of the EAC is cooperation in trade liberalization and development.<sup>225</sup> The Community’s customs union was considered an appropriate entry level of the integration process that would advance these fundamental pillars.<sup>226</sup> Although it is ideally an advanced stage of integration that requires an elaborate and functioning legal and institutional mechanism, EAC was not reinventing the wheel as it had been a fully operationalized customs union under the first East African Community that collapsed in 1977.<sup>227</sup>

On March 2, 2004, member states of the EAC signed a protocol for the establishment of the East African Community Customs Union which commits the states to eliminate Non- Tariff Barriers (NTBs).<sup>228</sup> However, despite signing an agreement to eliminate NTBs, they are still

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<sup>222</sup> UNCTAD Trust Fund for Trade Facilitation Negotiations Technical Note No. 7, *Maintenance and reinforcement of integrity and ethical conduct among officials* at [http://www.r0.unctad.org/ttl/technical-notes/TN07\\_IntegrityofOfficials.pdf](http://www.r0.unctad.org/ttl/technical-notes/TN07_IntegrityofOfficials.pdf). (accessed on 10/10/09).

<sup>223</sup> More information on these Global Forums and related documents can be found at: <http://www.ivforumglobal.org.br> ; <http://usinfo.state.gov/topical/econ/integrity> ; <http://www.state.gov/p/inl/rls/other/21851.htm>

<sup>224</sup> Article 3 and 9 of The African Union Convention on Preventing and Combating Corruption (AU Convention) adopted in Maputo on 11 July 2003.

<sup>225</sup> Article 74: EAC Treaty, 2000.

<sup>226</sup> Lasok D & Cairns W (1983) 1.(Authors, book published in 1983, reference from page). 1

<sup>227</sup> Busse M & Shams R (2005) 6 *Estey Centre Journal of International Law and Trade Policy* 62 at 63.

<sup>228</sup> Article 13 of the EACCU Protocol on Non-Tariff Barriers, Section 1 specifies that unless provided for or permitted by the Protocol, each of the three (now five) East African partner states will remove with immediate

applied by member states.<sup>229</sup> NTBs within the EAC context have been categorized under six clusters.<sup>230</sup> These are customs documentation and administrative procedures; immigration procedures; quality inspection procedures; transiting procedures; police road blocks; and business licensing and registration.<sup>231</sup>

Studies show that while internal tariffs have been largely eliminated in line with the protocol, NTBs such as those mentioned above have not been fully eliminated and they continue to increase the cost of doing business in the region and have negatively impacted on trade and co-operation.<sup>232</sup> For instance, in 2004, the EABC<sup>233</sup> noted that bureaucratic import/export procedures facilitated a non transparent environment that was rife with corruption. This seriously inhibits formal trade between the EAC countries thus undermining the objectives of the EAC Customs Union.<sup>234</sup>

The East African Community Customs Union (EACCU) commenced its operations within Kenya, Tanzania and Uganda on 1 January 2005. Burundi and Rwanda acceded to the EAC in July 2007. For the EACCU, to function properly and to be able to realize its objectives, it is supported by a well established legal framework. The EAC-CU Protocol provides that the CU shall be managed in accordance with the customs law of the Community.<sup>235</sup> This consists of relevant provisions of the EAC Treaty<sup>236</sup>; EACCU Protocol<sup>237</sup> and its annexes<sup>238</sup>; regulations and directives made by the Council of Ministers of the EAC; applicable decisions

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effect, all the existing NTBs to the importation in their respective territories of goods originating in the other partner states and thereafter not to impose any new NTBs. Furthermore, S.2 of Article 13 provides that partner states shall formulate a mechanism for identifying and monitoring the removal of NTBs.

<sup>229</sup> ASERECA Report, *Impact of NTBs on Cross Border Trade in EAC*  
[http://www.eaffu.org/go/downloads/2008\\_eaff\\_annual\\_report.pdf](http://www.eaffu.org/go/downloads/2008_eaff_annual_report.pdf). (accessed on 15/11/09).

<sup>230</sup> East African Community, East African Business Council(EABC), Monitoring Mechanism for Elimination of Non-Tariff Barriers in EAC under the GTZ Project of “Support of Regional Business Organisations in East Africa at  
[http://www.acp-eu-trade.org/.../EABC\\_EN\\_0706\\_EABC\\_Monitoring-Mechanism-for-NTB.pdf](http://www.acp-eu-trade.org/.../EABC_EN_0706_EABC_Monitoring-Mechanism-for-NTB.pdf)  
(accessed on 15/12/09).

<sup>231</sup> Ibid.

<sup>232</sup> CMI Report, *Fast Tracking East African Integration: Assessing the Feasibility of a Political Federation by 2010*, Thomas Nzioki Kibua and Arne Tostensen, CMI 2005:14 at <http://www.cmi.no/.../file/2088-fast-tracking-east-african-integration.pdf> (accessed on 12/09/09).

<sup>233</sup> EABC, Business Climate Index survey, 2004, at <http://www.eabc-online.com/brochure.pdf> (accessed on 15/12/09).

<sup>234</sup> Article 3: EACCU Protocol.

<sup>235</sup> Article 2:3 EACCU Protocol .

<sup>236</sup> The Treaty for Establishment of the East African Community (1999)

<sup>237</sup> Protocol on the Establishment of the East African Community Customs Union (2004)

<sup>238</sup> Key among them: The EAC Common External Tariff; The Programme for Elimination of Internal Tariff; The Rules of Origin; The Safeguard Measures

made by the East African Court of Justice; EAC Customs Management Act (EACCMA) and other Acts of the Community enacted by the East African Legislative Assembly; and relevant principles of international law.<sup>239</sup>

Turning to the objectives, under the Customs Union, EAC set itself to attain a number of objectives far beyond what is ordinarily prescribed in the theory of integration. In addition to intra-trade liberalization and promotion, EAC envisions promoting production efficiency, promotion of local, cross-border and foreign investment, and industrial diversification for economic development.<sup>240</sup>

Trade promotion is one underlying driver of the EAC Customs Union and because of that, TF is high on the agenda of the EAC. For instance, some basic strategies through which trade facilitation can be realized have been enumerated in its law.<sup>241</sup> The strategies include:

- 1) reducing the number and volume of documentation required with respect to trade among the partner states;
- 2) adopting common standards of documentation and procedures within the EAC where international requirements do not suit the conditions prevailing among partner states;
- 3) regularly reviewing the procedures adopted in international trade and transport facilitation with a view to simplifying and adopting them for use by the partner states;
- 4) and promoting the development and adoption of common solutions to problems in trade facilitation among partner states.

The EACCU Protocol in support of the trade facilitation programme, further provides for the simplification, standardization and harmonization of trade information and documentation.<sup>242</sup>

In doing so, the EAC will apply internationally accepted standards.<sup>243</sup>

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<sup>239</sup> Article 4(2)(a) of the EACCU Protocol provides for the application of internationally accepted standards in adopting uniform, comprehensive and systematic tariff classification of goods with a specific description and interpretation; Article 7(2) of the Protocol also provides for the application of internationally accepted standards in the simplification, standardization and harmonization of trade information and documentation, among others.

<sup>240</sup> Article 3: EACCU Protocol.

<sup>241</sup> Article 6: EACCU Protocol.

<sup>242</sup> Article 7(1): "The Partner States agree to simplify their trade documentation and procedures in order to facilitate trade in goods within the Community."

<sup>243</sup> Article 7.2: EACCU Protocol.

Since all EAC partner states are members of the WTO and WCO, many of the WTO/WCO trade facilitation principles, standards and recommended practices regarding import and export procedures and formalities have been incorporated in the EAC customs law.

### 3.5.1 Publication of EAC's Customs Laws

Article X of GATT, 1994 (Publication and Administration of Trade Regulations) sets out comprehensive transparency obligations for WTO members and vis-à-vis their trading communities. It lists the type of publications and measures that governments must make available to the trading community and prohibits enforcement of modified and new measures prior to publication. It also calls for administration of the above-mentioned laws, regulations, rulings and agreements in a uniform, impartial and reasonable manner<sup>244</sup> and for judicial redress through independent appeal mechanisms.<sup>245</sup> Fundamentally, all this is aimed at attaining transparency.<sup>246</sup>

Furthermore, Chapter 9 of the RKC similarly sets out the provisions for information, decisions and rulings supplied by customs. There are two (2) standards for information of general application: (a) *Customs shall ensure that relevant information pertaining to customs law is readily available to any interested person* and (b) *when information that has been made available must be amended due to changes in customs law, administrative arrangements or requirements, the customs shall make the revised information readily available sufficiently in advance of the entry in force of the changes to enable interested persons to take account of them, unless advance notice is precluded.*

In an effort to comply with Article X GATT 1994 and the RKC provisions, many of the customs laws, regulations, judicial decisions and administrative rulings are published. The Protocol provides for the communication of customs and trade information among the partner states.<sup>247</sup> For example, the EAC-CU itself is established by Article 2 (1) of the EAC-CU

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<sup>244</sup> Article X:3(a) GATT 1994

<sup>245</sup> Article X:3(b) GATT 1994

<sup>246</sup> Trade Facilitation Toolkit Review.3

[http://www.siteresources.worldbank.org/INTTLF/.../TF\\_Toolkit\\_Rev3.pdf](http://www.siteresources.worldbank.org/INTTLF/.../TF_Toolkit_Rev3.pdf)(accessed on 12/09/09).

<sup>247</sup> Article 5: EACCU Protocol.

Protocol.<sup>248</sup> This Protocol is founded on the provisions of Articles 2, 5 and 75 of the EAC Treaty – 1999. Moreover, the East African Community Customs Management Act, 2004 and the East African Community Customs Management Regulations 2006 have been published and are available on the different country’s websites<sup>249</sup> in compliance with Article X:3 of the GATT 1994.

Individually, partner states have adopted measures to ensure that information relevant to regulation of customs is published. For instance, Ugandan Customs provide general information on the Uganda Revenue Authority website, in the customs tariff (electronic version available), the National Gazette, press releases and a limited range of public notices. They participate in exhibitions, seminars and workshops. Binding rules are also issued in particular in the fields of tariff classification and valuation.

The EAC Treaty<sup>250</sup>, supports publication of the Community’s law by providing for the revival of the publication of the East African Law Reports or of similar law reports and such law journals as will promote exchange of legal and judicial knowledge and also enhance the approximation and harmonization of legal learning and the standardization of judgments of courts within the community.

The EAC customs law further provides for the publication in the Gazette judicial decisions and administrative rulings of general application giving effect to the Fourth Schedule.<sup>251</sup> This is in consonance with the WTO, Article X GATT provisions. In applying or interpreting this section and the provisions of the 4<sup>th</sup> Schedule, due regard shall be taken of the decisions, rulings, opinions, guidelines and interpretations given by the Directorate, the WTO or the Customs Cooperation Council.<sup>252</sup>

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<sup>248</sup> Article 2(1) Protocol on the Establishment of the East African Community Customs Union (2001): “In order to promote the objectives of the Community provided under Article 5 of the Treaty and in accordance with the provisions of this Protocol, the Partner states hereby establish a customs union as an integral part of the Community.”

<sup>249</sup> The different country websites are: Kenya Revenue Authority at <http://www.kra.go.ke> ; Rwanda Revenue Authority at <http://www.rra.gov.rw/customs> ; Tanzania Revenue Authority at <http://www.tra.go.tz>; and Uganda at Uganda-<http://www.ugrevenue.com> .Burundi Revenue Authority was set to commence its operation in January 2010.

<sup>250</sup> Article 126 (c).

<sup>251</sup> Section 122:5 EAC Customs Management Act, 2004 (EAC CMA).

<sup>252</sup> Section 122:6 EAC CMA

As an effort to improve on publication of customs information, it was reported by the Directorate of Corporate Communications and Public Affairs at the EAC Secretariat that the Secretary General of the EAC encouraged the Immigration, Police and Revenue authorities at the border posts to constantly update themselves on the decisions of the EAC Council of Ministers concerning cross-border trade and movement in order to ensure compliance with and effective implementation of the decisions. He reaffirmed that the decisions taken were usually communicated through the EAC Gazette<sup>253</sup> and the circulars issued by the relevant ministries of the partner States. The Secretary General emphasized that the EAC would step up its public communications about the EAC decisions through targeted publications and, in addition, the EAC was due to revamp its Website to deliver up to date business information on the EAC region.<sup>254</sup>

### 3.5.2 Legal proceedings and appeal

Instituting judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review and correction of administrative action relating to customs matters is another indispensable aspect of transparency which is necessary for TF.<sup>255</sup> This issue is not only treated by Article X: 3, GATT 1994 but also by the RKC.<sup>256</sup> It is observed that this important aspect of TF is catered for in EAC customs law. Cases may not only be settled administratively<sup>257</sup> but also through competent courts within the partner states.<sup>258</sup>

Moreover, by including the provision for the release of goods pending the outcome of the appeal procedures ‘upon payment of duty as determined by the Commissioner or (upon) provision of sufficient security for the duty and for any penalty that may be payable as determined by the Commissioner,’<sup>259</sup> the legislators in this particular aspect proved committed to trade facilitation.

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<sup>253</sup> <http://www.eac.int>.

<sup>254</sup> [http://www.eac.int/statistics/en/publications/doc\\_download/54-eac-trade-report.html](http://www.eac.int/statistics/en/publications/doc_download/54-eac-trade-report.html)

<sup>255</sup> Kafeero, E. (2008) 2 *World Customs Journal* 63 at 66.

<sup>256</sup> As provided for in the General Annex, Chapter 10 and the accompanying guidelines.

<sup>257</sup> Section 219, EAC CMA, 2004

<sup>258</sup> Section 220:1, EAC CMA, 2004: “...Provided that all proceedings of civil nature shall be filed and determined in accordance with the provisions of the relevant procedural legislation in the Partner States...”

<sup>259</sup> Section 229:6 CMA, 2004.

Corollary to the above, 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.<sup>260</sup> Requirements for appeal are part of a 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.<sup>261</sup>

### **3.5.3 Fees and Formalities Connected with Importation and Exportation within the EAC**

Article VIII of GATT 1994, seeks TF by reducing non-tariff fees and charges and other procedures –especially when they are applied in a protectionist manner. Fees and formalities as understood within the context of Article VIII, GATT 1994 can also be a hindrance to TF within the Community as elaborated below:

There are fees and charges contained within the EAC customs law, which can be qualified as ‘official’. Such fees contain, for instance, overtime fees<sup>262</sup>, fees for cautionary visits<sup>263</sup>, fees for customs revenue<sup>264</sup>, license fees<sup>265</sup>, and fees for services to the public<sup>266</sup>. These fees and charges may not necessarily contravene Article VIII, of the GATT 1994 and may not necessarily hamper TF.

Standard 3.2 of Chapter 3 of the General Annex to the Revised Kyoto Convention, addresses the issue of fees and charges for additional services. It is stipulated that any expenses for customs procedures outside the designated business hours or away from a customs office may be chargeable by customs.<sup>267</sup> However, there is caution that the amount of such charges should be limited to the approximate cost of the services rendered. While the above

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<sup>260</sup> 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’.

<sup>261</sup> Buyonge, C and Kireeva, I (2008) 2*World Customs Journal*, 41 at 46.

<sup>262</sup> Regulation 6, EAC Customs Management Regulations, 2006

<sup>263</sup> Regulation 8 EAC Customs Management Regulations, 2006

<sup>264</sup> Regulation 9 EAC Customs Management Regulations, 2006

<sup>265</sup> Regulation 217 EAC Customs Management Regulations, 2006

<sup>266</sup> Regulation 216 EAC Customs Management Regulations, 2006

<sup>267</sup> Standard 3.2 of the General Annex to the RKC, Chapter 3



mentioned official fees and charges may be justifiable, there is certainly a real problem with regard to ‘non-official’ ones<sup>268</sup> which take the form of bribes.

The EAC-CU law makes it an offence for an officer to request in connection for any payment or other reward whatsoever being payment or reward which he or she is not lawfully entitled to claim or receive.<sup>269</sup>

In further compliance with the WCO’s Revised Arusha Declaration on Integrity in Customs, the last ten years, have seen some attempts to improve integrity in customs within the EAC. In this connection, some integrity seminars and workshops have been conducted by the respective revenue authorities of the partner states. In 2001 for instance, an integrity workshop was conducted in Uganda at the launch of a new ethics and anti-corruption campaign, during which the Ethics and Integrity Committee was created in the Uganda Revenue Authority.<sup>270</sup>

In May 2005, Kenya also held workshops on integrity and, since then, Kenya Revenue Authority embarked on a nationwide integrity sensitization and training programmes.<sup>271</sup> At a general and regional level, the Kenya Anti-Corruption Commission, the Inspectorate of Government of Uganda and the Prevention and Combating of Corruption Bureau of Tanzania launched the East African Association of Anti-Corruption Authorities (EAAACA) on 9 November 2007.<sup>272</sup> The Anti-Corruption agencies of Rwanda and Burundi are also expected to join shortly.<sup>273</sup> The main aim of the association is to cooperate in preventing and combating corruption in the East African Community.

### **3.5.4 Automation, Information and Communication Technology**

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.

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<sup>268</sup> Kafeero, E. (2008) 2 *World Customs Journal* 63 at 67.

<sup>269</sup> Section 9: EAC CMA.

<sup>270</sup> De Wulf and Sokol (2005) at p.43.

<sup>271</sup> <http://www.kra.go.ke/pdf/publications/manifestmanual.pdf> (accessed on 11/12/09).

<sup>272</sup> BAFICAA 2006, Customs and Business in Africa: A better way forward together, <http://www.sitpro.org.uk/policy/baficaa/baficaareport.pdf> (accessed on 11/12/09).

<sup>273</sup> Ibid.



Chapter 7 of the RKC<sup>274</sup>, stipulates that maximum use of ICT is very important, *inter alia*, for efficient clearance procedures, uniform application of customs law, effective implementation of risk management, efficient revenue collection, effective data analysis and efficient production of trade statistics.

Proposed measures related to automation, computerization, reform and modernization of customs functions may also play an important role, as opportunities for corruption and unethical behaviour thrive particularly in areas where outdated and inefficient customs practices are used.<sup>275</sup>

In July 2005, Kenya introduced the new Customs Reform Modernisation Program<sup>276</sup>. Tanzania and Uganda use ASYCUDA++,<sup>277</sup> while Rwanda and Burundi uses ASYCUDA 2.7. Rwanda Revenue Authority's ICT sector is also doing well but would perform better if it had ASYCUDA ++ which supports electronic data interchange.<sup>278</sup> One of the findings of the Tanzania Time Release Study revealed that there was higher customs processing efficiency in stations where 'ASYCUDA++' had been implemented such as the Mwalimu Julius Nyerere International Airport (Dar es Salaam) compared to other stations that were still operating with 'ASYCUDA 2.7'.<sup>279</sup> These ICT systems have contributed a lot, especially through improving clearance time while managing imports and exports at customs stations.<sup>280</sup> Electronic filing of customs documents has been introduced, document processing (in Kenya) has been centralized, and the level of transparency has generally increased.<sup>281</sup>

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<sup>274</sup> **Standard 7.1:** Customs shall apply information technology to support Customs operations, where it is cost-effective and efficient for the Customs and for the trade. The Customs shall specify the conditions for its application.

<sup>275</sup> UNCTAD, Trade Facilitation Handbook, Technical Notes Part II

<sup>276</sup> Also known as SIMBA 2005.

<sup>277</sup> The acronym ASYCUDA is derived from Automated System for Customs Data. The system was developed by UNCTAD for use by developing country members.

<sup>278</sup> Uganda Revenue Authority, ASYCUDA ++ Trade Manual, Edition: ASY 12.08/9 at [www.ugrevenue.com](http://www.ugrevenue.com). Uganda first applied ASYCUDA 2.7 version in 1996 but with time, realized that it had shortcomings that could not serve the business community sufficiently. ASYCUDA ++ which was a more efficient customs computer system and suitable for the environment was then selected to replace ASYCUDA 2.7.

<sup>279</sup> BAFICAA 2006, Customs and Business in Africa: A better way forward together, <http://www.sitpro.org.uk/policy/baficaa/baficaareport.pdf> (accessed on 11/12/09).

<sup>280</sup> Uganda Revenue Authority, ASYCUDA ++ Trade Manual, Edition: ASY 12.08/9 at [www.ugrevenue.com](http://www.ugrevenue.com). Previously cargo would be cleared in periods ranging from about 3 to 14 days and now it is cleared between 10mins to 2 days depending on the type of risk target, compliance of the trader and bulk of work flowing through the stations.

<sup>281</sup> Buyonge C.(2007)1 *World Customs Journal* 55 at 57.

Moreover, under the East Africa training conducted for Customs clearing agents, about 50 company representatives were provided with hands on ASYCUDA++ training in August 2008. This is in adherence to the EACCU law<sup>282</sup> that provides for training facilities and programs on customs and trade. With this training, it was evident that those clearing agent firms were performing relatively better than before since their enlightenment of the customs computer system had been enhanced.<sup>283</sup>

## Conclusion

In his opening speech during the World Customs Forum in 2007, the Secretary General of the World Customs Organization, Mr Michel Danet, referred to trade as an ‘international public good to be safeguarded and facilitated’.<sup>284</sup> Hence, emphasizing the need for a strong legal framework that safeguards and supports TF efforts that ensure timely, accurate and easily accessible information on trade laws, applicable fees and charges, customs regulations, and related judiciary mechanisms which are essential for lending transparency and predictability to promoting efficiency in international commercial transactions by governments and private traders, particularly in developing countries. It is therefore important that governments adapt their trade laws and customs regulations and operations to meet today’s challenges of dynamic growth in world trade and technological innovation in order to derive maximum benefits from multilateral trade.

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<sup>282</sup> Article 4.1(e) : EACCU Protocol.

<sup>283</sup> Uganda Revenue Authority, ASYCUDA ++ Trade Manual, Edition: ASY 12.08/9 at [www.ugrevenue.com](http://www.ugrevenue.com) (accessed on the 14/01/10).

<sup>284</sup> WCO 11-12 December 2007, World Customs Forum 2007/WCO SAFE Framework of Standards, Brussels, Belgium at <http://www.tradeinnovations.com/.../2007%20WCO%20TTA%20SAFE%20Conference%20Invitation%20Broch...> (accessed on 12/11/09).

## Chapter 4

### WEAKNESSES OF THE EAC LEGAL AND INSTITUTIONAL FRAMEWORK SUPPORTING TRADE FACILITATION

#### 4.1 Introduction

This Chapter discusses TF measures adopted in the EAC customs law in line with international instruments and highlights the steps so far taken to encourage integrity in customs. It also examines the weaknesses within the EAC customs law structure and the problems generally restricting the full realization of the potential benefits of TF and the fight against customs corruption.

#### 4.2 Weaknesses of the EAC's Legal Regime Governing TF

All EAC partner states are members of the WTO and WCO and are therefore mandated to comply with the international standards and principles regulating trade within these organisations. The regulations, recommendations and guidelines of the WTO and WCO foster transparency, predictability and uniformity throughout the trade transaction process. The basic principles include; harmonization of laws and regulations; simplification of administrative and commercial formalities, procedures and documents; and the standardization of means which is very essential.<sup>285</sup>

For a truly facilitative environment, it is critical that the laws and regulations governing the import and export of any materials or goods provide *inter alia*, an adequate and coherent authority structure for the essential trade-related institutions; clearly stated regulations and procedures that form a basis for an adequate balance between facilitation and necessary controls essential for public health and welfare; The means to legally employ modern risk management techniques utilizing selective inspections and post release audits to accomplish their respective missions; A productive environment of cooperation and procedural coherence with the other government agencies with border control responsibilities; a cooperative and

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<sup>285</sup> UNCTAD, Trade Facilitation Handbook Part II, Technical Notes on Essential Trade Facilitation Measures, 2006. UNCTAD/SDTE/TLB/2005/2 at <http://www.unctad.org/Templates/Download.asp?docid=7058&lang...> (accessed on 15/09/09).

consultative atmosphere of dialogue between government agencies, the international trade community and the national legislature to accomplish goals and eliminate roadblocks.<sup>286</sup>

Despite efforts by the EAC to incorporate provisions that advance TF in the customs laws of the region, it is evident that there are still inefficiencies in trade administrative procedures that increase the cost of trading in the EAC. The practicality and implementation of the provisions in the EAC custom laws is yet to be realized.

A recent study by Business Action for Improving Customs Administration in Africa (BAFICCA)<sup>287</sup> revealed that traders in the EAC are still faced with several huddles. These range from excessive bureaucracy, outdated or sometimes, non-existent regulations, non-harmonized codes, procedures, and documents both at national and regional levels, which continue to create confusion making it more attractive for traders to pay bribes in order to expedite the trade process and escape this predicament.

In addition, complications in the administrative procedures and lack of adequate information and awareness on trade requirements, reforms and regulation by the traders are still serious impediments prevalent in the EAC. These impediments disable traders from meeting some of the requirements, forcing them to either pay bribes or engage in informal trade both of which add to transaction costs.<sup>288</sup>

### 4.3 Publication and Transparency

Article X, GATT 1994 provides for publication of trade-related laws, regulations, rulings and agreements in a prompt and accessible manner; and restrains from enforcing measures of general application prior to their publication; and administration. It further stipulates the institution of tribunals or procedures for the, *inter alia*, prompt review and correction of

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<sup>286</sup> Peter Baish, Customs and Border Agency Best Practices at [http://www.bizclir.com/cs/expert\\_opinions/expert\\_opinions?view.pdf](http://www.bizclir.com/cs/expert_opinions/expert_opinions?view.pdf) (accessed on 15/08/09).

<sup>287</sup> BAFICAA 2006, Customs and Business in Africa: A better way forward together, <http://www.sitpro.org.uk/policy/baficcaa/baficaareport.pdf> (accessed on 11/12/09).

<sup>288</sup> East African Community, East African Business Council(EABC), Monitoring Mechanism for Elimination of Non-Tariff Barriers in EAC under the GTZ Project of “Support of Regional Business Organisations in East Africa at [http://www.acp-eu-trade.org/.../EABC\\_EN\\_0706\\_EABC\\_Monitoring-Mechanism-for-NTB.pdf](http://www.acp-eu-trade.org/.../EABC_EN_0706_EABC_Monitoring-Mechanism-for-NTB.pdf) (accessed on 15/12/09).

administrative actions relating to customs matters. Fundamentally, all this is aimed at attaining transparency.

It is worth noting that efforts have been made towards the publication of many of the relevant customs laws. However, provisions of Article X, GATT 1994 are still far from being thoroughly observed within the EAC. Key documents required for the operations of the EACCU have been posted on the EAC website<sup>289</sup> and are available with the relevant authorities and offices of the partner states. With the information on the websites, one would imagine this being the best way of making information available to the public. However, the process still faces challenges.

First, only a handful of people in the EAC are computer literate or can afford internet services to access this information. Second, it is widely understood that many people in East Africa, like in other developing countries are still grappling with illiteracy which impedes them from being able to read or even understand the complicated customs procedures. Third, East Africa like many other African countries is still dogged with inefficient electricity or power supplies. Since the new technology of computers is supported by electric power, this makes it difficult for business people to rely on the websites as a source of information. The 2006 BAFICAA report revealed that within Africa, Côte d'Ivoire and Senegal were the only countries where customs made practical use of the website.<sup>290</sup>

Furthermore, it has been observed that publication of information is not carried out promptly in the EAC as required by Article X of the GATT 1994. For example, while the EAC customs law 'officially' came into effect on 1 January 2005, it was a month later that this law became applicable in Uganda. Commenting on this issue, the Commissioner General of the Uganda Revenue Authority explained that Uganda would wait for a month, and the intermediate period would be used for publicity and distribution of the new law to customs staff, clearing agents and importers.<sup>291</sup>

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<sup>289</sup> <http://www.eac.int>

<sup>290</sup> BAFICAA 2007, Customs Procedures still a challenge: A better way forward together, <http://www.sitpro.org.uk/policy/baficaa/baficaareport.pdf> (accessed on 11/12/09).

<sup>291</sup> The Uganda Daily Monitor, 6 January 2005 at <http://www.monitor.co.ug> (accessed on 12/08/09).

The publication problem becomes even more acute with respect to the manner/mode of publication and the distribution of the published laws. Whereas laws passed are officially published in the East African Community Gazette, the big problem remains on whether the stakeholders, and potential stakeholders have access to the gazette. For instance, it was noted during a seminar<sup>292</sup> held in Dar es Salaam (two years after the commencement of the EACCU) that no well-bound copy of the EAC Customs Management Act (CMA) had been produced. Such an important Act was on mere pamphlets held by a few 'EAC customs insiders'!<sup>293</sup>

Besides, availability of information on EAC Customs Union instruments among businesses is rather low<sup>294</sup> and at worst, unavailable. This was an observation by some companies in Burundi, Rwanda and Uganda. Kenyan businesses commented that relevant information in hard copies or soft publications may not be easily accessible at the information desks established for this purpose.<sup>295</sup> Dissemination of information on new rules and regulations governing trade procedures therefore remains extremely poor across member states and within them. Traders are often unaware of some of the decisions made at the EAC Council, such as the new transit regulations. At border points, customs agents often do not have the latest directives and/or forms from their revenue authorities, and truck drivers may not know the regulations specific to their cargo.<sup>296</sup> This heightens the need for EABC to come up with a strategy for outreach to the business community in the region.

The few selected examples given above show the challenges in the implementation of Article X:1, GATT 1994 and how it is violated within the EAC. All trade-related laws, regulations, rulings and agreements which affect Customs' processes, conditions and procedures ought to be published and made easily and cheaply available. Moreover, information should not only be available but it should also be simple and easily accessible even to SMEs.

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<sup>292</sup> Seminar title: 'Support to the Harmonisation of Trade and Customs Policies of the East African Community', 6-10 November 2006, Dar es Salaam, Tanzania; Organised by *InWEnt gGmbH*  
<http://www.unctad.org/templates/Download.asp?docid=8275&lang=1> (accessed on 12/08/09).

<sup>293</sup> Kafeero, E. (2008) 2 *World Customs Journal* 63 at 67.

<sup>294</sup> EABC 2008 Executive Summary: Border Survey at [http://www.rtfp.org/.../border\\_survey\\_study\\_-\\_executive\\_summary\\_-\\_160708\\_2.pdf](http://www.rtfp.org/.../border_survey_study_-_executive_summary_-_160708_2.pdf) (accessed on 15/12/09).

<sup>295</sup> Trade Facilitation Issues for Kenya: Issue 15, Feb 2006 at  
<http://www.ieakenya.or.ke/documents/Trade%20Notes%2015.pdf> (accessed on 15/12/09).

<sup>296</sup> EABC 2008 Executive Summary: Border Survey at [http://www.rtfp.org/.../border\\_survey\\_study\\_-\\_executive\\_summary\\_-\\_160708\\_2.pdf](http://www.rtfp.org/.../border_survey_study_-_executive_summary_-_160708_2.pdf) (accessed on 15/12/09).

### 4.3.1 Language

Successful trade requires an effective and easy language of communication. The EAC Treaty<sup>297</sup> stipulates English as the official language, while Kiswahili is the *lingua franca* of the EAC. Currently, however, almost all EAC laws are available *only* in English – and that is a problem because not all stakeholders know the language. There are some traders involved in intra-East African trade, even within Kenya, Tanzania, and Uganda, who cannot adequately understand the legal and administrative texts written in English. There is widespread concern that the mechanisms and the language used to explain issues concerning goods and trade regulations in the EAC are not simplified enough to be understood and made useful to small indigenous traders. In this regard, SMEs, which are a majority in the EAC, are particularly affected. The problem is worse in countries coming out of war situations like Burundi where the government systems are focused on early stages of post conflict recovery.<sup>298</sup>

Rwanda and Burundi have for long also had French as their official language. The problem of language is also faced in parts like Eastern Democratic Republic of Congo, currently a key player in EAC trade. French and Kiswahili are the most highly used languages in the EAC region and would, therefore, be a very big contribution to TF if EAC customs laws were translated into the two languages. In this connection, Kiswahili should be emphasized, especially for the stakeholders in Uganda.

### 4.3.2 Lack of Enough Consultation with the Private Sector

Consultative and feedback mechanisms are fundamental factors of TF because they enhance the predictability of the regulatory environment, improve public confidence and support, increase the prospects of compliance and provide a tool for improving regulatory quality.<sup>299</sup> Lack of proper communication between customs administration and businesses hinders successful customs reforms. There should be timely provision of information, ideally with

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<sup>297</sup> Article: 137 EAC Treaty, 1999.

<sup>298</sup> World Bank, Non Tariff Measures on Goods Trade in the EAC, Synthesis Report, September 2008 at [http://www.eac.int/trade/index.php?option=com\\_docman...gid...](http://www.eac.int/trade/index.php?option=com_docman...gid...) (accessed on 15/12/09).

<sup>299</sup> Hamilton BA, *Cross Border Trade in East African Countries: Shared Issues and Priorities for Reform*, Report presented under the Business Climate Legal and Institutional Reform Project (BizCLIR), June 2009. <http://www.bizclir.com/cs/publications/overview.pdf>. (accessed on 15/09/09).



consultation before changes are implemented. As would be expected, most customs administrations find it difficult to sustain genuine dialogue with business, and the relationship is often antagonistic because compliance with customs laws and procedures is often involuntary. This relationship means that changes in legislation or customs procedures are usually made suddenly without consultation or dialogue with the businesses.<sup>300</sup>

This poses a real setback in the TF process especially in the implementation of new customs IT systems if it is done without adequate internal and external consultation especially from the private sector which is the major stakeholder. For instance, 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.<sup>301</sup> 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 TF.<sup>302</sup>

### **4.3.3 Legal Proceedings and Appeal**

It is crucial for affected traders to have recourse to an independent appeal mechanism for review and, where appropriate, for the correction of administrative action or omission.<sup>303</sup> Efficient administrative appeal procedures can provide traders faster and cheaper means to deliver solutions than courts. GATT X-3 provides for the establishment of an administrative or judicial body independent of enforcement agencies for prompt reviews and correction of administrative actions relating to customs matters.

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<sup>300</sup> Buyonge, C and Kireeva, I (2008) *2World Customs Journal*, 41 at 47.

<sup>301</sup> Customs Automation and Process Reforms: Lessons from Kenya BizCLIR Report, March 2007 at [http://www.bizclir.com/galleries/bestpractices/01.128.08BP12\\_Kenya.pdf](http://www.bizclir.com/galleries/bestpractices/01.128.08BP12_Kenya.pdf) (accessed on 14/11/09).

<sup>302</sup> Buyonge, C and Kireeva, I (2008) *2World Customs Journal*, 41 at 48.

<sup>303</sup> UNCTAD 2008, Trade Facilitation Opportunities for Landlocked Least Developed Countries at [http://www.unctad.org/en/docs/dtltlbmisc20082\\_en.pdf](http://www.unctad.org/en/docs/dtltlbmisc20082_en.pdf) (accessed on 04/02/10).



Contrary to international best practice, the CMA lacks an established appeal system<sup>304</sup> and as a result, the EAC countries typically rely on local tribunals to resolve disputes. Consequently, many goods remain stuck at the border due to the unwillingness of the state to release them under bond, pending resolution of issues. Often, traders are unable to secure sufficient funds and their goods are forced to remain in customs' custody, thereby incurring storage charges.<sup>305</sup>

#### 4.3.4 Automation/use of ICT

Article X of GATT, 1994 seeks transparency and predictability through automation of processes. To implement customs procedures for entry processing, cargo control and transit, warehouse control, and accounting in the EAC, four member countries (Burundi, Rwanda, Tanzania and Uganda) have opted to use (various versions of) ASYCUDA; the most widely used IT system in Africa<sup>306</sup> which provides all necessary automation resources for risk management and generation of statistics. It is only Kenya that has chosen to operate on the much less effective SIMBA<sup>307</sup> IT 2005. Though SIMBA IT 2005 and ASYCUDA++ are *essentially* interoperable<sup>308</sup> these systems are still faced with compatibility and integration issues and using one ICT system in the whole EACCU would certainly be a better option.

In addition to the above challenge, EAC is faced with more fundamental technical limitations. These include inadequate supplies of power, electrical systems that cannot support modern technology, and scant access to the internet.

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<sup>304</sup> Section 230 required aggrieved parties to appeal to their state tribunals as provided for in section 231 which provides that each Partner State will handle its own tax appeals tribunal for purposes of hearing appeals against decisions of the Commissioner made under Section 229.

<sup>305</sup> Hamilton BA, *Cross Border Trade in East African Countries: Shared Issues and Priorities for Reform*, Report presented under the Business Climate Legal and Institutional Reform Project (BizCLIR), June 2009. <http://www.bizclir.com/cs/publications/overview.pdf>. (accessed on 15/09/09)

<sup>306</sup> <http://www.asycuda.org/>

<sup>307</sup> The Similarity Based Complex Analysis System (SIMBA) is an electronic real time trading system for international markets developed by SIMBA Technologies Inc. At <http://www.kra.go.ke/pdf/publications/manifestmanual.pdf>

<sup>308</sup> 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.

#### 4.4 Unofficial Fees

While, all EAC partner states signed the WCO Arusha Declaration, which is a fundamental tool of a global approach to preventing corruption and increasing the level of integrity in Customs, corruption is still rampant within EAC customs and non-official fees and charges are some of the indicators of such incidents of corruption. Bribes are still paid by traders at various levels of the trade transactions. Worse still, some East African stakeholders seem to be so much used to corruption that they consider it normal.<sup>309</sup> Such un-official fees are not only contrary to international principles, but also increase the cost of trading thereby hindering intra African trade.

#### 4.5 Legal Framework

The EAC's legal framework consists mainly of: the Treaty for the Establishment of the EAC; the EAC Protocol; and the EAC Customs Management Act (CMA).<sup>310</sup> The EAC CMA which was enacted on 16 December 2004, governs the administration of customs, including administrative and operational matters. Each of the EAC member states, with the exception of Burundi, now operates under the EAC 2005 CMA.

Among the reasons in favor of using RKC and WTO standards in the Customs Act is compatibility with customs laws in the region and around the world. Harmonized customs laws promote harmonized customs procedures and harmonized procedures mean lower transaction costs, faster clearance times, greater efficiency and higher returns for businesses engaged in trade.<sup>311</sup>

The EAC CMA represents an important effort to harmonize customs practices in the region but, unfortunately, it does not fully align with the WCO Revised Kyoto Convention, which lays out the key legal components of a modern customs operation.<sup>312</sup>

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<sup>309</sup> CMI Working Paper. (2009) *The pursuit of integrity in customs: Experiences from sub-Saharan Africa*. CMI authors: Odd-Helge Fjeldstad., at <http://www.cmi.no/.../publication/?3473=the-pursuit-of-integrity-in-customs.pdf>, (accessed on 12/10/09).

<sup>310</sup> Article 39: EACCU Protocol

<sup>311</sup> BizCLIR 2008, Best Practices Report on Modernisation of the Customs Code by Creck Buyonge at <http://www.bizclir.com/cs/publications/overview> (accessed on 05/01/10).

<sup>312</sup> Africa Business Forum , Business Action For Improving Customs Administration In Africa (BAFICCA), 2007 Report, at <http://www.businessactionforafrica.org/.../OverviewBAFICCAJuly2007.pdf>. (accessed on 12/01/10).

The EAC's slow pace in developing and implementing regulations for the CMA has resulted in continued inconsistencies in border practices throughout the EAC. Ambiguous provisions result in excessive officer discretion, particularly with respect to penalties. For example, because the CMA provides only for maximum amounts as penalties, in practice fines often prove excessive and vary widely within the EAC. This creates an environment rife with corruption as traders try to steer clear of the penalties by paying bribes. In Kenya, penalties ranging from US\$250 to US\$2,000 for inadvertent errors were repeatedly cited during the BizCLIR diagnostic.<sup>313</sup>

#### 4.6 Procedures and Formalities

Apart from the provisions of Article VIII:1(c) of GATT 1994, it should be noted that the WCO Revised Kyoto Convention has a lot to offer to TF through its key standards, principles and best practices that contribute to the simplification and harmonization of customs procedures and formalities.<sup>314</sup> Such procedures and principles include standardized and minimum requests, minimum intervention and the use of risk management, separation of release from clearance, audit-based control, maximum use of information and communication technology, specially simplified procedures for authorized traders, and cooperation with other agencies as well as cooperation with foreign counterparts.<sup>315</sup>

The situation in EAC regarding simplification, harmonization and standardization of procedures, still leaves a lot to be desired. The EAC Council of Ministers is expected to meet and resolve on how to simplify and synchronize customs documentation, formalities and procedures at the border posts. Many member states are undertaking donor-funded customs modernization programs, but the focus and content of such national efforts remain largely uncoordinated across the EAC. Planned improvements in administering border posts have been slow, mostly bilateral, and with somewhat varying results to date.<sup>316</sup> Duplication of processes continues to add to monetary costs and loss of time. Unequal treatment according

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<sup>313</sup> USAID (2009) Africa's Growth and Competitiveness In 2008: African Global Competitiveness Initiative, August 2009 at [http://www.usaid.gov/locations/sub-saharan\\_africa/.../AGCI\\_Report\\_Aug09.pdf](http://www.usaid.gov/locations/sub-saharan_africa/.../AGCI_Report_Aug09.pdf) (accessed on 05/04/10).

<sup>314</sup> Information from <http://www.wcoomg.org> (accessed on 11/12/09).

<sup>315</sup> General Annex of the RKC

<sup>316</sup> For example, Kenya and Uganda have a bilateral legal framework for joint control at their common border posts, creating a one-stop post at each border crossing, starting with Malaba. They also have an agreement to introduce 24-hour services at their common border posts.

to the country of origin of the goods and/or truck and opportunities for fraudulent behaviour is frequent, as are the allegations of such “unfair” treatment and corruption.<sup>317</sup>

It has been reported<sup>318</sup> that within the EAC, there are varying systems of import declaration, payment of applicable duty rates, and (technical and sanitary and phyto-sanitary requirement) standards applied, as well as limited/varying working hours at the customs posts. Lengthy procedures coupled with inadequate information available to customs officials while making pertinent decisions at the border posts seem to plague the EAC-wider system. Frequent use of COMESA certificates of origin by businesses of four EAC members illustrate that the standardization of EAC certificates of origin is not functional.

In Kenya, for instance, customs officers at border crossings were reported, in most cases to continue applying national taxes, duties, regulations and procedures long after relevant rules were harmonized by the EAC Council of Ministers (e.g. after harmonization of EAC CET in January, 2005).<sup>319</sup>

It is pertinent that administrative procedures and customs documents should be simplified. A 2008 EABC border survey revealed that a substantial amount of unrecorded trade goes on in all the borders of the East African countries. Trade worth US \$31.6m annually goes unrecorded.<sup>320</sup> And this is fuelled by export/import restrictions on food stuff, tariffs on non EAC originating products and inability of cross border traders to meet the requirements of the customs declaration form, which are considered complicated.<sup>321</sup> This underscores the need to expedite use of the EAC simplified certificate of origin and customs declaration forms.

The above weaknesses not only defeat the EAC-CU TF agenda<sup>322</sup> that advocates simplified customs procedures at border crossings and the application of harmonized documents to

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<sup>317</sup> World Bank, Non Tariff Measures on Goods Trade in the EAC, Synthesis Report, September 2008 at [http://www.eac.int/trade/index.php?option=com\\_docman...gid...](http://www.eac.int/trade/index.php?option=com_docman...gid...) (accessed on 15/12/09).

<sup>318</sup> Ibid.

<sup>319</sup> EABC 2008 Executive Summary: Border Survey at [http://www.rtfp.org/.../border\\_survey\\_study\\_-\\_executive\\_summary\\_-\\_160708\\_2.pdf](http://www.rtfp.org/.../border_survey_study_-_executive_summary_-_160708_2.pdf) (accessed on 15/12/09).

<sup>320</sup> Ibid.

<sup>321</sup> Ibid.

<sup>322</sup> Article 6: EACCU Protocol.

eliminate duplication and delays,<sup>323</sup> but are also contrary to the international customs standards of the WTO and WCO to which all EAC partner states are members.

#### 4.7 Freedom of Transit

Article V of GATT 1994, defines ‘transit’ and provides for freedom of transit, regulation of traffic in transit (urging members to avoid unnecessary delays or restrictions), setting reasonable charges and regulations for traffic in transit, non-discrimination – with regard to common products as well as air transit of goods. It is clear that some of these transit issues go beyond the strict customs domain. However, emphasis here is on those transit aspects in which customs is strictly present, and have a significant impact on TF in the EAC. Unfortunately, transit procedures are some of the troubling non-tariff barriers to the intra-EAC trade. The fact, for instance, that there are differences in axle load and Gross Vehicle Mass amongst EAC partner states<sup>324</sup> leads to a situation where Tanzanian trucks, for example transiting through Kenya, en route to Uganda, have to strip off excess cargo to avoid financial penalties for overloading. Of course, this is costly in terms of time and money. Moreover, Kenyan demand for a customs insurance bond (about US\$200 per 20-foot container) on transit goods destined to Uganda, Rwanda and Burundi affects traders.<sup>325</sup> One wonders whether such an amount is not in violation of Article V:4, GATT 1994.

Delays at roadblocks are also a transit disaster. They are very expensive in terms of time lost and monetary costs incurred.<sup>326</sup> They are also one major way through which corruption manifests. Many traders report that police officers stop vehicles with goods in transit at various roadblocks, yet officially, they are only supposed to stop vehicles based on proof that goods being transported are suspicious.<sup>327</sup> The long hours taken to clear a vehicle at a road block is meant to induce traders to offer a bribe to have their vehicles cleared fast enough.

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<sup>323</sup> Article 2.5(m) of the Protocol which provides for simplification and harmonization of trade documentation and procedures in accordance with internationally accepted standards.

<sup>324</sup> The Gross Vehicle Mass is 54 tonnes (in Kenya), 46 tonnes (in Uganda) and 56 tonnes (in Tanzania)

<sup>325</sup> EABC, *Proposed mechanism for the elimination of NTBs in EAC* at [http://www.acp-eu-trade.org/.../EABC\\_EN\\_0706\\_EABC\\_Monitoring-Mechanism-for-NTB.pdf](http://www.acp-eu-trade.org/.../EABC_EN_0706_EABC_Monitoring-Mechanism-for-NTB.pdf) (accessed on 15/12/09).

<sup>326</sup> EABC 2008 Executive Summary: Border Survey at [http://www.rtfp.org/.../border\\_survey\\_study\\_-\\_executive\\_summary\\_-\\_160708\\_2.pdf](http://www.rtfp.org/.../border_survey_study_-_executive_summary_-_160708_2.pdf) (accessed on 15/12/09).

<sup>327</sup> World Bank, *Non Tariff Measures on Goods Trade in the EAC, Synthesis Report*, September 2008 at [http://www.eac.int/trade/index.php?option=com\\_docman...gid...](http://www.eac.int/trade/index.php?option=com_docman...gid...) (accessed on 15/12/09).

#### 4.8 Competence of Managerial and Operational Staff

Within the East African Customs Union, partner states it is agreed by customs administrations and revenue authorities that customs brokers undergo required, uniform training to enable them to obtain practising certificates issued by customs as condition for their licensing.<sup>328</sup>

African customs officials (EAC inclusive) are reported to be 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. This skewed 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 maximizing revenue collection to meet set targets.<sup>329</sup> These are detrimental to the businesspeople.

Furthermore, in some member nations, traders are restricted from using clearing agents from their own country of origin and must hire (expensive) agents from the country of the port location. For example, Ugandan traders cannot use Uganda-registered clearing agents to clear goods in Kenya.<sup>330</sup> The integrity of clearing agents is also called into question in some locations. More particularly, lack of capacity of clearing agents impedes Burundi and Rwanda's goods trade, since the declaration process is slow owing to unfamiliarity with the use of the ASYCUDA system. As well, this is owed to having limited familiarity with customs procedures and regulations.<sup>331</sup>

#### 4.9 Synchronization by EAC members

EAC member states are required to give similar treatment to all agreed EAC policies.

Within the short period of the regional economic community's existence, members are finding the agreed harmonization of the national laws/policies and standards governing intra-

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<sup>328</sup> Section 145(2): EAC CMA

<sup>329</sup> Investment Climate facility for Africa, 2008 annual report at <http://www.icfafrika.org/downloads/annual/Report2008.pdf> (accessed on 10/12/09)

<sup>330</sup> World Bank, Non Tariff Measures on Goods Trade in the EAC, Synthesis Report, September 2008 at [http://www.eac.int/trade/index.php?option=com\\_docman...gid...](http://www.eac.int/trade/index.php?option=com_docman...gid...) (accessed on 15/12/09).

<sup>331</sup> Ibid.

EAC trade slow, cumbersome.<sup>332</sup> Currently, the harmonization process for policies and standards on traded goods is being driven by the public sector, with little or no involvement of the private sector—the sector most affected by the process.

Where action has been taken, significant variance is developing with regard to decisions and regulatory systems on the optimum standards of goods. For example: In the FY08 budget, Uganda imposed a ban on production and importation of polythene bags less than 30 microns. Kenya did not. It continues to produce polythene bags less than 30 microns and these are smuggled into Uganda. On the other hand, in Rwanda, the use of all polythene bags is completely banned. Hence, Uganda, Kenya, and other members cannot export products to Rwanda using such material for packaging.

EAC-wide harmonization is made more difficult by multiple memberships in regional trade arrangements. Uganda, Kenya, Rwanda, and Burundi are members of the COMESA, while Kenya belongs to the free trade area in COMESA, but Uganda does not. Tanzania is not part of COMESA, but belongs to SADC. The COMESA members in EAC see Tanzania to be delaying certain key decisions in goods trade integration and adoption of best practices at the EAC Council in order to maintain the lead already attained through its SADC membership.<sup>333</sup>

#### **4.10 Main Implementation Challenges**

A stable legal environment is the basis for any transaction, between businesses, private and public entities in a trading community. The more specific issues relating to the law in support of TF has been examined; however, in many cases, it is not so much the lack of law that hamper the free flow of goods, as the lack of implementation and enforcement. Thus, although many provisions of the EAC laws contain references and commitments to resolving trade issues, customs facilitation or regulatory problems, there are often simply not enough resources at hand to tackle the challenges in practice.

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<sup>332</sup> Ibid.

<sup>333</sup> Diodorus Buberwa Kamala, *The Achievements and Challenges of the New East African Community Cooperation*, an open lecture May 3, 2006. <http://www2.hull.ac.uk/hubs/pdf/memorandum58.pdf> (accessed on 12/12/09).



#### **4.11 Costs of implementing TF Measures**

The introduction and implementation of trade facilitation measures have entailed costs in one or more of the following areas: new regulation, institutional changes, training, equipment and infrastructure.<sup>334</sup> Among cost components, equipment and infrastructure, may be the most expensive in many cases; however, training appears to be the most significant, as TF is primarily about changing border agencies' ways of doing business. Since most the EAC partner states are LDCs, these costs pose a very big challenge to the TF programme and unless assisted, the full implementation of the TF agenda may still be far from being realised.

### **5. Main Conclusion and Recommendations**

From the above discussion there is no doubt that TF can play an essential role in not only stimulating economic development in the EAC and in facilitating the integration of the continent into the global economy but also curbing corruption. However, if TF is to yield positive outcomes it must be incorporated within domestic reforms that seek to create the proper conditions for social and economic development. It is clear that in each of the EAC countries, strengthening trade is a government priority and many improvements have been made toward developing mature, export-oriented industries. However, regionally, the countries of East Africa remain mired in counter-productive practices, and inadequate attention is paid to the details of strengthening their collective trade positions. This not only hinders economic development in the region but undermines the very spirit of regional cooperation.

Important to note is that reducing border corruption is very challenging because it is resisted by the officials who have a direct stake in the 'corruption income'. However efforts to contain corrupt tendencies must be strengthened by government because corruption costs, both the direct and indirect, increase the cost of trading and hamper the development of an economy.

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<sup>334</sup> OECD (2004), *The Cost of Introducing and Implementing TF Measures* By Edvokia Moise, No.8 OECD Trade Policy Working Papers at <http://www.oecd.org/dataoecd/58/25/35459690.pdf> (accessed on 20/11/09).

Many commendable TF strategies some of which have been discussed in this paper have been taken by EAC customs albeit with much difficulty. The EAC plan to establish a unified East African Customs Authority is a big step forward and can lead to trade facilitation but only if there is a formidable amendment of EAC customs law so as to enable better coordination among all stakeholders in all the EAC Partner States. It is also commendable that such reform makes use of the various WCO trade facilitation-related instruments like the Revised Kyoto Convention which is the blue print for any customs reform.

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