

UNCTAD Trust Fund for Trade Facilitation Negotiations
Technical Note No. 7

**Maintenance and reinforcement of integrity
and ethical conduct among officials**

The measure in the WTO context

Par. 3(a), Article X of GATT (Publication and Administration of Trade Regulations) requires each WTO member to “administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of [Article X]”.

In the context of the WTO negotiations on trade facilitation, one proposal suggests the “development of codes of conduct for staff of border agencies” and, concerning the maintenance of integrity, the “appointment of officials in charge of providing officials' education and provisions of adequate training to relevant officials” (TN/TF/W/8). Another proposal puts forward the “establishment of a code of conduct in the Customs services, spelling out the rights and obligations of the public servants; introduction of computerized systems to reduce (or eliminate) the discretion exercised by officials and employees with respect to basic Customs decisions; establishment of a system of penalties, to be directly incorporated in the country's Customs legislation; offences by Customs officials should be considered as criminal acts; technical assistance to create and build up the country's national capacity to prevent and control Customs offences; establishment of coordination and control mechanisms between Customs administrations and the organizations involved in devising ethics policies in the Customs services” (see WTO document TN/TF/W/60).

For an overview of proposals see the WTO's reference document TN/TF/W/43 (latest revisions) under Other Measures to Enhance Impartiality, Non-Discrimination and Transparency.

Background

Effective and impartial administration of trade regulations can be ensured only if officials in charge of such administration possess and maintain a high level of integrity in their dealings with members of the public, traders and other government officials. This should be ensured on a continuous basis. To this end, it would be important for countries to develop codes of conduct setting out, in very practical and clear terms, the standards of behaviour expected from Customs and other border control agency officials. In particular, such standards of behaviour would specify rights, duties and obligations with respect to the exercise of officials' functions, as well as provide for disciplinary measures in cases of non-compliance.

Codes of conduct for Customs officials, like other codes of conduct, normally include provisions to deal with general issues, such as loyalty, efficiency and effectiveness. Moreover, emphasis should be placed on the central importance of integrity, fairness, impartiality and non-discrimination. Any code of conduct would also state clearly which types of behaviour are unacceptable, such as undue preferential treatment for any

group of individuals, abuse of authority, acceptance of gifts or benefits. Provisions more specific to Customs may also be included, such as relating to the conduct of Customs officials when dealing with the business community, their involvement in procurement, business interests, and government contracts; concessions and discounts offered to Customs personnel; involvement in private financial transactions by staff members, especially when involving public money; and specific official identification and dress code.

A large-scale survey was carried out by the UN Economic and Social Council on the implementation of the *International Code of Conduct for Public Officials*. The report, based on responses from 54 countries, suggests that many countries already have in place comprehensive codes of conduct for all categories of public officials. Some countries have specific codes of conduct applicable only to high, medium or low-level officials. Others have codes of conduct for specific categories of public officials. In most countries, codes of conduct are incorporated into domestic laws and administrative policies.¹

It is also important to hold Customs officials accountable for illegal decisions and unethical behaviour. Usually, measures to ensure accountability for actions and decisions taken by public officials in the performance of their duties as well as effective disciplinary action are dealt with either in domestic laws and regulations or in a specific code of conduct, or in both. Such actions and decisions might also be open to judicial review in the criminal and administrative courts. Sometimes provisions for disciplinary measures concerning types of illegal or unethical behaviour might not be specifically expressed but implied in the general principles set out in the code of conduct. In cases of serious misconduct amounting to unlawful behaviour, criminal sanctions may be envisaged under domestic law. At the WTO negotiations on trade facilitation it has been specifically proposed that a “system of penalties” be established as part of a country’s Customs legislation and that “offences by Customs officials be considered as criminal acts” (TN/TF/W/60).

Reference to disciplinary measures and penalties in case of illegal or unethical behaviour of officials could be made in the country’s Customs Code of Conduct, frequently part of an internal resolution of the Customs authority. However, for such provisions to be enforceable they need to be supported by appropriate legislative and administrative provisions.

Automation and the introduction of computerized systems in Customs are further important steps towards effective facilitation of international trade procedures. They also potentially bring increased transparency in the assessment of duties and taxes, substantial reduction in Customs clearance times, as well as improved predictability, all leading to direct and indirect savings connected to international trade and investment transactions.

The establishment of coordination and control mechanisms between Customs administrations and the organizations involved in devising ethics policies in Customs

¹ See <http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN010930.pdf> for the General Assembly Resolution of 1997.

For the “Implementation of the United Nations Declaration against Corruption and Bribery in International Commercial Transactions” see E/CN.15/2002/6 <https://www.unodc.org/pdf/crime/commissions/11comm/6e.pdf>, and for the “Implementation of the International Code of Conduct for Public Officials”, E/CN.15/2002/6/Add.1 <https://www.unodc.org/pdf/crime/commissions/11comm/6add1e.pdf> (2002).

services can further help to increase accountability and reduce the potential for inappropriate or illegal conduct of Customs officials.

Many countries offer training in ethics and professional behaviour to their public officials at least once at the beginning of their service. This training is provided either by the individual institution or office employing the official, or by a specific agency within the government. Periodic refresher courses throughout the career of Customs officials may also be envisaged. Some organizations set as a condition for payment of annual bonuses to staff their online certification of having read the current version of the ethics code and ancillary documents. Procurement officials may also be required to take an online test.

Benefits and costs

Benefits

The reinforcement of integrity and ethical conduct among officials would positively affect the application of procedures and the administration of Customs rules in a more efficient, transparent, and impartial way, thus serving the overall objectives of trade facilitation.

Financial benefits could be considerable for both governments and companies, especially small- and medium-sized enterprises (SMEs) in developing countries, whose alternatives are scarce when confronted with unethical or unlawful Customs practices. Indeed, as it is the case with many discriminatory practices, many SMEs find that they are too big to hide and, unlike multinational corporations (MNCs) and other big companies, too small to fight back.

In the longer term, reinforcement of integrity and ethical conduct among officials could yield broad benefits for the overall economic interests of countries, such as their revenue collection, increased trade, and respect for the rule of law.

Costs

Costs might have to be incurred in relation to the following areas:

- Drafting of codes of conduct for Customs and other agencies' officials;
- Adjusting and amending the legislative and administrative frameworks governing the conduct of border control officials;
- Training needs;
- Professionalisation of Customs services; and
- Introducing efficient coordination and control systems.

Implementation of the measure

In order to effectively implement the proposed measures, codes of conduct for Customs officials would need to be introduced and incorporated into the national legislations or administrative frameworks of countries. This might require adjustments of existing legal and administrative provisions or the addition of new ones in order to make the provisions of the codes enforceable. Also, provisions containing requirements for the training of officials may have to be introduced in the national legislation. Institutional adjustments may also be required, including with respect to coordination and oversight mechanisms, training, and computerization.

In this context, gathering and compiling adequate information on the situation of individual countries, including the relevant applicable domestic and international legislation, would be a first step in the right direction. This could be initiated by the countries themselves, and supported by relevant international and regional organizations and the Customs services of experienced countries if necessary, including through technical assistance and capacity building support.

Relation to other trade facilitation measures

Maintenance and reinforcement of integrity and ethical conduct among officials is closely related to other measures aimed at securing an impartial, effective and transparent administration of trade regulations. Among these, measures relating to uniform administration of trade regulations and to the right of appeal should be mentioned. Measures related to automation, computerization, reform and modernization of Customs functions play a particularly important role, as opportunities for corruption and unethical behaviour thrive particularly where outdated and inefficient Customs practices are used. Automation and computerization are an important part of any Customs reform, and serve as catalysts for the modernisation of Customs.

References and available tools

United Nations International Code of Conduct for Public Officials

Concerned about the serious problems posed by corruption, the United Nations General Assembly included in one of its resolutions (A/RES/51/59, Action against corruption, 12 December 1996) an annex entitled “International Code of Conduct for Public Officials”. This annex contains general and other principles regarding the conduct of public officials.²

Article 8, par. 3 of the United Nations Convention against Corruption of 2003, which entered into force on 14 December 2005, invites states to take note of this Code, and other “relevant initiatives of regional, interregional and multilateral organizations”.³

General principles outlined in the UN International Code of Conduct for Public Officials

1. A public office, as defined by national law, is a position of trust, implying a duty to act in the public interest. Therefore, the ultimate loyalty of public officials shall be to the public interests of their country as expressed through the democratic institutions of government.
2. Public officials shall ensure that they perform their duties and functions efficiently, effectively and with integrity, in accordance with laws or administrative policies. They shall at all times seek to ensure that public resources for which they are responsible are administered in the most effective and efficient manner.

² <http://www.un.org/documents/ga/res/51/a51r059.htm>.

³ http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf. Also see the reports of the International Group for Anti-Corruption Coordination (IGAC). IGAC members are the African Development Bank Group, the Council of Europe, the European Anti-Fraud Office, Interpol, the Latin American Centre for Development Administration, the Organization for Economic Co-operation and Development, the Organization for Security and Co-operation in Europe, Transparency International, the Asian Development Bank, Ethics Resource Center, the European Bank for Reconstruction and Development, the European Commission, the Inter-American Development Bank, the World Bank’s Department of Institutional Integrity, the International Fund for Agricultural Development, the United Nations Department of Economic and Social Affairs, UNESCO’s International Institute for Educational Planning, the United Nations Development Programme, the United Nations Global Compact, the United Nations Office of Internal Oversight Services, the United Nations Office on Drugs and Crime, the United Nations Public Administration Programme, U4 Anti-Corruption Resource Centre and the World Customs Organization. <http://www.igac.net/>, <http://www.oecd.org/dataoecd/3/6/1918235.pdf>

3. Public officials shall be attentive, fair and impartial in the performance of their functions and, in particular, in their relations with the public. They shall at no time afford any undue preferential treatment to any group or individual or improperly discriminate against any group or individual, or otherwise abuse the power and authority vested in them.

World Customs Organization

Within the framework of its integrity programme, the WCO has produced an *Integrity Self-Assessment Guide*, a *Model Code of Ethics and Conduct*, an *Integrity Development Guide*, a *framework of standards to secure and facilitate global trade*, and an *Integrity Action Plan*, which are 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 key examples is the *Maputo Declaration*, adopted in March 2002 by the Heads of Customs across Africa. For examples and information on codes of conduct for Customs officials adopted in various countries, see the *Compendium on Integrity Best Practices*, last issued by the WCO in March 2007. The *Model Code of Ethics and Conduct*, also developed by the WCO, serves as a guide for these countries.

The need for the adoption of such codes was also recognised by the WCO in its *Declaration of the Customs Co-operation Council Concerning Good Governance and Integrity in Customs*, of 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 behaviour 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”.

The 11 key elements of a code of conduct for Customs officials are detailed in the *WCO Model Code of Ethics and Conduct*. They are:

1. Personal Responsibility
2. Compliance with the law
3. Relations with the Public
4. Acceptance of Gifts, Rewards, Hospitality and Discounts
5. Avoiding Conflict of Interest
6. Political Activities
7. Conduct in Money Matters
8. Confidentiality and Use of Official Information
9. Use of Official Property and Services
10. Private Purchases of Government Property by Staff
11. Work Environment

The *WCO Model Code of Ethics and Conduct* provides for disciplinary action for the most serious offences committed by Customs officials. It states that “[a]ll officials of Customs must comply with the law. The special responsibilities of Customs mean that offences relating to legislation administered by Customs, 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 exportation of goods will be subject to disciplinary action, regardless of any penalties applied as a result of criminal proceedings.” As it is also suggested by the WCO Revised Arusha Declaration, disciplinary measures and penalties in case of illegal or unethical behaviour of officials would have to be proportionate to the violation.

www.wcoomd.org

Other relevant multilateral instruments and initiatives

Other multilateral instruments to combat corruption include the following: ⁴

- the Inter-American Convention against Corruption, 1996;
- the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 1997;
- the Convention on the fight against corruption involving officials of the European Communities or officials of member States of the European Union, 1997;
- the Buenos Aires Declaration on Prevention and Control of Organized Transnational Crime, 1995;
- the Dakar Declaration on the Prevention and Control of Organized Transnational Crime and Corruption, 1997;
- the Manila Declaration on the Prevention and Control of Transnational Crime, 1998; and
- the United Nations Declaration against Corruption and Bribery in International Commercial Transactions, 1996.

Multilateral initiatives to promote rules of conduct for public officials in Customs administrations include:

- Global Forum for Fighting Corruption and Safeguarding Integrity among Justice and Security Officials, Washington D.C., U.S.A., 24-26 February 1999;
- Global Forum II on Fighting Corruption and Safeguarding Integrity, ‘Fighting Corruption by means of Integrity, Transparency and Responsibility’, The Hague, The Netherlands, 28–30 May 2001;
- Global Forum III on Fighting Corruption and Safeguarding Integrity, ‘Growing Challenges, Shared Responsibilities’, Seoul, Republic of Korea, 28-31 May 2003;
- Global Forum IV on Fighting Corruption and Safeguarding Integrity, ‘From Words to Deeds’, Brasilia, Brazil, 7-10 June 2005; and
- Global Forum V on Fighting Corruption and Safeguarding Integrity, ‘Fulfilling our commitments: Effective action against corruption’, Johannesburg, South Africa, 2-5 April 2007.⁵

⁴ See also Compendium of international legal instruments on corruption, 2nd edition (Vienna: United Nations Office on Drugs and Crime, 2005). http://www.unodc.org/pdf/corruption/publications_compendium_e.pdf

Other global initiatives to promote integrity and combat illegal decisions and unethical behaviour include the following:

- Transparency International;⁶
- The World Bank Public-Private-Dialogue;⁷ and
- The OECD Bribery in International Business.⁸

The Global Facilitation Partnership for Transportation and Trade (GFP)

The Global Facilitation Partnership for Transportation and Trade (GFP) brings together the world's leading organizations and practitioners in trade and transport facilitation. It creates an open information and exchange platform on major new developments and all aspects of trade and transport facilitation. See www.gfptt.org.

UNCTAD

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Further UNCTAD Technical Notes

Further Technical Notes are available via <http://www.unctad.org/technicalnotes>. See in particular:

- Technical Note No. 3 (Customs Automation Systems)
- Technical Note No. 4 (Release of Goods in Event of Appeal)
- Technical Note No. 10 (Right of Appeal against Customs and other Agency Rulings and Decisions)

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⁵ see <http://usinfo.state.gov/topical/econ/integrity/>; http://www.worldbank.org/wbi/governance/pdf/hague/final_declaration.pdf; www.globalforum3.org; <http://www.ivforumglobal.org.br>; and http://www.globalforum5.gov.za/Statics/overw_gl_forum.asp.

⁶ <http://www.transparency.org>.

⁷ <http://www.publicprivatedialogue.org>.

⁸ http://www.oecd.org/departement/0,2688,en_2649_34855_1_1_1_1_1,00.html and http://www.oecd.org/document/40/0,2340,en_2649_34855_38290152_1_1_1_1,00.html.