

Should the World Customs Organisation Develop a Hard Law Approach to Anti-Corruption in Customs?

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Most surveys of corruption victimisation point to customs as one of the leading government services affected by corruption. In the roughly 15 country-level surveys conducted about corruption in various government services, customs always appeared in the top three (along with the traffic police). Yet, relatively little work has been done at the international level focusing on reducing corruption in customs services world-wide. Most international organisations have developed recommendations and conventions aimed at reducing corruption. The OECD and the UN have their anti-corruption conventions. Regional and specialist organisations like the Organisation of American States and the International Chamber of Commerce are also following suit. However, these do not specifically cover customs-related activities. And aside from its Arusha Declaration and its Model of Code of Conduct, the World Customs Organisation (WCO) remains a conspicuously absent member of the international anti-corruption community.

The WCO should lead work on international anti-corruption work, specifically in customs, for three reasons. First, customs work is highly specialised – and the administrative procedures governing customs work often fall to different pieces of legislation from that of the broader civil service. In many Eastern European countries, for example, customs officers receive separate pay than civil servants and the customs director has much broader powers of regulating his (or her) staff than in other public sector agencies. Differences in risk profiling for corruption between border crossing points and mobile teams – or hard separations between corruption cases treated as disciplinary cases versus criminal ones – can not (and are not) covered by legislation. Second, most corruption cases involving customs are – by definition – cross-border. When a customs officer accepts a bribe in order to clear an improperly categorized import, a chain of accomplices may string from the exporting country – through transit countries – and into the importing country. A standardised approach is required (among other things) to share information on corruption and decide on issues of jurisdiction. Third, while anti-corruption related work in most WCO member states is becoming increasingly similar – differences in the way they are evolving can have dramatic effects later on. For example, in some countries, customs agencies are developing highly repressive agencies – modeled after the internal affairs departments of the USA. In other countries, customs agencies still opt (by law or preference of the customs agency head) for internal integrity departments with a more preventive or persuasive role.

Customs agencies are implementing law which helps combat corruption. First and foremost (and partly already because of the WCO's work), they are "right-regulating." Excessive customs regulations serve as the primordial reason for corruption – and most customs services are now dedicated to the periodic review of customs regulations (as allowed by law) to reduce burdensome customs requirements. Second, these customs agencies are – as is the organisational fad -- establishing internal departments; variously labeled as internal affairs, internal security or simply integrity departments. These departments investigate corruption internally, co-operate with other law enforcement agencies, and even handle disciplinary matters. Some are large, others are small...some are weak, while others are strong. Third, most customs agencies in the middle-income countries are implementing internal audit regimes which detect (and even prevent) corruption. Financial audit represents the most obvious and useful form of audit. Though compliance and performance audits which measure compliance with asset declaration schemes and conflict of interest programmes also represent increasingly important areas of internal audit in customs services. As of 2009, the similarities in customs agencies' regulations world-wide form a sufficient basis for WCO work on the topic.

Three dire, or at least troublesome, results may ensue if the WCO fails to assume some form of leadership in spearheading the anti-corruption effort in customs work world-wide. First, WCO-member customs agencies will (continue to) wonder why the WCO is not taking the same initiative as other agencies like the UN or OECD. Second, customs regulations may “evolve” (for lack of a better word) sufficiently differently across regions; so as to make later harmonisation extremely difficult. We have already seen this in the establishment of the more preventive agencies of the Balkans and the more repressive agencies in Eastern Europe. Customs agencies like the Macedonian Customs Administration even implement internal asset declaration and other programmes which remedy wider failures in the public sector’s ability to implement new anti-corruption laws. Customs services in Latin America lean toward criminal remedies for corruption cases whereas countries in Eastern Europe still find it easier (given their administrative legacy) to treat them as civil and administrative offences! Third, failure to translate the UN Convention Against Corruption’s articles into standard customs practice may cause numerous signatories to be in breach of their UN obligations. The UN Convention imposes numerous obligations on customs services to educate their staff about the harms of corruption, allocate administrative responsibility among various parties, and seek civil (and/or criminal) damages arising from corruption cases. The WCO has a strong role to play in supporting the other international organisations in this area. The soft law approach the WCO has favoured (relying on codes of conduct) will not rise to the challenge of helping customs services world-wide translate their new national anti-corruption laws into customs agency regulations.

In order to help its members translate anti-corruption legislation into workable customs regulations, the WCO should take three steps. First, the WCO should establish a special commission of members (and experts) in order to pass (yet another) resolution. The resolution, however, would establish the substantive rights and obligations for customs anti-corruption work in WCO-member customs agencies. Such resolution-making follows the same path the OECD and UN followed in their quest for ratification of an eventual anti-corruption convention. However, in the specific case of the WCO, these rights should be based (as discussed above) on right-regulating, the functioning of an internal affairs department (consistent with the legal principles of the member state involved) and a commitment to internal audit. Second, the recommendation – once adopted – should be formalised (through a formal drafting process) into an Anti-Corruption Model Regulation. The Model Regulation would – much like the anti-corruption conventions at the national level – establish a common framework for fighting corruption in customs. As a regulatory instrument, rather than a legislative one, the Model Regulation would provide a basis for hard law anti-corruption work... without the formal obligations involved in an international convention. Third, the WCO working group would assist member state customs services to adopt internal regulations consistent with the WCO Model Regulation. Such a model already exists in the GRECO, OECD and UN convention monitoring processes. However, these monitoring processes explicitly exclude customs work – exactly because of the specific nature of customs work. Only the WCO has the competency (and probably the competence) to tackle the type of anti-corruption legal guidance in customs work which the other international organisations can not (and want not) to engage in.

Customs agencies world-wide are waiting for the WCO to take the lead in fighting global corruption in customs. Regulatory harmonisation – spearheaded by the Organisation – provides that leadership.