

What do we know about corruption (and anti-corruption) in Customs?

Bryane Michael and Nigel Moore

Abstract

This article discusses many of the lessons learned in the last decade about fighting corruption in Customs. A methodology for measuring corruption including the use of internal audit is suggested. The effectiveness of various treatment approaches is discussed including the criminalisation of corruption, the implementation of codes of conduct, internal inspectorates and the use of conflict of interest statements. The article concludes by suggesting potential areas for additional research.

Introduction

In the mid-1990s, anti-corruption became one of the most fashionable – and important – topics in public governance. International donors spent at least €5 billion in various projects aimed at helping customs administrations around the world deal with this issue. Researchers in academia and practice have spent countless hours studying – and writing about – the best ways to understand and fight corruption in Customs. As a new decade begins, we should pause to reflect on what we, as customs officials, have learned over the past decade about fighting corruption in Customs.

This article presents some of the salient research from practitioners, together with some specific case studies of anti-corruption approaches within particular customs administrations. Most anti-corruption experts in the field generally agree on the basics: that IT helps and that the ‘public sector environment’ (pay and performance) should provide customs officials with incentives not to take bribes. This article focuses on some of the more specific approaches being implemented to overcome corruption including codes of conduct on bribery and how levels of corruption can be measured in an effective and meaningful way. As developing countries tend to experience more widespread corruption (though not necessarily the largest in financial terms), the article pays particular attention to issues of relevance to them.¹

Does criminalisation reduce corruption?

The trend in the last decade has been to criminalise corruption in all areas of public life, including in Customs. Figure 1 provides a brief overview of the major international conventions relating to anti-corruption which a customs agency should know about. Figure 1 also presents some issues raised by relevant conventions for customs agencies.² A detailed description of each convention is not proposed in this article.³ However, in the literature, there is particular consensus on the effectiveness of these conventions. The Organisation for Economic Co-operation and Development (OECD) Convention has failed to live up to its expectations – with academic and non-government organisation (NGO) commentators alike noting its widespread violation. The United Nations (UN) Convention has also encountered widespread problems mainly because signatory states refuse to implement the Convention in practice.

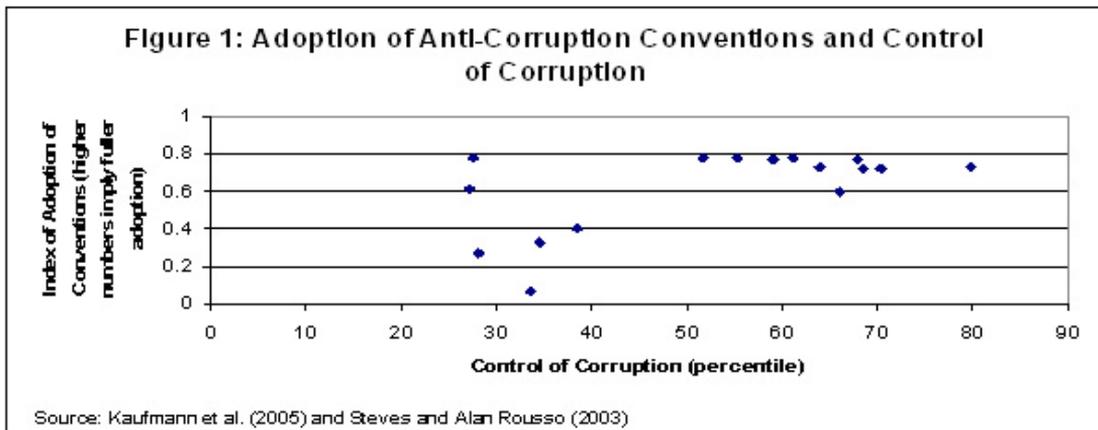
Figure 1: Fighting corruption in Customs involves more than customs law

Convention	Effect on Customs Agency
The UN Convention Against Corruption	Contains potentially powerful provisions related to the recovery of assets and the proceeds from corruption which internal affairs departments can use to recover losses from corruption (with the proper regulatory procedures and cooperative agreements with other agencies in place).
Council of Europe’s (CoE) Criminal Law Convention	Criminalisation is not new. But being able to name-and-shame a country for non-compliance with a CoE convention serves a potentially useful function which customs agencies can use to encourage their neighbours to seriously investigate and prosecute suspected corruption.
Council of Europe’s (CoE) Civil Law Convention	Potentially the most valuable of the anti-corruption conventions. Each corrupt act (particularly in Customs) carries with it large financial damages which customs agencies can (and should) recover through civil litigation.
OECD Convention on the Bribery of Foreign Officials in International Business Transactions	Customs agencies in Africa and Latin America think this convention does not apply to them. They are mistaken. A customs agency can do much to make sure their staff know that Germans and Mexicans who offer bribes anywhere in the world commit a crime in their own home countries.

Source: Michael & Moore 2009.

No formal empirical studies have established a strong correlation between the adoption of anti-corruption conventions and actual reductions in corruption. Figure 2 presents a scatter-plot showing the extent to which a number of countries worldwide have adopted the international conventions listed in Figure 1, and the extent to which corruption has fallen.⁴ Indeed, according to these data (mostly from Central Europe and the former Soviet Union), countries with high levels of corruption tend to be associated with a wider adoption of anti-corruption laws.

Figure 2: Adopting anti-corruption laws has questionable impacts on fighting corruption



Thus, in the literature, the consensus appears to be that the adoption of anti-corruption laws provides policymakers – like directors of customs administrations – with a type of voucher or option. These policymakers can use the new provisions to pass internal regulations implementing them – or not. Unlike other types of laws, customs administrations cannot sit back and wait for the police, prosecutors, the prime minister’s office or another agency to come and implement them. They, themselves, must take an active role in implementing the provisions.

How effective are codes of conduct and posters?

In the 1990s, large international donors – particularly United States (US) financed donors like USAID – spent enormous amounts of money paying for consultants to roam the world writing codes of conduct and create ‘don’t pay bribes’ posters. No anti-corruption expert has yet been able to produce evidence that the results of these activities in reducing corruption have outweighed their cost.⁵ Roughly 10 years and almost 75 projects worldwide have ‘helped’ customs agencies adopt codes of conduct. Yet, we do not know of one disciplinary case against a customs officer for violation of the code of conduct – their formulation is simply too abstract. Data from every anti-corruption survey consistently show that customs officers and importers know they should not be paying bribes – they don’t need posters to tell them so.

So, why should heads of inspectorates in customs administrations write and distribute these codes of conduct? The answer should be that a well-written, considered code of conduct tackles the tough ethical choices customs officers need to take in their daily work. An incompetent code of conduct tells customs inspectors not to take bribes. A useful one tells customs officers when they should NOT blow the whistle on a colleague. In other words, a code of conduct clarifies – if not teaches – moral reasoning skills. The 1990s witnessed a move away from ineffective slide presentations covering each point of a code of conduct and towards thoughtful case studies showing the two sides of every ethical choice.

If the 2000s saw the apogee of anti-corruption advertising, the 2010s will see the wider use of anti-corruption marketing. Every MBA and/or MPA graduate knows the difference between advertising and marketing. Advertising raises awareness about a product, service or social issue. Marketing aims to identify social needs and provides a service which helps society. Figure 3 shows the difference between anti-corruption advertising and marketing. In the first example, the poster admonishes viewers not to pay bribes (something they knew already). The second poster however, focuses on the main reasons for bribery (lack of knowledge about import procedures). The poster designers spent time (and conducted surveys) to find out what importers did not know. They put information which the viewer could use immediately (phone numbers and practical information).

Figure 3: Anti-corruption advertising versus marketing



An advertisement lets viewers know about a product or social issue they didn't know about before.

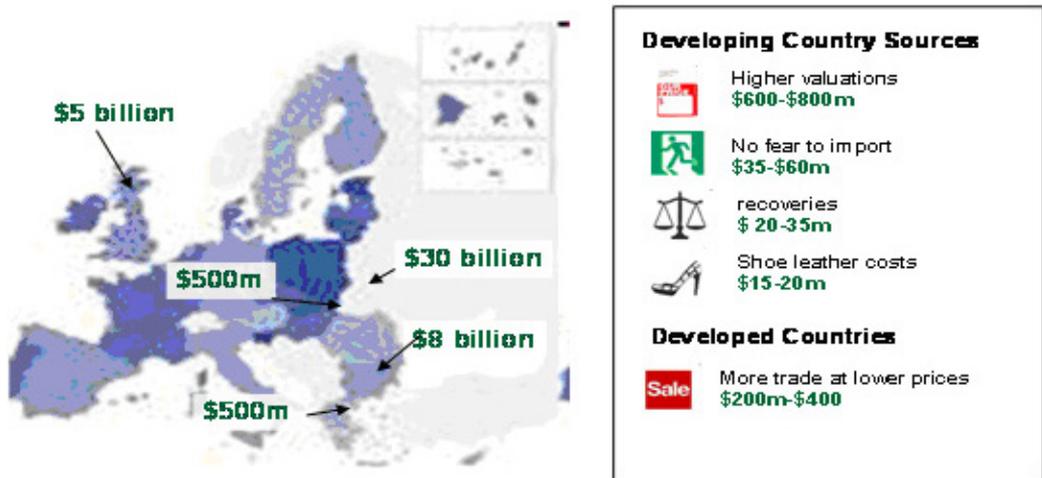


Marketing identifies wants and needs, and satisfies them at a (social) profit. (Social) marketing provides useful information which benefits the reader.

Measuring and estimating corruption

Throughout the 2000s, a number of articles by researchers and practitioners presented a vast array of data showing the extent of corruption in various customs agencies worldwide. Figure 4 provides an overview of some of these results (often combined with the authors' estimates where public data are unreliable). The estimated harm from corruption worldwide is at least \$700 billion – a small figure given that worldwide corruption in all services could easily be \$10 trillion.⁶ Corruption allows under-valuation and misclassification. Corruption allows smuggling. Corruption also costs business people money as they visit various officials, wait for documents and lose business.

Figure 4: \$700 billion in customs corruption



Source: Michael 2009.

Perhaps the biggest leap forward in the authors' understanding about anti-corruption in the 2000s came from the so-called 'empirical revolution'.⁷ As social scientists – and policymakers – we learned how to measure corruption, mostly with surveys. Almost all customs administrations sit back and wait for their national chapter of Transparency International to provide them with data. Such a (non)practice is a mistake. As shown in Figure 5, only a customs administration can engage in many of the techniques required to obtain reliable data. Customs administrations, particularly internal inspectorates, need to collect data before they can take decisions.

Figure 5: The three ways of getting data about corruption in Customs

1. <i>Ask companies.</i> Asking companies about the frequency and value of bribes they pay to customs inspectors constitutes the most popularly used way of measuring corruption. In smaller countries, they can also be used to measure conflict of interest. Data are becoming more unreliable as companies are getting ‘corruption survey fatigue’. ⁸
2. <i>Conduct internal audits.</i> Compliance audits, performance audits and, of course, fraud audits remain the gold standard for assessing the extent of corruption in various customs operations. Unfortunately, data cannot be compared across operations or between various customs agencies (and audit reports are almost never released publicly).
3. <i>Do integrity tests (bribe customs officers yourself!).</i> The most reliable and effective method of measuring corruption involves going to a random sample of customs inspectors and offering them bribes. Because of serious legal problems, these results should be used only for data collection and not as part of a large prosecution campaign.

Source: Michael & Moore 2009. For critiques of each method, see Michael & Polner (2007).

As practitioners, we also know how to apply the same skills when we find customs offences in order to fight corruption. Whether working on a mobile team, as an inspector or as an intelligence officer, we all share the language of risk profiling. We collect data on large numbers of individuals and companies and we estimate the probability of them engaging in illegal activity. The 2000s saw the application of those same skills in identifying bribe-askers (and bribe-takers) in a customs service. We can now estimate the probability that a customs inspector is taking bribes in the same way we can estimate the probability that an importer is not correctly declaring their import values.

Do internal inspectorates work? A proposed model

Throughout the 2000s, customs agencies worldwide created internal inspectorates to fight corruption. These inspectorates – alternatively known as internal affairs departments or units for internal security – reflect the variety of approaches adopted by corruption fighters more generally. Figure 6 shows the three main approaches to inspectorate-design – the educational inspectorate, the consultative, and the ‘repressive’.⁹ Naturally, many inspectorates (or their equivalents) combine more than one of these functions as over 30 per cent of inspectorates in Central and Eastern Europe have repressive competencies (the ability to investigate) and roughly 60 per cent engage in some kind of consultative function.

Figure 6: The three types of corruption fighters in Customs

Type of agency	Functions
Educational	Mostly deals with public education and engages in making posters, giving speeches on ethics, and so on.
Consultative	Conducts studies on ways to reduce corruption – regards corruption as a larger problem with customs regulation(s). These inspectorates usually handle hotline calls or receive complaints from the public.
Repressive	Typical internal affairs model, conducts serious investigations and assists with prosecutions.

Source: Michael & Moore 2009.

Owing to serious design problems, it is still not known if these inspectorates succeed in reducing customs-related corruption. These inspectorates had a difficult start in the 2000s, usually being mandated by a national anti-corruption strategy or action plan. Waiting for the legislative changes which would allow them to actually go out and investigate corruption, many customs agencies used these inspectorates as a ‘dumping ground’ for intelligence officers and investigators. The staff of these inspectorates receive no financial or other reward for finding corruption – and can often be ‘rewarded’ by criminal groups with an early death! As such, most inspectorate staff spend their time checking documents and (more recently) watching video camera footage of inspectors working at clearing houses.

As we enter the 2010s, the initial evidence tends to suggest that inspectorates should inspect, that is, they should have law enforcement powers. Inspectorates should have powers of investigation and sue for quick administrative prosecution for non-criminal offences such as negligence. The inspectorate of the 2010s draws the best investigative talent from the intelligence and investigation teams and pays them for using that talent. Because of the elite work in internal affairs, intelligence officers and investigators have incentives to develop their skills early in their careers – skills useful across the customs administration.

The effectiveness of internal audit

Internal auditors are not (necessarily) bean-counting accountants. Internal customs auditors have the same skills as business consultants working for prestigious companies like Accenture or McKinsey. They collect data and they make recommendations according to a set of standards agreed the world over.¹⁰ These standards – the International Framework for the Professional Practice of Internal Audit (IFPPIA) – are followed by auditors who satisfy extensive requirements for examination and professional experience. These auditors also work according to the same principles which we use as inspectors: they focus their work based on risk. Figure 7 shows the way that various types of audit help fight corruption in a customs administration.

Figure 7: Internal audit in Customs isn't what you think it is

<p>Three types of internal audit can help detect – and prevent – corruption in a customs agency.</p> <ol style="list-style-type: none">1. <i>Compliance.</i> Checks to see if customs officers follow the regulations in place. Auditors' recommendations reduce corruption because they suggest ways in which regulations can be rewritten to help encourage implementation. They also help to cut the red tape which gives both customs officers and importers incentives to pay bribes in the first place.2. <i>Performance.</i> Poorly performing work units are often rife with corruption. Auditor's recommendations can help find ways of making sure specific anti-corruption programs work. They can also help eliminate the inefficiencies in overall operations which allow customs officers to collect rents.3. <i>Fraud.</i> This is the audit which captures the popular imagination. Auditors swoop into a customs office, impound documents and computers and start heavy handed interrogations of staff. The fraud audit is rare and if real fraud were suspected, the customs agency would usually let the police deal with the case. Auditors don't (or at least, shouldn't) bully customs staff – they check, probe and advise. <p>Internal auditors can and do conduct financial audits. In these audits, they make sure that customs managers correctly report financial data (this is called ‘assurance’). But an internal audit department (particularly in the developing world) will spend only a small amount of time providing such assurance, leaving such work to internal accounting departments or external auditors.</p>

For all the benefits offered by an internal audit in preventing, finding and prosecuting corruption, it does have its limits. Internal audits cannot uncover widespread corruption as audits (or ‘engagements’ as the insiders call them) focus on very specific risks to customs revenue or traders’ rights. Internal audit recommendations are voluntary. Auditors can serve as honest brokers to all areas of a customs service because customs officials know they will not be punished if they deal openly and honestly with their internal auditors. Internal auditors look for solutions to corruption instead of attempting to assign blame.

Do asset declarations and conflict of interest statements work?

Asset declarations and conflict of interest statements (and declarations) became the special customs projects of the 2000s. By now, almost every customs official (particularly in senior management) had had to declare their cars, immovable property, and often the property of spouses and family members. Customs officers must also – by law – update these declarations periodically and/or with changes in their ‘material circumstances.’ In the same way, these customs officers must notify someone – a special external commission, an internal inspectorate or their manager, depending on the law in their country – if they want to hire their brother, clear the goods of a relative or buy shares in the companies they inspect.

At the beginning of the 2010s, compliance with these schemes is seriously lacking. Almost no country in the entire Eastern European and former Soviet region can claim to randomly sample these declarations to find under-declarations. Few, if any, countries can claim to have discovered (without the help of a whistleblower) conflict of interest cases. Few countries have seized the real estate and bank accounts of customs officers known to have taken bribes.

Issues for future research

The second decade of this century will undoubtedly witness extensive research on a number of topics relating to anti-corruption in the customs field, some of which are described below.

Corruption as violation of the GATT. Solicitation of a bribe imposes an unfair tax on trade. In the 2010s, companies will find more innovative ways to sue customs administrations which fail to investigate and prosecute corruption on two grounds. First, customs bribes create an unfair tax. Second, customs bribes create serious damage. A two-week delay on a €10 million consignment can cost a company up to €100,000. The 2010s are likely to see increased legal action against corruption as a hindrance to trade.

Risks relating to the Authorised Economic Operators (AEO) program. The AEO program has greatly facilitated trade by reducing the amount of fraud audits conducted at border crossings. However, the program also creates different types of controls – and administrative discretion – within the customs administration. The 2010s will undoubtedly produce data on the correlation between the proportion of AEOs and the extent of corruption in different World Customs Organization (WCO) member states.

Freedom of information. All Director Generals talk about openness, freedom of information and the importance of research. Yet, no customs director would ever authorise the release of data from their administration (in any form). If Director Generals want to benefit from the research of others, they must be willing to join the openness revolution. The 2010s will serve as a litmus test to see if Director Generals practise what they preach about openness and transparency.

Cross-border investigation. A number of bilateral and multilateral agreements allow for cooperation in criminal matters. Examples include a number of Council of Europe (CoE) treaties on mutual legal assistance in criminal matters and of course, the Treaty of Lisbon (for European Union countries). Yet, few investigators fly from London to Kiev (or other places) to help with cross-border cases.

Dying for anti-corruption. Eastern Europe has its ‘garden variety’ customs corruption (with some exceptions). In Latin America, investigating and prosecuting corruption runs into organised crime and often into lethal force from organised crime. In the next decade, inspectorates will undoubtedly need to know how to protect their staff using programs such as witness protection programs and *qui tam* rewards (for individuals denouncing corruption related to organised crime).

Comparative studies on anti-corruption in Customs. Policymakers sorely lack comparative data on anti-corruption in various customs agencies worldwide. Agencies like the United Nations Development Programme (UNDP) and OECD have vigorously pushed (and financed) peer reviews and the monitoring of anti-corruption work, particularly of anti-corruption agencies.¹¹ The time has come for an organisation – like the WCO – to support such work aimed specifically at anti-corruption in Customs.

Conclusions

Over the last decade, customs administrations and academic-practitioners have learned a great deal about fighting corruption in Customs. Most customs experts agree on the basics of an anti-corruption reform in Customs: prevention, consultation and enforcement. We are now more able to estimate the magnitude of corruption and its harm to the customs agency. We roughly agree on the basics of setting up and running an internal inspectorate and handling internal investigations. We also agree on a certain global ‘*acquis*’ in terms of anti-corruption law – criminalisation, the recovery of proceeds from crime and the ability to conduct international investigations. We also know, albeit in very rough terms, how to use computers to record data such as import times, inspectors’ names (and so on) to create the paper trails needed to investigate corruption, domestically and internationally.

Beyond these things, we still have a lot to learn about fighting corruption in Customs. We don’t really know what causes corruption in any particular customs agency, although we do know general causes. We do not know why some customs agencies have serious problems with corruption, while their neighbours in countries with exactly the same level of economic development (in GDP per capita terms) do not. We do not know why most countries continue to resist implementing the international anti-corruption conventions or why customs agencies do not take a more active role in creating regulations which prevent corruption. Such questions will undoubtedly pose interesting areas of research and work in the next decade.

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Endnotes

- 1 See Ferreira, Engelschalk & Mayville 2007. This chapter provides the quintessential overview of corruption in Customs and strongly reflects the issues addressed by the World Bank.
- 2 Ayres, Davis, Healy & Wrage (2007) provide a very competent overview of the conventions.
- 3 Heineman & Heimann (2006) provide an excellent overview of the problems of the international anti-corruption conventions.
- 4 Some of the data used in this analysis is provided in Steves & Rousso (2003). Their bibliography identifies useful sources. In the absence of other data and with some scepticism on the part of the authors of this paper about the numbers mentioned, see Kaufmann, Kraay & Mastruzzi (2005), an often cited paper, to consider the rhetorical question: 'How do you measure the immeasurable?'
- 5 The *UN Anti-corruption toolkit* (2004) lists the major initiatives but is surprisingly unhelpful on implementation. It addresses in some depth the various methods of advertising, focus groups and other techniques for 'awareness-raising'.
- 6 See Sampford (2006), the *vade mecum* for measuring corruption.
- 7 See McLinden 2005. This book is highly recommended: real issues tackled by real customs officials.
- 8 See the References for articles about survey design and implementation.
- 9 The OECD (2008) discusses in some detail the various 'flavours' of anti-corruption work.
- 10 See Khan (2006), an important contribution to the discussion. Also recommended is the paper by Baltaci & Yilmaz (2006) which includes an excellent description of the use of internal audit to fight corruption in any government institution.
- 11 See OECD 2008. In the authors' view, anti-corruption agencies have become a popular, if ineffective, institutional response to corruption. Numerous studies, such as this OECD study, try to compare these agencies and understand how to make them more effective. Ironically, little work has been done on the potentially much more effective customs inspectorates and internal affairs departments. Professors de Sousa's work (2006) which provides statistical comparisons of anti-corruption agencies in Eastern Europe and the former Soviet Union remains a *tour de force* in the anti-corruption field. Researchers need similar data on customs inspectorates.

Bryane Michael



Bryane Michael has served as senior anti-corruption adviser to over 15 governments and customs agencies worldwide. A Harvard-trained economist, his almost 15-year career has taken him to the World Bank, Organisation for Economic Co-operation and Development (OECD), United Nations Development Programme (UNDP), European Union (EU), and five years teaching at Oxford University.

Nigel Moore



Nigel Moore has 35 years operational and management experience in the Customs and tax fields, including 10 years international experience of working as a senior adviser on reform projects. He has worked in five developing countries advising on, amongst other things, practical approaches to enhance ethical standards and internal controls.