

Ethics and transparency in Customs: a case study

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Abstract

This case study provides an overview of the approaches taken by Uruguay National Customs Directorate to combat corruption. Measures implemented by the Customs Directorate on ethics and transparency include the commitment of senior officials to provide leadership and in so doing, to address the regulatory framework of the Customs Code of the Eastern Republic of Uruguay and the simplification of procedures based on international best practice, including increased transparency of customs operations, the introduction of automated systems leading to reform and modernisation of practices, routine auditing and greater collaboration to identify and investigate corrupt actions. A Code of Conduct has been developed, together with sound human resources management. These measures have improved the morale and organisational culture in the Customs Directorate and have led to stronger relationships with the private sector.

‘The Line’ in Guatemala

A suspicious flow of goods entering the country, and links between importers and customs clerks designed to evade taxes, led the International Commission against Impunity in Guatemala (CICIG),¹ to investigate allegations of involvement of senior government officials and directors from the Superintendency of Tax Administration (SAT) in a sophisticated smuggling network operating in the country’s customs offices. The facilitation (involving incorrect tariff rates, false invoices, incorrect goods declarations, false descriptions and undervaluation, according to the type of product) was arranged by a telephone contact, known as ‘The Line’. Also, in collaboration with senior SAT officials, customs brokers arranged for underpayments of duty not to be reported.

23 police operations led to the arrest of 20 people, including SAT officials and employees, businesspeople and customs clerks. Customs Declarations,² phone taps, photographs, invoices and shipping company reports were used in evidence.

In response to these developments, the Guatemalan public organised mass protests to show their disapproval of the situation. This culminated in the resignation of Guatemala’s president, Otto Pérez Molina, on 2 September 2015, who was remanded in custody and is being investigated for unlawful association, passive bribery and customs fraud.

Brief analysis of corruption

Corruption affects the growth and development of countries, limiting the government’s ability to implement stabilisation policies, since it undermines controls. It affects the whole economic system by lowering consumption, investment and export levels; slowing the country’s growth process; and resulting in a loss of confidence in the institutions.

Three elements combine in cases of corruption. First, a clear and transparent regulation is broken. Second, an official breaks the law and obtains a benefit, and third, the benefit that is obtained is a direct consequence of the corrupt act. Fiscal corruption occurs when an illicit agreement is reached between a tax payer and an official in order to avoid tax, to the detriment of the State.

Corruption is not a phenomenon that is exclusive to underdeveloped countries, and while most commentators believe that corruption can be reduced to a minimum level, they doubt whether it can be completely eradicated.

Measures implemented by the Uruguay National Customs Directorate on ethics and transparency

Corruption cannot be attributed to a single cause, so it needs to be combated with different measures, at different levels and in a creative and innovative way. Some of the measures should be aimed at preventing corruption, while others should be aimed at punishing and penalising it, as a way of combating all the variables involved. Different measures have been adopted at the Uruguay National Customs Directorate, based on the World Customs Organization's (WCO) Revised Arusha Declaration.³

LEADERSHIP AND COMMITMENT: *“The prime responsibility for corruption prevention must rest with the Head of Customs and the executive management team.”*

The senior officials of our Directorate, in compliance with Art. 1 of the Revised Arusha Declaration, have confirmed their commitment and leadership duties. They have committed themselves to detecting and fighting possible transgressions within the work environment, and they comply with Law No. 17.060, issued on 23 December 1998, that requires all civil servants to submit to ‘JUTEP’ (Commission for Transparency and Public Ethics) the detail of their assets, listed in an affidavit, every two years.

REGULATORY FRAMEWORK: *“Customs laws, regulations, administrative guidelines and procedures should be harmonised and simplified to the greatest extent possible so that Customs formalities can proceed without undue burden.”*

The Customs Code of the Eastern Republic of Uruguay (CAROU), Law No. 19276, was passed on 13 September 2014. It has systematised regulations that were scattered, and it has also updated those regulations, and aligned them with international best practice, thereby establishing clear and coherent regulations.

The simplification of procedures has resulted in a paperless approach and demanded a re-engineering of procedures and new features provided by the IT systems, in order to allow the simplification of requirements to be fulfilled and the implementation of information exchange with other agencies, as well as electronic payment. It also led to the development of new Procedure Manuals.

TRANSPARENCY: *“Customs clients are entitled to expect a high degree of certainty and predictability in their dealings with Customs.”*

On 2 April 2014, the Uruguay National Customs Directorate – Private Sector Consultancy Committee was created by Customs Regulation No. 23/2014. The objective of this Committee is to receive, in an organised manner, approaches and concerns of the international trading community. As far as possible, any changes in procedures and regulations are disseminated in advance, and hearings are conducted within the Committee or in other informal settings.

Law No. 18.381, passed on 17 October 2008, that regulates the right to access public information, provides citizens with the opportunity to access information that is held by the Directorate, in accordance with Law No. 18.331, passed on 11 August 2008, on personal data protection.

The Uruguayan Constitution, in Art. 317, established the right of appealing administrative acts, which is regulated in Decree No. 500/991, issued on 27 September 1991, in Art. 142 and following. The procedure for administrative appeals provides the right to appeal customs decisions or to request a re-examination of them.

AUTOMATION: *“Where possible, automated systems should be configured in such a way as to minimise the opportunity for the inappropriate exercise of official discretion, face-to-face contact between Customs personnel and clients and the physical handling and transfer of funds.”*

Since 2010, over 1,000 desktop and portable computers have been allocated to relevant officials. This represents a high percentage of computerisation within the Uruguay National Customs Directorate, which has 1,047 officials.

The Directorate has also introduced the ‘Electronic File System’ (GEX), which allows (through the ‘Pre-file’ application) customs brokers to initiate customs files electronically, from their offices, and to receive electronic notifications.

The Project ‘Digital DUA’ (DUA: Single Customs Document) is a customs operations control process, for imports, exports, and transit shipments, which is documented in an electronic and automated way, and has minimal dependence on paper. Through this project, a number of initiatives have been implemented including electronic document, electronic signature, customs operations document storage under the customs brokers’ responsibility, and the re-engineering of customs controls. Further, through the IT system ‘Sistema Lucia’, we have introduced the Electronic Customs Document and the ‘Digital Goods and Merchandise Detention Record and Computerised Control of Warehouse Stock’.

The Single Window for Foreign Trade (VUCE), from the Uruguay National Customs Directorate, is a mechanism for trade facilitation aimed at optimising and unifying, through electronic means, the information and documentation required to fulfil all import, export and transit procedures via a single entry point. As at September 2015, 33 customs procedures were incorporated in ‘VUCE’, with 440 registered users and 8,449 import and export documents processed.

REFORM AND MODERNISATION: *“Corruption typically occurs in situations where outdated and inefficient practices are employed and where clients have an incentive to attempt to avoid slow or burdensome procedures by offering bribes and paying facilitation fees.”*

Management by Process, a project which we have embarked on, creates greater institutional security by limiting the discretionary power of customs officials.

Management Agreements are commitments made by officials designated to specific hierarchical positions (functions) within the Directorate, for a period of 15 months. After that period, a Panel is required to evaluate the official’s compliance with the Management Agreement, and decide whether or not to renew the posting. The activity plans contemplated in the agreements contribute to the achievement of the institutional objectives of the Directorate.

Each Management Agreement has four kinds of indicators: fulfilment of the duties established in the Directorate’s Balanced Scorecard; fulfilment of the duties included in the Unit’s Balanced Scorecard; level of compliance with the punctuality and presence control duties, and fulfilment of the Unit’s annual work plan.

AUDIT AND INVESTIGATION: *“... a reasonable balance between positive strategies to encourage high levels of integrity and repressive strategies designed to identify incidences of corruption and to discipline or prosecute those personnel involved.”*

The National Customs Directorate is focused on training and enhancing the professionalism of its officials, as well as fostering their ability to discern whether somebody’s conduct is unethical.

The Customs Inspection area, Internal Audit unit and the Customs Response and Intelligence Group (GRIA), are working collaboratively and have the autonomy to investigate and identify corruption acts. Within the last five years, 26 criminal prosecutions of customs officials have been progressed by GRIA.

CODE OF CONDUCT: *“... which sets out in very practical and unambiguous terms the behaviour expected of all Customs personnel.”*

The National Customs Directorate has submitted to the Executive Branch its own Code of Ethics, which has the status of a Decree.

Likewise, there are regulations about ethical performance of public duties in our country. These include Art. 59 of The Uruguayan Constitution, the Penal Code, Law No. 17.060 (‘anti-corruption law’), the Statute for Public Servants (Law No. 19.121) and its regulatory decrees, that regulates, among other things, the disciplinary regime for civil servants. Decree No. 30/2003 sets out the duties, prohibitions and incompatibilities of civil servants and establishes the principle of pre-eminence of the public function, and in Art. 14 of Decree No. 204/013 the duties of customs officials are listed.

HUMAN RESOURCES MANAGEMENT: *“The implementation of sound human resources management policies and procedures plays a major role in the fight against corruption in Customs.”*

Corporate Governance is the set of processes, habits, policies, laws and institutions that affect the way a company or organisation (corporation) is directed, managed or controlled. It also includes the relationship between the different agents involved in it (the Directorate, external controllers, creditors, investors, customers, suppliers, employees, the foreign trade community and the whole society).

Innumerable measures have been implemented to support Corporate Governance; for example, salary improvement. Aligned with this measure, the employment relationship of those officials who have applied for and obtained their permanent status has been improved, thereby encouraging their professional careers to develop.

The range of training courses that are available to officials is published on our website. Our Training and Knowledge Management Department delivered 320 courses from January 2011 to September 2015, with a total number of 4,202 enrolments.

We also follow the steps of the Integrity Development Guide from the World Customs Organization, which is disseminated through seminars, workshops and other courses.

Repairs to the Customs buildings are being made across the entire country in order to provide officials with the appropriate infrastructure in which to work. Since 2010, approximately 29 building and warehouse refurbishments have taken place, a new Integrated Control Area has been built and alarms have been installed. A building maintenance plan has been developed, which will be implemented in the period 2016-2020. This plan includes six public works projects to be carried out in Montevideo and in the provinces in order to preserve the heritage of the Directorate.

In 2013, the Incentive System for Best Performance was developed, as a way of rewarding each official fairly. In order to achieve this, three factors are considered: Responsibility, Participation in customs violations discovery, and Performance. In terms of ‘Performance’, the accomplishment of individual, group and corporate goals, punctuality, presence and individual performance, are measured.

MORALE AND ORGANISATIONAL CULTURE: *“Corruption is more likely to occur in organisations where morale or ‘esprit de corps’ is low and where Customs personnel do not have pride in the reputation of their administration.”*

In order to improve our relationship with the general community, we have developed information campaigns that explain the various activities performed by customs officials, the allocation of revenue, the importance of combatting smuggling, and how our community and the national economy are being

protected. Since 2013, Corporate Social Responsibility activities have been undertaken, with the active involvement of customs officials. The project ‘Knowing the Customs Directorate’ is currently under way. It consists of informative workshops aimed at primary school students from across the country, presented by customs officials. With these activities, and with others that are also taking place, a higher level of participation from officials is being sought. These activities also encourage a greater sense of belonging, commitment and a sense of pride among customs officials.

RELATIONSHIP WITH THE PRIVATE SECTOR: “Customs administrations should foster an open, transparent and productive relationship with the private sector.”

We have signed 11 Integrity Agreements with the private sector, in compliance with the principles of Art. 10 of the Revised Arusha Declaration, which promotes the signing of Memoranda of Understanding and the development of Codes of Conduct or Integrity that include appropriate penalties.

We already have fourteen Qualified Economic Operators in Uruguay, and to date 49 Uruguayan companies have indicated their intention to participate in this program. On our website (www.aduanas.gub.uy), there is a link to the free telephone number 0800 1855, for our stakeholders to contact us directly.

Finally, we concluded an Agreement with Brazilian Customs on 17 July 2014 and with Argentinian Customs on 4 November 2014, for the Bilateral Implementation of the Intra-Mercosur Pilot Program on Customs Security in the Goods Supply Chain. These programs support international traders by ensuring a high level of customs security within the supply chain from the time the goods are exported from the territory of a member state to the time they are imported in another member state.

Notes

- 1 Comisión Internacional contra la Impunidad en Guatemala (CICIG).
- 2 Declaración Única Administrativa (DUA).
- 3 Signed in Arusha, Tanzania, on 7 July 1993 (81st/82nd WCO Council Sessions) and revised in June 2003 (101st/102nd WCO Council Sessions).

Enrique Canon



Enrique Canon, CPA, is Director General of Uruguay Customs, a position he has held for six years. He was appointed Director General of Uruguay Customs for a second consecutive term by the President of Uruguay, Dr Tabaré Vázquez, on 3 March 2015. From April 2012 to June 2014, Enrique was Regional Vice Chair of the World Customs Organization for the Americas and Caribbean Region. He holds degrees from the Universidad de la República (Uruguay), University of Stockholm (Sweden), and Universidad de la Empresa (Uruguay).

